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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

ALMA RAMIREZ, et al.,  
Plaintiffs,  
v.  
CITY OF GILROY, et al.,  
Defendants.

Case No. [17-cv-00625-VKD](#)

**PRETRIAL ORDER RE MOTIONS IN  
LIMINE AND PLAINTIFFS’ MOTION  
TO BIFURCATE LIABILITY AND  
DAMAGES**

The Court held a pretrial conference in this matter on February 26, 2020. Dkt. No. 115. This order resolves the parties’ motions in limine and plaintiffs’ conditional motion to bifurcate liability and damages (Dkt. Nos. 64, 65, 66, 67, 68, 69, 70, 71, 72, 74, 75, 76, 77, 78, 81). The Court will issue separate orders regarding the parties’ proposed jury instructions (Dkt. No. 94) and other matters discussed during the pretrial conference.

**I. MOTIONS IN LIMINE**

The Court resolves the parties’ motions in limine as follows:

**A. Plaintiffs’ Motion in Limine No. 1 (Tattoos/Gang Affiliation)**

Plaintiffs move to exclude any evidence that refers to Mr. Alvarez’s tattoos or alleged gang affiliation or activity. Dkt. No. 74. This motion is granted in part and denied in part.

The Court will permit evidence of the dispatch communications (audio and data) received by Officer Moon, as those communications constitute some of the information he had at the time of the incident and are therefore relevant to evaluating the reasonableness of his conduct. Similarly, the Court will permit Officer Moon to testify (and be cross-examined) about how the dispatch communications he received informed his actions, and will permit expert testimony on

1 how law enforcement officers in Officer Moon’s position are trained to account for information of  
2 the type contained in the dispatch communications to the extent those expert opinions have been  
3 disclosed as required under Rule 26. *See Watson v. City of San Jose*, 765 Fed. Appx. 248, 250–51  
4 (9th Cir. 2019) (finding district court did not abuse discretion in admitting evidence of information  
5 known to officers at time of incident and evidence of training and experience that informed their  
6 reaction to that information).

7 The Court excludes evidence of Mr. Alvarez’s tattoos (except to the extent those tattoos  
8 appear in images or videos that are admitted for other purposes), and excludes all other evidence  
9 of Mr. Alvarez’s alleged gang affiliation or gang activities as unduly prejudicial. The Court notes  
10 that defendants represent that they do not intend to offer this evidence at trial for any purpose,  
11 except for impeachment if plaintiffs open the door to such evidence. *See* Dkt. No. 84 at 9.

12 **B. Plaintiffs’ Motion in Limine No. 2 (Drug Use)**

13 Plaintiffs move to exclude any evidence that refers to Mr. Alvarez’s past or present drug  
14 use, including the toxicology report showing that at the time of his death Mr. Alvarez had some  
15 quantity of hydrocodone in his system. Dkt. No. 75. The motion is granted.

16 Defendants argue that “evidence that there was Hydrocodone in [Mr. Alvarez’s] system  
17 can be argued to have affected his judgment which could corroborate Ofc. Moon’s version of  
18 events as to [Mr. Alvarez’s] actions.” Dkt. No. 85 at 2. However, defendants concede that they  
19 have no evidence of how much hydrocodone was in Mr. Alvarez’s system or of how any particular  
20 amount of that drug might produce the effects defendants say Officer Moon observed. *See* Dkt.  
21 No. 119 at 29:4-10. Accordingly, the justification defendants offer for admission of this evidence  
22 is entirely speculative and certainly insufficient to overcome the prejudicial effect such evidence  
23 of Mr. Alvarez’s drug use might have.

