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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CRYSTAL LAKES,
Plaintiff,
v.
BATH & BODY WORKS, LLC,
Defendants.

No. 2:16-cv-02989-DJC-AC

ORDER

On March 22, 2024, the Court conducted a hearing on the Parties' expert Motions in Limine. (ECF No. 241.) The Court took under submission Defendant's Motion in Limine to Exclude the Report and Testimony of Dr. David Xu (ECF No. 226), granted in part and ordered submitted in part Defendant's Motion in Limine to Exclude the Report and Testimony of John Golder (ECF No. 227), and issued rulings on the remaining Motions (ECF Nos. 228, 229).

Concerning the remaining rulings as to Dr. Xu and Mr. Golder, the Court will deny Defendant's Motion in Limine concerning Mr. Golder's anticipated testimony with respect to opinions four and five in his expert report with some limitations, as set forth below. The Court will further deny Defendant's Motion in Limine concerning Dr. Xu insofar as Mr. Golder is allowed to discuss Dr. Xu's test results as a basis for his

1 opinions under Federal Rule of Evidence 703. All other testimony concerning Dr. Xu
2 will be excluded.

3 **LEGAL STANDARD**

4 "A witness who is qualified as an expert by knowledge, skill, experience,
5 training, or education may testify in the form of an opinion or otherwise if . . . the
6 expert's scientific, technical, or other specialized knowledge will help the trier of fact
7 to understand the evidence or to determine a fact in issue." Fed. R. Evid. 702. Expert
8 testimony must be "based on sufficient facts or data" and be "the product of reliable
9 principles and methods." *Id.* Further, experts must have applied the principles and
10 methods reliably to the facts of the case. *Id.* District Courts must engage in objective
11 screening to ensure that expert testimony meets the requirements of Rule 702, that is,
12 that the experts are qualified and their testimony "is not only relevant, but reliable."
13 *Daubert v. Merrell Dow Pharms.*, 509 U.S. 579, 589 (1993); *Kumho Tire Co. v.*
14 *Carmichael*, 526 U.S. 137, 141-42 (1999). Expert testimony is inadmissible if it
15 concerns factual issues within the knowledge and experience of ordinary lay people
16 because the jury will be capable of understanding the evidence and deciding the
17 issues through common knowledge and common sense.

18 Experts are permitted to base their opinions on facts or data in the case that
19 they have been made aware of or personally observed. Fed. R. Evid. 703. This
20 includes inadmissible hearsay so long as the hearsay facts or data are of the type
21 reasonably relied on by experts in the field. *See Daubert*, 509 U.S. at 595; *see also*
22 Fed. R. Evid. 703. However, such hearsay data may be admitted "to explain the basis
23 of the expert's opinion[,]" but not "to establish the truth of what they assert." *Paddock*
24 *v. Dave Christensen, Inc.*, 745 F.2d 1254, 1262 (9th Cir. 1984). Further, Rule 703 "is
25 not a license for an expert witness to simply parrot the opinions of non-testifying
26 experts." *Villagomes v. Lab. Corp. of Am.*, No. 2:08-cv-00387-RLH-GWF, 2010 WL
27 4628085, at *4 (D. Nev. Nov. 8, 2010). Finally, the probative value of the underlying
28 data must substantially outweigh its prejudicial effect. Fed. R. Evid. 703.

1 **ANALYSIS**

2 Mr. Golder intends to testify that the “evidence shows the flashovers are caused
3 by the failure to obtain a proper homogenous mix of wax and fragrant oil” (opinion
4 four) and “it is especially dangerous to have a non-homogenous mix of base wax and
5 fragrant oil because 3-wick candles have a greater Heat Release Rate” (opinion five).
6 (ECF No. 227-8 at 14-17.) The Court finds both opinions are within Mr. Golder’s realm
7 of expertise and supported by sufficient data as required by Rule 702.

