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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 BAO XUYEN LE, et al.,

9 Plaintiffs,

10 v.

11 REVEREND DR. MARTIN LUTHER
12 KING, JR. COUNTY, et al.,

Defendants.

C18-55 TSZ

MINUTE ORDER

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

15 (1) Plaintiffs' motion to preclude defendant King County from offering the
16 expert testimony of James W. Borden, docket no. 67, and the deferred portions of
17 plaintiffs' motion to exclude experts, docket no. 95, are GRANTED in part, DENIED in
18 part, and DEFERRED in part, as follows:

19 (a) As a result of untimely disclosure, lack of qualification, and unsound
20 methodology, James W. Borden will not be permitted to opine about "human
21 factors," "human movement," or "human performance," and plaintiffs' motion to
22 preclude such testimony is GRANTED. *See Dasho v. City of Fed. Way*, 101 F.
23 Supp. 3d 1025, 1029-30 (W.D. Wash. 2015) (summarizing the threshold
requirements for expert testimony, including reliability demonstrated through
sound methodology and an "analytical connection between the data, the
methodology, and the expert's conclusions"); *see also* Fed. R. Evid. 702. Borden
does not have the requisite training or education to provide expert testimony about
matters of human behavior and psychology. The Court declines to entirely
preclude King County from offering Borden's late disclosed testimony, but defers
ruling on the scope of permissible testimony.

1 (b) The Court is persuaded that Caroline Crump, Ph.D. has the
2 necessary expertise to explain and express opinions about how perception is
3 affected by expectations, priming, attention, emotional context, and/or stress, and
4 plaintiffs' motion to exclude her as a witness is therefore DENIED. Dr. Crump
will not, however, be permitted to opine about which version of events is more
credible, and plaintiffs' motion to preclude her from testifying about which facts
occurred is GRANTED.

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

7 Dated this 9th day of May, 2019.

8 William M. McCool
Clerk

9 s/Karen Dews
10 Deputy Clerk