

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

Gutzalenko v. City of Richmond

Gutzalenko v. City of Richmond · No. 22-cv-02130-EMC · Decided January 14, 2026

SUMMARY

This final pretrial order governs trial procedures, witness disclosures, voir dire, exhibits, jury instructions, and motions in limine in a civil rights and wrongful-death action against the City of Richmond and medical defendants. The court rules on or defers multiple evidentiary motions concerning expert testimony, causation, damages, medical literature, insurance, and the disclosure of other incidents. The order is dated January 14, 2026, and sets trial for January 30 through February 11.

CASE DETAILS

COURT	United States District Court for the Northern District of California
WRITING FOR THE COURT	Edward M. Chen
DECIDED	January 14, 2026
DOCKET	22-cv-02130-EMC
DISPOSITION	other
PROCEDURAL POSTURE	Final pretrial order resolving the parties' motions in limine and establishing procedures for the upcoming jury trial.
STANDARD OF REVIEW	For motions in limine, the court evaluated relevance, prejudice, reliability, and admissibility under the Federal Rules of Evidence and Daubert. The court generally declined to resolve credibility, weight, or competing expert interpretations before trial.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Ivan Gutzalenko, et al., Plaintiffs v. City of Richmond, et al., Defendants

TOPICS

- [motion in limine](#)
- [expert testimony](#)
- [daubert standard](#)
- [hearsay](#)
- [jury instructions](#)

PRACTICE AREAS

- [civil procedure](#)
- [evidence](#)
- [civil rights](#)
- [wrongful death](#)
- [expert testimony](#)

QUESTIONS PRESENTED

1. Whether evidence of Gutzalenko's medical history, substance use, employment, family-court matters, and criminal history should be excluded or limited.
2. Whether the opinions of medical expert Gary Vilke satisfied Daubert and Federal Rule of Evidence 702.
3. Whether police-practices expert Edward Flosi could testify regarding force science and medical matters.
4. Whether evidence and argument concerning prone-restraint asphyxia and other publicized incidents should be excluded.
5. Whether willingness-to-pay evidence could be used to quantify noneconomic damages.
6. Whether experts could offer opinions at trial beyond those disclosed in their reports and depositions.
7. Whether medical expert Ryan Herrington could testify regarding actual consent and the emergency-consent exception.
8. Whether medical literature could be read to the jury under the learned-treatise exception.
9. Whether the MICRA noneconomic-damages cap could be disclosed to the jury.
10. Whether evidence of professional liability insurance could be presented.

HOLDINGS

1. Evidence of prior medical records and substance use may be admitted when relevant to causation, subject to Rules 401, 403, 404, and 608. Employment and earnings evidence may be admitted for damages but not to suggest that Gutzalenko's conduct was influenced by professional consequences. Family-court evidence may be admitted for the nature of his relationships with his children and loss-of-support or companionship damages, while divorce and relationship records were excluded at that time except for narrowly limited impeachment. Criminal history was generally inadmissible, particularly when offered for propensity or when unknown to defendants at the time of the incident.
2. The court denied without prejudice the motion to exclude Dr. Vilke's opinions concerning blood gases, carbon dioxide, prone restraint, asphyxiation, and body weight or downward force. The asserted defects principally concerned interpretation, timing, factual assumptions, credibility, and weight rather than fundamentally unreliable methodology.
3. Flosi was qualified to testify about police practices, training, tactics, tactical decisionmaking, and how officers are trained to perceive and respond to developing threats. He could not invoke scientific or medical terminology, including force science, to imply that his opinions rested on a scientific foundation, and he could not offer medical opinions beyond his expertise.
4. The court denied without prejudice the motion to exclude evidence and argument that Gutzalenko died from restraint asphyxia. The relevant causation question was whether defendants' conduct substantially contributed to the death, not whether restraint asphyxia was the sole cause.
5. The court excluded Mr. Johnson's willingness-to-pay opinions under Federal Rule of Evidence 702 and Daubert. The methodology was generic, insufficiently connected to the decedent's personal qualities, imprecise, and unlikely to assist the jury; the ruling did not bar case-specific damages testimony based on facts and data.

