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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

MARTIN MONICA,  
Plaintiff,

v.

BRYAN WILLIAMS, et al.,  
Defendants.

Case No. [15-cv-04857-BLF](#)

**ORDER RE MOTIONS *IN LIMINE***

[Re: ECF 43, 44, 45, 46, 47]

Plaintiff Martin Monica (“Plaintiff”) brings this action alleging that Defendants detained, arrested him and used excessive force in violation of his constitutional rights. Monica initially brought a claim under 42 U.S.C. § 1983 against the City of Santa Clara and the individual police officers involved in the incident: Bryan Williams, Luke Erickson, and Patrick Estes. Only the claims against Officers Williams and Erickson (“Defendants”) for an alleged unconstitutional de facto arrest and use of excessive force remain. The Court held a pretrial conference on January 26, 2017, at which time it addressed a number of trial issues and heard argument on the parties’ motions *in limine*. The Court hereby orders as follows:

**I. SCHEDULING**

Plaintiff is allotted 8 hours of trial time, to include examination and cross-examination of witnesses and the presentation of evidence. Defendant is allotted 6 hours of trial time, also to include examination and cross-examination of witnesses and the presentation of evidence. Each party will have an additional 30 minutes for opening statements and one hour for closing arguments.

**II. JURY QUESTIONNAIRE**

For the reasons discussed on the record, the Court will not allow use of a jury

1 questionnaire. Each party will be allotted 40 minutes for *voir dire*.

2 **III. MOTIONS *IN LIMINE***

3 For the reasons explained below and on the record at the January 26, 2017 pretrial  
4 conference, the motions are decided as follows:

5 Plaintiff’s Motion in Limine No. 1: GRANTED IN PART and DENIED IN PART.

6 Plaintiff’s Motion in Limine No. 2: DEFERRED.

7 Defendants’ Motion in Limine No. 1: GRANTED.

8 Defendants’ Motion in Limine No. 2: GRANTED.

9 Defendants’ Motion in Limine No. 3: DENIED.

10 **A. Plaintiff’s Motions *in Limine***

11 **i. Plaintiff’s Motion *in Limine* No. 1 to Exclude Expert Testimony of Robert  
12 Fonzi. GRANTED IN PART AND DENIED IN PART.**

13 Plaintiff moves to exclude any and all testimony by Robert Fonzi (“Fonzi”) as well as his  
14 expert report as irrelevant and improper expert testimony, and contends it would create a  
15 substantial danger of undue prejudice to Plaintiff if admitted. Pl.’s Mot. in Lim. No. 1, at 1, ECF  
16 43. Plaintiff thus argues that Fonzi’s proposed expert testimony, which offers numerous legal  
17 conclusions, credibility determinations, and irrelevant opinions, are not proper expert testimony  
18 under Fed. R. Evid. 702 and should be excluded. *Id.* at 2 (citing *Chang v. Cty. of Santa Clara*, No.  
19 15-cv-2502, 2016 U.S. Dist. LEXIS 93246 (N.D. Cal. July 18, 2016)).

20 Defendants oppose Plaintiff’s motion in part, and argue that while Fonzi’s trial testimony  
21 may properly be limited, it should not be stricken in its entirety. Defs.’ Opp. to Pl.’s Mot. in Lim.  
22 No. 1, at 2, ECF 55. While Defendants concede that Fonzi may not opine on “pure” opinions or  
23 conclusions of law, he should be permitted to testify regarding the reasonableness of Defendants’  
24 actions and use of force in connection with general police standards and training. *Id.* (citing Fed.  
25 R. Evid. 704(a)).

26 The Court finds that Fonzi is a qualified witness and will be allowed to testify. However,  
27 Fonzi may not testify as to any legal conclusion or the credibility of any witnesses. *United States*  
28 *v. Barnard*, 490 F.2d 907, 912 (9th Cir. 1973) (finding that credibility is an issue for the jury);

1 *Mukhtar v. Cal. State Univ.*, 299 F.3d 1053, 1065 n.10 (9th Cir. 2002) (“[A]n expert witness  
2 cannot give an opinion as to her legal conclusion[.]” (citation and emphasis omitted)). Moreover,  
3 the Court cautions counsel that any questions directed to Fonzi must be phrased properly, for  
4 example, as hypotheticals, and will be subject to trial objections. Accordingly, the Court  
5 GRANTS IN PART AND DENIES IN PART Plaintiff’s motion *in limine* no. 1.

6 **ii. Plaintiff’s Motion *in Limine* No. 2 to Exclude Testimony Regarding**  
7 **Plaintiff’s Prior Political Activities, Lawsuits, and Reason for Being in the**  
8 **Area. DEFERRED.**

9 Plaintiff seeks to exclude any and all testimony, evidence, mention, or argument relating to  
10 Plaintiff’s political activities, prior lawsuits, and his reason for being in the area on the night of the  
11 incident. Pl.’s Mot. in Lim. No. 2, at 2, ECF 47. Plaintiff argues that such evidence is irrelevant  
12 to this action, inadmissible character evidence, and prejudicial. *Id.* at 2–3.

