

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

Colombo v. Palo Alto Unified School District, et al.

Colombo · No. 24-cv-0909 NC · Decided December 18, 2025

OPINION

Colombo

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA

10 11 PETER COLOMBO, Case No. 24-cv-0909 NC 12 Plaintiff,

ORDER GRANTING IN PART

13

v. AND DENYING IN PART

14 DEFENDANTS' MOTION TO

EXCLUDE EXPERT

15 PALO ALTO UNIFIED SCHOOL TESTIMONY

DISTRICT, and others, 16 Re: Dkt. 210 Defendants. 17 18 19 20 In this case, Plaintiff Peter Colombo alleges that three Palo Alto Unified School 21 District officials violated his due process rights and the District retaliated against him 22 following a false allegation made in January 2022 that Colombo raped a middle school 23 student. Presented to the Court is Defendants' motion to exclude expert testimony by five 24 witnesses disclosed by Colombo. Dkt. 210. The expert witnesses are Sandra Schuster; 25 Ken Whittemore; Mark Alifano; Dr. Jessica Chaudhary; and Dr. Barry Ben-Zion. Their 26 reports and portions of their deposition transcripts are attached to Dkt. 210. The central 27 issues presented in the motion are whether this expert witness testimony is relevant and 1 explained below, the Court finds that Colombo satisfies the standard for witnesses 2 Schuster, Whittemore, and Dr. Ben-Zion, and does not satisfy the standard for witnesses 3 Alifano and Dr. Chaudhary. 4 In order to understand the relevance of the expert testimony to this case, it is 5 important to start with the claims and defenses. The operative pleading by Colombo is the 6 Third Amended Complaint, filed January 6, 2025. Dkt. 113. Since the Third Amended 7 Complaint was filed, the Court dismissed all claims against defendant Amanda Bark by 8 stipulation (Dkt. 175), and granted in part the Defendants' motion to dismiss claims 9 against the remaining Defendants pursuant to Fed. R. Civ. P. 12(b)(6). Dkt. 128. After the 10 motion to dismiss order, the remaining claims are: 11 • First Claim (42 U.S.C. § 1983): (A) procedural due process claim against 12 Defendants Don Austin, Lisa Hickey, and Trent

Bahadursingh, based on Plaintiff's alleged 13 property interest in a position similar to his tenured teaching role. And, (B) stigma-plus 14 procedural due process claim against Defendants Austin and Hickey. 15 16 • Second, Third, and Fourth Claims for retaliation against the District under Title 17 VII, FEHA, and Title IX. See Dkt. 110 (Order denying motion to dismiss retaliation 18 claims against District in Second Am. Compl.) and Dkt. 128 (Order on motion to dismiss 19 Third Am. Compl.). 20 Defendants answered the Third Amended Complaint on April 10, 2025, denying the 21 claims and asserting 40 affirmative defenses. Dkt. 130. On November 3, 2025, 22 Defendants moved for summary judgment (Dkts. 192, 196) and Colombo moved for 23 partial summary judgment (Dkt. 199). The summary judgment motions will be addressed 24 in a separate order. A jury trial is scheduled for January 26, 2026. 25 The parties do not seriously contest the well-established law governing Defendants' 26 motion to exclude or limit the expert witness testimony. As a starting point, only relevant 27 evidence may be admitted. FRE 401, 402. And even relevant evidence may be excluded 1 if its "probative value is substantially outweighed by a danger of one or more of the 2 following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting 3 time, or needlessly presenting cumulative evidence." FRE 403. 4 Additional rules apply specifically to expert witness testimony. Federal Rule of 5 Evidence 702 provides:

6 "A witness who is qualified as an expert by knowledge, skill, experience, 7 training, or education may testify in the form of an opinion or otherwise if the 8 proponent demonstrates to the court that it is more likely than not that: 9 (a) the expert's scientific, technical, or other specialized knowledge will 10 help the trier of fact to understand the evidence or to determine a fact in 11 issue; 12 (b) the testimony is based on sufficient facts or data; 13 (c) the testimony is the product of reliable principles and methods; and 14 (d) the expert's opinion reflects a reliable application of the principles and methods 15 to the facts of the case."

