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**IN THE CIRCUIT OF THE THIRTIETH JUDICIAL CIRCUIT,
IN AND FOR MIDLAND COUNTY, FLORIDA**

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

CASE NO. 2020-CV-000319

Plaintiff,

v.

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

Defendants.

THE DEFENDANT'S SUPPLEMENTAL MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION TO STRIKE AND IN SUPPORT OF DEFENDANT'S MOTION IN LIMINE

/s/6000D

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Attorneys for the Defendants

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INTRODUCTION

This supplemental memorandum of law arises out of two separate Motions filed by both the Plaintiff Sheryl Jordan, as Personal Representative of the Estate of David Jordan, Jr. ("Jordan")'s and Defendant Deputy Eric Watson, respectively. Watson requests that this Court (1) deny Plaintiff's Motion to Strike Watson's qualified immunity defense, and (2) grant Defendant's Motion to Exclude testimony from Frank Edwards.

First, Plaintiff's Motion to Strike Defendant Eric Watson's Affirmative Defense of Qualified Immunity should be denied. Deputy Eric Watson categorically denies the allegations that he violated clearly established law and violated the Constitutional rights of Jordan under Fourth and Fourteenth Amendments. Therefore, he is entitled to rely on the defense of Qualified Immunity for his lawful actions.

Second, Defendant Eric Watson's Motion in Limine to prohibit the testimony at trial of Plaintiff's expert witness, Frank Edwards, Ph.D. should be granted. Edwards' methodology fails to meet the standard of reliability demanded by Rule 702 of the Federal Rules of Evidence and the precedent set by *Daubert v. Merrell Dow Pharmaceuticals, Inc*., because he fails to account for obvious alternative explanations or follow the standard method he uses in his research outside this

litigation. 509 U.S. 579 (1993). Further, his conclusion fails to make any material fact more or less probable, which violates Rule 401, and any possible probative value is substantially outweighed by its unfair prejudice, in violation of Rule 403.

For the reasons set forth below, Defendant Deputy Eric Watson asks this Court to deny the Plaintiff's Motion to Strike because Plaintiff is not likely to succeed in showing the defense is legally insufficient. Furthermore, Defendant Deputy Eric Watson asks this Court to grant the Motion in Limine because the testimony would violate Federal Rules of Evidence 702, 401, and 403.

STATEMENT OF FACTS

On February 14, 2019, Deputy Eric Watson responded to his first call of the day at a residence in a "high crime" part of town. Watson Aff. ¶ 7,12-13. Around 3:00PM, Watson and his younger partner, Deputy Eddie Rivera, responded to a noise disturbance for loud, vulgar music blaring across the street from an elementary school where children were outside playing. *Id.* at ¶ 14.

When they arrived in their sheriff uniforms and squad cars, the music was so loud that Watson could hear the explicit lyrics with his windows rolled up and his police radio on. *Id*. at ¶ 18-19. Watson approached the front door and banged on it with his fists, then knocked again on the side door with his police baton, both with no response. *Id*. at ¶ 21-23. As Watson returned to where Rivera was standing a few

feet in front of the front door, he heard the music get louder as a young African-American male, David Jordan, opened the front door wide enough for Watson to see into the foyer. *Id*. at ¶ 24-26.