6. Experts may explain, clarify, or elaborate on reasoning underlying disclosed opinions, but may not offer new conclusions, new theories, or materially new factual bases that were not disclosed in their reports or depositions.
7. Dr. Herrington may testify about whether Gutzalenko gave actual consent to the midazolam injection, but may not testify about whether the emergency-consent exception applies because his report disclosed no opinion or analysis on that issue.
8. When a medical expert relied on medical literature in forming an opinion and the publication was established as a reliable authority, relevant excerpts could be read into the record on direct examination under Federal Rule of Evidence 803(18), but the texts could not be admitted as exhibits.
9. The court barred disclosure of the MICRA cap on noneconomic damages to the jury. California Civil Code section 3333.2 applies after the jury determines total damages, rather than being disclosed during the jury's fact-finding.
10. The court granted the unopposed motion to exclude mention or reference to defendants' professional liability insurance during voir dire and trial.

KEY QUOTATIONS

"The jury is not tasked with determining whether restraint asphyxia was the sole cause of death; the relevant question is whether Defendants' actions, including physical restraint and force on Mr. Gutzalenko's body, contributed substantially to Mr. Gutzalenko's death." (p. 9)

"The jury can assess noneconomic damages without the WTP methodology." (p. 10)

"Thus, Dr. Herrington may testify on the question of actual consent and/or the lack thereof in this case." (p. 14)

"A categorical exclusion of all references or reading of medical excerpts from medical treatises on direct examination upon a proper showing of reliability, reliance, and with the understanding that the texts may only be read into the record but not admitted as exhibits." (p. 15)

FACTUAL BACKGROUND

The action concerns the death of Ivan Gutzalenko following an incident involving law-enforcement restraint and the administration of Versed by medical personnel. The parties disputed the medical causes of death, including the significance of prone restraint, asphyxia, metabolic acidosis, substance use, and preexisting medical conditions. They also disputed the permissible scope and reliability of police-practices, medical, and damages expert testimony.

PROCEDURAL HISTORY

The case was pending in the Northern District of California and had proceeded to a January 13, 2026 pretrial conference. The court entered a final pretrial order addressing witness disclosures, trial procedures, evidentiary motions, voir dire, and the timing of future rulings on jury instructions and the verdict form.

DISPOSITION

CASES CITED

- *Lopez v. Aitken*, 2011 WL 672798 (S.D. Cal. Feb. 18, 2011)
- *Galvan v. Yates*, 2008 WL 650282 (E.D. Cal. Mar. 5, 2008)
- *Glover v. City of Los Angeles*, 2023 WL 8586386 (C.D. Cal. Oct. 26, 2023)
- *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993)
- *Primiano v. Cook*, 598 F.3d 558, 564-65 (9th Cir. 2010), as amended (Apr. 27, 2010)
- *Stiner v. Brookdale Senior Living, Inc.*, 665 F. Supp. 3d 1150, 1168 (N.D. Cal. 2023)
- *In re Korean Ramen Antitrust Litigation*, 281 F. Supp. 3d 892, 931 (N.D. Cal. 2017)
- *Sullivan v. City of Buena Park*, 2022 WL 2965664 (C.D. Cal. Apr. 11, 2022)
- *Estate of DuBose v. City of San Diego*, 2002 WL 34408963 (S.D. Cal. Oct. 1, 2002)
- *Brown v. Gutierrez*, 2006 WL 3065574 (N.D. Cal. Oct. 27, 2006)
- *Dongxiao Yue v. Chordiant Software, Inc.*, 2009 WL 4931679 (N.D. Cal. Dec. 21, 2009)
- *Romero v. Garland*, 2024 WL 1099300 (S.D. Cal. Mar. 13, 2024)
- *Toland v. Vana*, 271 Cal. Rptr. 457, 458 (Cal. Ct. App. 1990)
- *Schiernbeck v. Haight*, 7 Cal. App. 4th 869, 880-81 (Cal. Ct. App. 1992)
- *Chan v. Curran*, 237 Cal. App. 4th 601, 629 (Cal. Ct. App. 2015)

OPINION

1 2 3 4 UNITED STATES DISTRICT COURT 5 NORTHERN DISTRICT OF CALIFORNIA 6 7
IVAN GUTZALENKO, et al., Case No. 22-cv-02130-EMC 8 Plaintiffs, FINAL PRETRIAL
ORDER 9 v. 10 CITY OF RICHMOND, et al., Docket No. 135–159, 163–167, 169, 171 11
Defendants. 12 13 I. TRIAL DATE & LENGTH 14 Trial is set to run from January 30 through
February 11.

The Court will conduct voir dire 15 on Friday, January 30, and parties are directed to be prepared
for opening statements and witness 16 examinations on that day. 17 Each side is allotted 13 hours
for trial in total, including opening statements, direct and 18 cross examination, and closing
statements. Trial will last from 9:00 a.m. to 2:00 p.m. each day, 19 with 15-minute breaks after
every 90 minutes.

