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

CHARLES COPELAN,

Plaintiff,

v.

TECHTRONICS INDUSTRIES,
CO., LTD., *ET AL.*

Defendants.

Case No. 12-cv-01285-BAS(MDD)

ORDER:

- (1) GRANTING DEFENDANTS’ MOTION TO PRECLUDE TESTIMONY OF DR. GASS (ECF NO. 28);**
- (2) DENYING DEFENDANTS’ MOTION TO PRECLUDE TESTIMONY OF DARRY ROBERT HOLT (ECF NO. 29); AND**
- (3) DENYING DEFENDANTS’ MOTION TO PRECLUDE TESTIMONY OF KELLY MEHLER (ECF NO. 30)**

Pending before the Court are motions filed by defendants One World Technologies, Inc. and Home Depot U.S.A., Inc. (collectively “Defendants”) to preclude the testimony of Plaintiff’s non-retained expert Dr. Stephen F. Gass, and retained experts Darry Robert Holt and Kelly Mehler. (ECF Nos. 28, 29, 30.) Plaintiff filed oppositions to the motions. The Court held a hearing on the motions on April 21, 2015.

1 For the reasons set forth below, the Court (1) **GRANTS** Defendants’ motion
2 to preclude the testimony of Dr. Stephen Gass (ECF No. 28); (2) **DENIES**
3 Defendants’ motion to preclude the testimony of Darry Robert Holt (ECF No. 29);
4 and (3) **DENIES** Defendants’ motion to preclude the testimony of Kelly Mehler
5 (ECF No. 30).

6 **I. BACKGROUND**

7 On November 7, 2011, Charles Copelan (“Copelan”) commenced this
8 personal injury action in San Diego County Superior Court. On January 25, 2012,
9 Copelan filed an amended complaint in San Diego Superior Court alleging, among
10 other things, negligence and strict liability for design defects. The action was
11 removed to federal court on May 25, 2012. (ECF No. 1.)

12 This action stems from an incident that occurred on December 21, 2009,
13 when Copelan used a Ryobi Portable Table Saw Model BTS16 (“Ryobi Saw”) to
14 cut a piece of bamboo flooring. (ECF No. 28 at 2.) The Ryobi Saw failed to
15 function, causing injury to Copelan’s left, non-dominant hand. (*Id.*; ECF No. 1.)

16 The Ryobi Saw is a small, benchtop saw designed, manufactured, and sold
17 by Defendants. (*Id.*) It weighs less than 60 lbs. and sells for less than \$200. (*Id.*)
18 The Ryobi Saw purchased by Copelan came equipped with a splitter/mounted
19 guard consisting of three pieces – a splitter (a piece of metal sitting behind the
20 blade), a hood guard which is attached to the splitter, and anti-kickback pawls
21 which are also attached to the splitter. (*Id.*) The supplied blade guard had been
22 removed at some point prior to Copelan’s accident. (*Id.* at 2-3; ECF No. 34 at 9.)

23 Copelan alleges the Ryobi Saw that caused his injuries was defective.
24 Central to Plaintiff’s case is the contention that the Ryobi Saw was defectively
25 designed because it did not include a flesh detection braking technology referred to
26 as “SawStop,” which was invented by Dr. Stephen Gass. (ECF No. 28 at 3; ECF
27 No. 28-2 at 12; ECF No. 34 at 11.) SawStop “is a contact detection system that
28 works by recognizing differences between the electrical properties of wood and a

1 person. The system generates an electrical signal onto the blade, and then monitors
2 that signal for changes caused by contact with a person's body. When the system
3 detects contact with a person's body it releases a block of aluminum or plastic into
4 the teeth of the saw blade to stop the blade from spinning." (ECF No. 28 at 3; *see*
5 *also* ECF No. 28-2 at 13, ¶¶ 3-6.)

6 On March 27, 2015, the Court granted United States Trustee Richard
7 Kipperman's motion to substitute into this case as the plaintiff. Therefore, the
8 action is currently being pursued by Mr. Kipperman (hereinafter referred to as
9 "Plaintiff").

10 On January 10, 2014, Copelan served his Federal Rule of Civil Procedure
11 26(a)(2) disclosures designating Robert Holt and Kelly Mehler as retained experts,
12 and Dr. Stephen Gass as a non-retained expert. (*See* ECF No. 28-2 at 22-25.)
13 Defendants now move to preclude the testimony of Plaintiff's experts. (ECF Nos.
14 28, 29, 30.)

