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: DEFENDANTS' MOTIONS IN LIMINE

Defendants move in limine ("MIL") for a pretrial order precluding the admission of certain evidence at trial. Each motion is addressed below.[1]

MIL No. 1

Defendants "move to preclude Plaintiffs from introducing evidence or eliciting testimony about Defendants' involvement in other lawsuits or incidents alleging deliberate indifference or other misconduct or bad acts on the grounds that such evidence is inadmissible [under Federal Rule of Evidence ("Rule") 404(b)], irrelevant, and highly prejudicial." (Defs.'

[1] Defendants' ninth in limine motion, filed on July 21, 2015, (ECF No. 229), is not addressed in this order.

MIL No. 1 1:21-24, ECF No. 158.) Defendants argue:

> The jury here must decide whether Defendants were indifferen[t] to [a] substantial risk of serious harm to [the Decedent] by removing the floor officers for an extended period of time and failing to provide him with CPR on May 10, 2006. Evidence of other lawsuits or complaints against Defendants does not tend to prove that they ignored a substantial risk of serious harm on the date at issue here. Furthermore, introduction of Defendants' past litigation or other complaints of misconduct will be refuted, which in turn, will waste time and unnecessarily prolong the trial. Accordingly, the Court should exclude evidence of other lawsuits or inmate complaints against Defendants.

(Id. at 3:2-9.)

Plaintiffs rejoin that such evidence is admissible under Rule 404(b) because it is probative of "the knowledge element of deliberate indifference[,]" i.e., "the Defendants' knowledge of conditions that endangered [the Decedent]." (Pls.' Opp'n to Defs.' MIL No. 1 2:7-8, 2:18-20, ECF No. 190.) Plaintiffs argue:

> A defendant is liable under the Eighth Amendment for denying an inmate humane conditions of confinement only if he knew of and disregarded a risk to the inmate's health or safety. . . . Plaintiff[s] thus bear[] the burden of establishing that the [Defendants] were aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and that [the Defendants] also drew that inference.
>
> . . . Defendants' knowledge of the problems can be established by the introduction of evidence of lawsuits, grievances, and complaints.

(Id. at 3:1-11.)

Defendants reply, *inter alia*, that "[e]ven if Plaintiffs have a specific lawsuit, grievance, or incident in

mind . . . that they contend is factually similar to the events in this case, the Court should preclude the evidence under Federal Rule of Civil Procedure 37(c)" because Plaintiffs did not respond to interrogatories propounded during discovery that requested such information. (Defs.' Reply to MIL No. 1 3:1-10, ECF No. 206.) This argument is disregarded since it was made for the first time in Defendants' reply brief. See Zamani v. Carnes, 491 F.3d 990, 997 (9th Cir. 2007) ("The district court need not consider arguments raised for the first time in a reply brief."); see also Final Pretrial Order 6:3-5 (prescribing in the section concerning in limine motions: "The failure to state a basis for the admissibility or non-admissibility of disputed evidence constitutes a waiver or abandonment of that basis").)

This motion lacks the concreteness required for a pretrial in limine ruling.

MIL No. 2

Defendants "move to preclude Plaintiffs from introducing evidence or eliciting testimony that the State of California or the California Department of Corrections and Rehabilitation (CDCR) will reimburse [the Defendants] for any adverse judgment that may result from the trial." (Defs.' MIL No. 2 1:21-23, ECF No. 159.) Defendants argue such evidence is inadmissible under Rule 411, irrelevant, and "prejudicial because a jury is more inclined to deliver a verdict against a defendant if it believes he is indemnified." (Id. at 1:24-2:2.) Defendants further contend: "[although] the State is required [under California Government Code § 825] to indemnify its employees, at their request, in litigation arising from the course and scope of

their employment[,] . . . the State is not obligated to indemnify its employees for exemplary damages." (Id. at 2:13-15.)

Plaintiffs "concede" the referenced evidence should be excluded from the first portion of the bifurcated trial, but rejoin "the evidence is admissible in [the jury's] determination[] of punitive damages." (Pls.' Opp'n to Defs.' MIL No. 2 2:1-6, ECF No. 191.) Plaintiffs argue: "'[T]he ultimate source of payment' is relevant to the issue of punitive damages because '[t]he jury must know the impact an award will have on the defendant to properly assess punitive damages.'" (Id. at 2:12-15 (alteration in original) (quoting Perrin v. Anderson, 784 F.2d 1040, 1047–48 (10th Cir. 1986).)

