

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

JOHN LINDLAND,  
  
Plaintiff,  
  
v.  
  
TUSIMPLE, INC., et al.,  
  
Defendants.

Case No.: 3:21-cv-00417-RBM-MDD

**ORDER DENYING DEFENDANT  
TUSIMPLE, INC.’S MOTION TO  
EXCLUDE THE TESTIMONY OF  
HORACIO VALEIRAS**

**[Doc. 38]**

On March 28, 2022, Defendant TuSimple, Inc. (“Defendant”) filed a motion to exclude the testimony of Plaintiff John Lindland’s (“Plaintiff”) expert witness Horacio Valeiras under Federal Rule of Evidence 702 (“Motion”). (Doc. 38 (hereinafter “Mot.”).) Plaintiff filed a brief in opposition to Defendant’s Motion on April 21, 2022 (Doc. 43 (hereinafter “Opp.”)), and Defendant filed its reply on April 28, 2022. (Doc. 46.) For the reasons discussed below, Defendant’s Motion is **DENIED**.

**I. BACKGROUND**

The Court recounted the factual and procedural background of this action in its orders on Defendant’s motion for order for choice of law determination (Doc. 31), Plaintiff’s motion to bifurcate (Doc. 40), and Plaintiff’s motion to exclude the testimony of Defendant’s expert Richard Holstrom (Doc. 59). The Court incorporates by reference

1 the background as set forth therein, and briefly states below those facts relevant to the  
2 instant Motion.

3 Defendant “is a technology company that operates self-driving trucks and develops  
4 commercial ready Level 4 (SAE) fully autonomous driving solution[s] for the logistics  
5 industry.” (Doc. 1 (“Compl.”) ¶ 6.) Defendant hired Plaintiff on or about August 24, 2018,  
6 as a Functional Safety Engineering Lead. (*Id.* ¶ 19.) Plaintiff was offered stock options  
7 prior to accepting Defendant’s job offer, which were “to vest on a three-year cliff vesting  
8 schedule in the amount of 30% after [Plaintiff’s] first year of employment, 30% after [his]  
9 second year of employment, and 40% after [his] third year of employment.” (Doc. 23-1 ¶  
10 4.) Plaintiff’s employment contract provides:

11 Upon approval by our Board of Directors, \$150,000 worth of share options, subject  
12 to all required taxes and withholdings, will be granted to you with 3-year-cliff  
13 vesting schedule as of commencement of your employment with TuSimple. The  
14 number of share options offered will be calculated upon the then valuation of  
15 TuSimple on the Valuation Date, i.e., six (6) months after the actual start date of  
16 your employment.

17 (*Id.* Ex. A § 6.)

18 Plaintiff alleges Defendant terminated his employment on or around March 18, 2020  
19 in order to avoid the payment of his stock options. (Compl. ¶¶ 49–50, 54.) In his  
20 Complaint, Plaintiff seeks “the granting of the full 150,000 share options at the strike price  
21 determined as per the employment contract” and a declaration “as to whether the share  
22 options that have already been earned according to the employment contract are being  
23 unreasonably withheld by Defendant TuSimple and should be vested immediately.” (*Id.*  
24 at 23.) The parties’ experts have submitted reports which dispute the value of the vested  
25 portion of Plaintiff’s stock options.

## 26 **II. LEGAL STANDARD**

27 Federal Rule of Evidence (“Rule”) 702 governs the admissibility of expert  
28 testimony. Rule 702 provides:

1 A witness who is qualified as an expert by knowledge, skill, experience,  
2 training, or education may testify in the form of an opinion or otherwise if: (a)  
3 the expert’s scientific, technical, or other specialized knowledge will help the  
4 trier of fact to understand the evidence or to determine a fact in issue; (b) the  
5 testimony is based on sufficient facts or data; (c) the testimony is the product  
6 of reliable principles and methods; and (d) the expert has reliably applied the  
7 principles and methods to the facts of the case.

