

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable William H. Alsup, Judge

Christopher Jones,)
)
 Plaintiff,)
)
 VS.) NO. C 12-0587 WHA
)
 Marriott Services Hotel, Inc.,)
)
 Defendant.)
 _____)

San Francisco, California
Thursday, January 31, 2013

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For Plaintiff:

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Reported By: Kelly L. Shainline, CSR No. 13476, RPR
Court Reporter Pro Tem

1 Thursday - January 31, 2013

8:37 a.m.

2
3 **THE COURT:** Case Number 12-587, Jones v. Marriott
4 Hotel.

5 Okay. Appearances, please.

6 **MR. JARRARD:** Good morning, Your Honor. My name is
7 Thomas Jarrard. I represent Mr. Jones.

8 **THE COURT:** Okay.

9 **MS. MILLER:** Michele Miller of Miller Law Group
10 representing Marriott.

11 **MR. LEVIN:** Hello, Your Honor. Noah Levin
12 representing --

13 **THE COURT:** What's your name?

14 **MR. LEVIN:** Noah Levin representing Marriott.

15 **THE COURT:** Okay. Great. Welcome to all of you.

16 This is a motion by both sides. So I don't really
17 see the point of arguing this. You both have briefed it, but I
18 think I want to give you each a chance to make your main points
19 and explain to me why the other side should lose. I think
20 that's more important than hearing why you should win.

21 So let's start with the defendant. You're the one
22 that wants to get summary judgment the most, so what is your
23 main point?

24 **MS. MILLER:** Your Honor, I think we've made most of
25 our main points, but I think that the issue is, under USERRA,

1 provided that Marriott had an obligation to reemploy Mr. Jones,
2 did they reemploy him to a position of employment. And I
3 think --

4 **THE COURT:** Well, let me tell you what I see is the
5 problem for you.

6 **MS. MILLER:** Okay.

7 **THE COURT:** This is a remarkable statute.

8 **MS. MILLER:** Yes, it is.

9 **THE COURT:** It is one of the most remedial statutes
10 I've ever seen, even more so than the Civil Rights Act,
11 Title VII, and it's there to protect veterans who serve our
12 country who get then returned only to find that their employer
13 has moved on and doesn't want to hire them anymore.

14 So it even goes so far as to have this escalator
15 provision, which I've never seen in any other part of the law
16 in 40 years, which says you get to go back to where you would
17 have been if you had stayed on at employment, including
18 promotions, but also demotions and layoffs if that would have
19 occurred. But it's clearly an exceedingly remedial statute.

20 All right. Now, what happened here was the
21 Marriott, he got up to the job of banquet chef and then he got
22 called to Afghanistan, served our country. While the rest of
23 us are back here making money, he's over there serving our
24 country.

25 Then he comes back and Marriott says, "Too bad. We

1 laid you off and eliminated your position." But come to find
2 out, he was only laid off at that hotel, not the other hotels.

3 So couldn't a reasonable jury sitting over in that
4 jury box, couldn't a reasonable jury sit and look at this
5 picture and say, "Wait a minute. This is a sham. This is a
6 sham. They just laid him off at that hotel. They didn't lay
7 off every single banquet chef in the United States."

8 So I'm inclined to let the jury decide this case.
9 I'm going to be honest, that's where I'm coming out unless you
10 have a very good reason for summary judgment. So you get to
11 go.

12 **MS. MILLER:** Okay. Your Honor, I agree it is a
13 remedial statute, and the code makes it very clear that you
14 return somebody to an escalated position. That escalated
15 position can be you're going up or going down.

16 **THE COURT:** Wait a minute. You're the one that
17 decides that he's going to get escalated down to a layoff. And
18 I can just see -- you know, I represented companies for
19 25 years. I know how it works. They sit around a room and say
20 Mr. So-and-So is now in Afghanistan, but there's this new law
21 that says we have to hire him.

22 And then the lawyer says, "No problem, we will just
23 escalate him down to a layoff. It will be a de-escalator.

24 **MS. MILLER:** If he were the only person impacted,
25 then I think that there -- we probably would not be standing

1 here, Your Honor.

2 **THE COURT:** You did not lay these people off across
3 the country.

4 **MS. MILLER:** No.

5 **THE COURT:** There are still Marriott Hotels that
6 didn't lay off the banquet chef.

7 **MS. MILLER:** But the question is: Did we treat him
8 the same --

9 **THE COURT:** That's what the jury is going to find
10 out.

