

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

JENZABAR, INC., LING CHAI, and)
ROBERT A MAGINN, JR.,)

Plaintiffs,)

CIVIL ACTION NO. 07-2075-H

v.)

LONG BOW GROUP, INC.,)

Defendant.)

**DEFENDANT LONG BOW GROUP’S REPLY MEMORANDUM IN SUPPORT OF
ITS MOTION TO STRIKE THE AFFIDAVIT OF FRANK FARANCE**

Long Bow has moved to strike the affidavit of Frank Farance, which Jenzabar has offered as its only evidentiary basis for claiming that keyword meta tags (and, if the complaint is amended, title tags) caused the high search ranking of the main Jenzabar-related page (“MJP”) on the tsquare.net web site. In a new affidavit, Farance seeks to burnish his credentials and claims to have conducted a “scientific experiment” proving that keyword meta tags affect search rankings on Google. Jenzabar also argues that the Supreme Court decisions in *Daubert v. Merrell Dow Pharms.*, 509 U.S. 579, 592-3 (1993) and *Commonwealth v. Lanigan*, 419 Mass. 15, 26 (1994), and their progeny should not affect admissibility of pseudo-expert testimony because trial court judges don’t take gatekeeper responsibilities seriously, and that in any event *Daubert/Lanigan* standards need not apply because it is the Court and not a jury that will decide whether to grant summary judgment.

These arguments should be rejected. First, Farance’s purported experiment is a fraud — inspection of the data attached to his affidavit reveals that it does not support his conclusion, and his “experiment” did not have sufficient safeguards to make his testimony reliable. Farance’s further

explication of his credentials is at best inadequate to justify reliance on his testimony in this case, and in some respects actually undercuts his claim to expertise about the impact of keyword meta tags on search rankings. Finally, Jenzabar's legal argument does not justify reliance on Farance's affidavit. Accordingly, the motion to strike that affidavit should be granted. Moreover, because the parties agreed that Long Bow may use this reply memorandum to attack the new Farance Affidavit without filing a separate motion to strike (so that the briefing on the motion for summary judgment could be brought to a close), that affidavit should be disregarded along with the first affidavit.

I. FARANCE'S NEW EXPERT AFFIDAVIT IS NO MORE RELIABLE THAN HIS FIRST AFFIDAVIT.

Long Bow's opening brief faulted Farance for relying on unsupported speculation and opinions without (1) grounding them in peer reviewed literature, (2) testing the impact search engine optimization techniques that he claims to use for his commercial clients, or (3) even discussing how he has used keyword meta tags in the past to affect search rankings in the way that Jenzabar claims Long Bow has done. The opening brief also explained that when an expert's opinions do not "grow[] naturally and directly out of research they have conducted independent of the litigation, [but have been] developed . . . expressly for purposes of testifying," courts performing their *Daubert* gatekeeping functions conduct a closer scrutiny of the opinions before admitting them in evidence. Opening Mem. at 4-5, quoting *Daubert v. Merrell Dow Pharmaceuticals*, 43 F. 3d 1311, 1317 (9th Cir. 1995) ("*Daubert II*"). By dissecting the reasoning process displayed in the opening affidavit, Long Bow showed that Farance reached conclusions about the impact of keyword meta tags and title tags that were not, in fact, supported by the sources to which he pointed.

A. Farance's "Controlled Experiment" Does Not Support Jenzabar.

Neither Jenzabar's opposition nor Farance's new affidavit takes issue either with Long Bow's

discussion of the impact of *Daubert* on opinions adopted specially for trial, or with Long Bow's dissection of Farance's "reasoning." Instead, they implicitly admit that Farance's original affidavit was flawed, but offer a new Farance affidavit claiming that, over an unspecified two-week period before signing his new (undated) affidavit, he conducted a "controlled experiment" which, he claims, shows for sure that the addition of keyword meta tags to a web page can affect its Google search ranking. Supplemental Affidavit ¶¶ 13-21. He describes an experiment consisting of four steps:

(1) On some unspecified date, he conducted a Google search for the term "sc32 attributes." Supp. Aff. ¶ 19 (search result attached as Exhibit C).

(2) On December 2, 2009, he added keyword meta tags for the web page http://metadata-standards.org/published_standards.html, including the terms "sc32" and "attributes." Supp. Aff. ¶¶ 16-17.

