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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

SHELLY LEMIRE, individually  
and as a personal  
representative for the  
ESTATE OF ROBERT ST. JOVITE;  
GERARD CHARLES ST. JOVITE;  
and NICOLE ST. JOVITE,

Plaintiffs,

v.

D.K. SISTO, JAMES NUEHRING,  
REBECCA CAHOON, and C.  
HOLLIDAY,

Defendants.

No. 2:08-cv-00455-GEB-EFB

**ORDER RE: PLAINTIFFS' MOTIONS IN  
LIMINE**

Plaintiffs move in limine ("MIL") for a pretrial order precluding the admission of certain evidence at trial. Each motion is addressed below.

**MIL No. 1**

Plaintiffs seek to exclude any "testimony regarding the practice of understaffing . . . at night" in the building in which the Decedent was housed ("Building 8"), arguing "because [the Decedent] died in the afternoon, graveyard shift staffing practices are not relevant to the jury's inquiry." (Pls.' MIL No.

1 1 3:3-11, ECF No. 174.) Plaintiffs further argue: “[e]ven if  
2 relevant, . . . [such] evidence should be excluded” under Federal  
3 Rule of Evidence (“Rule”) 403 “because its limited probative  
4 value is substantially outweighed by the danger of unfair  
5 prejudice to the plaintiff and confusion of issues.” (Id. at  
6 3:11-13.)

7 Defendants rejoin:

8 Evidence of the [night shift] staffing  
9 levels is relevant because the amount of time  
10 the floor officers were absent from Building  
11 8 is a disputed fact the jury must  
12 decide. . . .

13 . . . .  
14 . . . The jury here need not accept  
15 Plaintiffs’ version of the facts, or find  
16 that the officers were absent from the  
17 housing unit for more than three hours.

18 . . . Based on [conflicting evidence], a  
19 jury can conclude that Building 8 was without  
20 floor officers any where from more than three  
21 and half hours to less than two hours.

22 . . . .  
23 If the jury finds that the floor  
24 officers were removed for about two hours,  
25 evidence of the [night shift] staffing levels  
26 is relevant to show that Defendants could  
27 reasonably conclude that it was safe to  
28 remove the floor officers because the  
conditions mirrored those to [night  
shift]. . . .

Nothing in Lemire[ v. Cal. Dep’t of  
Corr. & Rehab., 726 F.3d 1076 (9th Cir.  
2013)] stated that evidence of the [night  
shift] staffing level was irrelevant. Rather,  
the Court discussed the differences between  
the . . . shifts to show the existence of a  
disputed fact. A jury could find more  
similarities between the two shifts to  
conclude that Defendants did not create an  
unreasonable risk of harm to the inmates in  
Building 8 . . . . Thus, evidence of the  
[night shift] staffing levels is relevant and

1 highly probative of the central issue of  
2 Plaintiffs' [condition-of-confinement] claim  
3 against Nuehring and Sisto [for their alleged  
4 failure to provide sufficient supervision for  
5 inmates in Building 8.]

6 (Defs.' Opp'n to Pls.' MIL No. 1 1:21-3:17, ECF No. 180.)

7 Plaintiffs have shown neither that evidence of the  
8 night shift's staffing levels lacks probative value on their  
9 conditions-of-confinement claim, nor that Rule 403 considerations  
10 justify its exclusion. Therefore, this in limine motion is  
11 DENIED.

12 **MIL No. 2**

13 Plaintiffs seek to exclude evidence or argument that  
14 Defendants Sisto and Neuhring "were unaware [of the  
15 Decedent's] . . . mental health problems and therefore . . .  
16 could not . . . be liable for his death[,]” arguing such evidence  
17 is irrelevant and should be excluded under Rule 403. (Pls.' MIL  
18 No. 2 1:24-2:4, 3:25-4:3, ECF No. 175.) Plaintiffs contend:

19 [T]he Ninth Circuit determined [in Lemire]  
20 that the appropriate inquiry is whether  
21 Nuehring and Sisto . . . “were aware that  
22 removing all floor officers from Building  
23 8 . . . would pose a substantial risk of  
24 serious harm **to someone in [the Decedent's]  
25 situation, not simply whether they were  
26 subjectively aware of [the Decedent's]  
27 specific medical needs.”**

28 . . . Thus, it is the risk of harm to  
someone in [the Decedent's] situation which  
the jury must examine. . . .

. . . The Defendants' . . . lack of  
knowledge of [the Decedent's] mental health[,  
specifically,] adds nothing to the jury's  
determination of liability so it should be  
excluded.

(Id. at 2:19-3:24 (emphasis in original) (quoting Lemire, 726  
F.3d at 1077-78) (citations omitted).)