24 **C. Plaintiffs’ Motion in Limine No. 3 (Criminal History)**

25 Plaintiffs move to exclude any evidence that refers to Mr. Alvarez’s criminal history,  
26 including the existence of a criminal domestic violence protective order that required him to stay  
27 away from Sovonnah Flores at the time of the incident. Dkt. No. 76. Defendants stipulate that  
28 they seek admission of evidence of Mr. Alvarez’s adult criminal history only, and not his juvenile

1 criminal history. Dkt. No. 119 at 30:21–31:9. Plaintiffs’ motion is granted in part with respect to  
2 the question of liability; the Court will defer ruling on the motion with respect to the question of  
3 damages.

4 On the question of liability, defendants argue that *all* of Mr. Alvarez’s adult criminal  
5 history (summarized at Dkt. No. 86 at 2–3) is relevant to liability because it suggests he had the  
6 motive and intent to behave aggressively towards Officer Moon in order to evade capture.  
7 Specifically, they argue that Mr. Alvarez’s criminal history was sufficiently serious that the  
8 prospect of imminent arrest for domestic violence and/or violation of the protective order may  
9 explain why, according to Officer Moon, Mr. Alvarez pretended to reach for a weapon in his  
10 waistband and then charged at Officer Moon in order to intimidate him. Dkt. No. 86 at 6–7; Dkt.  
11 No. 119 at 32:10-17.

12 The proposed expert testimony of defense expert Scott Seaman provides some support for  
13 defendants’ theory. According to Mr. Seaman, “Officers are trained that suspects will, and do,  
14 make movements to distract, intimidate, or affect the actions of a police officer, particularly when  
15 there is a one-on-one confrontation, as opposed to when a subject faces multiple officers.” Dkt.  
16 No. 84-1, Ex. C at 16. In addition, Mr. Seaman says, “[O]fficers are taught to understand that a  
17 suspect, of any size, may have the ability to attack and seriously injure or kill an officer or disarm  
18 an officer of his weapon, particularly if the suspect has, among other dynamics, a high degree of  
19 motivation, skill or a lack of fear.” *Id.* It is undisputed that Officer Moon had no information  
20 about any of Mr. Alvarez’s criminal history at the time of the incident. Nevertheless, the Court  
21 agrees that evidence that tends to make one party’s version of events more or less probable is  
22 relevant. *Boyd v. City and Cty. of San Francisco*, 576 F.3d 938, 944–45 (9th Cir. 2009). If Mr.  
23 Alvarez had a motive and intent to evade capture, evidence supporting such motive and intent  
24 could be relevant as it would tend to support Officer Moon’s testimony that Mr. Alvarez behaved  
25 aggressively towards him. However, defendants have not shown that Mr. Alvarez’s adult criminal  
26 history—a single misdemeanor conviction for petty theft, his prior arrests, or the pending charges  
27 and investigations against him—plausibly support such motive and intent. Defendants concede  
28 that there were no warrants out for Mr. Alvarez’s arrest and that he was not a fugitive. Dkt. No.

1 119 at 38:10–39:1. This criminal history is simply too limited, and the prospect of future charges  
2 too speculative, to support defendants’ contention that Mr. Alvarez had a motive to evade capture  
3 because he faced a significant period of incarceration if he was ultimately charged and convicted  
4 of the offenses for which he was under investigation. *Id.*; Dkt. No. 86 at 6–7. Even if Mr.  
5 Alvarez’s criminal history were relevant to the question of liability, the Court finds that the  
6 prejudicial effect of the evidence outweighs its limited relevance on the question of liability, as  
7 there is a serious risk that the evidence will be misused or misconstrued as evidence of Mr.  
8 Alvarez’s character or propensity to act. Fed. R. Evid. 403, 404.

9       The criminal domestic violence protective order is another matter. As represented to the  
10 Court, the protective order prohibited Mr. Alvarez from contacting Ms. Flores, except for peaceful  
11 contact for child custody issues. Dkt. No. 86 at 3. His presence at her apartment on the date of the  
12 incident appears to be a violation of that order, and Mr. Alvarez could have reasonably expected to  
13 be arrested, charged, and punished for that violation. Accordingly, the Court concludes that  
14 evidence of the existence and terms of the protective order are relevant and admissible on the  
15 question of liability for the limited purpose of showing that Mr. Alvarez may have had a motive or  
16 intent to evade capture by law enforcement when he encountered Officer Moon. The prejudicial  
17 nature of this evidence does not outweigh its relevance, particularly given that the Court has  
18 already concluded that the content of the dispatch communications, which refer to an alleged  
19 domestic violence incident in progress, is also admissible.