11 **MS. MILLER:** -- as everybody else in the Marriott
12 Marquis who was impacted by this layoff? And the answer is
13 yes.

14 **THE COURT:** That's not the issue. That's the way
15 you define the issue. You define it as a one-hotel deal. But
16 I'm going to let the jury look at the entire nation and see how
17 many people got laid off in this job. And the answer is a lot
18 of people did not get laid off.

19 Now maybe you can still convince the jury that it
20 wasn't a sham.

21 **MS. MILLER:** I think, Your Honor, if you take a look
22 at the Eighth Circuit decision in *Milhauser*, which is the exact
23 same argument that was raised by *Milhauser* --

24 **THE COURT:** Eighth Circuit? We're in the Ninth
25 Circuit.

1 **MS. MILLER:** I understand that.

2 **THE COURT:** We're the Ninth Circuit.

3 **MS. MILLER:** We're under the same -- we're under the
4 same statute. It was the exact same --

5 **THE COURT:** I don't care. Ninth Circuit counts.
6 Eighth Circuit is just for persuasive effect. I have a feeling
7 how the Ninth Circuit would come out on this.

8 Go ahead, though. I'd like to hear what is your
9 evidence that this was not directed at getting around your
10 obligations --

11 **MR. LEVIN:** Your Honor --

12 **THE COURT:** -- to this plaintiff in order so that
13 when he returned, he would have a job instead of being laid
14 off.

15 **MR. LEVIN:** Your Honor, if I could jump in. It's
16 all in our papers. And what the papers lay out is that there
17 were very specific business reasons why the banquet chef was
18 eliminated at this hotel.

19 **THE COURT:** They didn't have banquets? What was the
20 reason?

21 **MR. LEVIN:** In particular -- well, there was a
22 35-percent reduction in business -- banquet and catering
23 business.

24 **THE COURT:** So they still had 65 percent.

25 **MR. LEVIN:** They did. They still had some, but they

1 had to operate with fewer chefs. And the necessary business
2 decision was to have more versatile chefs and not --

3 **THE COURT:** They didn't have any chefs?

4 **MR. LEVIN:** Your Honor, there were 35 people whose
5 positions were eliminated in the food and beverage division
6 alone at this hotel. And because --

7 **MS. MILLER:** And, Your Honor, I understand --

8 **THE COURT:** Well, then a jury -- look, if it's all
9 so reasonable, the jury is going to buy your argument and then
10 you'll be happy.

11 **MS. MILLER:** Your Honor --

12 **THE COURT:** Why can't you let a jury decide this?

13 **MS. MILLER:** Because the law is -- I believe it is
14 clear.

15 **THE COURT:** But couldn't a jury reasonably decide,
16 "Hey, this was a sham, this was a sham"? That's what the
17 jury --

18 **MS. MILLER:** And we would be giving Mr. Jones
19 preferential treatment, and that's not what USERRA demands.
20 USERRA demands that we be -- and, you know, frankly, Your
21 Honor, morally and ethically we all might agree that, as a
22 veteran, the country should do more, the legislature should do
23 more.

24 **THE COURT:** I've never seen any more remedial
25 statute than this.

1 **MS. MILLER:** But it is clear if you look at the
2 statute, if you look at the code, and you look at all of the
3 cases, the Congress specifically said that USERRA is not a
4 veteran preference statute.

5 If, Your Honor, if we had laid off 35 people in the
6 Marriott Marquis and we had given all of them -- or we had
7 basically placed them and said, "You are banquet chef here.
8 Now we have an opening somewhere else. We're going to move you
9 there," or, "You were a food and beverage manager here, and now
10 we're going to move you somewhere else," but that's not what
11 happened.

12 Everybody that was laid off in 2008 and 2009 during
13 the worst crisis that unfortunately impacted the hospitality
14 industry and impacted the Marriott Marquis, everybody that was
15 laid off at that time was given the same package. Mr. Jones
16 was given the same package that kept him on leave. In fact,
17 they told him while he was on leave that the position had been
18 eliminated. They kept him on leave, and when he came back,
19 they gave him the same package. They treated him exactly the
20 same.

21 **THE COURT:** No. Other banquet chefs in the country
22 were not fired.

23 **MR. LEVIN:** And, Your Honor, to address your
24 question about why this should not go to the jury, the reason
25 is because there is no evidence in the record from which a jury

1 could infer that the business reasons that --

2 **THE COURT:** Yes, they could. They weren't fired in
3 other hotels. He was fired. Other banquet chefs are not
4 fired. That's enough to go to the jury.