1 Defendants "do not dispute that the Ninth Circuit's  
2 decision . . . held that the proper inquiry on Plaintiffs' Eighth  
3 Amendment claim against Defendants Sisto and Nuehring is whether  
4 Defendants were aware that removing all floor officers from  
5 Building 8 posed a substantial risk of serious harm to someone in  
6 [the Decedent's] situation." (Defs.' Opp'n to Pls.' MIL No. 2  
7 1:21-25, ECF No. 182.) Defendants rejoin, however, that "[t]his  
8 holding . . . does not preclude Defendants from presenting  
9 evidence or testifying that they were unaware of the medical or  
10 mental-health condition of the inmates in Building 8, including  
11 [the Decedent]." (Id. at 1:25-27.) Defendants argue:

12 [It is] anticipate[d] that Plaintiffs will  
13 argue or seek to introduce evidence of the  
14 Coleman litigation to support their  
15 contention that the inmates in Building 8  
16 were mentally ill and required greater  
17 supervision than other general population  
18 inmates on the yard. Indeed, in Lemire, the  
19 Ninth Circuit, in dicta, pointed out that  
20 "the Coleman litigation was well known . . .  
21 to officials at CSP-Solano," which in turn  
22 "alerted prison officials to the acute  
23 problem of inmate suicides in CDCR prisons,  
24 including CSP-Solano." Lemire, 726 F.3d at  
25 1078. Defendants have a right to defend  
26 against these contentions and submit evidence  
27 about their knowledge of Coleman, the alleged  
28 suicide rates at the prison, and what  
distinguished inmates in Building 8 from  
other general-population inmates. This will  
necessarily require Defendants to testify  
about their knowledge of how and which  
inmates were classified as [Correctional  
Clinical Care Management System ("CCCMS")],  
who made that determination, what information  
Defendants were provided about CCCMS, the  
housing and other needs of these inmates, and  
the level of supervision they required. Thus,  
evidence of Defendants' knowledge of the  
medical and mental-health conditions of the  
inmates in Building 8, including [the  
Decedent], is highly relevant and admissible.

(Id. at 2:1-14.)

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Plaintiffs reply:

While . . . knowledge of the fact that Building 8 was a unit housing CCCMS inmates is relevant to the danger posed to Building 8's inmates by the withdrawal of all supervisory floor staff . . . , knowledge or [the] lack thereof about [the Decedent's mental health condition in] particular has no bearing on whether a jury infers that unsupervised mentally ill inmates housed together are more likely to harm themselves or others than are inmates in the regular prison population.

(Pls.' Reply to MIL No. 2 4:5-15, ECF No. 203.)

Plaintiffs have shown neither that the referenced evidence lacks probative value on their conditions-of-confinement claim, nor that Rule 403 considerations justify its exclusion. Therefore, this in limine motion is DENIED.

**MIL No. 3**

Plaintiffs move to exclude "any expert testimony" by Alfredo Noriega, M.D.; Dorothy Hicks, R.N.; Shabreen Hak, L.V.N.; and John M. Dusay, M.D. "that goes beyond the usual scope of treat[ing] medical provider[] testimony." (Pls.' MIL No. 3 3:7-9, ECF No. 176.) Plaintiffs argue: "[w]hile each of these witnesses likely have relevant testimony, Plaintiffs move to preclude Defendants from putting on improper opinion testimony or expert testimony from any of these witnesses as they have not been properly disclosed pursuant to F.R.C.P. Rule 26." (Id. at 3:1-3.)

Defendants rejoin:

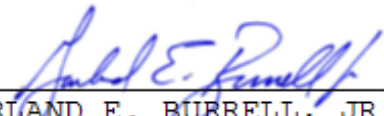
Defendants timely and properly disclosed six non-retained experts, including the matters about which they would be testifying. All of the disclosed non-retained experts were, at one time, Defendants in this case, and all,

1 but one, ha[ve] been deposed and provided  
2 testimony about their knowledge of the  
3 relevant events, the policies and procedures  
4 at issue, or their treatment of [the  
5 Decedent]. Although not deposed, Dr. Dusay  
6 provided detailed declarations of his  
7 treatment of [the Decedent] in connection  
8 with the parties' summary-judgment motions.  
9 Despite having knowledge of the testimony  
10 Defendants' non-retained experts are expected  
11 to provide, Plaintiffs failed to specify what  
12 testimony is objectionable, why it is  
13 improper, or how the disclosures failed to  
14 comply with Federal Rule of Civil Procedure  
15 Rule 26. The Court should therefore deny the  
16 motion.

17 (Defs.' Opp'n to Pls.' MIL No. 3 1:22-2:5, ECF No. 181.)

18 This motion lacks the preciseness and sufficient  
19 factual context required for a pretrial in limine ruling. See,  
20 e.g., Weiss v. La Suisse, Soc'y D'Assurances Sur La Vie, 293 F.  
21 Supp. 2d 397, 407-08 (S.D.N.Y. 2003) (denying motion to exclude  
22 evidence for a "lack[] of specificity[,] " stating "[n]o  
23 particular documents or testimony have been identified in the  
24 motion"); Colton Crane Co., LLC v. Terex Cranes Wilmington, Inc.,  
25 No. CV 08-8525 PSG (PJWx), 2010 WL 2035800, at \*1 (C.D. Cal. May  
26 19, 2010) (stating "motions in limine should rarely seek to  
27 exclude broad categories of evidence, as the court is almost  
28 always better situated to rule on evidentiary issues in their  
factual context during trial").

Dated: July 30, 2015

  
\_\_\_\_\_  
GARLAND E. BURRELL, JR.  
Senior United States District Judge