20       On the question of damages, the Court defers ruling on plaintiffs’ motion at this time.  
21 Some evidence of Mr. Alvarez’s adult criminal history may be relevant to plaintiffs’ claims about  
22 the value of their lost relationships. For example, defendants suggest that Mr. Alvarez’s criminal  
23 history involving domestic violence against Ms. Flores tends to suggest that the children she and  
24 Mr. Alvarez share likely suffered a loss that is not as great as the children may claim. Dkt. No. 86  
25 at 8–9. Neither child witnessed the alleged domestic violence (H.A. was not born, and L.A. was at  
26 most only 7 months old), *see id.* at 2–3, 9, but defendants may be able to show that it is proper for  
27 the jury to draw negative inferences regarding damages from evidence of the violence Mr. Alvarez  
28 allegedly committed against the children’s mother. Defendants also says that the criminal

1 protective order against Mr. Alvarez would have prevented him from having contact with his  
2 children until November 2018 and that this prohibition should factor into the calculation of  
3 damages.

4 As explained below, the Court will bifurcate the issues of liability and damages and will  
5 defer ruling on whether additional evidence of Mr. Alvarez’s adult criminal history is admissible  
6 for purposes of damages. *See infra* Section II.

7 **D. Plaintiffs’ Motion in Limine No. 4 (Agency Findings)**

8 Plaintiffs move to exclude evidence of “findings by any agency,” including specifically:

9 (1) the Santa Clara County District Attorney’s conclusion that Officer Moon’s use of force against  
10 Mr. Alvarez was justified, reasonable, or not criminal; (2) the Santa Clara County District  
11 Attorney’s review of Officer Moon’s conduct and decision not to bring charges against him; (3)  
12 the City of Gilroy’s review of Officer Moon’s conduct and conclusion that Officer Moon’s use of  
13 force against Mr. Alvarez was justified, reasonable, or consistent with City policies. Dkt. No. 77  
14 at 2. This motion is granted in part and denied in part.

15 The Court excludes evidence of the above-referenced findings and conclusions of the Santa  
16 Clara County District Attorney and the City of Gilroy or any other agency including the Gilroy  
17 Police Department, as those findings and conclusions are not relevant to any issue in the case.  
18 Both parties may offer otherwise admissible evidence of whether Officer Moon’s conduct did or  
19 did not comport with relevant policies, practices, training, or other norms of behavior without  
20 opening the door to evidence of the findings and conclusions of these local agencies.

21 Plaintiffs move to exclude not only agency findings or conclusions, but also the fact of any  
22 investigation by the District Attorney or the City, while both parties wish to be able to offer  
23 evidence of statements made by Officer Moon and witnesses during the investigation. *See id.* at 5;  
24 Dkt. No. 87 at 1–2. At the pretrial conference, the parties agreed that it would be impractical to  
25 entirely avoid reference to the existence of an “investigation.” Plaintiffs explained that they  
26 should be permitted to elicit evidence of changes or inconsistencies in Officer Moon’s statements  
27 at different points in time, and that the context in which he gave those statements (e.g., formal or  
28 informal, immediately following the incident or after a period of reflection) bear on how the jury

1 may credit particular statements. Dkt. No. 119 at 61:13–64:2. Defendants explained that they  
2 principally are concerned that plaintiffs will elicit evidence that Officer Moon gave some  
3 statements in the presence of counsel or after an opportunity to consult with counsel, and that such  
4 evidence might suggest to the jury that Officer Moon consulted counsel because he engaged in  
5 misconduct, when in fact he is entitled to consult with counsel. *Id.* at 64:13–66:14.

