UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
LAKEVILLE DIVISION

SHERYL JORDAN, as Personal Representative of the Estate of DAVID JORDAN, JR.,

Plaintiff,

Vs.

SHERIFF DEREK MICHAELS in his official Capacity as Sheriff of Midland County, and ERIC WATSON, an individual,

Defendants.
_____/

Case No. 2:20cv15994

MEMORANDUM OF LAW FOR DEFENDANT'S MOTION *IN LIMINE* TO EXCLUDE PLAINTIFF'S EXPERT AND DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION TO STRIKE DEFENDANT ERIK WATSON'S AFFIRMATIVE DEFENSE OF QUALIFIED IMMUNITY

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INTRODUCTION

Defendants Derek Michaels and Eric Watson respectfully file this memorandum of law: (1) in response to Plaintiff Sheryl Jordan's motion to strike Defendant Eric Watson's affirmative defense of qualified immunity; and (2) in support of their motion *in limine* to exclude Plaintiff's expert witness, Frank Edwards, Ph.D.

Defendants respectfully request this Court deny the motion to strike Defendant's affirmative defense of qualified immunity because Plaintiff's allegedly violated rights were not clearly established at the time of the incident. Further, Defendants respectfully request this court grant Defendant's motion *in limine* to exclude Plaintiff's expert witness because the expert testimony Plaintiff seeks to admit is inadmissible under Federal Rules of Evidence 401, 403 and 702.

STATEMENT OF FACTS

On February 14, 2019, at 3:15 p.m., Deputy Eric Watson and Deputy Eddie Rivera arrived at David Jordan Jr.'s residence at Midland County, Florida, in response to a noise complaint for loud music emanating from the residence. Complaint, ¶ 11. The caller claimed the loud vulgar music was being played from across an elementary school, creating an inappropriate environment. Lee McDonald, Sworn Statement, ¶¶ 4–7.

Both officers approached the residence and loudly knocked on the door, to no response. Deputy Eric Watson, Sworn Statement, ¶ 21. Deputy Watson approached the side door while Deputy Rivera stayed at the front door, knocking. Deputy Eddie Rivera, Sworn Statement, ¶¶ 22–23. Deputy Watson used his police baton to loudly bang on the side door in an attempt to speak with the person responsible for the loud music. *Id*.

As Deputy Watson came around the corner of the house, he could see Mr. Jordan opening the door wide enough for Deputy Watson to see into the foyer of his house. Deputy Eric Watson, Sworn Statement, ¶ 25. As the front door opened, Deputy Rivera loudly yelled "Sheriff's Office, Sheriff's Office." Deputy Eddie Rivera, Sworn Statement, ¶ 24. Deputy Watson could see Mr. Jordan standing a few feet away from Deputy Rivera, who was on the outside of the covered porch. Deputy Eric Watson, Sworn Statement, ¶¶ 26–27. Mr. Jordan had his left hand on the front

door, looking at Deputy Rivera. *Id*. From Deputy Watson's perspective, he could see Mr. Jordan had a small, dark, unidentifiable object in his right hand. *Id*. However, from Deputy Rivera's vantage point, he was able to identify the object as a gun, and immediately began screaming loudly, "gun, drop the gun." *Id*.

After hearing Deputy Rivera's shouts about Mr. Jordan being armed, Deputy Watson drew his service weapon and aimed at Mr. Jordan as he was coming from the side of the house. Deputy Eric Watson, Sworn Statement, ¶ 28. The front door started closing as Mr. Jordan raised his right hand, still holding the gun. Deputy Eric Watson, Sworn Statement, ¶ 31. At that point, Mr. Jordan raised his right arm in Deputy Rivera's direction and as he raised the gun in Rivera's direction, Deputy Watson yelled "hey." Deputy Eddie Rivera, Sworn Statement, ¶ 28.

