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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

EDWARD WARKENTINE, DANIEL
TANKERSLEY,

 Plaintiffs,

 v.

HECTOR J. SORIA, et al.,

 Defendants.

Case No. 1:13-cv-01550-MJS

**ORDER DENYING, WITHOUT PREJUDICE,
PLAINTIFFS’ MOTION IN LIMINE

(ECF NO. 82)**

I. INTRODUCTION

Plaintiffs initiated this action on September 25, 2013, and are proceeding on a second amended complaint filed on June 2, 2014. Following disposition of the parties’ cross-motions for summary judgment, Plaintiffs’ Fourth Amendment Search and Seizure and Fourteenth Amendment Due Process claims remain, as specifically set forth in the Court’s January 21, 2016, Order. (ECF No. 110). Trial in this case is currently scheduled for March 1, 2016.

Pending now is Plaintiffs’ August 31, 2015, motion to preclude the City of Mendota, Krystal Chojnacki, Hector J. Soria, and Dan Gosserand (“the City Defendants”) from offering expert testimony from Soria, Gosserand, and Gerry Galvin at trial. (ECF No. 82.) Plaintiffs argue that Defendants intend to improperly offer legal opinions and conclusions from these witnesses as to the legality of the City’s abatement process in

1 this case. Plaintiffs also move to exclude expert testimony from Abraham Gonzalez and
2 Felipe Gonzalez because these party witnesses did not offer expert opinions at their
3 depositions and because their testimony would not satisfy Federal Rule of Civil
4 Procedure 702's admissibility requirements.

5 **II. RELEVANT BACKGROUND**

6 Pursuant to the Court's July 14, 2014 Scheduling Order, initial expert disclosures
7 were due January 9, 2015, and rebuttal disclosures were due February 9, 2015. (ECF
8 No. 60.) Plaintiffs produced an initial disclosure on January 9, 2015, identifying both
9 Plaintiffs as percipient / un-retained experts pursuant to Federal Rule of Civil Procedure
10 26(a)(2)(A). See Breternitz Decl. Ex. 1. The proposed testimony of the Plaintiffs is
11 extensive and summarized as follows:

12 This witness may testify regarding expert opinion(s) which the
13 witness formed in the course of participating in events
14 relevant to this litigation, including, without limitation, opinions
15 regarding the conduct of each Defendant in this action toward
16 the Plaintiffs, and each of them, as compared to the differing
17 conduct of such Defendant(s) toward other similarly-situated
18 persons and entities; the conduct of any person acting in their
19 capacity as a representative of Defendant City of Mendota
20 toward the Plaintiffs, and each of them, as compared to the
21 differing conduct of such person(s) toward other similarly-
22 situated persons and entities; the conduct, policies, practices
23 and procedures of one or more Defendant(s); how Plaintiffs
24 were regulated and treated by one or more Defendant(s) in
25 comparison to other similarly-situated person(s) in the
26 Mendota area; the nature and extent of the regulatory
27 enforcement imposed upon the Plaintiffs; the impact of
28 Defendants' actions upon the Plaintiffs, their businesses and
property rights; the ability of Plaintiffs, and each of them, to
comply with various regulations being imposed by one or
more of the Defendants; the nature and value of any property
seized or otherwise removed or damaged by one or more of
the Defendants; the harm caused to Plaintiffs, their
businesses and/or their real or personal property by any such
seizure, removal or damage to their property and the
monetary value of such harm to Plaintiffs; whether certain
agreements were entered into between Plaintiffs and one or
more Defendant(s) and compliance by said Defendant(s) with
such agreements; whether notice(s) of various alleged

