NOT FOR PUBLICATION

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MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RAVI SALHOTRA, et al. Plaintiffs-Appellants, v. SIMPSON STRONG-TIE COMPANY, INC., et al., Defendant-Appellees.	No. 22-15800 D.C. No. 3:19-cv-07901-TSH MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Honorable Thomas S. Hixson, Magistrate Judge, Presiding

Argued and Submitted June 5, 2023
San Francisco, California

Before: MILLER and KOH, Circuit Judges, and MOLLOY,** District Judge.
Dissent by Judge MILLER.

Appellants Ravi Salhotra and the putative class sued Appellees Simpson Strong-Tie Company Inc. and Simpson Manufacturing Company ("Simpson"), alleging that an inherent defect in Simpson's connector products cause them to

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The Honorable Donald W. Molloy, United States District Judge for the District of Montana, sitting by designation.

prematurely corrode and that a failure to disclose this defect breached Simpson's express warranty. Simpson counters that class treatment is not appropriate because Appellants have not established an inherent design defect, that this case is about individual issues for induvial homeowners, and that if any damage occurred, it was caused by factors outside of Simpson's control. The district court excluded the declaration of Appellants' key expert, Dr. Paul Brown, and denied their motion for class certification. Appellants appeal. We have jurisdiction under 28 U.S.C. § 1291, and we reverse and remand.

We "review the district court's exclusion of [an] expert opinion and the resulting denial of class certification for an abuse of discretion." *Grodzitsky v. Am. Honda Motor Co.*, 957 F.3d 979, 984 (9th Cir. 2020). Consistent with the standard set forth in *Daubert*, the district court has a duty as a gatekeeper to "ensure that all admitted expert testimony is both relevant and reliable." *Id.* (quoting *Wendell v. GlaxoSmithKline LLC*, 858 F.3d 1227, 1232 (9th Cir. 2017)); *see Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579 (1993). "Scientific evidence is reliable if the principles and methodology used by an expert are grounded in the methods of science." *Wendell v. GlaxoSmithKline LLC*, 858 F.3d 1227, 1232 (9th Cir. 2017) (internal quotation marks omitted). Indicia of reliability may also be found when "an expert . . . draw[s] a conclusion from a set of observations based on extensive

and specialized experience." *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 156 (1999).

Dr. Brown's reliance on American Concrete Institute standards, personal observations based on his extensive experience working in the field of metal corrosion in concrete, and testing of specific Simpson products to reach his opinions demonstrate his reliability under *Daubert*. Simpson objects to these methodologies; however, their objections go to the weight of the evidence, not its admissibility. *See Grodzitsky*, 957 F.3d at 984–85 ("The focus of the district court's analysis must be solely on principles and methodology, not on the conclusions that they generate." (quoting *Wendell*, 858 F.3d at 1232)); *Primiano v. Cook*, 598 F.3d 558, 564 (9th Cir. 2010) ("The test under *Daubert* is not the correctness of the expert's conclusions but the soundness of his methodology." (quoting *Daubert v. Merrell Dow Pharms., Inc.*, 43 F.3d 1311, 1318 (9th Cir. 1995))). Accordingly, the district court abused its discretion in excluding Dr. Brown's opinions under *Daubert*. And because the denial of class certification rested so heavily on the exclusion of Dr. Brown's testimony, that decision must also be reconsidered by the district court.

REVERSED AND REMANDED.

MILLER, Circuit Judge, dissenting:

The district court did not abuse its discretion in excluding Dr. Paul Brown's declaration or in denying the motion for class certification.

Dr. Brown relied on the standards of the American Concrete Institute. No one disputes that those standards are grounded in "scientifically valid principles," but Dr. Brown did not explain how they are relevant to this case. *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 597 (1993). ACI 318 applies to rebar and structural reinforcement pieces, so by its terms it is inapplicable to the products at issue. ACI 222 does apply to the products, but it states that "additional protective measures" can compensate for inadequate concrete cover, and it suggests that, for at least some products, "consideration should be given to the use of galvanized . . . steel." That is precisely what Simpson did. On its face, therefore, ACI 222 does not suggest that there is anything defective about the products. In his declaration, Dr. Brown pointed to a comment of a panelist at a 2003 Concrete Industry Association meeting, who opined that the zinc coating on galvanized steel "is a thin sacrificial coating that will quickly be dissolved/consumed in acidic environments." Even assuming that a 20-year-old comment by a single, unnamed panelist should be taken to reflect "scientifically valid principles," Dr. Brown did

not show that the products were exposed to an acidic environment, so the comment is not relevant to any issue in the case.

To be fair, Dr. Brown did explain how the geometry of the products could lead to high-permeability regions in the concrete in which they are embedded; some evidence in the record suggests that corrosive salts in soil may seep through such concrete; and other evidence in the record suggests that galvanization does not provide complete protection against such corrosive salts. Arguably, those pieces of evidence could be linked together to form a theory that the products are defective because they are made from galvanized steel. But Dr. Brown did not connect the dots, let alone explain a scientific methodology that would justify connecting them.

Perhaps the district court could have been more generous in interpreting Dr. Brown's declaration, but we review a district court's decision to exclude expert testimony for abuse of discretion. *See General Elec. Co. v. Joiner*, 522 U.S. 136, 143 (1997). Under that standard, we must uphold the decision "unless the ruling is manifestly erroneous." *Id.* at 142 (quoting *Spring Co. v. Edgar*, 99 U.S. 645, 658 (1879)). In my view, plaintiffs have not made such a showing. And without Dr. Brown's declaration, plaintiffs did not establish that their claims are susceptible to common proof. I would therefore affirm the denial of class certification.