

1 **I. FACTUAL ALLEGATIONS AND PROCEDURAL BACKGROUND**

2 In January 2014, Rhodehouse was injured while riding as a
3 passenger in a 1999 Ford F-350. Second Am. Compl. ("SAC"), ECF
4 No. 16, at 4. The truck hit a patch of ice causing it to leave
5 the roadway and proceed down uneven terrain where it then struck
6 a tree and rolled over. Rhodehouse alleges that when the car
7 rolled over, the roof crushed into the passenger compartment and
8 as a result he sustained serious neck and back injuries. SAC at
9 4. Rhodehouse brings causes of action for negligence and strict
10 products liability related to two alleged design defects in the
11 1999 Ford F-350: "an unreasonably weak roof structure" and "a
12 high propensity to roll over." Id. at 5.

13 Rhodehouse hired expert witness Dr. Nicholas Perrone to
14 opine on potential design defects with the truck and their impact
15 on the accident and injuries sustained by Rhodehouse. Perrone
16 Report, ECF No. 37-7. Dr. Perrone concluded that the "subject
17 1999 Ford F350 pickup truck vehicle had an incredibly weak roof
18 structure combined with a high propensity to rollover" which were
19 "major factors in the rolling over and roof crushing inward and
20 directly causing Derek Rhodehouse's serious debilitating
21 injuries." Perrone Report at 5. Dr. Perrone supplemented his
22 report twice. Perrone Supplemental Report I, ECF No. 56-2 at
23 123-132; Perrone Supplemental Report II, ECF No. 56-2 at 133-139.

24 In July 2018, Plaintiff moved to substitute Byron Bloch,
25 another automotive safety liability expert, for Dr. Perrone.
26 Mot. to Substitute Byron Bloch as Replacement Expert, ECF No. 35-
27 1. Dr. Perrone is unable to testify at trial due to his
28 declining health. Id. The Court heard the motion to substitute

1 on September 18, 2018 and ordered that Mr. Bloch could be
2 substituted strictly to stand in Dr. Perrone's shoes (i.e., to
3 have a body at trial). See Minute Order re Mot. to Substitute,
4 ECF No. 46. If he is to testify, Mr. Bloch must adopt Dr.
5 Perrone's reports and opinions without supplementation. Id.

6 Mr. Bloch submitted a declaration in support of Plaintiff's
7 opposition to the present motion. Bloch Decl., ECF No. 56-1. In
8 its reply brief, Ford requests the court exclude Mr. Bloch's
9 expert testimony. Reply, ECF No. 62, at 5.

11 II. OPINION

12 A. The Motion is Ripe

13 Rhodehouse argues that Ford failed to comply with the
14 Court's meet and confer requirement prior to filing this motion.
15 Opp'n at 1; ECF No. 3-2. Rhodehouse further contends that the
16 Court must hold an evidentiary hearing (i.e., "Daubert hearing")
17 prior to deciding this motion. Opp'n at 1-2.

18 Both arguments are unpersuasive. First, the Court finds
19 that Ford complied with the Court's meet and confer requirement
20 prior to filing this motion. This motion is not a surprise to
21 Rhodehouse. Second, an evidentiary hearing is not required
22 prior to ruling on a motion to exclude expert testimony. See,
23 e.g., United States v. Lopez-Martinez, 543 F.3d 509, 514 (9th
24 Cir. 2008) (holding that conducting a hearing on a Daubert
25 motion is not required under Federal Rule of Evidence 702, nor
26 under "Supreme Court precedent or [Ninth Circuit] case law").
27 The record is sufficient for the Court to rule on the present
28 motion.

1 B. Legal Standard

2 Federal Rule of Evidence 702 governs the admissibility of
3 expert testimony. Pursuant to Rule 702, a witness qualified as
4 an expert may testify thereto if: "(1) the testimony is based
5 upon sufficient facts or data; (2) the testimony is the product
6 of reliable principles and methods; and (3) the expert has
7 applied the principles and methods to the facts of the case."
8 Fed. R. Evid. 702.