Defendants reply, *inter alia*, that Plaintiffs' argument "that indemnification evidence is relevant to a jury's determination of punitive damages," is contrary to Ninth Circuit authority, Larez v. Holcomb, 16 F.3d 1513, 1520-21 (9th Cir. 1994). (Defs.' Reply to MIL No. 2 1:21-27, ECF No. 207.)

"It has long been the rule in [the Ninth Circuit] that evidence of insurance or other indemnification is not admissible on the issue of damages . . . ." Larez, 16 F.3d at 1518. The Ninth Circuit has applied this principle in the context of determining compensatory and punitive damages. Id. at 1518-1521; see id. at 1520 ("The reasons that lead us to find the compensatory damages indemnification instruction improper apply with equal force in the punitive damages context."). Therefore, this in limine motion is GRANTED.

MIL No. 3

Defendants "move to preclude Plaintiffs from

introducing into evidence or eliciting testimony about documents filed or rulings made in Coleman v. Brown (E.D. Cal No. 2:90-cv-00520-KJM-DAD), including those related to the suicide rate and overcrowding in California prisons," arguing that, "other than the documents pertaining to [the California Department of Corrections & Rehabilitation's ("CDCR")] CPR policy, this evidence is inadmissible hearsay, irrelevant, and prejudicial." (Defs.' MIL No. 3 1:21-25, ECF No. 160.) Defendants do not reference any specific document or testimony in this motion, other than "the 'Report on Suicides Completed in the California Department of Corrections and Rehabilitation in Calendar Year 2006' by Dr. Raymond F. Patterson (Coleman Docket ECF No. 3030)."[2] Concerning this document, Defendants argue:

> No evidence shows that the Coleman court adopted or made any findings concerning the . . . Report. Thus, Dr. Patterson's statements and opinions lack foundation and are hearsay and not subject to judicial notice. To the extent Plaintiffs seek [to] use . . . Dr. Patterson's report as expert opinion, they did not timely or properly disclose Dr. Patterson as an expert as required under Federal Rule of Civil Procedure 26(a)(2) or the Court's March 3, 2014 Scheduling Order.
>
> Further, Dr. Patterson's report . . . [is] irrelevant. The jury here must decide whether Defendants exposed [the Decedent] to an unreasonable risk of harm by removing the floor staff for a certain period of time and whether the first responders ignored his medical needs by failing to provide him with immediate life-saving measures. The suicide rate for prisons other than [California State Prison ("CSP")]-Solano and for periods other than 2006 have no bearing on the issues the jury must decide.

[2] Over five thousand (5,000) documents have been filed in the Coleman case to date.

(Id. at 2:11-27.)

Plaintiffs counter that "the Coleman litigation is relevant to the [D]efendants' knowledge of the substantial risk of harm caused by removing the floor officers in Building 8 and failing to provide CPR." Plaintiffs argue:

> Obviousness is not measured by what is obvious to a layman, but rather by what would be obvious in light of reason and the basic general knowledge that a prison official may be presumed to have obtained regarding the type of deprivation involved. The Coleman litigation was well known in penological circles and to officials at CSP-Solano. That litigation specifically alerted prison officials to the acute problem of inmate suicides in CDCR prisons, including CSP Solano.

(Pls.' Opp'n to Defs.' MIL No. 3 5:1-3, 5:14-22, ECF No. 193 (internal quotation marks and citation omitted).) Plaintiffs further rejoin concerning Dr. Peterson's 2006 report that the report and opinions and conclusions contained therein are admissible under Rule 803(8) as an official report. Plaintiffs contend:

> [The Report was] made by an official investigatory body at the recommendation of [Magistrate] Judge Moulds in 1994.
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> On 09/13/1995 . . . , the Honorable Lawrence K. Karlton, adopted the findings & recommendation of the magistrate an[d] referred the matter [to] the magistrate judge for nomination of a special master. On 03/14/1996 . . . Judge Karlton appointed Raymond F Patterson, M.D. as a mental health expert.
>
> The United States Supreme Court addressed the issue of whether investigatory reports are admissib[le] in Beech Aircraft Corp. v. Rainey 488 US 153, 161-162, 170, and found that investigatory reports otherwise admissible under Rule 803(8) are not rendered

> inadmissible merely because they state a conclusion of opinion . . . .
>
> Th[is] investigative report[] [is an] official report[] within the meaning of . . . Rule 803(8), and [is] trustworthy having been prepared timely, by a person . . . with special skill [having] be[en] appointed by the court as Special Master[], without any evidence or even insinuation of bias or motive to lie. Hence, the report[] and the reporter's opinions and conclusions are admissible. See Beech, supra.