5 **MR. LEVIN:** Well, Your Honor, the evidence isn't
6 that we eliminated the banquet chef position at all hotels.
7 It's that the financial circumstances at this specific --
8 Marriott doesn't make business decisions across all of its
9 hotels. The executive committee at this specific hotel looked
10 at the declining revenue, and they were forced to lay off many
11 managers, approximately 20 percent of the managers at the
12 hotel. And --

13 **MS. MILLER:** And if they had taken any one of those
14 individuals that were laid off and moved them or transferred
15 them elsewhere, then Mr. Jones, when he came back, would have
16 been entitled to the same treatment. That is what the
17 escalator position required, that the individual is placed back
18 in the position they would have held, that they don't
19 unfortunately benefit from their military service, but at the
20 same time they aren't somehow impacted. They come back to the
21 same position they would have held had they not taken military
22 leave.

23 **THE COURT:** Let's hear from the plaintiff.

24 **MR. JARRARD:** Your Honor, this --

25 **THE COURT:** Well, what is your answer to their

1 point? What is your proof that this was a sham?

2 **MR. JARRARD:** Well, it's a sham -- it's simply a
3 sham for the fact that -- focused on the fact that they want to
4 focus on one single building here in San Francisco. The record
5 shows that they laid off 191 people, 180 during a temporary
6 layoff --

7 **THE COURT:** Well, it was a terrible downturn.

8 **MR. JARRARD:** Yeah, it was a terrible downturn.

9 **THE COURT:** All right. So the jury's going to
10 remember how bad it was.

11 **MR. JARRARD:** That's right.

12 **THE COURT:** And so they lay off not just him, but
13 181 people at the same hotel.

14 **MR. JARRARD:** 180 people at the same hotel for a
15 temporary layoff. And then an additional 11 folks who are,
16 quote/unquote, managers at that hotel.

17 Five of those managers are rehired. And all 180 of
18 the other folks are rehired by the time Mr. Jones comes back.
19 Then after Mr. Jones comes back --

20 **THE COURT:** Wait. Say that again. 180 are rehired
21 when he's come back?

22 **MR. JARRARD:** That's right. There was a temporary
23 layoff. They closed the banquet hall for a couple months.

24 **THE COURT:** You're saying there were 181 people laid
25 off and then 180 got rehired and he's the only one that didn't

1 get rehired?

2 **MR. JARRARD:** Not the only one. Actually, I'll be
3 clear with the numbers. There's 191 -- according to the
4 record, there was 191 folks laid off at that hotel, and 185 of
5 them went back to work for Marriott.

6 **THE COURT:** By when?

7 **MR. JARRARD:** By when? By January 2010. I mean, I
8 can cite to the Court portions of the record if you like.

9 **THE COURT:** I want to see if I've got this right.
10 191 were laid off in one fell swoop?

11 **MR. JARRARD:** Over the course -- according to -- the
12 way the case unfolded was they said they laid off some folks in
13 2008 and then again they said they laid off folks in 2009.
14 When you add them all up, it's 191 folks.

15 **THE COURT:** When was Mr. Jones laid off?

16 **MR. JARRARD:** Mr. Jones wasn't laid off until
17 January 29th, 2010. The record is clear on that. They kept
18 him in his position. In July of 2009, he got a letter from
19 Marriott stating, "When you're done with your military leave,
20 let us know so we can schedule you for your return to work."
21 Those are the words right out of the letter.

22 When he came back, that's what he did. I mean, if
23 there was some expectation that he had somehow been laid off
24 two years earlier, what would be the point of him seeking
25 reemployment? It's ridiculous.

1 **THE COURT:** So go back to the numbers. 191, and he
2 was part of that 191?

3 **MR. JARRARD:** Well, he would have been 192 if he had
4 been laid off in 2008 as they allege, but he wasn't.

5 **THE COURT:** All right. So by the time he returned
6 from Afghanistan, knocked on the door and said, "Here I am,"
7 how many of those had been rehired?

8 **MR. JARRARD:** All 180 of the temporary layoffs for
9 the banquet area closure had been rehired, and five of the
10 eleven alleged managers had been rehired.

11 **MS. MILLER:** Your Honor, that's not correct. That's
12 incorrect.

13 **THE COURT:** That's what he says.

14 **MS. MILLER:** I understand that's what he says. But
15 there's absolutely nothing in the record. And the record, the
16 evidence as submitted by Marriott is completely different.

17 There is -- in 2009 there was a temporary closure of
18 a restaurant for remodeling, not the banquet, but a restaurant.

