

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION**

The Right Reverend Charles G. vonRosenberg, individually and in his capacity as the former Provisional Bishop of The Episcopal Church in South Carolina and	)	<b>CIVIL ACTION NUMBER: 2:13-cv-00587-RMG</b>
The Right Reverend Gladstone B. Adams, III, individually and in his capacity as the Provisional Bishop of The Episcopal Church in South Carolina,	)	
Plaintiffs,	)	<b>DEFENDANTS’ MEMORANDUM IN SUPPORT OF MOTION TO EXCLUDE TESTIMONY AND REPORTS OF DR. WALTER EDGAR</b>
The Episcopal Church,	)	
Plaintiff in Intervention	)	
vs.	)	
The Right Reverend Mark J. Lawrence, et al.	)	
Defendants.	)	

**TO: PLAINTIFFS, THE EPISCOPAL CHURCH, THE EPISCOPAL CHURCH IN SOUTH CAROLINA, THE RIGHT REVEREND CHARLES G. VONROSENBERG, THE RIGHT REVEREND GLADSTONE B. ADAMS, III AND THEIR COUNSEL OF RECORD**

COMES NOW, Defendants, The Rt. Rev. Mark J. Lawrence, The Protestant Episcopal Church In The Diocese of South Carolina; and The Trustees of the Protestant Episcopal Church of South Carolina; Church of The Cross, Inc. and Church of the Cross Declaration of Trust, The Church of Our Saviour, of the Diocese of South Carolina, The Protestant Episcopal Church, of the Parish of Saint Philip, in Charleston South Carolina, The Protestant Episcopal Church, The Parish of Saint Michael in Charleston, in the State of South Carolina and St. Michael’s Church

Declaration of Trust, The Vestry and Church Wardens of the Episcopal Church of the Parish of St. Helena and the Parish Church of St. Helena Trust, Trinity Episcopal Church, Edisto Island, St. David's Church, Vestry and Church Wardens of the Episcopal Church of the Parish of St. John's Charleston County, Vestry and Church Wardens of St. Jude's Church of Walterboro, The Vestries and Churchwardens of the Parish of St. Andrew, Old Saint Andrews Parish Church; Holy Trinity, Grahamville; St. Alban's Chapel, The Citadel; St. John's Episcopal, Charleston; St. Andrew's Mission; All Saints Protestant Episcopal Church, Inc.; St. Bartholomews Episcopal Church; The Church of the Holy Cross; The Vestry and Church Wardens of The Parish of St. Matthew Holy Apostles, Barnwell; St. James Anglican, Blackville; St. Barnabas, Dillon; Ascension, Hagood; St. Paul's Orangeburg; Historic Church of the Epiphany, St. Johns, Berkeley; Christ St. Paul's Episcopal Church; Church Of The Holy Comforter; St. Matthias Episcopal Church, Inc.; St. Matthews Church; Christ Episcopal Church, Mars Bluff Community, Florence County, South Carolina; Trinity Episcopal Church, Pinopolis; Church Of The Redeemer; Holy Trinity Episcopal Church; The Church Of The Good Shepherd, Charleston, SC; St. Paul's Episcopal Church of Bennettsville, Inc.; St. James' Church, James Island, S.C.; The Church of St. Luke and St. Paul, Radcliffeboro; The Church Of The Resurrection, Surfside; The Protestant Episcopal Church, Of The Parish Of St. Philip, In Charleston, In The State of South Carolina; The Vestry and Wardens Of St. Paul's Church, Summerville; St. Timothy's, Cane Bay; Trinity Church of Myrtle Beach; Vestry and Church-Wardens Of The Episcopal Church Of The Parish Of Christ Church; St. Luke's Church; Grace Parish, North Myrtle Beach; Christ the King, Waccamaw; The Vestry and Church Wardens Of The Episcopal Church Of The Parish Of Prince George Winyah; St. John's Episcopal Church of Florence, S.C.; Church of the Advent, Marion; St. Paul's Episcopal Church of Conway; The Well Ministries; and Church of the Holy Cross,

Sullivan’s Island, (collectively “The Defendants”) by and through their undersigned attorneys, and pursuant to Federal Rules of Civil Procedure and Rules of Evidence move before this Honorable Court for an order precluding the Plaintiff from presenting opinion testimony from Plaintiffs’ purported expert, Dr. Walter Edgar.