8 First, the Court holds Mr. Golder is a qualified expert. In order for expert
9 testimony to be admissible under Rule 702, the expert in question must be qualified in
10 the specific subject areas that form the basis of their opinions. See *Ojmar US, LLC v.*
11 *Sec. People, Inc.*, No. 16-cv-04948-HSG, 2018 WL 3008872, at *2 (N.D. Cal. June 15,
12 2018); Fed. R. Evid. 702. Mr. Golder is a well-qualified expert concerning fire
13 investigations and forensics, with over 30 years of experience in the field and a
14 master’s degree in forensic science. Accordingly, Mr. Golder is qualified to opine on
15 the cause of the flashover in this matter, including that a non-homogenous mix of
16 fragrant oil and wax in a candle can lead to flashovers such as the one experienced by
17 Plaintiff.

18 In addition, the Court finds that Mr. Golder’s opinions meet the reliability test
19 set forth by the Supreme Court in *Daubert*, keeping in mind this is a “flexible” inquiry
20 that “should be applied with a ‘liberal thrust’ favoring admission” of expert testimony.
21 *Hardeman v. Monsanto Co.*, 997 F.3d 941, 960 (9th Cir. 2021) (quoting *Messick v.*
22 *Novartis Pharms. Corp.*, 747 F.3d 1193, 1196 (9th Cir. 2014)). Here, the Court finds
23 that Mr. Golder’s opinions are based on (1) his extensive experience investigating
24 fires, (2) his own testing of three Bath & Body Works (“BBW”) candles, and (3)
25 deposition testimony and other experts’ scientific tests in the case,¹ which he is

26 _____
27 ¹ In particular, Mr. Golder relies on the report of Dr. Xu, who conducted Micro FTIR testing to establish
28 the composition of the candle. “[N]umerous courts have held that reliance on scientific test results
prepared by others may constitute the type of evidence that is reasonably relied upon by experts for
purposes of Rule of Evidence 703.” *Romero v. S. Schwab Co.*, No. 15-CV-815-GPC-MDD, 2017 WL

1 permitted to rely on under Rule 703. This is minimally sufficient to surpass the
2 reliability inquiry, as Mr. Golder has demonstrated a reasonably sound basis for
3 forming his opinions. While significant questions may remain concerning the
4 correctness of Mr. Golder's opinions, those questions are the province of the jury, not
5 the Court. See *Pyramid Techs., Inc. v. Hartford Cas. Ins. Co.*, 752 F.3d 807, 814 (9th
6 Cir. 2014) ("After an expert establishes admissibility to the judge's satisfaction,
7 challenges that go to the weight of the evidence are within the province of a fact
8 finder, not a trial court judge."); *Solis v. Bridgestone Corp.*, No. CV-10-484-TUC-DCB,
9 2013 WL 12098802, at *3 (D. Ariz. Apr. 2, 2013) ("Questions related to the bases and
10 sources of an expert's opinion . . . should be left for the consideration of the finder of
11 fact a[s] these questions affect the weight to be assigned to an expert's opinion rather
12 than its admissibility.").

13 Mr. Golder is not qualified, however, to opine on candle manufacturing and
14 design, including the proper procedure for mixing candles, or that the candle at issue
15 here was improperly mixed.² (See Golder Dep. (ECF No. 234-1) at 24:6-29:8
16 (testifying he is not an expert in engineering, consumer product design, or product
17 manufacturing).) For example, Mr. Golder offers the following opinion within opinion
18 four:

19 _____
20 5885543, at *5 (S.D. Cal. Nov. 29, 2017) (quoting *Monsanto Co. v. David*, 516 F.3d 1009, 1015 (Fed. Cir.
21 2008)). While Dr. Xu is not a testifying witness in this matter, the Court finds that Mr. Golder's reliance
22 on his testing is proper as Dr. Xu is a qualified engineer with extensive lab experience who ran tests on
23 BBW candles using Micro FTIR technology, a technology which has been accepted by other courts in
24 the Ninth Circuit. See, e.g., *id.* at *11-12 (denying a motion to bar Dr. Xu from testifying to opinions
25 regarding materials identification formed in part from FTIR testing). As such, Mr. Golder may testify
concerning Dr. Xu's testing to the extent necessary to illustrate and explain his own opinions. Under
Rule 703, the Court finds that the probative value in helping the jury understand Mr. Golder's testimony
substantially outweighs their prejudicial effect. However, the Court notes that Dr. Xu's report did not
feature prominently in Mr. Golder's report, and anticipates that will be true for Mr. Golder's testimony at
trial. Any effort to effectively parrot Dr. Xu's report would be improper, as Plaintiff's counsel
acknowledged at the hearing on the Motions in Limine.

