

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

Regal v. County of Santa Clara

No. 5:22-cv-04321-BLF (N.D. Cal. May 31, 2025) · No. 5:22-cv-04321-BLF · Decided May 31, 2025

SUMMARY

The United States District Court for the Northern District of California ruled on the parties’ motions in limine in a Section 1983 action arising from Frederick Regal’s suicide while in County of Santa Clara custody. The court granted or partially granted several motions, including excluding an allegedly unlawfully recorded conversation and a defense life-care-planning expert’s testimony, while limiting evidence concerning arrests and drug-test results primarily to damages issues. The court deferred ruling on certain evidence concerning subsequent changes to suicide-prevention policies.

CASE DETAILS

COURT	United States District Court for the Northern District of California
WRITING FOR THE COURT	Beth Labson Freeman
JURISDICTION	United States District Court for the Northern District of California
DECIDED	May 31, 2025
DOCKET	5:22-cv-04321-BLF
DISPOSITION	other
PROCEDURAL POSTURE	Order resolving the parties' motions in limine before trial in a 42 U.S.C. § 1983 civil-rights action arising from Frederick Regal's suicide while in County custody.
STANDARD OF REVIEW	The Court applied the Federal Rules of Evidence, including Rules 401, 403, 407, 611(b), and 702, assessing relevance, unfair prejudice, confusion, misleading the jury, scope of expert testimony, and adequacy of the factual or methodological basis for expert opinions.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Devin Regal, E.R., C.R. v. County of Santa Clara

TOPICS

- motion in limine
- evidence
- expert testimony
- section 1983
- damages

PRACTICE AREAS

civil rights

evidence

civil procedure

damages

QUESTIONS PRESENTED

1. Whether evidence of subsequent suicide-prevention measures was admissible to show feasibility under Federal Rule of Evidence 407.
2. Whether a secretly recorded conversation between Frederick Regal and his daughter had to be excluded under the Federal Wiretap Act and Federal Rule of Evidence 403.
3. Whether testimony from a defense life-care-planning expert concerning future mental-health treatment costs was relevant to Plaintiffs' claimed noneconomic damages.
4. Whether detailed evidence concerning Regal's 2016 and 2020 arrests and detentions was admissible for liability or damages.
5. Whether drug-test results received by the County after Regal's death were admissible for liability or damages.
6. Whether Plaintiffs' expert could testify regarding causation, jail suicide-prevention standards, and the prevalence of suicide-resistant cells.
7. Whether evidence concerning the Chavez consent decree was admissible to show notice or to establish liability based on noncompliance.
8. Whether Plaintiffs' neurologist expert could offer opinions about consciousness during partial hanging and the duration of Regal's pre-death consciousness.
9. Whether evidence of missed or untimely 15-minute checks was relevant to Plaintiffs' Monell theory.
10. Whether the scope of cross-examination of the County's expert should be limited to the subjects in his expert report.

HOLDINGS

1. Evidence concerning the County's construction of suicide-resistant cells was admissible for purposes of the motion in limine, subject to any Rule 403 or other appropriate objection at trial. Ruling on evidence concerning changed Unit 8A admission criteria and the Ferguson blanket policy was deferred until trial.
2. The video recording of the conversation between Eliana Regal and Frederick Regal was excluded because neither participant consented, the Ninth Circuit does not recognize vicarious consent under the Federal Wiretap Act, and the recorder was not a party to the relevant conversation.
3. The defense life-care-planning expert's testimony concerning the cost of future mental-health treatment was excluded as irrelevant and, alternatively, under Rule 403 because it risked confusing or misleading the jury in a case seeking only noneconomic damages.
4. Detailed evidence concerning Regal's 2016 and 2020 arrests was excluded for liability purposes but admitted for purposes of determining noneconomic damages, subject to a limiting instruction.
5. Drug-test results received by the County after Regal's death were excluded for liability purposes but admitted for noneconomic-damages purposes, subject to a limiting instruction.

6. Dr. Boesky could testify about factual causation and widely used jail suicide-prevention standards and practices, but could not use those standards to define the constitutional standard or offer a legal conclusion. Her testimony concerning the prevalence of suicide-resistant cells was not excluded at the pretrial stage, subject to trial objections.
7. Evidence concerning the existence, conditions, and policies of the Chavez consent decree was admissible to show notice, but evidence of the County's compliance or noncompliance could not be used to establish liability, and counsel's name had to be redacted from Chavez documents.
8. Dr. Swanson was qualified to testify about hypoxic or ischemic brain injury, but he could not testify that Regal may have remained conscious for more than 25 seconds or that partial-hanging victims generally take longer to lose consciousness because those opinions lacked sufficient facts or data.
9. Evidence that individual correctional employees missed or conducted 15-minute checks untimely was excluded from liability issues because isolated incidents could not support Plaintiffs' asserted Monell custom-and-practice theory, although the evidence could be used for impeachment.
10. The Court deferred ruling on the permissible scope of Plaintiffs' cross-examination of Dr. Kaftarian until trial. Cross-examination must remain within the subject matter of direct examination, credibility, and the subjects disclosed in the expert's report.

FACTUAL BACKGROUND

Frederick Inea Regal died by suicide while detained in a Santa Clara County jail facility. His children brought claims individually and as successors in interest, alleging inadequacies in the County's suicide-prevention practices and seeking noneconomic damages for loss of familial association. The motions concerned subsequent remedial measures, a secretly recorded father-daughter conversation, expert testimony, arrest and drug-test evidence, jail welfare checks, the Chavez consent decree, and the scope of cross-examination of a defense expert.

PROCEDURAL HISTORY

Plaintiffs brought individual and successor-in-interest claims against the County. At the May 23, 2025 Final Pretrial Conference, the Court issued oral rulings on ten motions in limine and then summarized those rulings in this written order.

DISPOSITION

other

CASES CITED

- *Pyankovska v. Abid*, 65 F.4th 1067, 1074-75 (9th Cir. 2023), cert. denied sub nom. *Jones v. Pyankovska*, 144 S. Ct. 354 (2023)
- *Caro v. Weintraub*, 618 F.3d 94, 96-98 (2d Cir. 2010)
- *Planned Parenthood Fed'n of Am., Inc. v. Newman*, 51 F.4th 1125, 1135 (9th Cir. 2022)
- *Creswell v. HCAL Corp.*, No. 04-cv-388, 2007 WL 628036, at *2 (S.D. Cal. Feb. 12, 2007)

- K.J.P. v. County of San Diego, 621 F. Supp. 3d 1097, 1155 (S.D. Cal. 2022)
- Krouse v. Graham, 19 Cal. 3d 59, 68 (1977)
- Allen v. Toledo, 109 Cal. App. 3d 415, 424 (1980)
- United States v. Akpa, 120 F. App'x 717, 720 (9th Cir. 2005)
- United States v. Haischer, 780 F.3d 1277, 1281 (9th Cir. 2015)
- Gravelet-Blondin v. Shelton, 728 F.3d 1086, 1096 (9th Cir. 2013)
- Camenisch v. Umpqua Bank, 763 F. Supp. 3d 871, 881 (N.D. Cal. 2025)
- Hangarter v. Provident Life & Accident Ins. Co., 373 F.3d 998, 1016 (9th Cir. 2004)
- Gordon v. County of Orange, 888 F.3d 1118, 1125 (9th Cir. 2018)
- Castro v. County of Los Angeles, 833 F.3d 1060, 1071, 1076 (9th Cir. 2016)
- Cortez v. Skol, 776 F.3d 1046, 1050 (9th Cir. 2015)
- Farmer v. Brennan, 511 U.S. 825, 833 (1994)
- Taylor v. Barkes, 575 U.S. 822, 826 (2015)
- Germaine-McIver v. County of Orange, No. SACV1601201, 2018 WL 6258896, at *6 (C.D. Cal. Oct. 31, 2018)
- Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993)
- Elosu v. Middlefork Ranch Inc., 26 F.4th 1017, 1023-24 (9th Cir. 2022)
- Garcia v. Stewart, No. 06-cv-6735, 2009 WL 688887, at *7 (N.D. Cal. Mar. 16, 2009)
- Mitchell v. CDCR, No. 21-cv-01781, 2021 WL 5206135, at *3 (S.D. Cal. Nov. 9, 2021)
- Rader v. County of Placer, No. 19-cv-1265, 2021 WL 3662411, at *5 (E.D. Cal. Aug. 18, 2021)
- Trevino v. Gates, 99 F.3d 911, 918 (9th Cir. 1996)
- American Airlines Flow-Thru Pilots Coalition v. Allied Pilots Association, No. 15-cv-03125, 2021 WL 2930095, at *5 (N.D. Cal. May 6, 2021), aff'd, No. 21-16131, 2022 WL 4481533 (9th Cir. Sept. 27, 2022)
- Yeti by Molly, Ltd. v. Deckers Outdoor Corp., 259 F.3d 1101, 1106 (9th Cir. 2001)

