THE HONORABLE JOHN H. CHUN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FEDERAL TRADE COMMISSION, *et al.*,

Plaintiffs,

v.

AMAZON.COM, INC., a corporation,

Defendant.

CASE NO.: 2:23-cv-01495-JHC

PLAINTIFFS' MOTION TO EXCLUDE DEFENDANT'S REBUTTAL EXPERT OMAR HAQUE

NOTE ON MOTION CALENDAR: December 23, 2026

PUBLIC

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INTRODUCTION

Plaintiffs move to exclude all opinions of Amazon's proffered rebuttal expert Omar Haque under Federal Rule of Evidence 702. Basing his opinions primarily on his limited experience working at two vendor companies[1] that transact with Amazon, Mr. Haque is nothing more than a paid fact witness cloaked as an expert and has less experience than numerous fact witnesses regarding the issues on which he opines. **First**, Mr. Haque [redacted] because he lacks specialized knowledge on retailers, does not have a reliable methodology, and presents irrelevant opinions. **Second**, Mr. Haque cannot opine on [redacted] because he does not provide a sufficient nexus between his limited experience at two companies and the conclusions he draws.

BACKGROUND

Amazon offers Mr. Haque as an expert based on his "[redacted]" in retail working at two vendor companies.[2] Nowhere in his report or his testimony does Mr. Haque specify his field of expertise. [redacted]

[1] Vendors sell goods to retailers, such as Amazon, Walmart, and Target, who in turn, sell those goods directly to consumers.

[2] Ex. 1, Rebuttal Expert Report of Omar Haque (Jun. 10, 2026) ("Report") at ¶1. Citations in the form of Ex. __ refer to the exhibits to the Declaration of Olivia Jerjian (Dkt. #718).

[3] "First-party" selling refers to when a retailer (like Amazon) buys products from a vendor and then sells them to customers. *See, e.g.*, Order on Def.'s Mot. to Dismiss (Dkt. #289) at 14; Report ¶8; Ex. 4, Deposition of Omar Haque (Aug. 7, 2026), *California v. Amazon*, No. CGC-22-601826 (Cal. Super. Ct.) ("CA Dep.") 13:19-14:6.

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[redacted].[4] Mr. Haque's report[5] boils down to opining that [redacted] based primarily on his industry experience.[6] This experience consists of his past eCommerce sales and marketing positions at two companies where he [redacted]"[7]: (1) Bimbo Bakeries USA ("Bimbo")—the largest baked goods company in the country,[8] and Colgate-Palmolive ("Colgate")—a consumer goods company selling everyday products that are rapidly consumed, like toothpaste.[9] Mr. Haque describes his methodology as applying his industry experience to interpret (1) Professor Johnson's report, (2) trade publications, and (3) email exchanges between Amazon vendor managers and vendors.[10]

LEGAL STANDARD

In *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993) ("*Daubert I*"), the Supreme Court held that Rule 702 assigns trial courts "a gatekeeping role" in "ensuring that an expert's testimony both rests on a reliable foundation and is relevant to the task at hand." *Id.* at 597; *see also Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 147-48 (1999) (extending trial court's "gatekeeper" role to all types of expert testimony). Rule 702 requires that to offer an expert opinion a witness must be "qualified as an expert by knowledge, skill, experience, training, or

[4] *See* Report ¶¶10-19 (summarizing Haque's assignment and Plaintiffs' allegations).
[5] Mr. Haque provided a near identical rebuttal report in a related matter, *California v. Amazon*, No. CGC-22-601826 (Cal. Super. Ct.) ("*California*"). *See* Ex. 2, Deposition of Omar Haque (Sept. 2, 2026) ("Dep.") 13:13-17:7 (acknowledging that the challenged conduct and the opinions in his reports in *California* and this case were similar). *Compare* Report *with* Ex. 3, Expert Rebuttal Report of Omar Haque (Apr. 29, 2026), *California v. Amazon*, No. CGC-22-601826 (Cal. Super. Ct.).
[6] *See* Report §3; Dep. 17:8-19, 24:5-20, 26:23-27:5; CA Dep. 24:2-22, 28:17-29:12.
[7] Report ¶8.
[8] Report ¶¶1-2, 8.
[9] Report ¶¶1, 3, 8.
[10] Dep. 17:9-19; *see also* CA Dep. 28:17-29:12.

