

1
2
3
4
5
6
7
8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
10

11 JOHN LINDLAND,

12 Plaintiff,

13 v.

14 TUSIMPLE, INC., et al.,

15 Defendants.
16
17

Case No.: 3:21-cv-00417-RBM-MDD

**ORDER DENYING PLAINTIFF
JOHN LINDLAND'S MOTION TO
EXCLUDE TESTIMONY OF
DEFENDANT'S EXPERT WITNESS
RICHARD HOLSTROM**

[Doc. 32]

18 On March 24, 2022, Plaintiff John Lindland ("Plaintiff") filed a motion to exclude
19 the testimony of Defendant TuSimple, Inc.'s ("Defendant") expert witness Richard
20 Holstrom under Federal Rule of Evidence 702 ("Motion"). (Doc. 32 (hereinafter "Mot."))
21 Defendant filed a brief in opposition to Plaintiff's Motion on April 21, 2022 (Doc. 44
22 (hereinafter "Opp.")), and Plaintiff filed his reply on April 28, 2022. (Doc. 45.) For the
23 reasons discussed below, Plaintiff's Motion is **DENIED**.

24 **I. BACKGROUND**

25 The Court thoroughly recounted the factual and procedural background of this action
26 in its orders on Defendant's motion for order for choice of law determination (Doc. 31)
27 and Plaintiff's motion to bifurcate (Doc. 40). The Court incorporates by reference the
28 background as set forth therein, and briefly outlines below only those facts relevant to the

1 instant Motion.

2 Defendant “is a technology company that operates self-driving trucks and develops
3 commercial ready Level 4 (SAE) fully autonomous driving solution[s] for the logistics
4 industry.” (Doc. 1 (“Compl.”) ¶ 6.) Defendant hired Plaintiff on or about August 24, 2018,
5 as a Functional Safety Engineering Lead. (*Id.* ¶ 19.) Plaintiff was offered stock options
6 prior to accepting Defendant’s job offer, which were “to vest on a three-year cliff vesting
7 schedule in the amount of 30% after [Plaintiff’s] first year of employment, 30% after [his]
8 second year of employment, and 40% after [his] third year of employment.” (Doc. 23-1 ¶
9 4.) Plaintiff’s employment contract provides:

10 Upon approval by our Board of Directors, \$150,000 worth of share options, subject
11 to all required taxes and withholdings, will be granted to you with 3-year-cliff
12 vesting schedule as of commencement of your employment with TuSimple. The
13 number of share options offered will be calculated upon the then valuation of
14 TuSimple on the Valuation Date, i.e., six (6) months after the actual start date of
15 your employment.

16 (*Id.* Ex. A § 6.)

17 Plaintiff alleges Defendant terminated his employment on or around March 18, 2020
18 in order to avoid the payment of his stock options. (Compl. ¶¶ 49–50, 54.) In his
19 Complaint, Plaintiff seeks “the granting of the full 150,000 share options at the strike price
20 determined as per the employment contract” and a declaration “as to whether the share
21 options that have already been earned according to the employment contract are being
22 unreasonably withheld by Defendant TuSimple and should be vested immediately.” (*Id.*
23 at 23.) The parties’ experts have submitted reports which dispute the value of the vested
24 portion of Plaintiff’s stock options.

25 II. LEGAL STANDARD

26 Federal Rule of Evidence (“Rule”) 702 governs the admissibility of expert
27 testimony. Rule 702 provides:

28 A witness who is qualified as an expert by knowledge, skill, experience,
training, or education may testify in the form of an opinion or otherwise if: (a)
the expert’s scientific, technical, or other specialized knowledge will help the

1 trier of fact to understand the evidence or to determine a fact in issue; (b) the
2 testimony is based on sufficient facts or data; (c) the testimony is the product
3 of reliable principles and methods; and (d) the expert has reliably applied the
principles and methods to the facts of the case.

4 FED. R. EVID. 702. “The party offering expert testimony has the burden of establishing its
5 admissibility.” *Bldg. Indus. Ass’n of Washington v. Washington State Bldg. Code Council*,
6 683 F.3d 1144, 1154 (9th Cir. 2012).

7 Before finding expert testimony admissible, the trial court must make a “preliminary
8 assessment of whether the reasoning or methodology underlying the testimony is
9 scientifically valid and of whether that reasoning or methodology properly can be applied
10 to the facts in issue.” *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 592–93 (1993).
11 “Under *Daubert*, the trial court must act as a ‘gatekeeper’ to exclude junk science that does
12 not meet Federal Rule of Evidence 702’s reliability standards by making a preliminary
13 determination that the expert’s testimony is reliable.” *Ellis v. Costco Wholesale Corp.*, 657
14 F.3d 970, 982 (9th Cir. 2011) (citing *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 145,
15 147–49 (1999)).

