

1
2 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
3 AT SEATTLE

4 BAO XUYEN LE, individually and as
Personal Representative of the ESTATE
5 OF TOMMY LE, et al.

6 Plaintiffs,

C18-55 TSZ

7 v.

MINUTE ORDER

8 KING COUNTY, et al.,

9 Defendants.

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

11 (1) Defendant King County Deputy Sheriff Cesar Molina’s motion for
12 summary judgment, docket no. 87, is DEFERRED to oral argument.

13 (2) Defendant King County’s motion for summary judgment, docket no. 78, is
GRANTED in part, STRICKEN in part, and DEFERRED in part, as follows:

14 (a) With regard to (i) the equal protection (racially-selective law
15 enforcement) claim set forth in Paragraphs 129 and 130 of the First Cause of
Action, and (ii) the negligence (respondeat superior) claim (Sixth Cause of
16 Action), the motion is GRANTED and such claims are DISMISSED with
prejudice. These claims lack merit, and plaintiffs appear to have abandoned
17 them.¹

18 (b) With regard to the deprivation of liberty (loss of companionship)
claim set forth in Paragraph 131 of the First Cause of Action, King County’s
19 motion for summary judgment as to Tommy Le’s siblings, aunts, and
grandmother, who have not asserted such claim, *see* 2d Am. Compl. (docket
20 no. 27), is STRICKEN as moot;

21
22 ¹ Plaintiffs’ Fourth Cause of Action for reckless or negligent infliction of emotional distress and
23 Fifth Cause of Action for negligent selection, training, and supervision were previously
dismissed by stipulation of the parties. *See* Minute Order (docket no. 38); Stip. & Order (docket
no. 65).

1 (c) With respect to the remaining claims against King County, namely
2 (i) *Monell* liability with regard to any ratification of Deputy Molina's use of
3 allegedly excessive force (Paragraphs 127 and 128 of the First Cause of Action),
4 (ii) *Monell* liability (based on ratification) as to any deprivation of liberty (loss of
5 companionship), which is asserted by Tommy Le's parents (First Cause of
6 Action), (iii) wrongful death and survival action pursuant to RCW 4.20.020 and
7 .046 (Second Cause of Action), and (iv) outrage (Third Cause of Action), King
8 County's motion is DEFERRED to oral argument.

9 (3) Oral argument on Deputy Molina's motion for summary judgment, docket
10 no. 87, and the deferred portions of King County's motion, docket no. 78, is SET for
11 May 9, 2019, at 10:00 a.m.

12 (4) Plaintiffs' motion to preclude King County from calling as a witness
13 Dijana Coric of the Washington State Patrol Crime Laboratory, docket no. 91, is
14 DENIED. Coric will be permitted to testify at trial. Plaintiffs may take (or retake)
15 Coric's deposition at a mutually convenient time within fourteen (14) days of the date of
16 this Minute Order. Plaintiffs may also supplement their existing expert disclosures in
17 response to Coric's report dated March 7, 2019, within fourteen (14) days after taking
18 (or retaking) Coric's deposition.

19 (5) Plaintiffs' motion to exclude experts, docket no. 95, is GRANTED in part
20 as to James Anderson, Ph.D. and DEFERRED in part as to James W. Borden and
21 Caroline Crump, Ph.D. Anderson's proposed testimony is speculative, and the probative
22 value of such evidence is far outweighed by the danger of unfair prejudice to plaintiffs.
23 *See* Fed. R. Evid. 403. With regard to the deferred portions of their motion to exclude
experts (as to Borden and Crump), plaintiffs are DIRECTED to file a reply brief, not to
exceed eight (8) pages in length, by April 26, 2019. The deferred portions of plaintiffs'
motion to exclude experts, docket no. 95, and plaintiffs' motion to exclude Borden on the
basis of untimely disclosure, docket no. 67, are RENOTED to April 26, 2019.

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

Dated this 15th day of April, 2019.

William M. McCool
Clerk

s/Karen Dews
Deputy Clerk