Mr. Jordan then looked in Deputy Watson's direction and started to close the door. Deputy Eric Watson, Sworn Statement, ¶ 31. Deputy Watson proceeded to fire his service weapon rapidly, four times in a vertical trajectory at Mr. Jordan through his front door, as it was closing. Deputy Eric Watson, Sworn Statement, ¶¶ 36–37. Mr. Jordan died on scene as a result of the gunshots. Deputy Eric Watson, Sworn Statement, ¶ 53.

After the incident, both deputies took cover behind the patrol car and radioed for backup, noting that shots were fired. Deputy Eddie Rivera, Sworn Statement, ¶¶ 36–38. The deputies stayed behind the patrol car until the SWAT team took position

and then removed the deputies from the scene. *Id*. Deputy Watson has since indicated that in that moment, he did not know what Mr. Jordan had in his hand, but believed it to be a gun, and was therefore shooting to eliminate a threat. Deputy Eric Watson, Sworn Statement, ¶¶ 32–33. He further thought Mr. Jordan would shoot at Deputy Rivera, and in the event he missed, a potential stray bullet could threaten the safety of the elementary school children across the street. *Id*.

On February 2, 2020, Plaintiff, Sheryl Jordan, as personal representative of the estate of Mr. Jordan (collectively, "Plaintiff" or "Jordan") filed a complaint in the Circuit Court of the Thirtieth Judicial Circuit. Compl., ¶¶ 1–10.

ARGUMENT

I. This Court Should Deny Plaintiff's Motion to Strike Defendant's Affirmative Defense of Qualified Immunity Because Plaintiff's Rights Were Not Violated Because Plaintiff's Rights Were Nor Clearly Established at the Time of the Incident and Defendant Provided Plaintiff with "Fair Notice" of the Defense.

Although the loss of life underpinning this case is tragic, Defendant is immune from suit. As a police officer who conducted himself lawfully and reasonably, he is entitled to the affirmative defense of qualified immunity in this §1983 action. Plaintiff asserts that the pleading of qualified immunity is factually and legally insufficient. It is neither, so this Court should not strike Defendant's sixth defense.

The affirmative defense is pled with all the factual support needed to afford Plaintiff fair notice of the defense and its grounds. The legal sufficiency of the

pleading is equally sound because it simply cannot be said that there is no set of facts to support the merits of a qualified immunity defense. Given that Plaintiff raised what two officers believed to be a gun despite commands to drop it, Defendant reasonably perceived a deadly threat and justifiably intruded on Defendant's Fourth Amendment interests. But even if this Court finds that intrusion was patently unreasonable Defendant is still entitled to qualified immunity.

Under the Federal Rules of Civil Procedure, the Court "may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." Fed. R. Civ. P. 12(f). Striking pleadings is a "drastic," "disfavor[ed]" remedy, so such motions are often viewed by courts as "time wasters" and appropriate only for "patently frivolous" or legally invalid assertions. *See Ability Hous. of Northeast Fla., Inc. v. City of Jacksonville*, 2016 U.S. Dist. LEXIS 25983, at *2–3 (M.D. Fla. 2016) (citations and internal quotations omitted); *see also Operating Eng'rs Local 324 Health Care Plan v. G&W Constr. Co.*, 783 F.3d 1045, 1050 (6th Cir. 2015) ("A motion to strike should be granted if 'it appears to a certainty that plaintiffs would succeed despite any state of the facts which could be proved in support of the defense and are inferable from the pleadings.'") (citing *Williams v. Jader Fuel Co.*, 944 F.2d 1388, 1400 (7th Cir. 1991)).

A. Deputy Watson is entitled to assert qualified immunity as an affirmative defense because either he did not violate Plaintiff's rights or they were not clearly established at the time of the incident.

Unless, "it appears to a certainty that plaintiffs would succeed despite any state of the facts which could be proved in support of the defense," the affirmative defense must survive the motion to strike. *Barnes v. AT & T Pension Ben. Plan-Nonbargained Program*, 718 F. Supp.2d 1167, 1170 (S.D. Cal. 2010). When assessing qualified immunity, courts use a two-prong analysis. *Tolan v. Cotton*, 572 U.S. 650, 656 (2014). First, did the state official violate a federal right? *Id*. Next, was such a right clearly established when the official violated it? *Tolan*, 572 U.S. at 656. A plaintiff that cannot prevail on both prongs cannot eliminate qualified immunity as an affirmative defense. *See Tolan*, 572 U.S. at 565. Because Plaintiff can prevail on neither, Defendant is entitled to assert qualified immunity as an affirmative defense.

