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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. 14 TO  
EXCLUDE EVIDENCE, ARGUMENT, OR  
REFERENCE TO COMPARISON TO  
THE TOBACCO INDUSTRY**

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 submits this motion *in limine* to  
3 exclude any evidence, argument, or reference comparing Monsanto to the tobacco industry. Any  
4 comparison to “Big Tobacco” or to the previous or current practices of tobacco companies bears  
5 no relevance to the issues in this case, and would serve only to distract the jury and prejudice  
6 Monsanto.

7 Plaintiff Dewayne Johnson’s (“Plaintiff”) counsel in this action and other members of the  
8 plaintiffs’ steering committee in the on-going federal court multi-district litigation *In re Roundup*  
9 *Prods. Liab. Litig.*, No. 3:16-md-2741-VC (N.D. Cal.) (“*In re Roundup*”) have demonstrated to be  
10 all too eager to cast false, misleading, and derogatory comparisons between Monsanto and the  
11 tobacco industry.<sup>1</sup> Tobacco companies and the actions of their attorneys in relation to tobacco  
12 litigation have absolutely no relevance to Monsanto, glyphosate, the real or alleged cause of  
13 Plaintiff’s injuries, or any issue presented in this case. Tobacco companies and their litigation  
14 have a well-publicized stigma such that any mention of them or comparison made to Monsanto  
15 would prevent jurors’ dispassionate evaluation of the facts of the case, and serve only to induce  
16 jurors to punish Monsanto for any perceived connection to such a vilified industry. Accordingly,  
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18 <sup>1</sup> See Declaration of Sandra A. Edwards (“Edwards Decl.”) at ¶ 18, Ex. 17 (Tr. of Proceedings, *In*  
19 *re Roundup*, at 8:13-19 (May 3, 2016)) (quoting plaintiff’s counsel Mr. Andrus, arguing  
20 unsuccessfully against bifurcation in the MDL: “The fact is [Monsanto] bought the science. This  
21 court has seen it over and over. I want the court to imagine that it was 30 years ago, and this is a  
22 tobacco lawyer, and this argument is happening in this courtroom, and by that tobacco lawyer in  
23 front of you saying the science is clear, why should you let these people investigate our company,  
24 tobacco doesn’t cause cancer – because they bought the science.”); Edwards Decl. at ¶ 19, Ex. 18  
25 (Dep. of John Aquavella, *In re Roundup*, at 204:10 – 205:6 (April 4, 2017)) (Mr. Miller: “[Dr.  
26 Garabrant, an expert on the Intertek panel was an] expert for the tobacco industry. Are you aware  
27 of that?”); Edwards Decl. at ¶ 20, Ex. 19 (Dep. of Jennifer Rider, *In re Roundup*, at 165:4 –  
28 167:13 (Sept. 21, 2017)) (Mr. Miller (Plaintiff’s counsel in this instant case, *Johnson v. Monsanto*  
*Company*): “Have you ever said that before . . . that tobacco companies were a barrier to the  
acceptability of the notion that lung cancer is caused by tobacco?”); Edwards Decl. at ¶ 21, Ex. 20  
(Plf’s Supp. Mem. In Response to Monsanto’s Contention that Plf’s Experts Offered New  
Opinions, *In re Roundup*, ECF No. 1356 at 4) (*citing Reference Manual on Sci. Evid.*, 591 (3d  
2011) to argue erroneously that Monsanto’s assertion of the possibility of confounding in the  
study upon which plaintiffs’ expert relied is the same “strategy” utilized by those who sought to  
“undermine . . . studies . . . linking cigarette smoking to lung cancer.”).

1 any reference to an alleged connection or similarity between Monsanto and the tobacco industry  
2 should be excluded.