Trial will not take place on Thursdays. 20 II. TRIAL PROCEDURES 21 To make trial more
efficient, the Court imposes additional trial procedures. A party must 22 give the opposing party
and the Courtroom Deputy at least 48 hours notice of witnesses it intends 23 to call, exhibits it
intends to use, and/or demonstratives it intends to use. Saturdays and Sundays 24 do not count.

Thus, e.g., for a Tuesday trial day that starts at 8:30 a.m., a party must give the 25 opposing party
and Courtroom Deputy notice by 8:30 a.m. the preceding Friday. 26 On all trial days, counsel shall

be present in the Courtroom by 8:30 a.m. to discuss any 27 matters requiring resolution prior to commencement of trial at 9:00 a.m. Parties are reminded to 1 If the opposing party has an objection, then it must notify the party by 6:00 p.m. the same 2 day of notice, and the parties shall meet and confer to see if they can resolve their differences.

If 3 they cannot resolve the dispute, they shall file with the Court a joint statement 24 hours (excluding 4 Saturdays and Sundays) in advance of the relevant trial day. In short, the Court requires a full 5 court day to resolve any objections. 6 III. WITNESSES 7 The parties have identified the witnesses they intend to call for trial. Dkt. 159, 169. 8 Parties dispute the inclusion of Charles Yarbaugh.

The matter shall be briefed by the parties and 9 determined by the Court through a separate order. 10 Parties averred at the January 13, 2026 pretrial conference (“PTC”) that their witness lists 11 were over-inclusive with respect to both witnesses and allotted time. Parties are reminded that 12 they must comply with strict time limits set by the Court. 13 IV.

PLAINTIFFS’ MOTIONS IN LIMINE 14 A. Motion in Limine No. 1: Exclude Evidence Unknown to Defendants at Time of Incident 15 Plaintiffs move to exclude various categories of evidence concerning Mr. Gutzalenko’s 16 medical history, substance abuse, employment history, family court matters, and criminal history. 17 The Court GRANTS IN PART and DENIES IN PART Plaintiffs’ MIL No. 1.

Dkt. 144. 18 Evidence of Mr. Gutzalenko’s prior medical records and history of substance use may be 19 relevant to the issue of causation. In particular, such evidence may bear on Mr. Gutzalenko’s 20 physical condition, compromised health, and physiological vulnerabilities at the time of the 21 incident, including whether pre-existing conditions or chronic substance use contributed to his 22 death.

When offered for this purpose, the probative value of this evidence is not substantially 23 outweighed by the risk of unfair prejudice, and it is generally admissible, subject to an appropriate 24 limiting instruction if necessary. This ruling does not authorize the use of such evidence to 25 establish character, or for any purpose inconsistent with Federal Rules of Evidence (“FRE”) 401, 26 403, 404, or 608.

27 Evidence relating to Mr. Gutzalenko’s employment history, earnings, and future 1 may be introduced for that limited purpose. This evidence may not, however, be used to argue or 2 imply that Mr. Gutzalenko’s subjective state of mind or physical actions during the incident were 3 influenced by fear of arrest, job loss, or other professional consequences. 4 Evidence concerning family court proceedings, custody arrangements, or related records 5 may be relevant to the nature and extent of Mr. Gutzalenko’s relationship with his children, and 6 therefore Plaintiffs’ loss of support and loss of companionship claims.

When offered for that 7 limited purpose, such evidence (to the extent they shed light on the nature of Mr. Gutzalenko's 8 relationship with his children) may be admissible as it bears on noneconomic damages arising 9 from the wrongful death claims. See, e.g., *Lopez v. Aitken*, No. 07-cv-2028 JLS, 2011 WL 10 672798, at *3 (S.D. Cal. Feb. 18, 2011); *Galvan v. Yates*, 2008 WL 650282, at *1 (E.D.

Cal. Mar. 11 5, 2008). However, divorce records, stay-away order requests, and other records concerning Mr. 12 Gutzalenko's relationship with Honey Gutzalenko are excluded at this time. The Court leaves 13 open the possibility that such materials may be used for impeachment purposes only, including on 14 cross-examination of Honey Gutzalenko on relevant matters.

Any such use shall be limited 15 strictly to impeachment, and Defendants must be prepared to demonstrate the specific 16 inconsistency or omission that justifies their use. 17 Evidence of Mr. Gutzalenko's criminal history is generally inadmissible. See Fed. R. 18 Evid. 609 (limiting admission of criminal convictions). This includes arrests not resulting in 19 convictions, expunged matters, and other criminal records offered to show propensity or character.