1. Deputy Watson did not violate Plaintiff's Fourth or Fourteenth Amendment rights because he reasonably believed Plaintiff posed a deadly threat.

Generally, courts consider the use of deadly force a seizure subject to the Fourth Amendment's reasonableness requirement. *See Tennessee v. Garner*, 471 U.S. 1, 7 (1985). The reasonableness test of an officer's actions requires the court to balance "the nature and quality of the intrusion on the individual's Fourth Amendment interests against the importance of the governmental interests alleged

to justify the intrusion." *U.S. v. Place*, 462 U.S. 696, 703 (1983). An officer's use of deadly force is considered reasonable if "the officer has probable cause to believe that the suspect poses a threat of serious physical harm" or "if there is probable cause to believe that he has committed a crime involving the infliction or threatened infliction of serious physical harm." *Garner*, 471 U.S. at 11.

Deputy Watson's actions fall within the exceptions outline by the court in *Garner* because he reasonably believed Jordan posed a deadly threat to Deputy Rivera and the surrounding community. As Deputy Rivera detailed in his sworn statement, he believed he saw Jordan holding a Glock in his right hand when he opened the front door. Deputy Eddie Rivera, Sworn Statement, ¶¶ 27–30. Deputy Rivera believed Jordan raised the gun in his direction and he repeatedly asked Jordan to drop the gun. Deputy Eddie Rivera, Sworn Statement, ¶¶ 27–30. Deputy Watson, watching the situation unfold, fired his weapon because he believed that Jordan had a gun raised at Deputy Rivera, that Jordan did not put down, and if Jordan fired, Deputy Rivera and the nearby school children were all in danger. Deputy Eric Watson, Sworn Statement, ¶ 32. While Deputy Watson did not know for certain what was in the Jordan's right hand, he believed it was a gun at the time of the incident. *See* Deputy Eric Watson, Sworn Statement, ¶ 32. Such belief is sufficient to support the affirmative defense.

Further, the Eleventh Circuit Court of Appeals already found that officers are justified in using deadly force to apprehend an individual who confronts police officers with a gun in their hand, even if they are within their own home. *Young v. Borders*, 850 F.3d 1274 (11th Cir. 2017) In *Young*, the Eleventh Circuit found no reversible error when the District Court ruled that an officers' use of deadly force on an individual who opened their front door with a gun in their hand and pointed the weapon law enforcement. *Id.* at 1280. Because officers often have to make split-second decisions for the safety of themselves and others, they are not obligated to wait and see if a suspect will fire a weapon pointed at officers, even if that individual is in their own home. *Id.; see Long v. Slaton*, 508 F.3d 576, 581 (11th Cir. 2007). Denying Plaintiff's motion to strike simply falls in line with the prior precedent of this Circuit as Deputy Watson's use of force was not a violation of Plaintiff's rights.

2. Plaintiff's rights were not clearly established at the time of the incident.

A right is clearly established if the "state of the law" at the time of an incident provided "fair warning to the defendants that their alleged [conduct] was unconstitutional." *Saucier v. Katz*, 533 U.S. at 656 (citing *Hope v. Pelzer*, 536 U.S. 730, 739 (2002)) (internal quotations omitted). A right is only clearly established if the law is clear so that "every reasonable official would have understood that what he is doing violates that right." *Mullenix v. Luna*, 136 S.Ct. 305, 308 (2015) (citing *Reichle v. Howards*, 566 U.S. 658 (2012)) (internal quotations omitted). A court

ruling can provide fair notice to government officials of the existence of a right, therefore rending the right as clearly established. *See White v. Pauly*, 137 S.Ct. 548, 551 (2017). While the case does not need to be precisely on point, "'clearly established law' should not be defined 'at a high level of generality.'" *Id.* at 552 (quoting *Ashcroft v. al–Kidd*, 563 U.S. 731, 742 (2011)). Thus, "the clearly established law must be particularized to the facts of the case." *Id.* (citing *Anderson v. Creighton*,483 U.S. 635, 640 (1987)).