OPINION

1 2 UNITED STATES DISTRICT COURT 3 NORTHERN DISTRICT OF CALIFORNIA 4 SAN JOSE DIVISION 5 6 DEVIN REGAL, et al., Case No. 5:22-cv-04321-BLF 7 Plaintiffs, ORDER ON MOTIONS IN LIMINE 8 v. 9 COUNTY OF SANTA CLARA, [Re: Dkt. Nos. 146, 147, 148, 149, 150, 151, 152, 153, 154, 155] 10 Defendant. 11 12 This is a civil rights action under Section 1983 brought by Devin Regal and his siblings 13 E.R. and C.R., by and through their guardian ad litem Michael Leitchman (collectively, 14 “Plaintiffs”).

Plaintiffs bring claims individually and as successors in interest to their father, 15 Frederick Inea Regal (“Regal”), who died by suicide while held in custody at a County of Santa 16 Clara (“Defendant” or “the County”) jail facility.

The Court held a Final Pretrial Conference in 17 this case on May 23, 2025, during which the Court issued oral rulings on the Parties’ motions in 18 limine. See Motions, Dkt. Nos. 146, 147,

148, 149, 150, 151, 152, 153, 154, 155.

The Court's 19 rulings on the motions in limine are summarized as follows. 20 I. PLAINTIFFS' MOTIONS IN LIMINE 21 A. Plaintiffs' Motion in Limine No. 1 to Admit Evidence of Subsequent Remedial 22 Suicide Prevention Measures to Prove Feasibility of Such Measures 23 In Plaintiffs' first motion in limine, they request an order permitting admission of 24 "evidence of subsequent remedial suicide prevention measures defendant County of Santa Clara 25 implemented after July 29, 2020... to prove the feasibility of such measures." Dkt.

No. 146 26 ("Plfs.' MIL No. 1") at 1. Plaintiffs argue that, while Federal Rule of Evidence 407 does not 27 permit introduction of evidence of subsequent remedial measures to prove negligence, culpable 1 "feasibility of precautionary measures." Id. at 1–2.

In this case, Plaintiffs wish to present 2 evidence at least of "suicide-resistant cells in the Elmwood Men's Facility, relaxed admission 3 criteria for admission to Unit 8A... and the use of safety blankets in lieu of bedsheets." Id. at 2. 4 In opposition, Defendant argues that Plaintiffs have failed to adequately identify the 5 evidence they wish to admit, and that, in any event, it should be excluded as irrelevant and unduly 6 prejudicial.

Dkt. No. 161 ("Opp. to Plfs.' MIL No. 1"). As a preliminary matter, Defendant 7 argues that "Plaintiffs incorrectly frame the County's construction of suicide-resistant cells at 8 Elmwood as a subsequent remedial measure," since "it was building suicide-resistant cells across 9 its jail system before, during, and after Regal's time in custody." Id. at 2.

Accordingly, Defendant 10 "reserves the right to object" to evidence related to that construction effort, but states that it "does 11 not run afoul of Rule 407[]." Id. at 2–3. 12 As to the evidence related to changed 8A admission criteria and the County's Ferguson 13 gown policy, though, the County argues that this evidence does not fall into the Rule 407 14 feasibility carve-out.

Id. at 3. Regarding 8A, Plaintiffs elicited deposition testimony that at some 15 point after Regal's death, 8A was changed from a Lanterman-Petris-Short Act ("LPS") facility for 16 housing individuals on "5150 holds" to a non-LPS facility, which eliminated the attendant LPS 17 admission criteria for individuals housed there. Id. at 3–4. But because Plaintiffs did not conduct 18 further discovery on this issue, Defendant argues, Plaintiffs do not know what the new criteria 19 were, whether Regal would have been admitted to 8A under them, and whether they would have 20 made his death by suicide less likely to occur.

Id. at 4. Regarding the County's use of Ferguson 21 blankets, the County says that it "is unaware of any discovery on this subject, pertaining to this 22 timeframe, and would seek an offer of proof." Id. Moreover, Defendant argues that "[a]ny 23 probative value of evidence of suicide-prevention measures implemented by the County after 24 Regal's incarceration" should be excluded under Rule 403, because it would encourage the jurors 25 to measure the adequacy of the

County's performance "against the wisdom of 20/20 hindsight" 26 and might confuse or mislead them.

Id. at 5. 27 Under Federal Rule of Evidence 407, "[w]hen measures are taken that would have made an 1 to prove: negligence; culpable conduct; a defect in a product or its design; or a need for a warning 2 or instruction." Fed. R. Evid. 407.

However, "the court may admit this evidence for another 3 purpose, such as impeachment or—if disputed—proving ownership, control, or the feasibility of 4 precautionary measures." Id. Regardless of a piece of evidence's admissibility under Rule 407, 5 under Federal Rule of Evidence 403, "[t]he court may exclude relevant evidence if its probative 6 value is substantially outweighed by a danger of one or more of the following: unfair prejudice, 7 confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting 8 cumulative evidence." Fed.

R. Evid. 403. 9 The Court understands Defendant's opposition brief to concede that evidence of the 10 County's construction of suicide-resistant cells is generally relevant and admissible. And the 11 County also will introduce evidence of its jail construction efforts before and after Regal's death. 12 See Opp. to Plfs.' MIL No. 1 at 2.

Accordingly, the Court GRANTS Plaintiffs' motion insofar as 13 it pertains to the construction of suicide-resistant cells WITHOUT PREJUDICE to Defendant 14 asserting a Rule 403 or other appropriate objection at trial. 15 However, the Court must defer its ruling regarding the Unit 8A admission criteria and the 16 Ferguson blanket policy until those issues arise at trial.

Plaintiffs were unable to clearly identify 17 the evidence they endeavor to admit under this motion at the Final Pretrial Conference, because it 18 pertains to new testimony that they hope to elicit for the first time at trial. Specifically, Plaintiffs' 19 counsel explained that Plaintiffs intend to question certain witnesses about whether the County 20 changed its policies related to Unit 8A admission and Ferguson blankets after the date on which 21 Regal died.

Counsel was uncertain of how the witnesses would respond to these questions, but— 22 based on vague deposition testimony—expects the line of questioning to reveal that those policies 23 did change after Regal's death. 24 Without knowing whether any such subsequent policy changes would have had an impact 25 on Regal's housing placement or the preventative measures adopted to abate his risk of suicide, 26 the Court is unable to rule on whether the evidence is admissible to show feasibility.

As a 27 preliminary matter, Plaintiffs will need to lay a proper foundation for their belief that the witnesses 1 able to consider whether the evidence is relevant, whether it demonstrates feasibility, and whether 2 it should be excluded under Rule 403.