15 **II. LEGAL STANDARD**

16 Rule 702 of the Federal Rules of Evidence governs the admissibility of expert
17 testimony. *Ollier v. Sweetwater Union High Sch. Dist.*, 768 F.3d 843, 859 (9th Cir.
18 2014). Rule 702 provides that a witness "qualified as an expert by knowledge, skill,
19 experience, training, or education may testify in the form of an opinion or otherwise
20 if":

- 21 (a) the expert's scientific, technical, or other specialized knowledge
22 will help the trier of fact to understand the evidence or to
23 determine a fact in issue;
- 24 (b) the testimony is based on sufficient facts or data;
- 25 (c) the testimony is the product of reliable principles and methods;
26 and
- 27 (d) the expert has reliably applied the principles and methods to the
28 facts of the case.

Fed. R. Evid. 702. Under Rule 702, expert testimony must be both relevant and

1 reliable. *Estate of Barabin v. AstenJohnson, Inc.*, 740 F.3d 457, 462 (9th Cir.
2 2014). Relevancy simply requires that “[t]he evidence . . . logically advance a
3 material aspect of the party’s case.” *Cooper v. Brown*, 510 F.3d 870, 942 (9th Cir.
4 2007). Reliability requires that an expert’s testimony “have a reliable basis in the
5 knowledge and experience of his discipline.” *Estate of Barabin*, 740 F.3d at 462
6 (quoting *Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. 137, 148 (1999)).

7 The courts are not concerned with the “correctness of the expert’s
8 conclusions but the soundness of his [or her] methodology.” *Primiano v. Cook*,
9 598 F.3d 558, 564 (9th Cir. 2010) (quoting *Daubert v. Merrell Dow*
10 *Pharmaceuticals, Inc.*, 43 F. 3d 1311, 1318 (9th Cir. 1995)); *see also Ellis v. Costco*
11 *Wholesale Corp.*, 657 F.3d 970, 982 (9th Cir. 2011) (A court is not required “to
12 admit or to exclude evidence based on its persuasiveness;” but rather “to admit or
13 exclude evidence based on its scientific reliability and relevance.”). “For scientific
14 opinion, the court must assess the reasoning or methodology, using as appropriate
15 such criteria as testability, publication in peer reviewed literature, and general
16 acceptance, but the inquiry is a flexible one.” *Primiano*, 598 F.3d at 564. “Shaky
17 but admissible evidence is to be attacked by cross examination, contrary evidence,
18 and attention to the burden of proof, not exclusion.” *Id.*; *see also Daubert v.*
19 *Merrell Dow Pharmaceuticals. Inc.*, 509 U.S. 579, 595-96 (1993).

20 The duty falls upon the district court to act “in a gatekeeping role, to assess
21 whether the reasoning or methodology underlying the testimony is valid and
22 whether that reasoning or methodology properly can be applied to the facts in
23 issue.” *Ollier*, 768 F.3d at 860 (quoting *Daubert*, 509 U.S. at 592-93) (internal
24 quotation marks omitted); *see also Ellis*, 657 F.3d at 982 (“[T]he trial court must act
25 as a “gatekeeper” to exclude junk science that does not meet Federal Rule of
26 Evidence 702’s reliability standards by making a preliminary determination that the
27 expert’s testimony is reliable.”). The party seeking to offer the testimony bears the
28 burden of establishing its admissibility. *In re ConAgra Foods, Inc.*, 302 F.R.D.

1 537, 549 (C.D. Cal. 2014) (citations omitted).

2 **III. DISCUSSION**

3 **A. Dr. Stephen Gass**

4 Defendants seek to preclude the expert testimony of Plaintiff's non-retained
5 expert, Dr. Stephen Gass. (ECF No. 28.) At the hearing on Defendants' motions,
6 Plaintiff's counsel represented that, at this point in time, Plaintiff does not expect
7 Dr. Gass will testify at trial in this matter. (*See also* ECF No. 63.) Because the
8 issue is presently moot, the Court **GRANTS** Defendants' motion to preclude the
9 testimony of Dr. Gass. However, the Court's ruling does not preclude the parties
10 from raising the issue again if Plaintiff later decides to call Dr. Gass.