Plaintiffs' argument lacks a case that is binding on this court or that would classify any alleged rights as clearly established at the time of the incident. To the contrary, the Eleventh Circuit's ruling in *Young* suggests the exact opposite, that an individual's rights are not clearly established when they point a gun at officers, even if they are in their own home. *See Young*, 850 F.3d at 1281.

3. Deputy Watson's actions were reasonable.

Finally, Deputy Watson's actions may qualify as reasonable if he had probable cause, under the totality of circumstances, to believe the individual posed a threat. *Garner*, 471 U.S. at 11 The question as to whether an officer had probable cause to seize an individual depends on, "as the very name implies, … probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act." *Illinois v. Gates*, 462 U.S. 213, 231 (1983) (quoting *Brinegar v. United States*, 338 U.S. 160,

176 (1949)) (internal quotations omitted). As such, "probable cause is a fluid concept—turning on the assessment of probabilities in particular factual contexts." *Id*. at 232.

As the Eleventh Circuit emphasized in *Young*, the facts of cases involving the split-second decisions of officers confronted by a dangerous, and potentially deadly, set of circumstances are unique to the particular facts of that case. *Id.* Thus, the time of day that officers arrived at Mr. Jordan's house, the proximity of Plaintiff's home to an elementary school, and the loud music emanating from Plaintiff's home are all unique factors that contributed to the unique circumstances surrounding Deputy Watson's actions. Thus, not only were any alleged rights not clearly established at the time of the incident, but Deputy Watson's actions cannot be classified as unreasonable because there are not facts analyzed by this court, the Eleventh Circuit, or the Supreme Court that suggest such actions were unreasonable.

B. Whether under a notice or plausibility standard, this court should not strike Defendant's claim to qualified immunity because it provides Plaintiff with "Fair Notice" of its basis.

Affirmative defenses need to be stated in "short and plain terms." Fed. R. Civ. P. 8(b). To be properly pled, an affirmative defense needs to provide the plaintiff with "fair notice" of its "nature and grounds." *L.F. v. City of Stockton*, 2018 U.S. Dist. LEXIS 135599, at *4 (E.D. Cal. 2018) (citation and internal quotation omitted).

Further, an affirmative defense as "well-known" and "well-established" as qualified immunity can provide fair notice "without additional factual bases." *Id.*

At issue here is Defendant's sixth defense for qualified immunity. Iterations of this exact defense have been well received by courts operating under the "fair notice" pleading standard. *See L.F. v. City of Stockton*, 2018 U.S. Dist. LEXIS 135599, at *19 (E.D. Cal. 2018) (collecting cases of courts refusing to strike similarly states claims of qualified immunity); *Tardif v. City of New York*, 302 F.R.D. 31, 35 (S.D.N.Y. 2014). In *L.F.*, the court did not strike defendants' short assertion of "qualified immunity," despite a lack of "additional factual bases," because the defense is "a familiar, well-established defense in civil rights actions against police officers." *L.F. v. City of Stockton*, 2018 U.S. Dist. LEXIS 135599, at *19 (E.D. Cal. 2018). And in *Tardif*, the court denied the plaintiff's motion to strike an affirmative defense which stated "[t]he individually named defendants have not violated any clearly established constitutional or statutory right of which a reasonable person would have known and, therefore they are entitled to qualified immunity from liability." *Tardif v. City of New York*, 302 F.R.D. 31, 35–36 (S.D.N.Y. 2014) (citation and internal quotations omitted). The court did so because this assertion of qualified immunity gave the plaintiff "fair notice of the nature of the defense"—all that is required by Rule 8(c)—and because it raised "questions of fact and law that might allow the defense to succeed." *Id*. at 36. When comparing

what the instant Defendant has pled with what other courts accept, it is clear that Plaintiff's motion to strike should be denied.

