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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. 13 TO
EXCLUDE INTRODUCTION,
ARGUMENT, OR REFERENCE TO THE
SERALINI STUDY AND ANY
INFORMATION THEREIN**

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 submits this motion *in limine* to
3 exclude at trial any evidence, argument, or reference to the flawed, unreliable, and ultimately
4 retracted study by Gilles-Eric Seralini, “Long Term Toxicity of a Roundup Herbicide and a
5 Roundup-Tolerant Genetically Modified Maize” (the “Study”), the information and images
6 therein, and Dr. Seralini’s subsequent book and film documentary.¹ Monsanto anticipates that
7 Plaintiff Dewayne Johnson (“Plaintiff”) may attempt to elicit testimony and introduce evidence
8 regarding the Study in an attempt to (1) contend that Roundup PRO[®] and RangerPro[®] can cause
9 cancer in humans; and (2) argue that Monsanto improperly sought the retraction of this flawed and
10 unreliable Study in order to skew the scientific debate regarding glyphosate. However, the Study
11 has been completely rejected by the international scientific community due to its flawed
12 methodology and unsupported conclusions, and thus it has no probative value in the case. It does,
13 however, contain graphic images of dead rats with overgrown tumors that will shock the
14 conscience and inflame the passions of the jury against Monsanto. Monsanto believes this would
15 be Plaintiff’s true intent in introducing the Study at trial. Accordingly, Monsanto seeks to exclude
16 the Study because its prejudicial effect far outweighs its complete lack of any probative value.

17 **II. ARGUMENT**

18 **A. The Flawed Science of the Seralini Study Has Been Universally Rejected and**
19 **Should Not Admitted Into Evidence**

20 The Seralini Study is unreliable and not a proper part of any scientific evaluation of
21 whether glyphosate-based herbicides can cause cancer. There is no debate on this issue.
22 Plaintiff’s own expert on animal studies, Dr. Christopher Portier, acknowledged this in a recent
23 deposition:

24 _____

25 ¹ The Study was initially published in 2012 in an established peer-reviewed journal, *Food and*
26 *Chemical Toxicology*, but was later retracted in 2013, once it was rejected by the scientific
27 community as unreliable and inconclusive. The study was re-published in nearly identical form
28 with no additional peer review in another journal, *Environmental Sciences Europe*. As both
versions of the study contain the same flawed and ultimately rejected scientific methodology, this
motion seeks to exclude both versions and all related materials.

1 **Q: Okay, and you have stated before, I think yesterday, that Seralini**
2 **was in your opinion an unreliable study, right?**

3 **A: A study that I couldn't use.**

4 **Q: Because it was unreliable?**

5 **A: That's a legal term. I'm using a scientific term. The study was**
6 **underpowered, it was poorly presented and poorly analysed [sic].**

7 **Q: Okay. And the IARC working group rejected use of the Seralini**
8 **study as well?**

9 **A: That is correct.**

10 *See* Declaration of Sandra A. Edwards (“Edwards Decl.”) at ¶ 43, Ex. 42 (Dep. of Christopher
11 Portier, Jr., Ph.D. at 591:2 – 21 (April 17, 2018)).

12 For the same reasons, the Study was rejected by the International Agency for Research on
13 Cancer (“IARC”), the very agency Plaintiff and his experts so heavily rely upon in this case. In
14 rejecting the Study, IARC deemed it “inadequate for evaluation because the number of animals
15 per group was small, the histopathological description of tumors was poor, and incidences of
16 tumours [sic] for individual animals were not provided.” *See* Edwards Decl. at ¶ 44, Ex. 43
17 (IARC Monograph on Glyphosate at 35). It was not only IARC that rejected the Study. European
18 regulators also rejected it for the reasons similar to Dr. Portier and IARC.² The European Food
19 Safety Authority (“EFSA”), reviewed the Study and found that it was “of insufficient quality for
20 safety assessments.” Edwards Decl. at ¶ 46, Ex. 45 (EFSA Statement on Final Review of Seralini
21 et al. at 9 (2012)). EFSA’s review and ultimate rejection of the Study was made in agreement
22 with independent assessments of the Study done by organizations in Belgium, Denmark, France,
23 Italy, Germany, and the Netherlands. *Id.* at p. 7.

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26 ² In a 2013 article, the European Cooperation in Science and Technology (“COST”), proclaimed
27 that the study was “disregarded by the scientific community, based on incorrect experimental
28 designs and statistical analysis.” *See* Edwards Decl. at ¶ 45, Ex. 44 (Martinelli, L., et al. *Science,*
Safety and Trust: The Case of Transgenic Food, J. Croat. Med. (“Martinelli L., et al.”) at 91
(2013)).

1 The Study, rejected as reliable scientific evidence by Plaintiff's own expert, and the greater
2 scientific community at large, is not probative of that for which it purports to stand (causation),
3 and would serve only to distract and inflame the jury with discredited information and misleading
4 images.

5 **B. The Seralini Study Would be Significantly Prejudicial and Mislead the Jury**

6 The only real purpose that could be served by the introduction of the Seralini Study would
7 be to shock the conscience of the jury. The Study contains graphic images of tumor-prone rats
8 with large tumors that are designed to evoke a visceral reaction from the viewer.³ There is no
9 scientific evidence, however, that the tumors depicted in the images bear any relation to the rats'
10 exposure to glyphosate. Given the complete lack of scientific evidence, the authors' true intent in
11 displaying the photographs as part of the Study was very transparent to the scientific community.
12 "[G]iven that the tumors seen on the photos are not specific for treated animals and can be seen in
13 aged rats, they are not informative, their inclusion is highly objectionable, and we can only guess
14 they regrettably serve public relation, but not scientific purposes." Edwards Decl. at ¶ 47, Ex. 46
15 (Barale-Thomas, E. *Letter to the Editor*, *Food Chem. Toxicol.* 53:473 (2013)). The COST article
16 also noted that the inclusion of these graphic images that resonated in the public eye, in part, led to
17 the response from top scientists rejecting the article. *See* Edwards Decl. at ¶ 45, Ex. 44 (Martinelli
18 L., et al. at 93).

19 Monsanto stands to be severely prejudiced if the jury is given the debunked science in the
20 Study and allowed to view the graphic images associated with it. Jurors could easily conflate the
21 size and graphic nature of the tumors pictured in the Study with what happens to humans, which
22 would certainly prejudice Monsanto. The Seralini Study is highly prejudicial to Monsanto,
23 entirely misleading given it is discredited, and would serve solely to confuse and mislead the jury.
24 Its prejudicial value greatly outweighs any probative value, of which there is none, and for that
25 reason it should be excluded from evidence at trial.

26
27 ³ For the Court's reference, a small excerpt of the graphic images contained in the Study is
28 attached hereto. *See* Edwards Decl. at ¶ 48, Ex. 47 (Gilles-Eric Seralini, *Long Term Toxicity of a
Roundup Herbicide and a Roundup-Tolerant Genetically Modified Maize* at 6 (2012)).

1 **III. CONCLUSION**

2 For the foregoing reasons, the Court should exclude introduction, argument, or reference to
3 the Seralini Study, as well as Dr. Seralini's subsequent book and film documentary, and any
4 information and images contained therein.

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6 Dated: May 24, 2018

Respectfully submitted,

7 FARELLA BRAUN + MARTEL LLP

8 By: 

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Sandra A. Edwards

10 Attorneys for Defendant
11 MONSANTO COMPANY

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