### **BACKGROUND**

Plaintiffs have identified Dr. Walter Edgar (“Dr. Edgar”) as an expert in this matter. Dr. Edgar is a retired history professor and historian. Dr. Edgar has authored both a report, and rebuttal to the expert report of Hal Poret. Dr. Edgar was deposed on October 9, 2018.

### **ARGUMENT**

For an expert opinion to be admissible, Federal Rule of Evidence 702 requires the witness be qualified and the witness' opinion be both relevant and reliable:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case. Fed. R. Evid. 702.

The plain language of Rule 702 requires a three part analysis. First, the court must determine if the offered testimony will assist the trier of fact. Second, the court must determine whether the proffered expert is qualified to offer an opinion. Lastly, the court must determine whether the proffered opinions satisfy the three numbered requirements listed in the rule. Id. All expert testimony must meet all of the requirements of Rule 702, regardless of whether it is scientific,

technical, or otherwise. Kumho Tire Co. v. Carmichael, 526 U.S. 137, 148, 119 S. Ct. 1167, 1174 (1999).

The United States Supreme Court has addressed the standards used to evaluate the reliability of testimony offered by experts whose opinions were based on specialized knowledge. See Kumho Tire Co., 526 U.S. at 147; Daubert v. Merrill Dow Pharm., Inc., 509 U.S. 579 (1993). The Supreme Court's decisions in Daubert and Kumho Tire, read together, make the District Court a gatekeeper on expert evidence in order to “ensure that any and all scientific testimony or evidence admitted is not only relevant, but reliable.” Daubert, 509 U.S. at 589; see also Kumho Tire, 526 U.S. at 152. In Daubert, the Court set out five non-exhaustive factors to apply in evaluating the reliability of an expert's opinions under Rule 702: (1) whether a theory or technique relied on by the expert can be (and has been) tested; (2) whether the theory or technique has been subjected to peer review and publication; (3) the known or potential rate of error; (4) whether there are standards controlling the operation of the theory or technique; and (5) whether the theory or technique enjoys general acceptance within a relevant scientific community. Id. at 592-94 (noting that the approach is a flexible one).

A district judge, considering a proffer of expert testimony under Federal Rule of Evidence 702 – whether based on scientific, technical, or other specialized knowledge – must, in determining its admissibility, ensure that the evidence is “not only relevant, but reliable.” Oglesby v. GMC, 190 F.3d 244, 249-50 (4th Cir. 1999). “The proponent of the testimony must establish its admissibility by a preponderance of proof.” Cooper v. Smith & Nephew, Inc., 259 F.3d 194, 199 (4th Cir. 2001). Accordingly, even though Dr. Edgar is a respected South Carolina historian and professor, his opinions must pass muster under the rubric set forth by Rule 702, Daubert, and the case law cited above.

A review of Dr. Edgar's reports and deposition testimony reveal his opinions are nothing more than his impressions from reviewing publically available documents and results of non-scientific internet searches. Dr. Edgar's opinions are not derived from any specialized knowledge, are flawed from a reliability standpoint and will not aid the trier of fact in their determination.

**I. Dr. Edgar's Role and Opinions**

Dr. Edgar is a retired University of South Carolina history professor and historian with an emphasis on the American South and South Carolina history. (Exhibit A - Edgar Dep. p.13:1-17). Dr. Edgar is a self-described "multigenerational cradle Episcopalian" and is a member and former vestry member at Trinity Episcopal Cathedral in Columbia, South Carolina. (Exhibit A - Edgar Dep. p.15:19- 16: 22). Dr. Edgar does not have a degree in religious studies or formal training or degrees in church history. (Exhibit A - Edgar Dep. p.13:18- 15:18). He has not authored any books on church history and has done no professional studies in Episcopal Church history. Id.<sup>1</sup>

According to his first report, dated April 4, 2018, Dr. Edgar was tasked with opining whether the "common usage" of "Episcopal," "Protestant Episcopal," and "diocese," have historically been made in reference to churches affiliated with The Episcopal Church, with a particular interest in South Carolina. (Exhibit B - 4/13/18 Report p. 1). To form his opinions, Dr. Edgar reviewed a litany of publicly available documents, including a sampling of city directories, telephone directories, encyclopedias, history text books, and national news magazines. (Exhibit B – 4/13/18 Report pp. 2-3; Exhibit A - Edgar Dep p. 30:24-31:6). As a result of his review, Dr. Edgar opined that the terms "Episcopal" and "Protestant Episcopal" are "household names" that identify an affiliation with The Episcopal Church. (Exhibit B - 4/13/18

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<sup>1</sup> Dr. Edgar has conducted personal research in the history of his church, Trinity Cathedral. Id.