In short, once the evidence Plaintiffs aim to admit is made 3 more concrete at trial, the County may object and seek a ruling from the Court. Until then, the 4 Court DEFERS ruling on Plaintiffs' first motion in limine insofar as it concerns Unit 8A 5 admission criteria and the County's Ferguson blanket policy. 6 B. Plaintiffs' Motion in Limine No. 2 to Exclude Video Recording of July 27, 2020 Conversation Between Decedent Frederick Regal and Plaintiff Eliana Regal 7 (Bates No. PLTFS_000805) 8 In their second motion in limine, Plaintiffs seek to exclude a video produced by Plaintiffs 9 in discovery at Bates No. PLTFS_000805, which "depicts a telephone conversation between 10 plaintiff Eliana Regal, aged 13 at the time, and her father, decedent Frederick Regal."1 Dkt.

No. 11 147 ("Plfs.' MIL No. 2") at 1. Plaintiffs argue that the video must be excluded under the Federal 12 Wiretap Act, 18 U.S.C. § 2510 et seq., because neither Eliana nor her father "consented to or even 13 knew about [Eliana's mother] having recorded their conversation." Id. at 2.

Moreover, Plaintiffs 14 argue that Eliana's mother could not have consented on Eliana's behalf, because the Ninth Circuit 15 does not recognize a parental vicarious consent doctrine under the Act. Id. Plaintiffs also argue 16 that the video should be excluded under Rule 403, because the evidence is cumulative of the 17 County's ability to ask Eliana directly about her last conversation with her father and/or to read 18 deposition transcript testimony to the contents of that conversation.

Id. at 3–4. 19 In opposition, the County argues that Plaintiffs waived their objection under the Federal 20 Wiretap Act and that, regardless, the Federal Wiretap Act does not prohibit the use of the 21 evidence. Dkt. No. 162 ("Opp. to Plfs.' MIL No. 2").

On the first point, Defendant argues that 22 Plaintiffs' written objections in response to the Request for Production seeking this evidence 23 "made no mention of Plaintiffs' objection under the Wiretap Act," meaning that the objection is 24 waived. Id. at 1–2.

On the second point, Defendant argues that Plaintiffs' mother was a "party to 25 the communication" that was being recorded, meaning that it is subject to an exception from the 26 Federal Wiretap Act. Id. at 2 (citing *Caro v. Weintraub*, 618 F.3d 94, 96 (2d Cir. 2010)).

In 27 1 addition, Defendant argues that vicarious consent is the rule under California law, and that 2 Plaintiffs' Ninth Circuit case to the contrary was based on Nevada law. Id. at 3. Finally, 3 Defendant argues that the video is highly relevant to both Regal's history of suicidality and his 4 relationship to his family, and that presentation of the video is not cumulative of testimony from 5 Eliana, because she does not clearly recall the contents of the conversation.

Id. at 4–5. 6 "The Federal Wiretap Act... prohibits the intentional interception, disclosure, or use of 7 any oral communication without the consent of at least one party to the conversation." 8 *Pyankovska v. Abid*, 65 F.4th 1067, 1074 (9th Cir. 2023), cert. denied sub nom. *Jones v. 9*

Pyankovska, 144 S. Ct. 354 (2023). “Whenever any wire or oral communication has been intercepted, no part of the contents of such communication and no evidence derived therefrom may be received in evidence in any trial, hearing, or other proceeding in or before any court... if the disclosure of that information would be in violation of” the Act.

18 U.S.C. § 2515. Both Eliana and her mother submitted declarations in support of the motion attesting that the conversation between Eliana and her father was recorded without either participant’s knowledge or consent. Dkt. No. 147-1, Declaration of Rachel Regal in Support of Plaintiffs’ Motion in Limine No. 2 to Exclude July 27, 2020 Recorded Conversation Between Decedent Frederick Regal and Plaintiff Eliana Regal (“R.R.

Decl.”) ¶ 4 (“I did not have permission from either Frederick Regal or Eliana Regal to record their communication. At the time of the conversation, neither Frederick nor Eliana was aware that I was recording.”); Dkt. No. 147-2, Declaration of Eliana Regal in Support of Plaintiffs’ Motion in Limine No. 2 to Exclude July 27, 2020 Recorded Conversation Between Decedent Frederick Regal and Plaintiff Eliana Regal (“E.R.

Decl.”) ¶ 5 (“My mother, Rachel Regal, never asked me for permission to record my conversation with my father, and I was never aware that she had recorded it until after my father’s death.”). Thus, the Court concludes that the recording must be excluded unless any exception applies. No exception does. First, the Ninth Circuit has expressly held that “[t]he vicarious-consent doctrine is not the law of... this Circuit.” Pyankovska, 65 F.4th at 1075.

As such, the recording cannot be admitted “consent to the recording” of the conversation on her daughter’s behalf. See *id.* To the extent that the County attempts to suggest that the Pyankovska decision was based upon Nevada law and that the outcome would differ for a recording made in California, the Court disagrees.

The Court reads the opinion to say that neither Nevada law nor Ninth Circuit authority on the Federal Wiretap Act provided a basis for admitting the challenged recording in Pyankovska. The opinion does not suggest that the applicability of a vicarious consent exception to the Federal Wiretap Act would vary based on the underlying state’s own wiretap law.

Second, the Court finds that this is not a case in which the person making the challenged recording “[was] a party to the communication.” 18 U.S.C. § 2511(2)(d); see *Planned Parenthood Fed’n of Am., Inc. v. Newman*, 51 F.4th 1125, 1135 (9th Cir. 2022) (noting that “a person may record a conversation in which he or she is a party unless the ‘communication is intercepted for the purpose of committing any criminal or tortious act’”).

The County cites *Caro v. Weintraub*, 13 F.3d 94 (2d Cir. 2010), in support of its position that Rachel Regal gave consent to the recording as a “party” to Eliana and her father’s conversation. Specifically, the County argues that Rachel Regal spoke with Frederick both before and after

the recording took place, and thus that it 16 was “all one conversation to which Frederick, Rachel, and Eliana were [all] parties.” Opp. to 17 Plfs.’ MIL No. 2 at 3.

If that is the case, the County asserts that it does not matter that Eliana was 18 unaware of the recording. See *id.* 19 It is true that the relevant “party” in the Caro case recorded the conversation without the 20 knowledge of other parties. Caro, 618 F.3d at 96. But he also “spoke up a few times”—a detail 21 that the Second Circuit emphasized in its finding that he “[took] part in the conversation” and thus 22 was a “party.” *Id.* at 97–98.

Here, in contrast, deposition testimony from Rachel Regal reveals 23 that Eliana overheard her mother’s conversation with her father and then “grabbed the phone 24... and ran off.” Dkt. No. 162-2 (“R.R. Dep. Tr.”) at 127:1–5. There is no assertion that Rachel 25 Regal spoke up or otherwise took part in the conversation between Frederick Regal and their 26 daughter once Eliana took the phone to her room.

Instead, it appears that—unbeknownst to 27 Eliana—Rachel followed Eliana to the doorway of her bedroom and surreptitiously recorded the 1 distinguishes the present situation from that in Caro, and the Court finds that Eliana’s 2 conversation with her father was a separate conversation to which Rachel Regal was not a party. 3 Thus, the party-consent exception does not apply in this case and the recording must be excluded.

4 Accordingly, the Court GRANTS Plaintiffs’ second motion in limine. 5 C. Plaintiffs’ Motion in Limine No. 3 to Exclude Defense Life Care Planning Expert 6 Witness Cloie Johnson 7 In their third motion in limine, Plaintiffs move to exclude defense life care planning expert 8 Cloie Johnson under Federal Rules of Evidence 401 and 403. Dkt. No. 148 (“Plfs.’ MIL No. 3”) 9 at 1.