19 **MR. LEVIN:** The ballroom.

20 **MS. MILLER:** The ballroom. All of those individuals
21 were given layoff. They came back, you're right. Of the
22 managers that were let go, none of them were rehired by
23 Marriott because Marriott didn't rehire them.

24 What happened is if they -- same thing as Mr. Jones,
25 is some of them applied for positions and were able to get

1 other positions but not until way after the fact. And some of
2 them came back. Of the two banquet managers whose positions
3 were eliminated, one didn't find another position. The other
4 one applied for a position as a telephone operator at Marriott
5 which he got in 2010.

6 **MR. LEVIN:** After Jones returned from leave.

7 **MS. MILLER:** After Mr. Jones returned from leave.

8 So this is -- I would suggest, Your Honor, if you
9 could go back and just take a look at the undisputed facts in
10 this record, what Mr. Jarrard said just now is simply
11 incorrect.

12 **THE COURT:** All right. Let's hear your reply.
13 What's your response to what I just heard?

14 **MR. JARRARD:** Well, Your Honor, I could cite the
15 record here. I've got the exact spots in the record.

16 **THE COURT:** All right. Go ahead, cite the exact
17 spots.

18 **MR. JARRARD:** Marriott claims to eliminate --

19 **THE COURT:** Please not so fast. We've got to
20 understand what you're saying. And the court reporter's got to
21 be able to understand it. So go slow.

22 **MR. JARRARD:** The temporary positions, 180 folks
23 were laid off because of the closure of the portion of the
24 facility, one of their culinary provisions at the big hotel.

25 Now that's at Docket 53 at 10.

1 I apologize, Your Honor, it wasn't 53 at 10. That's
2 at Docket 49-45.

3 **THE COURT:** You said five managers were rehired.

4 **MR. JARRARD:** Oh, the five managers rehired?

5 **THE COURT:** Where do you get that part?

6 **MR. JARRARD:** The five managers rehired is at 51-2,
7 pages 7 through 9.

8 And they want to make a distinction between rehired
9 and recalled.

10 The fact of the matter is the folks got let go from
11 the hotel for financial reasons is what they allege. And then
12 they ended up working for the hotel again. We can call that
13 rehired, we can call that reemployed, we can call it whatever.
14 But the fact of the matter is they got a job.

15 **THE COURT:** Well, wait a minute. You said he had a
16 letter.

17 **MR. JARRARD:** He does have a letter.

18 **THE COURT:** Do you have a copy of that letter here?

19 **MR. JARRARD:** I do have a copy of that letter here,
20 Your Honor.

21 **THE COURT:** Can I see it right now?

22 **MR. JARRARD:** It is -- yes, Your Honor.

23 **THE COURT:** While we're digging out the letter, what
24 do you say to the letter? He gets a promise.

25 **MS. MILLER:** He does not get a promise, Your Honor.

1 **THE COURT:** What does he get? What was the point of
2 sending him that letter and then when he returned from serving
3 our country in Afghanistan, the door was closed on him?

4 **MR. LEVIN:** Your Honor, I can address that.
5 Marriott's policy is, with employees on leaves of absence, if
6 the position is eliminated while they're on leave of absence,
7 they stay employed until they return. And that's what happened
8 here.

9 And the HR director for the hotel notified Mr. Jones
10 in January of 2009 after the decision had been made so he could
11 evaluate his options, and he admitted that they had that
12 conversation. She told him his position would be eliminated,
13 he would remain employed with the company until he returned
14 from leave at which time the position would be formally
15 eliminated.

16 **THE COURT:** It would be what?

17 **MR. LEVIN:** Formally, officially eliminated. And
18 the evidence is undisputed on that fact.

19 And the fact that a form letter went out to him in
20 the interim about scheduling his return was just an
21 administrative necessity because the layoff would not take
22 place pursuant to Marriott's policy until --

23 **THE COURT:** Well, if it's so clear, the jury will
24 understand your argument. If it's so clear, if they're saying,
25 "Come back and we'll reschedule you as soon as you finish

1 serving our country in Afghanistan, we'll reschedule you for a
2 meeting," but really that was double-speak to mean, "You're
3 fired," your jury will understand what you're talking about and
4 it will be so clear. Come on.

5 Can I see that letter?

6 **MR. JARRARD:** Your Honor, I don't have -- the letter
7 is submitted in the defendant's --

8 **THE COURT:** Never mind.

