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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

KARLA FERNANDEZ, et al.,

Plaintiffs,

v.

TASER INTERNATIONAL, INC.,
SANTA ROSA POLICE
DEPARTMENT, CITY OF SANTA
ROSA, et al.,

Defendants.

No. C 06-4371 SBA

ORDER

[Docket Nos. 65, 67, 68, 69, 70, 76, 77]

REQUEST BEFORE THE COURT

Before the Court are the following pleadings:

(1) Defendants’ Motions in Limine and Exhibits [Docket Nos. 65-66];

(2) Plaintiff’s Motion in Limine to Exclude Evidence and Testimony of Extra Marital Affairs [Docket No. 67];

(3) Plaintiff’s Motion in Limine to Exclude Evidence and Testimony of Carlos Fernandez’ Criminal Record [Docket Nol. 68]

(4) Plaintiff’s Motion in Limine to Exclude Evidence and Testimony of Carlos Fernandez’ Prior Drug Use and History [Docket No. 69];

(5) Plaintiff’s Motion in Limine to Exclude Evidence and Testimony of Nylon Stockings [Docket No. 70];

(6) Defendants’ Objections to Plaintiff’s Motions in Limine and Exhibits [Docket Nos. 71-73];

(7) Plaintiff’s Opposition to Defendants’ Motions in Limine [Docket No. 75];

(8) Plaintiff’s Second Motion to Continue Trial [Docket No. 76]; and

1 (9) Plaintiff's Motion for Leave to File Opposition to Defendants' Motions in Limine
2 [Docket No. 77].

3 BACKGROUND

4 I. Factual background.

5 This lawsuit arises from the death of Carlos Casillas-Fernandez ("Mr. Fernandez"), the
6 husband of plaintiff Karla Fernandez ("Mrs. Fernandez") and father of plaintiff Mauricio Fernandez
7 ("son"). On July 16, 2005, at about 1:00 a.m., the Santa Rosa Police Department dispatch received a
8 9-1-1 telephone call from a Spanish-speaking male. Mrs. Fernandez came on the line and identified
9 herself, in English, and told the 911 operator that her husband called 911. What else Mrs. Fernandez
10 told the 911 operator is disputed, with the exception that the parties agree that she informed dispatch
11 that her husband may be mentally ill, was acting paranoid, and had a history of prior suicide
12 attempts. Mrs. Fernandez also informed dispatch that her husband might have taken some of her
13 diet pills, that he had also been drinking, that he thought she was trying to do something to him, and
14 that their 4 year-old son was asleep upstairs.

15 Defendants Santa Rosa police officers Matthew Sanchez ("Officer Sanchez") and Brian
16 Sinigiani ("Officer Sinigiani") were dispatched to the Fernandez residence. What ensued is mostly
17 disputed, but the parties agree that the officers tried to speak to Mr. Fernandez but he walked away
18 from them and into the kitchen. The parties also agree that Mr. Fernandez grew more upset, one of
19 the officers tried to check his pupils but was unsuccessful, one officer managed to take his pulse.
20 The officers contend that Mr. Fernandez stated that he wanted to kill himself and talked about
21 people being "out to get him" and yelled and screamed in Spanish. All the while, Mrs. Fernandez
22 was present while the officers were trying to communicate with Mr. Fernandez.

23 The officers told him he was under arrest (for being under the influence of a controlled
24 substance) and attempted to handcuff him. At 1:26 a.m. Officer Sinigiani called for backup. The
25 officers were unable to place Mr. Fernandez' hands behind his back and Officer Sanchez tried to
26 physically subdue him by applying pressure with his thumb to some part of Mr. Fernandez' body.
27 Officer Sanchez used his taser twice on Mr. Fernandez and also applied a "cartoid restraint."
28 Sometime during the tasing and the choke hold, Mrs. Fernandez left the dining room and went

1 upstairs. A struggle ensued. Officer Sinigiani called for backup again at 1:31 a.m. and one officer,
2 James Griffin, arrived a minute later. All three officers were involved in a struggle with Mr.
3 Fernandez and Officer Griffin used his taser 3 or 4 times.