20 See Fed. R. Evid. 404(b). Moreover, such evidence cannot bear on whether Defendants' conduct 21 was reasonable at the time of the incident if the information was unknown to Defendants. See 22 *Glover v. City of L.A.*, No. 21-cv-09915-FWS-AS, 2023 WL 8586386, at *4 (C.D. Cal. Oct. 26, 23 2023). 24 All aforementioned rulings remain subject to FRE 403.

The Court will not permit 25 unnecessary or cumulative evidence where its probative value is substantially outweighed by the 26 risk of unfair prejudice or juror confusion. The Court expects counsel to tailor the presentation of 27 evidence to what is reasonably necessary for the permissible purposes identified above. 1 warranted.

The jury can appropriately consider the evidence for its proper purposes within a 2 single, unified trial. Court may give a limiting instruction upon request. 3 Accordingly, Plaintiffs' MIL No. 1 is GRANTED IN PART and DENIED IN PART, 4 consistent with the rulings set forth above. 5 B. Plaintiffs' MIL No. 2: Limits on Dr. Vilke's Testimony 6 Plaintiffs' MIL No. 2 seeks to exclude portions of the testimony of Dr. Gary Vilke, 7 particularly his opinions concerning blood gas measurements, carbon dioxide (CO2) levels, prone 8 restraint, and the effect of body weight or downward force on Mr. Gutzalenko.

Dkt. 145. The 9 motion is DENIED WITHOUT PREJUDICE. 10 The motion does not present a basis for wholesale exclusion under *Daubert*. 509 U.S. 579 11 (1993). Dr. Vilke's opinions are grounded in medical principles, review of relevant facts and 12 medical records, and scientific literature. Disagreements raised by Plaintiffs largely concern the 13 interpretation, timing, and weight of the data, rather than the existence of a fundamentally 14 unreliable or unacceptable methodology.

Such disputes are better suited for cross-examination 15 and competing expert testimony. See *Primiano v. Cook*, 598 F.3d 558, 564–65 (9th Cir. 2010), as 16 amended (Apr. 27, 2010). 17 First, Plaintiffs argue that Dr. Vilke’s opinions concerning CO2 measurements are flawed 18 because blood gas testing is the “best measure” of CO2, the CO2 measurements were taken after 19 Mr. Gutzalenko became unconscious, and Dr. Vilke allegedly misunderstood the significance of 20 those results.

These objections go to credibility and the persuasive force of Dr. Vilke’s opinions, 21 not a core methodological defect. Any alleged flaws in Dr. Vilke’s reasoning are appropriate 22 subjects for cross-examination and rebuttal expert testimony. They do not warrant exclusion of 23 the opinions altogether. 24 Second, Dr. Vilke may testify regarding his opinions on prone restraint and asphyxiation.

25 Such testimony is relevant to causation and reflects an area of expert disagreement. Plaintiffs raise 26 substantial concerns regarding Dr. Vilke’s reliance on certain studies purporting to show that 27 downward pressure applied to the human body does not impair ventilation or cause death. Again, 1 testimony meets threshold requirements, and Plaintiffs remain free to challenge the factual 2 assumptions and any methodological shortcomings underlying the studies or Dr. Vilke’s opinions.

3 Accordingly, Plaintiffs’ MIL No. 2 is DENIED WITHOUT PREJUDICE to a motion to 4 exclude should evidence at trial warrant such, but no such motion shall be made absent good 5 cause. 6 C. Plaintiffs’ MIL No. 3: Limit Mr. Flosi’s Testimony 7 Plaintiffs’ MIL No. 3 seeks to limit testimony by City Defendants’ police practices expert, 8 Edward Flosi, and supposed opinions based in “force science.” Dkt.

146. The Court DEFERS a 9 ruling on this motion. 10 City Defendants disclosed Mr. Flosi as a police practices expert to testify regarding law 11 enforcement training, tactics, decisionmaking, and evaluation of use of force. *Id.*, Ex. 12 at 1. 12 The Court’s role under Federal Rule of Evidence and Daubert is to ensure that expert testimony is 13 reliable, relevant, and not prejudicial.

The Court is not to resolve disputes over credibility and 14 persuasiveness at this stage. Where an expert is qualified based on experience, and the 15 methodology used is not facially unreasonable, the appropriate remedy is often limiting the scope 16 and framing of the testimony, rather than wholesale exclusion. See *Stiner v. Brookdale Senior 17 Living, Inc.*, 665 F. Supp. 3d 1150, 1168 (N.D.