(3) He verified that no other changes had been made to that particular web page (Farance uses the term web site, but it is apparent that he means to refer only to this one particular web page within the metadata-standards.org web site). *Id.* ¶ 16 and Exhibit B.

(4) On some unspecified date **after** step (2), he conducted another Google search for the term "sc32 attributes." *Id.* ¶ 20 (search result attached as Exhibit D).

Farance summarizes his experimental outcome as follows:

20. . . . In Exhibit D, the third item on published standards has changed and the Google search ranking is now different. The only change to the website that could account for the change in the search ranking was the addition of keyword metatags.
21. While the actual weighting of factors in for [sic] Google search ranking is unknown at the present moment of experimentation, that statement "metatag keywords don't affect Google searches" is demonstrably false."¹

¹ This statement is much weaker than Farance's first opinion, ¶ 26, that title tag and keyword meta tags are "a primary reason . . . why web search engines . . . rank LB's website so high on a search of the term 'jenzabar.'"

In fact, inspection of Exhibits C and D reflects that Farance mischaracterizes his experimental data. The web page whose keyword meta tags were changed is metadata-standards.org/published_standards.html, and in both Exhibits, the third search result is exactly the same:

SC32 WG2 Published Standards

Mar 2, 2009 ... registries (MDR) – Part 3: Registry metamodel and basic **attributes**. (SC32 N1168 incorporates the corrections into the base document.) ...

metadata-standards.org/published_standards.html - Cached - Similar

Thus, the search ranking of the page to which keyword meta tags were added was **not** affected. There is a difference in the indented item that appears below that third result — in Exhibit C, the indented item is a word document within the metadata-standards.org web site, while in Exhibit D it is a PDF document elsewhere within that site. But Farance does not indicate that he added keyword meta tags to or removed keyword meta tags from either of those files, and inspection of the both documents reveal that they do not contain any keyword meta tags. Chang Fourth Affidavit, ¶ 1. Consequently, the most important flaw in Farance’s supposed controlled experiment is that he has misstated his data to obscure the fact that the data do not support his assertion that changing keyword meta tags affected search rankings on Google.

His experiment has several other flaws. First, Farance is at pains to emphasize that he made no other changes to the web page apart from adding keyword meta tags, implicitly recognizing that an experiment cannot test an independent variable unless there are strict controls to be sure that it is the variable being tested that had the impact shown by the experiment; controls are “a central tenet of the scientific method.” *Cooper Laboratories v. Commissioner*, 501 F.2d 772, 779 (D.C. Cir. 1974). But even his original affidavit acknowledged that search rankings are affected at least by eleven different factors, several of which are external to the web page. Farance First Affidavit ¶ 21(g), (h), (I), and (k). Beyond that, the Google materials for webmasters that Jenzabar itself put in

evidence represents that the number of factors is much greater. *See* Long Bow Mem. at 8, citing *Technology Overview*, Exhibit 34. Farance does not say anything about whether those **other** factors remained constant. Moreover, one factor he mentions is “the freshness of the contents,” Farance Affidavit ¶ 21(f), yet he gives no consideration to the possibility that the mere making of changes to the html code on the page could affect search rank. Second, Farance deliberately concealed the dates of the Google searches he performed by changing the default settings on his web browser to prevent the printing of the **dates** when they were printed. (Compare Farance’s printed Google searches with the search engine results that Farance attested in his previous affidavit, *id.* ¶ 25, citing Exhibits 37, 38 and 49, each of which includes the date in the lower right hand corner of the page.) The search dates are significant because search engines change their ranking algorithms, and Farance has not taken the possibility of such changes into account. For example, in early December, Google implemented personalized search ranking, <http://googleblog.blogspot.com/2009/12/personalized-search-for-everyone.html>, whereby the outcome of search rankings is affected by previous searches that the same individual has conducted. Farance does not explain what he did to control for the impact of personalized search rankings.

And, even if Farance’s Supplemental Affidavit is admitted in evidence, it contradicts his first expert affidavit in a key respect that makes his entire submission useless for Jenzabar’s purposes. Farance originally averred that the keyword meta tag, together with the title tag, was “a primary reason” why the MJP appeared as the third-ranked search result. Having conducted his experiment, he now says very modestly that he can only be certain that keyword meta tags have some impact on search ranking, although he cannot say how much because “the actual weighting of factors” is unknown. But how, then, can he testify that the keyword meta tags are what brought the MJP to the third position in the search ranking? And once that part of his first affidavit is rejected because his

experimental results contradict it, the main purpose for the expert testimony — to show that the key word meta tags “caused” the high search ranking — is defeated.