Plaintiffs argue that Ms. Johnson’s “testimony pertains only to economic damages,” but 10 Plaintiffs seek only noneconomic damages at trial. *Id.* Thus, Plaintiffs argue that Ms. Johnson’s 11 testimony is “irrelevant because the amount of money future psychotherapy would cost... does 12 not bear on whether or even how much Plaintiffs have suffered emotionally from the loss of their 13 father.” *Id.* at 2.

In addition, Plaintiffs argue that Ms. Johnson’s testimony should be excluded 14 under Rule 403 because it might confuse the jury by suggesting “that all of Plaintiffs’ non- 15 economic damages can be addressed with a small sum of economic damages for mental health 16 therapy.” *Id.* at 3. This might permit Defendant to “artificially deflate” any noneconomic 17 damages award “by using economic damages as a psychological anchor to weigh down the value 18 of the damages Plaintiffs are actually claiming.” *Id.* at 4.

19 In opposition, Defendant argues that Ms. Johnson’s “testimony is relevant because her 20 opinions regarding the cost of Plaintiffs’ future mental health care [] will provide the jury with a

21 helpful, reliable data point in determining the extent of Plaintiffs' noneconomic damages." Dkt. 22 No. 163 ("Opp. to Plfs.' MIL No. 3") at 1.

The County accepts that it is difficult to calculate 23 emotional damages, and that the value of psychological treatment for Plaintiffs is not equivalent to 24 the value of their noneconomic damages. Id. at 2. However, Defendant argues that the award of 25 noneconomic damages must be based on something more exacting than speculation, and that Ms. 26 Johnson's life care planning testimony will provide a relevant "data point" that the jury can 27 consider in valuing Plaintiffs' damages.

Id. at 2–3. Moreover, Defendant argues that Ms. 1 relevant as the testimony that Plaintiffs seek to introduce from their neurologist expert, Dr. 2 Swanson. Id. at 3–4. Finally, Defendant argues that Ms. Johnson's testimony should not be 3 excluded under Rule 403, because the County will not suggest that her calculations "cover the 4 totality" of Plaintiffs' damages or that Plaintiffs can only recover for specifically calculable 5 economic damages.

Id. at 4. 6 Under Federal Rule of Evidence 401, "[e]vidence is relevant if: (a) it has any tendency to 7 make a fact more or less probable than it would be without the evidence; and (b) the fact is of 8 consequence in determining the action." Fed. R. Evid. 401.

Under Federal Rule of Evidence 403, 9 "[t]he court may exclude relevant evidence if its probative value is substantially outweighed by a 10 danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, 11 undue delay, wasting time, or needlessly presenting cumulative evidence." Fed. R. Evid. 403. 12 The Court concludes that defense expert Ms. Johnson's testimony is not relevant—and 13 even if it was marginally relevant, that relevance would be substantially outweighed by the risk of 14 confusing the issues or misleading the jury.

As the defense acknowledges, "Plaintiffs in this 15 action have made clear that they 'do not seek any economic or special damages.'" Opp. to Plfs.' 16 MIL No. 3 at 1. And Ms. Johnson, understandably, "will not opine on the amount or purport to 17 quantify Plaintiffs' noneconomic damages," id. at 2, since such damages "are oftentimes not 18 readily amenable to computation." See *Creswell v. HCAL Corp.*, No. 04-cv-388, 2007 WL 19 628036, at *2 (S.D.

Cal. Feb. 12, 2007). As a result, there is no throughline between (1) Ms. 20 Johnson's testimony about the cost of mental health treatment and (2) the value of Plaintiffs' Loss 21 of Familial Association claim, because there is no suggestion that such a cost is at all proportional 22 to or otherwise indicative of the value of any noneconomic damages suffered.

Similarly, the 23 County cites no testimony or caselaw in support of the idea that the noneconomic damages sought 24 may be mitigated or reduced through therapy. Further, the County has no evidence as to the effect 25 of the proposed mental health counseling on reducing Plaintiffs' damages. 26 The County is correct that the jury should not assign the value of any noneconomic

27 damages awarded randomly, but the proper considerations are those related to “the pecuniary 1 family unit, the depth of their love and affection, and the character of the deceased as kind, 2 attentive, and loving,” *K.J.P. v. Cnty. of San Diego*, 621 F. Supp. 3d 1097, 1155 (S.D.

Cal. 3 2022)—not the dollar amount of mental health treatment. For this reason, the Court concludes 4 that even if Ms. Johnson’s testimony was very marginally relevant as a “data point,” it should be 5 excluded under Rule 403. Presenting the specific figures that Ms. Johnson prepared is very likely 6 to confuse or mislead the jurors into believing that they are being asked to compensate Plaintiffs 7 for the costs incurred in seeking mental health treatment, or—as Plaintiffs fear—that Plaintiffs 8 “can only recover for economic damages that they can prove with specific figures.” *Plfs.’ MIL 9 No. 3* at 3.

As discussed above, neither is true. Plaintiffs’ third motion in limine is GRANTED. 10 D. Plaintiffs’ Motion in Limine No. 4 to Exclude Detailed Evidence Leading to Decedent’s 2016 and 2020 Arrests and Detentions 11 12 In their fourth motion in limine, Plaintiffs ask the Court to exclude detailed evidence of 13 Regal’s 2016 and 2020 arrests and jail detentions.

See Dkt. No. 149 (“*Plfs.’ MIL No. 4*”) at 1. 14 Plaintiffs anticipate that the County plans to introduce testimony, video, and documentary 15 evidence pertaining to Regal’s arrests, and argue that such evidence should be excluded because it 16 is irrelevant and unduly prejudicial. *Id.* at 2–4; see Fed. R. Evid. 401, 403. 17 First, Plaintiffs argue that details of the 2016 arrest should be excluded because no County 18 employee considered them in assessing or addressing Regal’s suicide risk.

Id. at 3. Since these 19 details were not known to the County employees who made decisions regarding Regal’s suicide 20 risk and suicide prevention interventions, Plaintiffs assert that they are irrelevant to the County’s 21 liability, which is based on the reasonableness of the preventative measures Regal received. *Id.* 22 Regarding damages, Plaintiffs acknowledge that the details of the 2016 arrest may be relevant in 23 assessing the impact of the incident on Plaintiffs’ relationship with Regal, but Plaintiffs argue that 24 any evidence admitted should be limited to what is actually known by the Plaintiffs.

Id. They 25 argue that other sources of evidence would not be relevant and would waste time, confuse the 26 issues, or persuade the jurors to dehumanize Regal. *Id.* at 3–4. As for the 2020 arrest, Plaintiffs 27 argue that the specific details of that incident are irrelevant and unduly prejudicial because no 1 later arrest were unknown to the Plaintiffs at the time their relationship with Regal ended by his 2 suicide.

Id. at 4. 3 In response, the County argues that the details of the arrests are relevant to both liability 4 and damages. See Dkt. No. 164 (“*Opp. to Plfs.’ MIL No. 4*”) at 1. The County states that the 5

2016 arrest is relevant to the County's liability because it was considered during the Classification 6 process to determine Regal's housing arrangements, a central issue to Plaintiffs' liability case.

Id. 7 at 1–2. Likewise, the County argues that the details of the 2020 arrest are relevant to liability, 8 because (1) Regal's mental-health condition and presentation depicted in video footage are 9 relevant to the Plaintiffs' claims regarding the County's treatment of Regal, (2) arresting Officer 10 Ortega's interview with Regal in the footage informed his determination that Regal did not meet 11 the criteria for an involuntary hold, and (3) Regal is calm and cooperative in the footage, 12 discrediting Plaintiffs' claims that more drastic measures were necessary.

Id. at 2. Moreover, the 13 County states that both arrests are directly relevant to Plaintiffs' damages for loss of Regal's care, 14 comfort, and society, because drug usage, involvement with the criminal justice system, and 15 character are all relevant considerations. Id. at 3.