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education" and the party proffering the opinion must "demonstrate[] to the court that it is more likely than not that:

(a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;

(b) the testimony is based on sufficient facts or data;

(c) the testimony is the product of reliable principles and methods; and

(d) the expert has reliably applied the principles and methods to the facts of the case."

See also Erwin v. OBI Seafoods, LLC, No. 2:22-CV-00893-JHC, 2024 WL 553697, at *1 (W.D. Wash. Feb. 12, 2024) (Chun, J.) (citing *Lust v. Merrell Dow Pharm., Inc.*, 89 F.3d 594, 598 (9th Cir. 1996)) (holding proponent of expert opinion must show it is more likely than not that expert opinion is admissible). District courts have "considerable leeway in deciding in a particular case how to go about determining whether particular expert testimony is reliable." *Kumho*, 526 U.S. at 152; *see also United States v. Hankey*, 203 F.3d 1160, 1168 (9th Cir. 2000). Reliability depends not on "the correctness of the expert's conclusions but the soundness of his methodology." *Daubert v. Merrell Dow Pharm., Inc.*, 43 F.3d 1311, 1318 (9th Cir. 1995) ("*Daubert II*"). An expert opinion must be both reliable and helpful; that is, it "must assist the trier of fact in understanding or determining a fact in issue." *Plunkett v. Best Buy Co.*, 2017 WL 4958579, at *2 (W.D. Wash. Oct. 31, 2017) (citing *Daubert I*, 509 U.S. at 591-92).

"When the expert witness relies 'solely or primarily on experience, then the witness must explain how that experience leads to the conclusion reached, why that experience is a sufficient basis for the opinion, and how that experience is reliably applied to the facts.'" *Erwin*, 2024 WL 553697 at *2 (quoting Fed. R. Evid. 702 advisory committee's notes (2000 Amendment)). "[C]ourts are mindful that reliability becomes more, not less, important when the experience-based expert opinion is . . . not subject to routine testing, error rate, or peer review type analysis,

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like science-based expert testimony." *FTC v. Amazon*, No. 2:23-cv-00932-JHC, 2025 WL 2314745, at *3 (W.D. Wash. Aug. 11, 2025) (Chun, J.) ("*Amazon ROSCA*") (quotations and citations omitted).

ARGUMENT

I. MR. HAQUE SHOULD NOT BE PERMITTED TO OPINE ON [redacted]

Relying primarily on his industry experience at two *vendor* companies, as well as examples in Professor Johnson's opening report and trade publications,[11] Mr. Haque offers several general opinions [redacted].[12] For example, he opines on:

- [redacted];"[13]
- [redacted];"[14]
- [redacted];"[15] and
- [redacted].[16]

Mr. Haque then opines that [redacted]. For example, he states:

- "[redacted];"[17] and

[11] *See* Dep. 17:9-19, 24:5-20; Report ¶31 [redacted].

[12] [redacted]

[13] Report ¶23(a), §2.2.1.

[14] Report ¶23(b), §2.2.2.

[15] Report ¶23(c), §2.2.3.

[16] *See* Report ¶27, §3.2.

[17] Report ¶26(b).

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- "[redacted]."[18]

Mr. Haque's opinions regarding [redacted] because (a) he does not have specialized knowledge [redacted], (b) he does not have a reliable methodology based on sufficient facts and data, and (c) his opinions are not helpful to the factfinder. *See* Fed. R. Evid. 702.

A. Mr. Haque Has No Specialized Knowledge About [redacted]

Mr. Haque lacks any credible expertise to render opinions about [redacted]. He has never worked [redacted].[19] Tellingly, Mr. Haque disclaimed knowledge of [redacted]."[21] For the same reason, he is unqualified to testify as to [redacted]. It simply would not make sense for a witness who is unable to speak to the [redacted].