Deputy Watson saw that Jordan had something small and dark in his right hand. *Id*. at ¶ 26, 31. Rivera identified the object as a gun and jumped back, fearing for his life. Rivera Aff. ¶ 31, 34. Watson heard Rivera screaming over the music, at the top of his lungs: "Gun! Gun! Drop the gun!" Watson Aff. ¶ 27. Watson drew his service weapon just as Jordan looked in his direction. *Id.* at ¶ 31. Jordan started shutting the door and raised his right hand holding what Rivera and Watson both believed to be a gun. *Id*. Believing that Jordan was going to shoot Rivera through the door, or potentially the elementary school children across the street, Watson fired four shots at Jordan as he pulled the door closed. *Id*. at ¶ 33. This was Watson's first time shooting someone in his 20 years of service. *Id*. at ¶ 39. A small, stolen handgun was recovered on Jordan's person at the scene. *Id*. at ¶ 55-56. By drawing a weapon on Rivera, Jordan committed the crime of aggravated assault on a peace officer, authorizing Watson to take protective action. *Id*. at ¶ 59. Jordan did not survive the encounter. His estate filed this action against Deputy Watson. Plaintiff moves to strike his defense of qualified immunity on the basis that Watson, a Caucasian officer, failed to act reasonably and deprived Jordan of his Constitutional rights.

Plaintiff attempts to present testimony from Frank Edwards, a sociologist who studies of the effect of social structures on relationships between family and state. Edwards Aff. ¶ 3. In his limited research into risk of death to minorities following police interaction, Edwards refrains from relying only on official police records and instead utilizes data from Fatal Encounters, a journalist-led effort to collect accurate accounting for police encounters. Edwards, *Risk of Being Killed by Police Use of Force in the United States by Age, Race-Ethnicity, and Sex* (2019). Noting that the issue is a "multilevel problem," Edwards and his co-authors refrain from making any conclusions about officer intent because they acknowledge that this study fails to account for other external factors that "intersectionally structure exposure to violence," like social class, place, gender, and age. *Id.*

In preparing his study on the Midland County Sherriff's Department, Edwards defined his relevant case files as follows: stops involving Caucasian officers, in which the officer drew their weapon, pursuant to a misdemeanor or ordinance violation, and between 2016 and 2019. Edwards Aff. ¶ 6-7. Of the 650 cases that matched his parameters, Edwards arbitrarily selected 350, evaluated the detainee's race and age, and concluded that the department faced rampant implicit racial bias. *Id.* at ¶ 7-8. Of the instances a Caucasian officer drew their weapon, 77% of suspects were African-American and 33% Caucasian. *Id.* at ¶ 8. Deputy

Watson moves to exclude this testimony on the grounds that it violates Federal Rules of Evidence 702, 401, and 403.

ARGUMENT

I. THIS COURT SHOULD DENY PLAINTIFF'S MOTION TO STRIKE BECAUSE DEFENDANTS' AFFIRMATIVE DEFENSE OF QUALIFIED IMMUNITY IS LEGALLY SUFFICIENT.

Plaintiff claims Defendant Deputy Watson's affirmative defense of Qualified Immunity is an insufficient defense. However, a Rule 12(f) motion to strike should only 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." *Williams v. Jader Fuel Co.*, 944 F.2d 1388, 1400 (7th Cir. 1991). "Rule 12(f) motions are generally viewed with disfavor because striking a portion of a pleading is a drastic remedy." *Waste Mgmt. Holdings, Inc. v. Gilmore*, 252 F.3d 316, 347 (4th Cir. 2001). Moreover, Rule 12(f) motions are "not a good fit for resolving issues like qualified immunity which often turn on facts yet to be developed." *Atkins v. Pickard*, 298 F. App'x 512, 513 (7th Cir. 2008).

"The doctrine of qualified immunity shields officials from civil liability so long as their conduct 'does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" *Mullenix v. Luna*, 136 S. Ct. 305, 308 (2015) (quoting *Pearson v. Callahan*, 555 U.S. 223, 231 (2009)). If a

defendant invokes qualified immunity, the plaintiff has the burden to show that (1) the defendant violated a constitutional right and (2) this right was clearly established at the time of the defendant's challenged conduct. *See Pearson*, 555 U.S. at 232.