4 Two more officers arrived within minutes – Officer Robert St. Pierre and Officer Dan Jones.
5 During this period of struggle, Officer Griffin used his taser again, Officer Sanchez sprayed Mr.
6 Fernandez with pepper spray, and three more cycles of taser were applied and Mr. Fernandez was
7 handcuffed. At 1:40 a.m. the officers requested a medical team. Shortly thereafter, Sgt. Gary Negri
8 arrived as the officers were putting Mr. Fernandez into soft leg restraints. Mr. Fernandez had
9 stopped kicking and yelling by now. His vital signs were checked, he appeared to have pulse and
10 breathing problems and CPR was administered. The Santa Rose Fire Department arrived at 1:45
11 a.m., and an ambulance a few minutes later. At 2:07 a.m. Mr. Fernandez was transported to the
12 hospital, admitted at 2:20 a.m., and pronounced dead at 2:44 a.m.

13 **II. Procedural background**

14 On July 17, 2006, Plaintiffs filed a complaint against the City Defendants and Taser
15 International. Only the City defendants remain in the lawsuit. There are 3 causes of action: (1)
16 under Section 1983, allegations against individual officers for unlawful arrest and excessive force,
17 against the police department for deliberate indifference to the actions of the individual officers, and
18 against the City of Santa Rosa and the police department for failure to properly train officers; (2) a
19 state law wrongful death action; and (3) state law negligent hiring, training and supervision.

20 **ANALYSIS**

21 **I. Plaintiff's Motion to Continue Trial.**

22 The Court GRANTS the Motion to Continue Trial. The trial, currently scheduled for November
23 3, 2008, is continued to April 27, 2009, and is set for 7-8 days. The Court RESETS the following
24 pretrial dates:

25 (1) The Pretrial Conference is scheduled for April 14, 2009, at 1:00 p.m.;

26 (2) Pretrial filing requirements are due on or before March 24, 2009, consistent with the new
27 Pretrial Conference;

28 (3) Motions in Limine and objections to evidence are due on or before March 31, 2009; and

1 responses to motions in limine and/or responses to objections to evidence are due on or before April 7,
2 2009.

3 The parties are ORDERED to comply with this Court's Standing Order No. 5, and meet and
4 confer before filing any motion with this Court, and to certify that they have complied with this
5 requirement.

6 **II. Plaintiff's Motion for Leave to File Opposition to Defendants' Motions in Limine.**

7 The Court DENIES this motion as MOOT. Plaintiffs filed an untimely opposition on eve of the
8 Pretrial Conference, October 20, 2008, and failed to seek leave of this Court until October 21, 2008.
9 The opposition was heard, nevertheless, at the Pretrial Conference on October 21, 2008.

10 **III. Defendants' Motions in Limine ("MIL").**

11 **1. Exclusion of Witnesses.** The unopposed request is GRANTED.

12 **2. Exclusion of Newspaper Articles, other Media Coverage of Statements and Testimony**
13 **of Same.** The unopposed request is GRANTED.

14 **3. Exclusion of Claims or Lawsuits of Police Misconduct other than the Subject Incident.**

15 Defendants motion is hypothetical at this juncture in the case. The plaintiffs have not identified
16 any evidence of claims or lawsuits of police misconduct, primarily because Plaintiffs have not had
17 access to police personnel files to date. The parties stipulated to conditions and a protective order for
18 the personnel files, and this Court entered the Order at the pretrial conference. Accordingly, the Court
19 DENIES WITHOUT PREJUDICE the motion in limine.

20 **4. Exclusion of Statements Regarding Unrelated Cases.**

21 The basis for this motion to exclude evidence is the same as for Defendants' MIL No. 3. The
22 Court DENIES WITHOUT PREJUDICE this motion for the same reasons as it denies MIL No. 3.