16 The Court must find “that any and all scientific testimony or evidence admitted is
17 not only relevant, but reliable.” *Daubert*, 509 U.S. at 590. “Expert opinion testimony is
18 relevant if the knowledge underlying it has a valid connection to the pertinent inquiry. And
19 it is reliable if the knowledge underlying it has a reliable basis in the knowledge and
20 experience of the relevant discipline.” *Primiano v. Cook*, 598 F.3d 558, 565 (9th Cir.
21 2010), *as amended* (Apr. 27, 2010). “[T]he court must assess [an expert’s] reasoning or
22 methodology, using as appropriate such criteria as testability, publication in peer reviewed
23 literature, and general acceptance.” *Alaska Rent-A-Car, Inc. v. Avis Budget Grp., Inc.*, 738
24 F.3d 960, 969 (9th Cir. 2013) (quoting *Primiano*, 598 F.3d at 564). “Reliable expert
25 testimony need only be relevant, and need not establish every element that the plaintiff
26 must prove, in order to be admissible.” *Id.* (citing *Stilwell v. Smith & Nephew, Inc.*, 482
27 F.3d 1187, 1192 (9th Cir. 2007)).
28

1 The inquiry required by Rule 702 “is a flexible one.” *Daubert*, 509 U.S. at 594; *see*
2 *also City of Pomona v. SQM N. Am. Corp.*, 750 F.3d 1036, 1043 (9th Cir. 2014) (citing
3 *Alaska Rent-A-Car, Inc.*, 738 F.3d at 969). “In evaluating proffered expert testimony, the
4 trial court is ‘a gatekeeper, not a fact finder.’” *City of Pomona*, 750 F.3d at 1043 (quoting
5 *Primiano*, 598 F.3d at 565). “Challenges that go to the weight of the evidence are within
6 the province of a fact finder, not a trial court judge. A district court should not make
7 credibility determinations that are reserved for the jury.” *Id.* at 1044. “Shaky but
8 admissible evidence is to be attacked by cross examination, contrary evidence, and
9 attention to the burden of proof, not exclusion.” *Primiano*, 598 F.3d at 564 (citing *Daubert*,
10 509 U.S. at 596).

11 III. DISCUSSION

12 Defendant retained expert Richard Holstrom “to review the claimed economic
13 damages submitted by the Plaintiff as a result of an allegation of wrongful termination.”
14 (Doc. 34 at 4.) Mr. Holstrom obtained and reviewed documents in the case relevant to
15 Plaintiff’s claimed economic loss. (*Id.*) Mr. Holstrom reviewed the report submitted by
16 Plaintiff’s retained expert, Horacio A. Valeiras, who also opined on the scope of Plaintiff’s
17 economic damages. (*Id.*) Mr. Holstrom and Mr. Valeiras reach drastically different results
18 regarding the value of Plaintiff’s stock option shares as of September 29, 2021. (*See id.* at
19 6, 13.) Plaintiff objects to Mr. Holstrom’s testimony contained in: (1) his initial expert
20 report, dated October 13, 2021; (2) Mr. Holstrom’s supplemental expert report, dated
21 December 8, 2021; and (3) testimony from Mr. Holstrom’s deposition, which occurred on
22 December 10, 2021. (Mot. at 5.)

23 Plaintiff’s objections to Mr. Holstrom’s testimony are two-fold, targeting both Mr.
24 Holstrom’s qualifications and the substance of his expert reports. First, Plaintiff argues
25 that although “Mr. Holstrom is a well-educated person and possesses an extensive
26 background in accounting,” Mr. Holstrom is not “an expert on the valuation of stock
27 options, specifically.” (*Id.* at 8–9.) Plaintiff further argues that, although Mr. Holstrom
28 “estimated that he had dealt with valuation of options in approximately half a dozen cases,”

1 he does not “claim to be an expert on the valuation of stock options, specifically.” (*Id.* at
2 9) (internal quotation marks omitted.) Defendant argues Mr. Holstrom is qualified to
3 opine on the value of Plaintiff’s stock options and has rendered opinions on option
4 valuations in the past. (Opp. at 6.)

5 Under Rule 702, a testifying expert must be “qualified as an expert by knowledge,
6 skill, experience, training, or education.” FED. R. EVID. 702. In the Ninth Circuit, “[t]he
7 threshold for qualification is low: a minimal foundation of knowledge, skill, and experience
8 suffices.” *PixArt Imaging, Inc. v. Avago Tech. Gen. IP (Singapore) Pte. Ltd.*, No. C 10-
9 00544 JW, 2011 WL 5417090, at *3 (N.D. Cal. Oct. 27, 2011) (citing *Hangerter v.*
10 *Provident Life & Accident Ins. Co.*, 373 F.3d 998, 1015–16 (9th Cir. 2004)).