In order to make out a claim under §1983, Plaintiff must first demonstrate that he was deprived of a right secured by the Constitution or laws of the United States. Plaintiff claims both his Fourth and Fourteenth Amendment rights were violated by Defendants. However, Deputy Watson's actions were objectively reasonable under the circumstances and therefore not violative of Jordan's Fourth Amendment rights. Furthermore, Deputy Watson did not deprive Plaintiff's life without due process and therefore neither violated his Fourteenth Amendment rights. Thus, Plaintiff's motion to strike Defendants' affirmative defense of qualified immunity for all claims made under §1983 should be denied.

A. Neither Jordan's Fourth nor Fourteenth Amendment Rights Were Violated by Deputy Eric Watson.

i. Deputy Watson's Actions were Objectively Reasonable and Therefore were not Violative of Plaintiff's Fourth Amendment Rights.

In order to overcome qualified immunity for excessive force, a plaintiff must establish a clear violation of his Fourth Amendment rights. "Claims of excessive force are analyzed under the objective reasonableness standard of the Fourth Amendment." *Graham v. Connor*, 490 U.S. 386, 395 (1989). "[I]t is reasonable for

police to move quickly if delay would gravely endanger their lives or the lives of others. This is true even when, judged with the benefit of hindsight, the officers may have made some mistakes. The Constitution is not blind to the fact that police officers are often forced to make split-second judgments." *City & Cty. of San Francisco, Calif. v. Sheehan*, 575 U.S. 600 (2015).

In *Graham*, the Supreme Court noted three nonexclusive factors for determining whether a particular use of force was excessive: (1) "the severity of the crime at issue," (2) "whether the suspect poses an immediate threat to the safety of the officers or others," and (3) "whether he is actively resisting arrest or attempting to evade arrest by flight." 490 U.S. at 396. The "'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Id.* Although the first and third factors can be significant in certain cases, the second factor—whether there is an immediate threat to safety— "is undoubtedly the most important . . . factor in determining the objective reasonableness of an officer's use of force." *Pauly v. White*, 874 F.3d 1197, 1216 (10th Cir. 2017).

On the first *Graham* factor, although Defendants do not dispute the severity of the initial reason for Deputy Rivera and Watson's arrival at Plaintiff's residence was for a minimal noise disturbance, the Plaintiff committed a criminal act when he raised his gun in Deputy Rivera's direction and threatened his life. Thus, this

incident elevated from a minor noise disturbance to the crime of aggravated assault against a police officer, a severe crime that unequivocally warranted the use of deadly force.

On the second *Graham* factor, it cannot be contested that Jordan presented an immediate threat to both the officers and children located at the scene, which made the officer's reasonable force necessary. In *Estate of Valverde v. Dodge*, the court held the officer was reasonable in believing the suspect was going to fire his gun at the officer or other officers at the time. 967 F.3d 1049 (10th Cir. 2020). The court concluded the officer's belief was reasonable based on the determination that the officer saw the barrel of a gun as the suspect pulled it from his waistband or pocket. *Id.* The officer fired immediately. *Id.* The sound of his first shot was less than a second after the suspect pulled out his gun. The sound of his last shot was a mere second after the first. *Id.*

The case at hand directly parallels with *Dodge*. Deputy Watson needed to make a split-second decision in order to protect his partner at the time Jordan began to raise his arm with the gun in hand toward Deputy Rivera. As Jordan began to close the door, he simultaneously raised his right arm with what the officers undoubtedly believed to be a gun in his hand toward Deputy Rivera. Deputy Watson, believing Jordan was going to shoot Deputy Rivera through the door, instantly fired his weapon at Jordan. Deputy Watson was well-aware of the possibility that Jordan

could have fired his weapon even when Jordan was behind the closed door, heightening the probability that Deputy Rivera would get hit based on the inability to see where the potential shots were coming from. Even if Jordan missed Deputy Rivera, there were 50 children behind the officers that could have been injured. Jordan's hostile motion gave rise to Deputy Rivera's lawful authority to defend Deputy Rivera's life.

