

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

ROBERT CLEVELAND, an individual,
Plaintiff,
v.
THE BEHEMOTH, a California
corporation; and DOES 1 through 10,
Defendants.

Case No.: 3:19-cv-00672-RBM-BGS

**ORDER DENYING PLAINTIFF
ROBERT CLEVELAND’S DAUBERT
MOTION TO EXCLUDE
DEFENDANT FROM MAKING USE
OF THE TESTIMONY OF
DOMINICK ADDARIO, M.D.**

[Doc. 65]

On March 4, 2022, Plaintiff Robert Cleveland (“Plaintiff”) filed a Motion to Exclude Defendant from Making Use of the Testimony of Dominick Addario, M.D. (“Motion”). (Doc. 65.) On March 18, 2022, Defendant The Behemoth (“Defendant”) filed an opposition to the Motion (“Opposition”). (Doc. 80.) In the Motion, Plaintiff argues Dr. Addario’s testimony would not be helpful to the trier of fact and is irrelevant, unreliable, and inadmissible under the Federal Rules of Evidence (“Rules” or “Rule”). (Doc. 65–1 at 2.)

For the reasons discussed below, Plaintiff’s Motion is **DENIED**.

///

1 **I. BACKGROUND**

2 Plaintiff is a former quality assurance specialist at Defendant, a video game
3 development company headquartered in San Diego. (Doc 1–2 at 4.) On February 20, 2019,
4 Plaintiff filed the instant action alleging that from March 2016 to February 2018,
5 “Defendant[] subjected Plaintiff to systemic employment discrimination based on his
6 gender” and “engendered, endorsed, and/or ratified a hostile work environment violative
7 of state and federal law.” (*Id.* at 4, 7.)

8 In particular, Plaintiff brings claims for: (1) hostile work environment/sexual
9 harassment in violation of California Fair Employment and Housing Act, (2) retaliation in
10 violation of California Fair Employment and Housing Act, (3) wrongful termination in
11 violation of public policy, (4) violation of California Business and Professions Code §
12 17200, (5) intentional infliction of emotional distress, (6) negligent infliction of emotional
13 distress, (7) failure to prevent harassment, (8) hostile work environment/sexual harassment
14 in violation of Title VII [42 U.S.C. §§ 2000(e) et seq.], and (9) retaliation in violation of
15 Title VII [42 U.S.C. §§ 2000(e) et seq.]. (*Id.* at 3.) Plaintiff’s complaint has requested
16 general, compensatory, and/or special damages in any amount to be proven at trial. (*Id.* at
17 21.) The complaint also requests punitive damages in an amount sufficient to punish and
18 deter Defendant from harming other employees. (*Id.*)

19 In light of Plaintiff’s claims of emotional distress, “both parties engaged expert
20 witnesses to render opinions relating to Plaintiff’s mental health.” (Doc. 71 at 3.)
21 Defendant designated expert witness Dominick Addario, M.D., a medical doctor and
22 licensed psychiatrist with over forty-five years of clinical and forensic psychiatric
23 experience. (Doc. 80 at 6.) Plaintiff contends that Dr. Addario’s testimony should be
24 excluded because it is not helpful or reliable, and his “expert report and opinions suffer
25 from a litany of evidentiary defects.” (Doc. 65–1 at 6.)

26 ///

27 ///

28 ///

1 **II. LEGAL STANDARD**

2 Rule 702 provides that expert testimony is admissible if:

3 (a) the expert's scientific, technical, or other specialized knowledge will help
4 the trier of fact to understand the evidence or to determine a fact in issue;
5 (b) the testimony is based on sufficient facts or data; (c) the testimony is the
6 product of reliable principles and methods; and (d) the expert has reliably
7 applied the principles and methods to the facts of the case.

8 FED. R. EVID. 702. For expert testimony to be admitted, it must be useful to the trier of
9 fact, the expert must be qualified to provide the testimony, and the proposed evidence must
10 be reliable or trustworthy. *Sterner v. U.S. Drug Enf't Agency*, 467 F. Supp. 2d 1017, 1033
11 (S.D. Cal. 2006).