13 Defendants concede that evidence of Plaintiff’s previous lawsuits is not admissible, but  
14 oppose Plaintiff’s motion, arguing that evidence of Monica’s prior political activity and the reason  
15 he was in the area at the time of the incident is relevant, and the evidence’s probative value is not  
16 substantially outweighed by the risk of unfair prejudice in this case. Defs.’ Opp. to Pl.’s Mot. in  
17 Lim. No. 2, at 2, ECF 59. Specifically, Defendants contend that this evidence lends credence to  
18 the Officers’ version of the facts. *Id.*

19 At the pretrial conference, the Court agreed to defer ruling on this motion until trial.  
20 However, to the extent the Court allows this evidence to be admitted, it will be allowed only for  
21 impeachment purposes. Moreover, if the evidence is admitted, the Court would welcome a  
22 limiting instruction and would require Defendants’ counsel to make a showing of the questions  
23 they intend to ask before allowing questioning on the subject. Accordingly, Plaintiff’s motion *in*  
24 *limine* no. 2 is DEFERRED.

25 **B. Defendants’ Motions *in Limine***

26 **i. Defendants’ Motion *in Limine* No. 1 to Exclude Evidence Relating to Any**  
27 **Prior or Subsequent Incidents Involving Any of the Officers. GRANTED.**

28 Defendants move to exclude any and all utterances, statements, evidence, testimony,  
argument, or any mention by Plaintiff, Plaintiff’s witnesses and/or Plaintiff’s attorneys about any

1 prior or subsequent complaints or incidents involving any of the Officers. Defs.’ Mot. in Lim. No.  
2 1, at 3, ECF 44. Defendants argue that any prior and subsequent complaints or incidents are  
3 irrelevant and should be excluded pursuant to Fed. R. Evid. 401. *Id.* at 2. Defendants further  
4 contend that any potential relevance is strongly outweighed by the risk of prejudice from the jury  
5 considering them as propensity evidence. *Id.* at 3 (citing Fed. R. Evid. 403, 404).

6 Plaintiff does not oppose Defendants’ motion, but asks that Plaintiff be allowed to “walk  
7 through” the door if Defendants open the door to the admission of such evidence on direct  
8 examination. Pl.’s Opp. to Defs.’ Mot. in Lim. No. 1, at 1, ECF 48.

9 The Court agrees with Defendants, and will exclude any evidence relating to prior or  
10 subsequent complaints or incidents involving the Defendants. However, in the event Plaintiff  
11 feels the door has been opened, he is advised to raise the issue with the Court so the Court may  
12 revisit its ruling. Accordingly, the Court GRANTS Defendants’ motion *in limine* no. 1.

13 **ii. Defendants’ Motion *in Limine* No. 2 to Exclude Miscellaneous Items Under**  
14 **FRE 403. GRANTED.**

15 Defendants seek to exclude reference to: (1) the San Jose Mercury News article regarding  
16 this case and (2) a prior incident between Santa Clara officers and an African-American subject on  
17 a bicycle that Monica witnessed and speculated may have been racially-motivated. Defs.’ Mot. in  
18 Lim. No. 2, at 2, ECF 45. Defendants argue that the San Jose Mercury News article is irrelevant  
19 and hearsay. *Id.* Defendants also contend that the prior incident Plaintiff observed is irrelevant.  
20 *Id.* Plaintiff does not oppose this motion. Pl.’s Opp. to Defs.’ Mot. in Lim. No. 2, at 1, ECF 49.

21 The Court finds Defendants’ argument persuasive and the motion is unopposed. The Court  
22 GRANTS Defendants’ motion *in limine* no. 2.

23 **iii. Defendants’ Motion *In Limine* No. 3 Regarding Bifurcating Punitive**  
24 **Damages and to Exclude Evidence of Defendants’ Finances During Liability**  
25 **Phase. DENIED.**

26 Defendants seek to bifurcate the punitive damages phase and to exclude evidence of  
27 Defendants’ financial condition until there is a finding of liability for punitive damages. Defs.’  
28 Mot. in Lim. No. 3, at 3, ECF 46. Defendants argue that evidence of Defendants’ financial  
condition is inadmissible until Plaintiff has first proven a *prima facie* case of liability for punitive


1 damages, and that prematurely hearing evidence of Defendants' income and assets may potentially  
2 prejudice the jury. *Id.* at 2.

3 Plaintiff only opposes the motion to the extent that it implies that Plaintiff bears the burden  
4 of establishing Defendants' financial condition. Pl.'s Opp. to Defs.' Mot. in Lim. No. 3, at 1, ECF  
5 50. Plaintiff contends that the burden is on Defendants to establish their own financial condition.  
6 *Id.*

7 The Court does not find that bifurcation is necessary and further finds that bifurcation  
8 would be time consuming. Accordingly, the Court DENIES Defendants' motion *in limine* no. 3.

9 **IT IS SO ORDERED.**

10  
11 Dated: January 30, 2017

  
BETH LABSON FREEMAN  
United States District Judge