Report p.1). Dr. Edgar further opined that “Episcopal” and “Protestant Episcopal” have been used to identify churches affiliated with The Episcopal Church “for a long time.” (Exhibit B - 4/13/18 Report p.1). In addition, Dr. Edgar indicated that in materials that referred to an “Episcopal” or “Protestant Episcopal” entity, the term “diocese” was used to refer to a “constituent part of The Episcopal Church.” (Exhibit B - 4/13/18 Report p.1).

Dr. Edgar has also offered a rebuttal report, dated September 20, 2018, in which he seeks to contradict the expert report of Hal Poret challenge Poret’s conclusion that “The Episcopal Church” and “Episcopal Church” are generic terms. (Exhibit C - 9/20/18 Report p.1). In so doing, Dr. Edgar conducted an internet search to determine how the term “The Episcopal Church” is used by the public and which organizations use that name. (Exhibit C - 9/20/18 Report p.1). According to his report, Dr. Edgar’s methodology included searching the term “The Episcopal Church” in both Google and Yahoo and reviewing the first 20 pages of results. (Exhibit C - 9/20/18 Report p.). In addition, in an effort to combat any “geographic bias” Dr. Edgar directed his son-in-law to run an identical search in Massachusetts. (Exhibit C - 9/20/18 Report p.1). Dr. Edgar (Exhibit C - 9/20/18 Report p.1).

As will be shown, none of the opinions offered by Dr. Edgar are admissible in this action.

**II. Dr. Edgar’s Opinions are inadmissible as they are not the result of any specialized knowledge and will not assist the trier of fact to understand the evidence or to determine a fact in issue.**

With due respect to Dr. Edgar’s qualifications, his opinions rendered in this case are not the result of specialized knowledge and do not stand up to the rubric set forth by Daubert and its progeny. Expert testimony is permitted if the witness is “an expert by knowledge, skill, experience, training, or education,” and his opinion is “the product of reliable principles and methods” that have been reliably applied to the facts of the case. Fed. R. Evid. 702. “Because we

are not concerned with the witness's general qualifications but instead with his ‘foundation for ... answer[ing] a specific question[,] ... we must look at each of the conclusions he draws individually to see if he has the adequate education, skill, and training to reach them.’” Hall v. Flannery, 840 F.3d 922, 926 (7th Cir. 2016) citing Gayton v. McCoy, 593 F.3d 610, 617 (7th Cir. 2010) (citations and internal quotation marks omitted).

Dr. Edgar’s opinions contained within his first report were based on a review of publically accessible records postdating 1900 that were “for everyday people,” as opposed to being tailored for academics. (Exhibit A - Edgar Dep. p. 31:1-20). In the subsequent rebuttal report, Dr. Edgar’s opinions are based upon his review of internet search engine results conducted by him and his out-of-state son-in-law. The research conducted by Dr. Edgar does not fall within the ambit of “specialized knowledge” required by Rule 702 and will not aid the trier of fact in their determination of the issues at hand. Dr. Edgar’s work and the resulting opinions did not require any specialized knowledge on his part. The ability to conduct word searches in historical databases at a library or running term searches into an internet search engine are not skills reserved for historians. Rather, the work performed by Dr. Edgar and his resulting opinions could well be performed by a lay-person. Put more simply, Dr. Edgar’s research did not require him to call upon any of his specialized knowledge as a historian or as an individual proficient in The Episcopal Church’s history.

The Fourth Circuit decided a similar fact pattern in the matter of Kennedy v. Joy Technologies. In reviewing the lower court’s decision to exclude a purported expert report the Court determined the report was merely a summary of records and documents, but did not offer any “specific scientific gloss or expertise.” Kennedy v. Joy Techs., Inc., 269 F. App’x 302, 312 (4th Cir. 2008). Moreover, the Court determined the report did not demonstrate any particular

scientific expertise that can be assessed for reliability or that would ultimately assist the trier of fact. Id. Instead, the report was merely a summary of information without specialized analysis to support its conclusions. Id. A nearly identical situation is presented here as Dr. Edgar's opinions are not the result of any specialized skill or knowledge, but his interpretation of the documents he reviewed.