23 **5. Exclusion of Statements Regarding Complaints of Excessive Force.**

24 Again, the defendants' effort to exclude statements regarding complaints of excessive force
25 about Santa Rosa police officers is premature at this point. At this moment, plaintiffs have no
26 evidence, if such exists, due to the fact that they have been unable to review the individual
27 defendants' personnel files. If such evidence is obtained and the plaintiffs intend to introduce it at
28 trial, the Defendants would seek to exclude evidence of prior instances of use of force by individual

1 defendants on the basis that it is inadmissible character evidence. Plaintiffs oppose the exclusion of
2 the evidence, should it exist, on the basis that it is relevant to their *Monell* claim against the Santa
3 Rosa Police Department and contend it would not be introduced for an inadmissible purpose against
4 the individual defendants. Because this motion, like MIL No. 3 and MIL No. 4, is raised
5 prematurely, the Court DENIES WITHOUT PREJUDICE.

6 **6. Liability Insurance/Wealth of the City.** The is unopposed request is GRANTED.

7 **7. Payment by City of Burial Expenses.** The unopposed request is GRANTED .

8 **8. Loss of Society and Companionship.**

9 Defendants limit their objection to evidence produced by, or testimony by, Plaintiffs' expert
10 witness, forensic economist Robert W. Johnson to the subject of the value of human life.

11 Defendants correctly contend that Plaintiffs' damages claim for loss of care, companionship and
12 society is not amenable to expert testimony because it is a subjective, rather than objective, non-
13 economic loss. Further, no witness is qualified to express a subjective opinion on the matter.

14 *Beagle v. Vasold*, 65 Cal. 2d 166, 172 (Cal. 1996).

15 Defendants have not deposed the expert witness although they intend to. This MIL is
16 premature, as it is unclear for what purpose the evidence or testimony of Mr. Johnson would be
17 introduced. In light of the fact that discovery has not concluded, and the trial date has been
18 continued for the completion of discovery, the Court DENIES WITHOUT PREJUDICE this motion
19 in limine.

20 **9. Officer Commendations/Evaluations.**

21 Like MIL Nos. 3-5, the Defendants ask the Court to allow the introduction of evidence they
22 believe the Plaintiff will seek to exclude. No examples of such evidence have been offered. Nor has
23 Plaintiff sought to exclude the hypothetical evidence. Accordingly, the Court DENIES WITHOUT
24 PREJUDICE the motion.

25 **IV. Plaintiffs' Motions in Limine**

26 **1. Exclude Evidence and Testimony of Extramarital Affairs.** After the Court explained
27 its intention to divide the presentation of evidence into two phases – liability evidence first, followed
28 by damages evidence – the Defendants clarified that any evidence and testimony that relates to the

1 marital relationship would be offered during the damages phase of trial only. Plaintiffs oppose its
2 introduction at the liability phase. Accordingly, the Court GRANTS the motion IN PART as to the
3 liability phase of the trial and DENIES the motion IN PART as to the damages phase of the trial.

4 **2. Exclude Evidence and Testimony of Carlos Fernandez' Prior Criminal Record.**

5 **3. Exclude Evidence and Testimony of Carlos Fernandez' Prior Drug Use/History.**

6 MIL 2 and MIL 3 are closely related and were discussed together at the Pretrial Conference.
7 Plaintiffs base these motions on a report that was produced by Defendant Santa Rose Police
8 Department entitled "Critical Incident Report." The report consists of approximately 50 entries
9 relating to the decedent's criminal history, some of which overlaps with his drug use history.
10 Plaintiffs oppose the introduction of any criminal records or drug use and drug history as irrelevant,
11 highly prejudicial, and impermissible character evidence.

