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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ALICE ROSAS AGUILAR, et. al.,

Plaintiffs,

v.

COUNTY OF FRESNO, et. al.,

Defendants.

Case No.: 1:08-cv-01202 OWW-GSA

**ORDER FOLLOWING HEARING ON
PLAINTIFF'S MOTIONS IN LIMINE**

Trial Date: August 24, 2010

1 The Court having held a hearing on August 3, 2010, with the participation of
2 counsel for the parties, rules as follows on Plaintiff's motions in limine:

3 Motion in Limine #1: To exclude defense experts' testimony regarding
4 suicide by cop

5
6 Ruling: Granted as to defense expert Joseph Callanan; reserved
7 as to defense expert Dr. Kris Mohandie pending an
8 evidentiary hearing.

9
10 The Court grants the motion as to defense police practice expert Joseph Callanan.
11 The Court finds that there is no evidence that Officer Serrano believed he was dealing
12 with a suicidal individual and did not invoke or consider any of his training on how to
13 deal with a suicidal individual in his encounter with the decedent. Moreover, if no
14 special tactics that would be employed in dealing with a suicidal individual entered
15 Officer Serrano's mind or were considered by him, there is no foundation for Mr.
16 Callanan's opinion. Accordingly, Mr. Callanan's opinions regarding training on suicide
17 by cop, or any testimony by him regarding suicide by cop, would be irrelevant, and if
18 not irrelevant, the prejudicial affect grossly outweighs any probative value. The Court
19 also finds that there is no foundational support for Mr. Callanan's opinions.

20 The Court reserves ruling as to defense psychologist Dr. Mohandie. The Court
21 will hold an evidentiary hearing pursuant to FRE 104 to determine whether Dr.
22 Mohandie will be permitted to testify regarding suicide by cop. The scope of the
23 testimony at the hearing will be limited to facts mentioned by Officer Serrano in the
24 performance of his duties with regard to his encounter with the decedent, not substance
25 use on other occasions or other unspecified or unknown events in the life of the
26 decedent. The Court wants to know exactly what hypothetical facts are going to be
27 asked to be assumed because those facts have to be limited to the Court's stated
28 analysis.

1 Motion in Limine #2: To exclude testimony regarding decedent's immigration
2 status and method of payment by his employer
3

4 Ruling: Motion is granted as to decedent's immigration status.
5 Motion is granted as to method of payment subject to
6 impeachment if decedent's employer Patrick Thomas
7 testifies.
8

9 The motion is granted as to decedent's immigration status. The motion is granted
10 as to any testimony regarding the method of payment by his employer. However, if
11 decedent's employer, Patrick Thomas, testifies to establish decedent's employment or
12 establish that decedent was lawfully on the premises on that night of the incident, he
13 can be impeached by a narrowly framed question calling for a "yes" or "no" response,
14 such as the following : "Haven't you, in effect, maintained false records for the purpose
15 of avoiding reporting?" There is to be no mention of Mr. Thomas' invocation of his
16 Fifth Amendment right at his deposition.
17

18 Motion in Limine #3: To exclude evidence of decedent's alleged prior alcohol
19 use and alleged drug use by plaintiff
20

21 Ruling: Motion is granted as to prior alcohol use by decedent
22 and denied as to drug use by plaintiff.
23

24 The motion to exclude prior alcohol use by decedent is granted. The motion to
25 exclude drug use by plaintiff is denied. The Court finds that if there is affirmative
26 reliable evidence that plaintiff's methamphetamine use caused problems in their
27 relationship, this information would be relevant to damages, and any claim regarding
28 loss of comfort and society.

1
2 Motion in Limine #4: To exclude evidence of decedent and plaintiff's alleged
3 prior criminal history
4

5 Ruling: Motion is granted.
6

7 The Court finds that decedent's and plaintiff's past criminal histories are not
8 admissible under FRE 608. There is no evidence of prior felony convictions for
9 decedent or plaintiff. The Court finds that evidence regarding past criminal history of
10 decedent and plaintiff is more prejudicial than probative. With respect to using the fact
11 that plaintiff was paying a fine for the DUI to impeach Marie [Sustaita], the Court
12 believes that this can be done without reference to plaintiff's DUI conviction and
13 suggests the following types of questions: Was your mother paying a fine (without
14 mentioning what it was for)? Was that a stressor, or was it causing stress? The Court
15 finds that under FRE 608, outside facts cannot be used to prove a prior inconsistent
16 statement.

17 The Court orders that there be no reference to the DUI by plaintiff prior to
18 showing the Court a transcript of the conviction for a determination of whether or not
19 this is proper impeachment.
20

21 **IT IS SO ORDERED.**
22
23
24

25 DATED: August 20, 2010

/s/ OLIVER W. WANGER
UNITED STATES DISTRICT JUDGE
26
27
28