3 **II. ARGUMENT**

4 **A. Evidence Related to the Tobacco Industry is Irrelevant to Plaintiff’s Claims**

5 Here, Plaintiff claims that his use of Ranger Pro<sup>®</sup> and Roundup PRO<sup>®</sup> caused him to  
6 develop mycosis fungoides, a subtype of non-Hodgkin lymphoma. Plaintiff makes no allegation  
7 involving tobacco products or the tobacco industry as a potential cause of his injury. Evidence  
8 concerning the actions or legal strategy of the tobacco or any other unrelated industry at unrelated  
9 times has no bearing on whether Plaintiff’s use of Ranger Pro<sup>®</sup> or Roundup PRO<sup>®</sup> caused his  
10 mycosis fungoides. *See* Cal. Evid. Code §§ 210, 350. The Court should exclude evidence,  
11 testimony, or argument related to the tobacco industry as completely irrelevant to this case.

12 **B. Evidence Related to the Tobacco Industry Should Be Excluded Because It**  
13 **Would Be Unduly Prejudicial**

14 Even if evidence related to the tobacco industry were marginally relevant – which it is not  
15 – such evidence should be excluded because Monsanto would suffer undue prejudice should the  
16 comparison be permitted.

17 Evidence related to the tobacco industry is unduly prejudicial because it invites the jury to  
18 infer that because large, world-wide tobacco manufactures have been labeled as “unethical,” all  
19 large, world-wide manufacturers and corporations must be equally unethical, or that because  
20 tobacco companies were found to have concealed scientific information, Monsanto must have  
21 done the same. *See* Cal. Evid. Code § 352 (evidence may be excluded when its probative value is  
22 substantially outweighed by the risk of confusion of the issues or undue prejudice); *People v.*  
23 *Waidla*, 22 Cal. 4th 690 (2000) (exclusion of relevant evidence is proper when its probative value  
24 is outweighed by its potential for creating an emotional bias against a defendant); *Hernandez v.*  
25 *Cty. of Los Angeles*, 226 Cal. App. 4th 1599, 1613 (2014) (explaining that California courts  
26 exclude even relevant evidence when it tends to evoke an emotional bias against one party, and  
27 would motivate the jury to use the information for an illegitimate purpose – *i.e.*, to reward or  
28 punish one party because of the jurors’ emotional reaction).

1 Courts have recognized the highly prejudicial nature of a comparison to the tobacco  
2 industry and have excluded such comparisons. *See, e.g.*, Edwards Decl. at ¶ 22, Ex. 21  
3 (Coordination Proceeding Special Title Rule 1550b at 4) (*Thomas v. Lincoln Electric Co.*, No.  
4 RG-06-272122 (Super. Ct. Alameda Cty.) (Jan. 7, 2009)) (granting defendants' motion *in limine*  
5 and prohibiting plaintiff from referring to or making pejorative comparisons to the tobacco  
6 industry at trial for claim of injury involving welding industry). Numerous other courts have  
7 gone a step further and prohibited comparisons of defendants to *any* other company, even within  
8 the same industry, because of the almost certain risk of undue prejudice. *See Rowe Entm't v. The*  
9 *William Morris Agency, Inc.*, No. 98 Civ. 8272 (RPP), 2003 WL 22272587, at \*8 (S.D.N.Y. Oct.  
10 2, 2003) (discrimination suit excluding evidence of racist acts by other companies in the same  
11 industry as defendant because evidence was not relevant and ““would only serve to interject  
12 substantial unfair prejudice into the case’ and confuse the jury by directing its attention from the  
13 issues in this case.”) (quoting *Collier v. Bradley Univ.* 113 F. Supp 2d 1235, 1242 (C.D. Ill. 2000);  
14 *In re Benedectin Prods. Liab. Litig.*, 857 F.2d 290, 321-22 (6th Cir. 1988) (in suit alleging birth  
15 defects caused by defendant’s medication, upholding trial court’s ruling to exclude any mention of  
16 analogous medications as unduly prejudicial). This Court should similarly exclude this irrelevant  
17 and highly prejudicial comparison.

18 **III. CONCLUSION**

19 For the aforementioned reasons, the Court should grant this motion *in limine* and exclude  
20 any evidence, argument, or reference comparing Monsanto to the tobacco industry.

21  
22 Dated: May 24, 2018

Respectfully submitted,

23 FARELLA BRAUN + MARTEL LLP

24  
25 By: 

26 Sandra A. Edwards

27 Attorneys for Defendant  
MONSANTO COMPANY

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