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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

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9 Ahmad Alsadi and Youssra Lahlou,
10 husband and wife,

11 Plaintiffs,

12 vs.

13 Intel Corporation, a Delaware corporation,

14 Defendant.

No. CV-16-03738-PHX-DGC

ORDER

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16 On February 28, 2016, Plaintiff Ahmad Alsadi was exposed to hydrogen sulfide
17 (“H₂S”) while working at Defendant Intel Corporation’s technology development campus
18 in Chandler, Arizona. Alsadi asserts negligence claims against Intel, alleging that his
19 exposure to H₂S caused him toxic inhalation injuries. Doc. 20 ¶ 21. He claims to have
20 reactive airways dysfunction syndrome (“RADS”) which has rendered him permanently
21 disabled. *See* Docs. 161 at 5, 195 at 3.

22 In an order dated September 30, 2019, the Court granted Intel’s motions to exclude
23 Plaintiffs’ experts from offering causation opinions in Plaintiffs’ case-in-chief at trial or in
24 response to Intel’s summary judgment motion. Doc. 204 at 2-19, 22-25. The Court denied
25 summary judgment on the issue of causation because a jury reasonably could find, without
26 the benefit of expert medical testimony, that Alsadi was exposed to H₂S and the exposure
27 caused a toxic inhalation injury on the night in question and immediately thereafter. *Id.*
28 at 30-33.

1 At the Court's direction, the parties have filed supplemental briefs addressing two
2 issues: (1) whether an expert opinion is required to prove that Alsadi's exposure to H₂S
3 caused RADS, and (2) the extent of damages Plaintiffs can seek at trial if they cannot
4 recover for RADs without an expert opinion. *Id.* at 33-34; Docs. 205, 206. For reasons
5 stated below, the Court will grant summary judgment on the issue of whether Alsadi's
6 exposure to H₂S caused RADS and deny summary judgment on the extent and duration of
7 Plaintiffs' injuries. The Court will also grant Plaintiffs' request for clarification of its
8 previous order. Doc. 209.

9 **I. Summary Judgment Ruling in Light of Supplemental Briefing.**

10 **A. Summary Judgment on RADS.**

11 Whether expert medical testimony is required to establish causation under Arizona
12 law "depends upon the nature of the illness with which the jury is concerned." *Crystal*
13 *Coca-Cola Bottling Co. v. Cathey*, 317 P.2d 1094, 1100 (Ariz. 1957). Arizona courts "have
14 long recognized that unless the result of an accident is clearly apparent to a lay person,
15 expert medical evidence is required to establish the fact of an injury and its causal
16 connection to [the accident]." *Jones v. Indus. Comm'n of Ariz.*, No. 2 CA-IC 2010-0009,
17 2011 WL 288028, at *3 (Ariz. Ct. App. Jan. 27, 2011) (citations omitted).

18 RADS is a chronic disease that begins with the sudden onset of asthma symptoms
19 following a high level exposure to a toxic gas, vapor, or fume. *See* Doc. 161 at 12 (citing
20 the definition of RADS provided by the National Center for Biotechnology Information);
21 *Howell v. CSX Transp., Inc.*, No. 2:11-CV-079 JD, 2013 WL 6145730, at *2 (N.D. Ind.
22 Nov. 21, 2013) (RADS is an "irritant-induced asthma typically caused by exposure to high
23 concentrations of chemical fumes"); *Karamolengos v. Durango Ga. Paper Co.*, No.
24 CV202-085, 2007 WL 9701006, at *2 (S.D. Ga. Sept. 27, 2007) ("RADS is a permanent
25 condition that occurs when an individual has a sudden onset of non-allergic asthma caused
26 by a high level exposure to an irritant gas."); *Mattis v. Carlon Elec. Prods.*, 114 F. Supp.
27 2d 888, 890 (D.S.D. 2000) (describing the criteria for RADS as set forth in the article first
28 naming the disease) (citing Stuart M. Brooks, Mark A. Weiss & I.L. Bernstein, *Reactive*

1 *Airways Dysfunction Syndrome: Persistent Asthma Syndrome after High Level Irritant*
2 *Exposures*, 88 Chest 376 (Sept. 1985)).