Mr. Haque cannot remedy his [redacted] with other forms of specialized knowledge. *See Alpha & Omega Semiconductor Ltd. v. Force MOS Tech. Co.*, 2026 WL 2161197, at *5-6 (N.D. Cal. July 27, 2026). According to his CV and his report, he has not conducted any research on [redacted]; nor has he published any peer-reviewed articles or taught

[18] Report ¶28, §3.3.
[19] *See* Dep. 34:24-35:10.
[20] *See* Dep. 69:5-17.
[21] *See* Dep. 213:23-214:18.

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any classes.[22] While he has an MBA [redacted],[23] Mr. Haque does not explain how his education provides him with specialized knowledge about [redacted] "as part of his [MBA] degree[]." *See id.* at *6 (excluding expert in part because he did not explain how his degree related to the subject matter of his expertise). Mr. Haque is also not an economist,[24] yet he purports to offer opinions in response to Plaintiffs' expert economist Professor Justin Johnson.

B. Mr. Haque's Experience-Based Methodology Is Unreliable

Even if Mr. Haque were qualified, his methodology is not reliable. Though "an expert's opinion may be based on the expert's experience and knowledge of the industry as a whole," *Wyatt B. v. Kate Brown*, 2022 WL 3445767, at *4 (D. Or. Aug. 17, 2022) (citing *United States v. Laurienti*, 611 F.3d 530, 548 (9th Cir. 2010)), "[e]xperts that rely primarily on experience must explain 'how that experience leads to the conclusion reached, why that experience is a sufficient basis for the opinion, and how that experience is reliably applied to the facts.'" *Amazon ROSCA*, 2025 WL 2314745, at *3 (quoting *Moussouris v. Microsoft Corp.*, 311 F. Supp. 3d 1223, 1246 (W.D. Wash. 2018)). "[C]ourts are mindful that reliability becomes more, not less, important when the experience-based expert opinion is . . . not subject to routine testing, error rate, or peer review type analysis, like science-based expert testimony." *Id.* at *3 (quotations and citations omitted). Despite his extensive opinions regarding the practices of *retailers*, Mr. Haque never "show[s] how his experience" at two *vendor* companies "informs his conclusions" about [redacted] *See id.* at *4 (excluding expert due to his "inability to articulate how his

[22] Dep. 36:23-25; CA Dep. 127:8-11.
[23] Report ¶9, App. A; CA Dep. 126:17-19.
[24] *See* Dep. 36:19-22.
[25] Haque refers to "his own experience" but does not explain anything further. *See* Report ¶¶100, 188.

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education, training, and experience [in human factors engineering] have led him to his conclusions [on dark patterns]").

For instance, [redacted]"[26] Mr. Haque opines that [redacted][27] Mr. Haque does not explain when or how his experiences at vendors gave him any reliable insight into [redacted]"[28] *See Erwin*, 2024 WL 553697, at *2-3 (excluding expert where she "fail[ed] to demonstrate how her experience has informed her conclusions" on standard HR practices). Similarly, Mr. Haque opines that [redacted],"[29] [redacted] "draws no methodological nexus between his conclusions and his experience, education, and training . . . other than to say his conclusions are based on his experience." *Amazon ROSCA*, 2025 WL 2314745, at *3. This type of "circular reasoning" is unreliable. *Id.*

Like the excluded expert in *Humphreys v. Regents of University of California*, [redacted] and, therefore, his "limited experience does not meet the 'reliability' standard for expert testimony." 2006 WL 1867713, at *3 (N.D. Cal. July 6, 2006) (excluding senior executive's expert testimony on search firm procedures because he "never actually worked for such a firm" and his experience was "limited to having been recruited twice

[26] Report ¶99.
[27] Report ¶100.
[28] Dep. 213:23-214:18.
[29] Report ¶188.
[30] Dep. 196:14-19.

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to new positions by such firms . . . [and] having hired such firms to conduct searches on numerous occasions"); *see Samuels v. Holland Am. Line-USA Inc.*, 656 F.3d 948, 953 (9th Cir. 2011) ("We also conclude that the district court did not abuse its discretion by excluding the material portions of [a proposed expert declaration addressing cruise safety, which] . . . established that she has worked in the travel industry for over 30 years, but never for a cruise line.").

