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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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RICHARD MATHIS, individually and as
Special Administrator of the Estate of JOE
ROBINSON MATHIS aka JOE R.
MATHIS; and as Trustee of the JOE
ROBINSON MATHIS AND ELEANOR
MARGHERITE MATHIS TRUST;
JAMES MATHIS and ANTHONY
MATHIS,

Plaintiffs,

v.

COUNTY OF LYON, a political subdivision
of the State of Nevada, and RICHARD
GLOVER, an individual,

Defendants.

Case No. 2:07-cv-00628-APG-GWF

**ORDER DENYING ORAL MOTION
TO EXCLUDE EVIDENCE OF
EMOTIONAL DISTRESS DAMAGES
ARISING FROM DAMAGE TO
PROPERTY**

14 At the October 28th calendar call, defendant Richard Glover argued that Nevada law does
15 not allow recovery of emotional distress damages arising from harm to property. Glover did not
16 raise this issue nor cite to relevant case law in his motion in limine. (Dkt. #272). Even if I
17 considered this untimely argument, I would deny it. The case Glover cited, *Smith v. Clough*,
18 states only that a plaintiff cannot pursue a claim for negligent infliction of emotional distress
19 based on damage to his or her property (as opposed to being a bystander who witnesses harm to
20 another person). 796 P.2d 592, 593-94 (Nev. 1990); see also *Merluzzi v. Larson*, 610 P.2d 739,
21 742-43 (Nev. 1980). The plaintiffs do not assert a claim for negligent infliction of emotional
22 distress, so *Smith* does not control. Glover cites no law for the proposition that the plaintiffs
23 cannot recover for emotional distress arising out of damage to their property with respect to their
24 state law tort claims. I therefore deny the oral motion.

25 Glover also raised for the first time arguments regarding emotional distress damages
26 arising from a due process violation. Emotional distress damages caused by the denial of due
27 process are recoverable in an action under 42 U.S.C. § 1983. *Carey v. Piphus*, 435 U.S. 247, 263-
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1 65 (1978). However, the plaintiff must show “that he actually suffered distress because of the
2 denial of procedural due process itself.” *Id.* at 263; *see also Jones v. Los Angeles Community*
3 *College Dist.*, 702 F.2d 203, 207 (9th Cir. 1983) (stating the plaintiff must “demonstrate that her
4 injury resulted directly from the wrongful deprivation of due process” and finding that there was
5 support in the record for the finding that she “suffered mental and emotional distress because she
6 believed that [her employer] treated her unfairly”).

7 DATED this 29th day of October, 2015.



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9 ANDREW P. GORDON
10 UNITED STATES DISTRICT JUDGE
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