11 **B. Robert Darry Holt**

12 Defendants seek to preclude the expert testimony of Robert Darry Holt on the
13 grounds Mr. Holt's "proposed testimony is speculative, irrelevant, and unreliable
14 given the particular facts of this case." (ECF No. 29 at 1.) Specifically, Defendants
15 seek to preclude the expert testimony of Mr. Holt for the following reasons:

16 First, Defendants contend Mr. Holt's opinion that the Ryobi Saw "is unsafe
17 because it lacks a riving knife independent of the guard" should be excluded
18 because Mr. Holt "can only speculate that the lack of an independent riving knife
19 played any role in [Copelan's] accident." (*Id.* at 4.) Therefore, Mr. Holt's
20 testimony on this point is not likely to assist the jury. (*Id.*)

21 Second, Defendants contend Mr. Holt's opinion the Ryobi Saw is defective
22 because the included guard is not user-friendly is irrelevant because "it is
23 undisputed that the supplied guard had been removed prior to [Copelan] using the
24 saw" and Mr. Holt "concedes that the supplied blade guard could have been used
25 for the work he was performing." (*Id.* at 5.)¹

26
27 ¹ Plaintiff disputes the characterization of this proposed testimony,
28 which is set forth at ECF No. 29-2 at 10. (*See* ECF No. 34 at 9-10.) Plaintiff
contends Mr. Holt will opine that the absence of the guard was a product of the

1 Third, Defendants contend Mr. Holt’s testimony that the injury to Copelan,
2 more probably than not, would have been less severe using a saw with SawStop
3 technology than the injuries Copelan actually sustained, lacks foundation and is
4 pure speculation because “the testimony regarding the circumstances of [Copelan’s]
5 accident is ‘imperfect’” and Mr. Holt does not know the angle or speed Copelan’s
6 hand approached the blade at the time of his accident. (*Id.* at 6.) Because Mr. Holt
7 lacks this information, Defendants contend his testimony on the topic is irrelevant.

8 Lastly, Defendants contend Mr. Holt is not qualified to opine that the Ryobi
9 Saw is defective for lack of adequate warnings, and moreover, “there is no evidence
10 the lack of any warnings caused or contributed to [Copelan’s] accident.” (*Id.* at 6-
11 7.)

12 As an initial matter, during the hearing on this matter, Plaintiff’s counsel
13 confirmed Mr. Holt will not be testifying regarding warnings or the economic
14 feasibility of incorporating SawStop (or any other flesh detection technology) on
15 the Ryobi Saw at issue. (*See* ECF No. 34 at 12.) Mr. Holt is therefore precluded
16 from testifying on these matters.

17 The parties do not dispute that Mr. Holt is qualified “by knowledge, skill,
18 experience, training, or education” to opine on the remaining issues, and the Court
19 agrees. Mr. Holt is a “mechanical engineer and a licensed professional engineer
20 with approximately ten years[’] experience in industry in a variety of production,
21 maintenance and manufacturing and process development engineering positions,
22 and approximately 39 years[’] experience as a consulting engineer evaluating the
23 safety design and condition of hundreds of machines and products of all types,
24 including table saws.” (*See* ECF No. 29-2 at 8.) In the course of his work, Mr.
25 Holt has tested and examined all kinds of table saws and is familiar with the Ryobi
26 Saw. (ECF Nos. 34 at 2; 34-3 at 6.) In addition, Mr. Holt has developed a

27
28 defective design. (*Id.* at 9.)

1 mechanism for incorporating a riving knife onto a standard table saw and has run
2 tests on saws equipped with SawStop technology and analyzed SawStop prototypes
3 to gauge the technology's efficacy. (*Id.*; ECF No. 34-3 at 6) Moreover, other
4 courts have found Mr. Holt qualified "to opine regarding the mechanics of the
5 [Ryobi Saw's] blade-guarding system and the risk-hazard analysis that is a standard
6 feature of the product design process." (*Id.* at 2-3; ECF No. 34-3 at 7.)