B. The Other “Reasoning” in Farance’s Affidavit Similarly Does Not Support Jenzabar.

Although Farance responds at great length to a footnote in Long Bow’s opening brief questioning the strength of his credentials as an expert on search engine optimization — an issue addressed in the next part of this reply brief — he largely ignores the detailed dissection of the reasons he gave for his initial opinion about whether keyword meta tags affect search ranking; that dissection showed that his reasoning was internally contradictory and that his opinion about the impact of keyword meta tags and title tags in a search of the term “jenzabar” was unsupported by any of the data he cited. Instead, he offers additional arguments, but those arguments are also so seriously flawed that they are not reliable enough to warrant admission or to block summary judgment on the issue of causation.

For example, in paragraph 22, Farance avers that, in his general experience, “descriptive data, such as keywords, help web pages rank high on all search engines.” To the extent that Farance refers here to the inclusion of keywords in the **text** of web pages, his statement is unobjectionable, but does not support Jenzabar’s contention, expressly contradicted by Google itself, as well as by the many other sources cited in Long Bow’s opening brief, that Google and other major search engines ignore keyword **meta tags**.” The second sentence of paragraph 22, unlike the first, refers in passing to “the widespread practice of adding keyword metatags to improve search engine placement.” But Farance makes no showing of any such widespread practice, nor does he cite any scholarly literature or statements by other experts in his field — anything not prepared specifically for use in this litigation — showing such a widespread practice.

Indeed, inspection of web pages that Farance himself controls shows that he does not use keyword meta tags, except the one set of such meta tags that he inserted for his failed experiment. For example, his description of his experiment makes clear that, until he wanted to alter the page to make a rhetorical point in his affidavit, the web page that he controls at http://metadata-standards.org/published_standards.html did not contain any keyword meta tags. Indeed, **none** of the pages on the <http://metadata-standards.org/> site that Farance controls use keyword meta tags — except for the one page into which he inserted such meta tags for his “experiment.” Fourth Affidavit of Nora Chang, ¶ 5.

Similarly, as noted in Long Bow’s opening brief, at 10 n.7, Farance does not use keyword meta tags on his own professional web site. He addresses this point by saying that his surname is sufficiently unusual that his site can rank high without such meta tags. But that argument is fallacious for two reasons. First, his site ranks higher than other Farances shown in the search rankings, such as Melody Farance, Dan Farance, Steven Farance, Jeff Farance, and Courtney Farance; he accomplishes that without keyword meta tags. Second, the answer assumes that the only reason to use meta tags is to be ranked high when the searcher is looking for him by name, and not when for example, the searcher is looking for an expert in “standards and specification development,” “systems architecture and engineering,” or any of the other areas in which his web site represents that he does business. Apparently, this supposed expert in search engine optimization (“SEO”) does not consider keyword meta tags to be needed to ensure that his business web site can be found online. And although he burnishes his expertise by touting his involvement in the development of a forthcoming international standard on standards metadata, ISO 24706, which includes, he says, “metadata that helps [standards] rank higher in search engines,” ¶ 11, he does not attach that proposed standard to his affidavit, and for good reason — the standard makes no

reference to keyword meta tags (or, indeed, to search engines). Chang Fourth Affidavit Exhibit 65.

Paragraph 23 of the Farance affidavit similarly does not support Jenzabar. He cites two pages from Google's web site as showing that Google advises web site owners to use "metatags and keywords" to improve search result placement. But, as our opening brief pointed out, Google's statement that its search engine does not support keyword meta tags does indicate that the engine pays attention to the "**description** meta tag" — a meta tag that Long Bow's web pages do not use. And the Google advice pages that Farance cites say nothing about using or abusing keyword meta tags, although they do refer to title tags. They are primarily addressed to the use of keywords in **text** — as in the sentence that Farance cites in the web page entitled "Keyword stuffing," <http://www.google.com/support/webmasters/bin/answer.py?answer=66358>, "Focus on creating useful, information-rich **content** that uses keywords appropriately and in context." (Although Farance does not attach the two pages cited in ¶ 23 to his supplemental affidavit, they are attached to the Fourth Affidavit of Nora Chang as Exhibit 64.) As the *Keyword stuffing* page shows (and as Google expert Matt Cutts explains on another blog), keyword stuffing consists of placing keywords in the **text** of a web site: <http://www.mattcutts.com/blog/avoid-keyword-stuffing/>. Chang Fourth Affidavit, Exhibit 63.

