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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
REPLY IN SUPPORT OF MOTION *IN*
LIMINE NO. 20 TO EXCLUDE
EVIDENCE, ARGUMENT, OR
REFERENCE TO "GHOSTWRITING"**

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

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*Superior Court of California,
County of San Francisco*
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1 **I. INTRODUCTION**

2 The day before Monsanto filed its Motion *in limine* No. 20 to Exclude Evidence,
3 Argument, or Reference to Ghostwriting, Plaintiff’s company documents expert, Dr. Charles
4 Benbrook, was deposed. His testimony there exhibited just how flimsy and irrelevant Plaintiff’s
5 “ghostwriting” theme is. Indeed, Plaintiff cannot point to a single aspect of the allegedly
6 ghostwritten review articles that are fraudulent or misrepresentative of the underlying studies and
7 science, and instead relies upon speculation on top of speculation derived from a one-sided review
8 of company emails. Allegations of “ghostwriting” are perhaps the most obvious example of
9 Plaintiff’s attempt to distract the jury from the fact that this case lacks scientific evidence that
10 glyphosate-based herbicides (“GBHs”) cause non-Hodgkin lymphoma. Any reference to or
11 testimony regarding ghostwriting should be excluded in its entirety.

12 **II. ARGUMENT**

13 Plaintiff’s regulatory and company documents expert, Dr. Charles Benbrook, is a self-
14 described “expert in ghostwriting.” Declaration of Sandra A. Edwards (“Edwards Decl.”) at ¶ 2,
15 Ex. 1 (Dep. of Charles Benbrook at 379:13-16 (May 23, 2018)). Nonetheless, Dr. Benbrook’s
16 claimed expertise was conspicuously absent when questioned about how he came to his
17 conclusions that Monsanto ghostwrote various review articles. While Dr. Benbrook candidly
18 agreed that by his own definition, “the first thing an expert in ghostwriting checks is who is an
19 author on the paper,” *id.* at 411:15-18, as to each of the allegedly ghostwritten review articles on
20 which he was questioned, Dr. Benbrook admitted the alleged ghostwriter was in fact an author of
21 the publication. *See id.* at 411:19-22 (admitting Dr. Saltmiras’s “name does appear as the paper
22 was published”); *see also id.* at 390:13-15 (speculating that “presumably because of Acquavella’s
23 objection, Acquavella’s name now appears on the paper as published”).¹ Plaintiff’s attempt to

24 _____
25 ¹ Counsel only had time to depose Dr. Benbrook on two of the allegedly ghostwritten articles, as
26 Plaintiff’s counsel in this case, Mr. Timothy Litzenburg, informed the parties five hours into the
27 deposition that he would no longer be able to attend the second day of the deposition as originally
28 noticed. *See id.* at 202:4-19 (noting that “I have just informed counsel that I had a death in the
immediate family this week and we will have to suspend this deposition for a 5:00 a.m. flight
tomorrow”).

1 elicit purportedly expert testimony on ghostwriting is betrayed by Dr. Benbrook's own testimony
2 about the cherry-picked documents fed to him by Plaintiff's counsel in reaching his opinion.²

3 Q: Right. You based your opinions as to ghostwriting on company e-mails and
4 company documents?

5 A: Right.

6 Q: Rather than looking at the first place you should have looked, which is the
7 authorship --

8 A: Right.

9 *Id.* at 412:9-14. When confronted about his speculation with respect to the alleged ghostwriting,
10 given his claim that a ghostwriter cannot be a listed author, Dr. Benbrook provided further
11 speculation: "I think the -- what Saltmiras was reporting to his supervisor was that he deserves
12 credit for being the principal author, the major author, perhaps the sole author, I don't really know,
13 of this particular paper, and he himself characterized his role as ghostwriting it and I took him at
14 his word." *Id.* at 413:16-23.

15 What is truly disappointing about the one-side nature of Dr. Benbrook's expert inquiry into
16 the alleged ghostwriting is that he did not take the time to read the depositions of the witnesses he
17 slandered as ghostwriters:

18 Q: Okay. And during that time and since that time, you know, roughly six months,
19 you still haven't taken the time to review Dr. Acquavella's deposition and see what
20 he had to say about your claims with respect to him and ghostwriting, correct?

21 A: I -- as I said, I -- I haven't reviewed Dr. Acquavella's deposition.

22 *Id.* at 380:3-9; *see also id.* at 411:11-14 ("Q: You claim that Dr. Saltmiras ghostwrote the Greim
23 publication, correct? A: That's what he says in -- that's what he says in this e-mail."). Indeed,
24 instead of relying on the primary evidence at issue -- the publications themselves and the sworn
25 testimony of the alleged ghostwriters -- Dr. Benbrook relies on hearsay statements, often by third
26 parties rather than the authors of the publications themselves.

