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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

DEWAYNE JOHNSON,

Plaintiff,

vs.

Case No. CGC-16-550128

MONSANTO COMPANY, et al.,

Defendants.

-----/

Proceedings held on Thursday, August 9, 2018,
Volume 27, before the Honorable Suzanne R. Bolanos,
at 10:09 a.m.

REPORTED BY:

LESLIE ROCKWOOD ROSAS, RPR, CSR 3462

Job No. 2983886

Pages 5287 - 5317

1 APPEARANCES:

2

3 FOR THE PLAINTIFF:

4 R. BRENT WISNER, ESQ.

5 PEDRAM ESFANDIARY, ESQ.

6 BAUM, HEDLUND, ARISTEI, GOLDMAN PC

7 12100 Wilshire Boulevard, Suite 950

8 Los Angeles, California 90025

9 310-207-3233

10

11 DAVID DICKENS, ESQ.

12 THE MILLER FIRM, LLC

13 108 Railroad Avenue

14 Orange, Virginia 22960

15 540-672-4224

16

17 FOR THE DEFENDANT:

18 SANDRA A. EDWARDS, ESQ.

19 FARELLA BRAUN + MARTEL LLP

20 235 Montgomery Street

21 San Francisco, California 94104

22 415-954-4400

23

24

25

1 APPEARANCES (Continued):

2

3 FOR THE DEFENDANT:

4 GEORGE C. LOMBARDI, ESQ.

5 WINSTON & STRAWN LLP

6 35 West Wacker Drive

7 Chicago, Illinois 60601

8 312-558-5969

9

10 KIRBY T. GRIFFIS, ESQ.

11 HOLLINGSWORTH LLP

12 1350 I Street, N.W.

13 Washington, D.C. 20005

14 202-898-5800

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INDEX OF PROCEEDINGS

WITNESS DIRECT CROSS REDIRECT RECROSS

(None.)

EXHIBITS

(None.)

Thursday, August 9, 2018

10:09 a.m.