7 Rather than disputing Mr. Holt's qualifications, Defendants dispute whether
8 Mr. Holt's opinions are relevant and reliable. Based on the papers submitted,
9 arguments heard on the motions, and offers of proof, the Court finds Mr. Holt's
10 proposed testimony on the issues raised by Defendants to be relevant to this case.
11 The proposed testimony logically advances material aspects of Plaintiff's case. *See*
12 *Cooper*, 510 F.3d at 942; Fed. R. Evid. 702(a). In addition, the Court finds Plaintiff
13 has demonstrated Mr. Holt's testimony is based on sufficient facts or data, is the
14 product of reliable principles and methods, and Mr. Holt has reliably applied his
15 principles and methods to the facts of this case. *See* Fed. R. Evid. 702(b)-(d).

16 To the extent Defendants disagree with Mr. Holt's conclusions or factual
17 assumptions, Defendants may properly attack Mr. Holt's testimony by cross
18 examination and contrary evidence. *See Primiano*, 598 F.3d at 564; *Daubert*, 509
19 U.S. at 595-96. Whether Mr. Holt's conclusions or factual assumptions should be
20 accepted are issues bearing on the weight of his testimony, rather than on its
21 admissibility. *See Bergen v. F/V St. Patrick*, 816 F.2d 1345, 1352 n. 5 (9th Cir.
22 1987) ("The weakness in the underpinnings of [expert] opinions may be developed
23 upon cross-examination," as "such weakness goes to the weight and credibility of
24 the testimony" as opposed to its admissibility. (citations omitted)); *In re Toyota*
25 *Motor Corp. Hybrid Brake Mktg., Sales Practices and Prods. Liab. Litig.*, No.,
26 MDL 10-02172, 2012 WL 4904412, at *3 (C.D. Cal. Sept. 20, 2012) (finding
27 whether an expert's reasonable assumptions are true and whether his opinions
28 should be accepted are issues going to the weight of his testimony and report and

1 not to their admissibility); *McLean v. 988011 Ontario, Ltd.*, 224 F.3d 797, 801 (6th
2 Cir. 2000) (“[An] expert’s conclusions regarding causation must have a basis in
3 established fact and cannot be premised on mere suppositions. An expert’s opinion,
4 where based on assumed facts, must find some support for those assumptions in the
5 record. However, mere weaknesses in the factual basis of an expert witness’
6 opinion bear on the weight of the evidence rather than on its admissibility.”
7 (internal citations, quotation marks, and alternations omitted)).

8 For the foregoing reasons, Defendants’ motion to preclude Mr. Holt’s
9 testimony (ECF No. 29) is **DENIED**.

10 **C. Kelly Mehler**

11 Defendants seek to preclude the expert testimony of Kelly Mehler on the
12 grounds Mr. Mehler is not qualified to offer expert opinions that would assist the
13 jury. (ECF No. 30 at 1.) Specifically, Defendants argue Mr. Mehler is not an
14 engineering or design expert and therefore he cannot opine that the Ryobi Saw is
15 defectively designed because “(1) the blade guard is insufficient to protect the user,
16 (2) the rip fence is defective, and (3) the [Ryobi Saw] does not include flesh-
17 detection technology.” (*See id.* at 2; *see also* ECF No. 33-7 at ¶ 6.) Defendants
18 further argue Mr. Mehler’s proposed testimony is unreliable because it is not
19 supported by any accepted engineering methodology. (*Id.*)

20 At the hearing on Defendants’ motions, Plaintiff stated Mr. Mehler will not
21 be testifying regarding flesh detection technology and withdrew Mr. Mehler’s
22 proposed testimony on that issue. (*See also* ECF No. 33 at 8.) Mr. Mehler is
23 therefore precluded from testifying regarding any flesh detection technology,
24 including SawStop.

25 Concerning Mr. Mehler’s qualifications, Defendants argue Mr. Mehler is
26 nothing more than a talented woodworker and user of the table saws, and therefore
27 is not qualified to testify about the design of the blade guard and the rip fence. The
28 Court disagrees. Mr. Mehler majored in Industrial Arts Education at Berea College

1 and founded a custom furniture shop in 1978, where he designed and made
2 furniture for individuals until 2004. (ECF No. 33-7 at ¶ 2.) Between 1995 and
3 2007, Mr. Mehler spent an increasing amount of time teaching and writing about
4 woodworking, primarily table saw safety. (*Id.*) He has taught table saw workshops
5 for employees and staff of Black & Decker and Delta, as well as taught numerous
6 table saw safety seminars at trade shows and schools, and for manufacturers,
7 schools, guilds, and staff members of woodworking publications. (*Id.* at ¶¶ 2-4.) In
8 his safety demonstrations, Mr. Mehler focuses on kickback and blade guarding.
9 (*Id.* at ¶ 5.) In 2004, Mr. Mehler opened a woodworking school in Kentucky, in
10 which he incorporates table saw safety in his classes. (*Id.* at ¶¶ 2-3.)

