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

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

Case No. CGC-16-550128
**DEFENDANT MONSANTO COMPANY'S
REPLY REGARDING MOTION IN
LIMINE NO. 10 TO EXCLUDE DR.
BENBROOK'S OPINIONS REGARDING
PERSONAL PROTECTIVE EQUIPMENT**
Hon. Judge Curtis E.A. Karnow
Trial Date: June 18, 2018
Time: 9:30 a.m.
Department: TBD

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County of San Francisco*
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1 **I. INTRODUCTION**

2 Plaintiff Dewayne Johnson’s (“Plaintiff”) expert Dr. Charles Benbrook wants to testify
3 about his interpretation of company documents and emails that purport to show Defendant
4 Monsanto Company’s (“Monsanto”) glyphosate-based herbicide (“GBH”) labels did not include
5 enough personal protective equipment (“PPE”). *See* Pl.’s Opp’n to MIL No. 10 at 3-4. The
6 opinions are (1) contrary to nearly every one of the six bases on which Dr. Benbrook’s opinions
7 have already been excluded; (2) beyond his expertise; and (3) entirely irrelevant as applied to the
8 facts of this case.

9 **II. ARGUMENT**

10 As is his general custom and practice, Dr. Benbrook’s testimony about the inadequate PPE
11 on GBH labels relies on his interpretation of company emails and documents. *See, e.g.*, Pl.’s
12 Opp’n to MIL No. 10 at 3 (relying on “internal meeting minutes from an internal meeting with
13 outside consultants” to support his opinions regarding inadequate PPE). Judge Curtis E. Karnow
14 was fully aware of the impropriety of Dr. Benbrook offering such opinions, as he listed six
15 different bases that could apply to prohibit such testimony by Dr. Benbrook at trial. *See* 5/17/2018
16 Order on *Sargon* and Summary Judgment Motions (“*Sargon* Order”) at 30-31. Perhaps most
17 notably, Judge Karnow recognized that “Dr. Benbrook has no specific expertise pertaining to the
18 EPA’s approval of amended labels,” *see id.* at 30, which is exactly what Plaintiff is suggesting
19 should have occurred in this instance. Plaintiff’s citation to various pages of Dr. Benbrook’s
20 report exemplifies the speculative steps by which Dr. Benbrook gets from A to Z. First, he uses
21 one email discussing a potential study, *see* Declaration of Sandra A. Edwards (“Edwards Decl.”)
22 at ¶ 4, Ex. 3 (Benbrook Rpt. at ¶ 562), and then a second email discussing the (erroneous) results
23 of a study, *see id.* at ¶¶ 588-89, to claim that Monsanto “knowingly misled regulators,” *id.* at ¶
24 594, resulting in a “risk of applicator exposure,” *see id.* at ¶ 596, that purportedly exemplifies
25 Monsanto’s “egregious lack of concern for . . . the safety of certain Roundup users that
26 substantially increased Mr. Johnson’s many exposures.” *Id.* at 112-13.

27 Notably, Dr. Benbrook did not take the time to review the actual study he claims shows the
28 increased dermal exposure he claims as a basis for his PPE opinions, which exemplifies Judge

1 Karnow’s concerns about Dr. Benbrook offering “opinions as to the proper interpretation of
2 documents, such as emails, or to argue that inferences of knowledge or intent can be derived from
3 those documents.” 5/17/18 Order on *Sargon* and Summary Judgment Motions at 30; *see also*
4 Edwards Decl. at ¶ 5, Ex. 4 (Dep. of Dr. Charles Benbrook (“Benbrook Dep.”) at 486:9-16 (Feb.
5 9, 2018)) (admitting he did not review the study he claims provides a basis for his opinions on
6 increased exposure). If Dr. Benbrook had reviewed the primary study, he would have seen that
7 the third-party study director concluded “[d]ue to the high variation in dermal penetration within
8 the test groups and the poor recoveries, the data presented in this report are not acceptable for
9 regulatory use and risk assessment.” Edwards Decl. at ¶ 6, Ex. 5 (TNO Report: “In Vitro
10 percutaneous absorption study with [14C] glyphosate in viable rat skin membranes” at 3). As is
11 usually the case, the primary studies do not support Dr. Benbrook’s speculative leaps from
12 company emails to conclusions that Monsanto misled regulators and egregiously increased the
13 exposure risk to Plaintiff. Even if he had a degree in “any physical science,” *see* Edwards Decl. at
14 ¶ 5, Ex. 4 (Benbrook Dep at 19:3-6 (Feb. 8, 2018)), Dr. Benbrook’s exposure opinions and
15 allegations about inadequate PPE are exactly the type of speculative opinions based on cherry-
16 picked company documents that Judge Karnow expressly excluded.

17 **III. CONCLUSION**

18 For the foregoing reasons, the Court should exclude Dr. Benbrook’s opinions about PPE.

19
20 Dated: June 12, 2018

Respectfully submitted,

21 FARELLA BRAUN + MARTEL LLP

22
23 By: 

24 Sandra A. Edwards

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