Cal. 2023); *In re Korean Ramen Antitrust Litig.*, 18 281 F. Supp. 3d 892, 931 (N.D. Cal. 2017). 19 The record reflects that Mr. Flosi served as a full-time peace officer for nearly thirty years, 20 contributed to the development of police use-of-force policies, and instructed officers in defensive 21 tactics and decisionmaking. See Dkt. 146, Ex. 10 at 1–3. Mr. Flosi’s experience is sufficient to

22 qualify him as an expert on police practices, training, tactical decisionmaking, and how officers
23 are trained to perceive and respond to developing threats.

24 Mr. Flosi may not, however, invoke scientific or medical terminology, including the 25
discipline of “force science,” to import a scientific foundation for his opinions. While he may 26
reference his training, including force science, he may not state or imply his opinions are based on
27 science rather than experience and training. Mr. Flosi is also prohibited from offering medical 1
medical experts.

Mr. Flosi’s opinions at trial must comport with his experience and expertise. 2 V. CITY
DEFENDANTS’ MOTIONS IN LIMINE 3 A. City Defendants’ MIL No. 1: Evidence or
Argument of Prone Restraint Asphyxia 4 City Defendants’ MIL No. 1 seeks to exclude evidence
and argument that Mr. Gutzalenko 5 died as a result of “restraint asphyxia,” as well as any
reference to the killing of George Floyd or 6 other non-party incidents.

City Defendants MIL No. 1 (Dkt. 135). 7 City Defendants’ MIL No. 1 rests primarily on the
contention that the coroner testified at 8 his deposition that metabolic acidosis, not asphyxia, was
Mr. Gutzalenko’s cause of death, and 9 that references to “restraint asphyxia” are irrelevant and
unduly prejudicial because they evoke 10 emotional comparisons to highly publicized national
incidents.

11 Under California law, liability may attach if Defendants’ conduct was a substantial factor 12 in
causing harm, even if other factors also contributed. The jury is not tasked with determining 13
whether restraint asphyxia was the sole cause of death; the relevant question is whether 14
Defendants’ actions, including physical restraint and force on Mr. Gutzalenko’s body, contributed
15 substantially to Mr. Gutzalenko’s death.

16 The record reflects genuine disagreement among the coroner and the parties’ experts 17
regarding both the mechanisms contributing to Mr. Gutzalenko’s death and the significance of the
18 prone restraint within that causal chain. See, e.g., City Defendants’ MIL No. 1, Ex. 1 at 12:21–
19 14:6, 16:19–17:1, 77:12–23; Ex. 2 at 12–20; Ex. 3 at 11–21; Ex. 4 at 3–7.

Because causation 20 depends on disputed medical opinions and competing interpretations of
complex medical and 21 physiological processes, exclusion at the motion in limine stage would
improperly require the 22 Court to resolve factual disputes and engage in expert credibility
disputes typically reserved for 23 the jury. These issues are more appropriately tested through
expert testimony and cross- 24 examination.

25 Accordingly, City Defendants’ MIL No. 1 is DENIED WITHOUT PREJUDICE. 26 Defendants
may raise an objection at trial if Plaintiffs inadequately establish a basis for expert 27 opinions
concerning prone restraint asphyxia. Again, in light of this ruling, no such motion shall 1 B. City
Defendants’ MIL No. 2: Willingness-to-Pay Damages Theory 2 City Defendants move to exclude

Plaintiffs' damages expert from testifying about the 3 "human value of life" using a willingness-to-pay ("WTP") methodology to quantify noneconomic 4 damages.

Dkt. 136. The Court GRANTS City Defendants' MIL No. 2. 5 Mr. Johnson's WTP-based opinions are excluded under FRE 702 and Daubert as 6 unreliable and unhelpful. The proffered methodology is excessively generic, untethered to any 7 personal qualities of the decedent, and results in a wide, imprecise range of damages that does not 8 meaningfully aid the factfinder.

The jury can assess noneconomic damages without the WTP 9 methodology. 10 There is a substantial body of case law rejecting WTP damages evidence presented by Mr. 11 Johnson. See, e.g., *Sullivan v. City of Buena Park*, No. SACV-20-01732-CJC, 2022 WL 2965664, 12 at *6–7 (C.D. Cal. Apr. 11, 2022); *Lopez v. Aitken*, No. 07-cv-2028 JLS, 2011 WL 672798, at *5 13 (S.D.