Further, the viability of Defendant's sixth defense does not change even under the plausibility standard Plaintiff requests this Court to adopt. Although one court of appeals has extended the *Twombly* and *Iqbal* standard to affirmative defenses, it even cautioned that the application is a "context-specific task." *See GEOMC Co. v. Calmare Therapeutics Inc.*, 918 F.3d 92, 98 (2d Cir. 2019) (internal quotations omitted). As in *Iqbal*, this Court is "impelled to give real content to the concept of qualified immunity for high-level officials who must be neither deterred nor detracted from the vigorous performance of their duties." in this analysis. *Id.* (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 686 (2009)). So, a heightened standard of pleading—especially one as important to government functions as qualified immunity—requires a relaxation of the "degree of rigor appropriate for testing the pleading of an affirmative defense" when compared to testing that of a complaint. *Id.* Unlike Plaintiff, who had "the entire statute of limitations" to file a complaint, Defendant had a 21-day window. *Id.*

For two reasons, the plausibility of qualified immunity in this case is more than sufficient because Plaintiff has "fair notice of the nature of the defense." *See Lawrence v. Chabot,* 182 Fed. Appx. 442, 456 (6th Cir. 2006) (citation omitted). First, plaintiff's own complaint alleges many of the facts supporting assertions that

Defendant acted reasonably and without violating the decedent's rights. Specifically, the decedent's music had generated a noise complaint the officers were investigating, and the decedent was in fact armed with a gun. Plaintiff Complaint ¶ 11, 17. Second, Florida law outlines various situations for the "Justifiable Use of Force," Fla. Stat. § 776 et. seq (Lexis 2019) and the defendant gave notice of these laws to the plaintiff in defense directly preceding its qualified immunity claim. Defendant Answer ¶ 5.

II. The Federal Rules of Evidence Require This Court to Exclude Plaintiff's Expert Witness Testimony As Irrelevant under Rule 401, Unreliable And Unhelpful under Rule 702, And Substantially Less Probative Than Prejudicial under Rule 403.

Under the Federal Rules of Evidence, the Court finds evidence to be irrelevant and therefore inadmissible if it is not "probative of the proposition it is offered to prove and the proposition is not of consequence to the determination of the facts." Fed. R. Evid. 401; *U.S. v. Troya*, 733 F. 3d 1125, 1131 (11th Cir. 2013). Additionally, expert testimony is inadmissible if it is neither reliable nor helpful to the trier of fact. Fed. R. Evid. 702. Furthermore, even relevant evidence may be deemed inadmissible and subject to exclusion if "its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." Fed. R. Evid. 403.

A. Dr. Edwards' testimony on racial bias is not relevant under Federal Rule of Evidence 401 because racial bias is not a material issue raised by Plaintiff.

Evidence is relevant if it "has any tendency to make a fact more or less probable than it would be without the evidence; and the fact is of consequence in determining the action." Fed. R. Evid. 401. "The fact to which the evidence is directed does not need to be in dispute." *Id.* However, the evidence offered must be "probative of the proposition it is offered to prove and the proposition must be one that is of consequence to the determination of the action." *Troya*, 733 F. 3d at 1131; *see also U.S. v. Howard*, 373 Fed. Appx. 21, 25 (11th Cir. 2010) (holding that evidence of acquittal was irrelevant because it does not prove innocence, which was of consequence in determining the action).

Here, Dr. Edwards' testimony on racial bias within the Midland Sheriff's Department is not relevant and is therefore inadmissible. As the Eleventh Circuit has clearly held, proffered evidence is considered relevant when the proposition offered is probative and one that is of consequence to the determination of the action. *Troya*, 733 F. 3d at 1131. Here, Plaintiff has not asserted a claim for which racial bias is probative for anything "of consequence to the determination of" Plaintiff's § 1983 action *Id.* at 1131. Furthermore, Plaintiff has not asserted that Defendant was reckless, indifferent, or negligent on the basis of race. Dr. Edwards' proffered

testimony is not probative and does not address a proposition that is of consequence to the determination of the action, and therefore must be excluded.