Finally, the County argues that evidence of the 16 arrests should not be excluded under Rule 403, as the evidence has high probative value and any 17 prejudicial effect is not unfair. Id. at 5. 18 As a preliminary matter, the Parties agree that the impact of witnessing the events leading 19 to the 2016 arrest is relevant to Plaintiffs' claim to damages for loss of Regal's care, comfort, and 20 society.

The Court finds, however, that such evidence is not limited to what was actually known 21 by Plaintiffs. In awarding noneconomic damages for Loss of Familial Association, juries are to 22 consider the warmth of feeling between family members, the closeness of the family unit, the 23 depth of their love and affection, the character of the deceased as kind, attentive, and loving.

24 K.J.P., 621 F. Supp. 3d at 1155; see also *Krouse v. Graham*, 19 Cal. 3d 59, 68 (1977). Juries may 25 also consider "the life expectancy of the deceased," considering "all relevant factors including the 26 deceased's health, lifestyle and occupation." *Allen v. Toledo*, 109 Cal. App. 3d 415, 424 (1980). 27 The Court concludes that the circumstances surrounding both the 2016 and 2020 arrests provide 1 on his ability to maintain close consistent relationships with his children, as well as on his life 2 expectancy.

Thus, the Court finds that the details of both arrests are relevant to show the reality of 3 Plaintiffs' relationship with Regal for purposes of determining noneconomic damages. 4 That said, the Court finds that such evidence should not be considered for liability. During 5 arguments at the Final Pretrial Conference, Plaintiffs distinguished between Regal's security risk 6 classification and suicide risk classification.

Details of Regal's 2016 arrest were considered only 7 for Regal's security risk classification, which Plaintiffs do not challenge. Because those details 8 were not considered in determining which suicide prevention measures to implement, the Court 9 finds that details of this arrest are not relevant to the County's liability. Details of the 2020 arrest 10 are somewhat differently

situated, since Regal's behavior at the time of his arrest did inform his 11 suicide risk assessment—but this relevance to liability is limited by how little knowledge the 12 County employees who conducted Regal's formal suicide risk assessments had of those details.

13 Thus, the Court finds that details of the 2020 arrest should be excluded under Rule 403 as regards 14 the County's liability. 15 For the foregoing reasons, the Court will admit this evidence for damages purposes only. 16 The Court acknowledges that there is some risk of prejudice in discussing instances of Regal's 17 past interactions with law enforcement, including details about drug usage or domestic violence, 18 but that risk does not substantially outweigh the very high probative value of the evidence to the 19 damages issues.

In addition, courts may consider the probable effectiveness of a limiting 20 instruction in decreasing the risk of prejudice. See Fed. R. Evid. 403, advisory committee notes. 21 In this case, the Court invites the Parties to prepare a limiting instruction stating that detailed 22 evidence of Regal's 2016 and 2020 arrests is only to be considered in determining noneconomic 23 damages.

The Parties shall request that the limiting instruction be read at the appropriate time(s) 24 at trial. 25 In sum, Plaintiffs' motion to exclude detailed evidence of Regal's 2016 and 2020 arrests is 26 GRANTED insofar as the evidence is sought to be admitted on liability issues, but DENIED 27 insofar as the evidence is sought to be admitted on damages issues.

E. Plaintiffs' Motion in Limine No. 5 to Exclude Evidence of Decedent's Drug Test 1 Results the County Received After the Hanging 2 In Plaintiffs' final motion in limine, they seek to exclude evidence of drug test results from 3 Regal that were not received by the County until after his death. Dkt. No. 150 ("Plfs.' MIL No. 4 5") at 1. Plaintiffs argue that the County "seeks to admit into documentary evidence the drug test 5 results it only received after Regal's hanging and testimony from Philip Sobolesky, a clinical 6 biochemist," but that the County should not be permitted to do so because those test results are 7 "completely irrelevant" to damages and the issues before the jury.

Id. at 1–2. Although it is not 8 disputed that Mr. Regal died due to hanging, Plaintiffs are concerned that the drug test information 9 might confuse or mislead the jury regarding the cause of death. Id. at 2. In addition, Plaintiffs 10 argue that this evidence might "unduly prejudice the jury against awarding noneconomic damages 11 for Regal or his children." Id. 12 In opposition, the County argues that "Regal's history of drug use, as well as his drug use 13 on and just before July 28, 2020, is 'of consequence to determining the action.'" Dkt.

No. 165 14 ("Opp. to Plfs.' MIL No. 5") at 1. According to the County, this evidence bears upon Regal's 15 state of mind at the time of his arrest, which in turn bears upon the appropriateness of the County's 16 response to the risk of suicide he presented. Id. at 1–2. Defendant argues that it is

also relevant to 17 Plaintiffs' family loss claim, because closeness, warmth, and life expectancy are all considerations 18 for the valuation of such emotional damages.

Id. at 2–3. Finally, Defendant argues that the drug 19 test evidence should not be excluded under Rule 403, because the County will not suggest to the 20 jury that Regal's cause of death was drug related and because "[n]ot everything that hurts is 21 unfairly prejudicial." Id. at 4 (citing *U.S. v. Akpa*, 120 F. App'x 717, 720 (9th Cir. 2005)). 22 As with the preceding motion in limine, the Court finds that the challenged evidence is not 23 relevant to liability.

Since the specific drug test results were not known to the County's 24 employees until after Regal had died, this information could not have informed their assessment as 25 to which suicide prevention measures should be adopted to abate Regal's risk of suicide.

For 26 clarity, however, the Court notes that this determination does not serve to exclude all evidence of 27 "Regal's history of drug use" or his "drug use on and just before July 28, 2020." Opp. to Plfs.' 1 employees at the time of Regal's arrest and intake, including his behavior and other evidence 2 bearing upon those employees' conclusions that he might be under the influence of drugs.

3 However, the Court finds that the drug test results are relevant to Plaintiffs' noneconomic 4 damages. In that damages assessment, the jury can consider factors like "the closeness of the 5 family unit," *K.J.P.*, 621 F. Supp. 3d at 1155, and the "life expectancy of the deceased," *Allen*, 109 6 Cal. App. 3d at 424. These considerations are not limited by the information actually known to 7 the plaintiff claiming the damage, so the jury may properly consider evidence of Regal's drug use 8 even though his children may not have known the specific drugs or quantities used by Regal at the 9 time of his death.

Moreover, the Court finds that the relevance of this evidence to Plaintiffs' 10 damages is not "substantially outweighed" by the risk of prejudice. Fed. R. Evid. 403. "[A]ll 11 unfavorable evidence" about a party presents a risk of at least "some prejudice," *Akpa*, 120 F. 12 App'x at 720, so the critical question is whether the challenged evidence has "an undue tendency 13 to suggest decision on an improper basis." *United States v. Haischer*, 780 F.3d 1277, 1281 (9th 14 Cir.

2015). Here it does not. Therefore, Plaintiffs' fifth motion in limine is GRANTED insofar as 15 the evidence is sought to be admitted on liability issues, but DENIED insofar as the evidence is 16 sought to be admitted on damages issues.

As with the preceding motion in limine, the Parties may 17 prepare a limiting instruction and request that the Court read it at the appropriate time(s) at trial. 18 II. DEFENDANT'S MOTIONS IN LIMINE 19 A. Defendant's Motion in Limine No. 1 to Exclude Certain Testimony of Lisa Boesky, 20 Ph.D. 21 In its first motion in limine, the County seeks to exclude testimony from Plaintiffs' expert 22 Lisa Boesky, Ph.D., "regarding (1) causation; (2) the standard of care and,

relatedly, the suicide- 23 prevention measures she believes the County should have implemented; and (3) the prevalence of 24 suicide-resistant cells.” Dkt.

No. 151 (“Deft.’s MIL No. 1”) at 1. Defendant first argues that Dr. 25 Boesky’s causation-related opinions would confuse and mislead the jury because she addresses 26 only “cause-in-fact—which is insufficient for Monell purposes” because causation in Monell 27 claims also requires a showing of proximate causation. Id. at 2.

