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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. 17 TO
EXCLUDE IMAGES OF INJURED
PATIENTS OTHER THAN PLAINTIFF**

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

1 **I. INTRODUCTION**

2 Defendant Monsanto Company (“Monsanto”) respectfully requests that this Court preclude
3 Plaintiff from showing images at trial of persons other than Plaintiff who have non-Hodgkin
4 lymphoma (“NHL”), mycosis fungoides (“MF”), or any cancer. Such images are irrelevant to any
5 disputed fact of consequence and would unfairly prejudice Monsanto and waste the jury’s and this
6 Court’s time. Accordingly, the evidence should be excluded. Cal. Evid. Code §§ 210, 350, 352.

7 **II. ARGUMENT**

8 Monsanto anticipates that Plaintiff may seek to introduce photographs or images of
9 persons other than himself who have NHL, MF, or other types of cancer or injuries. It is
10 Plaintiff’s specific injury – not anyone else’s injury(ies) – that is the focus of this trial. Any
11 images of injured patients other than Plaintiff himself have no bearing on whether Plaintiff’s use
12 of Ranger Pro[®] or Roundup PRO[®] caused his MF, and are irrelevant to Plaintiff’s claims or
13 Monsanto’s liability in this case. *See* Cal. Evid. Code § 210 (evidence which does not “hav[e] any
14 tendency in reason to prove or disprove any disputed fact that is of consequence” to this action is
15 irrelevant); Cal. Evid. Code § 350 (only relevant evidence is admissible). “Case law has
16 uniformly held where a photograph will not aid jurors it may be excluded” – that is precisely the
17 case here, as any photographs of other plaintiffs or patients – with similar or dissimilar injuries –
18 are simply irrelevant to this specific Plaintiff in this specific case. *Hinckley v. La Mesa R.V.*
19 *Center, Inc.*, 158 Cal.App.3d 630, 645 (1984).

20 Further, such images would serve only to provoke an emotional response from jurors by
21 showing them images of injured individuals. Such evidence would be extremely prejudicial to
22 Monsanto, as jurors likely will find it difficult to separate Plaintiff’s actual condition from graphic
23 photographs of other patients who may have presented with different cancer forms or different and
24 more severe injuries than Plaintiff has experienced. *See* Cal. Evid. Code § 352; *Vorse v. Sarsay*,
25 53 Cal. App. 4th 998, 1009 (1997) (“[E]vidence should be excluded as unduly prejudicial
26 [because] it is of such nature as to inflame the emotions of the jury, motivating them to use the
27 information, not to logically evaluate the point upon which it is relevant, but to reward or punish
28 one side[.]”). This Court should not permit this waste of the jury’s and this Court’s time with

1 irrelevant evidence that would do nothing more than inflame the passions of the jury and distract it
2 from a dispassionate evaluation of the facts.

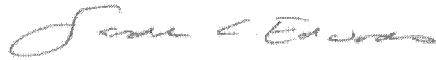
3 **III. CONCLUSION**

4 For the foregoing reasons, the Court should exclude any photographs or images of injured
5 patients other than Plaintiff himself.

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7 Dated: May 24, 2018

Respectfully submitted,

8 FARELLA BRAUN + MARTEL LLP

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10 By: 
Sandra A. Edwards

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12 Attorneys for Defendant
MONSANTO COMPANY

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