(Id. at 3:18-4:22 (citations omitted).)

Defendants reply, *inter alia*,[3] that the referenced report "do[es] not satisfy the trustworthiness element of Rule 803(8) because no evidence shows that [Dr. Peterson] conducted a proper investigation to support his opinions or findings." (Defs.' Reply to MIL No. 3 2:5-7, ECF No. 213.) "Accordingly," Defendants argue "the court should exclude the . . . 2006 report[] as irrelevant and inadmissible hearsay." (Id. at 14-15.)

To the extent Defendants seek a pretrial ruling excluding Dr. Peterson's 2006 report, they have not shown that it lacks probative value on Plaintiffs' conditions-of-confinement claim, that Rule 403 justifies its exclusion, or that it is not admissible under Rule 803(8). Therefore, that portion of the in limine motion is DENIED.

The remainder of the motion lacks the preciseness and sufficient factual context required for a pretrial in limine ruling.

[3] Defendants also make arguments in their reply concerning the exclusion of Dr. Peterson's Special Master Report for 2005. These arguments are disregarded since Defendants did not mention exclusion of this specific document in their motion.

MIL No. 4

Defendants move to preclude the following anticipated evidence for the stated reasons:

> [(1) Evidence on the Decedent's] medical and mental-health conditions, [the] cause of those conditions, and whether [the Decedent] received proper treatment for such conditions on the grounds that they have no personal knowledge of the treatment [he] received or the information he relayed to his providers, and they are not qualified to opine about the adequacy of the medical or mental-health care [he] received at CSP-Solano[; and]
>
> . . . [(2) E]vidence . . . of [the Decedent's] medical conditions, the medical care he received for those conditions, and any complaints or inmate appeals he may have submitted or had about his medical conditions or treatment [on the ground that t]his evidence is not relevant to the remaining claims in this case.

(Defs.' MIL No. 4 1:21-2:4, ECF No. 170.)

Plaintiffs rejoin that they do not intend to introduce the referenced evidence on the proposition that the Decedent received constitutionally inadequate care. Instead, Plaintiffs contend they "intend to introduce CDCR's own medical/mental health records in order to demonstrate [the Decedent's] medical and mental health condition at the time of his death as evidence of the extent of his pain and suffering." (Pls.' Opp'n to Defs.' MIL No. 4 2:3-16, 3:20-4:5, 4:22-26, ECF No. 198.) Plaintiffs further argue that the Decedent's CDCR medical records are admissible under the "hearsay exception for statements made for purposes of medical diagnosis or treatment." (Id. at 5:7-6:22.)

Defendants also raise new objections to this evidence in their reply brief, which are not considered since they were not timely argued.

This motion lacks the concreteness required for a pretrial in limine ruling.

MIL No. 5

Defendants "move to preclude Plaintiffs and their counsel from [presenting evidence] or argu[ment] . . . that [the Decedent] was murdered by his cell mate, John Harden[,]" arguing "Plaintiffs did not allege that [the Decedent] was murdered, they did not put Defendants on notice of this theory." (Defs.' MIL No. 5 1:21-24, ECF No. 162.) Defendants further contend that "allowing Plaintiffs to advance this theory at trial is prejudicial to Defendants, and there is no evidence to support [the] theory." (Id. at 1:24-26.)

Plaintiffs oppose the motion, rejoining that certain deposition testimony indicates that Officer Cahoon stopped Harden from providing CPR to the Decedent because she believed Harden was attacking the Decedent, and that such testimony "is relevant to the issue of deliberate indifference." (Pls.' Opp'n to Defs.' MIL No. 5 2:8-21, 3:4-5, ECF No. 195.)