Second, the County argues that 1 established right to a certain level of suicide prevention care, and those opinions are likely to 2 confuse or mislead the jury into believing that her testimony about the standard of care addresses 3 the relevant constitutional standard. Id. at 3–4.

Third, the County argues that Dr. Boesky’s 4 testimony about the prevalence of suicide-resistant cells should be excluded because she was 5 unable or unwilling to disclose a basis for her opinion on that topic. Id. at 4–5. 6 In opposition, Plaintiffs argue that “Dr. Boesky’s testimony is relevant to the factual issue 7 of causation” without stating a legal conclusion, and that it is also relevant to “the County’s actual 8 and constructive knowledge of suicide risks and prevention standards in jails.” Dkt.

No. 169 9 (“Opp. to Deft.’s MIL No. 1”) at 1. On the first point, Plaintiffs argue that Dr. Boesky need not 10 testify to all of the elements of Monell causation in order to provide an opinion that is helpful to 11 the jury. Id. at 1–2.

On the second point, Plaintiffs argue that Dr. Boesky’s testimony on 12 standards related to jail suicide prevention will help the jury to understand terminology and 13 common suicide prevention practices. Id. at 2–4.

Finally, Plaintiffs argue that Dr. Boesky’s 14 opinions regarding the prevalence of suicide-resistant cells is “based on her experience because 15 there is very limited actual data,” and that she is permitted to offer opinions based on facts that she 16 observes through her industry experience. Id. at 4. 17 First, the Court concludes that Dr. Boesky’s testimony regarding causation need not be 18 excluded.

True, her opinions do not seem to address both the causation-in-fact and the proximate 19 causation requirements subsumed in the “moving force” element of the Monell test, see *Gravelet-20 Blondin v. Shelton*, 728 F.3d 1086, 1096 (9th Cir. 2013)—but as Plaintiffs point out, it would be 21 improper for Dr. Boesky to “give an opinion as to her legal conclusion, i.e., an opinion on an 22 ultimate issue of law,” anyway.

See *Camenisch v. Umpqua Bank*, 763 F. Supp. 3d 871, 881 (N.D. 23 Cal. 2025) (quoting *Hangarter v. Provident Life and Acc. Ins. Co.*, 373 F.3d 998, 1016 (9th Cir. 24 2004)). Rather, Dr. Boesky may provide testimony based on her expertise regarding whether the 25 County’s conduct

was a substantial contributing factor to Regal's suicide. That her opinion does not cover all of the elements of the claim is a matter that the County may take up in cross examination and closing argument.

It is for the Parties' attorneys to argue whether Plaintiffs have 1 Cnty. of Orange, 6 F.4th 961, 973 (9th Cir. 2021) (quoting *Dougherty v. City of Covina*, 654 F.3d 2 892, 900 (9th Cir. 2011)). The County's first motion in limine is DENIED insofar as it seeks to 3 exclude Dr. Boesky's causation opinions. 4 Whether to permit Dr. Boesky's testimony regarding the standard of care for jail suicide 5 prevention is a closer question.

Plaintiffs' Monell claim requires more than a showing of "mere 6 lack of due care." *Gordon v. Cnty. of Orange*, 888 F.3d 1118, 1125 (9th Cir. 2018) (quoting 7 *Castro v. Cnty. of Los Angeles*, 833 F.3d 1060, 1071 (9th Cir. 2016)); see *Cortez v. Skol*, 776 F.3d 8 1046, 1050 (9th Cir. 2015) ("Deliberate indifference is 'something more than mere negligence.'" 9 (quoting *Farmer v. Brennan*, 511 U.S. 825, 833 (1994))).

And no Supreme Court decision has 10 established a right to a specific suicide prevention protocol or to "the proper implementation of 11 adequate suicide prevention protocols." *Taylor v. Barkes*, 575 U.S. 822, 826 (2015).

Thus, 12 Plaintiffs may not use Dr. Boesky's testimony to suggest that the standard of care defines the 13 constitutional parameters of Plaintiffs' claim. However, the Court agrees with Plaintiffs that 14 suicide prevention standards widely known in the industry are relevant to the issue of notice. See 15 *Germaine-McIver v. Cnty. of Orange*, No. SACV1601201, 2018 WL 6258896, at *6 (C.D.

Cal. 16 Oct. 31, 2018) ("Deliberate indifference may be found '[w]here a § 1983 plaintiff can establish 17 that the facts available to city policymakers put them on actual or constructive notice that the 18 particular omission is substantially certain to result in the violation of the constitutional rights of 19 their citizens.'" (quoting *Castro*, 833 F.3d at 1076)).

In addition, Dr. Boesky's expertise could be 20 helpful to the jury's understanding of the various suicide prevention protocols that the County had 21 adopted at the time. Therefore, the County's motion is DENIED to the extent that it seeks to 22 exclude Dr. Boesky's testimony regarding suicide-prevention standards and practices widely used 23 in jails. This denial is without prejudice to the County objecting at trial if the questioning suggests 24 that the jury may find the County liable for failing to meet those standards.

25 Finally, the Court finds that it would be premature to prevent Dr. Boesky from testifying 26 regarding the prevalence of suicide-resistant cells at this time. The Court's "gatekeeping" function 27 under *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), "is to ensure the 1 (1999).

In relation to that function, “[a]n expert’s specialized knowledge and experience can serve as the requisite ‘facts or data’ on which they render an opinion.” *Elosu v. Middlefork Ranch Inc.*, 326 F.4th 1017, 1024 (9th Cir. 2022).

Here, Plaintiffs assert that Dr. Boesky’s opinion “is based on her experience,” Opp. to Deft.’s MIL No. 1 at 4, and the County had the opportunity to question Dr. Boesky about the opinion during her deposition, see Dkt. No. 151-2 (“Boesky Dep. Tr.”) at 6 24:18–25:10, 27:14–28:5, 152:3–158:25. Based upon that questioning, the foundation for Dr. Boesky’s testimony about the prevalence of suicide-resistant cells appears weak, but the Court concludes that the County’s motion goes more to the weight or credibility that should be accorded the opinion and therefore declines to exclude it—for now.

If, however, the questioning at trial reveals that Dr. Boesky’s opinion is unsupported or speculative, the County may request that the Court strike it. In sum, the County’s first motion in limine is DENIED. B. Defendant’s Motion in Limine No. 2 to Exclude Certain Evidence Relating to the Chavez Federal Consent Decree In its second motion in limine, the County seeks to exclude “any evidence [] about the County’s level of compliance with the [Chavez] consent decree,” and “any evidence showing and/or suggesting that Deputy County Counsel Aryn Paige Harris... is also lead counsel for the County in the Chavez matter.

Dkt. No. 152 (“Deft.’s MIL No. 2”) at 1. The first part of the County’s motion refers to the consent decree entered in *Chavez et al. v. County of Santa Clara*, No. 15-cv-05277-RMI (N.D. Cal.), which requires the County to “fully implement all of the remedial measures set forth in the Remedial Plan.” Deft.’s MIL No. 2 at 1.

The Remedial Plan is “designed to meet the minimum level of health care necessary to fulfill [the County’s] obligations under the Eighth and Fourteenth Amendments.” Id. (quoting Deft.’s MIL No. 2, Ex. 1 (“Consent Decree”) ¶ 10, and citing Deft.’s MIL No. 2, Ex. 2 (“Remedial Plan”)).

The County acknowledges that the existence of the consent decree is “a relevant background fact,” and indeed, states that “[c]ertain facts relevant to the County’s defenses also require an understanding that the consent decree existed at the time of Regal’s death.” Id. at 2.