Volume 27

San Francisco, California

Department 504

Judge Suzanne Ramos Bolanos

PROCEEDINGS

10:09:24

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10:09:54

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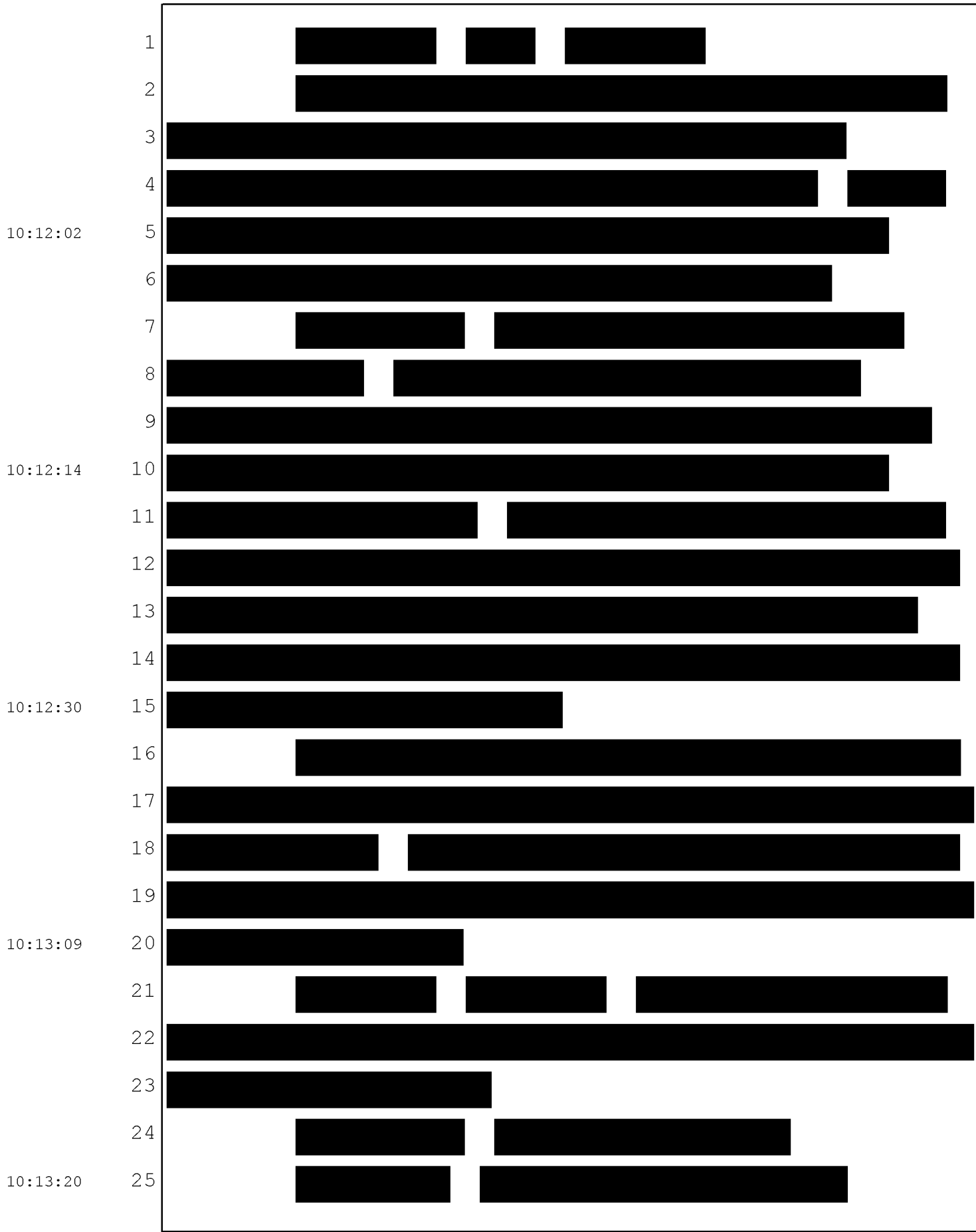