Cal. Feb. 18, 2011); *Estate of DuBose v. City of San Diego*, No. 99cv2279-L, 2002 WL 14 34408963, at *2 (S.D. Cal. Oct. 1, 2002). Consistent with the weight of authority, Mr. Johnson's 15 WTP damages testimony is unreliable, unhelpful, and potentially confusing.

The jury can 16 sufficiently evaluate noneconomic damages without expert assistance in this form. 17 Accordingly, City Defendants' MIL No. 2 is GRANTED. This ruling does not preclude 18 Mr. Johnson from testifying about damages based on case-specific facts and data. This exclusion 19 is limited only to WTP-based quantifications. 20 C. City Defendants' MIL No. 3: Limit Scope of Police Practices Expert Testimony 21 City Defendants' MIL No. 3 seeks to limit Plaintiffs' police practices expert, Charles 22 Yarbaugh, from offering any speculative opinions based on facts about which he has no personal 23 knowledge or from providing legal conclusions.

Dkt. 137. 24 Plaintiffs state that the MIL is moot because Plaintiffs have not retained Mr. Yarbaugh to 25 testify at trial and so the Court does not at this juncture rule on the motion. 26 However, City Defendants now seek to call Mr. Yarbaugh to testify at trial.

The parties 27 have been directed to brief the issue of whether Defendants may call Mr. Yarbaugh. The Court 1 should Defendants be permitted to call Mr. Yarbaugh. 2 D. City MIL No. 4: Evidence of Other Incidents, Claims, and Lawsuits 3 City Defendants' MIL No. 4 seeks to exclude evidence concerning other claims, lawsuits, 4 settlements, verdicts, judgments, complaints, administrative investigations, proceedings, and other 5 alleged incidents, including references to national incidents such as George Floyd, the Black Lives 6 Matter movement, and the "Code of Silence" among police officers.

Dkt. 138. 7 At the PTC, City Defendants acknowledged that Officer Tom Tran testified at his 8 deposition that he understood certain training programs and guidelines to have been developed in 9 response to the killing of George Floyd and that his conduct on this occasion may have been 10 informed by the George Floyd incident.

To the extent such testimony is offered to explain an 11 officer's understanding, training, or perceptions at the relevant time, it may be relevant and 12 admissible for that limited purpose. 13 To the extent any argument or testimony exceeds the limited bounds of this ruling, that 14 argument or testimony must be balanced against FRE 403.

The Court cautions the parties that 15 references to nationally publicized events, other verdicts, settlements, etc. that are offered to 16 inflame the jury, invite improper inferences, or distract from the facts of this case will be subject 17 to exclusion. Any such extraneous evidence, to be admissible, must be directly relevant to the 18 parties herein. 19 Accordingly, the Court DENIES the motion in part, insofar as it seeks to bar admissible 20 evidence pertaining to the totality of the circumstances surrounding the incident in question.

The 21 Court's ruling is without prejudice, and parties may renew this objection at trial if appropriate. 22 VI. MEDICAL DEFENDANTS' MOTIONS IN LIMINE 23 A. Medical Defendants' MIL No. 1: Limits on Expert Testimony 24 Medical Defendants' MIL No. 1 seeks to limit Plaintiffs' experts from providing testimony 25 that exceeds the scope of the information and opinions expressed in their expert reports and 26 depositions.

Dkt. 139. 27 Federal Rule of Civil Procedure 26(a)(2)(B) requires a retained expert to disclose "a 1 The purpose of this rule is to eliminate surprise, permit meaningful cross-examination, and allow 2 the opposing party to prepare rebuttal evidence. Consistent with that purpose, courts in this 3 District have repeatedly held that experts may not offer at trial new opinions or materially 4 expanded opinions that were not disclosed in their reports or depositions.

See, e.g., *Brown v. 5 Gutierrez*, 2006 WL 3065574, at *1 (N.D. Cal. Oct. 27, 2006) ("Defendants' expert should not 6 testify to opinions not expressed in his report."); *Dongxiao Yue v. Chordiant Software, Inc.*, 2009 7 WL 4931679, at *9 (N.D. Cal. Dec. 21, 2009). 8 Plaintiffs' experts are not required to treat their reports or deposition testimony as a rigid 9 trial script.