Finally, Farance reports in paragraph 24 that "Google itself generates keywords [sic] metatags on its YouTube site." Although Farance does not claim that any conclusions can be drawn from that fact, Jenzabar argues in its memorandum in opposition that it shows that Google must not think keywords are useless. There are several problems here. First, Farance does not aver that he has ever placed a video on YouTube or that he has professional expertise in the use of YouTube to publicize content or express opinions. Second, it isn't Google but the YouTube user who decides whether to include keywords meta tags for a particular video. Moreover, even if the search engine within the

YouTube site may support keyword meta tags — perhaps because videos, unlike web pages, do not have text that can be searched — that is irrelevant to this case because there is no contention that a Long Bow video comes up high in the search results on YouTube. The only searches relevant here are searches using the Google search engine; the use of keyword meta tags on Google’s YouTube subsidiary is a red herring.

In summary, even if the Court concludes that Farance’s expertise is sufficiently keyed to the specific issues on which Jenzabar has offered his affidavit, he should not be permitted to “waltz into court,” *see* cases cited in Long Bow’s opening memorandum at 4, spouting opinions that either have no mooring in the sources and data that he cites, or have no bearing on the actual issues in this case. His supplemental affidavit should be rejected because it is no more reliable or relevant than the first.

II. FARANCE’S NEW AFFIDAVIT DOES NOT BURNISH HIS CREDENTIALS TO TESTIFY ABOUT THE IMPACT OF KEYWORD META TAGS.

Long Bow’s opening brief contained a footnote, at 3 n.3, that questioned whether Farance’s admitted expertise on some issues qualifies him to testify about search engine optimization and specifically about the impact of keyword meta tags on search rankings. Half of his supplemental affidavit, ¶¶ 2-12, and more than four pages of Jenzabar’s opposition brief, at 5-9, seek to respond to this one footnote. But the response is far from reassuring. For example, Farance argues that although he has not published in peer-reviewed journals, he has participated in the development of international standards, ¶¶ 5-12, which he says is a “higher threshold than peer-reviewed journals.” ¶ 6. But Farance is responding to an argument that Long Bow never made. Our point is not that Farance has not published any peer-reviewed work, but that he has not published any peer-reviewed work **about SEO generally or keyword meta tags in particular**. And the listing of his publications and other work on international standards makes crystal clear that none of the

publications involves SEO or keyword meta tags. Indeed, although Farance touts his involvement in the development of a forthcoming international standard on standards metadata, ISO 24706, he withholds that proposed standard from the Court; as noted above, he had a reason for that omission — the standard makes no reference to SEO or to keyword meta tags. Chang Fourth Affidavit, Exhibit 65. Indeed, review of the document reveals that it deals with meta data at such a high level of generality that the document does nothing to suggest that Farance is an expert who knows about SEO or keyword meta tags.

Instead, Farance argues that keyword meta tags are a form of meta data, and inasmuch as he is deeply involved in developing standards for meta data, he must be an expert qualified to testify in this case. That result does not follow. A highly qualified generalist engineer is not necessarily qualified to offer testimony about whether a particular design could have been used on a particular truck to make it less likely to cause injury. *See Johnson v. Manitowoc Boom Trucks*, 484 F.3d 426, 432 (6th Cir. 2007). Similarly, it is not just any licensed psychologist, however skilled as a general matter, who is qualified to testify as a forensic psychologist in a capital murder case. *Thompson v. Bell*, 315 F.3d 566, 603 (6th Cir. 2003). Although Long Bow has not argued that Farance's testimony should be excluded solely because he lacks any expertise in SEO (after deposing Farance on the specifics of the experiences claimed for the first time after close of discovery, we reserve the right to revisit that issue), Jenzabar's flabby showing on this point does not inspire confidence that his opinion should be enough to block summary judgment on the issue of causation.