Finally, in regard to the third *Graham* factor, and as already established, by Jordan closing the door while raising his arm with the gun in hand, he was threatening the officer's life. Deputy Watson reasonably believed he had to shoot Jordan in order to prevent his escape and, more importantly, to save his partner and the school children's lives. Deputy Watson's use of deadly force was certainly constitutionally permissible because a reasonable officer in his situation would have believed deadly force was warranted under the circumstances.

ii. Deputy Watson Did Not Deprive Plaintiff of Life Without Due Process of Law.

Plaintiff first alleges that by the shooting, Deputy Watson violated his Fourteenth Amendment right against deprivation of life without due process of law. Defendants do not contest whether Plaintiff suffered a deprivation of life, therefore the issue turns on whether the deprivation was incurred absent due process.

The due-process clause of the Fourteenth Amendment was intended to protect individuals from the abusive and arbitrary exercise of power, not from the mere accidental effects of lawful actions. *See Daniels v. Williams*, 474 U.S. 327, 333 (1986). Instead, only government behavior that "shocks the conscience," or "offend[s] even hardened sensibilities" transgresses the bounds of substantive due process. *Rochin v. California*, 342 U.S. 165, 172 (1952).

What constitutes "conscience-shocking" behavior depends on the circumstances of the particular case. For police officers who are expected to act quickly and decisively in dangerous circumstances to protect themselves and the citizenry, the range of constitutionally permissible actions is somewhat greater than for those state actors who have more time for reasoned calculation. *See County of Sacramento v. Lewis*, 523 U.S. 833, 852–53 (1998). In making this determination, the court balances a number of factors, including "the need for the application of force, the relationship between the need and the amount of force that was used, the extent of the injury inflicted, and whether force was applied in a good faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing harm." *Johnson v. Glick*, 481 F.2d 1028, 1033 (2d Cir. 1973); *Ellison v. City of Montgomery*, 55 F. App'x 900 (11th Cir. 2002).

The Fourteenth Amendment does not require police officers take every possible step to prevent the use of force or even that they use the minimum degree

of force possible to serve their purposes. *See O'Neal v. DeKalb County, Georgia*, 850 F.2d 653, 656 (11th Cir. 1988). This is not a case in which police officers opened fire on an unarmed or nonthreatening citizen or in which their use of force was excessive or unnecessary. Rather, Deputy Rivera saw Jordan holding a gun within a few feet of him, shouted loudly to his partner alerting Deputy Watson to the weapon, shouted directly to Jordan to drop the gun while in full uniform, and ultimately it wasn't until Jordan started to raise his arm in Deputy Rivera's direction that Deputy Watson resorted to deadly force in order to protect Deputy Rivera. To wait to see what Jordan would do with the weapon could have be fatal. Therefore, Deputy Watson's actions do not establish the existence of a constitutional violation.

B. Deputy Watson Did Not Violate Clearly Established Law in that his Conduct Was Unconstitutional.

To rebut the presumption of qualified immunity, however, Jordan must also successfully establish that the constitutional right was clearly established. "The salient question" is whether the law gave Defendant "fair warning" that his conduct was unconstitutional. *Hope v. Pelzer*, 536 U.S. 730, 740-41 (2002). There are three ways for Plaintiff to prove that a right is clearly established: "(1) case law with indistinguishable facts clearly establishing the constitutional right; (2) a broad statement of principle within the Constitution, statute, or case law that clearly establishes a constitutional right; or (3) conduct so egregious that a constitutional

right was clearly violated, even in the total absence of case law." *Lewis v. City of West Palm Beach*, 561 F.3d 1288, 1291-92 (11th Cir. 2009). None of these situations fit the case at hand.

