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4 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
5 AT SEATTLE

6 KIRTI TIWARI, et al.,

7 Plaintiffs,

8 v.

C17-242 TSZ

9 JAMES MATTIS, Secretary,
10 U.S. Department of Defense, in his
official capacity,

MINUTE ORDER

11 Defendant.

12 The following Minute Order is made by direction of the Court, the Honorable
13 Thomas S. Zilly, United States District Judge:

14 (1) Plaintiffs' motion in limine, docket no. 155, is DENIED in part and
DEFERRED in part as follows. To the extent that plaintiffs seek to exclude certain
15 Department of Defense ("DoD") witnesses from testifying, their motion in limine is
DENIED. Whether these DoD witnesses intend to or are attempting to provide expert
16 opinions without having been properly and timely disclosed pursuant to Federal Rule of
Civil Procedure 26(a)(2) is DEFERRED to trial.

17 (2) Defendant's motions in limine, docket no. 154, are DENIED in part,
STRICKEN in part, and DEFERRED in part as follows.

18 (A) Defendant's motion to exclude the testimony by perpetuation
19 deposition of plaintiffs Lieutenant Kirti Tiwari, Sergeant Raj Chettri, Sergeant
Seung Yoon Yang, and Specialist Amandeep Singh is DEFERRED to the Pretrial
20 Conference.

21 (B)(i) Defendant's motion to exclude the deposition testimony of DoD
22 witness Latrice McSwain is DENIED. If plaintiffs wish to call Ms. McSwain in
their case-in-chief, the DoD shall make her available for such purpose. If
23 Ms. McSwain appears to testify in plaintiffs' case-in-chief, defendant shall
contemporaneously conduct its examination of her so that she does not have to

1 return at a later time during trial. If Ms. McSwain does not appear to testify in
2 plaintiffs' case-in-chief, either side may use her deposition as permitted under
Federal Rule of Civil Procedure 32.

3 (B)(ii) Defendant's motion to exclude the deposition testimony of
4 DoD witnesses Mary Dandridge (located at Fort Stewart, Georgia), Curtis
Kingsland (located at DoD Consolidated Adjudications Facility, Maryland), and
5 Terrill White (located at Fort Bragg, North Carolina) is DENIED. *See* Fed. R.
Civ. P. 32(a)(1) & (4)(B). Any objections to specific questions and/or answers are
6 deferred to trial.

7 (C) Defendant's motion to exclude the testimony of Naomi Verdugo,
Ph.D. is DENIED in part and DEFERRED in part. Dr. Verdugo will be permitted
8 to testify at trial. Defendant's objections concerning possible bias or undue
influence by plaintiffs' counsel during the course of Dr. Verdugo's deposition go
9 to the weight, not the admissibility, of Dr. Verdugo's testimony. The appropriate
scope of Dr. Verdugo's testimony is DEFERRED to the Pretrial Conference.

10 (D) Defendant's motion to require plaintiffs to revise their witness list
is STRICKEN as moot.

11 (3) Defendant's motion in limine, docket no. 158, is DEFERRED to the
Pretrial Conference. Defendant's motion seeks to exclude the testimony of Margaret
12 Stock on the grounds that she is married to and the law partner of plaintiffs' counsel Neil
O'Donnell. The Court will hear oral argument at the Pretrial Conference concerning this
13 motion. Counsel shall be prepared to address (i) whether Ms. Stock will be called to
testify as a fact witness or an expert; (ii) whether the appropriate remedy for the situation
14 at issue is disqualification of Mr. O'Donnell or exclusion of Ms. Stock; Joseph Shaeffer
of MacDonald Hoague & Bayless has been local counsel for plaintiffs since the inception
15 of this case, and he is expected to "be prepared to handle the matter, including the trial
thereof" in the event that Mr. O'Donnell and his firm are disqualified; *see* Local Civil
16 Rule 83.1(d)(2); and (iii) whether the Court has the inherent authority to exclude
Ms. Stock as an expert witness on public policy grounds given her involvement in this
17 and other similar or related cases; *see Perfect 10, Inc. v. Giganews, Inc.*, 2014 WL
10894452 at *5 (C.D. Cal. Oct. 31, 2014).

18 (4) The Clerk is directed to send a copy of this Minute Order to all counsel of
19 record.

20 Dated this 6th day of November, 2018.

21 William M. McCool
22 Clerk

23 s/Karen Dews
Deputy Clerk