6 The Court agrees with the parties that references to “investigation” of the incident must be  
7 permitted. The parties and their witnesses shall take care to describe such investigation or  
8 investigations in neutral terms, so as not to suggest that a particular investigation contemplated the  
9 possibility of criminal prosecution or that it exonerated Officer Moon of all misconduct or reached  
10 any other conclusion. The Court agrees with plaintiffs that evidence of the timing and context of  
11 Officer Moon’s statements about the incident are relevant and admissible. Plaintiffs represent that  
12 they have no intention of arguing or suggesting that Officer Moon consulted counsel because he or  
13 some relevant authority believed he had engaged in misconduct. The Court accepts this  
14 representation. The Court will consider a limiting instruction of the type defendants proposed  
15 during the pretrial conference if defendants wish to propose one.

16 **E. Plaintiffs’ Motion in Limine No. 5 (Paternity of Minor Children)**

17 Plaintiffs move to exclude any evidence that refers to one or both minor plaintiffs as Mr.  
18 Alvarez’s “purported” children or in any other manner that calls into question their paternity. Dkt.  
19 No. 78. The motion is granted.

20 Defendants stipulate that they do not challenge minor plaintiffs’ standing based on lack of  
21 paternity; however, defendants say that there may be impeachment evidence that involves the  
22 question of paternity. Dkt. No. 88; Dkt. No. 119 at 70:1-25. The Court is skeptical that such  
23 evidence is relevant to any issue in the case, and defendants have made no showing that it is.  
24 Unless and until such showing is made, the evidence is excluded.

25 **F. Defendants’ Motion in Limine No. 1 (Other GPD Incidents)**

26 Defendants move to exclude evidence of unrelated incidents, shootings, citizen’s  
27 complaints, lawsuits, or internal affairs investigations involving the Gilroy Police Department or  
28 any of its officers, including Officer Moon. Dkt. No. 64. Defendants move specifically to exclude

1 evidence referring to a 2008 incident involving Officer Rodriguez, who is a witness in this case.  
2 Plaintiffs do not oppose the motion, although they reserve the right to use this evidence for  
3 impeachment if any witness testifies falsely that no such incidents, etc. occurred. Dkt. No. 95 at  
4 1–2. The motion is granted except to the extent any witness provides specific testimony that may  
5 be impeached by specific evidence, as discussed at the pretrial conference. *See* Dkt. No. 119 at  
6 71:1–73:24.

7 **G. Defendants’ Motion in Limine No. 2 (Other Reports of Use of Force)**

8 Defendants move to exclude evidence of or questioning during voir dire regarding media  
9 and other reports of police use of excessive or deadly force. Dkt. No. 65. The motion is granted  
10 in part and denied in part.

11 As a general matter, the Court excludes evidence of and references to other specific  
12 incidents of police use of excessive or deadly force unrelated to the events at issue in this case as  
13 irrelevant and potentially prejudicial. However, the Court will permit limited questioning of  
14 prospective jurors during voir dire regarding whether and how their exposure to information,  
15 including media reports, of other officer-involved shootings does or does not impact their ability  
16 to be fair and impartial in this case. In addition, the Court will permit limited testimony regarding  
17 other matters in which the parties’ respective police procedures experts have offered opinions for  
18 the purpose of establishing the experts’ qualifications and experience. Finally, the Court will  
19 afford counsel for both sides some flexibility during closing argument to refer generally to matters  
20 of common knowledge not in evidence, so long as those references are consistent with Ninth  
21 Circuit guidance that limits such argument to matters that are not unfairly inflammatory or likely  
22 to confuse the jury. *See Tenorio v. United States*, 390 F.2d 96, 99 (9th Cir.), *cert. denied*, 393  
23 U.S. 874 (1968) (“Counsel are entitled to a reasonable degree of latitude in the presentation of  
24 argument, and the prosecutor’s comment concerning ‘the destruction and the human waste which  
25 arises from the use of heroin’ contained nothing more than that which is within the common  
26 knowledge of all reasonable people.”); *see also United States v. Candelaria*, 704 F.2d 1129, 1132  
27 (9th Cir. 1983) (permitting prosecution to respond to defense argument that defendant’s alleged  
28 threat was a joke, by arguing “in this day [and] age when people are subjected to threats, to bombs

1 in airplanes . . . . [T]his is an age when you don't joke about things like that").