3 The Court agrees with the Seventh Circuit’s observation that “a typical layperson
4 does not possess the requisite knowledge to draw a causative line, without the assistance
5 of a medical expert, between a brief encounter with [a toxic] gas and the onset of . . .
6 RADS[,] a disease with which . . . most lay people have no familiarity[.]” *Higgins v. Koch*
7 *Dev. Corp.*, 794 F.3d 697, 702 (7th Cir. 2015). Courts in other jurisdictions have reached
8 the same conclusion. See *Kolesar v. United Agri Prods., Inc.*, 412 F. Supp. 2d 686, 696
9 (W.D. Mich. 2006) (requiring the plaintiff to present expert testimony that his exposure to
10 metam sodium fertilizer caused RADS “because the effects of toxic chemical exposure are
11 complex and not within the ken of ordinary experience”); *Byous v. L.M. Scofield Co.*, No.
12 3:07-CV-053-JTC, 2009 WL 10664903, at *10 (N.D. Ga. Jan. 27, 2009) (“Plaintiffs . . .
13 cannot prove that the Cureseal-S vapors caused [the plaintiff’s] RADS without expert
14 testimony.”); *Zamora v. Champion Cooler Corp.*, No. 05-16-00577-CV, 2018 WL 507362,
15 at *1-2 (Tex. App. Jan. 23, 2018) (requiring expert testimony to prove that exposure to
16 fumes from an acetylene torch and machine grease caused RADS).

17 Plaintiffs’ reliance on *Sunnycalb v. CSX Transportation, Inc.*, 926 F. Supp. 2d 988
18 (S.D. Ohio 2013), is misplaced. Doc. 206 at 3-4. The plaintiff in that case presented
19 testimony of medical experts “who conducted numerous diagnostic tests and ruled out
20 other possible causes before diagnosing [the] plaintiff with RADS.” *Sunnycalb*, 926 F.
21 Supp. 2d at 996. One expert had “exhaustively reviewed the medical literature regarding
22 RADS and the effects of exposure to chlorine[,]” and expressly opined that the plaintiff’s
23 “sudden chemical exposure to chlorine . . . could generally cause, and in [his] case, did
24 specifically cause, [the] plaintiff’s injuries.” *Id.* Plaintiffs present no admissible expert
25 opinion that the exposure in this case caused RADs. Moreover, *Sunnycalb* involved claims
26 under the Federal Employers’ Liability Act for which a “a relaxed standard of causation
27 applies” in “comparison to tort litigation at common law[.]” *CSX Transp., Inc. v. McBride*,

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1 564 U.S. 685, 692 (2011) (citation omitted); *see Claar v. Burlington N. R.R. Co.*, 29 F.3d
2 499, 504 (9th Cir. 1994) (noting the “modicum of causation [the] FELA requires”).

3 Plaintiffs’ citation to *Gass v. Marriott Hotel Services, Inc.*, 558 F.3d 419 (6th Cir.
4 2009), fares no better. Doc. 206 at 3. The *Gass* plaintiffs became ill within minutes of
5 entering a hotel room filled with a putrid cloud of toxic pesticides, and were diagnosed
6 with acute pesticide exposure shortly thereafter. 558 F.3d at 422-24. The Sixth Circuit
7 concluded that it did not take an expert to find that the defendants likely caused the
8 plaintiffs’ injuries given their immediate adverse reaction to the pesticides in the hotel
9 room. *Id.* at 433. The Court has reached a similar conclusion in this case: “a jury
10 reasonably could find, without the benefit of expert medical testimony, that Alsadi was
11 exposed to H₂S and the exposure caused a toxic inhalation injury.” Doc. 204 at 31-32
12 (citing *Cathey*, 317 P.2d at 1100).¹

13 But the claim that the H₂S exposure caused RADS – a permanent disease with which
14 most lay people have no familiarity – distinguishes this case from *Gass*. The Seventh
15 Circuit aptly explained the distinction in *Higgins*:

16 [T]he *Gass* plaintiffs complained only of “chemical poisoning” (i.e.,
17 headache, itching, dizziness, etc.). The connection between the inhalation of
18 harmful pesticides – exposure to which occurred in a confined hotel room –
19 and those symptoms is fairly obvious, as the Sixth Circuit found. Here, by
20 contrast, *Higgins* primarily complains that exposure to chlorine fumes caused
not symptoms, but [a] permanent, chronic condition[] – [RADS].

21 794 F.3d at 703.

22 Absent an expert opinion that Alsadi’s exposure to H₂S caused RADS, any jury
23 award of damages for RADS would be based on speculation. *See id.* (explaining that

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25 ¹ *See also Bradford v. CITGO Petro. Corp.*, 237 So. 3d 648, 660-74 (La. Ct. App.
26 2018) (finding that the plaintiffs proved causation where they experienced inhalation
27 injuries immediately after being exposed to H₂S); *Ulfik v. Metro-N. Commuter R.R.*, 77
28 F.3d 54, 59-60 (2d Cir. 1996) (“[T]he trier of fact could reasonably determine, without
expert testimony, that prolonged exposure to paint fumes would cause headache, nausea,
and dizziness.”)

