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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Youngevity International, *et al.*,
Plaintiffs,
v.
Todd Smith, *et al.*,
Defendants.

Case No.: 3:16-cv-704-BTM-JLB

**ORDER DENYING MOTION IN
LIMINE WITHOUT PREJUDICE**

[ECF No. 703]

Todd Smith, *et al.*,
Counterclaim Plaintiffs,
v.
Youngevity International, *et al.*,
Counterclaim Defendants.

The Plaintiffs and Counterclaim Defendants moved to limit the expert testimony of Dr. Joshua Plant and exclude the Microbac Laboratory tests (EX1003 and EX1004). (ECF 703.) The Court heard oral argument at the October 6, 2020, pretrial conference.

The Court denies the motion without prejudice. As discussed at the conference, Dr. Plant will testify in front of the Court to establish the scope of his trial testimony on November 23, 2020. Any purported prejudice can be addressed

1 by discovery, which the parties may petition the Court to reopen on a limited basis
2 if needed.

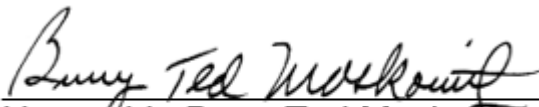
3 As for the Microbac tests, Rule 703 provides that:

4 An expert may base an opinion on facts or data in the case that the
5 expert has been made aware of or personally observed. If experts in
6 the particular field would reasonably rely on those kinds of facts or data
7 in forming an opinion on the subject, they need not be admissible for
8 the opinion to be admitted. But if the facts or data would otherwise be
9 inadmissible, the proponent of the opinion may disclose them to the
jury only if their probative value in helping the jury evaluate the opinion
substantially outweighs their prejudicial effect.

10 Fed. R. Evid. 703. Dr. Plant bases his opinion (at least partially) on the Microbac
11 tests). Rule 703, however, “provides a presumption against disclosure to the jury
12 of information used as the basis of an expert's opinion and not admissible for any
13 substantive purpose, when that information is offered by the proponent of the
14 expert.” *Turner v. Burlington N. Santa Fe R. Co.*, 338 F.3d 1058, 1062 (9th Cir.
15 2003) (quoting Committee Notes to 2000 Amendment). Wakaya thus has the
16 burden of establishing that the Microbac tests are the kind that a microbiologist
17 would reasonably rely on and that their probative value in helping the jury evaluate
18 Dr. Plant’s opinion substantially outweighs their prejudicial effect.

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20 **IT IS SO ORDERED.**

21 Dated: October 7, 2020

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23 Honorable Barry Ted Moskowitz
24 United States District Judge
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