However, the County argues that its right secured by the Constitution or laws of the United States” and often “go beyond” minimum constitutional requirements. Id. at 3 (quoting *Garcia v. Stewart*, No. 06-cv-6735, 2009 WL 3 688887, at *7 (N.D. Cal. Mar. 16, 2009), and *Cagle v. Sutherland*, 334 F.3d 980, 986–87 (11th Cir. 2003)). Regarding the second part of the County’s motion, the County argues that Attorney Harris’s name appears on certain exhibit documents related to Chavez, and that seeing her name there might confuse the jury.

Id. at 4–5. 7 In their opposition brief, Plaintiffs acknowledge that they “are not suing the County under 8 the Consent Decree or for its lack of compliance with the Consent Decree.” Dkt. No. 170 (“Opp. 9 to Deft.’s MIL No. 2”) at 1.

However, they argue that the consent decree is relevant evidence in 10 the case because it “put the County on notice of what suicide prevention interventions were 11 necessary.” Id. at 2. In addition, Plaintiffs argue that it would be unfair to permit Defendant to 12 “use the Consent Decree as a shield” while preventing Plaintiffs from using it as evidence of 13 notice.

Id. at 2–3. Plaintiffs do not oppose the redaction of Attorney Harris’s name from any 14 Chavez documents that are used at trial. Id. at 4. 15 For similar reasons as discussed with regard to the County’s first motion in limine, the 16 Court concludes that the Chavez consent decree is relevant to the issue of notice. See Germaine- 17 McIver, 2018 WL 6258896, at *6 (“Deliberate indifference may be found ‘[w]here a § 1983 18 plaintiff can establish that the facts available to city policymakers put them on actual or 19 constructive notice that the particular omission is substantially certain to result in the violation of 20 the constitutional rights of their citizens.’” (quoting Castro, 833 F.3d at 1076)).

That said, the 21 County is correct that “a remedial court decree does not provide a right secured by the 22 Constitution or laws of the United States.” Garcia, 2009 WL 688887, at *7; Mitchell v. CDCR, 23 No. 21-cv-01781, 2021 WL 5206135, at *3 (S.D. Cal. Nov. 9, 2021) (“Section 1983 provides a 24 vehicle for plaintiffs to seek redress for injuries to their own constitutional rights, not to enforce 25 prophylactic measures or technical requirements of state law, policy, remedial decree, or 26 settlement agreements.” (quoting Rader v. County of Placer, No. 19-cv-1265, 2021 WL 3662411, 27 at *5 (E.D.

Cal. Aug. 18, 2021))). As with Dr. Boesky’s testimony regarding suicide prevention 1 that the County’s noncompliance provides a basis for finding liability on Plaintiffs’ claims. 2 Regarding the exclusion of evidence of Deputy County Counsel Aryn Paige Harris’s involvement 3 in the Chavez action, the Parties are in agreement that Counsel Harris’s name may be redacted 4 from any Chavez documents used at trial.

See Opp. to Deft.’s MIL No. 2 at 4. 5 Therefore, the Court GRANTS IN PART AND DENIES IN PART the County’s second 6 motion in limine. The Court will exclude as irrelevant testimony and other evidence addressing 7 the County’s level of compliance or noncompliance with the consent decree, and Counsel Harris’s 8 name SHALL be redacted from any Chavez documents used at trial.

However, the Court will 9 allow evidence related to the Chavez consent decree for purposes of demonstrating notice, and 10 either side is permitted to discuss the conditions and policies in effect at the time that Regal was 11 held in County custody.

To help address the risk of confusing or misleading the jury as to the proper use for this evidence, the Parties may prepare a limiting instruction and request that the Court read it at the appropriate time(s) during trial. C. Defendant's Motion in Limine No. 3 to Exclude Testimony of Raymond A. Swanson, M.D. In its third motion in limine, the County moves to exclude the testimony of Plaintiffs' expert Raymond A. Swanson, M.D., who is "a neurologist whom Plaintiffs disclosed to opine on the duration of Frederick Regal's pre-death pain and suffering." Dkt.

No. 153 ("Deft.'s MIL No. 19 3") at 2. Defendant argues that Dr. Swanson is not qualified to opine on Regal's pre-death pain and suffering because he "lacks experience treating patients with the type of injury Regal had when he died," and only conducted literature research on the topic of how long Regal might have suffered after he was retained by Plaintiffs in this case.

Id. at 3. Moreover, Defendant contends that even if Dr. Swanson is qualified to testify on this subject, "his testimony would also be excludable because it is not 'based on sufficient facts or data.'" Id. at 4 (quoting *Elosu*, 26 F.4th at 25 1023). In opposition, Plaintiffs argue that Dr. Swanson is a highly qualified expert with regard to "neuronal death and loss of consciousness" and that his testimony will assist the jury.

Dkt. No. 1 with regard to hanging-related deaths, and that Dr. Swanson has reviewed and considered the information available in relation to his own experiences to come to his conclusions. Id. at 2–3. Under Federal Rule of Evidence 702, "[a] witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the proponent demonstrates to the court that it is more likely than not that": (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; (b) the testimony is based on sufficient facts or data; (c) the testimony is the product of reliable principles and methods; and (d) the expert's opinion reflects a reliable application of the principles and methods to the facts of the case.

10 Fed. R. Evid. 702. On the preliminary question about whether Dr. Swanson is qualified, see Fed. R. Evid. 104(a), the Court concludes that he is. While patients with hypoxic/ischemic brain injury may have made up a relatively small part of Dr. Swanson's clinical practice, the Court finds that he still has substantial knowledge and experience related to this kind of brain injury.

See Dkt. No. 153-2 at 22, 24–58. And, as Plaintiffs argue, Opp. to Deft.'s MIL No. 3 at 3, it is not surprising that the literature on deaths by hanging is more limited than literature in other research areas might be. This limitation should not impugn Dr. Swanson's neurology expertise and ability to provide helpful expert testimony regarding the mechanics of hypoxic/ischemic brain injuries.

Likewise, 18 the fact that Dr. Swanson conducted research on the subject of loss of consciousness during 19 hanging after he was retained by Plaintiffs' counsel does not—in and of itself—undermine a 20 finding that he is qualified as an expert in this matter. 21 However, the Court concludes that certain of Dr. Swanson's opinions are not based on 22 sufficient facts or data and should be excluded.

Specifically, Plaintiffs seek to admit Dr. 23 Swanson's opinions that individuals experiencing "partial hanging[s]" will take "much longer to 24 lose consciousness," and that Regal might have remained conscious for "up to 10 minutes." Dkt. 25 No. 153-2 ("Swanson Dep. Tr.") at 32:16–23; id. at 37:23–38:13. But Dr. Swanson admitted at 26 his deposition that the support for his conclusion that Regal could have remained conscious for up 27 to 10 minutes was "an editorial written for... a London newspaper," Swanson Dep.

Tr. at 43:5– 1 "suicide user-guide[]" that did not, in turn, provide the source for the statement, Dkt. No. 153-3 at 2 3. Dr. Swanson also remarked that "[f]or all [he] [knew] [the commentator] made the whole thing 3 up." Swanson Dep. Tr. at 45:25–46:8. Further, Dr. Swanson stated that, beyond a range of about 4 13–25 seconds, "[n]obody knows" how long someone would stay conscious during a partial 5 hanging.

Swanson Dep. Tr. at 43:23–44:12. And the scientific study on which Dr. Swanson 6 relied in forming his opinions does not provide support for the conclusion that individuals 7 experiencing partial hangings take longer to lose consciousness. See Dkt. No. 153-2 at 64 ("It is 8 generally thought in the forensic community that... hangings with complete suspension of the 9 body lead[] to death more quickly than hangings in which the body is partially supported (e.g., feet 10 or knees on the floor)....

However, this study does not support this assumption.""). Even Dr. 11 Swanson's conclusion that an individual would remain conscious for 13–25 seconds is only 12 tenuously supported by that study, which concluded that the likely range for consciousness was 8– 13 18 seconds. See id. at 62. But because 13 seconds is within the supported range and 25 seconds 14 departs by only 7 seconds, the Court will permit Dr. Swanson to offer that testimony, and the 15 County is free to probe his opinion on cross-examination.