1 violations by one or more Plaintiffs, among others, were
2 properly given; whether a hearing on any such alleged
3 violation(s) was properly held and complied with various laws,
4 rules and regulations applicable to such hearing(s); the
5 usefulness and viability of items characterized by one or
6 more Defendant as junk, debris or inoperable vehicles;
7 whether the Defendants' personal property removal efforts
8 exceeded the scope of any warrant allegedly issued in
9 relation thereto; whether property belonging to one or more
10 Plaintiffs was later found in another location subsequent to
11 the Defendants' seizure of same; whether one or more
12 Defendants engaged in a policy, custom, or practice of
13 intentionally and deliberately violating a policy or procedure of
14 the City of Mendota or other governmental agency or
15 otherwise established by law; whether any property of one or
16 more Plaintiffs constituted a nuisance within the meaning of
17 any applicable law; whether any applicable law sufficiently
18 defined nuisance such that a person of ordinary intelligence -
19 such as the Plaintiffs - could understand which items of their
20 property fell within the definition of "nuisance" or not; whether
21 one or more Defendants discriminated against the Plaintiffs,
22 and, if so, whether any rational basis existed for such
23 discrimination; and whether the Defendants had in place a
24 statutorily proper policy, practice or procedure regarding the
25 return or disposition of (and the notice of return or disposition
26 of) any valuable personal property confiscated during
27 nuisance abatement efforts and, if so, whether the
28 Defendants complied with that policy, practice or procedure in
this case.

19 The City Defendants did not prepare an initial expert disclosure. Instead, they
20 disclosed five parties to this case as non-retained experts in a rebuttal disclosure. See
21 Breternitz Decl. Ex. 2. Defendants identified Hector Soria, Dan Gosserand, and Gerry
22 Galvin¹ to testify on the nuisance abatement process utilized by the City of Mendota.
23 Each of these witnesses is "expected to testify that the procedures utilized by the City of
24 Mendota in its nuisance abatement process in this case were non-discriminatory and
25 met the requirements of local and state laws." They identified Abraham and Felipe
26 Gonzalez of Gonzalez Towing to testify on the role they played in the nuisance
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28 ¹ Gerry Galvin was dismissed from this action on January 21, 2016. (ECF No. 110.)

1 abatement process as well as the condition and value of the property that was removed
2 during the nuisance abatement process. Each of these witnesses is “expected to testify
3 that the value of the property disposed of during the nuisance abatement did not exceed
4 the cost of abatement.”

5 Defendants Abraham Gonzalez, Felipe Gonzalez, and Gonzalez Towing & Tire
6 Shop did not provide initial or rebuttal expert disclosures.

7 On August 6, 2015, Defendants Abraham and Felipe Gonzalez were deposed.
8 Breternitz Decl. Exs. 3-4. During their respective depositions, neither Defendant offered
9 any expert witness opinions.

10 On August 13, 2015, Plaintiffs Edward Warkentine and Daniel Tankersley were
11 deposed. Fike Decl. ¶ 2. At these depositions, Plaintiffs’ counsel produced a list of
12 personal property that the Plaintiffs claim were taken during the nuisance abatements
13 and the values for each item. Id. ¶ 3. This was the first evidence produced by the
14 Plaintiffs offering an opinion as to the value of the items taken. Id.

15 **III. LEGAL STANDARD**

16 A party may use a motion in limine to exclude inadmissible or prejudicial
17 evidence before it is actually introduced at trial. See Luce v. United States, 469 U.S.
18 38, 40 n.2 (1984). “[A] motion in limine is an important tool available to the trial judge to
19 ensure the expeditious and evenhanded management of the trial proceedings.”
20 Jonasson v. Lutheran Child and Family Services, 115 F.3d 436,440 (7th Cir. 1997). A
21 motion in limine allows the parties to resolve evidentiary disputes before trial and
22 avoids potentially prejudicial evidence being presented in front of the jury, thereby
23 relieving the trial judge from the formidable task of neutralizing the taint of prejudicial
24 evidence. Brodit v. Cambra, 350 F.3d 985, 1004-05 (9th Cir. 2003).

25 Under the Federal Rules, “[i]f scientific, technical, or other specialized knowledge
26 will assist the trier of fact to understand the evidence or to determine a fact in issue, a
27 witness qualified as an expert by knowledge, skill, experience, training, or education may
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1 testify thereto in the form of an opinion or otherwise.” Fed. R. Evid. 702. A party must
2 disclose the identity of any expert witnesses, whether retained or non-retained, expected
3 to testify at trial. Fed. R. Civ. P. 26(a)(2)(A). Disclosure of a non-retained expert “must
4 state: (i) the subject matter on which the witness is expected to present evidence ...; and
5 (ii) a summary of the facts and opinions to which the witness is expected to testify.” Fed.
6 R. Civ. P. 26(a)(2)(C).