To the contrary, several Circuit cases support Defendants' actions. In *Anderson v. Russell*, the officers ordered a detainee to his hands and knees, and then shot him when he reached for a bulge in his waistband that turned out to be a radio. 247 F.3d 125 (4th Cir. 2001). In an earlier decision from the same court, *McLenagan v. Karnes*, a bystander was shot as he ran toward a police officer moments after the officer learned that an armed arrestee was on the loose in the area. 27 F.3d 1002 (4th Cir. 1994). Additionally, in *Slattery v. Rizzo*, an officer shot a suspect who ignored commands to show his hands before turning quickly toward the officer with what turned out to be only a beer bottle in a clinched fist. 939 F.2d 213 (4th Cir. 1991). In each of these cases, the court held the officers were entitled to qualified immunity, despite the suspects' lack of wielding a weapon. If deadly force was justified in such circumstances, it is even more appropriate in this setting, where Jordan raised a handgun toward Deputy Rivera.

Finally, in *Pauly v. White*, the Tenth Circuit granted the defendant qualified immunity because the court could not "identify a case where an officer acting under similar circumstances as Officer White was held to have violated the Fourth Amendment." 874 at 1222-23 (10th Cir. 2017). Similarly, Plaintiff is unable to point

to any established law that would give Deputy Watson "fair warning" that his actions were unconstitutional. Thus, Deputy Watson did not violate a clearly established constitutional right.

II. THIS COURT SHOULD EXCLUDE THE TESTIMONY OF FRANK EDWARDS BECAUSE ITS ADMISSION WOULD VIOLATE FEDERAL RULES OF EVIDENCE 702, 401, AND 403.

Expert testimony is admissible when its proponent shows that, by preponderance of evidence, "the technical issues and policy concerns addressed by the Federal Rules of Evidence have been afforded due consideration." *Bourjaily v. United States*, 483 U.S. 171, 175 (1987). Frank Edwards' testimony violates rule 702 because it is founded on unreliable principles and methods. Fed. R. Evid. 702. Moreover, it fails to make any material fact more or less probable in violation of rule 401, and would result in unfair prejudice in violation of rule 403. Fed. R. Evid. 401, 403. Since admission of this testimony would violate rule 702, 401, and 403, Defendant requests that this Court exclude it.

A. Edwards' Testimony Violates Rule 702 because It Uses Unreliable Scientific Methods.

Expert testimony pursuant to rule 702 is subject to the standard of reliability set forth in *Daubert v. Merrell Dow Pharmaceuticals, Inc*.: it must be based on reliable scientific principles and methods, evaluated using a number of non-exclusive factors. 509 U.S. 579 (1993). These factors should be applied broadly,

though some experts like a sociologist may not "neatly" fit the *Daubert* mold. *Id.; see also Tyus v. Urban Search Management*, 102 F.3d 256 (7th Cir. 1996). Because Edwards' testimony fails to account for obvious alternatives and was prepared specifically for the litigation without the same due care he uses in his other research, it fails to meet the *Daubert* standard and should be excluded.

i. Edwards Fails to Adequately Account for Obvious Alternative Explanations.

Experts utilize unreliable methods when they fail to account for other significant controlling alternatives. *See, e.g., General Elec. Co. v. Joiner*, 522 U.S. 136, 146 (1997); *Sheehan v. Daily Racing Form, Inc.*, 104 F.3d 940, 942 (7th Cir. 1997) (excluding expert statistical testimony in an age discrimination case because the data sample was "arbitrary" and failed to account for other non-discriminatory reasons, like technology literacy, for which younger employees may be preferred to older candidates); *American Homeland Title Agency, Inc. v. Robertson,* 348 F.Supp.3d 852, 866 (S.D.Ind., 2018) (excluding testimony from a statistician regarding improperly-assessed fines on out-of-state companies because of his failure to account for other obvious variables, like companies' compliance with investigation, severity of conduct, and potential negotiations).