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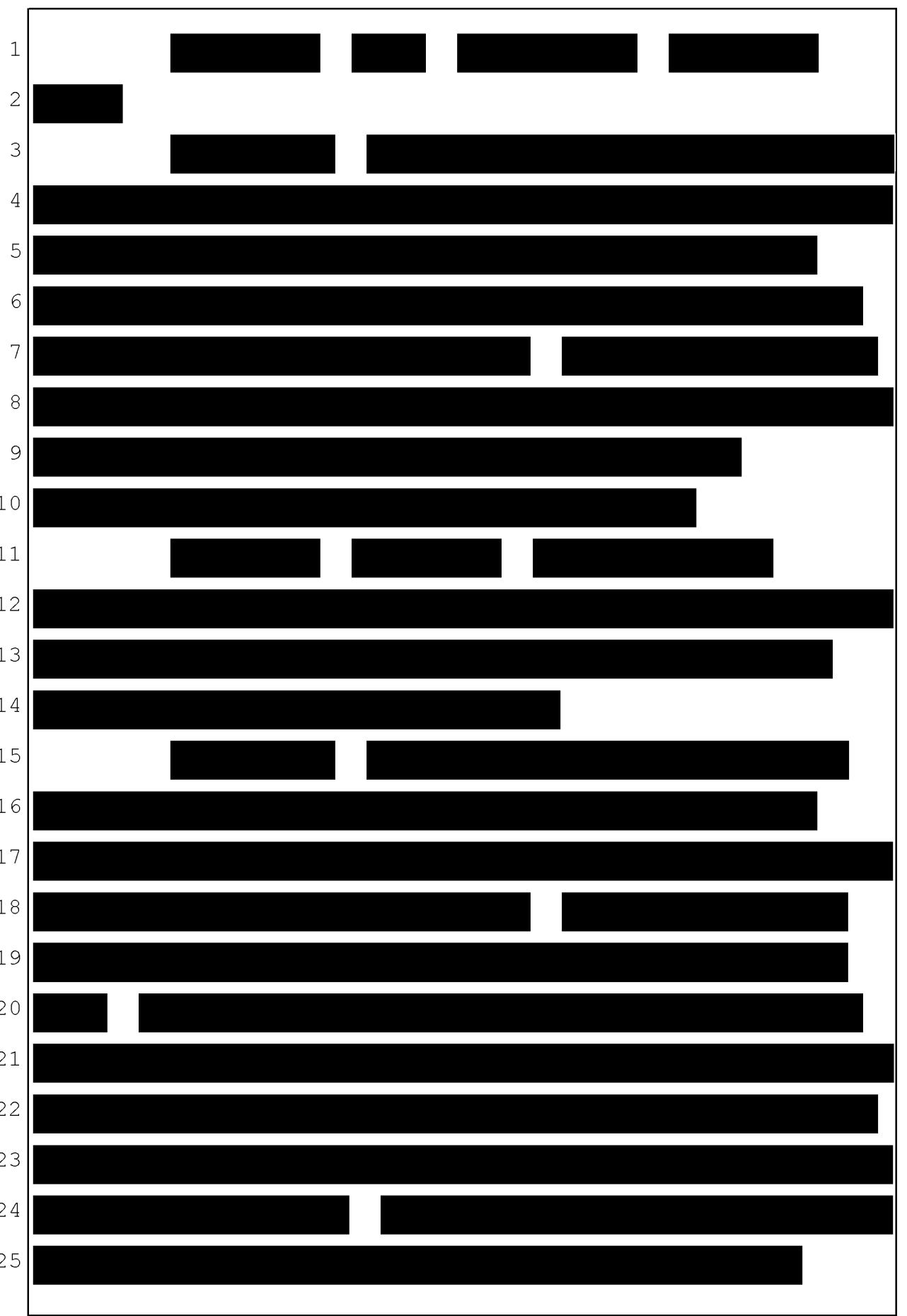
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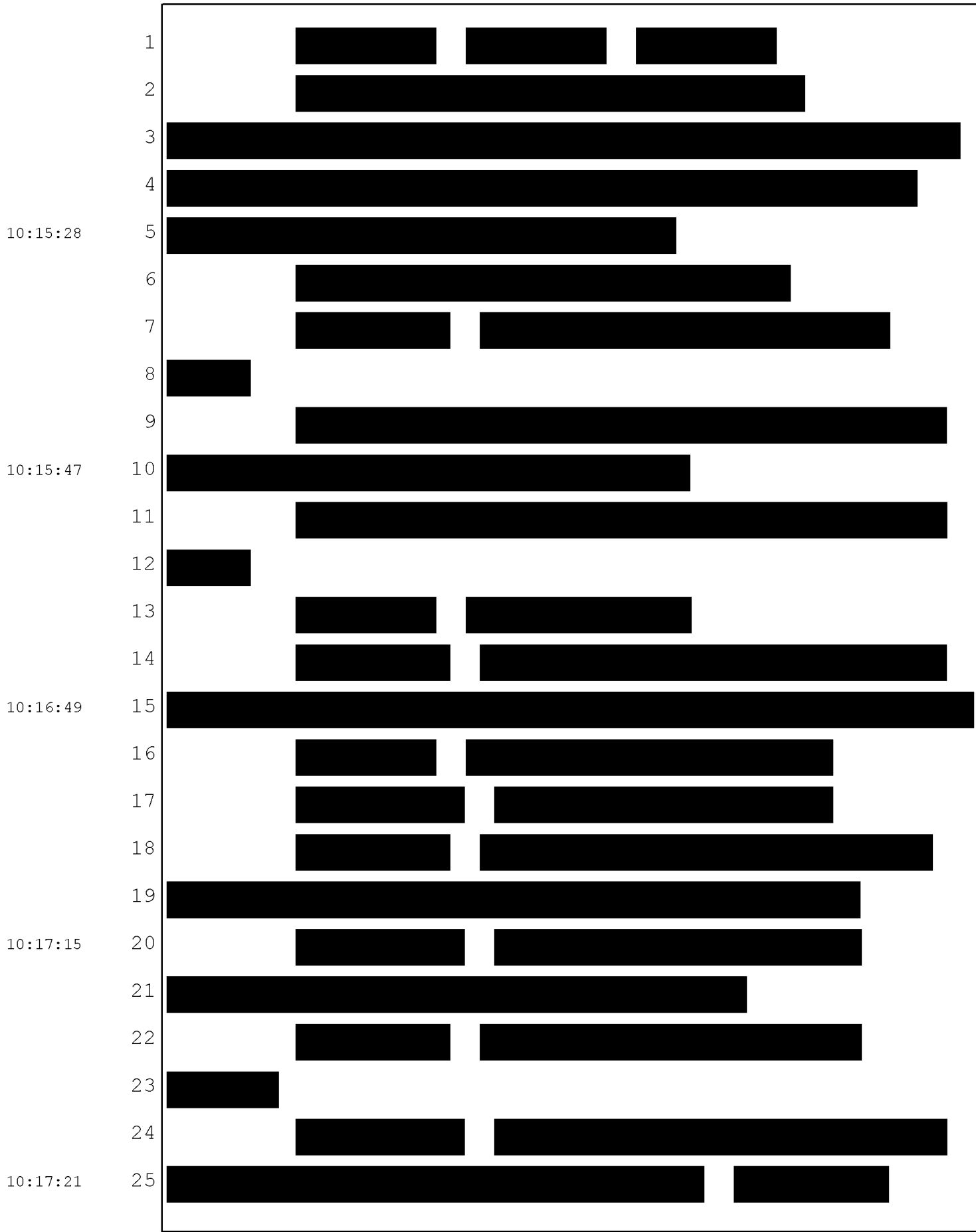
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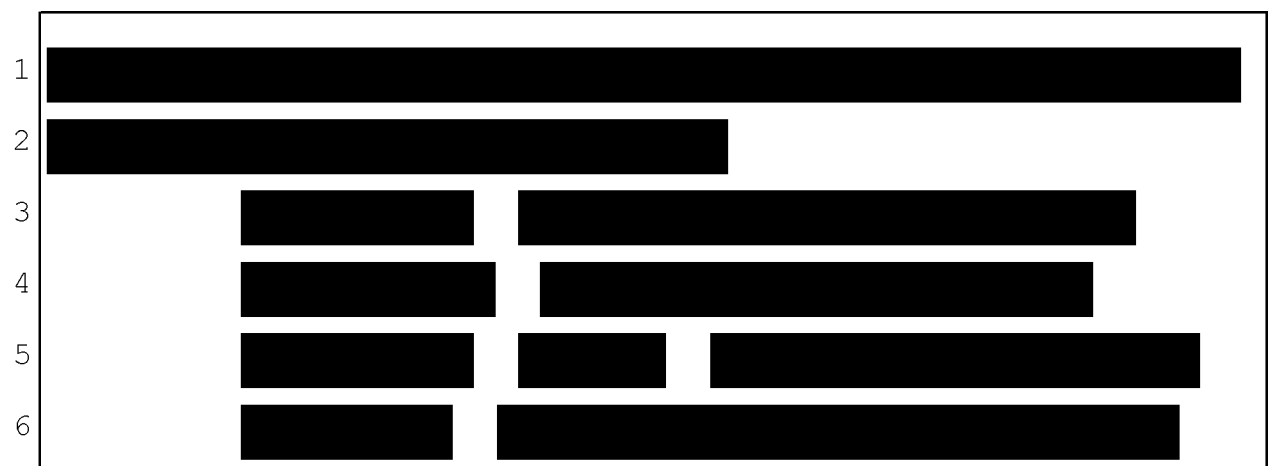
