

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. 7 TO
EXCLUDE EMAIL FROM DONNA
FARMER**

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 an email written by Donna Farmer to John Combest in 2009. This email is irrelevant, misleading
4 and unfairly prejudicial to Monsanto and therefore inadmissible. *See* Cal. Evid. Code §§ 210, 350
5 and 352.

6 **II. BACKGROUND**

7 Monsanto anticipates that Plaintiff will attempt to introduce into evidence a 2009 email
8 from Donna Farmer, Ph.D., a product safety toxicologist for Monsanto, to John Combest, a
9 member of the Monsanto public affairs group, to support Plaintiff’s argument that Monsanto did
10 not conduct safety tests on its formulated herbicide product, Roundup® and Ranger PRO®. In the
11 September 21, 2009 email, Dr. Farmer stated to Mr. Combest that he could not “say that Roundup
12 does not cause cancer...we have not done carcinogenicity studies with ‘Roundup.’” Dr. Farmer’s
13 statement in this email, however, is taken out of context and does not reflect the numerous studies
14 Monsanto and other researchers undertook to test the safety of the formulated products and their
15 ingredients.

16 Monsanto’s products have been the subject of repeated epidemiologic, animal, and
17 genotoxicity studies, which have shown no evidence of carcinogenicity or mutagenicity in the
18 final formulated glyphosate-containing pesticides. *See, e.g.*, Declaration of Sandra A. Edwards
19 (“Edwards Decl.”) at ¶ 5, Ex. 4 (Andreotti et al., *Glyphosate Use and Cancer Incidence in the*
20 *Agricultural Health Study*, 110 J. Nat’l Cancer Inst. 1, 1 (2018)) (“In this large, prospective cohort
21 study, no association was apparent between glyphosate and any solid tumors or lymphoid
22 malignancies overall, including NHL and its subtypes.”); Edwards Decl. at ¶ 6, Ex. 5 (Heydens et
23 al., *Genotoxic Potential of Glyphosate Formulations: Mode-of-Action Investigations*, J. of
24 *Agricultural and Food Chemistry* at p. 1 (2008)) (“A broad array of in vitro and in vivo assays has
25 consistently demonstrated that glyphosate and glyphosate-containing herbicide formulations
26 (GCHF) are not genotoxic. . . . results continue to support the conclusion that glyphosate and
27 GCHF are not genotoxic under exposure conditions that are relevant to animals and humans.”);
28 Edwards Decl. at ¶ 7, Ex. 6 (De Roos et al., *Cancer Incidence Among Glyphosate-Exposed*

1 *Pesticide Applicators in the Agricultural Health Study*, 113 *Environmental Health Perspectives* 49,
2 at 52-53 (2005)) (“[T]he available data provided evidence of no association between glyphosate
3 exposure and NHL incidence.”); Edwards Decl. at ¶ 8, Ex. 7 (Kier et al, *Review of Genotoxicity*
4 *studies of glyphosate and glyphosate-based formulations*, *Critical Reviews in Toxicology* at p. 1
5 (2013)) (noting “earlier review of the toxicity of glyphosate and the original Roundup-branded
6 formulation concluded that neither glyphosate nor the formulation poses a risk for the production
7 of heritable/somatic mutations in humans,” and finding that glyphosate and typical glyphosate-
8 based formulations “do not appear to present significant genotoxic risk under normal conditions of
9 human or environmental exposures”).

10 While federal regulations did not require Monsanto to perform chronic carcinogenicity
11 studies on its final formulated products, the company nonetheless did extensive “six-pack tests” on
12 its products, in which acute oral, acute dermal, acute inhalation, skin and eye irritation and a skin
13 sensitization exposure tests are performed. *See* Edwards Decl. at ¶ 9, Ex. 8 (Dep. of Donna
14 Farmer (“Farmer Dep.”) at 52:4 – 7)¹; *id.* at 432-33 (testing demonstrated that Monsanto’s
15 products were “practically and slightly nontoxic . . . [with] very . . . low acute, dermal and
16 inhalation toxicity [and] low eye and skin irritation . . .”). Monsanto has also undertaken
17 genotoxicity and in vivo animal testing on the formulated products, neither of which were required
18 by federal regulations. *See Id.* at 434-35.

