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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  
REPLY IN SUPPORT OF MOTION IN  
LIMINE NO. 15 TO EXCLUDE  
DEROGATORY REFERENCES TO  
ROUNDUP READY CROPS AND OTHER  
BIOTECHNOLOGY**

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

1 **I. INTRODUCTION AND ARGUMENT**

2 None of Plaintiff Dewayne Johnson’s (“Plaintiff”) arguments justify his intention to turn  
3 this litigation into a referendum on the supposed drawbacks of genetically modified organisms  
4 (“GMOs”).

5 First, Plaintiff claims that Dr. al-Khatib’s expert report opens the door to testimony about  
6 alleged drawbacks of GMOs. *See* Plaintiff’s Opposition to MIL No. 15 (“Pl.’s Opp.”) at 1-2.  
7 While Dr. Al-Khatib’s report does contains certain statements about glyphosate-resistant crops,  
8 Defendant Monsanto Company (“Monsanto”) does not intend to present any evidence about  
9 Roundup Ready® crops or GMOs at trial. Absent any affirmative testimony about the benefits of  
10 GMOs, there will be no reason for there to be “rebuttal” evidence or argument.

11 Second, Plaintiff contends that “evidence of GMO’s [sic] is necessary, relevant, and  
12 admissible on the issue of dietary exposure and the presence of glyphosate in food.” Pl.’s Opp. at  
13 2. However, there is no issue regarding dietary exposure in this case. Plaintiff’s Complaint  
14 alleges that glyphosate-containing herbicides are defective, not that Plaintiff’s diet was defective.  
15 Plaintiff’s sole argument for the relevance of food exposure involves citing the report of Dr.  
16 Sawyer, who purported to calculate the cancer risk from dietary glyphosate to the *general U.S.*  
17 *population* (not Plaintiff specifically) by calculating a putative “cancer slope factor.” *See*  
18 Declaration of Sandra A. Edwards (“Edwards Decl.”) at ¶ 8, Ex. 7 (Dep. of William Sawyer at  
19 464:13-19, 525:7-18 (Feb. 27, 2018)). While the Court initially ruled that dietary exposure could  
20 be relevant based on Dr. Sawyer’s report, the Court *subsequently excluded all of Sawyer’s*  
21 *testimony based on cancer “slope factors” during the Sargon stage.* 5/17/2018 Order on Sargon  
22 and Summary Judgment Motions at 28, 46.

23 The Court’s ruling disposes of any claim by Dr. Sawyer about a cancer risk from food  
24 exposure, because Dr. Sawyer’s “general population” dietary risk is his excluded slope factor  
25 calculation. According to Dr. Sawyer’s report, “[t]he calculation uses the cancer slope factor and  
26 is determined by the following equation” shown below in this brief. Edwards Decl. at ¶ 9, Ex. 8  
27 (Report of William Sawyer at 145). In that equation, Dr. Sawyer multiplies the “slope factor”  
28 (0.00169 mg/kg/day) by the putative daily exposure dose 0.23 mg/kg/day to reach his general

1 population dietary risk level.

2 Consequently, the upper range of the dietary exposure cancer risk level is determined as:

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$$\text{Cancer Risk} = \frac{\left[ 0.23 \frac{\text{mg}}{\text{kg}} \text{ per day} \times 0.00169 \left( \frac{\text{mg}}{\text{kg}} \text{ per day} \right)^{-1} \times 70 \text{ years} \right]}{70 \text{ years (lifetime)}} = 3.9 \times 10^{-4}$$

5

6 *Id.* at 145, 149 (excluded portion of Sawyer report detailing how “[t]he oral cancer slope factor of  
7 0.00169 mg/kg/day was determined”). All of this has been deemed inadmissible during the  
8 *Sargon* ruling. See 5/17/2018 Order on *Sargon* and Summary Judgment Motions at 27. And,  
9 there is no other plausible basis for relevance of dietary exposure now that Dr. Sawyer’s opinions  
10 have been excluded.<sup>1</sup> *Id.* at 27-28.

11 Finally, Plaintiff contends that “evidence of the harmful effects of GMO’s [sic] are  
12 relevant to punitive damages and to rebut the benefits of glyphosate-based herbicides.” See Pl.’s  
13 Opp. at 1. Nonsense. Punitive damages must relate to the actual harm suffered by Plaintiff.  
14 *Dugan v. Nance*, No. CV 11-8145-CAS SHX, 2013 WL 4479289, at \*1 (C.D. Cal. Aug. 20, 2013)  
15 (citing *State Farm Mutual Auto Ins. Co. v. Campbell*, 538 U.S. 408, 422–23 (2003)) (“Dissimilar  
16 prior acts of the defendant are not a proper basis for awarding punitive damages because the  
17 defendant ‘should be punished for the conduct that harmed the plaintiff, not for being an unsavory  
18 individual.’”). Plaintiff, however, makes no allegation that he was exposed to GMOs or that his  
19 mycosis fungoides is in any way related to GMOs. Nor does he have a claim that he was harmed  
20 from glyphosate exposure through GMOs. Thus, Plaintiff’s argument that GMOs are relevant to  
21 punitive damages is meritless.

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28 <sup>1</sup> Whether or not Dr. Sawyer’s “family never buys GMO food,” as Plaintiff claims, is wholly irrelevant to his testimony about Roundup® or any other issue. Pl.’s Opp. at 3.

1 **II. CONCLUSION**

2 For the foregoing reasons, Monsanto’s Motion *in Limine* No. 15 should be granted.

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Dated: June 12, 2018

Respectfully submitted,

FARELLA BRAUN + MARTEL LLP

By: 

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Sandra A. Edwards

Attorneys for Defendant  
MONSANTO COMPANY