2 **H. Defendants' Motion in Limine No. 3 (Threat/Use of Force against Ms. Flores)**

3 Defendants move to exclude evidence of any threatened or actual use of force against Ms.  
4 Flores or evidence that she was placed in handcuffs. Dkt. No. 66. If, as the Court expects, neither  
5 party offers any of Ms. Flores's testimony or statements in evidence during trial, the Court will  
6 exclude this evidence. However, if Ms. Flores's testimony or statements are offered in evidence,  
7 the context in which she gave such testimony or statements may be relevant to the jury's  
8 assessment of that evidence. At this time, the Court defers ruling on this motion.

9 **I. Defendants' Motion in Limine No. 4 (Post-Incident Body Camera Footage)**

10 Defendants move to exclude evidence of specific portions of the video and audio from the  
11 body cameras of Officers Moon, Rodriguez, and Silva. Dkt. No. 67. Specifically, defendants  
12 move to exclude the following video and/or audio:

- 13 1. Officer Moon – audio only for 2 minutes of body camera video
- 14 2. Officer Rodriguez – video and audio for 8 minutes and 30 seconds of body camera  
15 video
- 16 3. Officer Silva –video and audio from first 4 minutes of body camera video

17 *Id.* at 3–5. Plaintiffs argue, among other things, that video and audio that show what Officer  
18 Moon said or did not say immediately following the incident bears directly on his credibility  
19 regarding whether he believed Mr. Alvarez was armed. Dkt. No. 102 at 2. The Court denies this  
20 motion without prejudice at this time.

21 The Court has reviewed the video and audio samples submitted with defendants' motion in  
22 limine. The body camera video and audio are difficult to see and hear, perhaps due to the quality  
23 of the medium. During the pretrial conference, the parties agreed to review the video, audio, and  
24 images that each proposes to offer in evidence and to confer further in an effort to narrow or  
25 eliminate disputes about admissibility. If disputes remain, defendants may renew their motion.

26 **J. Defendants' Motion in Limine No. 5 (Video and Photos of Mr. Alvarez)**

27 Defendants move to exclude unduly graphic or cumulative photographic or video evidence  
28 depicting Mr. Alvarez's post-shooting injuries. Dkt. No. 68. Plaintiffs respond with a list of



1 specific autopsy photographs that they wish to use and generally argue for admissibility of eight  
2 video clips. Dkt. No. 99. The Court denies this motion without prejudice at this time. As with the  
3 disputed body camera video and audio, the parties shall confer further in an effort to narrow or  
4 eliminate disputes about admissibility. If disputes remain, defendants may renew their motion.

5 **K. Defendants' Motion in Limine No. 6 (Unarmed)**

6 Defendants move to exclude evidence that Mr. Alvarez was unarmed at the time of the  
7 incident. Dkt. No. 69. This motion is denied.