B. Dr. Edwards' expert testimony on racial bias is not admissible under Federal Rule of Evidence 702 because his testimony is neither reliable nor helpful to the trier of fact.

Even if this Court finds that Dr. Edwards' testimony is relevant under Rule 401, this Court should still find his testimony inadmissible under Rule 702 because it is unreliable and does not assist the trier of fact. An expert's opinion testimony is admissible when the witness is qualified as an expert by their knowledge, skills, experience, training, or education. Fed. R. Evid. 702. Expert opinion testimony must also help the trier of fact to understand or determine a fact in issue. *Id*. The testimony has to be based on sufficient facts or data and must be the product of reliable principles and methods. *Id*. Finally, the expert must have reliably applied the principles and methods to the facts of the case in question. *Id*. Trial court Judges serve as the gatekeepers and their functions require "more than simply taking an expert's word." *See Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 43 F. 3d 1311, 1316 (9th Cir. 1995); *see also U.S. v. Frazier*, 387 F. 3d 1244, 1261 (11th Cir. 2004). When evaluating the reliability of expert opinions, a trial judge must assess whether the reasoning or methodology underlying is valid and whether they can be applied to the facts in issue. *Daubert v. Merrell Dow Pharmaceuticals, Inc.* 509 U.S. 579, 590 (1993). Nonetheless, the admissibility of expert testimony depends on whether

the proffered testimony concerns matters that are beyond the understanding of the average lay person. *Frazier*, at 387 F. 3d at 1262; *see also United States v. Rouco*, 765 F. 2d 983, 995 (11th Cir. 1985) (holding expert testimony to be admissible if it offers knowledge beyond that of an average citizen).

The Eleventh Circuit has previously held that expert testimony must assist the trier of fact and must be more than an argument made by lawyers at closing argument. *Frazier*, at 387 F.3d at 1262–63. *Frazier* addressed whether a "forensic investigator's testimony about the recovery of inculpatory hair or seminal fluid being 'expected'" was admissible as expert testimony under Rule 702. *Id.* at 1254. The court regarded the forensic investigator as a qualified expert in the field through a three-part inquiry. *Id.*at 1261. The admissibility of an expert's opinion testimony must consider the expert's "qualifications", the methodology's "reliability" and the "helpfulness" to the trier of fact. *Id*. In *Fraizer*, the court found that the forensic investigator's opinion would be unreliable and not assist the trier of fact because his testimony did not concern matters that are beyond the understanding of the average person. *Id.*at 1263–66; *see also Hull v. Merk & Co., Inc.,* 758 F. 2d 1474, 1477 (11th Cir. 1985) (finding the expert's testimony inadmissible because of its "speculative" nature); *General Electric Company v. Joiner*, 522 U.S. 136, 146 (1997) (finding that there was "simply too great an analytical gap between data and the opinion proffered for the expert opinion to be admissible.")

Furthermore, the admissibility of expert testimony proffering statistical data under Rule 702 must consider all factors pertinent in the case. *Martin v. City of Atlanta, Ga*, 579 Fed. Appx. 819, 827 (11th Cir. 2014). The court in *Martin*, considered whether an expert's racial statistics were admissible evidence under Rule 702. *Id.* at 826. The trial judge evaluated the expert testimony offered and found that it was not reliable or relevant for trial "because it did not take into account the panel interviews that . . . resulted in the rankings of the candidates." *Id*. Ultimately, the court found that the lack of inclusion of all key factors "discredits the reliability of the" proffered expert statistical study. *Id.*

In the instant case, Dr. Edwards' testimony would not assist the trier of fact. As addressed above, the Eleventh Circuit has found that an expert's testimony should be found inadmissible if too "speculative in nature" or requires a "great analytical gap between the data and proffered opinion." *Joiner*, 522 U.S. at 146; *Hull*, 758 F. 2d at 1477. Here, Dr. Edwards' testimony would require the jury to speculate and confront a great analytical gap between his national statistical study and the actual mindsets of the officers in this case. Without more individualized data and analysis, the Rules of Evidence prohibit such testimony. Additionally, the concept of racial bias does not require expert opinion testimony as it does not concern matters beyond an average person's understanding.