8 FED. R. EVID. 702. “The party offering expert testimony has the burden of establishing its  
9 admissibility.” *Bldg. Indus. Ass’n of Washington v. Washington State Bldg. Code Council*,  
10 683 F.3d 1144, 1154 (9th Cir. 2012).

11 Before finding expert testimony admissible, the trial court must make a “preliminary  
12 assessment of whether the reasoning or methodology underlying the testimony is  
13 scientifically valid and of whether that reasoning or methodology properly can be applied  
14 to the facts in issue.” *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 592–93 (1993).  
15 “Under *Daubert*, the trial court must act as a ‘gatekeeper’ to exclude junk science that does  
16 not meet Federal Rule of Evidence 702’s reliability standards by making a preliminary  
17 determination that the expert’s testimony is reliable.” *Ellis v. Costco Wholesale Corp.*, 657  
18 F.3d 970, 982 (9th Cir. 2011) (citing *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 145,  
19 147–49 (1999)).

20 The Court must find “that any and all scientific testimony or evidence admitted is  
21 not only relevant, but reliable.” *Daubert*, 509 U.S. at 590. “Expert opinion testimony is  
22 relevant if the knowledge underlying it has a valid connection to the pertinent inquiry. And  
23 it is reliable if the knowledge underlying it has a reliable basis in the knowledge and  
24 experience of the relevant discipline.” *Primiano v. Cook*, 598 F.3d 558, 565 (9th Cir.  
25 2010), *as amended* (Apr. 27, 2010). “[T]he court must assess [an expert’s] reasoning or  
26 methodology, using as appropriate such criteria as testability, publication in peer reviewed  
27 literature, and general acceptance.” *Alaska Rent-A-Car, Inc. v. Avis Budget Grp., Inc.*, 738  
28 F.3d 960, 969 (9th Cir. 2013) (quoting *Primiano*, 598 F.3d at 564). “Reliable expert  
testimony need only be relevant, and need not establish every element that the plaintiff

1 must prove, in order to be admissible.” *Id.* (citing *Stilwell v. Smith & Nephew, Inc.*, 482  
2 F.3d 1187, 1192 (9th Cir. 2007)).

3 The inquiry required by Rule 702 “is a flexible one.” *Daubert*, 509 U.S. at 594; *see*  
4 *also City of Pomona v. SQM N. Am. Corp.*, 750 F.3d 1036, 1043 (9th Cir. 2014) (citing  
5 *Alaska Rent-A-Car, Inc.*, 738 F.3d at 969). “In evaluating proffered expert testimony, the  
6 trial court is ‘a gatekeeper, not a fact finder.”” *City of Pomona*, 750 F.3d at 1043 (quoting  
7 *Primiano*, 598 F.3d at 565). “Challenges that go to the weight of the evidence are within  
8 the province of a fact finder, not a trial court judge. A district court should not make  
9 credibility determinations that are reserved for the jury.” *Id.* at 1044. “Shaky but  
10 admissible evidence is to be attacked by cross examination, contrary evidence, and  
11 attention to the burden of proof, not exclusion.” *Primiano*, 598 F.3d at 564 (citing *Daubert*,  
12 509 U.S. at 596).

### 13 III. DISCUSSION

14 Plaintiff retained expert Horacio A. Valeiras and Frontier Global Partners, LLC “to  
15 provide expert witness testimony with respect to alleged damages accruing from the  
16 allegations of conversion and the amount and valuation of John L[i]ndland’s promised  
17 TuSimple common stock options.” (Doc. 38-2 at 6.) Mr. Valeiras obtained and reviewed  
18 documents in the case relevant to Plaintiff’s claimed economic loss, including, among other  
19 things, Plaintiff’s employment offer letter and emails exchanged among Plaintiff and  
20 certain of Defendants’ employees. (*Id.* at 13.) Mr. Valeiras submitted an initial expert  
21 report on September 30, 2021 and a rebuttal expert report on October 29, 2021, responding  
22 to the expert report submitted by Defendant’s retained expert, Richard Holstrom. (*See id.*)  
23 Mr. Valeiras and Mr. Holstrom reach drastically different results regarding the value of  
24 Plaintiff’s stock option shares.

