IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

MARTHA ZEPEDA OLIVARES, et al., Plaintiffs, v. CITY OF FRESNO, et al., Defendants.	CASE NO. 1:23-cv-01575 JLT SAB **ORDER ON OBJECTIONS TO THE EX PARTE REQUEST FOR A PRIVATE AUTOPSY**

The Court issued a preliminary order granting the plaintiffs' request for a private autopsy of the body of Maximiliano Sosa, Jr., who, it is alleged, was recently shot and killed by one or more member of the Fresno Police Department. The plaintiffs seek to have the autopsy occur before the body is embalmed, due to the changes that can be made to the forensic evidence due to the embalming process.

Mr. Sosa's wife, Maria Sosa, has filed objections to the order. (Docs. 11, 12) She objects that she is entitled to determine the disposition of Mr. Sosa Jr's remains, that the autopsy is unnecessary because the Fresno County Coroner's Office conducted an autopsy and that she disagrees to further desecration and mutilation of the body, that the private autopsy will delay the funeral, which will delay the ability of Mr. Sosa Jr.'s loved ones to begin the grieving process, and because the plaintiffs' have failed to provide details about the proposed private autopsy. *Id*. Though the Court is saddened for Mrs. Sosa and all of Mr. Sosa Jr.'s family for

their loss and for all of the additional pain that a private autopsy will impose, the Court **OVERRULES** Mrs. Sosa's objections.

First, the Court makes no finding about the status of Mrs. Sosa's relationship to Mr. Sosa Jr. To the extent that there is a dispute on this topic, resolving it now is unnecessary because the Court recognizes Mrs. Sosa's significant interest in how Mr. Sosa Jr.'s body is treated. This order allowing the private autopsy to proceed is not intended to disparage any of Mrs. Sosa's rights or to determine the rights of any party to inherit or to prosecute the estate's case.

Second, the Court recognizes that the Fresno County Coroner's Office has conducted an autopsy on the body. However, the Court's experience in these types of matters is consistent with the authorities cited by the plaintiff's request and in their response to the objections. In addition, the value of expert testimony is increased if the witness has examined the body. Thus, in fairness, the plaintiffs deserve to be able to gather needed evidence to prosecute this action. Also, the Court agrees that the fact that the autopsy determined the manner of death, this is a far cry from determining how Mr. Sosa Jr. died.

In addition, the suggestion that embalming and burial does not impact the ability to gather evidence is unsupported and is contrary to the evidence presented. In addition, if the body were buried and later exhumed, the distress imposed on loved ones would be magnified.

Third, the response to the objections sets forth the information that Mrs. Sosa desired. The plaintiffs have identified where the autopsy will occur and by whom and how long it will take, including that they will bear the costs associated with it.

Fourth, the plaintiffs report that the private autopsy will result in no additional disfigurement and that any delay to the funeral, scheduled for November 22, 2023, will be modest. The fact that the service is planned so far out poses the significant potential that no delay will occur at all.

For all of these reasons, the objections are **OVERRULED.** The Court's order issued on November 8, 2023 is now effective. The plaintiffs **SHALL immediately** arrange for and have completed, the private autopsy. In addition, the plaintiffs **SHALL** serve Mrs. Sosa, Wallin

Funeral Home and the City of Fresno with this order.

IT IS SO ORDERED.

Dated: **November 14, 2023**

UNITED STATES DISTRICT JUDGE