Furthermore, Dr. Edwards' expert testimony is inadmissible because the racial statistical study conducted does not include all key facts present in the immediate case. Similar to the expert in *Martin,* Dr. Edwards did not consider all the key facts present in this case while conducting his statistical study of the racial bias found within the Midland Sheriff's Department. Dr. Edwards' did not include victims that were found with a weapon; he only considered race, age, and type of offense. We argue that the presence of a weapon is a key fact in the case at hand. The failure to include such a key factor in the statistical study would discredit Dr. Edwards' testimony and result in a finding of unreliability, and therefore, must be excluded as inadmissible expert testimony.

C. Dr. Edwards' expert testimony on racial bias is not admissible under Federal Rule of Evidence 403 because the probative value of his testimony is substantially outweighed by unfair prejudice.

Should this Court find Dr. Edwards' expert testimony to be relevant under Rule 401 and admissible under Rule 702, this Court should still exclude his testimony under Rule 403 because its probative value is substantially outweighed by unfair prejudice. Under Rule 403, even relevant evidence may be deemed inadmissible and subject to exclusion if "its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting

cumulative evidence." Fed. R. Evid. 403; *see also United States v. Moore*, 651 F.3d 30, 63 (D.C. Cir. 2011).

A court has "broad discretion to weigh the extent of potential prejudice against the probative force of relevant evidence." *Sprint/United Mgmt. Co. v. Mendelsohn*, 552 U.S. 379, 384 (2008). To determine whether to exclude evidence under the rule, courts must "engage in on-the-spot balancing of probative value and prejudice and ... exclude even factually relevant evidence when it fails the balancing test." *Moore*, 651 F.3d at 63 (internal quotation marks omitted) (quoting *Sprint/United Mgmt. Co.*, 552 U.S. at 384). This balancing test "requires a fact-intensive, context-specific inquiry." *Id.* at 388. Importantly, "'[u]nfair prejudice' within [the Rule 403] context means an undue tendency to suggest decision on an improper basis, commonly, though not necessarily, an emotional one." *United States v. Ring*, 706 F.3d 460, 472 (D.C. Cir. 2013) (quoting Fed. R. Evid. 403 advisory committee's notes). Where, as here, a party seeks the admission of expert testimony into evidence, the "required analysis [under Rule 403] is context-specific and must be made on a case-by-case basis." *Amobi v. Brown*, 317 F. Supp. 3d 29, 40 (D.D.C. 2018).

In the present case, Dr. Edwards' expert testimony on racial bias within the Midland Sheriff's Department is more prejudicial than probative. Dr. Edwards' expert testimony serves no other purpose than to inflame the jury with racial animus and divert it from deciding the case on the relevant evidence concerning the central

legal questions because it does not seek to address a proposition that is of consequence to the determination of the action. It therefore unfairly prejudices and misleads the jury. The probability of a decision being rendered through an improper basis would increase, which is the antithesis of what Rule 403 was designed to achieve.

Further, because Plaintiff has not asserted a claim that would implicate racial bias, Dr. Edwards' expert testimony has no probative value. It therefore brings undue delay, wastes time, and needlessly presents irrelevant evidence. For these reasons, the risks of prejudicing, misleading, and delaying the jury substantially outweigh the probative value of Dr. Edwards' expert testimony on racial bias within the Midland Sheriff's Department, which therefore must be excluded as inadmissible expert testimony.

CONCLUSION

For the foregoing reasons, this Court should deny Plaintiff's Motion to Strike Defendant Eric Watson's Affirmative Defense of Qualified Immunity and grant Defendant's Motion in Limine to Exclude Plaintiff's Expert Witness Frank Edwards, PhD.

Respectfully Submitted,

/s/ Team 1234

Attorneys for Defendants