25 Defendant does not seek to exclude Mr. Valeiras’s testimony in its entirety. (*See*  
26 Doc. 46 at 1 (“The Motion is not a motion to exclude Mr. Valeiras’ opinions entirely.”).)  
27 Rather, Defendant seeks only “to exclude the purported legal conclusion of Mr. Valeiras  
28 that Plaintiff was granted ‘common’ stock options.” (Mot. at 2) (emphasis omitted).

1 Defendant argues that “[w]hether Plaintiff was granted common stock options or  
2 nonstatutory options based on the language of the Employment Agreement is a legal  
3 conclusion.” (*Id.*) (emphasis omitted). In his opposition, Plaintiff argues Mr. Valeiras’s  
4 description of Plaintiff’s granted equity as “common stock options,” *see, e.g.*, Doc. 38-2 at  
5 6, “is based on the plain language of the contract, supported by additional information  
6 provided to him throughout the litigation process,” including Defendant’s 2017 Share Plan  
7 and its S-1 Form filed with the U.S. Securities and Exchange Commission at the time of  
8 the company’s initial public offering. (Opp. at 9–10.)

9 In evaluating a motion to exclude expert testimony, it is this Court’s role to “act as  
10 a ‘gatekeeper’ to exclude junk science that does not meet Federal Rule of Evidence 702’s  
11 reliability standards.” *Ellis*, 657 F.3d at 982. In the instant Motion, Defendant does not  
12 argue that Mr. Valeiras is unqualified to serve as an expert or that his opinions regarding  
13 the alleged value of Plaintiff’s economic damages are unreliable. Rather, Defendant argues  
14 Mr. Valeiras’s use of the term “common” stock in calculating Plaintiff’s alleged damages  
15 constitutes an improper legal conclusion reserved for the Court. While Defendant is correct  
16 that an expert cannot provide a legal conclusion, *see Nationwide Transp. Fin. v. Cass Info.*  
17 *Sys., Inc.*, 523 F.3d 1051, 1058 (9th Cir. 2008), Mr. Valeiras’s reports regarding the amount  
18 of Plaintiff’s alleged economic damages do not constitute legal conclusions. Mr. Valeiras’s  
19 opinions are based on his review of documents and his calculation of the alleged value of  
20 Plaintiff’s share options. Additionally, in the company emails attached to Mr. Valeiras’s  
21 report, Defendant’s employees themselves refer to the equity granted to Plaintiff as  
22 common stock. (*See* Doc. 38-2 at 22 (“Options are the right to purchase a share of  
23 TuSimple *common stock* at an exercise price under certain conditions, primarily based on  
24 duration of employment.”) (emphasis added).) Because the Court finds Mr. Valeiras’s  
25 reports both relevant and reliable (and because Defendant does not challenge the report on  
26 either ground), the Court declines to exclude Mr. Valeiras’s testimony at this time, subject  
27 to any renewed objection to Mr. Valeiras’s testimony at trial.

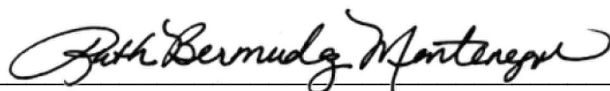
28 ///

1 **IV. CONCLUSION**

2 For the reasons discussed above, Defendant's motion (Doc. 38) is **DENIED**.

3 **IT IS SO ORDERED.**

4 DATE: October 24, 2022

5 

6 HON. RUTH BERMUDEZ MONTENEGRO  
7 UNITED STATES DISTRICT JUDGE

8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28