Edwards' testimony regarding the Midland County Sherriff's Department is fundamentally unreliable. Edwards narrows the initial data provided by the department and based on the following parameters: 1) stops for misdemeanors or

ordinance violations, 2) involving a Caucasian officer, 3) where that officer drew their weapon, and 4) occurring between 2016-2019. Of the 650 files remaining, Edwards arbitrarily pares down to 350, and from there only evaluates the detainee's race and age. He concludes that, of the instances a Caucasian sheriff had to draw their weapon during a stop, 77% of the suspects were African-American and 33% Caucasian, therefore proving implicit racial bias. Edwards makes the same mistake as the statisticians in *Sheehan* and *American Homeland*. His conclusion lacks consideration for other variables that could produce this result *besides* his proposed implicit racial bias. He only analyzes stops involving Caucasian officers, eliminating any context as to how often officers of other races interact with African-American suspects. Not only that, but Edwards' analysis only considers stops where officers drew their weapon – there is no consideration for the added step of *firing* their weapon. Edwards fails to address either of these shortfalls.

In fact, Edwards fails to account for *any* other considerations that permissibly effect an officer's reasonable suspicion or decision to use force, such as: whether the suspect was armed, whether the suspect escalated the encounter, suspect's prior criminal history, the location of stop in a high-crime area, race and age distribution of individuals frequently arrested for committing crimes, or the officer's own training and experience. This method of taking an inherently narrow filter on a data

set comprised of many moving parts is rejected in *General Electric* and *Sheehan*, and as such this court exclude it.

ii. Edwards' Testimony About the Midland County Sherriff's Department Failed to Follow the Method Used in His Outside Research.

Daubert and subsequent cases stress the inherent conflict of scientific data prepared in anticipation of litigation. *See Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999). A reliable expert must demonstrate that he is being "as careful as he would be in his regular professional work outside his paid litigation consulting." *Sheehan*, 104 F.3d at 942; *contra Tyus*, 102 F.3d at 263 (admitting expert testimony from a sociologist that "[met] the [appropriate] standards of intellectual rigor" for analytical gaps between a New York study of white-based advertising's effect on African American homebuyers as applied to a Chicago action for violating the Fair Housing Act).

Edwards' Sheriff's Department study fails on this front because it departs from his normal research regarding race correlation with police activity. Edwards fails to live up to the comparison set forth in *Tyus*, where the expert adequately made equal comparisons in claims for violating Fair Housing Act by replicating his study of New York and applying it to Chicago. Instead, Edwards takes his underlying hypothesis – that police violence is racially motivated – and manipulates the data provided by the Sherriff's Department to fit the same narrative. It is worth noting

that Edwards' primary focus in his professional life does not address police issues; rather, the bulk of his publications and presentations focus on economic and childcare issues. In his limited research on use of force, he studies *mortality* rates of minority individuals as a result of police interaction, not whether the officer drew his weapon. He utilizes data from Fatal Encounters, a national journalist-led effort to collect these statistics, and cautions *against* using official records for being "limited." The scope of this research is not limited by the officer's race, police department, nature of underlying crime, or any of the other parameters Edwards lists in his sworn statement.

Even then, Edwards and his co-authors acknowledge that their findings fail to consider external factors like social class, place, gender, and age "intersectionally structure[ing] exposure to violence." Because it is inherently a "multilevel problem," Edwards in his outside research fails to make any conclusive statement that higher death rate of minorities in police activity is an *exclusive* result of the officers' racial bias. Rather, his studies are more fairly described as assessing the risk of death to minorities, not establishing racial bias as a motive. In contrast with his findings in this litigation, it is clear he does not use the same principles and methods as he uses in his outside research. Because of this, and the lack of accounting for external variables, the court must exclude Edwards' testimony as unreliable and in violation of *Daubert* and rule 702.

B. Edwards' Testimony Should be Excluded because It Is Irrelevant, Its Prejudice Outweighs Any Probative Value, and because the Trial Court has a Duty to Shield the Jury from Unreliable Expert Testimony.

