

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAR 18 2019

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

JASON SCOTT THEIS,

Plaintiff-Appellant,

v.

GRACO, INC.,

Defendant-Appellee.

No. 17-56723

D.C. No.

2:17-cv-02354-SVW-FFM

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Stephen V. Wilson, District Judge, Presiding

Argued and Submitted March 8, 2019
Pasadena, California

Before: WARDLAW and BENNETT, Circuit Judges, and CARDONE,** District Judge.

Jason Theis appeals the district court's grant of summary judgment in favor of Graco Inc. on his products liability manufacturing defect claim. We have jurisdiction pursuant to 28 U.S.C. § 1291. We affirm.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The Honorable Kathleen Cardone, United States District Judge for the Western District of Texas, sitting by designation.

The district court correctly concluded that there is no genuine issue of material fact as to whether the allegedly missing check ball in Theis's Probler P2 spray gun caused his accident, a required element of his manufacturing defect claim. *See Nelson v. Superior Court*, 144 Cal. App. 4th 689, 695 (2006). Theis concedes that California law requires him to establish causation through expert testimony because the mechanics, construction, and operation of a Probler P2 spray gun are "sufficiently beyond common experience." *Carson v. Facilities Dev. Co.*, 36 Cal. 3d 830, 844 (1984). Theis seeks to serve as his own expert. However, even if Theis could qualify as an expert witness, his proffered expert testimony concerning his independent experiments fails to meet the *Daubert* standard in accordance with Federal Rule of Evidence 702. *See Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 141, 147–49 (1999). As the experiments have "unsubstantiated and undocumented" results, have not been tested by anyone other than Theis, and were conducted using an unknown methodology, they cannot serve as the basis of expert testimony provided to the trier of fact. *Cabrera v. Cordis Corp.*, 134 F.3d 1418, 1423 (9th Cir. 1998); *see also Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 146 (1997) ("[N]othing in either *Daubert* or the Federal Rules of Evidence requires a district court to admit opinion evidence that is connected to existing data only by the *ipse dixit* of the expert.").

Without the required expert testimony, Theis has proffered insufficient

evidence of causation. Federal Rule of Civil Procedure Rule 56(c) therefore mandates the entry of summary judgment against Theis for “fail[ing] to make a showing sufficient to establish the existence of an element essential to [his] case.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

AFFIRMED.