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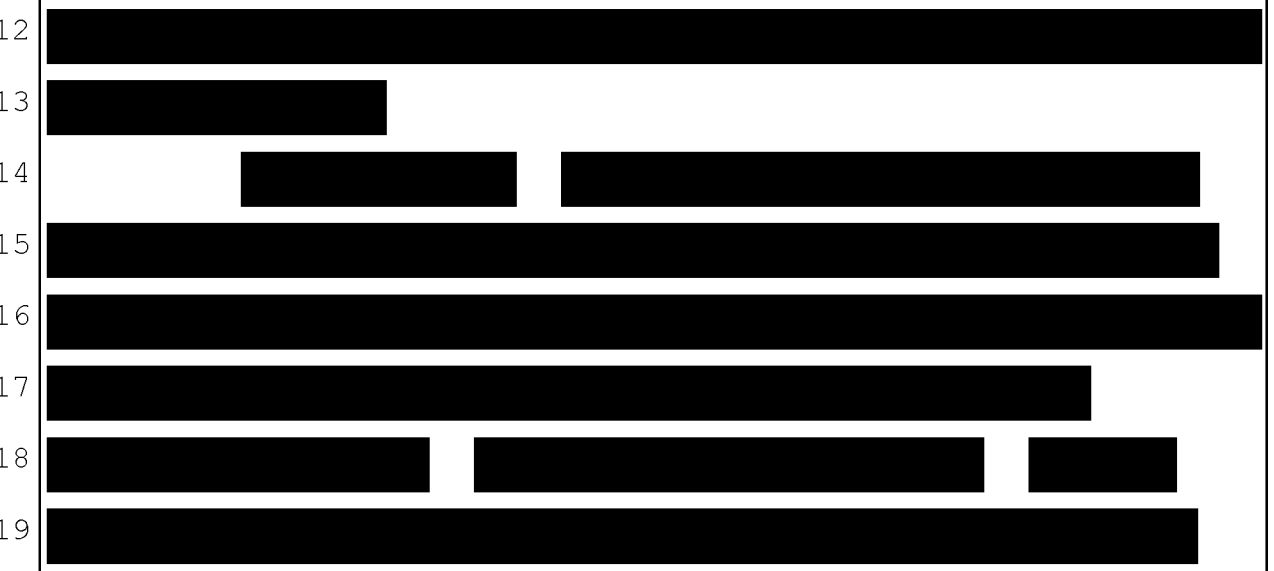
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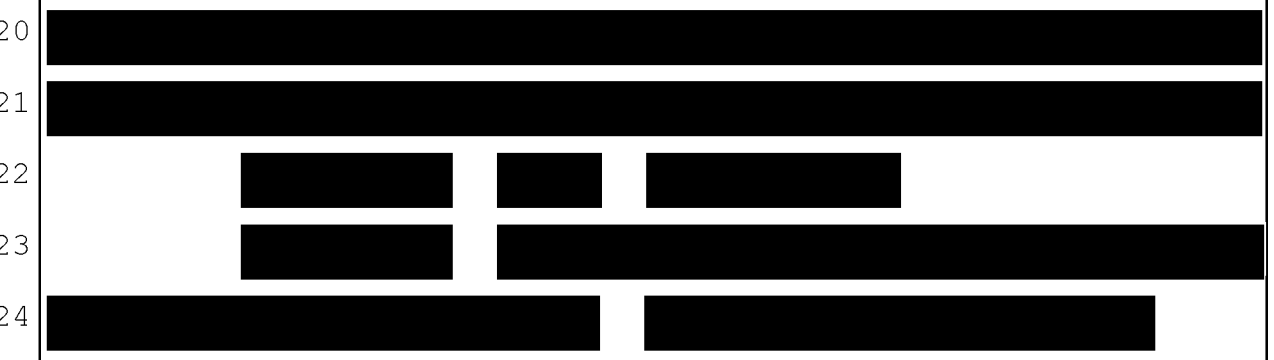
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10:23:07

