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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

LESLIE LARAY CRAWFORD,  
Plaintiff,  
v.  
CITY OF BAKERSFIELD, et al.,  
Defendants.

Case No. 1:14-cv-01735-SAB  
ORDER RE DEFENDANTS' MOTIONS IN  
LIMINE NO. 1 AND 9  
(ECF Nos. 45, 46, 48, 49, 52, 55, 74, 76, 78)

**I.**

**BACKGROUND**

On September 15, 2016, the parties filed motions in limine in this action. On October 6, 2016, the Court conducted oral argument on the parties' motions in limine. On this same date, Defendant filed a supplemental motion in limine no. 9. During the hearing, the Court granted the parties the opportunity to file supplemental briefing on Defendants' motion in limine no. 1 and set a briefing schedule for the motion in limine no. 9 filed on October 6, 2016. The Court issued an order addressing the parties' motions in limine filed September 15, 2016, but deferring ruling on Defendants' motion in limine no. 1.

On October 10, 2016, Defendants filed supplemental briefing regarding motion in limine no 1. On October 12, 2016, Plaintiff filed supplemental briefing regarding Defendant's motion in limine no. 1 and an opposition to Defendants' motion in limine no. 9. On October 13, 2016,

1 Defendants filed a reply to Plaintiff’s opposition to motion in limine no. 9 and a reply to  
2 Plaintiff’s supplemental brief regarding motion in limine no. 1.<sup>1</sup>

3 **II.**

4 **LEGAL STANDARD**

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

13 Motions in limine that exclude broad categories of evidence are disfavored, and such  
14 issues are better dealt with during trial as the admissibility of evidence arises. Sperberg v.  
15 Goodyear Tire & Rubber, Co., 519 F.2d 708, 712 (6th Cir. 1975). Additionally, some  
16 evidentiary issues are not accurately and efficiently evaluated by the trial judge in a motion in  
17 limine and it is necessary to defer ruling until during trial when the trial judge can better estimate  
18 the impact of the evidence on the jury. Jonasson, 115 F.3d at 440.

19 **III.**

20 **DISCUSSION**

21 Currently pending before the Court are Defendants’ motion in limine no. 1, filed  
22 September 15, 2016, to exclude evidence regarding an incident involving Ramiro Villegas, and  
23 Defendants’ motion in limine no. 9 to preclude Plaintiff from offering evidence regarding  
24 Decedent’s mental health issues.

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27 <sup>1</sup> The Court notes that the order addressing the motions in limine did not provide for a reply by Defendants to  
28 motion in limine no. 1, and the pretrial order specifically noted that reply briefs to motions in limine would not be  
considered.

1           **A.     Defendants’ Motion in Limine No. 1**

2           In November 2014, Defendant Stringer took a trainee to Kern Medical Center to view the  
3 body of a suspect that had been killed by a Bakersfield police officer. During the incident,  
4 Defendant Stringer manipulated the body and made inappropriate comments. Defendant Stringer  
5 was ultimately terminated for the incident. Defendants seek to exclude evidence of what  
6 occurred during this incident arguing it has no relevance to the underlying action. Defendant  
7 Stringer was not involved in the shooting of this individual.

8           Plaintiff argues that Defendant Stringer instructed the trainee who was present during the  
9 incident to falsely state to Bakersfield Police Department detectives that she did not see the body  
10 of the shooting victim. Plaintiff argues this is highly probative of Defendant Stringer’s character  
11 for truthfulness. In their supplemental briefing, Defendants argue that this has no probative  
12 value in this action and seek to exclude the evidence on the ground that the prejudice outweighs  
13 its probative value and needlessly prolongs the case as it will result in Defendant Stringer  
14 introducing evidence of his character for truthfulness.