Similarly, Long Bow's opening brief questioned whether Farance's general claim that he had provided SEO services to four major retailers showed his ability to offer opinions about keyword meta tags. In response, Farance has offered additional detail about his service for two of those clients. Supp. Aff. ¶ 4. But neither of those descriptions appears to have anything to do with SEO

— for client #1, he analyzed web data, and for client #2, he analyzed data that included “external referrals” including referrals from search engines. None of this work is said to have included determining search ranking or the reasons for it. Again, Farance’s additional information in support of this testimony is largely beside the point.

III. JENZABAR HAS NOT SHOWN A REASON FOR THE COURT TO RELAX ITS CRUCIAL GATEKEEPING RESPONSIBILITIES UNDER *DAUBERT* AND *LANIGAN*.

Jenzabar offers several reasons why the Court should not apply the gatekeeping responsibilities rigorously, but none of them is persuasive.

First, Jenzabar argues that the adoption of the *Daubert* / *Lanigan* gatekeeping requirement for expert testimony has had little or no impact on the acceptance of expert testimony because courts typically allow experts to testify and leave it to the jury to decide how much weight should be given to the testimony. Opp. at 2-3, 13-14. That is simply not true. To the contrary, courts take their gatekeeping responsibilities seriously, and do not permit wealthy litigants to buy their way out of summary judgment, nor permit putative experts to “waltz into court” without genuine review of the reliability of their analysis. Such scrutiny is particularly needed in trademark litigation given how expensive such cases tend to be. An empirical study of *Daubert*’s impact on trademark litigation found that of 44 reported decisions from 1997 through 2004, expert testimony was excluded in 14 cases, expressly given “little or no weight” in 6 more cases, and admitted but “discounted” or found “deficient” in 2 more cases – in other words, the testimony was essentially overridden in fully **half** the reported cases. Plevan, *Daubert’s Impact on Survey Experts in Lanham Act Litigation*, 95 Trademark Rep. 596 (2005). Such scrutiny is particularly needed given the prospect for use of pseudo-science to perpetrate strike suits like this case where a wealthy, well-connected litigant hopes to wear down a small company by making its exercise of free speech rights too expensive.

Second, Jenzabar argues that *Daubert* gatekeeping is principally needed to protect against the presentation of unreliable evidence to juries: “There is less need for the gatekeeper to keep the gate when the gatekeeper is keeping the gate only for himself.” Opp. 3-4, citing *United States v. Brown*, 210 F.3d 491, 500 (5th Cir. 2005) and a string of other cases. But every one of the cases cited involved a *Daubert* hearing preliminary to a **bench** trial. Jenzabar itself served a jury demand in this case, and has, indeed, relied on the fact that this case is slated for a jury trial as the predicate for its argument that Long Bow attorney Levy should be disqualified from litigating this case because his blogging about Google’s categorical statements that its search engine does not consider keyword meta tags might taint the jury pool. **None** of Jenzabar’s cases applied a lower *Daubert* threshold in cases where *Daubert* was invoked at the summary judgment stage of a case slated for jury trial.

To the extent that Jenzabar is trying to suggest that *Daubert* should receive only limited application at the summary judgment stage because summary judgment is decided by the Court as a matter of law, this argument ignores the fact that the purpose of summary judgment is to determine, as a matter of law, whether a reasonable jury, considering evidence that will be admissible in the jury trial, will confront a genuine issue of facts that are legally material to its determination. *Anderson v. Liberty Lobby*, 477 U.S. 242, 248 (1986). The evidence is viewed through the prism of the legal rules that will apply at trial. *Id.* at 254-255. Because *Daubert* standards will admittedly apply at trial, they must also be applied at this summary judgment stage to decide whether, based on evidence that can be admitted at trial, Jenzabar has created a genuine issue on the material fact of causation.