8 The fact that Mr. Alvarez was unarmed is relevant to the jury's assessment of Officer  
9 Moon's credibility. Plaintiffs dispute that Officer Moon saw Mr. Alvarez reaching into his  
10 waistband for a weapon, and the fact that there was, in fact, no weapon in Mr. Alvarez's waistband  
11 tends to support plaintiffs' version of events and undermine Officer Moon's contention that his  
12 belief Mr. Alvarez was armed was reasonable. Evidence that tends to make one party's version of  
13 events more or less probable is relevant. *Cruz v. City of Anaheim*, 765 F.3d 1076, 1079–80 (9th  
14 Cir. 2014) (evidence decedent was not armed is probative of whether officer's testimony is  
15 credible); *see also Boyd*, 576 F.3d at 944–45. Moreover, were the Court to permit Officer Moon  
16 to testify that he saw Mr. Alvarez reaching into his waistband as if for a weapon without  
17 permitting evidence that Mr. Alvarez was not armed, the jury would likely be left with the  
18 incorrect impression that Mr. Alvarez, in fact, had a weapon in his waistband. The concerns  
19 defendants raise are best addressed by means of an appropriate jury instruction.

20 **L. Defendants' Motion in Limine No. 7 (Clark Expert Testimony)**

21 Defendants move to exclude the proposed testimony of plaintiffs' expert Roger Clark.  
22 Dkt. No. 70. The motion is granted in part and denied in part.

23 *First*, defendants argue that Mr. Clark should be precluded from testifying about any  
24 opinions not disclosed in his Rule 26 expert report, even if those opinions were disclosed during  
25 his deposition. *Id.* at 3. Plaintiffs argue that Mr. Clark should be permitted to testify at trial to  
26 opinions expressed in his Rule 26 expert report *or* during his deposition. Dkt. No. 100 at 4.  
27 Defendants do not identify any particular opinions that Mr. Clark proposes to give but which  
28 defendants believe were not adequately disclosed.

1 Rule 26(a)(2) requires a party to disclose the identity of any person it intends to call as an  
 2 expert witness and to provide “a written report prepared and signed by the witness[,] . . .  
 3 contain[ing] a complete statement of all opinions to be expressed and the basis and reasons  
 4 therefor.” Fed. R. Civ. P. 26(a)(2). “A party that without substantial justification fails to disclose  
 5 information required by Rule 26(a) . . . is not, unless such failure is harmless, permitted to use as  
 6 evidence at a trial . . . any . . . information not so disclosed.” Fed. R. Civ. P. 37(c)(1); *Torres v.*  
 7 *City of Los Angeles*, 548 F.3d 1197, 1212–14 (9th Cir. 2008); *Yeti by Molly, Ltd. v. Deckers*  
 8 *Outdoor Corp.*, 259 F.3d 1101, 1107 (9th Cir. 2001).

9 A party may not cure a failure to disclose an expert opinion in a written report by  
 10 supplementing the expert’s disclosure with later deposition testimony. *See Ciomber v. Coop. Plus,*  
 11 *Inc.*, 527 F.3d 635, 642 (7th Cir. 2008); *Garrison v. New Fashion Pork LLP*, No. 18-CV-3073-  
 12 CJW-MAR, 2020 WL 1318806, at \*5 (N.D. Iowa Jan. 23, 2020); *Scholl v. Pateder*, No. 1:09-CV-  
 13 02959-PAB, 2011 WL 3684779, at \*4 (D. Colo. Aug. 22, 2011). Accordingly, Mr. Clark may not  
 14 testify to opinions not disclosed in his written expert report, unless *defendants* solicited those  
 15 opinions from him in his deposition. Mr. Clark may not testify to opinions he volunteered or that  
 16 were solicited by *plaintiffs* in his deposition.

17 *Second*, defendants argue that Mr. Clark should not be permitted to offer an opinion  
 18 criticizing Officer Moon’s conduct up to the point Mr. Alvarez descended the stairs at the  
 19 apartment complex because Mr. Clark made certain concessions during his deposition that  
 20 undermine his critique. Dkt. No. 70 at 5. Defendants’ motion on this point is denied, as Mr.  
 21 Clark’s alleged concessions are proper material for cross-examination but do not justify exclusion  
 22 of Mr. Clark’s testimony.