1 without the requirement for expert testimony, a plaintiff claiming that exposure to a
2 chemical caused RADS “would be free . . . to prove his allegations relying on the logical
3 fallacy ‘*post hoc ergo propter hoc*’”); *Claar*, 29 F.3d at 502-04 (finding that “special
4 expertise” was necessary to draw a causal inference between the chemical exposure and
5 the plaintiffs’ alleged “‘dyscalculia’ (poor arithmetic ability) and ‘spelling dyspraxia’ (poor
6 spelling ability)”); *Ulfik*, 77 F.3d at 59 (distinguishing *Claar* because “special expertise
7 was thought necessary because of the esoteric nature of the injuries alleged – dyscalculia
8 and spelling dyspraxia”); *see also Coca-Cola Bottling Co. of Tucson v. Fitzgerald*, 413
9 P.2d 869, 872-73 (Ariz. 1966) (medical testimony was required to prove that drinking
10 fungus-contaminated soda caused the plaintiff’s heart condition suffered two weeks after
11 the incident but not his initial symptoms of nausea).

12 The Court will grant summary judgment on the issue of whether Alsadi’s exposure
13 to H₂S caused RADS. *See Robertson v. Sixpence Inns of Am., Inc.*, 789 P.2d 1040, 1047
14 (Ariz. 1990) (the court must not leave causation to the jury’s speculation); *Kolesar*, 412 F.
15 Supp. 2d at 696-99 (granting summary judgment where the plaintiff failed to present an
16 expert opinion that his chemical exposure caused RADS); *Byous*, 2009 WL 10664903,
17 at *10-11 (same); *Zamora*, 2018 WL 507362, at *5 (same); *Shiver v. Ga. & Fla. Railnet,*
18 *Inc.*, 652 S.E.2d 819, 821 (Ga. Ct. App. 2007) (affirming summary judgment where the
19 plaintiff presented “no admissible medical testimony to support his claim that exposure to
20 diesel fumes caused him to develop RADS”).

21 **B. Extent and Duration of Plaintiffs’ Recoverable Injuries.**

22 The parties were asked to address the extent of injuries Plaintiff can recover at trial
23 without a medical causation expert. Doc. 204 at 34. Intel contends that the jury should not
24 be allowed to award damages beyond those necessary to compensate Plaintiffs for the acute
25 symptoms Alsadi experienced on the night of the incident and up to a week thereafter.
26 Doc. 205 at 8. Plaintiffs counter that they should be entitled to recover their full damages,
27 including damages for permanent injuries they can establish at trial. Doc. 206 at 8.

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1 This is an unusual case. Plaintiffs have failed to disclose timely or admissible expert
2 testimony that Alsadi’s exposure caused the little-known illness of RADs, and therefore
3 they are precluded from seeking to recover for RADs, But the facts of his exposure — as
4 discussed in the Court’s previous order — seem clearly to suggest that Alsadi suffered an
5 inhalation injury on the night in question that has persisted for some time thereafter.
6 Docs. 204 at 31-32, 206 at 4-5. Thus, although Plaintiff now lacks evidence to show that
7 he suffers from RADs, he is not precluded under Arizona law from presenting evidence
8 that he suffered an inhalation injury on the night in question, that has persisted. *See Heck*
9 *v. City of Lake Havasu*, No. CV 04–1810–PCT–NVW, 2006 WL 2460917, at *11-12 (D.
10 Ariz. Aug. 24, 2006) (denying summary judgment where the jury could infer from
11 circumstantial evidence that carbon monoxide contributed to a drowning death); *Patania*
12 *v. Silverstone*, 415 P.2d 139, 144 (Ariz. 1966) (“Whether the injury is permanent need not
13 be proven by medical testimony, nor is the jury bound by the testimony of a medical expert
14 who testifies as to the lack of permanency of the injury, if there is controverting evidence
15 or testimony from which it may be inferred that the injury is in fact permanent.”) (citation
16 omitted); *Ball v. Prentice*, 781 P.2d 628, 630 (Ariz. Ct. App. 1989) (“Whether Ball’s
17 emotional problems, nausea, sleeplessness, tension and headaches are causally connected
18 to the accident and the extent and duration of those injuries is a matter for jury
19 determination.”); *Bradford*, 237 So. 3d at 674-75 (affirming award of damages based in
20 part on each plaintiff’s testimony as to how long he or she continued to have symptoms
21 from the chemical exposure and noting that “the last medical visit is not a magic bullet that
22 suddenly remedies a plaintiff’s symptoms and makes him whole again”).

