

1 Sandra A. Edwards (State Bar No. 154578)
Joshua W. Malone (State Bar No. 301836)
2 Farella Braun + Martel LLP
235 Montgomery Street, 17th Floor
3 San Francisco, CA 94104
Telephone: (415) 954-4400; Fax: (415) 954-4480
4 sedwards@fbm.com
jmalone@fbm.com

5 Joe G. Hollingsworth (appearance *pro hac vice*)
6 Martin C. Calhoun (appearance *pro hac vice*)
Kirby T. Griffis (appearance *pro hac vice*)
7 William J. Cople (appearance *pro hac vice*)
Hollingsworth LLP
8 1350 I Street, N.W.
Washington, DC 20005
9 Telephone: (202) 898-5800; Fax: (202) 682-1639
jhollingsworth@hollingsworthllp.com
10 mcalhoun@hollingsworthllp.com
kgriffis@hollingsworthllp.com
11 wcople@hollingsworthllp.com

12 George C. Lombardi (appearance *pro hac vice*)
James M. Hilmert (appearance *pro hac vice*)
13 Winston & Strawn LLP
35 West Wacker Drive
14 Chicago, IL 60601
Telephone: (312) 558-5969; Fax: (312) 558-5700
15 glombard@winston.com
jhilmert@winston.com

16 *Attorneys for Defendant*
17 MONSANTO COMPANY

18 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
19 **COUNTY OF SAN FRANCISCO**

21 DEWAYNE JOHNSON,
22 Plaintiff,
23 vs.
24 MONSANTO COMPANY,
25 Defendant.

Case No. CGC-16-550128

**DEFENDANT MONSANTO COMPANY'S
MOTION *IN LIMINE* NO. 21 TO
EXCLUDE DR. SAWYER FROM
INTERPRETING MONSANTO'S
INTERNAL DOCUMENTS, ASCRIBING
MOTIVATIONS, OR CLAIMING
MONSANTO MISLEAD EPA**

Trial Date: June 18, 2018
Time: 9:30 a.m.
Department: TBD

34812/6689450.1

1 **I. INTRODUCTION**

2 Defendant Monsanto Company (“Monsanto”) hereby moves this Court for an order
3 excluding any testimony by Plaintiff’s expert Dr. Sawyer that purports to interpret Monsanto’s
4 internal documents, draw conclusions about Monsanto’s knowledge or motivations, or suggest
5 Monsanto intended to mislead the U.S. Environmental Protection Agency (“EPA”) or foreign
6 regulators. The Court has already ruled on these very same issues with respect to another of
7 Plaintiff’s proffered experts, Dr. Benbrook. *See* 05/17/2018 Order on *Sargon* and Summary
8 Judgment Motions at 30–31, 46 (“the Court’s Order”). Dr. Sawyer should be prohibited from
9 testifying on these matters to the same extent as the Court has already established for Dr.
10 Benbrook.

11 **II. ARGUMENT**

12 The Court’s Order granted Monsanto’s motion to exclude Dr. Benbrook — Plaintiff’s
13 proffered expert in EPA affairs — from interpreting Monsanto internal emails and impugning the
14 motives of Monsanto’s employees based on his interpretations. *Id.* The Court’s Order sets forth
15 six areas of prohibited testimony. First, “Dr. Benbrook may not offer any opinions as to the
16 proper interpretation of documents, such as emails, or to argue that inferences of knowledge or
17 intent can be derived from those documents.” *Id.* at 30. Second, “Dr. Benbrook may not opine on
18 Monsanto’s legal obligations.” *Id.* Third, “Dr. Benbrook may not relate case-specific facts
19 asserted in hearsay statements unless they are independently proven by competent evidence or are
20 covered by hearsay exception.” *Id.* Fourth, Dr. Benbrook “may not offer an opinion as to whether
21 the EPA would have approved an amendment to the Roundup label.” *Id.* Fifth, “while Dr.
22 Benbrook might have experience regarding industry standards and stewardship obligations at
23 argument Johnson agreed these were irrelevant.” *Id.* Sixth, “Dr. Benbrook may not testify
24 Monsanto misled the EPA.” *Id.* at 31.

25 The Court’s Order explains how each of these topics is not the appropriate the subject of
26 expert testimony. For example, the Court explained that “opinions about the knowledge and intent
27 of Monsanto and other actors invade the province of the jury and are often speculative,” and an
28 expert may not opine on a question of law. *Id.* at 30.

1 The same rulings and rationale apply to Plaintiff’s expert Dr. Sawyer. Dr. Sawyer is
2 putatively a toxicologist, but he directs much of his expert report to casting aspersions on the
3 character of Monsanto’s scientists. Dr. Sawyer’s report selectively quotes various snippets of
4 internal communications between individuals he has never spoken to in his life, and then purports
5 to interpret them in a derogatory way. Based on his subjective interpretation, Dr. Sawyer then
6 assigns an intention or improper motive to Monsanto, or accuses Monsanto of behaving
7 unlawfully or unethically in some manner. *See, e.g.*, Declaration of Sandra A. Edwards (“Edwards
8 Decl.”) at ¶ 30, Ex. 29 (Expert Report of William Sawyer at 68-73 (Dec. 21, 2017)) (quoting a
9 portion of various emails from one Monsanto employee to another, concluding that it raises
10 “numerous ethical red flags”); *id.* at 86 (interpreting a snippet of an email as being “a masterpiece
11 of sophistry”).

12 Dr. Sawyer’s opinions should be excluded to the same extent and on the same basis as Dr.
13 Benbrook for each of the categories listed above and in the Court’s order. First, Dr. Sawyer’s
14 interpretation of emails lacks foundation and “invade[s] the province of the jury” because he is not
15 an expert any more than Dr. Benbrook in the interpretation of emails, or of ethics, or of reading
16 the minds of strangers. Second, it is equally improper for Dr. Sawyer to testify about any legal (or
17 moral/ethical) obligations. Third, it is equally improper for Dr. Sawyer to be a conduit for
18 inadmissible hearsay. Fourth, to the extent he purports to do so, Dr. Sawyer cannot offer
19 competent testimony that the EPA would have approved an amendment to a Roundup label (in
20 addition to pure speculation, he has no such experience), or fifth, about any stewardship
21 obligations (for the same reasons). To that effect, Dr. Sawyer has never worked at the EPA, nor
22 does he claim to be an expert in compliance with EPA regulations. *See* Edwards Decl. at ¶ 31, Ex.
23 30 (Dep. of William Sawyer, M.D. at 54:14-55:3 (February 26, 2018)). Sixth, and finally, it is
24 equally improper for Dr. Sawyer to testify that Monsanto misled the EPA or other foreign
25 regulatory bodies.

26 //
27 //
28 //

1 **III. CONCLUSION**

2 The court should grant Monsanto's motion *in limine* to exclude Dr. Sawyer from testifying
3 about all six of the categories to the same extent set forth with respect to Dr. Benbrook in the
4 Court's May 17, 2018 Order.

5
6 Dated: May 24, 2018

Respectfully submitted.

7 FARELLA BRAUN + MARTEL LLP

8 By:


9 Sandra A. Edwards

10 Attorneys for Defendant
11 MONSANTO COMPANY
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28