They may explain, clarify, or elaborate on the reasoning underlying disclosed 10 opinions, so long as they do not introduce new conclusions, new theories, or materially new 11 factual bases for opinions. See *Romero v. Garland*, 2024 WL 1099300, at *13 (S.D. Cal. Mar. 13, 12 2024). 13 Accordingly, the Court DEFERS a ruling on Medical Defendants' MIL No. 1. Parties 14 may renew any such objections at trial as necessary and appropriate.

15 B. Medical Defendants' MIL No. 2: Expert Opinions Regarding Consent 16 Medical Defendants next seek to preclude Plaintiffs' medical expert, Ryan Herrington, 17 from testifying as to any opinions regarding informed consent and lack of consent. Dkt. 140.

The 18 parties do not appear to dispute that Mr. Gutzalenko did not provide verbal consent to the 19 administration of Versed. At the PTC, Medical Defendants clarified that the crux of the MIL 20 concerns whether Dr. Herrington may testify as to the emergency consent exception to a medical

21 battery claim. 22 Federal Rule of Civil Procedure 26(a)(2)(B) requires the disclosure of all opinions an 23 expert will offer at trial, and the bases for those opinions.

The report states that, based on review 24 of the video evidence, “Mr. Gutzalenko was not asked to consent to the midazolam injection.” Id., 25 Ex. A at 11. The report further analyzes the involuntary administration of Versed as a departure 26 from the standard of care, explaining that Mr. Gutzalenko was physically and cognitively unable 27 to provide meaningful consent at the time of the injection and that proceeding under such 1 consent to medical intervention....

Reviewed video footage demonstrated that Mr. Gutzalenko 2 was never asked to consent to the midazolam injection that was administered to him. Mr. 3 Gutzalenko, when the midazolam was given, was unconscious and at that specific point he would 4 not have been physically able to give consent.”).

Thus, Dr. Herrington may testify on the question 5 of actual consent and/or the lack thereof in this case. 6 Dr. Herrington’s report does not, however, provide any opinions or analysis about 7 emergency consent in this instance or generally in instances where an individual is unconscious, 8 and whether the medical intervention was reasonably believed to be necessary to preserve the life 9 or health of the individual.

Accordingly, he may not testify as to whether Mr. Gutzalenko’s 10 condition warrants application of the emergency consent exception. Plaintiffs are not prohibited 11 from eliciting testimony — including cross-examination of Defendants’ experts — about 12 emergency consent and whether emergency consent applied in this incident. 13 For the foregoing reasons, Medical Defendants’ MIL No. 2 is GRANTED.

14 C. Medical Defendants’ MIL No. 3: Exclude Hearsay Evidence 15 Medical Defendants’ MIL No. 3 seeks to exclude statements from medical texts and 16 literature as inadmissible at trial. Dkt. 141 at 1–2. 17 The learned treatise exception under FRE 803(18) permits Plaintiffs’ experts to read 18 excerpts of medical texts into the record on direct examination, though such treatises may not be 19 entered as an exhibit.

Plaintiffs explain that any readings of medical literature would be used to 20 establish their reliability to help the jury understand the basis of his opinion. 21 Medical Defendants’ MIL No. 3 rests on the assertion that medical literature is 22 categorically inadmissible on direct examination. This argument is inconsistent with Rule 23 803(18). So long as Plaintiffs’ medical expert relied on the medical literature in forming their 24 opinions, and the publication is established as a reliable authority, the expert may read relevant 25 excerpts into the record to explain the basis for their opinions and testimony.

26 Accordingly, the Court DENIES Medical Defendant’s MIL No. 3, conditioned upon 27 compliance with Rule 803(18). A categorical exclusion of all references or reading of medical 1

excerpts from medical treatises on direct examination upon a proper showing of reliability, 2 reliance, and with the understanding that the texts may only be read into the record but not 3 admitted as exhibits.

4 D. Medical Defendants' MIL No. 4: Disclosure of Statutory Damages Cap 5 Medical Defendants next seek to prohibit parties from instructing the jury about statutory 6 limits on noneconomic damages imposed by the Medical Injury Compensation Reform Act 7 ("MICRA"). Dkt. 142. Medical Defendants argue that the statutory limit on noneconomic 8 damages was imposed to help ensure the availability of health care and the enforceability of 9 judgments against healthcare providers by making medical malpractice insurance affordable.

Id. 10 at 3; see also Order Re Applicability of MICRA (Dkt. 131). Instructing the jury about the 11 statutory cap on damages therefore undermines the legislative objective by potentially suggesting 12 to the jury that the statutory cap is an appropriate or "standard" award. Id. 13 Plaintiffs contend that such an instruction is appropriate, citing *Toland v. Vana*, where the 14 California Court of Appeal permitted an instruction on MICRA damages limits so long as the jury 15 was also instructed that an award for noneconomic damages must be reasonable in light of the 16 evidence.