11 Mr. Mehler has also written magazine articles on various aspects of table
12 saws, including articles on kickbacks, blade covers, and table saw safety issues, and
13 authored books and produced videos on table saws. (*Id.* at ¶ 3; *see also* ECF No.
14 30-2 at 17-18.) In addition, beginning in 2001, Mr. Mehler served on the ad-hoc
15 working group at Underwriters Laboratory and the Standards Technical Panel for
16 improving blade guarding on table saws, and consulted with Black and Decker
17 Company on the development of the Dewalt 744 and 746 table saws. (*Id.* at ¶ 3.)
18 Mr. Mehler is very familiar with nearly all table saws manufactured in the United
19 States, as well as European-manufactured models sold in this country, and has
20 served as a consultant in dozens of table saw personal injury lawsuits. (*Id.*; *see also*
21 ECF No. 30-2 at 19-21.)

22 Rule 702 provides that a witness may be “qualified as an expert by
23 knowledge, skill, experience, training, or education.” Fed. R. Evid. 702. While Mr.
24 Mehler does not have a safety design or engineering degree, based on the foregoing,
25 the Court finds his knowledge, skill, experience, and training qualify him as an
26 expert to testify to the following: (1) the blade guard was of defective design and
27 therefore insufficient to protect the user; and (2) the rip fence is defective, as it does
28 not consistently lock parallel to the saw blade, increasing the likelihood of a

1 dangerous kickback event. (See ECF No. 33-7 at 4, ¶ 6; ECF No. 30-2 at 8.)

2 Defendants also argue Mr. Mehler’s proposed testimony is unreliable
3 because it is not supported by any accepted engineering methodology. (ECF No.
4 30 at 7-8.)² Mr. Mehler explains the basis for his opinions in his report. (See ECF
5 No. 30-2 at 9-14.) His opinions are based on a reconstruction and review of the
6 facts of this case, and his extensive use and study of table saws with the Ryobi Saw
7 guard design, interaction with users, and long history and experience in the
8 industry. (*Id.*; see also ECF No. 33-8 at 8-9.) The Court finds this basis
9 sufficiently reliable under Rule 702. Mr. Mehler’s proposed testimony has “a
10 reliable basis in the knowledge and experience of his discipline.” See *Estate of*
11 *Barabin*, 740 F.3d at 462; see also *United States v. Hankey*, 203 F. 3d 1160, 1169
12 (9th Cir. 2000) (citing *Kumho Tire Co., Ltd.*, 526 U.S. at 150) (“The *Daubert*
13 factors (peer review, publication, potential error rate, etc.) simply are not applicable
14 to this kind of testimony . . . whose reliability depends heavily on the knowledge
15 and experience of the expert, rather than the methodology or theory behind it.”) As
16 previously noted, whether an expert’s conclusions or factual assumptions should be
17 accepted are issues that bear on the weight of the testimony, rather than on its
18 admissibility, and may be attacked by cross examination and contrary evidence.
19 See *Primiano*, 598 F.3d at 564; *Daubert*, 509 U.S. at 595-96; *Bergen*, 816 F.2d at
20 1352 n. 5.

21 For the foregoing reasons, Defendants’ motion to preclude Mr. Mehler’s
22 testimony (ECF No. 30) is **DENIED**.

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27 ² At the hearing on the motions, Defendants stated they do not object to
28 Mr. Mehler being offered to explain to the jury how a table saw works and the basic
safety features of table saws.

1 **IV. CONCLUSION & ORDER**

2 Based on the foregoing, the Court (1) **GRANTS** Defendants' motion to
3 preclude the testimony of Dr. Gass (ECF No. 28); (2) **DENIES** Defendants' motion
4 to preclude the testimony of Mr. Holt (ECF No. 29); and (3) **DENIES** Defendants'
5 motion to preclude the testimony of Mr. Mehler (ECF No. 30).

6 **IT IS SO ORDERED.**

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8 **DATED: April 24, 2015**


Hon. Cynthia Bashant
United States District Judge

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