

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. 20 TO  
EXCLUDE EVIDENCE, ARGUMENT, OR  
REFERENCE TO "GHOSTWRITING"**

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, argument, or reference to allegations that Monsanto “ghostwrote” certain scientific  
4 articles about glyphosate, the active ingredient in its Roundup PRO<sup>®</sup> and Ranger Pro<sup>®</sup> herbicides.  
5 These allegations are false and misleading and are transparent attempts by Plaintiff Dewayne  
6 Johnson’s (“Plaintiff”) counsel to distract the jury from the real issues in the case by presenting  
7 irrelevant evidence and disparaging Monsanto in order to evoke an emotional response from the  
8 jury. These allegations must be excluded as irrelevant and unfairly prejudicial to Monsanto. *See*  
9 Cal. Evid. Code §§ 210, 350 and 352.

10 **II. ARGUMENT**

11 Monsanto anticipates that Plaintiff may attempt to present argument or evidence regarding  
12 allegations that Monsanto “ghostwrote” certain scientific articles in an attempt to distort the  
13 scientific literature on glyphosate. These allegations are false and misleading and will distract the  
14 jury from focusing on the real issues in this case: whether Plaintiff’s use of Ranger Pro<sup>®</sup> or  
15 Roundup PRO<sup>®</sup> caused his mycosis fungoides (“MF”). Glyphosate-based products have been on  
16 the market and the subject of independent scientific research by academics, government agencies,  
17 and other independent scientists for over 40 years. Despite this extensive record, Plaintiff will  
18 likely make “ghostwriting” allegations relating to a handful of articles that provide summaries, or  
19 reviews, of primary data on glyphosate. Much of the primary data discussed in these reviews  
20 comes from non-Monsanto studies, meaning that Monsanto had no role in their generation.  
21 Therefore, whether Monsanto “ghostwrote” any of the review articles – which it did not – would  
22 not have changed any of the primary data, and thus has no bearing on the studies’ conclusions and  
23 no relevance to the central issue in this case: whether Plaintiff’s use of Roundup PRO<sup>®</sup> or Ranger  
24 Pro<sup>®</sup> caused his MF. *See* Cal. Evid. Code § 210 (relevant evidence is that which has “any  
25 tendency in reason to prove or disprove any disputed fact that is of consequence to the  
26 determination of the action.”).

27 Further, the review articles at issue are transparent about the extent of Monsanto’s  
28 involvement, as Plaintiff’s expert, Dr. Nabhan, has acknowledged. In his expert report submitted

1 in the federal court multi-district litigation *In re Roundup Prods. Liab. Litig.*, No. 3:16-md-2741-  
2 VC (N.D. Cal.), Dr. Nabhan asserted that a paper reviewing 14 animal studies (“Greim paper”)  
3 had been “ghostwritten” by Monsanto simply because one of its employees had been involved in  
4 the paper. *See* Declaration of Sandra A. Edwards (“Edwards Decl.”) at ¶ 25, Ex. 24 (Expert  
5 Report of Chadi Nabhan at 16 (May 1, 2017)). But he later admitted at his deposition that  
6 ghostwriting did not occur because the Monsanto employee was, in fact, clearly disclosed as an  
7 author on the first page of the Greim paper. *See* Edwards Decl. at ¶ 13, Ex. 12 (Dep. of Chadi  
8 Nabhan at 77:24-78:11 (Aug. 23, 2017)).

9 In addition, since Plaintiff’s counsel in this case and other product liability litigation  
10 against Monsanto began their unsubstantiated media campaign to brand these papers as  
11 ghostwritten, many of the authors have publicly stated that no ghostwriting occurred.<sup>1</sup> Even the  
12 European Food Safety Authority (“EFSA”) has explained that “even if the allegations regarding  
13 ghostwriting proved to be true, there would be no impact on the overall assessment as presented in  
14 the EFSA Conclusion on glyphosate” because “[t]he review papers in question represented only  
15 two of approximately 700 scientific references in the area of mammalian toxicology considered by  
16 EFSA in the glyphosate assessment,” and “their provenance was evident from the Declarations of  
17  
18

