

1 Sandra A. Edwards (State Bar No. 154578)
Joshua W. Malone (State Bar No. 301836)
2 Farella Braun + Martel LLP
235 Montgomery Street, 17th Floor
3 San Francisco, CA 94104
Telephone: (415) 954-4400; Fax: (415) 954-4480
4 sedwards@fbm.com
jmalone@fbm.com

5 Joe G. Hollingsworth (appearance *pro hac vice*)
6 Martin C. Calhoun (appearance *pro hac vice*)
Kirby T. Griffis (appearance *pro hac vice*)
7 William J. Cople (appearance *pro hac vice*)
Hollingsworth LLP
8 1350 I Street, N.W.
Washington, DC 20005
9 Telephone: (202) 898-5800; Fax: (202) 682-1639
jhollingsworth@hollingsworthllp.com
10 mcalhoun@hollingsworthllp.com
kgriffis@hollingsworthllp.com
11 wcople@hollingsworthllp.com

12 George C. Lombardi (appearance *pro hac vice*)
James M. Hilmert (appearance *pro hac vice*)
13 Winston & Strawn LLP
35 West Wacker Drive
14 Chicago, IL 60601
Telephone: (312) 558-5969; Fax: (312) 558-5700
15 glombard@winston.com
jhilmert@winston.com

16 *Attorneys for Defendant*
17 MONSANTO COMPANY

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
MOTION *IN LIMINE* NO. 18 TO
EXCLUDE EVIDENCE OF PRODUCTS
NOT AT ISSUE IN THIS LITIGATION**

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

ELECTRONICALLY
FILED
*Superior Court of California,
County of San Francisco*
05/24/2018
Clerk of the Court
BY: VANESSA WU
Deputy Clerk

1 **I. INTRODUCTION**

2 Defendant Monsanto Company (“Monsanto”) respectfully requests that this Court exclude
3 any evidence of any Monsanto products other than Ranger PRO[®] and Roundup PRO[®], and any
4 litigation relating to products that are not at issue in this case. Any information related to such
5 products or litigation is irrelevant, and its inclusion at trial would unfairly prejudice Monsanto and
6 waste the jury’s and this Court’s time. Accordingly, the evidence should be excluded. *See* Cal.
7 Evid. Code §§ 210, 350, 352.

8 **II. ARGUMENT**

9 **A. Plaintiff Cannot Demonstrate That Any Other Monsanto Products Or**
10 **Litigation Are “Substantially Similar” To Those At Issue In This Case**

11 Monsanto anticipates that Plaintiff may attempt to introduce evidence or argument
12 referencing the fact that the company’s predecessor, “Old Monsanto,”¹ once manufactured certain
13 controversial products such as poly-chlorinated biphenyls (“PCBs”), used in industrial and
14 commercial applications, and Agent Orange, an herbicide used during the Vietnam War, in order
15 to inflame the passions of the jury and paint Monsanto as a large corporation that manufactures
16 controversial products. *See, e.g., Kelly*, 2016 WL 3543050, at *2 (describing history of corporate
17 mergers and Monsanto’s PCB manufacture); *Custer v. Cerro Flow Prod., Inc.*, No. 09-514-DRH,
18 2009 WL 5033931, at *2 (S.D. Ill. Dec. 15, 2009) (noting Monsanto’s contract with the
19 Department of Defense to manufacture Agent Orange). But Plaintiff here makes no allegations
20 that PCBs, Agent Orange or any products other than Ranger Pro[®] or Roundup PRO[®] caused his
21 mycosis fungoides (“MF”). Accordingly, reference to any other Monsanto products or litigation

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23 ¹ “Old Monsanto” manufactured chemicals and agricultural products from 1901 to 1997, at which
24 time the original Monsanto corporate entity ceased to exist due to a series of corporate spin-offs
25 and acquisitions. *See Kelly v. Monsanto Co., Solutia Inc.*, No. 4:15 CV 1825 JMB, 2016 WL
26 3543050, at *2 (E.D. Mo. June 29, 2016), *appeal dismissed sub nom. Kelly v. Monsanto Co.*, No.
27 16-3247, 2017 WL 3392250 (8th Cir. Mar. 14, 2017). Old Monsanto’s chemical division split
28 into a new, independent corporation called Solutia, Inc., and, in 2000, the remaining part of Old
Monsanto merged with Pharmacia/Upjohn Corporation. *Id.* Pharmacia incorporated a new
company in Delaware, also called “Monsanto Co.,” and Pharmacia was then acquired by Pfizer,
Inc. in 2003. *Id.* In 2012, Pharmacia merged with another Pfizer subsidiary and was renamed
Pharmacia LLC. *Id.*

1 concerning those products is wholly irrelevant to the central issue in this case: whether Plaintiff's
2 use of Ranger Pro[®] or Roundup PRO[®] caused his MF. *See* Cal. Evid. Code § 210 (evidence which
3 does not “hav[e] any tendency in reason to prove or disprove any disputed fact that is of
4 consequence” to this action is irrelevant); Cal. Evid. Code § 350 (only relevant evidence is
5 admissible).