16 The 2023 amendments to Rule 702 clarified and emphasized that expert testimony 17 may not be admitted unless the proponent demonstrates to the Court that it is more likely 18 than not that the proffered testimony meets the admissibility requirements set forth in the 19 rule. See *Engilis v. Monsanto Co.*, 151 F.4th 1040, 1050 (9th Cir. 2025). As *Engilis* 20 confirmed, there is no presumption of admission. *Id.* A proponent of expert testimony 21 must always establish the admissibility requirements of Rule 702 by a preponderance of 22 the evidence. *Id.*; FRE 702 (2023). 23 Furthermore, Rule 703 provides that an expert may base an opinion on facts or data 24 that the expert "has been made aware of or personally observed." If experts in the 25 particular field would reasonably rely on those kinds of facts or data, they need not be 26 admissible for the opinion itself to be admitted. FRE 703. 27 "The duty falls squarely upon the district court to 'act as a gatekeeper to exclude 1 *Estate of Barabin v. AstenJohnson, Inc.*, 740 F.3d 457, 463 (9th Cir. 2014) (overruled on 2 other grounds by *United States v. Bacon*, 979 F.3d 766 (9th Cir. 2020)) (quoting *Ellis v. 3 Costco Wholesale Corp.*, 657 F.3d 970, 982 (9th Cir. 2011)). Rule 702 "assign[s] to the 4 trial judge the task of ensuring that an expert's testimony both rests on a

reliable 5 foundation and is relevant to the task at hand.” *Daubert v. Merrell Dow Pharm.*, 509 U.S. 6 579, 597 (1993). In *Daubert*, the United States Supreme Court identified “four factors 7 that may bear on the analysis: (1) whether the theory can be and has been tested, (2) 8 whether the theory has been peer reviewed and published, (3) what the theory’s known or 9 potential error rate is, and (4) whether the theory enjoys general acceptance in the 10 applicable scientific community.” *Murray v. S. Route Maritime SA*, 870 F.3d 915, 922 11 (9th Cir. 2017) (citing *Daubert*, 509 U.S. at 593–94). 12 Importantly, the Court’s duty is to evaluate the soundness of the expert’s 13 methodology, not the correctness of the expert’s conclusions. *Primiano v. Cook*, 598 F.3d 14 558, 564 (9th Cir. 2010). “Shaky but admissible evidence is to be attacked by cross 15 examination, contrary evidence, and attention to the burden of proof, not exclusion.” *Id.* 16 The Court has broad discretion and flexibility in assessing an expert’s reliability. *Id.* 17 The Court finally turns to its gatekeeping duties, considering the testimony of each 18 expert witness in turn. 19 Sandra K. Schuster, Esq. 20 Schuster is a Partner at an educational consulting firm, reporting more than 25 years 21 of experience in college administration and teaching, including serving as Associate Dean 22 of Students at The Ohio State University. She reports extensive experience in consulting 23 and training on Title IX issues. She reports extensive prior expert witness work. Her 24 analysis in this case concerns the District’s Title IX policies and response. She concludes 25 that the District failed to follow industry standard practices in responding to the allegations 26 against Colombo. Dkt. 210-1 at p. 30. 27 Defendants challenge Schuster’s testimony as unreliable and as improperly 1 standard of showing that Schuster’s testimony is relevant, helpful to the jury in 2 understanding the evidence and in determining retaliation, based on sufficient data, is the 3 product of reliable principles and methods, and the opinions reflect a reliable application of 4 the principles and methods to the facts of the case. FRE 702. The Court therefore denies 5 Defendants’ motion to exclude Schuster’s testimony. 6 Ken Whittemore 7 Mr. Whittemore’s expert report provides that he was retained as “an expert witness 8 on human resources practices and procedures within educational settings.” Dkt. 210-1 at 9 p. 48. He is employed as an Assistant Superintendent, Human Resources, at a California 10 school district, with over two decades of experience in school administration and human 11 resources. Whittemore opines that the District’s actions, coupled with a lack of proper 12 investigation, appears to be an act of retaliation. 13 The Court finds that Colombo meets the preponderance standard of showing that 14 Whittemore’s testimony is relevant, helpful to the jury in understanding the evidence and 15 in determining retaliation, based on sufficient data, is the product of reliable principles and 16 methods, and the opinions reflect a reliable application of the principles and methods to the 17 facts of the case. FRE 702. The Court therefore denies Defendants’ motion to exclude 18 Whittemore’s testimony. The Court is concerned that Whittemore’s testimony may be 19 duplicative of testimony by Schuster, but will address this concern with trial time limits 20 and consideration of further objections at trial. 21 Mark Alifano 22 Alifano is a retired law enforcement officer with 22 years of experience. Dkt. 210-1 23 at p. 57. His expert report provides that he was retained to opine on