10:23:48

[REDACTED]

(Recess.)

(The following was read to the jury by the reporter.)

1587:15 - 1588:2

This is request for admission number 26.

"Request: Admit that Monsanto never submitted the reports written by Dr. James Parry in 1999 on behalf of Monsanto regarding the genotoxicity of glyphosate and glyphosate-containing products to the US EPA."

"Response: To the extent that this request references MONGLY01312093-104 and MONGLY01314233-83, Monsanto admits that after reasonable inquiry into the information that is known or generally obtainable, it has

1 not identified any documentary evidence that the
2 referenced reports were submitted to the US EPA. To the
3 extent that this request references other documents,
4 Monsanto cannot respond."

5

6 3186:2 - 14

7 "Admission Number 13. Request: Admit that
8 Monsanto has never warned any consumers that
9 glyphosate-containing products can cause non-Hodgkin's
10 lymphoma.

11 "Response. Admitted. Monsanto denies its
12 glyphosate-containing products can cause non-Hodgkin's
13 lymphoma.

14 "Admission Number 14. Request: Admit that
15 Monsanto never warned Dewayne Lee Johnson prior to
16 August 2014 that glyphosate-containing products could
17 cause cancer.

18 "Response. Admitted. Monsanto denies that its
19 glyphosate-containing products can cause cancer."

20

21 3850:8 - 3852:2

22 "Admission Number 10: Request: Admit that
23 Monsanto has not conducted a chronic toxicity study of
24 any of the glyphosate-containing formulations sold in the
25 United States as of June 29, 2017.

1 "Response: Monsanto admits that after
2 reasonable inquiry into the information that is known or
3 reasonably obtainable, it has not identified any 12-month
4 or longer chronic toxicity studies that it has conducted
5 on glyphosate-containing formulations that were available
6 for sale in the United States as of June 29, 2017. But
7 denies that Monsanto has not conducted toxicity studies
8 of shorter durations, genotoxicity studies and other
9 tests on formulated glyphosate-containing products sold
10 in the United States as of June 29, 2017.

11 "Monsanto also denies the request to the extent
12 it suggests that Monsanto has not conducted chronic
13 toxicity studies on glyphosate. Monsanto otherwise
14 denies this request."

15 "Admission Number 12: Request: Admit that
16 Monsanto has never conducted an epidemiological study to
17 study the association between glyphosate-containing
18 formulations and non-Hodgkin's lymphoma.

19 "Response: Denied. Monsanto has conducted
20 epidemiological studies on glyphosate-containing
21 formulations, including the farm family exposure study.
22 Monsanto admits that that has not conducted a study
23 designed to examine specifically whether an association
24 exists between glyphosate-containing formulations and
25 non-Hodgkin's lymphoma. However, multiple published

1 studies conducted by others show no association.

2 "Admission Number 4. Request: Admit that after
3 receipt of EPA's July 29, 1985, letter, Monsanto stated
4 that EPA's determination that glyphosate was oncogenic,"
5 quote, "'would have serious negative economic
6 repercussions.'

7 "Response: Monsanto denies this request as
8 written. Monsanto admits that the cited document dated
9 March 13, 1985, states," quote, "'Monsanto is concerned
10 that even the initiation of formal regulatory action
11 would have serious negative economic repercussions, which
12 we believe are not justified by the scientific evidence.'

13 "Monsanto denies that this document was created
14 after Monsanto received EPA's July 29, 1985, letter,
15 MONGLY04269006-07. Monsanto otherwise denies this
16 request."

17

18 3386:15 - 3387:8

19 I'm just going to read to you three stipulations
20 that the parties have come to agreement on.

21 Number 1: Regarding plaintiff's economic
22 damages for future lost earnings, the amount of income
23 that he will reasonably -- that he will be reasonably
24 certain to lose in the future as a result of the injury
25 is \$1,433,327.

1 Number 2: Regarding plaintiff's economic
2 damages for loss of ability to provide household
3 services, the reasonable value of the services he would
4 have been reasonably certain to provide to household if
5 the injury had not occurred is \$286,038.

6 Finally, regarding plaintiff's economic damages
7 for past medical expenses, the reasonable cost of
8 reasonably necessary MediCare that he has received is
9 \$533,844.32.

10

11 4017:13 - 17

12 Ladies and Gentlemen, the following has been
13 stipulated to for the purposes of this case:

14 "As of the first quarter of 2018, Monsanto's net
15 worth was \$6.6 billion. And among Monsanto's assets,
16 cash and cash equivalents were valued at \$3.1 billion."

17 (End of record read to the jury.)

18 THE COURT: I don't see -- defense counsel is
19 missing?

11:38:49

20 MR. WISNER: Here they are.

21 THE COURT: Hello.

22 Okay. So I just wanted to inform you of a
23 development. And that is that we believe, we're still
24 trying to confirm, that the cleaning staff went into the
25 jury deliberation room overnight. And we -- the jurors

11:39:14

1 reported that, you know, an empty or half empty coffee
2 cup and a partially empty Coke bottle that they had left
3 on the table were gone this morning, which is fine,
4 because it was just old coffee and an old Coke bottle, so
11:39:41 5 that didn't seem significant.

6 However, at the break, the bailiff inquired as
7 to the Roundup bottle, the plastic -- the large plastic
8 bottle that's in evidence -- is that Exhibit 514?

9 MR. WISNER: I think it's in the 10 series.

11:40:05 10 THE COURT: Right. So the Roundup bottle
11 apparently is missing. The jurors, of course, reported
12 that they left it in the jury room last night, because
13 it's in evidence, and it's now gone, so we are inquiring
14 with the cleaning staff whether perhaps in the process of
11:40:21 15 cleaning up, such as disposing of the coffee cup and the
16 Coke bottle, perhaps they disposed of the Roundup bottle
17 as well. I'm speculating right now.

