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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,

No. 2:08-cv-01470-MCE-DAD

Plaintiff,

AHMED ELSHENAWY,

ORDER

Plaintiff-Intervenor,

_____ v. _____

SIERRA PACIFIC INDUSTRIES,

Defendant.

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Presently before the Court is Plaintiff's Motion to Exclude the testimony of Defendant's designated vocational rehabilitation expert, Gregory Sells. Plaintiff asks the Court to prevent MrSells from testifying on grounds that his proposed testimony is irrelevant. Plaintiff further contends, on an even more fundamental basis, that Sells' testimony lacks any basis in specialized knowledge so that it would assist the jury in considering the issues presented by this case. Plaintiff cites the Court's function as gatekeeper with respect to admissibility in that regard.


1 See Daubert v. Merrell Dow Pharms., Inc., 509 U.S. 579, 589
2 (1993).

3 The Court is unpersuaded by Plaintiff's claim that Mr. Sells'
4 expected testimony is by nature so unreliable that it runs afoul
5 of Daubert standards. Sells' credentials show that he has some
6 thirty-eight years of experience as a vocational rehabilitation
7 counselor, and has been qualified as an expert on such issues some
8 nineteen times since 2005. On the basis of that experience,
9 Mr. Sells is more than qualified to offer his opinion with respect
10 to whether Elshenawy should have been able to find suitable
11 employment following his termination, and how long that job search
12 should reasonably have taken. That testimony is plainly relevant
13 with respect to whether Elshenawy properly mitigated his claimed
14 damages, and may assist the jury in deciding this case.

15 To the extent that Plaintiff claims that the basis for
16 Sells' opinions are incomplete and/or erroneous, those
17 contentions can adequately be addressed through vigorous cross-
18 examination. They are not properly the subject of a motion to
19 exclude his testimony altogether. Plaintiff's Motion to Exclude
20 Sells' testimony (ECF No. 56) is accordingly DENIED.¹

21 IT IS SO ORDERED.

22 Dated: October 6, 2010

23 

24 MORRISON C. ENGLAND, JR.
25 UNITED STATES DISTRICT JUDGE
26

27 ¹ Because oral argument was not be of material assistance,
28 the Court ordered this matter submitted on the briefs. E.D. Cal.
Local Rule 230(g).