Mr. Haque conceded he does not [redacted]"[31] He took "no steps to discover the actual opinions" of [redacted] *Corcoran v. CVS Health*, 2017 WL 1065135, at *12 (N.D. Cal. Mar. 21, 2017) (excluding testimony where expert "conducted no specific investigation" that would support his opinions); *see Rambus Inc. v. Hynix Semiconductor Inc.*, 254 F.R.D. 597, 608 (N.D. Cal. 2008) (where a propounded expert's experience is "limited" in the particular subject, a "sufficient showing should include some minimum effort to survey industry publications or consider the efforts of multiple persons in the field . . . at least absent evidence of extensive experience . . . in the [relevant] industry"). Mr. Haque did not speak with [redacted],[32] when forming his opinions. He did not even review the [redacted] to compare [redacted].[33] He also did not conduct any empirical analyses, including any statistical ones.[34]

[31] CA Dep. 204:20-206:9.
[32] Dep. 18:11-18.
[33] *Compare, e.g.*, Dep. 257:23-258:17 [redacted]); CA Dep. 209:6-18 ([redacted] *with* Report ¶¶123(d), (g) ([redacted].
[34] Dep. 23:10-22.

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C. Mr. Haque's Opinions [redacted] Are Irrelevant

Even assuming Mr. Haque has specialized knowledge and uses a reliable methodology, his opinions are not helpful to the trier of fact. *See* Fed. R. Evid. 702(a). While "[t]he relevancy bar is low," expert testimony must have "a valid connection to the pertinent inquiry." *Messick v. Novartis Pharm. Corp.*, 747 F.3d 1193, 1196–97 (9th Cir. 2014). Whether [redacted] is a red herring, and does not bear on the question of whether its conduct was anticompetitive. It is well settled that benign or even procompetitive practices used by other firms can be anticompetitive when used by a monopolist. *See CoStar Grp., Inc. v. Com. Real Est. Exch., Inc.*, 150 F.4th 1056, 1072 (9th Cir. 2025), *cert. denied*, 146 S. Ct. 1836, 224 L. Ed. 2d 272 (2026) ("[A] firm with monopoly power is precluded from employing otherwise lawful practices that unnecessarily exclude competition from a relevant market" (internal citations omitted)). Thus, Mr. Haque's views about [redacted] which are not grounded in any relevant expertise or reliable methodology—are not relevant to the question of whether Amazon's conduct is anticompetitive.

II. MR. HAQUE SHOULD NOT BE PERMITTED TO OFFER SWEEPING OPINIONS ABOUT [redacted]

Primarily extrapolating from his Colgate and Bimbo experience, Mr. Haque proffers opinions on [redacted] including:

- [redacted];"[35]
- [redacted]."[36]
- [redacted];"[37] and

[35] Report ¶22(a), §2.1.1.
[36] Report ¶¶22(b)-(c), §§2.1.2, 2.1.3.
[37] Report ¶26(c), §3.1.

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- [redacted]."[38]

While Mr. Haque may well have experience with [redacted]. Such opinions exceed his experience, and he does not claim otherwise. As with his opinions on [redacted] Mr. Haque's experience *is* his methodology.[39] His limited experience at two vendor companies is not a sufficient foundation for his sweeping opinions [redacted].

First, Colgate and Bimbo are distinct [redacted]. *See Jinro Am. Inc. v. Secure Investments, Inc.*, 266 F.3d 993, 1004, 1006 (9th Cir. 2001) (excluding unreliable expert testimony on Korean business culture where expert made "sweeping generalizations, derived from his limited experience and knowledge [concerning Korean businesses]—plainly a skewed sample"); *United States v. Alo-Kaonohi*, 635 F. Supp. 3d 1074, 1080 (D. Haw. 2022) ("There must be a threshold number of experiences from which the expert's knowledge is drawn. . . . Those experiences must be sufficiently similar in nature to form a valid basis for comparison." (internal citations omitted)). Though Mr. Haque refers to companies of all sizes and categories in his report,[40] at no point does he explain how his experience at Colgate and Bimbo enables him to offer [redacted].[41]

[redacted]

[38] Report ¶29.
[39] Dep. 24:5-20.
[40] *See, e.g.*, Report ¶¶170 n.278 [redacted]), 213-14 ([redacted]).
[41] Mr. Haque also testified that [redacted] *See* Dep. 31:10-33:11.