18 So we're making inquiries as to why the Roundup
19 bottle is missing, but I just wanted to let you know that
11:40:38 20 it's missing.

21 MR. LOMBARDI: Everybody needs a good side
22 mystery, Judge.

23 THE COURT: So I thought I should let you know
24 that.

11:40:45 25 And, then, the only other thing is that the

1 jurors will be taking their lunch today from 12:15 to
2 1:15.

3 MR. WISNER: Okay. Great. And if we need a new
4 one, we have one, and I would clear it with you guys
11:40:55 5 before. We have, actually, a second one at our office,
6 so we actually can fix that if that's a problem.

7 THE COURT: Okay. Thank you. We'll keep you
8 posted.

9 (Recess.)

11:41:44 10 THE COURT: They have looked in the dumpsters
11 now, apparently, and the dumpsters have been emptied. So
12 there is -- the Roundup bottle is --

13 MS. EDWARDS: A Roundup bottle --

14 THE COURT: -- missing.

11:41:59 15 MR. WISNER: It's Ranger Pro.

16 THE COURT: The large -- which exhibit number
17 was it?

18 THE CLERK: 1041, your Honor.

19 THE COURT: Exhibit 1041.

11:42:07 20 So you can meet and confer and see if you'd like
21 to perhaps send in a replacement bottle.

22 MR. WISNER: Sure.

23 MR. ESFANDIARY: There's plenty of Roundup.

24 THE COURT: All right. Okay. Thank you.

11:42:24 25 (Recess.)

1 (Lunch recess: 12:15 - 1:30 p.m.)

2 THE COURT: Good afternoon, Counsel.

3 So we have another question from the jury. They
4 would like read back on the historical controls for
13:43:17 5 Dr. Foster during direct, redirect, cross and recross,
6 specifically discrepancy between historical controls in
7 the CD-1 mouse studies.

8 MR. GRIFFIS: Correct. We're working on it.

9 THE COURT: Oh, okay. They're clearly very --
13:43:46 10 really sifting through that.

11 MR. GRIFFIS: They gave us the right date.

12 THE COURT: Madam Court Reporter, are you
13 pulling that up?

14 THE REPORTER: Yes.

15 THE COURT: We can go off the record.

16 (Recess.)

17 (The following testimony was read to the jury by
18 the reporter.)

19

20 DIRECT EXAMINATION 4558:23 - 4563:18

21 Q. And if you'd let me get by, sir, I'm going to
22 put up a chart.

23 Stay down, please.

24 A. Sorry? You said sit down?

25 Q. No. Stay down.

1 So let's talk about this chart that you helped
2 us make. So we've been talking, like, 2200, those are
3 the control, low dose, medium dose, high dose --

4 A. Correct.

5 Q. -- values, and here it's the lymphoma figures in
6 CD-1 mouse studies?

7 A. That's correct.

8 Q. So we have not just Knezevich & Hogan and
9 Sugimoto and Wood, but also -- I mean, Wood, Sugimoto and
10 Atkinson, but also the Knezevich & Hogan data, which you
11 didn't consider to be significant.

12 A. That's right. It was not significant.

13 Q. And why did you want to show the jury all of the
14 CD-1 mouse lymphoma data?

15 A. The reason that I wanted to show it was
16 severalfold. One, these tumors are occurring within the
17 historical range for the tumor, and, moreover, the
18 average rate -- if you go to Giknis and Clifford, the
19 average prevalence is around 12 tumors -- or
20 12 percent, sorry, so that's roughly 6 tumors as a mean,
21 an average --

22 Q. Out of a group of 50, it's 6?

23 A. Sorry?

24 Q. Out of a group of 50, it's 6.

25 A. Out of a group of 50. So 50 is the total number

1 of animals per group. And if you look at the dose
2 response, you've got an impact upside down view. You've
3 got something here that doesn't make any sense. You've
4 got a U shape, and then you've got a linear increase.
5 All of them are below the average historical background,
6 and in none of them the dose response is consistent
7 across studies. All of them, in my opinion, are nothing
8 more than statistical noise.

9 Q. Now, to a statistician, this sure looks like a
10 linear increase, doesn't it, 0, 1 is bigger than 0, 2 is
11 bigger than 1, 5 is bigger than 2?

12 A. Correct.

13 Q. What does it look like to a toxicologist?

14 A. Well, first off, I know that most lymphomas are
15 a common tumor in mice, so I'm not surprised that I see
16 some in my control group. I'm surprised that I'm not
17 seeing any there. And from a statistical point of view,
18 if you have 0 in your control group, that's going to
19 artificially create the probability that it's
20 statistically significant, because you've got no events
21 in that -- in that dose group, and I know there should be
22 some.

23 Q. And so the jury can see that you're not just
24 making up this 12 percent figure, can we put up Defense
25 Exhibit 3114, the Wood analysis on page 3?