12 A trial court acts as a gatekeeper in excluding unreliable expert testimony. *Cooper*
13 *v. Takeda Pharms. Am., Inc.*, 239 Cal. App. 4th 555, 576 (2015); *see Daubert v. Merrell*
14 *Dow Pharms., Inc.*, 509 U.S. 579, 600 (1993) ("Rule 702 confides to the judge some
15 gatekeeping responsibility in deciding questions of the admissibility of proffered expert
16 testimony"). Moreover, a trial court has broad discretion in deciding whether to admit
17 expert testimony and in determining an expert's reliability. *United States v. Hankey*, 203
18 F.3d 1160, 1168 (9th Cir. 2000); *see also United States v. Espinosa*, 827 F.2d 604, 611 (9th
19 Cir. 1987) ("[t]he decision to admit expert testimony is committed to the discretion of the
20 district court and will not be disturbed unless manifestly erroneous").

21 **III. DISCUSSION**

22 Plaintiff argues that Dr. Addario's testimony should be excluded from trial because
23 it would not be helpful to the trier of fact, and it is irrelevant, unreliable, and inadmissible
24 under the Rules. (Doc. 65-1 at 2.) In particular, Plaintiff alleges Dr. Addario: (1) made
25 broad conclusions, (2) offered improper opinions relating to Plaintiff's credibility, (3)
26 administered a single objective test to anchor his findings, and (4) allowed his assistant to
27 administer the test in violation of industry practice. (*Id.* at 7.) Additionally, Plaintiff
28 criticizes "Dr. Addario's reliance on Plaintiff's alleged electronic and social media
communications to conclude that Plaintiff did not suffer a psychiatric disorder as a result

1 of [Defendant] exposing Plaintiff to pedophilic and obscene content is unscientific and
2 unreliable” and argues such testimony is inadmissible. (*Id.* at 15.) Plaintiff contends Dr.
3 Addario’s testimony relating to Plaintiff’s “foul language, derogatory statements, sexist
4 comments, and dealing with very sexual issues” is a violation of Rule 412, which prohibits
5 evidence offered to prove a victim’s sexual behavior or predisposition unless its probative
6 value outweighs any harm or unfair prejudice. (Doc. 65–1 at 20); FED. R. EVID. 712.

7 It is Defendant’s position that Dr. Addario’s testimony is helpful to the jury, reliable,
8 not character evidence, and admissible under the Rules. Defendant alleges that Dr. Addario
9 conducted an independent medical evaluation which “lasted approximately 2.25 hours and
10 consisted of a clinical interview and a battery of psychological tests.” (Doc. 80 at 7–8.)
11 “Dr. Addario concluded that Plaintiff did not suffer severe emotional distress as a result of
12 the alleged conduct by Defendant.” (*Id.* at 10.) Rather, “Plaintiff’s mild [generalized
13 anxiety disorder] is a preexisting condition that was likely exacerbated by other events in
14 Plaintiff’s life, including the terminal illness and death of his mother, the death of a beloved
15 pet rat, and having his car towed and resulting litigation.” (*Id.*)

16 Moreover, Defendants claim that “Dr. Addario has not and will not offer an opinion
17 at trial regarding Plaintiff’s credibility as a witness in general.” (*Id.* at 12.) Instead,
18 Defendant explains that “documents that reflect Plaintiff’s use of sexually explicit language
19 are relevant to Dr. Addario’s clinical assessment ‘[b]ecause they point towards his
20 sensitivity to sexually laden material,’” which is relevant to whether and to what extent
21 Plaintiff suffered emotional distress as a result of the alleged conduct. (*Id.*) Additionally,
22 Defendants contend that Dr. Addario’s administration of the objective test, the Minnesota
23 Multiphasic Personality Inventory–2 (“MMPI–2”), was not improper. (*Id.* at 18.) Even
24 though Dr. Addario’s assistant explained the test to Plaintiff, “Dr. Addario subsequently
25 explained the test to Plaintiff and gave him the opportunity to answer any question that he
26 might have had about approaching the exam” and he “is a qualified psychiatrist who
27 supervised the administration of the MMPI–2, including the brief portion in which Dr.
28 Addario’s assistant handed the test to Plaintiff.” (*Id.* at 17.) Defendants also argue Dr.