16 Accordingly, the County's third motion in limine is GRANTED IN PART AND DENIED 17 IN PART. The Court finds that Dr. Swanson is qualified to provide expert testimony regarding 18 hypoxic/ischemic brain injury, but Dr. Swanson may not offer his opinions that (1) Regal might 19 have remained conscious for longer than 25 seconds, or (2) individuals experiencing partial 20 hangings take longer to lose consciousness, since neither of those opinions is supported by 21 sufficient facts or data.

22 D. Defendant's Motion in Limine No. 4 to Exclude Certain Evidence Relating to 23 Frederick Regal's 15-Minute Checks 24 In its fourth motion in limine, the County moves to exclude "evidence regarding any 25 alleged deficiencies in the County correctional deputies' 15-minute checks of Plaintiffs' father," 26 such as "untimely or missed checks." Dkt. No. 154 ("Deft.'s MIL No. 4") at 1.

The County 27 argues that this evidence is irrelevant to Plaintiffs' Monell claim, because that claim does not 1 checks. Id. at 2–3. In addition, the County asserts that evidence of isolated incidents of deficient 2 checks cannot support Monell liability. Id. at 3.

Finally, the County argues that any relevance this 3 evidence might have is substantially outweighed by the risk of unfair prejudice because it might 4 confuse the issues and "poison the jury against the County." Id. 5 In response, Plaintiffs argue that "evidence of the County's untimely and missed checks is 6 highly probative evidence regarding the sole suicide risk reduction measure the County permitted 7 its mental health clinician to give Regal." Dkt.

No. 172 ("Opp. to Deft.'s MIL No. 4") at 1. 8 Plaintiffs assert that they should be permitted to introduce this evidence to challenge the County's 9 argument that its practices were reasonable, and as impeachment evidence. Id. at 2–3. 10 Plaintiffs' theory in this case is that the County had a custom and practice of housing 11 individuals with a known risk of suicide in cells with obvious hanging points and without 12 reasonable measures in place to abate that risk.

Opp. to Deft.'s MIL No. 4 at 2. Related to that 13 theory, Plaintiffs have specifically challenged whether the County's 15-minute check intervention 14 should have involved "staggered" checks—but they have not alleged that there were systemic 15 issues involving County employees' failure to adequately carry out the checks. See, e.g., Dkt. No. 16 142 ("SAC") ¶¶ 21, 29, 42.

Evidence of individual County employees missing checks or 17 conducting them in an untimely matter is thus not relevant to Plaintiffs' theory. And even if it was 18 marginally relevant, the risk that the evidence would confuse or mislead the jury into believing 19 that the County's liability should be based on those individual instances of missed or untimely 20 checks substantially outweighs the relevance.

A "custom and practice" theory must be based on 21 "persistent and widespread" conduct effectively constituting a "well settled [municipal] policy;" it 22 "may not be predicated on isolated or sporadic incidents" such as one officer conducting the 23 welfare check intervention inadequately. *Trevino v. Gates*, 99 F.3d 911, 918 (9th Cir. 1996). 24 Accordingly, the Court GRANTS the County's fourth motion in limine.

This Order does not 25 prevent Plaintiffs from introducing the evidence for impeachment purposes. 26 E. Defendant's Motion in Limine No. 5 to Confine Scope of Plaintiffs' Cross- 27

Examination of Edward Kaftarian, M.D. 1 examination of the County’s expert, Dr. Edward Kaftarian, M.D.” Dkt. No. 155 (“Deft.’s MIL 2 No. 5”) at 1.

The County argues that Dr. Kaftarian opined in his expert report only on the “care 3 and treatment provide[d] by the County of Santa Clara’s suicide prevention program” and 4 “Plaintiffs’ allegations of the inadequacy of” that program. Id. Because “Plaintiffs’ counsel went 5 far beyond the scope” of those opinions during Dr. Kaftarian’s deposition, the County aims to 6 tether the scope of his opinions at trial to that laid out in his expert report, in order to prevent 7 Plaintiffs from “unfairly weaponiz[ing]” the County’s expert against it.

Id. at 2–3. 8 In opposition, Plaintiffs argue that they should be permitted to question Dr. Kaftarian about 9 his opinions in light of facts related to Regal’s drug use and risk of suicide, as well as “about the 10 increase in suicide risk specifically for jail inmates... because jail inmates are more likely to be 11 detoxing from drugs obtained outside of jail.” Dkt.

No. 173 (“Opp. to Deft.’s MIL No. 5”) at 1–2. 12 Plaintiffs argue that such questioning is “highly probative of risk of suicide in jails” and is an 13 appropriate line of questioning based on Dr. Kaftarian’s expertise. Id. at 2. 14 In general, “[c]ross-examination should not go beyond the subject matter of the direct 15 examination and matters affecting the witness’s credibility.” Fed.

R. Evid. 611(b). When it 16 comes to expert testimony, the scope of a direct examination is defined by that of the expert’s 17 pretrial disclosures and reports. See *Am. Airlines Flow-Thru Pilots Coal. v. Allied Pilots Ass’n*, 18 No. 15-cv-03125, 2021 WL 2930095, at *5 (N.D. Cal. May 6, 2021), *aff’d*, No. 21-16131, 2022 19 WL 4481533 (9th Cir. Sept. 27, 2022) (citing *Yeti by Molly, Ltd. v. Deckers Outdoor Corp.*, 259 20 F.3d 1101, 1106 (9th Cir.

2001)). These guideposts limit the extent to which a party can 21 commandeer another party’s expert to procure favorable opinion testimony on a topic outside of 22 those addressed by the party offering the expert. 23 In this case, Dr. Kaftarian was disclosed to offer expert opinions related to the care and 24 treatment provided to individuals in custody through the County’s suicide prevention program.

25 See Dkt. No. 155-2 at 1 (“At your request, I am offering a professional evaluation of the care and 26 treatment provided by County of Santa Clara’s suicide prevention program... and Plaintiffs’ 27 allegations of the inadequacy of the County’s suicide prevention program.”). Plaintiffs are entitled 1 untethered from Dr. Kaftarian’s report and opinions—for example, if Plaintiffs seek testimony on 2 || a standard of care or on how Dr. Kaftarian treats, or trains clinicians to treat, a detoxing patient— 3 || then Plaintiffs have gone too far.

Because it is difficult to draw the line separating proper from 4 || improper cross-examination in a vacuum, the Court must DEFER ruling on the County’s fifth 5 || motion in limine until trial. If the County wishes to challenge a particular line of Plaintiffs’ 6 || questioning, the County may object

and/or request a sidebar to discuss whether the questioning 7 falls properly within the scope of Dr. Kaftarian's report and opinions given in this case.

8 || I. ORDER 9 For the foregoing reasons, IT IS HEREBY ORDERED that: 10 1. Plaintiffs' first motion in limine is GRANTED IN PART AND DEFERRED IN 11 PART. 12 2. Plaintiffs' second motion in limine is GRANTED. 13 3. Plaintiffs' third motion in limine is GRANTED. 14 4. Plaintiffs' fourth motion in limine is GRANTED IN PART AND DENIED IN 15 PART. 16 5. Plaintiffs' fifth motion in limine is GRANTED IN PART AND DENIED IN PART.

S 18 6. Defendant's first motion in limine is DENIED. 19 7. Defendant's second motion in limine is GRANTED IN PART AND DENIED 20 IN PART. 21 8. Defendant's third motion in limine is GRANTED IN PART AND DENIED IN 22 PART. 23 9. Defendant's fourth motion in limine is GRANTED. 24 10. Defendant's fifth motion in limine is DEFERRED. 25 IT IS SO ORDERED. 26 Dated: May 31, 2025 TH LABSON FREEMAN 28 United States District Judge