9 **MR. JARRARD:** In the defendant's briefing, it's
10 Section 49 of the brief, and it's an attachment to Ms. Fallon's
11 declaration. I apologize. I don't have that specific document
12 here. I brought the documents to support.

13 His termination letter, I do not have a copy of that
14 either with me present.

15 In any event, the termination letter states that his
16 position, he would continue in employment until January 29th.

17 **THE COURT:** Where's Mr. Jones today?

18 **MR. JARRARD:** What's that?

19 **THE COURT:** Is he in the country today? Where is
20 he?

21 **MR. JARRARD:** No, Your Honor. He's deployed. He's
22 in Afghanistan.

23 **THE COURT:** Well, how are we going to have a trial
24 then?

25 **MR. JARRARD:** We will have a trial after he returns.

1 **THE COURT:** When is our trial date?

2 **MR. JARRARD:** It is in September, I believe,
3 Your Honor.

4 **THE COURT:** Oh, I've already extended it?

5 **MR. JARRARD:** That's correct, Your Honor.

6 **THE COURT:** All right.

7 **MR. JARRARD:** I did have a couple other quick
8 points, Your Honor, in response to some things I've heard this
9 morning.

10 First of all, counsel makes great hay about the case
11 of *Milhauser*. *Milhauser* is not the same. *Milhauser* is
12 significantly different.

13 **THE COURT:** Is that the Eighth Circuit case?

14 **MR. JARRARD:** That's the Eighth Circuit case. And I
15 don't want it to have any persuasive effect on this Court
16 because the fact of the matter is *Milhauser* deals with a
17 different section of the law. 4313 has two sections. The
18 first section deals with folks who are gone for less than three
19 months, and the second section deals with folks that are gone
20 for more than three months.

21 Mr. Jones is gone for over a year. And what the
22 law -- and I can read the statute to you, but I'll save you the
23 time. Under the first section, when someone's gone for a very
24 short period of time, less than 90 days, there's one position
25 of escalator that the statute discusses. It's the job that

1 they would have had had they never left. And then if they're
2 not qualified for that job, the employer can look to a
3 different position.

4 Under the section that applies here in this case,
5 Mr. Jones was gone for over a year, and Section 2 applies. And
6 there's three jobs that are discussed in that portion of the
7 statute, before we even look to the qualifications. The first
8 is the escalated position, the job they would have had had they
9 never left. Or a second job, a position of like employment,
10 status and pay. Or finally, the job they had before they left.

11 Then the statute directs that we look to the
12 qualifications of the folks involved.

13 In addition to the fact that --

14 **THE COURT:** Then what is your point?

15 **MR. JARRARD:** I'm sorry?

16 **THE COURT:** You're just going on and on. What is
17 the point you're trying to make?

18 **MR. JARRARD:** The point is that when a fellow comes
19 back from active duty after a long period of service, the
20 employer has an obligation under the statute, as well as under
21 the regulations, to look at the circumstances surrounding their
22 ability to make reemployment at that time.

23 And when you're gone for a long period of time, of
24 course more things have happened during your absence. When
25 it's a short period of time --

1 **THE COURT:** How long was he gone? A year, wasn't
2 he?

3 **MR. JARRARD:** A little over a year, yes, Your Honor.

4 **THE COURT:** All right. So then how old was he when
5 he left?

6 **MR. JARRARD:** I'm sorry. Frankly, I don't know his
7 age.

8 **THE COURT:** Roughly.

9 **MR. JARRARD:** 22, 25.

10 **THE COURT:** 25?

11 **MR. JARRARD:** I'm sorry, Your Honor. He's probably
12 29 years old.

13 **THE COURT:** All right. So let's say he's about that
14 age. He goes away for one year, and the hotel is saying they
15 could not find any place to put him.

16 **MS. MILLER:** That's not what the obligation is under
17 the law. The law is to return him, if he's qualified, to the
18 escalated position. He was returned. He was qualified to the
19 escalated position. Unfortunately the escalated position, as
20 the courts and the Department of Labor and the regulations
21 state that escalator position could be either a promotion, a
22 demotion or even a termination.

23 And as the 20 CFR --

24 **THE COURT:** How about subsection (b)? The way I
25 read this, subsection (a) is the escalator thing which gives

1 him the benefit of where he would have been employed had he
2 been in continuous employment. But then subsection (b) says,
3 "The position of employment in which the person was employed on
4 the date of commencement of the service in the uniformed
5 services or a position of like seniority, status, and pay, the
6 duties of which the person is qualified to perform, only if the
7 person is not qualified to perform the duties of a position
8 referred to in subparagraph (a) after reasonable efforts by the
9 employer to qualify the person."