23 *Third*, defendants argue that Mr. Clark should not be permitted to testify regarding his  
 24 view of the facts or to give his opinion as to which side’s version of disputed events is most likely  
 25 or most credible. *Id.* at 5–6. Defendants’ motion on this point is granted. Mr. Clark may make  
 26 clear that his opinions are based on specific assumptions or understandings about the facts or,  
 27 where appropriate, based on specific hypotheticals; however, he may not testify to any opinions  
 28 about what the facts are.

1            *Fourth*, defendants argue that Mr. Clark should not be permitted to testify regarding his  
2 second and fifth opinions because those opinions concern plaintiffs’ *Monell* claims for failure to  
3 train, which have been dismissed. This motion is granted. Mr. Clark may testify regarding the  
4 content of relevant training to the extent such training reflects applicable standards and practices,  
5 but he may not opine that the Gilroy Police Department failed to adequately train its police  
6 officers or Officer Moon in particular.

7            *Fifth*, defendants argue that Mr. Clark should not be permitted to give his opinions about  
8 what the law is or whether particular conduct does or does not constitute negligence or excessive  
9 force, and that he should not be permitted to testify outside the scope of his expertise. *Id.* at 6–10.  
10 Defendants’ motion is granted in part and denied in part on these points.

11            Expert testimony that concerns an ultimate issue for the jury to decide is not per se  
12 improper. Fed. R. Evid. 704(a); *Hangarter v. Provident Life & Acc. Ins. Co.*, 373 F.3d 998, 1016  
13 (9th Cir. 2004). However, an expert may not give an opinion that amounts to a legal conclusion or  
14 testify regarding what the law requires. *Hangarter*, 373 F.3d at 1016. Here, Mr. Clark (and any  
15 other expert) must avoid using specialized legal terms, such as “excessive force,” “battery,” or  
16 “negligence” in testifying about his opinions in this case, so as not to suggest to the jury the  
17 conclusion they should reach on plaintiffs’ claims. Whether an expert may use other words that  
18 have both lay and legal meaning, such as “reasonable” or “unreasonable,” is a more difficult  
19 question, and one on which different courts have reached different conclusions. *Compare, e.g.,*  
20 *Estate of Bojcic v. City of San Jose*, No. C05 3877 RS, 2007 WL 3314008, at \*3 (N.D. Cal. Nov.  
21 6, 2007) (expert may not offer opinion that officer “acted unconstitutionally or exercised  
22 ‘excessive force,’” but may use “the terms ‘reasonable’ or ‘unreasonable’ in his testimony” so  
23 long as he avoids using “language in the form of a legal conclusion”) *with Valtierra v. City of Los*  
24 *Angeles*, 99 F. Supp. 3d 1190, 1198 (C.D. Cal. 2015) (“Although the Court finds that Clark is  
25 qualified to opine as to whether the officers’ use of force was excessive or unreasonable, the Court  
26 concludes that such testimony should be explored through hypothetical questioning so as to avoid  
27 invading the province of the jury.”). In this case, the parties’ respective experts must avoid using  
28 judicially defined or legally specialized terms, and they must not testify that certain conduct was

1 or was not unlawful or unconstitutional. The Court will not absolutely prohibit use of lay terms,  
2 such as “reasonable” or “unreasonable,” so long as it is clear that the expert is using such terms in  
3 the context of discussing how the conduct compares to relevant procedures, policies, practices,  
4 experience, or norms of conduct, and not giving an opinion regarding whether the conduct does or  
5 does not meet a specific legal standard.

6 In addition, Mr. Clark may not testify about matters outside his specialized knowledge or  
7 expertise. For example, he may not testify that Officer Moon’s flashlight blinded Mr. Alvarez, but  
8 he may testify (if the opinion is otherwise properly disclosed) about police practices or procedures  
9 involving shining a flashlight in a suspect’s face. On the other hand, Mr. Clark may testify based  
10 on matters within his knowledge or experience, such as the content of the POST guidelines and  
11 whether Officer Moon’s conduct was consistent or inconsistent with such guidelines. Finally, Mr.  
12 Clark may not testify as to his own personal beliefs, untethered to any procedures, policies,  
13 practices, experience, or norms of conduct.