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[redacted].[42] [redacted].[43] Both operate in very specific product categories—principally personal care products and baked goods, respectively.[44] As a result, during Mr. Haque's time at the vendors, [redacted].[45] [redacted].[46] Mr. Haque has no reliable basis to testify about [redacted]. He is at best in the same position as many other fact witnesses.

Second—and even more concerning—is Mr. Haque's admitted unfamiliarity with GMM and MCP agreements. Mr. Haque states that [redacted].[47] As a result, he has no firsthand experience with GMM or MCP agreements. He concludes, with no "more than bald assertions," that [redacted].[48] *City of Seattle v. Monsanto Co.*, 2023 WL 4288163, at *4 (W.D. Wash. June 30, 2023) (citing *City of Pomona v. SQM N. Am. Corp.*, 750 F.3d 1036, 1049 (9th Cir. 2014)). However, Mr. Haque's lack of experience—[redacted], is a woefully inadequate foundation for the opinion that [redacted]. *See Laprade*

[42] *See* Ex. 5, Colgate-Palmolive Co., Annual Report (Form 10-K) (Feb. 13, 2025), at 4 (Colgate is "a truly global company, with employees in over 100 countries"), CA Dep. 32:21-33:8 [redacted]), 39:5-6 ([redacted]); Ex. 6, Grupo Bimbo, 2025 Integrated Annual Report 7 (2026) (Bimbo operates directly in 39 countries).

[43] *See* CA Dep. 34:10-17, 35:1-5 ([redacted]).

[44] CA Dep. 34:18-22 (Colgate), 39:14-16 (Bimbo).

[45] *See* CA Dep. 113:6-10 (Colgate), 115:9-12 ([redacted]).

[46] *See, e.g.*, CA Dep. 323:11-17.

[47] *See* Dep. 228:13-229:1; CA Dep. 222:22-223:4.

[48] Report ¶¶149-50, 157 (GMMs) and 161 (MCPs).

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v. Volkswagen AG, 2026 WL 1091292, at *8–9 (W.D. Wash. Apr. 22, 2026) (excluding expert testimony where proffered expert "formed his conclusion [on the maximum reasonable temperature for a seat heater] upon the fact that he had never seen [a temperature] this high before") (internal quotation omitted).

Mr. Haque has no experience [redacted]. Despite his lack of experience, Mr. Haque took no steps to investigate [redacted]. *See Corcoran*, 2017 WL 1065135, at *12; *Rambus*, 254 F.R.D. at 608. For example, he did not seek information from any other vendors or from Amazon vendor managers who negotiate with vendors[49] [redacted].[50] [redacted].

When Mr. Haque's unreliable opinions about [redacted] are pared away, what remains of his report is lay testimony about [redacted]. But Rule 702 does not permit a party to hire a witness as an "expert" and have that "expert" testify to broad factual matters beyond their ken. *See Jinro*, 266 F.3d at 1006; *Alo-Kaonohi*, 635 F. Supp. 3d at 1080. And Mr. Haque's opinions on how vendors transact with Amazon are particularly unhelpful to the factfinder given that multiple vendor witnesses were deposed and may testify at trial.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court exclude the expert testimony of Amazon's proffered expert Omar Haque.

[49] *See* Dep. 293:11-17.
[50] *See* CA Dep. 378:18-379:4.

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I certify that this memorandum contains 3,758 words, in compliance with the Local Civil Rules.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 16, 2026, I electronically filed a true and correct copy of the foregoing document using the United States District Court for the Western District of Washington's CM/ECF System.

I FURTHER CERTIFY that I served the foregoing document on the following counsel via secure FTP service:

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