27 ² Judge Karnow was especially concerned with Dr. Benbrook's "opinions as to the proper
28 interpretation of documents, such as emails, or to argue that inferences of knowledge or intent can
be derived from those documents" and excluded any opinions Dr. Benbrook may have on that
subject, along with five other enumerated categories of opinions. *See Sargon* Order at 30-31.

1 Q: If you wanted documents on a particular issue, you would often send an e-mail to
2 the Miller Firm and ask for more company documents on that subject, they would
3 conduct a search and then return you a search that lined up with the documents you
4 requested. Is that fair?

5 A: They would – they would e-mail the documents.

6 *Id.* at 67:11-17; *see also id.* at 57:22-58:1 (“Q: Your opinions on Dr. Heydens, Dr. Farmer, Dr.
7 Saltmiras, Dr. Goldstein are based on company e-mails and documents given to you by the Miller
8 Firm, correct? Q: Yes, correct.”); *see also id.* at 384:1-8 (Q: So you’re reading this company e-
9 mail by Dr. Acquavella and interpreting what he means to say with certain text in this company e-
10 mail, correct? A: Yeah, this and other e-mails”). The one-sided inquiry and flimsy allegations
11 are especially troubling because credible scientists risk ruining their careers when allegations in
12 this litigation make their way into the media.³

13 Moreover, Monsanto’s arguments with respect to relevance are far from baseless. First,
14 given Plaintiff cannot point to anything that is scientifically inaccurate or misrepresented in the
15 review articles, what matters most with respect to the ghostwriting allegations is whether the
16 reader is aware that the publication is funded or in some way associated with a relevant company
17 or interested party. Again, Dr. Benbrook’s recent testimony is instructive in this regard:

18 Q: Monsanto’s name is all over this declaration of interest and every declaration of
19 interest that you have a problem with, correct?

20 A: The declarations of interest are different somewhat across the papers. The one I
21 was just talking about, it wasn’t a Monsanto declaration of interest. It was a
22 statement by the editor of the journal.

23 Q: I’m talking about the declarations of interest, sir. Monsanto’s name is all over
24 these; isn’t that true?

25 A: Correct. Yeah.

26 *Id.* at 403:5-16. Further, as Dr. Benbrook admits, regulatory agencies do not rely on review papers
27 – and all of the allegedly ghostwritten scientific publications are review papers – when they have

28 ³ Edwards Decl. at ¶ 11, Ex. 10 (Waldman, et. al, “Monsanto Was Its Own Ghostwriter for Some
Safety Reviews,” Aug. 9, 2017, <https://www.bloomberg.com/news/articles/2017-08-09/monsanto-was-its-own-ghostwriter-for-some-safety-reviews>) (noting the “Monsanto documents, more than
70 in all, were obtained through pretrial discovery and posted online by some of the plaintiff’s
lawyers”).

1 the underlying studies, and with respect to glyphosate, regulators now have nearly all the primary
2 studies in their possession, and thus do not consider review articles of any importance.

3 Q: Dr. Benbrook, you are aware that regulatory agencies, EPA, EFSA, they do not
4 consider review articles of – of any importance when they have the primary studies
to review, correct?

5 A: I think that’s generally a correct statement.

6 *Id.* at 405:2-6. Thus, not only are Plaintiff’s allegations about ghostwriting lacking in factual
7 support with respect to whether ghostwriting occurred, they are lacking in factual support with
8 respect to whether they even impacted the science or regulatory review of the science. Wading
9 into the ghostwriting inquiry will waste time, as it lacks relevance, and is unfairly prejudicial, and
10 should thus be excluded. *See Hill v. Novartis Pharm. Corp.*, 944 F. Supp. 2d 943, 952 (E.D. Cal.
11 2013) (excluding testimony and other evidence relating to allegedly ghostwritten articles where
12 opinion of only expert offering testimony on ghostwriting issue had been excluded as lacking
13 foundation).

14 **III. CONCLUSION**

15 For the foregoing reasons, the Court should exclude any reference, evidence, or argument
16 relating to allegations that Monsanto “ghostwrote” certain scientific articles about glyphosate.

17
18 Dated: June 12, 2018

Respectfully submitted,

19 FARELLA BRAUN + MARTEL LLP

20
21 By: 

22 Sandra A. Edwards

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MONSANTO COMPANY