7 **IV. ANALYSIS**

8 Plaintiffs move the Court to exclude the proposed rebuttal expert testimony on
9 multiple grounds: (1) the expert opinions do not satisfy Federal Rule of Civil Procedure
10 26(a)(2)(C)’s disclosure requirements; (2) those portions of the experts’ proposed
11 testimony that exceeds the scope of Plaintiffs’ proposed testimony were not disclosed by
12 the initial expert disclosure deadline set by the Court; (3) since there are not any new or
13 unforeseen facts in this case, the defense witnesses should have anticipated the need
14 for the proposed testimony and thus identified experts in their initial disclosures; (4) the
15 proposed opinions of Soria, Gosserand, and Galvin are inadmissible legal conclusions;
16 and (5) Defendants Hector and Felipe Gonzalez have not offered any expert opinions at
17 their depositions.

18 Defendants contend this motion is premature. They argue that their disclosures
19 were made to contradict or rebut evidence on the same general subject matters
20 identified by Plaintiffs in their disclosures and which did not appear to require expert
21 testimony. Regarding Plaintiffs’ argument that the proposed testimony of Soria,
22 Gosserand and Galvin should be precluded because their opinions are legal
23 conclusions, Defendants assert that Plaintiffs themselves identify these areas as the
24 subject of their expert testimony. Lastly, they argue that with respect to the proposed
25 testimony of Abraham and Felipe Gonzalez, these Defendants did not offer opinion
26 testimony during their depositions regarding the value of Plaintiffs’ property because
27 Plaintiffs did not produce a list of their valuation of their personal property until after
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1 these Defendants were deposed.

2 Although the Court welcomes early *motions in limine*, some simply do not lend
3 themselves to resolution until the context for the objected-to testimony and perhaps even
4 the objected-to testimony are proffered at trial. Except as noted below, the issues raised
5 by the current *motion in limine* seem to fall within the just-described category: At this
6 point in this case, it is far from clear as to on which of the numerous subject matters the
7 parties intend to offer opinion testimony. Accordingly, except as otherwise provided
8 herein, the Court reserves ruling on the issues presented in this motion until if and when
9 they arise at trial.

10 However, the Court will address some issues it anticipates arising based on what
11 is before it now:

12 First, the Court will expect the parties to show compliance with the disclosure
13 requirements of the Federal Rules of Civil Procedure or, if there was a failure to comply,
14 to show good cause for, and a lack of prejudice to the other parties from, that failure.

15 Next, the information presented with this motion suggests a possible intent on the
16 part of one or more parties to provide opinion evidence as to law applicable to the events
17 in this case and whether it was followed or applied properly in the case. Absent very
18 unusual circumstances, that will not be permitted. Such information will be presented, if
19 at all, via jury instructions and then addressed and resolved by the jury. There will be no
20 opinion from any of the parties or their witnesses that invades the provenance of the
21 Court or the jury; there will be no testimony as to what the law was and whether it was
22 followed or not. The parties and the witnesses may describe what they perceived, what
23 they and others did and, if relevant, why they did it. It is conceivable that may include
24 reference to what they believed were applicable guidelines and procedures, perhaps
25 even those established by law, but they may not express opinions on same.

26 Finally, the parties should be prepared to address via briefs and argument at trial
27 the propriety of various lay witnesses expressing opinions as to the value of property at
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1 issue in this case.

2 **V. CONCLUSION**

3 Accordingly, IT IS HEREBY ORDERED that Plaintiffs' motion in limine (ECF No.
4 82) is denied without prejudice to its renewal at trial.

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6 IT IS SO ORDERED.

7 Dated: February 5, 2016

1st Michael J. Seng
8 UNITED STATES MAGISTRATE JUDGE

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