14 **M. Defendants’ Motion in Limine No. 8 (Critique of Mr. Alvarez’s Detention)**

15 Defendants move to exclude evidence of or references to whether legal justification existed  
16 for Officer Moon to detain Mr. Alvarez. Dkt. No. 71. Plaintiffs agree that no such evidence  
17 should be admitted. Dkt. No. 97. The motion is granted. The Court will separately determine  
18 whether to give the jury instruction defendants request at page 5 of their motion.

19 **N. Defendants’ Motion in Limine No. 9 (Incorrect Standard re Use of Force)**

20 Defendants move to exclude testimony of plaintiffs’ expert Roger Clark that an officer  
21 cannot use deadly force until the officer actually sees a weapon in a subject’s possession, which  
22 defendants say amounts to an incorrect statement of the law. Dkt. No. 72. This motion is granted  
23 in part and denied in part.

24 As explained above with respect to Defendants’ Motion in Limine No. 7, Mr. Clark may  
25 not testify as to what the legal standard is. *See supra* Section I.L. The Court will instruct the jury  
26 regarding the standards that apply to plaintiffs’ claims. However, Mr. Clark may testify as to  
27 whether Officer Moon’s conduct complied with applicable procedures, policies, practices,  
28 experience, or norms of conduct.

1           With respect to Mr. Clark’s statement during deposition that Officer Moon should not have  
2 used deadly force unless he saw Mr. Alvarez with a weapon, Mr. Clark may not testify that this is  
3 what the law requires in all circumstances, and he may not assert his opinion as a legal conclusion.  
4 However, if the opinion is otherwise properly disclosed and supported (i.e., it is not merely his  
5 personal opinion), Mr. Clark may testify that Officer Moon’s use of deadly force *in the*  
6 *circumstances presented in this specific case* was not appropriate. The Court will separately  
7 determine whether to give the disputed jury instruction defendants request at page 3 of their  
8 motion.

9       **II.     PLAINTIFFS’ MOTION TO BIFURCATE LIABILITY AND DAMAGES**

10           Plaintiffs move to bifurcate liability and damages in this case because the Court has  
11 concluded that evidence of Mr. Alvarez’s criminal history (beyond the existence of the criminal  
12 domestic violence protective order entered against him) and his relationship with his children’s  
13 mother may be relevant to damages. Dkt. No. 81. Citing *Estate of Diaz v. City of Anaheim*, 840  
14 F.3d 592 (9th Cir. 2001), plaintiffs argue that bifurcation is necessary to prevent prejudicial  
15 evidence bearing solely on the issue of damages from influencing the jury’s consideration of  
16 liability. *Id.* at 4–5.

17           Defendants oppose bifurcation on the ground that bifurcation is unnecessary and will waste  
18 judicial resources. Dkt. No 114 at 2–4. Defendants’ inefficiency arguments are not well taken.  
19 Indeed, if defendants prevail on the issue of liability, bifurcation would allow the Court, the  
20 parties, and jury to avoid consideration of damages altogether. Defendants do not otherwise  
21 contend that bifurcation will prejudice their defense. *See* Dkt. No. 119 at 120:14–121-6.

22           The Court is persuaded that bifurcation of liability and damages is the most effective way  
23 to ensure that evidence not relevant to liability and which may be unduly prejudicial to Mr.  
24 Alvarez is not permitted to influence the jury’s determination of liability. *See Diaz*, 840 F.3d at  
25 603 (bifurcation appropriate where evidence relevant only to damages may unfairly prejudice  
26 jury’s consideration of liability). Accordingly, the Court will exercise its discretion to bifurcate in  
27 this case.

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**IT IS SO ORDERED.**

Dated: March 27, 2020

*Virginia K. DeMarchi*  
VIRGINIA K. DEMARCHI  
United States Magistrate Judge