During his deposition testimony, Dr. Edgar alluded to the fact that his ultimate opinion was merely a summary of information from the selected works he reviewed. Under questioning concerning his decision making process to determine whether a document referencing the terms "Episcopal" or "Protestant Episcopal" alluded to an affiliation with The Episcopal Church, Dr. Edgar simply indicated that he "read the articles," and agreed that he reached his conclusions based on the content of the articles. (Exhibit A - Edgar Dep. p. 69:21-70:14). In other words, Dr. Edgar's opinions are not based on any specialized knowledge, but on his belief and inferences from reading selected documents. See Oglesby, 190 F.3d at 250 (stating a reliable expert opinion must be based on scientific, technical, or other specialized knowledge and not on belief or speculation, and inferences must be derived using scientific or other valid methods). Dr. Edgar admitted the resources reviewed were geared toward the common man and accessible by the general public. By proffering Dr. Edgar as an expert in this matter, Plaintiffs are implicitly asserting it took some specialized knowledge to conduct the research and reach the opinions rendered by Dr. Edgar. While admittedly Dr. Edgar may know his way around a research library better than most, the work he has performed is not unique or specialized such that his qualification as an expert in the matters set forth in the report is justified.

This fact is further bolstered by Dr. Edgar's rebuttal report. In order to avoid any geographic bias, Dr. Edgar enlisted his son-in-law to conduct the very same internet search in



order to compare the results. Clearly, the contents of the rebuttal report do not rise to the level of expert research given that a layperson was enlisted to perform the very same task. Dr. Edgar's research and opinions did not require specialized knowledge to perform. Accordingly, Defendants contend that Dr. Edgar fails to meet the requirements of Rule 702 as his opinions in this matter are not the result of any scientific, technical or specialized knowledge. See Certain Underwriters at Lloyd's v. Sinkovich, 232 F.3d 200, 203 (4th Cir. 2000) quoting Redden & Saltzburg, Federal Rules of Evidence Manual 225 (1975). (stating a critical distinction between Rule 701 and Rule 702 testimony is that an expert witness "must possess some specialized knowledge or skill or education that is not in the possession of the jurors.").

In addition, Dr. Edgar's opinions will not assist the trier of fact in their determination of the issues at hand. The opinions contained in the reports and deposition testimony are nothing more than his personal impressions of publicly accessible records and internet searches. See Free v. Bondo-Mar-Hyde Corp., 25 F. App'x 170, 172 (4th Cir. 2002) (Court affirming exclusion of expert opinions that were based on his assumptions of what caused the can to explode rather than on scientific, technical, or other specialized knowledge.); See also Oglesby, 190 F.3d at 250 (stating a reliable expert opinion cannot be based on belief or speculation, but inferences must be derived using scientific or other valid methods). To the extent these documents speak for themselves, testimony by Dr. Edgar is not necessary to help the jury understand the contents contained therein.

Moreover, Dr. Edgar has testified he does not have any expertise or testimony to offer concerning sociology, the psychology of choice, the psychology or sociology of religion, genericness of terms, or trademarks. Rather, Dr. Edgar can only provide testimony as to the contents of the documents he selected and reviewed. As such, Dr. Edgar is not offering any

expert opinions, but rather those of a lay witness who has reviewed a range of publicly available records and search results. See Certain Underwriters at Lloyd's, 232 F.3d 203 (4th Cir. 2000) quoting Redden & Saltzburg, Federal Rules of Evidence Manual 225 (1975) (stating unlike a lay witness under Rule 701, an expert can answer hypothetical questions and offer opinions not based on first-hand knowledge because his opinions presumably “will have a reliable basis in the knowledge and experience of his discipline.”).

Testimony as to the results of hand-selected documents and internet search results will not aid the trier of fact in determining the claims of trademark infringement, false advertising, or the request to cancel state marks. Other than the utilization of his research abilities, Dr. Edgar has not exercised any of his specialized knowledge as a professor of history to form his opinions. Rather, Dr. Edgar has simply pulled records and collected internet search results to undergird his overall conclusion. See Kennedy, 269 F. App'x at 312 (4th Cir. 2008) (affirming exclusion of expert report that lacked any specific scientific gloss, expertise, or specialized analysis).