---

19 <sup>1</sup> *See* Edwards Decl. at ¶ 26, Ex. 25 (D. Hakim, *Monsanto Weed Killer Roundup Faces New*  
20 *Doubts on Safety in Unsealed Documents*, N.Y. TIMES (Mar. 14, 2017),  
21 <https://www.nytimes.com/2017/03/14/business/monsanto-roundup-safety-lawsuit.html>) (co-  
22 author David Kirkland said in an interview, “‘I would not publish a document that had been  
23 written by someone else.’ He added, ‘We had no interaction with Monsanto at all during the  
24 process of reviewing the data and writing the papers.’”); Edwards Decl. at ¶ 27, Ex. 26 (D. Hakim,  
25 *Monsanto Glyphosate Case: Select Documents Suggest Company Tried To Influence Public*  
26 *Debate over Weed Killer*, Genetic Literacy Project (Aug. 3, 2017),  
27 [https://geneticliteracyproject.org/2017/08/03/monsanto-glyphosate-case-selected-documents-](https://geneticliteracyproject.org/2017/08/03/monsanto-glyphosate-case-selected-documents-suggest-company-tried-influence-public-debate-weedkiller/)  
28 [suggest-company-tried-influence-public-debate-weedkiller/](https://geneticliteracyproject.org/2017/08/03/monsanto-glyphosate-case-selected-documents-suggest-company-tried-influence-public-debate-weedkiller/)) (co-author John Acquavella said  
“there was no ghostwriting”); Edwards Decl. at ¶ 28, Ex. 27 (W. Cornwall, *Update: After Quick*  
*Review, Medical School Says No Evidence Monsanto Ghostwrote Professor’s Paper*, Science  
(Mar. 23, 2017), [http://www.sciencemag.org/news/2017/03/update-after-quick-review-medical-](http://www.sciencemag.org/news/2017/03/update-after-quick-review-medical-school-says-no-evidence-monsanto-ghostwrote)  
[school-says-no-evidence-monsanto-ghostwrote](http://www.sciencemag.org/news/2017/03/update-after-quick-review-medical-school-says-no-evidence-monsanto-ghostwrote)) (officials at New York Medical College found  
“‘no evidence’ that [Dr. Gary Williams] violated the school’s prohibition against authoring a paper  
ghostwritten by others”).

1 Interest and Acknowledgements in the papers themselves.”<sup>2</sup> Accordingly, any allegations of  
2 “ghostwriting” are plainly false, and bear no relevance to whether Plaintiff’s use of Ranger Pro®  
3 or Roundup PRO® caused his MF. See Cal. Evid. Code § 210.

4 Instead, Plaintiff is using these baseless allegations of “ghostwriting” simply to inflame the  
5 passions of the jury in an attempt to mislead the jury into deciding this case based on an emotional  
6 response to unfounded allegations – *i.e.*, of a large corporation influencing scientific debate –  
7 rather than basing a decision on a dispassionate evaluation of relevant facts that are supported by  
8 evidence. See *Hernandez v. Cty. of Los Angeles.*, 226 Cal. App. 4th 1599, 1613 (2014) (even  
9 relevant evidence may be excluded if it would motivate the jury to reward or punish one party  
10 because of the jurors’ emotional reaction). Even if Monsanto were to expend time at trial  
11 presenting the above evidence to disprove Plaintiff’s “ghostwriting” allegations, the jury would be  
12 irreparably prejudiced by its mention. Federal courts applying California law have granted  
13 motions *in limine* to exclude allegations of “ghostwriting” where, as here, they are lacking in  
14 factual support. See *Hill v. Novartis Pharm. Corp.*, 944 F. Supp. 2d 943, 952 (E.D. Cal. 2013)  
15 (excluding testimony and other evidence relating to allegedly ghostwritten articles where opinion  
16 of only expert offering testimony on ghostwriting issue had been excluded as lacking foundation).  
17 Plaintiff’s “ghostwriting” allegations are false, irrelevant, and highly prejudicial, and must be  
18 excluded. See Cal. Evid. Code at §§ 210, 350 and 352.

19 //  
20 //  
21 //  
22 //  
23 //  
24 //  
25 //

---

26  
27 <sup>2</sup> See Edwards Decl. at ¶ 29, Ex. 28 (European Food Safety Authority, *EFSA Statement regarding*  
28 *the EU assessment of glyphosate and the so-called “Monsanto papers”*,  
[http://www.efsa.europa.eu/sites/default/files/topic/20170608\\_glyphosate\\_statement.pdf](http://www.efsa.europa.eu/sites/default/files/topic/20170608_glyphosate_statement.pdf)).

1 **III. CONCLUSION**

2 For the foregoing reasons, the Court should exclude any reference, evidence, or argument  
3 relating to allegations that Monsanto “ghostwrote” certain scientific articles about glyphosate.  
4

5 Dated: May 24, 2018

Respectfully submitted,

6 FARELLA BRAUN + MARTEL LLP

7  
8 By: 

9  
10 Sandra A. Edwards

11  
12 Attorneys for Defendant  
13 MONSANTO COMPANY  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28