15           1.     Allegation that Defendant Stringer Instructed Trainee to Lie

16           Rule 608 of the Federal Rules of Evidence provides:

17           Except for a criminal conviction under Rule 609, extrinsic evidence is not  
18 admissible to prove specific instances of a witness’s conduct in order to attack or  
19 support the witness’s character for truthfulness. But the court may, on cross-  
examination, allow them to be inquired into if they are probative of the character  
for truthfulness or untruthfulness of: (1) the witness . . . .

20 Fed. R. Evid. 608(b).

21           During the trial of this action, the jury will be tasked with evaluating Defendant  
22 Stringer’s testimony regarding his perception of the events that occurred on the date of  
23 Decedent’s death to determine the reasonableness of his use of deadly force. While Defendants  
24 argue that this occurred after the excessive force allegations at issue in this action, this incident  
25 occurred within approximately four months of the incident at issue here, and involves an  
26 allegation that Defendant Stringer instructed a trainee to lie during an investigation to cover up  
27 Defendant Stringer’s wrongful conduct while on duty. The Court finds that the allegation that  
28 Defendant Stringer instructed a trainee to falsify information during an investigation to cover up

1 Defendant Stringer’s misconduct is highly probative of his character for untruthfulness.

2 Defendants rely on Foster v. Davis, No. 10 C 6009, 2013 WL 6050147 (N.D. Ill. Nov.  
3 15, 2013), in which the court found it was not error to preclude evidence that a correctional  
4 officer had lied in a prior incident report. In Foster, there was an investigation into whether the  
5 officer had used excessive force in dealing with an inmate. Id. at \*3. The plaintiff was arguing  
6 that a disciplinary report found that the correctional officer had previously filed an incident  
7 report that was untruthful. Id. The report issued in the investigation stated that evidence “did  
8 not support the version of events provided” by the correctional officer. Id. The court found that  
9 the prior incident report contained no specific findings that the officer had lied in the prior report.  
10 Id. The Court finds this to be distinguishable from the situation presented here where the  
11 allegation is based upon specific statements of a witness that Defendant Stringer told her to lie  
12 during an investigation.

13 2. Probative Value is Not Substantially Outweighed by the Factors Identified in Rule  
14 403

15 Defendants argue that Plaintiff should be precluded from asking whether Defendant  
16 Stringer ever instructed the trainee to lie during the investigation because it is not relevant to  
17 Defendant Stringer’s character for truthfulness at the time the incident alleged in this action  
18 occurred, will needlessly prolong the trial of this action, and will shift the jury’s focus away from  
19 the actual issues in this action.

20 Evidence under Rule 608 is also subject to exclusion, “if its probative value is  
21 substantially outweighed by a danger of one or more of the following: unfair prejudice,  
22 confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting  
23 cumulative evidence.” Fed. R. Evid. 403.

24 First, as discussed above, the Court finds that the allegation is highly probative as to  
25 Defendant Stringer’s character for truthfulness in this action. Defendant argues that the evidence  
26 is so tangential that it has no probative value. However, the incident was close in time to the  
27 incident at issue in this action, approximately four months, and involved allegations that  
28 Defendant Stringer instructed a trainee to lie during an investigation into Defendant Stringer’s

1 conduct.

2 “Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than  
3 it would be without the evidence; and (b) the fact is of consequence in determining the action.”  
4 Fed. R. Evid. 401. The jury will be tasked with determining which testimony to believe in this  
5 action. Evidence that Defendant Stringer instructed a trainee to lie would make it less probable  
6 that his testimony in this action is truthful. Therefore, the Court rejects the argument that the  
7 incident should be precluded because it is irrelevant in this action.

8 Although Defendants argue that the evidence is prejudicial, they do not address any  
9 prejudice that would result should Plaintiff be allowed to propound the question to Defendant  
10 Stringer during trial. To the extent that the question suggests that Defendant Stringer would be  
11 untruthful to protect himself that is what creates the high probative value of the allegation.