To the extent Defendants seek in this in limine motion to preclude Plaintiffs from advancing the claim at trial that the Decedent was murdered by his cellmate, the motion is GRANTED since this claim is not preserved in the December 10, 2014 Final Pretrial Order. "[The Ninth Circuit] ha[s] consistently held that issues not preserved in the pretrial order have been eliminated from the action." Hunt v. Cnty. of Orange, 672 F.3d 606, 617 (9th Cir. 2012) (internal quotation marks and citation omitted); see also United States v. First Nat'l Bank of Circle, 652 F.2d 882, 886 (9th Cir. 1981) ("[A] party need offer no proof at trial as

to matters agreed to in the order, nor may a party offer evidence or advance theories at the trial which are not included in the order or which contradict its terms.").

To the extent this in limine motion seeks other relief, it lacks the concreteness required for a pretrial in limine ruling.

MIL No. 6

Defendants "move to preclude Plaintiffs and their counsel from testifying, eliciting testimony, or arguing in the jury's presence that Defendants Cahoon's or Holliday's failure to provide [the Decedent] with CPR caused his death or that [the Decedent] would have benefited or survived had he been given CPR." (Defs.' MIL No. 6 1:21-24, ECF No. 163.) Defendants argue: "[o]pinions about causation, diagnosis, and prognosis can only be rendered on the basis of specialized knowledge held by an expert qualified by medical education, experience and training[,]" and here, "Plaintiffs are not competent to opine about [the Decedent's] survivability[,] and they have no expert to testify about this matter." (Id. at 1:25-27, 2:7-10.)

Plaintiffs counter: "[t]he Ninth Circuit prescribe[d] that [the issue of whether Defendants Cahoon's and Holliday's failure to provide the Decedent with CPR caused his death] should be decided by the jury[,]" and "[t]he jury's consideration of this issue requires introduction of evidence regarding [the Decedent's] condition and argument from counsel." (Pls.' Opp'n to Defs.' MIL No. 6 2:2-14, ECF No. 192.)

The Ninth Circuit held in Lemire, in relevant part, as follows:

3. Causation

> We analyze causation only with respect to Defendants Cahoon and Holliday . . . .
>
> Viewing the evidence in the light most favorable to Plaintiffs, . . . a jury could reasonably determine that [the Decedent] was alive and capable of being revived if CPR had been timely provided by Cahoon and Holliday. First, when the . . . paramedics arrived over twenty minutes after [the Decedent] was discovered by Cahoon and Holliday, they immediately administered CPR, and continued to do so for almost twenty minutes before he was pronounced dead. A jury could conclude that, if the paramedics believed something could be done so long after [the Decedent] was found unconscious and not breathing, starting CPR earlier might have had a benefit. Second, [Supervising Registered Nurse ("SRN")] Hicks testified that [the Decedent] could have died any time between six and thirty minutes prior to the time she evaluated him. This suggests that if Cahoon or Holliday had started CPR immediately, which would have been anywhere between five to twenty-five minutes before SRN Hicks arrived at the scene, [the Decedent] would not have been beyond revival at the time and therefore might have survived. Drawing all reasonable inferences in Plaintiffs' favor, a jury could conclude that had Cahoon and Holliday provided CPR immediately, [the Decedent] might have survived.

Lemire, 726 F.3d at 1084 (emphasis in original).

The Ninth Circuit held in Lemire that the summary judgment record created a triable issue of fact on the issue of whether Defendants Cahoon's and Holliday's alleged failure to immediately perform CPR caused the Decedent's death. Therefore, this in limine motion is DENIED.

Further, to the extent Defendants' reply brief could be construed as reframing this in limine motion by narrowing the scope of evidence they seek to exclude, that argument is disregarded as untimely.

MIL No. 7

Defendants "move to exclude and limit the testimony of Plaintiffs' correctional experts Walter L. Kautzky and George E. Sullivan[,]" arguing:

> (1) the experts are expected to provide similar testimony, thus permitting both to testify will be cumulative, prejudicial, and a waste of time; (2) the experts' opinions and reference[s] to events or matters that are no longer at issue or individuals who are no longer parties to this action are irrelevant and prejudicial; (3) the experts are not qualified to opine about [the Decedent's] medical and mental-health conditions, the adequacy of the treatment he received, whether he would have benefitted from CPR, and the level of care [Correctional Clinical Care Management System] inmates require; and (4) the experts' opinions that Defendants acted with deliberate indifference, the ultimate question of law in this matter, are improper and inadmissible.

