IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

WILLIAM A. LINK, et al.,

***Plaintiffs*,**

v. **Case No.: 4:21cv271-MW/MAF**

MANNY DIAZ, JR., et al.,

Defendants,
_____/

ORDER DENYING DEFENDANTS' MOTIONS IN LIMINE

This Court has considered, without hearing, Defendants' motions in limine that seek to exclude Plaintiffs' expert witnesses' testimony at the bench trial in this case, ECF Nos. 188, 189, 190, 191, & 192, and Plaintiffs' omnibus response in opposition to these motions, ECF No. 199. Defendants assert Plaintiffs' experts' testimony is inadmissible for myriad reasons, including—for example—that they lack the necessary qualifications to testify about certain subjects, that they employed no reliable methodology in reaching their conclusions, that their opinions encompass the ultimate issue that this Court, as the fact finder, must decide, and that their testimony is irrelevant to Plaintiffs' claims. Although some of Defendants' motions pose a closer call for this Court than others, Defendants motions are all due to be denied for the reasons set out below.

Expert testimony must be relevant and reliable. Fed. R. Evid. 702. With those requirements in mind, the Eleventh Circuit requires district courts to apply a three-part test to determine whether expert evidence is admissible. Under that test, courts must consider whether

> (1) the expert is qualified to testify competently regarding the matters he [or she] intends to address; (2) the methodology by which the expert reaches his [or her] conclusions is sufficiently reliable as determined by the sort of inquiry mandated in *Daubert*; and (3) the testimony assists the trier of fact, through application of scientific, technical, or specialized expertise, to understand the evidence or to determine a fact in issue.

Hendrix v. Evenflo Co., 609 F.3d 1183, 1194 (11th Cir. 2010) (quoting *United States v. Frazier*, 387 F.3d 1244, 1260 (11th Cir. 2004)). The burden is on the proponent of the testimony to show, "by a preponderance of the evidence, that the testimony satisfies each prong." *Id*.

When conducting a bench trial,[1] however, courts are less concerned about the parties "dumping a barrage of questionable scientific evidence on a jury." *Allison v. McGhan Med. Corp.*, 184 F.3d 1300, 1310 (11th Cir. 1999); *see also United States v. Brown*, 415 F.3d 1257, 1269 (11th Cir. 2005) ("There is less need for the gatekeeper to keep the gate when the gatekeeper is keeping the gate only for himself."). And although motions in limine "can work a

[1] The parties agreed to setting this case for a non-jury trial in their Rule 26 Report filed on October 19, 2021. ECF No. 48 at 6.

savings in time, cost, effort and preparation, a court is almost always better situated during the actual trial to assess the value and utility of evidence." *Wilkins v. Kmart Corp.*, 487 F. Supp. 2d 1216, 1218 (D. Kan. 2007). This is true here with respect to Defendants' arguments for excluding Plaintiffs' experts' testimony.

For example, Defendants take issue with many of the experts' asserted legal opinions. Of course, neither side's experts can offer legal opinions. *See Ala. State Conf. of NAACP v. Alabama*, No. 2:16-CV-731-WKW, 2020 WL 579385, at *3 (M.D. Ala. Feb. 5, 2020) (rejecting expert testimony on legal questions). Even so, whether Defendants' challenge on this point merits relief requires a more nuanced analysis than Defendants suggest. *See, e.g.*, *City of South Miami v. DeSantis*, Case No. 19-cv-22927-BLOOM/Louis, 2020 WL 7074644 (S.D. Fla. Dec. 3, 2020) (precluding Dr. Lichtman from "offering any opinions at trial as to the ultimate issue of discriminatory legislative intent," but otherwise denying motion to exclude Dr. Lichtman's expert testimony that followed a framework resembling the *Arlington Heights* factors).

Defendants also assert some of Plaintiffs' experts lack technical expertise with respect to data security or software development, thus undermining their opinions about survey administration or historical context

based on a review of selected webpages. *See, e.g.*, ECF No. 190 at 12 (calling into doubt Dr. Hurtado's opinion concerning survey administration because she "is not a data security expert") and ECF No. 192 at 14 (arguing that Dr. Kamola is not qualified to testify about computer code used to select website data for his review in forming his opinion). Although a close call, as long as experts are "minimally qualified, gaps in [their] qualifications generally will not preclude admission of [their] testimony, as this relates more to witness credibility and thus the weight of the expert's testimony, than to its admissibility." *Ala. State Conf. of NAACP*, 2020 WL 579385, at *2.

Defendants' remaining arguments identify areas ripe for cross-examination at trial, and which go toward challenging the weight this Court should assign to Plaintiffs' experts' testimony, rather than its admissibility. An adversarial presentation at trial will put this Court in the best position to determine what weight—if any—to give to these experts' testimony. And nothing in this Order precludes Defendants from raising timely objections at trial. Accordingly, Defendants' motions, ECF Nos. 188, 189, 190, 191, and 192, are **DENIED**.

SO ORDERED on December 7, 2022.

s/Mark E. Walker
Chief United States District Judge