

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**

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

Case No. CGC-16-550128
**DEFENDANT MONSANTO COMPANY'S
MOTION *IN LIMINE* NO. 28 TO
EXCLUDE EVIDENCE, ARGUMENT, OR
REFERENCE TO MONSANTO'S
FINANCIAL CIRCUMSTANCES,
REVENUE OR PROFITS ASSOCIATED
WITH THE SALE OF ROUNDUP PRO[®],
RANGERPRO[®], OR OTHER
GLYPHOSATE-BASED HERBICIDES**

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

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*Superior Court of California,
County of San Francisco*
05/24/2018
Clerk of the Court
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Deputy Clerk

1 **I. INTRODUCTION**

2 Monsanto Company (“Monsanto”), respectfully moves for an *in limine* order excluding the
3 introduction at trial of any evidence, argument, or reference to Monsanto’s financial position, any
4 revenue or profits Monsanto earned from the sale of Roundup PRO[®] or Ranger Pro[®], the general
5 profitability of these products, or the effect on Monsanto’s business if these products were to be
6 banned or additional warnings required. Such evidence has no bearing on whether Plaintiff’s use
7 of Roundup PRO[®] or Ranger Pro[®] caused his mycosis fungoides, and will serve only to induce the
8 jury to decide this case based on Monsanto’s perceived ability to pay damages rather than a
9 dispassionate and rational evaluation of the relevant facts. This evidence must be excluded.

10 **II. ARGUMENT**

11 **A. Monsanto’s Financial Circumstances and Profits Are Not Relevant To The**
12 **Issues in This Case and Should Be Excluded**

13 California law is clear: “evidence of a party’s wealth is generally irrelevant to the issue of
14 liability.” *See, e.g., Las Palmas Assocs. v. Las Palmas Ctr. Assocs.*, 235 Cal. App. 3d 1220, 1242
15 (1991) (“Both the pauper and the millionaire are entitled to be treated fairly before the trier of
16 fact.”).

17 Neither Monsanto’s general financial position nor the profits earned from Roundup PRO[®]
18 or Ranger Pro[®] has any bearing on the issues to be decided by this jury: whether Plaintiff’s use of
19 Ranger Pro[®] or Roundup PRO[®] during his employment at Benicia Unified School District caused
20 his mycosis fungoides. Monsanto anticipates that Plaintiff will attempt to introduce evidence that
21 Monsanto earned large profits from the sale of its glyphosate-containing herbicides, or that
22 Monsanto is a generally wealthy and solvent company. But Monsanto’s financial circumstances
23 have no bearing on the issue of whether glyphosate is capable of causing mycosis fungoides;
24 whether Monsanto’s warning on the Roundup PRO[®] or Ranger Pro[®] products that Plaintiff
25 allegedly used was adequate; or any other disputed material fact. This evidence must be excluded
26 on this basis alone. *See* Cal. Evid. Code § 210; Cal. Evid. Code § 350 (only relevant evidence is
27 admissible).

28

1 **B. Evidence of Monsanto’s Financial Circumstances and Profits Are Unduly**
2 **Prejudicial and Must Be Excluded**

3 Where, as here, issues of wealth are not relevant to a case, it is deemed misconduct for a
4 party to attempt to exploit another party’s financial situation to appeal to the sympathies or
5 prejudices of the jury. *Hoffman v. Brandt*, 65 Cal. 2d 549, 552-53 (1966) (finding references by
6 counsel to the wealth and poverty of litigants in an attempt to appeal to the social prejudices of the
7 jury to be misconduct); *Collins v. Union Pac. R.R. Co.*, 207 Cal. App. 4th 867, 883 (2012)
8 (“Deliberate attempts by counsel to appeal to the social or economic prejudices of the jury are
9 misconduct, where irrelevant to the issues of the case.”).

10 In fact, the California Supreme Court recognized that California Civil Code § 3295 –
11 which bifurcates the liability and punitive damages stages of civil proceedings – codifies the
12 presumption that evidence of a defendant’s wealth is more prejudicial than probative at the
13 liability stage of trial. *See Adams v. Murakami*, 54 Cal. 3d 105 (1991). California courts have
14 recognized the prejudice inherent in the introduction of a defendant’s wealth, as “evidence of [a
15 defendant’s] financial condition could be introduced with the likely result that it would inflame the
16 passion and prejudice of the jury to tip their judgment in favor of liability.” *Id* at 121; *see Las*
17 *Palmas Assocs.*, 235 Cal. App. 3d at 1241 (“... evidence of a defendant's wealth can induce fact
18 finders to abandon their objectivity and return a verdict based on passion and prejudice.”) (*citing*
19 *Adams*, 54 Cal. 3d at 121).

20 Here, reference, argument, or introduction of evidence of Monsanto’s wealth would
21 achieve exactly the result recognized as improper by California courts and the legislature. Any
22 mention of Monsanto’s profits or financial position is certain to incite the jury to abandon its
23 ability to objectively observe and assess the facts of this case and instead “tip their judgment in
24 favor of liability” based solely on Monsanto’s perceived ability to pay damages. *See Adams*, 54
25 Cal. 3d at 121. Such evidence would serve only to provoke this emotional response and distract
26 the jury from a dispassionate evaluation of the relevant evidence and issues to be decided. *See*
27 *Hernandez v. Cty. of Los Angeles*, 226 Cal. App. 4th 1599, 1613 (2014) (explaining that California
28 courts exclude even relevant evidence when it tends to evoke an emotional bias against one party,

1 and would motivate the jury to use the information for an illegitimate purpose – *i.e.*, to reward or
2 punish one party because of the jurors’ emotional reaction). Such evidence should be excluded.
3 *See* Cal. Evid. Code § 352 (excluding evidence if its probative value is outweighed by the
4 likelihood of undue consumption of time, or the danger of undue prejudice, of confusing the
5 issues, or of misleading the jury).

6 **III. CONCLUSION**

7 For the foregoing reasons, Monsanto respectfully requests that the Court grant its motion
8 *in limine* and exclude the introduction at trial of any evidence, argument, or reference to
9 Monsanto’s financial position, any revenue or profits Monsanto earned from the sale of Roundup
10 PRO[®] or Ranger Pro[®], the profitability of these products, or the effect on Monsanto’s business if
11 these products were to be banned or additional warnings required.

12
13 Dated: May 24, 2018

Respectfully submitted,

14 FARELLA BRAUN + MARTEL LLP

15 By: 

16 Sandra A. Edwards

17 Attorneys for Defendant
18 MONSANTO COMPANY