1 MR. GRIFFIS: Any objection?

2 MR. WISNER: No objection.

3 Q. BY MR. GRIFFIS: So let's go to the first page
4 of this, so you can tell the jury what it is first? What
5 is this?

6 A. This is the Safepharm report on their -- their
7 control study looking at the background rates.

8 Q. So this is a background rate from the same time?

9 A. Same -- same -- contemporary, same ops, same
10 investigators.

11 Q. Okay. And then let's go to page 3, top
12 paragraph.

13 And right there, 6 male mice, 12 percent, and 6,
14 12 percent female mice developed malignant lymphoma.
15 Is that the 12 percent figure from contemporaneous data,
16 sir?

17 A. That's from contemporaneous data, and it also
18 happens to agrees with Giknis and Clifford.

19 Q. Okay. And Giknis and Clifford, that's Defense
20 Exhibit 2552.

21 MR. GRIFFIS: Permission to publish that, your
22 Honor?

23 THE COURT: Any objection?

24 MR. WISNER: What is it?

25 MR. GRIFFIS: 2552. Defense Exhibit 2552,

1 Giknis and Clifford.

2 MR. WISNER: No objection.

3 THE COURT: Very well.

4 Q. BY MR. GRIFFIS: So what is this, sir?

5 A. This is the Giknis and Clifford report looking
6 at CD-1 mice.

7 Q. And it's reporting on the control group finding
8 from a whole bunch of studies from around the right time
9 period from CD-1 mice?

10 A. And so that actually is 46 studies they looked
11 at.

12 Q. So let's go to page 21, and flip it sideways,
13 and go to malignant lymphoma, which is the first thing
14 under whole body, multiple organ systems. And those
15 numbers, those are the control numbers for malignant
16 lymphoma in male mice from a whole bunch of studies from
17 around the same time period; right?

18 A. Correct. And so you're seeing a range from a
19 low of 0 to as high as 7.

20 Q. Let's go to the next page where the study -- the
21 study count from here goes from 1 to 23. The next page
22 we go from 24 to 46, call out the same line, and what's
23 our range of numbers there?

24 A. Again, this is 0 and a high of 13 in this case.

25 Q. So we saw a 7. We saw a 6. We see a 13, and

1 you picked 6 as a reasonable top for the historical
2 range; right?

3 A. I looked at the mean, and that was 6 in this
4 case. 12 percent gives the number 6. 12 percent of 50
5 is 6.

6 Q. So when you see a scattering of numbers in the
7 CD-1 mouse studies from malignant lymphoma at or below 6,
8 how do you interpret that as a toxicologist, sir?

9 A. As a toxicologist, this tells me it's within the
10 normal range of what would be expected, whether I gave
11 them glyphosate or not.

12 Q. Okay. So what's your bottom line on malignant
13 lymphoma?

14 A. My bottom line on malignant lymphoma is, again,
15 these are not compound-related tumors.

16 Q. Would you take those down?

17

18 CROSS-EXAMINATION 4576:25 - 4581:1

19 MR. WISNER: Okay. Permission to publish Slide
20 27?

21 THE COURT: Very well.

22 Q. BY MR. WISNER: Mr. Griffis just pointed this
23 out to you, and this is your chart talking about the
24 lymphomas; right?

25 A. Correct.

1 Q. And you opined and told this jury that the rate
2 is at 6 out of 50, so that's 12 percent; right?

3 A. Correct.

4 MR. WISNER: Okay. Permission to publish
5 Defendant's Exhibit 2552? It was shown to the jury
6 during direct.

7 THE COURT: Any objection?

8 MR. GRIFFIS: No objection.

9 THE COURT: Very well.

10 Q. BY MR. WISNER: Now, you arrived at that
11 12 percent number and you showed the jury this document.
12 Do you recall that?

13 A. I do.

14 Q. And this is dated March 2000, and this is about
15 neoplastic lesions in the CD-1 mice; right?

16 A. Correct.

17 Q. All right. And if we go into this actual
18 document, it says right here that it involved 51 studies
19 between January 1987 and December 1996; right?

20 A. Correct.

21 Q. Now, the Wood study that you're referring to,
22 that was published in 2009; right?

23 A. Correct.

24 Q. So this is kind of older data; fair?

25 A. Yes.

1 Q. And then I was going through it over lunch, and
2 I found this table. This is Table 3.

3 Do you see that?

4 A. Yes, I do.

5 Q. And this is the neoplasms in males; right?

6 A. Yes.

7 Q. And this is tabulating all the data from the
8 charts that are in here; right?

9 A. Correct.

10 Q. And if we turn to "Malignant Lymphoma, Whole
11 Body" --

12 Do you see that?

13 A. Yes.

14 Q. -- it says "Percent of Total, 4.09 Percent" --

15 A. Uh-huh.

16 Q. -- right?

17 4.09 percent of 50 would be 2 tumors, not 6?

18 A. Uh-huh.

19 Q. Right?

20 A. Correct.

21 MR. WISNER: All right. Permission to approach,
22 your Honor?

23 THE COURT: Yes.

24 MR. WISNER: I'm handing the witness Plaintiffs'
25 Exhibit 1063.

1 THE COURT: Thank you.

2 Q. BY MR. WISNER: Are you familiar with this
3 document, sir?

4 A. Yes, I am.

5 Q. This is an updated version of the same one we're
6 looking at; right?

7 A. Correct.

8 MR. WISNER: Permission to publish?

9 THE COURT: Any objection?

10 MR. GRIFFIS: No, no objection.

11 THE COURT: Very well.

12 Q. BY MR. WISNER: This is the same group of
13 authors, and they're talking about the same thing,
14 Spontaneous Neoplastic Lesions in CD-1 mice, but this is
15 dated March 2005.