Admissible evidence must have a tendency to make any material fact more or less probable than it would be without the evidence. Fed. R. Evid. 401. If the prejudicial effect of the evidence substantially outweighs its probative value, the trial court should exercise its discretion to exclude it. Fed. R. Evid. 403. Because Edwards' testimony is largely speculative and has a tendency to mislead the jury as to its significance, the court should exercise its authority under *Daubert* to exclude it.

i. Edwards' Testimony is Irrelevant Because it is Too Speculative of Watson's Intent.

While Plaintiff claims that Edwards' testimony is probative that officer Watson acted unreasonably in choosing to fire his weapon due to implicit racial bias, it fails to live up to logical scrutiny. *See Karlo v. Pittsburgh Glass Works, LLC,* 849 F.3d 61, 84–85 (3d Cir. 2017) (excluding expert overbroad expert testimony because "population-wide statistics have only speculative application to [the individual defendant].") The Midland County research, at best, shows a *correlation* between race and police action, but fails to show any sort of *causation*. It is not probative of the officer's intent when Edwards even admits that there are many other factors at play. Under his speculation, a Caucasian officer could *never* use force against an

African-American suspect without the implication that he acted in bad faith. Because this evidence does not make it more or less probable that Watson acted reasonably, it is not relevant to this action and should be excluded.

ii. Any Probative Value In Edwards' Testimony Is Substantially Outweighed By Its Tendency To Mislead The Jury About The Reliability Of His Statements And Confuse The Issue Of Good Faith With Racial Bias.

If the Court does find that there is probative value in Edwards' Midland County testimony, that potential probative value is substantially outweighed by its tendency to mislead the jury and potential to confuse the issues. First, Edwards is only qualified to testify as an expert if he follows his standard methodology, which he has failed to do. It is misleading to present Edwards' research to the jury as being authoritative when there are fundamental flaws to his method as applied to this litigation. There is inherent risk of a jury giving undue weight to testimony presented as "expert" in this context. Second, yielding an emotionally-charged conclusion about the role race plays in police interaction, particularly given the current newsworthiness of police brutality, is likely to confuse the issue when it is only speculatively relevant at best. As such, the prejudice of Edwards' testimony far outweighs by any probative value, and therefore it should be excluded.

iii. Because Any Potential Probative Value Is Substantially Outweighed By Its Prejudice, The Court Must Exercise Its Discretion To Exclude Edwards' Testimony.

The *Daubert* Court tasked trial judges with the responsibility of acting as gatekeepers to exclude unreliable expert testimony. A majority of circuit courts addressing this role adopt a bright-line rule that "*any* step that renders the analysis unreliable under the *Daubert* factors renders the expert's testimony inadmissible." *In re Paoli R.R. Yard PCB Litig*., 35 F.3d 717, 745 (3d Cir. 1994) (emphasis added); *see also Amorgianos v. Nat'l R.R. Passenger Corp.*, 303 F.3d 256, 265-270 (2d Cir. 2002) (relying on Rule 702 and *Paoli II*); *Attorney General of Oklahoma v. Tyson Foods, Inc*., 565 F.3d 769,779 (10th Cir. 2009) (citing *Paoli II* "any step" rule); *Tamraz v. Lincoln Electric Co*., 620 F.3d 665, 670 (6th Cir. 2010). Because Edwards failed to account for the obvious outstanding variables in his analysis of the Midland County Sherriff's department, failed to use the same level of care and analysis as his outside research, and failed to provide any probative insight into Watson's actions, he therefore fails to reach the level of reliability demanded of scientific experts in *Daubert*. Based on the precedent set by these courts and *Daubert* itself, it is this Court's duty to shield the jury from the prejudicial effect of Edwards testimony. On these grounds, this Court must grant the motion to exclude Frank Edwards' testimony.

CONCLUSION

For the foregoing reasons, the Court should deny Plaintiff's Motion to Strike Deputy Watson's affirmative defense of qualified immunity and grant Defendant's Motion to Exclude the testimony of Frank Edwards.

Respectfully submitted,

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Attorneys for the Defendants