12 Defendants also argue that allowing Plaintiff to ask the question will require them to call  
13 multiple witnesses to testify to the character of Defendant Stringer including commendations that  
14 Defendant Stringer received prior to this incident. Pursuant to Rule 608, “evidence of truthful  
15 character is admissible only after the witness’s character for truthfulness has been attacked. Fed.  
16 R. Evid. 608(a). Therefore, if Plaintiff questions Defendant Stringer regarding the allegations  
17 that he instructed a trainee to lie during an investigation, Defendant Stringer may present  
18 witnesses to testify to his character for truthfulness. However, the Court will limit the number of  
19 witnesses and only testimony regarding Defendant Stringer’s character for truthfulness would be  
20 admissible. Therefore, the Court does not find that allowing Plaintiff to question Defendant  
21 Stringer regarding whether he told a trainee to lie during an investigation would result in undue  
22 delay or wasting the jury’s time.

23 Finally, Defendants argue that it will shift the focus away from the issue to be decided in  
24 this action, which is whether Defendant Stringer used excessive force. However, Defendant  
25 Stringer’s testimony regarding what occurred during the incident is unquestionably relevant to  
26 this action; and therefore, his truthfulness is at issue. Allowing Plaintiff to question Defendant  
27 Stringer regarding whether he had instructed a trainee to lie during an investigation, while  
28 placing the focus on the truth of Defendant Stringer’s testimony, does not place the focus on

1 incidents other than that at issue here.

2         The Court finds that the probative value of the questioning substantially outweighs the  
3 risk of unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or  
4 needlessly presenting cumulative evidence.

5         3.         Extrinsic Evidence is Not Admissible to Impeach Defendant Stringer’s Credibility

6         While the opposing party may impeach a witness with specific incidents of conduct that  
7 are probative of his character for truthfulness or untruthfulness if he has a good faith basis for the  
8 questioning, the party is precluded by Rule 608(b) from offering extrinsic evidence concerning  
9 the incident in question. United States v. Crowley, 318 F.3d 401, 418 (2d Cir. 2003); United  
10 States v. Estell, 539 F.2d 697, 700 (10th Cir. 1976) (“[t]he showing must be in the form of cross-  
11 examination of the witness himself; extrinsic evidence may not be introduced.”) Accordingly,  
12 Plaintiff may, on cross examination, question Defendant Stringer regarding whether he instructed  
13 the trainee to falsify information during an investigation, however, no extrinsic evidence of the  
14 incident is admissible for the purposes of impeachment. In other words, while Plaintiff may  
15 inquire of Defendant Stringer if the incident occurred, she will have to live with the answer given  
16 by Defendant Stringer.

17         [E]xtrinsic evidence of such acts is always deemed collateral. On the one hand,  
18 even under the general rule if the witness initially denies perpetrating the act, the  
19 cross-examiner may pressure the witness for an honest answer by reminding the  
20 witness of the penalties of perjury and perhaps by confronting the witness with his  
21 own writing mentioning the act. On the other hand, when the witness sticks to his  
22 guns and adamantly refuses to concede the act, the cross-examiner must “take the  
23 answer” even though it would be relatively easy for the cross-examiner to expose  
24 the perjury. Even if a person with personal knowledge of the witness’s act were  
25 sitting in the courtroom, the cross-examiner could not later call that person to the  
26 stand to prove the prior witness’s commission of the deceitful act.

23 1 McCormick on Evidence §49 (7th ed.).

24         Plaintiff argues that the circumstances of the incident are inextricably intertwined with  
25 the allegations that Defendant Stringer instructed the trainee to testify falsely. However, the  
26 Court disagrees. The issue to be presented to the jury is that during an investigation, Defendant  
27 Stringer instructed a trainee to make a false statement. The substance of the statement is  
28 irrelevant, it is the fact that Defendant Stringer instructed the trainee to make the false statement

1 that is probative on the issue of his truthfulness.