16 A. Uh-huh.

17 Q. Sorry, I've got to get a "yes."

18 And so if we turn the page -- it's been
19 pre-highlighted for us -- this included some more studies
20 up through 2000; right?

21 A. Correct.

22 Q. Okay. And then if we go again to -- let me find
23 this. It would have been Table 3, it's the same table.

24 See Table 3, "Neoplasms in Males," sir?

25 A. Yes.

1 Q. And then we go to "Full Body." That would be on
2 this page, this is page 10.

3 Do you see that, sir, "whole body"?

4 And we have the lymphoma?

5 Do you see that, sir.

6 A. Yes.

7 Q. Again, that's a 4.5 percent; right?

8 A. Correct.

9 Q. And that would be -- 4.5 percent out 50 would be
10 what? What would that be, 2.25?

11 A. About that, yes.

12 Q. We talked about how important numbers are, and
13 this is that chart you created. If, in fact, we were to
14 use the numbers from those publications, this line would
15 actually be a third. It would be down here, wouldn't it?

16 A. It would be if we accepted those numbers, yes.

17 Q. And, in fact, if we did that, a lot of these
18 high-dose groups, they're outside of that range; right?

19 A. They would be outside the range, yes.

20

21 REDIRECT EXAMINATION 4678:23 - 4680:23

22 Q. Okay. Sir, you were shown a couple of the
23 studies that we talked about when we looked at your chart
24 about the melanoma studies; correct?

25 A. Correct.

1 MR. GRIFFIS: And I would like to use the Elmo
2 and publish 3114, the Wood evaluation.

3 THE COURT: Any objection?

4 MR. WISNER: 3114? Okay.

5 MR. GRIFFIS: We showed it before.

6 MR. WISNER: Okay. Yeah, we showed it before.

7 Q. BY MR. GRIFFIS: So this is contemporaneous to
8 the Wood study, one of the -- one of the studies that's
9 up here. Evaluation showing 12 percent of male mice and
10 12 percent of female mice develop malignant lymphoma;
11 right?

12 A. That's correct.

13 Q. So that was not -- and what you have here is not
14 the average, but the top of a range; correct?

15 A. Correct.

16 Q. Okay. And the 12 percent is right at the top of
17 that range?

18 A. Correct.

19 Q. So if you did a range around 12, it would
20 actually be like that?

21 A. Right.

22 Q. You picked that as the high point, even though
23 it's really an average; right?

24 And Mr. Wisner asked you about the averages from
25 Giknis & Clifford. But, again, this was not, sort of, an

1 average, but a range; correct?

2 A. Sorry. The 6 is a range?

3 Q. Yes.

4 A. Six is the average.

5 Q. Okay. So the 6 is the average? Then you would
6 expect to see as many above as below the average;
7 correct?

8 A. Correct.

9 Q. And we don't?

10 A. Correct.

11 Q. And when we looked at Giknis, sir --
12 highlighting doesn't show up, but we can see it here.

13 The malignant lymphoma, you saw a 1, 1, 7, 2, 1,
14 1, 1, 4, 2, 2. There's a 7 that's higher than the top
15 figure that we saw in these figures.

16 A. Correct.

17 Q. And 13 on the next page, that was higher than
18 the top figure we saw in these figures.

19 A. Correct.

20 Q. Correct?

21 There's the 13. There's the 6. There's a 5 and
22 a 4.

23

24 RE-CROSS-EXAMINATION 4686:12 - 4687:1

25 Q. Doctor, I'm just going to show you the document

1 again. We just showed it to the jury. This is the
2 Charles River March 2000 document.

3 Do you see that one?

4 A. Yes.

5 Q. And I am not good at math. I'll be honest with
6 you. Okay? But when I look at these numbers, you know,
7 to 2, 2, 1, 4, 1, 3, 1 -- it goes on, and even when I
8 throw in that 13 on the next page, how does that average
9 to 6?

10 A. Yeah, it's late, and I'm looking at it. And --
11 yeah. When I did my assessment of the data, I used
12 range.

13 Q. Sure.

14 A. And I misspoke.

15 (End of testimony read.)

16 (Time noted: 4:30 p.m.)

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1 REPORTER'S CERTIFICATE

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I certify that the proceedings in the within-titled cause were taken at the time and place herein named; that the proceedings were reported by me, a duly Certified Shorthand Reporter of the State of California authorized to administer oaths and affirmations, and said proceedings were thereafter transcribed into typewriting.

I further certify that I am not of counsel or Attorney for either or any of the parties to said Proceedings, not in any way interested in the outcome of the cause named in said proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand:
August 9th, 2018.

<%signature%>
Leslie Rockwood Rosas
Certified Shorthand Reporter
State of California
Certificate No. 3462