

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

LASHAWN JONES, ET AL.

CIVIL ACTION

VERSUS

**No. 12-859
c/w 12-138
REF: 12-859**

MARLIN GUSMAN, ET AL.

SECTION I

ORDER

Before the Court are the objections¹ filed by the City of New Orleans (“City”) with respect to exhibits proposed by plaintiffs, LaShawn Jones, et al., and intervenor plaintiff, the United States of America (collectively, “Plaintiffs”). Plaintiffs have filed an opposition to the objections.² Also before the Court are two motions *in limine* filed by Plaintiffs,³ to which the City and the Orleans Parish Sheriff (“Sheriff”) have filed an opposition in response.⁴ Plaintiffs have filed a reply.⁵

I. Application of the Federal Rules of Evidence

Consistent with authority from the U.S. Court of Appeals for the Fifth Circuit and other case law, the Court will exercise its discretion at the April 1, 2013 hearing and, when appropriate, not enforce a strict application of the Federal Rules of Evidence. *See Union Asset Mgmt. Holding A.G. v. Dell, Inc.*, 669 F.3d 632, 641-642 (5th Cir. 2012).

¹R. Doc. No. 175.

²R. Doc. No. 185.

³R. Doc. Nos. 198 & 199.

⁴R. Doc. Nos. 220-23.

⁵R. Doc. No. 376.

II. Pending Motions *in Limine*

With respect to the pending motion⁶ *in limine* to limit cross-examination, the Court will **DEFER** ruling until the hearing.

With respect to the motion⁷ *in limine* to limit the introduction of documents not previously produced during discovery, the parties have agreed not to introduce any documents not produced prior to the hearing, and this Court has ordered the Sheriff to produce any remaining unproduced documents or video recordings on or before 5:00 p.m. today, March 28, 2013. Accordingly, the *motion in limine* is **DISMISSED AS MOOT**.

III. Objections to Exhibits

A. Plaintiffs' Proposed Exhibit 5 (Video Transcript)

Proposed Exhibit 5 consists of a video of interviews conducted by Orleans Parish Prison employees and a transcript of the interviews. The City objects to the transcript on the basis of foundation, authenticity, and hearsay, but the City does not object to the introduction of the video itself.⁸ Plaintiffs respond that Rule 611 authorizes use of the transcript as demonstrative evidence admitted for the purpose of aiding the Court's understanding of the video. The objection is **OVERRULED IN PART**. The transcript will be admitted as an aid to the Court's understanding of the audio portion of the video. *United States v. Garcia*, 334 F. App'x 609, 615 (5th Cir. 2009). To the extent that there are any inconsistencies, the audio portion of the video will govern.

⁶R. Doc. No. 198.

⁷R. Doc. No. 199.

⁸R. Doc. No. 175, at 2.

B. Plaintiffs' Proposed Exhibit 352 (News Article)

The City objects to the admission of a March 13, 2012 news article as irrelevant.⁹ Plaintiffs respond that the statements by the Orleans Parish Prison Medical Director are relevant to Orleans Parish Prison facilities' current mental health care services. The objection is **SUSTAINED**, although for a different reason than that suggested by the City. The news article contains statements by Dr. Samuel Gore, a party-opponent, that, if relevant, would be admissible as an admission. In order to be relevant, the Court must be satisfied that the quoted portion of the article is accurate. The Court is unwilling to conclude that such quotes are accurate merely on the basis that they appeared in a newspaper article.

C. Plaintiffs' Proposed Exhibits 353, 354, and 356 (Summary Exhibits)

The City argues that three summary exhibits fail to meet the Fifth Circuit's requirements for admission of a summary into evidence. The City does not contest the accuracy of the summary exhibits or the existence of the underlying supporting documentation.¹⁰ These summary exhibits will be admitted into evidence. Should the City or any other party bring to the Court's attention any inaccuracies in the exhibits or their supporting documentation, the Court will consider the same at the upcoming hearing. The Court rejects the City's objection pursuant to Rule 403 of the Federal Rules of Evidence. To the extent that any underlying documentation does not support the findings required by the Prison Litigation Reform Act and relevant jurisprudence, the Court will properly

⁹R. Doc. No. 175, at 2.

¹⁰R. Doc. No. 186, at 3.

assign such documentation the appropriate weight, if any. The objections to these exhibits are **OVERRULED**.

D. Exhibits 327-379 (Expert Reports and Curricula Vitae)

Exhibits 372 through 379 are expert reports and curricula vitae. The City objects to the admission of these documents as hearsay. The Court will admit the reports and curricula vitae, electing not to strictly apply the Federal Rules of Evidence. However, such admission is contingent on an appropriate foundation being laid with respect to the introduction of the documents as well as the experts being made available for cross-examination. The admission of such evidence will help expedite what is expected to be a prolonged hearing focused on the first phase of this litigation. Furthermore, it will assist the Court in its consideration of the plethora of expert testimony expected to be presented in this case. *See Dell*, 669 F.3d at 642 (“Historically, courts have commonly relied on affidavits, declarations, arguments made by counsel, and other materials in the record without also requiring live testimony.”) (quotation omitted); *see also Cohen v. Chilcott*, 522 F. Supp. 2d 105 (D.D.C. 2007) (relying on and citing to experts’ reports). Should there be inconsistencies between the reports and testimony, the Court will apply the appropriate amount of weight, if any, to that portion of the expert report which is inconsistent.

IV. Sealed Exhibits

The Court has determined that some of the sealed exhibits intended for admission at the hearing contain content that may be relevant to issues raised at the hearing and to this Court’s subsequent ruling on whether to approve the proposed consent judgment. The parties are on notice that the Court reserves the right to discuss the content, both at the hearing and in written rulings, of

sealed exhibits that have been admitted into evidence. Where appropriate and possible, the Court will attempt to avoid disclosing identifying information as to the individuals referenced in the exhibits.

New Orleans, Louisiana, March 28, 2013.



LANCE M. AFRICK
UNITED STATES DISTRICT JUDGE