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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA

11	ALICE ROSAS AGUILAR, as successor)	CASE NO. 1:08-cv-01202-OWW-GSA
	in interest to Sergio Rosas Aguilar;)	
12	ALICE ROSAS AGUILAR, an individual,)	ORDER ON DEFENDANTS' MOTION TO
)	MODIFY THE SCHEDULING ORDER
13	Plaintiffs,)	AND TO RECONSIDER EVIDENTIARY
)	RULING LIMITING THE TESTIMONY
14	v.)	OF CHP OFFICER MARTORANA
)	
15	COUNTY OF FRESNO, CALIFORNIA,)	
	a political subdivision of the State of)	
16	California; ERNEST SERRANO, an)	
	individual,)	
17)	Complaint Filed: August 15, 2008
	Defendants.)	Trial Date: December 7, 2010
18	_____)	

19 The hearing on this matter was heard before The Honorable Oliver W. Wanger in
20 Courtroom 3 of this Court with Brian Claypool appearing on behalf of Plaintiff, ALICE
21 ROSAS AGUILAR and Valerie Velasco and James Weakley appearing on behalf of
22 Defendants, COUNTY OF FRESNO and ERNEST SERRANO. Argument was heard by both
23 parties and the Court finds as follows:

24 The Court finds that the appropriate standard to modify the Final Pretrial Order is
25 manifest injustice as set forth in Federal Rule of Civil Procedure Rule 16(e) and Defendants did
26 not meet that standard so as to allow for Dr. Kris Mohandie to supplement his previous Rule 26
27 disclosure to include testimony regarding the physical effects of being involved in a traumatic
28 or high stress situation. Defendants' motion to allow Dr. Mohandie to supplement his Rule 26
report and trial testimony is DENIED.

Defendants' Order on Motion to
Modify Scheduling Order and Reconsider Ruling

1 The Court finds that the Defendants did not demonstrate manifest injustice to allow for
2 the designation of an expert on bullet trajectory analysis and that motion is DENIED.
3 However, the Court finds that any argument of counsel regarding the significance of the
4 location of shell casings at the scene is inappropriate as it lacks foundation and will not be
5 permitted.

6 The Court finds that the raw data that was gathered by Hector Tello at the scene was
7 available to the parties even though it was not utilized at the trial of this matter. The Court
8 GRANTS Defendants' motion to permit Hector Tello's diagram of the scene and his testimony
9 regarding what he observed and how he took his measurements, however he is not permitted to
10 provide any expert testimony amounting to scene reconstruction.

11 The Court finds that manifest injustice was not established so as to allow the expert
12 testimony of Ronnie Rackley and Defendants' motion to allow his designation and testimony at
13 trial is DENIED.

14 The Court finds that Plaintiff's drug use is extremely prejudicial but that it is relevant to
15 the issue of Plaintiff's damages. As such the testimony of Officer Martorana is admissible.
16 However, the limitations imposed were a result of balancing the prejudicial effect of evidence
17 of Plaintiff's drug use against the probative value of that evidence. The Court will not expand
18 upon the limitations imposed at trial, and Defendants' motion for reconsideration of this ruling
19 is DENIED.

20
21 IT IS SO ORDERED.

22
23 DATED: November 10, 2010

24
25 /s/ OLIVER W. WANGER
26 United States District Judge
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