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MONSANTO COMPANY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

DEWAYNE JOHNSON,

Plaintiff,

vs.

MONSANTO COMPANY,

Defendant.

Case No. CGC-16-550128

DEFENDANT MONSANTO COMPANY'S MOTION *IN LIMINE* NO. 6 TO EXCLUDE EVIDENCE, ARGUMENT, OR REFERENCE TO INDUSTRIAL BIO-TEST OR CRAVEN LABORATORIES

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

I. INTRODUCTION

Defendant Monsanto Company ("Monsanto") respectfully submits this motion *in limine* to exclude any evidence, argument, or reference to Industrial Bio-Test ("IBT") or Craven Laboratories ("Craven"). Any reference to these laboratories or the studies they performed in the 1970s and the controversy that ensued bears no relevance to the issues in this case, and would serve only to distract and confuse the jury and prejudice Monsanto.

IBT was a U.S. based chemical laboratory contracted by Monsanto, EPA, and dozens of other manufacturers, including pharmaceutical and other pesticide producers, to conduct toxicology testing on their products. In 1976, the U.S. Food and Drug Administration ("FDA") discovered discrepancies in some of toxicology tests produced by IBT. Because of this, the U.S. Environmental Protection Agency ("EPA") demanded an audit of all IBT studies which were used to support pesticide registration. The audit revealed some of IBT's studies to be invalid, including some studies conducted on Roundup®.[1] Monsanto repeated all of the studies in question in accordance with EPA guidelines, and no IBT data are currently used in support of glyphosate registration.

In 1990 a pesticide industry task force found irregularities in studies conducted at Craven relating to the analyses used to determine the amount of various pesticide and toxic substance residues in treated crops.[2] The task force alerted the EPA and the EPA commenced an investigation. Monsanto and 16 other independent laboratories have conducted hundreds of

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[1] Misconduct at IBT was widespread and not isolated just to Monsanto products, or even to the pesticide industry. The FDA's investigation invalidated 618 of 867 (71%) of studies conducted by IBT for discovered discrepancies between the study conduct and raw data. *See* Declaration of Sandra A. Edwards ("Edwards Decl.") at ¶ 2, Ex. 1 (Mark Eaton, Ph.D., *An Update on FDA's Good Laboratory Practice (GLP) for Nonclinical Laboratory Studies Proposed Rule*, SOT: Regulatory and Safety Evaluation Specialty Section Webinar, at 12 (Sept. 29, 2017), http://www.toxicology.org/groups/ss/rsess/doc/2017SOTWebinar_with_notesRSESS_Seaton.pdf).

[2] According to the EPA, 262 companies had submitted residue data on various pesticides and substances to Craven for analysis. *See* Edwards Decl. at ¶ 3 Ex. 2 (*Texas firm probed for residue studies*, Moscow-Pullman Daily News (March 1, 1991), https://news.google.com/newspapers?id=4NctAAAAIBAJ&sjid=sdAFAAAAIBAJ&pg=2557%2C184092).

residue studies in support of EPA product registration. Of these hundreds of studies, only a small number were conducted by Craven. Monsanto invested $6.5 million to repeat the pesticide residue studies originally conducted by Craven – all of these repeated studies have been found to be sound and have been accepted by the EPA. Many other pesticide manufacturers took similar steps to repeat the necessary studies for EPA registration.

II. ARGUMENT

A. Evidence Relating to IBT or Craven Laboratories is Irrelevant to This Case

Here, Plaintiff claims that his use of Roundup PRO® and Ranger Pro® caused him to develop mycosis fungoides ("MF"). Evidence concerning irregularities in some studies conducted by IBT and Craven – all of which play no role in the current registration of Roundup PRO® or Ranger Pro® or in the registration of those products during the time in which Plaintiff claims to have used them[3] – have absolutely no bearing on whether Plaintiff's use of Roundup PRO® or Ranger Pro® caused his MF. *See Fuery v. City of Chicago*, No. 07 C 5428, 2015 WL 13682033, at *5 (N.D. Ill. Nov. 30, 2015) (granting defendant's motion in limine to exclude evidence of non-party misconduct as not relevant); *see Fields v. City of Chicago*, No. 12 C 1306, 2018 WL 1652093, at *10 (N.D. Ill. Apr. 5, 2018) (granting defendant's motion in limine "because any misconduct of a non-Defendant is irrelevant."); *see* Cal. Evid. Code §§ 210, 350. The IBT and Craven episodes were decades-old news before Plaintiff ever used Roundup PRO® or Ranger Pro®.

B. Evidence Related to IBT and Craven Laboratories Should Be Excluded Because It Would Be Unduly Prejudicial

Even if evidence related to these laboratories is marginally relevant – which it is not – such evidence should nevertheless be excluded because Monsanto would be unduly prejudiced by its admission. *See* Cal Evid. Code §352.

Evidence relating to these laboratories would serve only to invite the jury to infer that,

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[3] Plaintiff claims exposure only after June 2012. *See* Edwards Decl. at ¶ 4 Ex. 3 (Dep. of Dewayne Johnson at 15:20-22 (Dec. 7, 2017)).

because IBT and Craven apparently participated in improper scientific practices, then Monsanto did too. Monsanto would have to respond by showing that it was victimized – along with the EPA and the rest of the industry – by IBT and Craven.[4] Monsanto would then be forced to expend significant time at trial putting on evidence explaining the details concerning the IBT and Craven studies, Monsanto's product registration and submissions to EPA. Distracting the jury with this irrelevant evidence would waste the jury's and this Court's time, and prejudice Monsanto. *See Martinez v. City of Chi.*, No. 14-cv-369, 2016 WL 3538823, at *10 (N.D. Ill. June 29, 2016) (excluding evidence of misconduct by non-defendants because introduction of it "would create an unnecessary sideshow, and would unduly prejudice Defendants."); *Hernandez v. Cty. of Los Angeles*, 226 Cal. App. 4th 1599, 1613 (2014) (explaining that California courts exclude even relevant evidence when it tends to evoke an emotional bias against one party, and would motivate the jury to use the information for an illegitimate purpose – i.e., to reward or punish one party because of the jurors' emotional reaction). This Court similarly should exclude this questionably relevant, highly prejudicial evidence of non-party misconduct.

III. CONCLUSION

For the aforementioned reasons, the Court should grant this motion *in limine* and exclude any evidence, argument, or reference to IBT and Craven laboratories.

Dated: May 24, 2018

Respectfully submitted.

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By: _____
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MONSANTO COMPANY

[4] The discovery of misconduct at Craven was uncovered by a pesticide industry task force and appropriately and promptly reported to the finding to the EPA for enforcement. This enforcement action concluded with the conviction of Craven's CEO and 14 others on charges of falsifying pesticide records for which they received punishments ranging from fines to prison sentences.