6 Courts routinely exclude evidence of other products made by defendant-manufacturers that
7 are not similar to the products at issue in the pending case. *See, e.g., Chlopek v. Fed. Ins. Co.*, 499
8 F.3d 692, 6991 (7th Cir. 2007) (affirming exclusion of evidence about a medical device not at
9 issue in plaintiff's complaint); *Dowdy v. Coleman Co.*, No. 1:1CV45DAK, 2012 WL 5944232, at
10 *7 (D. Utah Nov. 28, 2012) (excluding evidence of manufacturer's other products because “there
11 is no evidence that the other types of [products] . . . are substantially similar” and therefore such
12 products are “not relevant”); *Piacenti v. Gen. Motors Corp.*, 173 F.R.D. 221, 225-26 (N.D. Ill.
13 1997) (excluding evidence of different products that did “not share several pertinent
14 characteristics” with the product at issue). Other Monsanto products such as Agent Orange and
15 PCBs should meet a similar fate, as they share no similarities with Monsanto’s glyphosate-
16 containing herbicides Roundup PRO[®] or Ranger Pro[®].

17 Evidence of Monsanto’s involvement in litigation relating to these other products is
18 likewise irrelevant to this case and should be excluded. *See, e.g., In re Homestore.com, Inc.*, No.
19 01-cv-11115, 2011 WL 291176, at *1 (C D. Cal. Jan. 25, 2011) (excluding “evidence of Plaintiff's
20 involvement in other litigation” as irrelevant); *In re Static Random Access Memory (SRAM)*
21 *Antitrust Litig.*, No. 07-MD-01819, 2010 WL 10086747, at *2 (N.D. Cal. Dec. 16, 2010) (granting
22 motion *in limine* to exclude reference to party's other litigation because “[s]uch evidence does not
23 appear relevant.”); *Barrett v. Negrete*, No. 02-cv-2210-L, 2010 WL 2106235, at *3-4 (S.D. Cal.
24 May 25, 2010) (excluding evidence of other cases brought by plaintiff); *Lucent Technologies Inc.,*
25 *v. Gateway, Inc.*, No. 02CV2060-B(CAB), 2007 WL 4829666 at *1 (S.D. Cal. Jan. 8, 2007)
26 (precluding testimony on unrelated legal matters).

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1 **B. Evidence Relating to Previously Manufactured Products Or Unrelated**
2 **Litigation Would Unduly Prejudice Monsanto**

3 Reference to other products and litigation would serve only to impugn Monsanto’s
4 reputation in the eyes of the jury and should be excluded as unduly prejudicial. *See* Cal. Evid.
5 Code § 352; *Vorse v. Sarsay*, 53 Cal. App. 4th 998, 1009 (1997) (“[E]vidence should be excluded
6 as unduly prejudicial [because] it is of such nature as to inflame the emotions of the jury,
7 motivating them to use the information, not to logically evaluate the point upon which it is
8 relevant, but to reward or punish one side.”). PCBs and Agent Orange are attended by a well-
9 known stigma that the Court should not permit the jury to entertain. Courts have routinely
10 excluded this type of evidence on prejudice grounds. *See, e.g., In re Bendectin Litig.*, 857 F.2d
11 290, 322 (6th Cir. 1988) (“[W]e uphold Judge Rubin's determination that references to
12 Thalidomide would be extremely prejudicial”); *Am. Home Assurance Co. v. Merck & Co., Inc.*,
13 462 F. Supp. 2d 435, 446 (S.D.N.Y. 2006) (excluding references to Vioxx litigation and finding
14 them prejudicial because “the only possible purpose for offering such evidence would be to
15 generally prejudice the fact finder against Merck through insinuations that it is a careless corporate
16 citizen.”); *Rondor Music Int. Inc., et al. v. TVT Records LLC*, No. 19582, 2006 WL 5105272 at
17 *10 (C.D. Cal. 2006) (holding that reference to the prior lawsuit “would potentially result in unfair
18 prejudice to plaintiffs or confusion of the issues”). Plaintiff should be precluded from offering any
19 such evidence at trial.

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1 **III. CONCLUSION**

2 For the foregoing reasons, the Court should exclude any evidence of any Monsanto
3 products other than Ranger Pro[®] and Roundup PRO[®], and any litigation relating to products that
4 are not at issue in this case.

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6 Dated: May 24, 2018

Respectfully submitted,

7 FARELLA BRAUN + MARTEL LLP

8 By: 
9 Sandra A. Edwards

10 Attorneys for Defendant
11 MONSANTO COMPANY

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