11 The Court finds Mr. Holstrom’s education and professional experience satisfy Rule
12 702’s requirements. Plaintiff admits that Mr. Holstrom “is licensed as a Certified Public
13 Accountant (CPA), certified in Financial Forensics (CFF), is Accredited in Business
14 Valuations (ABV), and is a Certified Fraud Examiner (CFE).” (Mot. at 8.) Mr. Holstrom
15 has worked in the field of forensic accounting since 1980, and he has substantial experience
16 serving as an expert in both state and federal courts. (*See* Doc. 34.) Plaintiff himself admits
17 Mr. Holstrom has offered expert testimony on issues of stock option valuations in other
18 cases. (*See* Mot. at 8–10.) To the extent Plaintiff takes issue with the depth of Mr.
19 Holstrom’s experience opining on issues of stock option valuation, such objection goes to
20 the weight of Mr. Holstrom’s testimony, not its admissibility. *City of Pomona*, 750 F.3d
21 at 1044.

22 Second, Plaintiff argues Mr. Holstrom’s findings are unreliable because “Mr.
23 Holstrom simply provides a rebuttal to Plaintiff’s Expert Witness” and “Mr. Holstrom
24 admits that although Defendant utilized the Black-Scholes method of valuation in its S-1
25 and 10-Q filings, Mr. Holstrom did not utilize the Black-Scholes method in valuing the
26 stock options provided to Plaintiff.” (Mot. at 10–11.) Specifically, Plaintiff argues Mr.
27 Holstrom’s report is only a “rebuttal” to Mr. Valeiras’s expert report which does not “assist
28 the trier of fact.” (*Id.* at 11.) Plaintiff also argues Mr. Holstrom should have used the

1 Black–Scholes model to value Plaintiff’s stock options because Defendant used the Black–
2 Scholes model in its S-1 Form filed with the U.S. Securities and Exchange Commission at
3 the time of the company’s initial public offering. (*Id.* at 12–17.) In its opposition,
4 Defendant argues Mr. Holstrom’s use of a different methodology to value Plaintiff’s stock
5 options goes to the weight of his opinion, not its admissibility. (Opp. at 7–8.)

6 Having reviewed the parties’ briefing and Mr. Holstrom’s reports, the Court finds
7 Mr. Holstrom’s testimony satisfies Rule 702 and the *Daubert* standard of admissibility.
8 Plaintiff is incorrect that Mr. Holstrom “did not possess any methodology at all” in
9 calculating the value of Plaintiff’s stock options. (Doc. 45 at 6.) Mr. Holstrom details his
10 review of Mr. Valeiras’s report, along with documents relevant to Plaintiff’s stock option
11 grant. (Doc. 34 at 9–12.) Mr. Holstrom goes on to calculate the potential value of
12 Plaintiff’s stock options, based on the number of vested shares Plaintiff possessed at the
13 time of his termination (using the closing stock price on September 29, 2021). (*Id.* at 12–
14 13.) Mr. Holstrom expands on his analysis in his supplemental report, at which time he
15 discusses “Mr. Valeiras’ improper use of the Cabrillo Advisors October 29, 2021 409A
16 report and his the failure to fully consider TuSimple’s methodology to value the company
17 as of February 2019.” (Doc. 34-1 at 6.)

18 Plaintiff’s objections to Mr. Holstrom’s valuation methodology go to the weight of
19 Mr. Holstrom’s testimony, not its admissibility. *City of Pomona*, 750 F.3d at 1044.
20 Plaintiff has not shown that Mr. Holstrom’s opinion is the “junk science Rule 702 was
21 meant to exclude.” *Wendell v. GlaxoSmithKline LLC*, 858 F.3d 1227, 1237 (9th Cir. 2017)
22 (internal quotation marks omitted). Accordingly, “the interests of justice favor leaving
23 difficult issues in the hands of the jury and relying on the safeguards of the adversary
24 system—‘[v]igorous cross-examination, presentation of contrary evidence, and careful
25 instruction on the burden of proof’—to ‘attack[] shaky but admissible evidence.’” *Id.*
26 (citing *Daubert*, 509 U.S. at 596). Plaintiff will have ample opportunity at trial to cross
27 examine Mr. Holstrom, at which time he can probe Mr. Holstrom’s decision not to use the
28 Black–Scholes model in his analysis of Plaintiff’s alleged economic damages.

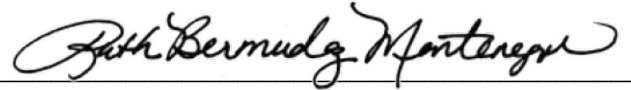
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IV. CONCLUSION

For the reasons discussed above, Plaintiff's motion (Doc. 32) is **DENIED**.

IT IS SO ORDERED.

DATE: October 20, 2022



HON. RUTH BERMUDEZ MONTENEGRO
UNITED STATES DISTRICT JUDGE