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17 MONSANTO COMPANY

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 IN SUPPORT OF MOTION *IN*
LIMINE NO. 21 TO EXCLUDE DR. SAWYER
FROM INTERPRETING MONSANTO'S
INTERNAL DOCUMENTS, ASCRIBING
MOTIVATIONS, OR CLAIMING
MONSANTO MISLED THE EPA**

Trial Date: June 18, 2018
Time: 9:30 AM
Department: TBD

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*Superior Court of California,
County of San Francisco*
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Deputy Clerk

1 **I. INTRODUCTION**

2 There is no justification for Plaintiff Dewayne Johnson’s (“Plaintiff”) toxicologist, Dr.
3 William Sawyer, to offer his personal interpretation of Defendant Monsanto Company’s
4 (“Monsanto”) internal documents or to cast aspersions on the character and ethics of Monsanto’s
5 scientists. The Court has already rejected Plaintiff’s attempts to offer the same type of testimony
6 through another of Plaintiff’s experts, Dr. Benbrook. Plaintiff presents no rational explanation for
7 why Dr. Sawyer should be able to proffer the same incompetent testimony that the Court already
8 precluded Dr. Benbrook from offering, and there is none.

9 **II. ARGUMENT**

10 **A. Plaintiff’s Procedural Arguments are Meritless**

11 Lacking any substantive basis to oppose the motion, Plaintiff devotes eight pages to
12 making a variety of odd procedural arguments. Plaintiff seems to be suggesting that the Court
13 must allow evidence in violation of the controlling law by procedural default. That suggestion is
14 clearly wrong, as are Plaintiff’s particular complaints.

15 First, Plaintiff claims that Monsanto’s motion is not specific enough. *See* Plaintiff’s Opp’n
16 to MIL No. 21 (“Pl.’s Opp.”) at 3-4. On the contrary, the motion is directed to excluding Dr.
17 Sawyer to the *exact same* scope of the Court’s existing order excluding Plaintiff’s expert Dr.
18 Benbrook. The Court had no difficulty understanding the scope of that request in precluding Dr.
19 Benbrook from offering speculation about Monsanto’s internal documents, no such difficulty in
20 precluding Dr. Benbrook from offering the opinion that Monsanto misled the EPA, and no such
21 difficulty precluding Dr. Benbrook from offering conclusions about legal obligations. *See*
22 5/17/2018 Order *Sargon* and Summary Judgment at 30–31. The Court made these findings
23 because “opinions about the knowledge and intent of Monsanto and other actors invade the
24 province of the jury and are often speculative,” and because an expert may not opine on a question
25 of law. *Id.* Plaintiff does not claim that Dr. Sawyer is in any better position to speculate about the
26 meaning of Monsanto documents, or the intentions of their authors, or to claim that Monsanto
27 misled the EPA, than Dr. Benbrook.

28 Second, Plaintiff asserts that the Court already denied Monsanto’s request to exclude Dr.

1 Sawyer. Pl.'s Opp. at 6. However, in the same paragraph, Plaintiff states that the Court did not
2 deny Monsanto's requests, but left them for the trial court to resolve. *Id.* Monsanto is now raising
3 its objections as contemplated by the Court's order, clarifying that the scope of its motion to
4 exclude Dr. Sawyer is entirely commensurate in scope with the Court's prior ruling on Dr.
5 Benbrook.

6 Third, Plaintiff asserts that Monsanto's motion was filed too late. That is wrong. A
7 motion *in limine* is a threshold motion that asks a court to rule on the admissibility of evidence,
8 without prejudice to making objections to evidence at trial. Monsanto's objections are by no
9 means late—Monsanto could have decided not to make the present motion at all and raised the
10 same objections at trial. Plaintiff also complains that the deadline for filing summary judgment
11 motions has passed. Pl.'s Opp. at 7. The present motion is, obviously, not a summary judgment
12 motion. And, Plaintiff cannot seriously argue that the present issue must have been resolved
13 during *Sargon* proceedings when his own brief concedes that the Court deferred the issue to the
14 trial judge. Pl.'s Opp. at 6.

15 **B. There is No Legal Basis for the Proffered Testimony**

16 On the merits, Plaintiff presents no meaningful argument for allowing Dr. Sawyer to testify
17 that Monsanto misled the U.S. or federal regulators, to speculate about the motives of authors of
18 documents, or to impugn their integrity or ethics. Dr. Sawyer's personal interpretation of
19 Monsanto documents and assertions that Monsanto misled regulators are inadmissible to the same
20 extent as Dr. Benbrook. "Having an expert witness simply summarize a document (which is just
21 as easily summarized by a jury) with a tilt favoring a litigant, without more, does not amount to
22 expert testimony." *Mitchell v. United Nat'l Ins. Co.*, 127 Cal. App. 4th 457, 477-78 (2005)
23 (finding an expert's conclusions as to the defendant company's intent and what the defendant
24 should have known or done differently was mere speculation and must be disregarded).

25 Plaintiff's brief provides only a single example of the testimony it seeks to elicit at trial:
26 Dr. Sawyer quotes a Monsanto email exchange purporting to "explain[] data provided to the
27 Spanish government," Pl.'s Opp. at 4, interprets it, and then suggests that Monsanto somehow
28 misled the Spanish government. Plaintiff provides no explanation for how the document is

1 conceivably relevant to the issues in this case. Regardless, Dr. Sawyer is no more equipped than
2 Dr. Benbrook to ascribe evil intentions or to cast aspersions on the integrity of Monsanto's
3 scientists, which appears to be the purpose for which the document is provided. No expert is
4 capable of doing that, because such matters are not the appropriate subject of expert testimony, as
5 this Court has already ruled. *See People v. Vang*, 52 Cal.4th at 1048-49 (expert's opinion was
6 inadmissible because it expressed an opinion that effectively directed the jurors how to resolve the
7 issue of defendant's motive); *Ewing v. Northridge Hosp. Med. Center*, 120 Cal. App. 4th 1289,
8 1302 (2004) (same).

9 **III. CONCLUSION**

10 For the foregoing reasons, Monsanto's Motion in Limine No. 21 should be granted.

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12 Dated: June 12, 2018

Respectfully submitted,

13 FARELLA BRAUN + MARTEL LLP

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15 By: 

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Sandra A. Edwards

17 Attorneys for Defendant
18 MONSANTO COMPANY

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