271 Cal.Rptr. 457, 458 (Cal. Ct. App. 1990). But the California Supreme Court 17 subsequently directed the decision to not be published. Accordingly, the *Toland* decision does not 18 carry any precedential weight and does not bind this Court. See Cal. Rules of Court 8.115(a). 19 Instead, the overwhelming weight of California and federal authority indicate that statutory 20 caps on damages are not to be disclosed to the jury.

Instead, statutory caps are imposed after the 21 jury renders its verdict. Such an approach preserves the jury's fact-finding role and minimizes the 22 risk of confusion. See *Schiernbeck v. Haight*, 7 Cal.App.4th 869, 880–81 (Cal. Ct. App. 1992); 23 see also *Chan v. Curran*, 237 Cal.App.4th 601, 629 (Cal. Ct. App. 2015). 24 For the foregoing reasons, the Court GRANTS Medical Defendants' MIL No. 4.

The 25 statutory cap under MICRA, and specifically California Civil Code § 3333.2, limits noneconomic 26 damages but is applied after the jury's determination of total damages. This separation ensures 27 that the jury is not undermined in its factfinding function and preserves the California 1 E. Medical Defendants' MIL No. 5: Exclude Evidence of Professional Liability Insurance 2 Medical Defendants' MIL No. 5 seeks to prevent Plaintiffs from mentioning or otherwise 3 alluding to Defendants' professional liability insurance coverage during voir dire and at trial.

Dkt. 4 143. 5 Plaintiffs do not oppose Medical Defendants' MIL No. 5, and the MIL is consistent with 6 state and federal rules limiting disclosure of insurance coverage. Fed. R. of Evidence 411; Cal. 7 Evidence Code § 1155. 8 Accordingly, the Court GRANTS Medical Defendants' unopposed

MIL No. 5. 9 VII. EXHIBITS 10 The Court will enforce hearsay rules but notes the proponent of evidence may establish an 11 exception to hearsay.

Moreover, the Court notes experts may disclose evidence upon which they 12 rely, even if not admissible, if compliant with FRE 703. 13 VIII. VOIR DIRE 14 To ensure a fair and impartial jury, the Court will allow the parties to conduct case-related 15 voir dire for 20 minutes per side following Court-led voir dire. Court will focus primarily, but not 16 exclusively, on hardships.

17 The parties will be given six peremptory challenges total, three per side. Defendants as a 18 group will be limited to three peremptory challenges. The Court will seat eight jurors in total. 19 The Court will hold a remote conference to review and vet jury questionnaire responses on 20 January 27, 2026, at 3:30 p.m. 21 The parties jointly request the following additional questions for inclusion in the Court's 22 jury questionnaire form: 23 1.

Have you had a significant interaction with law enforcement that may impact your ability to serve as a juror in a case involving law 24 enforcement officers? If so, please explain. 25 2. Have you had any experiences with individuals that have substance abuse problems? If so, please explain. 26 3. Do you have strong opinions regarding the use of force by law 27 enforcement officers?

If so, please explain. 4. Have you or anyone in your immediate family ever filed a lawsuit 1 or submitted a formal claim against a public entity or its employee(s)? If so, please briefly identify the circumstances 2 leading to the lawsuit/claim. 3 5. Do you have any specialized training or experience in law enforcement and/or medical care? If so, please provide a summary 4 of that experience.

5 Dkt. 156. 6 The parties' jointly proposed questions will be included in the Court's jury questionnaire 7 form. In addition to these jointly proposed questions, Plaintiffs submitted a separate proposed jury 8 || questionnaire form. /d. Plaintiffs' proposed questionnaire includes many standard questions 9 || already included in the Court's jury questionnaire form.

Plaintiffs were directed at the PTC to 10 submit eight non-overlapping, relevant questions for review. Defendants will have an opportunity 11 to object to these proposed questions, and the Court will determine which additional questions, if a 12 any, to include in the jury questionnaire form. 13 IX. JURY INSTRUCTIONS & JURY VERDICT FORM 14 The Court will address jury instructions, including the preliminary statement to the jury, 15 and the verdict form in separate orders.

16 = 17 IT IS SO ORDERED. Z 18 19 Dated: January 14, 2026 20 21 EDWARD M. CHEN 22 United States District Judge 23 24 25 26 27 28