1 Addario was not required to administer another test in addition to the MMPI–2. (*Id.*)

2 The Court finds Dr. Addario’s testimony regarding causation of Plaintiff’s emotional
3 distress is admissible. *See Weekley v. City of Los Angeles*, 656 F. App’x 824, 827 (9th Cir.
4 2016) (finding the expert did not opine on the plaintiff’s general credibility but rather
5 “explained, based on his qualifications as an expert, that [the plaintiff’s] responses to the
6 testing he conducted suggested that [the plaintiff] has exaggerated his symptoms”). Dr.
7 Addario is a qualified expert, and his testimony, similar to the testimony of Plaintiff’s
8 expert Ellen Stein, Ph.D., may be helpful to the trier of fact in determining whether and to
9 what extent Plaintiff suffered emotional distress and whether such distress was caused by
10 Defendant. However, Plaintiff’s argument seeking exclusion of any broad, conclusory
11 statements made by Dr. Addario as to Plaintiff’s credibility is well taken, and any attempt
12 by Dr. Addario to introduce inadmissible character evidence shall be excluded at trial. *See*
13 *United States v. Barnard*, 490 F.2d 907, 913 (9th Cir.1973) (finding exclusion of
14 psychiatrist’s and psychologist’s testimony that witness was a sociopath and
15 not credible was proper, and that admitting such testimony “may cause juries to surrender
16 their own common sense in weighing testimony”).

17 In regard to Dr. Addario’s clinical methodology and testing, the Court finds Dr.
18 Addario used reliable principles and methods in his administration of the MMPI–2. Dr.
19 Addario’s expert testimony is based on a variety of factors including: (1) his review of
20 medical documents, including medical records, employment records, and deposition
21 testimony, (2) a clinical interview with Plaintiff, and (3) various clinical tests, including
22 the MMPI–2. (*See* Doc. 80 at 16.) While Plaintiff argues the MMPI–2 testing is unreliable
23 because Dr. Addario allowed his assistant to administer the test, Defendant clarifies that
24 Dr. Addario’s assistant explained the MMPI–2 test to Plaintiff and “Dr. Addario
25 subsequently explained the test to Plaintiff and gave him the opportunity to answer any
26 question that he might have had about approaching the exam.” (Doc. 80 at 17.) Moreover,
27 Dr. Addario’s administration of the test is consistent with the test publisher’s guidance
28 which provides the test “can be administered by [a] trained secretary, clerk, or technician.”

1 (See Doc. 80–2 at 72.) Thus, the Court finds Dr. Addario’s reliance on objective testing
2 admissible.

3 In regard to Plaintiff’s argument that the expert impermissibly relied upon
4 communications made by Plaintiff that may be excluded under Rule 412, the Court
5 incorporates by reference its ruling on the Plaintiff’s Motion in Limine No. 1 (Doc. 68–1.)

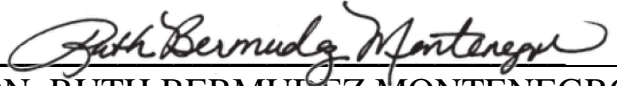
6 Finally, any of Plaintiff’s concerns regarding Dr. Addario’s testimony may be
7 examined on cross examination. See *Daubert*, 509 U.S. at 596 (“[v]igorous cross-
8 examination, presentation of contrary evidence, and careful instruction on the burden of
9 proof are the traditional and appropriate means of attacking shaky but admissible
10 evidence”).

11 **IV. CONCLUSION**

12 For the foregoing reasons, Plaintiff’s Motion is **DENIED**.

13 **IT IS SO ORDERED.**

14 DATE: October 6, 2022

15 
16 HON. RUTH BERMUDEZ MONTENEGRO
17 UNITED STATES DISTRICT JUDGE
18
19
20
21
22
23
24
25
26
27
28