19 The ingredients in Monsanto’s products Roundup[®] and Ranger PRO[®], i.e. glyphosate and
20 the surfactants, have also been extensively studied and found to be non-carcinogenic. *See*
21 Edwards Decl. at ¶ 10, Ex. 9 (Belvaux email, MONGLY01159775-78 (March 5, 2013)) (noting
22 that impact of long term exposure to RoundUp[®] products “has been assessed according to the
23 regulatory requirements in chronic and carcinogenicity studies conducted with the active
24 ingredient glyphosate”); *see also* Edwards Decl. at ¶ 11, Ex. 10 (Email from Stephen Adams to
25 Gary Klopf et al., MONGLY01155974-79 (Dec. 14, 2010)) (noting that while direct

26 _____
27 ¹ *Id.* (“[W]e are not required to do chronic carcinogenicity studies on the formulated product, but
28 we are on the active ingredient.”).

1 carcinogenicity testing of the product formulations is unavailable, the company did “have such
2 testing on the glyphosate component and some extensive tox testing on the surfactant. Since the
3 glyphosate formulations are simply a blend of these components, I think we can address these
4 questions in a confident manner.”). EPA has further determined that the group of surfactants used
5 in Monsanto’s products are not neurotoxic, mutagenic, clastogenic, or carcinogenic. *See* Edwards
6 Decl. at ¶ 12, Ex. 11 (EPA Memorandum Re: Alkyl Amine Polyalkoxylates (JITF CST 4 Inert
7 Ingredients) at 4).

8 Because Monsanto’s final formulated glyphosate-containing products and their ingredients
9 have been extensively studied, Plaintiff’s allegations to the contrary are unsupportable. As Dr.
10 Farmer clarified during her deposition, “we have no evidence of carcinogenicity with glyphosate,
11 we have no evidence with the surfactant,” and therefore no evidence to suggest that Roundup® and
12 Ranger PRO® cause cancer. Edwards Decl. at ¶ 9, Ex. 8 (Farmer Dep. at 51); *id.* at 468 (“[T]his
13 should have been really that we have done carcinogenicity studies with glyphosate, but with
14 Roundup we don’t believe that it causes cancer based on the lack of carcinogenicity with
15 glyphosate and lack of carcinogenicity within the surfactants.”). For this reason alone, Dr.
16 Farmer’s email and out-of-context statement about the carcinogenicity testing of the products
17 should be excluded as irrelevant. *See* Cal. Evid. Code § 210; *People v. De La Plane*, 88 Cal. App.
18 3d 223, 242 (1979), *cert. denied*, 444 U.S. 841 (1979), *disapproved on other grounds in People v.*
19 *Green*, 27 Cal. 3d 1, 39 n.25 (noting that evidence that produces “only speculative inference” is
20 irrelevant and thus inadmissible).

21 Furthermore, this email is a “soundbite” that would serve only to confuse and mislead the
22 jury into punishing Monsanto for an erroneous perception that the product has not been tested.
23 *See* Cal. Evid. Code §§ 350, 352. Allowing Plaintiff to put this email in front of the jury as
24 evidence that Roundup® and Ranger PRO® causes cancer or that Monsanto failed to adequately
25 test its products would be unduly prejudicial to Monsanto and likely to waste time and resources
26 as Monsanto attempts to refute these misleading statements. *See Lemer v Boise Cascade, Inc.*, 107
27 Cal. App. 3d 1, 10 (1980) (excluding evidence when its “marginal value [is] more than
28 outweighed by the heavy costs in trial time and expense” that would ensue). The ingredients and

1 Monsanto's final formulated products have been thoroughly tested as required by the applicable
2 regulations, and Plaintiff should not be permitted to put this email before the jury as evidence of
3 inadequate testing.


4 **III. CONCLUSION**

5 For the foregoing reasons, the Court should exclude this email.

6
7 Dated: May 24, 2018

Respectfully submitted.

8 FARELLA BRAUN + MARTEL LLP

9 By: 
10 _____
Sandra A. Edwards

11 Attorneys for Defendant
12 MONSANTO COMPANY

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28