(Defs.' MIL No. 7 1:22-2:2, ECF No. 164.) Specifically, Defendants request the following relief:

> [T]he Court should preclude Plaintiffs from calling both experts and allow them to call one or the other[;] . . .
>
> . . . .
>
> . . . [P]reclude [Plaintiffs' experts] from offering . . . opinions or making . . . statements at trial [concerning the Decedent's medical or mental-health conditions, the adequacy of the level of care he received for his conditions, the cause of his conditions, or whether he would have benefited from CPR;]
>
> . . . .
>
> . . . [P]reclude Plaintiffs' experts from testifying or opining about matters unrelated to Defendants' decision to remove the floor officers from Building 8 and not provide CPR[; and]

> . . . .
>
> . . . [P]reclude the experts from making . . . statements or opinions in front of the jury [that Defendants acted with deliberate indifference].

(Id. at 2:22-23, 4:25-5:2, 6:8-10, 7:11-12, 7:24-27.)

Plaintiffs "concede[]" that both correctional experts will not be necessary at trial, and state they "will only call one correctional expert." (Pls.' Opp'n to Defs.' MIL No. 7 2:23-25, ECF No. 197.) Therefore, the Court need not decide this portion of the motion.

Plaintiffs oppose the remainder of the motion, rejoining in summary as follows:

> Defendants . . . maintain that the correctional expert's opinions will reference matters no longer at issue or individuals who are no longer parties to this action. However, the incident involved many people who are no longer parties, yet are relevant and provide relevant information which support the expert's conclusions.
>
> Defendants further maintain that neither expert is qualified to opine on [the Decedent's] medical and mental-health conditions, and the adequacy of his treatment. The correctional experts provide no medical opinions.
>
> Finally, Defendants argue that the correctional expert's opinion that Defendants acted with deliberate indifference, is inadmissible as ultimate questions of law. Plaintiffs disagree with this observation.

(Id. at 2:2-19.)

"It is well-established . . . that expert testimony concerning an ultimate issue is not per se improper. Indeed, Fed. R. Evid. 704(a) provides that expert testimony that is 'otherwise admissible is not objectionable because it embraces an ultimate

issue to be decided by the trier of fact.'" Hangarter v. Provident Life & Acc. Ins. Co., 373 F.3d 998, 1016 (9th Cir. 2004) (alteration in original) (internal quotation marks and citation omitted). "That said, an expert witness cannot give an opinion as to her legal conclusion, i.e., an opinion on an ultimate issue of law." Id. (internal quotation marks and citation omitted).

Therefore, Defendants' in limine motion is granted to the extent it seeks to preclude Plaintiffs' correctional expert from giving the legal opinion that a Defendant acted with "deliberate indifference." See, e.g., M.H. v. Cnty. of Alameda, No. 11-cv-02868-JST, 2015 WL 54400, at *3 (N.D. Cal. Jan. 2, 2015) (stating "Plaintiffs' experts may not offer testimony using the specific term[] . . . "deliberate indifference"); Gonzalez v. City of Garden Grove, No. CV 05-1506 CAS (JTLx), 2006 WL 5112757, at *7 (C.D. Cal. Dec. 4, 2006) (concluding an expert witness could "not testify as to the legal conclusion[] . . . that the City's alleged inadequate training constitutes 'deliberate indifference'"); Wiles v. Dep't of Educ., Nos. 04-00442 ACK-BMK, 05-00247 ACK-BMK, 2008 WL 4225846, at *1 (D. Haw. Sept. 11, 2008) ("[T]he term 'deliberate indifference' is . . . a judicially defined and/or legally specialized term.").

The remainder of the motion lacks the concreteness required for a pretrial in limine ruling.

MIL No. 8

Defendants "move to preclude Plaintiffs from requesting that the jury award 'hedonic' damages . . . or arguing to the jury that they are entitled to recover for the loss of [the

Decedent's] enjoyment of life." (Defs.' MIL No. 8 1:21-24, ECF No. 171.) Defendants argue, *inter alia*,[4] that hedonic damages are "intended to compensate the injured party for the reduction in the quality of life caused by the injury[, and i]n death cases, such as this, that purpose is inapplicable." (Id. at 3:8-10.) Defendants further argue that "any evidence [concerning hedonic damages] would be speculative . . . , especially [regarding] someone in [the Decedent's] position who had a lengthy history of criminal and drug-related activities and incarceration." (Id. at 3:10-13.)