12 Defendants stated to the Court that of the 50 alleged incidents in the report, they were
13 inclined to admit only three. Of those, defendants asserted they would certainly seek to admit
14 references to an incident that occurred in November 2004, when the decedent was detained
15 following an attempted suicide and tested positive for methamphetamine and other drugs.
16 Defendants contend this evidence is relevant to causation in the wrongful death claim and the Court
17 concurs. Accordingly, the Court GRANTS the plaintiffs' MIL No. 3 IN PART as to the liability
18 phase of the trial and DENIES the motion IN PART as to the damages phase of the trial.

19 Defendants also argue that criminal history evidence is relevant to the issue of damages, to
20 the extent that it relates to decedent's absence from the workplace. Accordingly, the Court
21 GRANTS the plaintiffs' MIL No. 2 IN PART as to the liability phase of the trial and DENIES the
22 motion IN PART as to the damages phase of the trial.

23 **4. Exclude Evidence and Testimony of Nylon Stocking.**

24 Plaintiffs contend that testimony about a nylon stocking tied around the decedent's genitalia
25 is irrelevant and would serve to distract the jury from the main issues. Defendants argue the
26 presence of the nylon stocking is relevant to the issue of liability because the physical state of the
27 decedent's genitalia, post-incident, provides some circumstantial evidence of the degree of force, or
28 lack thereof, that was exerted on him during the struggle with the officers. The Court DENIES the

1 motion.

2 **CONCLUSION**

3 Accordingly, with regard to:

4 (A) Defendants' Motions in Limine [Docket No. 65]:

5 (1) The Court GRANTS the motion for Exclusion of Witnesses;

6 (2) The Court GRANTS the motion for Exclusion of Newspaper Articles, other
7 Media Coverage of Statements and Testimony of Same;

8 (3) The Court DENIES WITHOUT PREJUDICE the motion for Exclusion of
9 Claims or Lawsuits of Police Misconduct other than the Subject Incident; .

10 (4) The Court DENIES WITHOUT PREJUDICE the motion for Exclusion of
11 Statements Regarding Unrelated Cases;

12 (5) The Court DENIES WITHOUT PREJUDICE the motion for Exclusion of
13 Statements Regarding Complaints of Excessive Force;

14 (6) The Court GRANTS the motion for Exclusion of Liability Insurance/Wealth
15 of the City;

16 (7) The Court GRANTS the motion for Exclusion of Payment by City of Burial
17 Expenses;

18 (8) The Court DENIES WITHOUT PREJUDICE the motion for Exclusion of
19 evidence or testimony by Expert Witness Robert Johnson as to Loss of Society and Companionship;

20 (9) The Court DENIES WITHOUT PREJUDICE the motion to prevent the
21 exclusion of Officer Commendations/Evaluations;

22 (B) the Court GRANTS IN PART, as to the liability portion of trial, and DENIES IN
23 PART, as to the damages portion of trial, the Plaintiffs' Motion in Limine to Exclude Evidence and
24 Testimony of Extramarital Affairs [Docket No. 67];

25 (C) the Court GRANTS IN PART, as to the liability portion of trial, and DENIES IN
26 PART, as to the damages portion of trial, the Plaintiffs' Motion in Limine to Exclude Evidence and
27 Testimony of Carlos Fernandez' Prior Criminal Record [Docket No. 68];

28 (D) the Court GRANTS IN PART, as to the liability portion of trial, and DENIES IN

1 PART, as to the damages portion of trial, the Plaintiffs' Motion in Limine to Exclude Evidence and
2 Testimony of Carlos Fernandez' Prior Drug Use/History [Docket No. 69],;

3 (E) the Court DENIES the Plaintiffs' Motion in Limine to Exclude Evidence and
4 Testimony of Nylon Stocking [Docket No. 70];

5 (F) the Court GRANTS the Motion to Continue the Trial; and


6 (G) the Court DENIES AS MOOT the Plaintiffs' Motion for Leave to file Opposition.

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8 IT IS SO ORDERED.

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October 27, 2008



Sandra Brown Armstrong
United States District Judge

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