9 The trial court acts as a gatekeeper to the admission of
10 expert testimony under Rule 702. See Daubert v. Merrell Dow
11 Pharm., Inc., 509 U.S. 579 (1993). The court must conduct a
12 preliminary assessment to "ensure that any and all scientific
13 testimony or evidence admitted is not only relevant, but
14 reliable." Daubert, 509 U.S. at 589. The relevancy bar is low,
15 demanding only that "[t]he evidence . . . logically advance a
16 material aspect of the party's case." Cooper v. Brown, 510 F.3d
17 870, 942 (9th Cir. 2007). The reliability inquiry is "a
18 flexible one" and the court looks to whether the testimony has
19 "a reliable basis in the knowledge and experience of [the
20 expert's] discipline." Kumho Tire Co., Ltd. v. Carmichael, 526
21 U.S. 137, 148-149 (1999). The court is concerned "not [with]
22 the correctness of the expert's conclusions but the soundness of
23 his methodology." Primiano v. Cook, 598 F.3d 558, 564 (9th Cir.
24 2010), as amended (Apr. 27, 2010).

25 "When an expert meets the threshold established by Rule 702
26 as explained in Daubert, the expert may testify and the jury
27 decides how much weight to give that testimony." Primiano, 598
28 F.3d at 565.

1 C. Dr. Perrone's Qualifications

2 As a threshold matter, an expert must be qualified by his
3 or her "knowledge, skill, experience, training, or education."
4 Fed. R. Evid. 702. Ford has not challenged Dr. Perrone's
5 qualifications as an expert on vehicle rollover propensity and
6 roof strength. From its review, the Court finds Dr. Perrone is
7 qualified to provide expert testimony on these topics.

8 D. Relevance of Dr. Perrone's Testimony

9 Rhodehouse alleges that two design defects in the Ford F-
10 350 - a susceptibility to rollover and a weak roof - contributed
11 to the crash and Plaintiff's injuries. See SAC. Vehicle roof
12 strength and susceptibility to rollover are matters beyond the
13 common experience of lay people. See Soule v. Gen. Motors
14 Corp., 8 Cal. 4th 548, 564-567 (Cal. 1994). Because Dr.
15 Perrone's testimony could assist the trier of fact in
16 determining whether the alleged defects existed and caused
17 Plaintiff's injury, Dr. Perrone's testimony is relevant.

18 E. Reliability of Dr. Perrone's Testimony

19 Dr. Perrone provides opinions regarding (1) accident
20 reconstruction, (2) rollover propensity, (3) roof strength,
21 (4) alternative roof design, (5) biomechanical causation,
22 (6) Ford's knowledge, and (7) foreign vehicle roof strength.

23 As detailed below, the Court finds as reliable and based on
24 sufficient evidence, and therefore will not exclude, Dr.
25 Perrone's opinions regarding: accident reconstruction, rollover
26 propensity, roof strength, and the correlation between roof
27 strength and injury in rollover accidents. For these opinions,
28 the Court finds that Ford's arguments generally go to the weight

1 to be accorded to Dr. Perrone's testimony by the factfinder,
2 rather than admissibility.

3 On the other hand, the Court finds as unreliable, and
4 therefore excludes, Dr. Perrone's opinions that: Ford could have
5 improved roof strength of the Ford F-350 for a nominal sum and
6 the injury in this case would have been prevented by a stronger
7 roof; the injury resulted from the vehicle's rollover
8 propensity, that Ford had knowledge of roof strength and
9 rollover issues, and foreign vehicles have stronger roofs than
10 domestic vehicles.

11 1. Opinions Not Excluded

12 a. Accident Reconstruction

13 Dr. Perrone opines that Mr. Rhodehouse "sustained his
14 spinal injuries from the massive roof collapse" wherein the roof
15 crushed in 20 inches from a rollover at a velocity of less than
16 25 MPH. Perrone Report at 4. Ford argues that Dr. Perrone's
17 accident reconstruction opinion should be excluded because it is
18 based solely on third-party photographs, information provided to
19 him by Plaintiff, or the estimates in the Traffic Collision
20 Report. Mot. at 7-9.