23 And if Plaintiffs are permitted under Arizona law to show that Alsadi suffered
24 immediate inhalation injury symptoms that have persisted, the Court can see no legal basis
25 for holding that they cannot seek future damages for the same symptoms, provided they
26 can present evidence that the symptoms are likely to continue into the future. “Where there
27 is conflicting evidence as to the extent of the plaintiff’s injuries, it is a question for the jury.
28 It is not the function of the trial court . . . to determine the amount which would compensate

1 the plaintiff.” *Hardy v. S. Pac. Emp. Ass’n*, 459 P.2d 743, 748 (Ariz. Ct. App. 1969); *see*
2 *Lloyd v. State Farm Mut. Auto. Ins.*, 860 P.2d 1300, 1304 (Ariz. Ct. App. 1992) (noting
3 that “[t]he extent of damages is a jury question”); *Merch. Transaction Sys., Inc. v. Nelcela,*
4 *Inc.*, No. CV02-1954-PHX-MHM, 2010 WL 1336956, at *2 (D. Ariz. Mar. 31, 2010)
5 (citing *Lloyd* for the proposition that “damages must be awarded by a jury based on
6 evidence presented at trial”).

7 The Court does not know from the present record whether precluding evidence of
8 RADs, while permitting evidence of continuing inhalation injury symptoms, is a distinction
9 without a difference. The Court cannot tell from the record whether RADs includes
10 complications or a prognosis not suggested by a mere continuation of Alsadi’s symptoms.
11 If it does, Plaintiff will not be permitted to recover for such additional complications or
12 prognosis. If it does not, then the Court’s ruling may simply mean that the case is tried
13 with no mention of RADs. The Court’s intention will be to permit Plaintiffs to present
14 evidence, if offered in admissible form, that Alsadi’s symptoms which developed
15 immediately upon exposure (and which the jury therefore could properly conclude were
16 caused by the exposure) have continued and likely will continue into the future, but not to
17 permit them to present evidence of new or different symptoms that were not immediately
18 apparent upon exposure. The Court will engage in this line-drawing as the evidence is
19 presented at trial.

20 **II. Plaintiff’s Request for Clarification.**

21 Plaintiffs seek clarification or reconsideration of the Court’s order granting Intel’s
22 motion to exclude opinions of Dr. Kelly Johnson-Arbor. Doc. 209. The Court will grant
23 the motion to the extent Plaintiffs seek clarification.

24 “To survive summary judgment on a toxic tort claim for physical injuries,
25 [the plaintiff must] show that he was exposed to chemicals that could have caused the
26 physical injuries he complains about (general causation), and that his exposure did in fact
27 result in those injuries (specific causation).” *Golden v. CH2M Hill Hanford Grp., Inc.*, 528
28 F.3d 681, 683 (9th Cir. 2008) (citing *In re Hanford Nuclear Reservation Litig.*, 292 F.3d

1 1124, 1133 (9th Cir. 2002)); *see In re Zicam Cold Remedy Mktg., Sales Practices, & Prods.*
2 *Liab. Litig.*, 797 F. Supp. 2d 940, 942 (D. Ariz. 2011) (noting that each state requires toxic
3 tort plaintiffs to “prove general and specific causation for their claims for negligence”);
4 *Mason v. Wasatch Prop. Mgmt., Inc.*, No. C20035581, 2012 WL 12964636, at *2 (Ariz.
5 Super. Ct. Oct. 09, 2012) (explaining that “toxic tort cases require proof of both ‘general’
6 and ‘specific’ causation”). In its order addressing Intel’s *Daubert* motions, the Court
7 excluded Dr. Johnson-Arbor’s specific causation opinion that Alsadi’s exposure to H₂S
8 resulted in RADS. Doc. 204 at 18-19. Plaintiffs seek clarification as to whether
9 Dr. Johnson-Arbor’s general causation opinion that H₂S exposure can cause RADS has
10 also been excluded. Doc. 209 at 2.

11 The answer is yes. The Court will enter summary judgment on Plaintiffs’ claim that
12 Alsadi’s exposure caused RADS, and with no such claim in the case, Dr. Johnson-Arbor’s
13 general causation opinion is not relevant. *See* Fed. Rs. Evid. 401-02. To be clear, however,
14 the Court has made no ruling on the admissibility of any opinion of Dr. Johnson-Arbor that
15 H₂S can cause some of the symptoms Alsadi has experienced since the exposure event.
16 *See* Doc. 209 at 2, 4. Intel has not challenged any such opinion. *See* Doc. 147 at 5-6
17 (challenging only the general causation opinion that H₂S can cause RADS).

18 **IT IS ORDERED:**

19 1. Intel’s motion for summary judgment (Doc. 183) is **granted in part and**
20 **denied in part** as set forth above.

21 2. Plaintiff’s motion for clarification or reconsideration (Doc. 209) is **granted**
22 **in part and denied in part** as set forth above.

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