2 Further, the incident at Kern Medical Center is unrelated to this action and the allegations  
3 against Defendant Stringer are in no manner similar to the claims in this action. It is undisputed  
4 that Defendant Stringer was not involved in the shooting of the decedent in the Kern Valley  
5 Medical Center incident. Evidence of the allegations in the Kern Valley Medical Center incident  
6 are directed at the character of Defendant Stringer and admission of such evidence raises the  
7 substantial risk of prejudice to Defendants that the jury could decide to punish Defendant  
8 Stringer for his actions in this unrelated incident at the Kern Valley Medical Center. Further, the  
9 Court finds that admission of such evidence would result in unnecessarily wasting the jury's  
10 time. Accordingly, the Court finds that the November 2014 incident at Kern Medical Center is  
11 improper character evidence under Rule 608, and to the extent that there is any relevance in this  
12 action, should be excluded pursuant to Rule 403.

13 Finally, Defendants argue that Plaintiff did not disclose this witness in her Rule 26  
14 disclosures. However, Rule 26 provides that a party must provide to the opposing party the  
15 "name and, if known, the address and telephone number of each individual likely to have  
16 discoverable information--along with the subjects of that information--that the disclosing party  
17 may use to support its claims or defenses, unless the use would be solely for impeachment."  
18 Fed. R. Civ. P. 26(a)(1). See Gribben v. United Parcel Serv., Inc., 528 F.3d 1166, 1172 (9th Cir.  
19 2008) ("impeachment evidence does not have to be revealed in pretrial disclosure"). Therefore,  
20 Rule 26 does not provide a ground for exclusion of the evidence.

21 4. Impeachment by Contradiction

22 Plaintiff argues that extrinsic evidence would be admissible as impeachment by  
23 contradiction if Defendant Stringer testifies that he did not instruct the trainee to lie during the  
24 investigation.

25 Impeachment by contradiction is governed by Rule 607 of the Federal Rules of Evidence.  
26 United States v. Castillo, 181 F.3d 1129, 1133 (9th Cir. 1999). Impeachment by contradiction  
27 permits the admission of extrinsic evidence that specific testimony is false because it is  
28 contradicted by other evidence. Castillo, 181 F.3d at 1133.

1 [D]irect-examination testimony containing a broad disclaimer of misconduct  
2 sometimes can open the door for extrinsic evidence to contradict even though the  
3 contradictory evidence is otherwise inadmissible under Rules 404 and 608(b) and  
4 is, thus, collateral. This approach has been justified on the grounds that the  
witness should not be permitted to engage in perjury, mislead the trier of fact, and  
then shield himself from impeachment by asserting the collateral-fact doctrine.

5 Id. (quoting 2A Charles A. Wright & Victor J. Gold, Federal Practice and Procedure, § 6119 at  
6 116–17 (1993)). In Castillo, the Ninth Circuit recognized that courts are more willing to allow  
7 impeachment by contradiction where the testimony is volunteered on direct examination, but that  
8 there may be situations where testimony given during cross-examination may be impeached by  
9 contradiction. Castillo, 181 F.3d at 1134.

10 Plaintiff relies on U.S.A. v. Boyajian, No. CR09-933(A)-CAS, 2016 WL 225724 (C.D.  
11 Cal. Jan. 19, 2016), in support of her argument that extrinsic testimony would be admissible  
12 should Defendant Stringer deny on cross examination that he instructed a trainee to lie. In  
13 Boyajian, the defendant was charged with one count of travel with intent to engage in illicit  
14 sexual contact with a minor, one count of engaging in illicit sexual contact with a minor, and one  
15 count of commission of a felony offense involving a minor while required to register as a sex  
16 offender. Boyajian, 2016 WL 225724, at \*1.) The government brought a motion in limine to  
17 admit evidence to impeach the defendant if he testified at trial.