10 Now, in this case, the duties of the position
11 referred to in subparagraph (a), under your theory, is he
12 gets -- he gets escalated out the door out onto the sidewalk.

13 **MS. MILLER:** Your Honor, if that is the escalated
14 position, if he was qualified for the escalated position, that
15 is the escalated position.

16 The regulations, the statutes --

17 **THE COURT:** The escalated position is no position.
18 He's been fired.

19 **MS. MILLER:** It is a layoff with severance benefits,
20 correct. That is the position.

21 **THE COURT:** Could Congress have possibly meant that?

22 **MR. LEVIN:** Yes, Your Honor.

23 **MS. MILLER:** Yes, it is clear because in the statute
24 and in all the legislative history, there is no veterans'
25 preference.

1 **THE COURT:** I'm not saying that it's a veterans'
2 preference.

3 **MS. MILLER:** But, Your Honor, what you're basically
4 saying is that even though everybody else at the hotel was laid
5 off during a downturn of 2008, 2009, they should be laid off,
6 but when Mr. Jones came back, Marriott had an affirmative
7 obligation to find him another position somewhere in the world.
8 That is a veterans' preference statute.

9 **THE COURT:** I'm not going that far. So don't tell
10 the Ninth Circuit --

11 **MR. LEVIN:** Your Honor -- Your Honor -- subpart (b),
12 if you -- the key language in there is "only if the employee is
13 not qualified for the escalator position."

14 **THE COURT:** But the escalator position, under your
15 theory, is no position, he's fired.

16 **MR. LEVIN:** Yes. And the regulations are explicit,
17 are explicit that that is --

18 **THE COURT:** Well, I'm going to look at those
19 regulations. I can't believe the Department of Labor would
20 have come to that conclusion.

21 **MR. JARRARD:** Your Honor, I would like to talk about
22 the regulations because they are very specific and I'd like to
23 draw your attention to some of them.

24 All of them are at 20 CFR 1002.191 through -197.

25 In the first, it says, "In all cases USERRA places

1 the burden on" --

2 **THE COURT:** Not so fast. Come on. Go slow so that
3 I can -- and don't read so fast. I can't even follow it.

4 **MR. JARRARD:** "In all cases USERRA places the burden
5 on the employer to determine the proper employment position
6 based on the circumstances surrounding the employee's return."

7 **THE COURT:** We're going to just read all these regs
8 to the jury. I'm going to give them the law exactly as it
9 comes in the regs --

10 **MR. JARRARD:** Your Honor, I'm -- I don't want --

11 **THE COURT:** -- and if the jury thinks that the
12 Marriott has complied with the law, then great.

13 **MR. JARRARD:** Your Honor, I don't want to have to
14 have the Court read these to the jury and I don't want to use
15 up the Court's time. The fact of the matter is the statute and
16 the regulation impose a burden upon the employer --

17 **THE COURT:** All right.

18 **MR. JARRARD:** -- to make an assessment --

19 **THE COURT:** I'm not going to give you summary
20 judgment either.

21 **MR. JARRARD:** I'm sorry?

22 **THE COURT:** The jury is going to sit over there, and
23 they're going to decide this case whenever he comes back from
24 his military service in Afghanistan.

25 Look, I've got a lot of lawyers here who have got

1 their case coming up, too. So I'm going to get an order out.
2 I'm going to deny summary judgment. I believe that whenever we
3 hear all the facts of the case, it will all become clear. The
4 jury will come to a just and proper verdict.

5 **MS. MILLER:** Thank you, Your Honor.

6 **THE COURT:** Both motions will be denied. And this
7 case is going to trial.

8 **MR. JARRARD:** Thank you, Your Honor.

9 **THE COURT:** All right. Thank you.

10 (Proceedings adjourned at 9:02 a.m.)

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CERTIFICATE OF REPORTER

I, KELLY SHAINLINE, Court Reporter for the United States Court, Northern District of California, hereby certify that the foregoing proceedings in C 12-0587 WHA, Christopher Jones v. Marriott Services Hotel, Inc., were reported by me, a shorthand reporter, and were thereafter transcribed under my direction into typewriting; that the foregoing is a full, complete and true record of said proceedings as bound by me at the time of filing.

The validity of the reporter's certification of said transcript may be void upon disassembly and/or removal from the court file.



Kelly Shainline, Court Reporter

Tuesday, February 12, 2013