21 While Dr. Perrone did not personally visit the crash site,
22 he still relied on sufficient facts and data in reviewing, among
23 other things, the Traffic Collision Report prepared by the
24 California Highway Patrol as well as numerous photographs of the
25 truck after the crash. See Perrone Report at 2-3. Federal Rule
26 of Evidence 703 expressly allows experts to rely on facts and
27 data collected by others to form their opinions. Fed. R. Evid.
28 703; see, e.g., Southland Sod Farms v. Stover Seed Co., 108 F.3d

1 1134, 1141-42 (9th Cir. 1997).

2 b. Rollover Propensity

3 In his report, Dr. Perrone discusses the concept of Static
4 Stability Factor (SSF), which is a correlation between a
5 vehicle's width (track width) and height (center of gravity).
6 Perrone Report at 6-7. Dr. Perrone calculated the Ford F-350
7 "to have an SSF of 1.14 resulting in a 30% rollover probability
8 in a single vehicle accident (like the subject case)" making it
9 "about three times more likely to roll over in a single vehicle
10 accident than full sized passenger cars." Id. at 7.

11 Dr. Perrone relied on sufficient facts and data in
12 supplying this opinion. Dr. Perrone need not have investigated
13 the suspect truck to opine on the ratio between the width and
14 height of F-350s *generally*. Moreover, the SSF appears to be a
15 widely accepted rollover propensity measure with the National
16 Highway Traffic Safety Administration (NHTSA) having developed a
17 star rating system based largely on the metric. Perrone Report
18 at 6. The SSF concept is reliable.

19 c. Roof Strength and its Correlation

20 Dr. Perrone discusses roof strength in terms of a strength-
21 to-weight ratio ("W"). Perrone Report at 5-6. Dr. Perrone
22 calculated the 1999 F-350's roof strength-to-weight ratio to be
23 1.7W. Perrone Report at 6. He opines that the 1.7W roof
24 strength was well below the 3.5W level recommended by Cornell
25 labs in 1959 and below the new 2009 NHTSA standard. Id. at 10.

26 Ford does not seem to argue the W score itself is
27 unreliable. In fact, the W score has multiple indicia of
28 reliability, including its use by the NHTSA and other vehicle

1 safety test groups. Instead, Ford merely argues that Dr.
2 Perrone's application of the score is improper, an argument
3 which goes to the weight of Dr. Perrone's testimony to the fact-
4 finder, not to its admissibility. The concept of strength-to-
5 weight ratio is reliable.

6 2. Opinions Excluded

7 a. Alternative Roof Design

8 Dr. Perrone writes that the roof strength of the 1999 F-350
9 could have been "readily enhanced by making the [roof rail]
10 members closed sections" or by increasing the thickness of the
11 roof's materials. Perrone Report at 8. Dr. Perrone notes that
12 the "NHTSA indicated in the previous FMVSS 216 exercise of 2005
13 it would cost on average \$50.00 per vehicle to double the roof
14 strength requirement from 1.5W to 3W." Id. Ford points out that
15 Dr. Perrone admitted he does not know the strength or thickness
16 of the materials Ford actually used, or whether the 1999 F-350's
17 roof has open or closed section roof members. Mot. at 5-6.

18 Dr. Perrone identifies no basis on which this opinion rests.
19 Dr. Perrone does not know how the roof of the F-350 was
20 structured, nor if it was possible for the truck to have been
21 made with a stronger roof, or for what exact price. Dr.
22 Perrone's opinion in this context is conjecture and must be
23 excluded.

24 b. Biomechanical Causation

25 Dr. Perrone opines that Rhodehouse sustained his spinal
26 injuries from the "massive roof collapse" which resulted from
27 the rollover. Perrone Report at 4. Dr. Perrone writes that the
28 F-350's rollover propensity was "well less than adequate" and

1 that "if the F350 had been designed to not easily roll over,
2 Derek Rhodehouse would not have had his serious neck and back
3 vertebral injuries." Id. at 7. Next, Dr. Perrone states that,
4 generally, "there is a definite correlation between roof crush
5 and injury to occupants under the crushed roof during
6 rollovers." Id. at 8. Dr. Perrone further opines that "even
7 with the poor stability characteristics of the vehicle, with a
8 proper minimum [roof strength] there would not have been any
9 significant intrusion in his accident and Derek Rhodehouse would
10 have had no serious residual injuries." Id. at 10.