18 Specifically, the government sought to admit evidence that during his state court  
19 proceedings alleging similar allegations, the defendant had instructed his victim to testify that he  
20 had not engaged in sexual activity with her. Id. at \*6. When the victim expressed concern that  
21 she would be committing perjury, he told her “no one prosecutes perjury.” Id. The defendant  
22 also threatened to sue her family and take everything they had and threatened that he might have  
23 to kill her father if she told what had happened. Id. If the defendant testified at trial, the  
24 government sought to admit transcripts of telephone conversations between the defendant and  
25 the victim in which he repeatedly instructed the victim to lie about their relationship so he would  
26 not have to go to jail. Id. at \*10. The court found that these incidents were highly probative of  
27 his propensity to tell the truth and if he testified it was likely that he would attempt to contradict  
28 the testimony of his alleged victim. Id. at \*10. The court held that, in this case, the defendant’s



1 credibility would be of crucial importance because the jury would have to believe either the  
2 victim or the defendant's version of the events. Id.

3 Relying on United States v. Diaz, No. 2:13-CR-00148-JAD, 2014 WL 4384492 (D. Nev.  
4 Sept. 4, 2014), appeal dismissed (Nov. 4, 2014), Defendants reply that Plaintiff cannot impeach  
5 by contradiction solely to show that the witness is lying. In Diaz, the trial court did not allow  
6 extrinsic evidence where the purpose of the extrinsic evidence was to show the officer was a liar  
7 and untruthful in his investigation. Id. at \*10.

8 The Court finds that the testimony sought to be presented in this matter is distinguishable  
9 from that sought to be admitted in Boyajian. While in Boyajian, the defendant had been charged  
10 with a similar crime and had attempted to persuade his victim to lie, there is no similarity  
11 between the evidence that Defendant Stringer instructed a trainee to lie during an investigation  
12 and whether he used excessive force in this action. Further, the Boyajian court was presented  
13 with transcripts of conversations between the victim in the previous case and the defendant.  
14 Therefore, the evidence was easily admissible and was not likely to evolve into a separate trial of  
15 an unrelated issue. Finally, the Government sought to admit the testimony to prove that the  
16 defendant had engaged in similar sexual conduct with the alleged victim in the action.

17 Similar to Diaz, it appears that Plaintiff is attempting to admit extrinsic evidence that  
18 Defendant Stringer asked someone in a different incident to lie so that she can show that  
19 Defendant Stringer is being untruthful here. If this is the case, it would be improper  
20 impeachment by contradiction. See United States v. Kozinski, 16 F.3d 795, 806 (7th Cir. 1994)  
21 (“one may not contradict for the sake of contradiction; the evidence must have an independent  
22 purpose and an independent ground for admission”).

23 In this instance, Plaintiff seeks to admit extrinsic evidence upon the cross examination of  
24 Defendant Stringer. The issue of whether extrinsic evidence would be admissible upon the cross  
25 examination of Defendant Stringer as impeachment by contradiction is not capable of being  
26 decided in a motion in limine. Accordingly, if Plaintiff determines that such evidence is  
27 admissible following the cross examination of Defendant Stringer, she is required to address the  
28 matter with the Court outside the presence of the jury.

1           5.     Plaintiff May Cross Examine Defendant Stringer Regarding Allegation He  
2           Instructed Trainee to Lie During an Investigation

3           Based on the foregoing, the Court finds that Plaintiff may, on cross-examination, inquire  
4 of Defendant Stringer whether he has instructed a trainee to lie during an investigation.  
5 However, absent evidence elicited at trial, no extrinsic evidence is admissible to impeach  
6 Defendant Stringer and the substance of the underlying investigation is not to be inquired into  
7 during the trial of this action.

8           **B.     Defendants’ Motion in Limine No. 9**

9           Defendants’ motion in limine no. 9 seeks to exclude evidence that Decedent was  
10 schizophrenic or suffered from any mental illness. Defendants argue that this information was  
11 unknown to Defendant Stringer at the time of the incident and Plaintiff should not be permitted  
12 to testify to Decedent’s condition because she is not medically qualified and any testimony she  
13 could render would be hearsay.

