

1
2
3
4
5
6
7
8
9
10
11
12
13
14

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

EFRAIN MUNOZ, *individually and on
behalf of all others similarly situated,
et al.*,

Plaintiffs,

v.

PHH MORTGAGE CORPORATION,
et al.,

Defendants.

No. 1:08-cv-00759-MMB-BAM

ORDER

15 The parties have filed dueling motions to exclude expert testimony or
16 portions thereof. *See* ECF 570 (Plaintiffs’ motion to exclude Madigan); ECF 571
17 (Defendants’ motion to exclude Hoyt). A major theme of Plaintiffs’ opposition
18 to Defendants’ motion to exclude is that matters regarding the facts or under-
19 lying assumptions on which an expert witness bases his opinion are properly
20 the subject of cross-examination and go to the weight, not the admissibility, of
21 the expert’s testimony. *See, e.g.*, ECF 572, at 11, 13, 14.

22 An amendment to Federal Rule of Evidence 702 took effect on December
23 1, 2023.¹ The Advisory Committee’s Note states that “many courts have held
24 that the critical questions of the sufficiency of any expert’s basis, and the ap-
25 plication of the expert’s methodology, are questions of weight and not

¹ *See* https://www.uscourts.gov/sites/default/files/2023_congressional_package_april_24_2023_0.pdf.

1 admissibility. These rulings are an incorrect application of Rules 702 and
2 104(a).” Fed. R. Evid. 702 Adv. Comm. Note (2023).

3 The court directs the parties to address the significance—if any—of the
4 2023 amendment to Rule 702 as it relates to the pending motions to exclude.
5 Within 14 days of the date of this order, the parties shall submit supplemental
6 briefs on that question, not to exceed 3,000 words per side.

7 Dated: December 7, 2023

/s/ M. Miller Baker

8

M. Miller Baker, Judge²

² Judge of the United States Court of International Trade, sitting by designation.