11 Ford argues that any scientific methodology to support
12 these claims is entirely lacking. Mot. at 10. Ford takes issue
13 with the fact that based only on a review of select medical
14 records and photos of the F-350 taken well after the truck had
15 been removed from the scene, Dr. Perrone concludes that the
16 nature of the Plaintiff's injury suggests he was under the roof
17 as it was collapsing. Id. at 10-11. Ford also argues that Dr.
18 Perrone's testimony that a neck injury would not have occurred
19 with a strongly reinforced roof is unsupported by reliable
20 studies. Id. at 13. Additionally, Ford contends that Dr.
21 Perrone has no basis for his testimony that the truck, which
22 veered off the road and struck a tree, would not have rolled
23 over but for its low SSF. Id. at 8.

24 While Dr. Perrone's opinion that roof crushes are *generally*
25 associated with injury is supported and reliable, Dr. Perrone's
26 other biomechanical causation opinions are not reliable.

27 Dr. Perrone proffers no adequate scientific basis for his
28 opinion that the injury would have been prevented had the roof

1 been stronger. Dr. Perrone in fact testified that an injury
2 could occur in a rollover accident even when the roof does not
3 deform.

4 Moreover, Dr. Perrone's opinion that Rhodehouse would not
5 have been injured if the truck been more stable is
6 unsubstantiated and unreliable. Dr. Perrone conducted no
7 scientific analysis of the crash forces and plethora of factors
8 which could have caused the crash and rollover.¹ Nor did Dr.
9 Perrone make any attempt to account for the effect of the
10 potential after-market modifications on the truck, which he
11 admitted could have made the truck more vulnerable to rollover.

12 c. Ford's Knowledge and Foreign Vehicles

13 Dr. Perrone states that Ford had knowledge of the roof
14 strength and rollover issues for decades and did nothing to
15 improve the design of its vehicles. Perrone Report at 11-12;
16 Perrone Supplemental Report I at 3-4; Perrone Supplemental
17 Report II at 3. Dr. Perrone also opines that foreign-made
18 vehicles have stronger roofs than domestic vehicles and that the
19 American auto industry is in jeopardy due to this imbalance.
20 Perrone Supplemental Report I at 5-6; Perrone Supplemental
21 Report II at 4.

22 These opinions are not based on reliable, scientific
23 information or studies. Indeed, there is no explanation
24 provided by Dr. Perrone as to the underlying scientific bases
25 for these opinions. In the absence of any such facts or data,

26 ¹ Dr. Perrone actually writes that "the right front [of the truck
27 made] contact with a tree which caused it to change its direction
28 and go into a full 360 degree single lateral rollover with driver
side leading." Perrone Report at 4.

1 these opinions must be excluded.

2 F. Mr. Bloch's Declaration

3 Pursuant to the Court's order, Mr. Bloch was only to adopt
4 Dr. Perrone's reports and opinions, and provide no
5 supplementation. See ECF No. 46. His role is limited solely to
6 serving as a body at trial to testify in place of Dr. Perrone.
7 Id.

8 Contrary to the Court's order, Mr. Bloch's declaration
9 provides expert testimony that goes well beyond Dr. Perrone's
10 testimony. For example, unlike Dr. Perrone, Mr. Bloch examined
11 an exemplar F-350, provided illustrations of how the roof
12 buckled, points out other defects not discussed by Dr. Perrone,
13 and rebuts Ford's experts' testimony. Bloch Decl. at 2-4.
14 Ford's request to strike Mr. Bloch's declaration was granted at
15 the October 16 hearing. That Order is reaffirmed.

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III. ORDER

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IT IS SO ORDERED.

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Dated: October 29, 2018

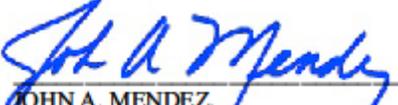
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JOHN A. MENDEZ,
UNITED STATES DISTRICT JUDGE