14          1.     Decedent’s Mental Illness

15          Defendants first move to exclude the evidence on the ground that Defendant Stringer did  
16 not know that Decedent suffered from mental illness or schizophrenia and the evidence of mental  
17 illness should be excluded on the same basis that Plaintiff sought to exclude evidence of  
18 Decedent’s bad acts. The question to be decided in addressing whether Decedent’s mental  
19 illness is relevant in this action is would the evidence make a fact of consequence in determining  
20 the action more or less probable than it would be without the evidence. Fed. R. 401. In an  
21 excessive force action, the relevant “question is whether the officers’ actions are ‘objectively  
22 reasonable’ in light of the facts and circumstances confronting them, without regard to their  
23 underlying intent or motivation.” Graham v. Connor, 490 U.S. 386, 397 (U.S. 1989); Smith v.  
24 City of Hemet, 394 F.3d 689, 701 (9th Cir. 2005).

25          Here, Decedent had just pulled the gasoline hose from a vehicle and set gasoline on fire  
26 at a gas station. When Defendant Stringer arrived at the scene he observed Decedent pacing  
27 back and forth. Decedent made statements to Defendant Stringer as he approached. Clearly, in  
28 determining the reasonableness of Defendant Stringer’s decision to fire his weapon Decedent’s

1 actions prior to Defendant Stringer drawing and firing his weapon are relevant. Based on his  
2 knowledge of what was alleged to have occurred and the observed behavior, Defendant Stinger  
3 believed Decedent was under the influence of a drug like PCP, which makes individuals very  
4 agitated and angry. Plaintiff contends that it was Decedent's mental health issues that were  
5 causing this behavior.

6 Unlike Decedent's prior criminal history, which would not be evident from the  
7 observations made by Defendant Stringer in interacting with Decedent, it was evident to  
8 Defendant Stringer that Decedent was angry and acting in an aggressive manner. Whether this  
9 was due to being under the influence of a drug such as PCP or because Decedent was suffering  
10 from mental illness is relevant to determining whether the force used in this instance was  
11 reasonable. Therefore, Defendants' motion to exclude evidence that Decedent was  
12 schizophrenic or suffered from any mental illness is denied.

13 However, the issue remains as to the competency of the witnesses in this action to testify  
14 as to Decedent's mental illness. Defendants move to preclude Plaintiff from offering such  
15 evidence arguing she is not competent to offer evidence as to Decedent's mental health issues.  
16 Defendants move to exclude any such testimony by Plaintiff on the grounds that it would be  
17 hearsay and that she is not qualified as a medical expert in this action. Plaintiff responds that the  
18 testimony as to Decedent's mental illness is relevant because officers are trained to recognize  
19 behavioral indicators that are typically associated with mental illness and Decedent demonstrated  
20 each of those behaviors. Plaintiff counters that there will be significant expert testimony  
21 concerning the behavioral indicators associated with mental illness and how officers are trained  
22 to respond. Defendant responds that Plaintiff did not designate an expert to present medical  
23 testimony in this action; and Plaintiff's use of force expert is not competent to render medical  
24 testimony nor is any other witness so qualified.

25 **a. Expert Testimony**

26 Under the Federal Rules of Evidence a "witness who is qualified as an expert by  
27 knowledge, skill, experience, training, or education may testify in the form of an opinion or  
28 otherwise if: a) the expert's scientific, technical, or other specialized knowledge will help the

1 trier of fact to understand the evidence or to determine a fact in issue; b) the testimony is based  
2 upon sufficient facts or data; c) the testimony is the product of reliable principles and methods;  
3 and d) the witness has applied the principles and methods reliably to the facts of the case.” Fed.  
4 R. Evid. 702. If a witness is not testifying as an expert in the action, “the witness’ testimony in  
5 the form of opinions or inferences is limited to those opinions or inferences which are (a)  
6 rationally based on the perception of the witness; (b) helpful to a clear understanding of the  
7 witness’ testimony or the determination of a fact in issue; and (c) not based on scientific,  
8 technical, or other specialized knowledge within the scope of Rule 702.” Fed. R. Evid. 701.