26 ² While Mr. Golder is qualified to testify that the flashover was caused by a non-homogenous mix of the
27 wax and fragrant oil, which implies improper mixing, he is not qualified to testify as to the origins or
28 cause of the allegedly improper mixing. That is to say, he may testify that the flashover must have
occurred due to the candle's improper mixture, but he is not permitted to testify that the candle was in
fact improperly mixed because of BBW's practices.

1 At no time was a quantitative analysis performed on the
2 completed candles to assure that there was a homogenous
3 mix throughout the candle. To confirm that it had a
4 homogenous mix, BBW only performed subjective visual
5 inspection. The critical need for a homogenous mix has
6 been testified to by all employees who were deposed from
7 BBW, Mast, LBrands and Alene. There should be a constant
8 percentage of fragrance oil throughout the candle, and most
9 importantly, there should be no pockets of fragrant oil.
Should you have a non-homogenous mix, a larger
percentage of fragrant oil, and/or a pocket of fragrant oil, a
flashover could occur during ordinary operating conditions,
even when following all directions on the candle's warning
label.

10 This opinion goes beyond the scope of Mr. Golder's expertise as he comments on the
11 proper design for a candle: that there should be a constant percentage of fragrance
12 oil mixed homogeneously throughout. Such testimony will be excluded.

13 Finally, Mr. Golder is reminded that, while he may rely on the testimony of
14 Thomas Donnelly, Stephen Smith, John English, and Andy Fernandez while testifying
15 to his opinions, he may not simply parrot their testimony on the stand as the jury is
16 capable of reviewing and weighing that testimony themselves. For example, Mr.
17 Golder states within opinion 4:

18 Stephen Smith testified that a candle mixture is like a cake
19 batter in which if everything isn't mixed correctly, you could
20 get spots of flour and sugar. The same thing can occur to
21 cause an imbalance in the candle system, in which you can
22 have too much fragrant oil in the candle mix. There is a
23 certain percentage of fragrance oil that a candle should
24 have. That percentage will affect the length of burn time.
25 The manufacturer should always be making sure that it
measures out the correct method of distribution of materials.
When you have an imbalance in the candle system you can
have a melt pool temperature that goes above the flashpoint
of the system, and you could get a flashover.

26 This opinion is improper both because it summarizes testimony the jury could hear
27 and consider themselves, but also because it falls outside of the scope of Mr. Golder's
28 expertise when discussing proper candle manufacturing and design.

1 In short, Mr. Golder may testify to his opinions four and five at trial and may rely
2 on the testing of Dr. Xu to do so. However, Mr. Golder should take care to offer
3 opinions only within the scope of his expertise and avoid parroting the testimony of
4 other witnesses.

5 **CONCLUSION**

6 In conclusion, the Court hereby:

- 7 1. DENIES Defendant's Motion in Limine to Exclude the Report and
8 Testimony of John Golder (ECF No. 227) with respect to his opinions
9 four and five, subject to the limitations discussed above; and
10 2. DENIES Defendant's Motion in Limine to Exclude the Report and
11 Testimony of Dr. David Xu (ECF No. 226) insofar as Mr. Golder may
12 rely on and discuss Dr. Xu's report as a basis for his own opinions.
13 The Court GRANTS Defendant's Motion in Limine to exclude all other
14 references to or testimony concerning Dr. Xu's report and deposition
15 testimony.

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17 IT IS SO ORDERED.

18 Dated: March 26, 2024


19 Hon. Daniel J. Calabretta
20 UNITED STATES DISTRICT JUDGE
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