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17 MONSANTO COMPANY

18 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
19 **COUNTY OF SAN FRANCISCO**

20
21 DEWAYNE JOHNSON,
22
23 Plaintiff,
24 vs.
25 MONSANTO COMPANY,
26 Defendant.

Case No. CGC-16-550128

**DEFENDANT MONSANTO COMPANY'S
MOTION *IN LIMINE* NO. 22 TO
EXCLUDE EVIDENCE, ARGUMENT, OR
REFERENCE TO ENDOCRINE
DISRUPTION, BIRTH DEFECTS, OR
EFFECTS ON GUT BACTERIA**

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 the Court exclude
3 any evidence or argument that glyphosate causes endocrine disruption, causes birth defects, or
4 affects gut bacteria. Plaintiff Dewayne Johnson (“Plaintiff”) has made no allegation that he has
5 suffered harm from any of these putative mechanisms. Previously, this Court ruled that “evidence
6 relating to glyphosate exposure through breast milk should be excluded” because there “is no
7 allegation or argument that Johnson was exposed to glyphosate through breast milk.” 04/03/2018
8 Order on Motions *In Limine* at 6. That same logic and ruling applies here.

9 **II. ARGUMENT**

10 Evidence about endocrine disruption, birth defects, and gut bacterial enzymes is absolutely
11 irrelevant and would serve only to confuse the issues, prejudice Monsanto, and inflame the jury.
12 *See* Cal. Evid. Code §§ 210, 350, 352. Moreover, there is no scientific support for the assertion
13 that glyphosate is capable of causing any such harms to any other person.

14 Plaintiff alleges that he has developed mycosis fungoides, a type of non-Hodgkin
15 lymphoma, based on his use of glyphosate-containing herbicides. *See* Complaint at ¶ 75 (claiming
16 that “Mr. Johnson was diagnosed with non-Hodgkin lymphoma”). Plaintiff has proffered an
17 oncologist, Dr. Nabhan, to testify about Plaintiff’s cancer. But Dr. Nabhan does not claim that
18 Plaintiff suffers from endocrine disruption, birth defects, or harmed gut bacteria. Plaintiff has also
19 proffered a group of other experts purporting to be epidemiologists, toxicologists, or statisticians,
20 to testify about the alleged link between cancer and glyphosate. But none of these experts make
21 any claim that glyphosate disrupted Plaintiff’s endocrine system, caused him birth defects, or
22 disrupted his gut bacteria, and Plaintiff himself makes no such claims. *See, e.g.*, Declaration of
23 Sandra A. Edwards (“Edwards Decl.”) at ¶ 32, Ex. 31 (Dep. of Dewayne Johnson (“Johnson
24 Dep.”) Vol. 3 at 719:8–723:17 (Jan. 20, 2018) (testifying about his health status and injuries
25 without identifying endocrine system injuries, concerns with birth defects, or issues related to
26 complications with his gut bacteria)).

27 Despite the irrelevance to his claimed harm, Monsanto expects that Plaintiff will try to
28 make spurious assertions that glyphosate could possibly create these harms in other people. For

1 example, Plaintiff has offered the report of an agricultural economist who makes assertions about
2 glyphosate’s alleged “Capacity to Disrupt the Endocrine System.” Edwards Decl. at ¶ 14, Ex. 13
3 (Expert Report of Charles Benbrook at § IV-C-4 (Dec. 21, 2017)). Plaintiff’s counsel has elicited
4 testimony from his client making insinuations about birth defects. *See, e.g.*, Edwards Decl. at ¶ 4,
5 Ex. 3 (Deposition of Dewayne Johnson (“Johnson Dep.”) (Vol. 1) at 453:7–16 (Dec. 7, 2017))
6 (“BY [Plaintiff’s Counsel]: Q Do you ... see signs out that say there’s a chemical here that’s
7 known in the state of California to cause ... birth defects? Have you ever seen one for – for
8 Roundup?”). And Plaintiff’s toxicologist Dr. Sawyer provides the baseless speculation that
9 “glyphosate *may* disrupt the essential shikimate process in bacteria, particularly the beneficial
10 bacteria of the human intestinal tract,” causing a parade of speculated effects—although he makes
11 no claims that any such thing actually occurred to Plaintiff himself or caused him harm. *See*
12 Edwards Decl. at ¶ 30, Ex. 29 (Expert Report of William Sawyer, M.D. at 36 (Dec. 21, 2017))
13 (emphasis added).

14 Such testimony has no logical connection to any disputed issue, as the Court has already
15 held in excluding evidence of the purported presence of glyphosate in breast milk. *See* 04/03/2018
16 Order on Motions *In Limine* at 6 (excluding breast milk testimony); *see Schweitzer v. Westminster*
17 *Investments*, 157 Cal. App. 4th 1195, 1214 (2007) (“When evidence is not pertinent to the issues
18 raised by the pleadings, the evidence is irrelevant and it is proper to preclude the introduction of
19 such evidence.”). Not only is it irrelevant, it is highly inflammatory and improper. Such
20 “evidence”—particularly the insinuations about birth defects—is impermissibly calculated to play
21 on the jury’s fears and emotions that *they* or *their children* are at risk of harm. *See People v.*
22 *Rivera*, 201 Cal. App. 4th 353, 362 (2011) (“[E]vidence should be excluded as unduly prejudicial
23 when it is of such nature as to inflame the emotions of the jury, motivating them to use the
24 information, not to logically evaluate the point upon which it is relevant, but to reward or punish
25 one side because of the juror’s emotional reaction.”).

26 Moreover, there is no competent scientific basis for any such misleading claims. The
27 assertions about endocrine disruption come from an *economist* who has no scientific training or
28 basis to make such claims. *See* 05/17/2018 Order on *Sargon* and Summary Judgment Motions at

1 30 (explaining Dr. Benbrook’s lack of scientific credentials). No evidence from any witness
2 supports a claim that glyphosate causes any birth defects or causes harm by inhibiting gut
3 microbes. On the contrary, the U.S. Environmental Protection Agency and international
4 regulators have found no evidence of glyphosate causing these speculated harms. *See, e.g.,*
5 Edwards Decl. at ¶ 33, Ex. 32 (U.S. Environmental Protection Agency, *EDSP Weight of Evidence*
6 *Conclusions on the Tier 1 Screening Assays for the List 1 Chemicals* (June 29, 2015)) (concluding
7 “there was no convincing evidence” that glyphosate interacts with endocrine pathways); Edwards
8 Decl. at ¶ 34, Ex. 33 (Food and Agriculture Organization of the United Nations & World Health
9 Organization, *Joint Meeting of the FAO Panel of Experts on Pesticide Residues in Food and the*
10 *Environment and the WHO Core Assessment Group* at 159 (2004)) (“The Meeting concluded that
11 glyphosate is not teratogenic.”). The Court should avoid a needless “trial within a trial” on these
12 improper distractions. *See Notrica v. State Comp. Ins. Fund*, 70 Cal. App. 4th 911, 928 (1999).

13 **III. CONCLUSION**

14 For the reasons discussed, the Court should exclude all evidence, argument, or reference
15 made that glyphosate causes endocrine disruption, causes birth defects, or affects gut bacteria.

16
17 Dated: May 24, 2018

Respectfully submitted.

18 FARELLA BRAUN + MARTEL LLP

19 By: 

20 Sandra A. Edwards

21 Attorneys for Defendant
22 MONSANTO COMPANY