In presenting this testimony, Dr. Edgar's status as a former professor and historian should not be allowed to create the assumption or impression his opinions are the result of in-depth research in church history. Particularly when, as set forth in his reports and deposition testimony, his opinions are merely the result of his reading of selected records and internet search results.

Accordingly, Dr. Edgar's testimony fails the test for admissibility prescribed by Rule 702. His opinions and reports are not the result of specialized knowledge and will not assist the trier of fact in their determination and, thus, should be excluded.

**II. Dr. Edgar's Opinions are Inadmissible as they fail to meet the reliability requirement of Rule 702.**

Dr. Edgar's reports and deposition testimony raise several questions as to the reliability of the opinions reached and whether they should be presented to the fact finder.

As discussed throughout his deposition, Dr. Edgar is an Episcopalian and is an active member and former vestry member of a Parish within a diocese affiliated with The Episcopal Church. (Exhibit A - Edgar Dep. p. 16:10-13). In fact, Dr. Edgar referred to himself as a "multigenerational cradle Episcopalian." (Exhibit A - Edgar Dep. p. 16:19-22). Moreover, Dr. Edgar testified he previously attended a defendant parish when he visited the Charleston area. However, when the Diocese of South Carolina disaffiliated with The Episcopal Church, Dr. Edgar began attending a different parish that remained affiliated with The Episcopal Church. (Exhibit A - Edgar Dep. p.16:23-17:12). While the Defendants do not seek to impugn Dr. Edgar's character, the Defendants do express concern over the reliability of Dr. Edgar's opinions given his life-long connection with The Episcopal Church.

Dr. Edgar acknowledged that in his review of records in preparation for reaching the opinions contained in his first report, he could not provide any quantifiable figure as to how many of the documents referenced in his research may have made mention of "Episcopal" or "Protestant Episcopal," but were not in reference to The Episcopal Church. (Exhibit A - Edgar Dep. p.81:3-17). Moreover, in Dr. Edgar's first report, he makes note that there are several churches that incorporate "Episcopal" into their name; however, those results were dismissed as the result of having a "qualifier" in this name. (Exhibit B - 4/13/18 Report p.1). Therefore, in so doing, Dr. Edgar acknowledges that in his research the relevant terms may have appeared in reference to entities that were not affiliated with The Episcopal Church, but Dr. Edgar appears to have dismissed those results due to the "qualifier" that may have appeared in the name. This

action raises questions as to whether Dr. Edgar fully considered all uses of the terms “Episcopal” or “Protestant Episcopal” or only counted those he believed referred to The Episcopal Church. See Nease v. Ford Motor Co., 848 F.3d 219, 229 (4th Cir. 2017) citing Oglesby, 190 F.3d at 250 (“With respect to reliability, the district court must ensure that the proffered expert opinion is ‘based on scientific, technical, or other specialized knowledge and not on belief or speculation, and inferences must be derived using scientific or other valid methods.’”).

With respect to his first report, Dr. Edgar made no effort to quantify his results or to properly denote instances where the relevant search terms appeared, but were not related to The Episcopal Church. Rather, Dr. Edgar has used vague qualifying language in the rendering of his opinion that “virtually every reference” to “Episcopal” or “Protestant Episcopal” was a reference to The Episcopal Church or a church affiliated therewith. (Exhibit B - 4/13/18 Report p.1). Moreover, Dr. Edgar appears to have dismissed results that contained the relevant terms as the result of a “qualifier.” Based on the foregoing, there are legitimate concerns as to the accuracy and reliability of Dr. Edgar’s opinions. See Kumho Tire Co., 526 at 157, 119 at 1179 (1999) quoting GE v. Joiner, 522 U.S. 136, 146, 118 S. Ct. 512, 519 (1997) (stating “nothing in either Daubert or the Federal Rules of Evidence requires a district court to admit opinion evidence that is connected to existing data only by the *ipse dixit* of the expert.”). See Cooper v. Smith & Nephew, Inc., 259 F.3d 194, 200 (4th Cir. 2001) (affirming exclusion of expert when opinions amounted to a wholly conclusory finding based upon his subjective beliefs rather than any valid scientific method).