the investigative 24 handling of the claims against Colombo. Alifano has not previously provided expert 25 witness testimony outside his employment in law enforcement. 26 The Court does not doubt the credentials of Alifano as a law enforcement officer, 27 but finds that Colombo has not met the preponderance standard of showing that Alifano's 1 retaliation and is based on sufficient data. FRE 702. As noted by Defendants, Alifano 2 testified that he was not an expert in Title IX and does not hold himself out as such; that he 3 is not a school policies or practices expert and does not hold himself out as such an expert; 4 he has not been employed by a school district outside of his current employment as a 5 substitute teacher and does not possess teaching credentials or administrator credentials; 6 and he has never conducted a Title IX investigation, nor ever directed a school district in 7 how to conduct their Title IX investigation. Dkt. 210 at p. 10 (listing deposition citations). 8 The Court therefore grants Defendants' motion to exclude Alifano's testimony. 9 Dr. Jessica Chaudhary 10 Dr. Chaudhary, a Board certified psychiatrist, conducted a virtual interview of 11 Colombo for 2 to 2.5 hours in August 2025 and authored an 8-page report. Dkt. 210-1 at 12 p. 68. The report repeats Colombo's allegations of emotional distress and recommends 13 therapy and starting psychiatric medication. Dkt. 210-1 at p. 73. Dr. Chaudhary also 14 opines that the District should return Colombo to his Fletcher Middle School assignment 15 and should issue a "formal apology" to Colombo. 16 The Court finds that Colombo does not meet the preponderance standard of 17 showing that Dr. Chaudhary's testimony is relevant and helpful to the jury in 18 understanding the evidence. FRE 702. In particular, the Court finds that the report was 19 not based on sufficient data (a short remote interview) and was not the product of reliable 20 principles because it did not assess alternative causes and treatment recommendations and 21 did not make a mental health diagnosis. The witness also went far beyond her expertise in 22 recommending placement at a particular job site and in recommending an apology. The 23 Court therefore grants Defendants' motion to exclude Dr. Chaudhary's testimony. 24 Dr. Barry Ben-Zion 25 Dr. Ben-Zion is a consulting economist retained to opine on Colombo's economic 26 loss. Dkt. 210-1 at p. 85. In his analysis, Dr. Ben-Zion assumes that Colombo will be 27 constructively terminated on Jan. 26, 2026 (the first day of trial). Dkt. 210-1 at p. 88. 1 || Dr. Ben-Zion's testimony is relevant, helpful to the jury in understanding the evidence of 2 || damages, based on sufficient data, is the product of reliable principles and methods, and 3 || the opinions reflect a reliable application of the principles and methods to the facts of the 4 || case. FRE 702. As to the assumption about constructive termination, the Court finds that 5 || the assumption does not undercut the reliability of the data or analysis. Defendants may 6 || challenge the assumption through cross-examination. The Court therefore denies 7 || Defendants' motion to exclude Dr. Ben-Zion's testimony. 8 Conclusion 9 Pursuant to Federal Rules of Evidence 702, 401, and 403, the Court GRANTS IN 10 PART Defendants' motion to exclude and excludes the expert testimony of witnesses Alifano and Dr. Chaudhary, and DENIES IN PART as to witnesses Schuster, Whittemore, and Dr. Ben-Zion, who will be allowed to testify within the confines of their disclosed 12 € opinions. 13 14 IT IS SO ORDERED. 15 16 Dated:

December 18, 2025 Lee ——— _

NATHANAEL M. COUSINS

United States Magistrate Judge 17 7 18 19 20 21 22 23 24 25 26 27 28

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