9 A witness is competent to testify to those matters of which they have personal  
10 knowledge. Fed. R. Evid. 601, 602. “[L]ay witnesses have been held incompetent to testify as  
11 to the existence or treatment of physical illnesses” and mental condition. Frisone v. United  
12 States, 270 F.2d 401, 403 (9th Cir. 1959). While a witness may testify to her own observations  
13 and opinions that are rationally based on the perception of the witness, the existence or treatment  
14 of a mental illness “falls clearly outside the area of common knowledge and within the area  
15 where expert testimony is required.” Frisone, 270 F.2d at 403. Therefore, Plaintiff may not  
16 present lay witness testimony regarding the existence or treatment of a mental illness.

17 While Plaintiff may present lay witness testimony regarding factual matters and opinions  
18 within her personal knowledge regarding Decedent’s mental condition, the issue is that Plaintiff  
19 is not testifying as to her observations on the date of the incident but as to her prior knowledge of  
20 Decedent’s mental illness. However, it is undisputed that Defendant Stringer had no prior  
21 knowledge of Decedent and was therefore unaware of any prior history of mental illness.  
22 Although Plaintiff may present expert testimony in the liability phase of trial regarding indicators  
23 of mental illness and the training officers receive, Plaintiff’s testimony regarding her  
24 observations of Decedent on other occasions is not relevant to the issue of whether Defendant  
25 Stringer should have known that that Decedent’s behavior could have been caused by mental  
26 illness.

27 Plaintiff also argues that Decedent’s history of mental illness is relevant to whether  
28 Decedent’s award of damages will be reduced on the basis of his comparative fault. Defendants

1 did not respond to this specific argument.

2 “Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than  
3 it would be without the evidence; and (b) the fact is of consequence in determining the action.”  
4 Fed. R. Evid. 401. However, in California, “[a] person of unsound mind, of whatever degree, is  
5 civilly liable for a wrong done by the person.” Cal. Civ. Code § 41. Therefore, courts have held  
6 that a mental illness is not a defense to negligence. Bashi v. Wodarz, 45 Cal. App. 4th 1314,  
7 1323 (1996). Liability for negligence in California is predicated on an objective reasonable  
8 person standard. Bashi, 45 Cal.App.4th at 1323. The Court finds this to be consistent with the  
9 California jury instruction defining negligence.

10 A person is negligent if he or she does something that a reasonably careful person  
11 would not do in the same situation or fails to do something that a reasonably  
careful person would do in the same situation.

12 California Civil Jury Instruction 401. Therefore, the Court finds that Decedent’s mental illness is  
13 not relevant on the issue of comparative fault.<sup>2</sup>

14 Accordingly, Defendants’ motion in limine no. 9 to exclude testimony regarding  
15 Decedent’s mental illness is granted.

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27 <sup>2</sup> Defendants also seek to exclude evidence of Decedent’s mental illness on the ground of hearsay. As the Court has  
28 found that Plaintiff is not competent to testify as to the existence or treatment of a mental illness and Decedent’s  
mental illness is irrelevant to damages, the Court declines to address the hearsay issue.

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**IV**

**CONCLUSION AND ORDER**

Based on the foregoing, IT IS HEREBY ORDERED that:

1. Defendants' motion in limine no. 1 to exclude evidence regarding an incident involving Ramiro Villegas is GRANTED IN PART AND DENIED IN PART as follows:
  - a. Defendants motion to exclude evidence of the November 2014 incident at Kern Medical Center involving Ramiro Villegas is GRANTED. However, on cross examination, Defendant Stringer's instruction to a trainee to falsify information during an investigation may be inquired into; and
2. Defendants' motion in limine no. 9 is GRANTED.

IT IS SO ORDERED.

Dated: October 13, 2016

  

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UNITED STATES MAGISTRATE JUDGE