Defendants also challenge the reliability of Dr. Edgar’s opinions set forth in his second report and testimony related thereto offered in Dr. Edgar’s deposition. Dr. Edgar and his son-in-law performed keyword internet searches using Google and Yahoo. While the details of which

are somewhat beyond the ambit of this Motion, internet search engines, namely Google, do not provide unadulterated results in response to search terms. Rather, per Google's own website, searches are performed using algorithms that analyze the imputed search and return pages that the algorithms deem to be most relevant. (See Exhibit D). In addition, according to Google, "[i]nformation such as your location, past search history and Search settings all help [Google] to tailor your results to what is most useful and relevant for you in that moment." (Exhibit D). In other words, while Google algorithms may return the most useful results, they do not necessarily return the most accurate results for research purposes. Goldman, Eric. "Search Engine Bias and the Demise of Search Engine Utopianism," 8 Yale J.L. & Tech 188 (2006) ("Due to search engines' automated operations, people often assume that search engines display search results neutrally and without bias. However, this perception is mistaken.") See also Jian Zhang v. Baidu.com Inc., 10 F. Supp. 3d, 433, 438 (S.D. New York, 2014) ("The central purpose of a search engine is to retrieve relevant information from the vast universe of data on the internet and to organize it in a way that would be most helpful to the searcher. In doing so, search engines inevitably make editorial judgments about what information to include in the results ... and how and where to display that information....") In addition, the search terms are of little worth as they are narrowly defined and appeared intended to only return results with the name of the Plaintiff-in-Intervention. See JFJ Toys, Inc. v. Sears Holdings Corp., 237 F. Supp. 3d 311, 332 (D. Md. 2017) (finding Google search terms of "little worth" as evidence during summary judgment as the search terms were too narrowly defined). See also McKillip Indus., Inc. v. Integrated Label Corp., 477 F. Supp. 2d 928, 931 (N.D. Ill. 2006) (finding self-selective internet searches found in an affidavit of counsel to be of minimal probative value).

Dr. Edgar, at least in part, acknowledged the inherent weakness in this method by enlisting his son-in-law to perform an identical search in a different locate to account for any “geographic bias.” However, there has been no showing by Plaintiffs or testimony by Dr. Edgar that such a method is accepted in the academy or has been subjected to peer review. Rather, Plaintiffs, through Dr. Edgar, are seeking to introduce opinion testimony based on skewed and unreliable search results that do not pass muster under Rule 702. See Nease, 848 F.3d (holding that expert opinion should have been excluded when theory was not widely accepted, methodology untested, and theory not subjected to peer review).

Moreover, when evaluating Dr. Edgar’s searches under the Daubert rubric, the reliability of the results fall short. Daubert sets forth the following five factors concerning expert reliability:

- (1) whether a theory or technique relied on by the expert can be (and has been) tested;
- (2) whether the theory or technique has been subjected to peer review and publication;
- (3) the known or potential rate of error;
- (4) whether there are standards controlling the operation of the theory or technique; and
- (5) whether the theory or technique enjoys general acceptance within a relevant scientific community.

Daubert, 509 U.S. at 592-94. Plaintiffs have not put forth any evidence that the searches performed by Dr. Edgar and his son-in-law meet any of the five factors. In fact, many of the factors, such as the potential rate or error and standards controlling the operation of the technique would be nearly impossible to discern without knowing Dr. Edgar and his son-in-law’s search settings and the impact of the search engine’s algorithms. See Nease, 848 F.3d 231 citing In re Zurn Pex Plumbing Prods. Liab. Litig., 644 F.3d 604, 613 (8th Cir. 2011) (stating the main purpose of Daubert exclusion is to protect juries from being swayed by dubious scientific testimony).

In sum, it is Defendants' contention that Dr. Edgar's internet research using a search platform that utilizes algorithms that cater to past searches, location, and search settings may not produce representative results for the whole of the internet. As such, Dr. Edgar's opinions derived from these searches lack reliability and should be excluded.

**CONCLUSION**

For the foregoing reasons, the Defendants hereby move this Court for an Order excluding the testimony of Plaintiffs' expert, Dr. Walter Edgar, in its entirety or limiting his testimony in the fashions outlined herein.

December 7, 2018

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