Plaintiffs oppose the motion, arguing "the Ninth Circuit Pattern Instruction concerning the MEASURE OF TYPES OF DAMAGES (5.2)" includes "loss of enjoyment of life" as a factor that jurors should consider in awarding damages. (Pls.' Opp'n to Defs.' MIL No. 8 2:19-27, ECF No. 196.)

Defendants reply:

> Plaintiffs' reliance on the Ninth Circuit's Model Jury Instruction No. 5.2 for damages is misplaced. No. 5.2 is a generic instruction, intended to be used in both personal injury and survival or wrongful death actions. The instruction is intended to be modified based on the claims being asserted. Nothing in the instruction (nor do Plaintiffs cite any authority that) provides that all the listed damages in No. 5.2 are available in every case in which the instruction is given.

(Defs.' Reply to MIL No. 8 2:7-12, ECF No. 212.)

[4] Defendants also seem to seek a pretrial ruling that hedonic damages, if recoverable, are "one component of a general damages award for pain and suffering" rather than "a separate award." (Id. at 2:11-12.) However, Defendants have not shown that a pretrial ruling on this issue is necessary.

"Hedonic damages are those 'that attempt to compensate for the loss of the pleasure of being alive.'" Dorn v. Burlington N. Santa Fe R.R. Co., 397 F.3d 1183, 1187 n.1 (9th Cir. 2005) (quoting Black's Law Dictionary 395 (7th ed. 1999)); accord Loth v. Truck-A-Way Corp., 60 Cal. App. 4th 757, 760 n.1 (1998) ("As interpreted by the courts around the United States, hedonic damages means either a loss of enjoyment of life or loss of life's pleasures."). "Under California survivorship law, . . . hedonic damages[] are not available." T.D.W. v. Riverside Cnty., No. EDCV 08-232 CAS (JWJx), 2009 WL 2252072, at *5 (C.D. Cal. June 27, 2009) (citing Cal. Code Civ. P. § 377.34); Garcia v. Sup. Ct., 42 Cal. App. 4th 177, 187-88 (1996); Cnty. of L.A. v. Sup. Ct., 21 Cal. 4th 292, 294-95 (1999)).

"Because federal law is silent on the measure of damages in § 1983 actions, California's disallowance of [hedonic] damages governs unless it is inconsistent with the policies of § 1983." Chaudhry v. City of L.A., 751 F.3d 1096, 1103 (9th Cir. 2014). "Whether a state-law limitation on damages applies in § 1983 actions depends on whether the limit is inconsistent with § 1983's goals of compensation and deterrence." Id.

Neither the Supreme Court nor the Ninth Circuit has addressed whether a state law's disallowance of hedonic damages is inconsistent with § 1983 where an alleged violation of federal law caused the victim's death, and there is a split of non-binding authority on the issue. See, e.g., Bell v. City of Milwaukee, 746 F.2d 1205, 1235-41 (7th Cir. 1984) ("Wisconsin law cannot be applied to preclude the [decedent's] estate's recovery for loss of life."), overruled in part on other grounds by Russ

v. Watts, 414 F.3d 783 (7th Cir. 2005); Frontier Ins. Co. v. Blaty, 454 F.3d 590, 600 (6th Cir. 2006) (holding "federal law does not require, in a section 1983 action, recovery of hedonic damages stemming from a person's death"); T.D.W., 2009 WL 2252072, at *5-7 (stating "the case law in this area is inconsistent," but deciding: "excluding damages of decedent's . . . loss of enjoyment of life would be inconsistent with the purposes of section 1983"). However, in Chaudhry, the Ninth Circuit "agree[d] with" the Seventh Circuit's "reasoning in" Bell, in deciding that "California's prohibition against pre-death pain and suffering damages limits recovery too severely to be consistent with § 1983 deterrence policy." Chaudry, 751 F.3d at 1105. This indicates that the Ninth Circuit would follow the Seventh Circuit's analysis on this issue. For this reason, the Court holds that notwithstanding California's prohibition thereof, excluding hedonic damages, i.e. damages for the Decedent's loss of enjoyment of life, would be inconsistent with the purposes of section 1983.

Further, Defendants have not shown that hedonic damages are too speculative to be considered by the jury.

For the stated reasons, this in limine motion is DENIED.

Dated: July 31, 2015

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