Moreover, Jenzabar’s leading case for the proposition that *Daubert* should be applied sparingly at the summary judgment stage, *Cortes-Irizarry v. Corporacion Insular De Seguros*, 111 F.3d 184 (1st Cir. 1997), supports Long Bow. Immediately before the long blocked quotation that appears in Jenzabar’s brief, the First Circuit said, “If proffered expert testimony fails to cross

Daubert's threshold for admissibility, a district court may exclude that evidence from consideration when passing upon a motion for summary judgment.” *Id.* at 188. And, immediately after *Jenzabar*'s blocked quotation appeared this sentence and footnote:

We conclude, therefore, that at the junction where *Daubert* intersects with summary judgment practice, *Daubert* is accessible, but courts must be cautious — except when defects are obvious on the face of a proffer — not to exclude debatable scientific evidence without affording the proponent of the evidence adequate opportunity to defend its admissibility.³

³ Though such an opportunity is most easily afforded at trial or in a trial-like setting, courts have displayed considerable ingenuity in devising ways in which an adequate record can be developed so as to permit *Daubert* rulings to be made in conjunction with motions for summary judgment. . . .

Id.

The First Circuit faulted the trial judge in that case, not for improperly invoking *Daubert* standards and *Daubert* procedures in excluding expert testimony, but for ignoring expert testimony despite the fact that the defendant had not filed a *Daubert* motion and the trial court had not even cited *Daubert*.

Here, Long Bow **has** filed a *Daubert* motion to strike Farance's affidavit or to bar its use because of its serious scientific weaknesses, and *Jenzabar* has had every opportunity to bolster its expert's submissions, not only by responding to Long Bow's arguments but also by making a more complete record by presenting a supplemental affidavit — precisely the procedure approved both by the First Circuit in *Cortes-Irizarry* and by some of the trial courts cited by *Jenzabar* on pages 4-5, after the blocked quotation. The problem for *Jenzabar* is that its additional material is even more seriously flawed than Farance's original submission, and reveals him to be someone who seeks to rely on impressive credentials accumulated in largely unrelated endeavors as a license to “waltz into court” spouting pseudo-scientific opinions that cannot withstand serious scrutiny. Unlike cases cited by *Jenzabar*, this is not a “close case” in which Farance's testimony is fairly debatable. Although

Jenzabar cites cases like *Ruiz-Troche v. Pepsi Cola Bottling Co.*, 161 F.3d 77 (1st Cir.1998), to support its argument that the Court should ignore the pseudo-scientific character of Farance's testimony, it would have been wiser to take note of the warning in that case that, although the mere existence of competing scientific approaches does not warrant the exclusion of an expert's opinions, "*Daubert* . . . demands only that the proponent of the evidence show that the expert's conclusion has been arrived at in a scientifically sound and methodologically reliable fashion." *Id.* at 85. Because Jenzabar does not come close to making that showing, Farance's affidavits should be stricken or at least ignored as a basis for avoiding summary judgment.²

Indeed, if any party has been denied process in connection with Farance's purportedly expert testimony, it is Long Bow. Jenzabar initially failed to reveal its intent to rely on expert testimony in response to Long Bow's Rule 26(b)(4) interrogatory, and then, in a supplemental response last summer, Opposition to Motion to Strike, Exhibit B, revealed only the barest outline of the subjects on which it "might" offer testimony from Farance, without disclosing either "the substance of the facts and opinions to which the expert is expected to testify [or] a summary of the grounds for each opinion," as required by Rule 26(b)(4) of the Rules of Civil Procedure. That disclosure indicated that only after Jenzabar obtained more "documents and data" from Long Bow would it "disclose the substance of the facts and opinions and a summary of the grounds for each opinion." Exhibit B at 5. At the same time, Jenzabar produced a resume from Farance that, as Jenzabar now admits, does not include any mention of a background or experience in SEO. Jenzabar first claimed that Farance had such experience after summary judgment was sought following the close of discovery. Long Bow has never had any opportunity to pierce Farance's claims about his qualifications, or to cross-

²Similarly, Jenzabar cites *Herbert A Sullivan v. Utica Mut. Ins. Co.*, 439 Mass. 387 (2003), Opp. 13, without acknowledging that no *Daubert* motion was made in that case.

examine Farance on the substance of the opinions and the grounds for those opinions, because they were disclosed only after discovery ended. Consequently, if this case survives summary judgment, and Farance's opinions survive the motion to strike his affidavit, then Long Bow should have the opportunity to take discovery of Farance and then renew both motions.

CONCLUSION

The motion to strike the affidavits of Frank Farance should be granted. If the affidavits are not stricken, his opinions should be given no weight in determining whether there are genuine issues about the material facts.

Respectfully submitted,

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