

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**

20 DEWAYNE JOHNSON
21 Plaintiff,
22 vs.
23 MONSANTO COMPANY,
24 Defendant.

Case No. CGC-16-550128

**DEFENDANT MONSANTO COMPANY'S
REPLY IN SUPPORT OF MOTION
IN LIMINE NO. 22 TO EXCLUDE
EVIDENCE OF ENDOCRINE
DISRUPTION, BIRTH DEFECTS, OR
EFFECTS ON GUT BACTERIA**

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

1 Evidence regarding endocrine disruption, birth defects, and gut bacteria is entirely
2 irrelevant because there is no allegation or argument that Plaintiff Dewayne Johnson (“Plaintiff”)
3 suffered any harm from these mechanisms. Plaintiff’s opposition does not even claim otherwise.
4 Instead, Plaintiff asserts that he is entitled to present such evidence as “rebuttal” if Defendant
5 Monsanto Company (“Monsanto”) presents evidence regarding the benefits of glyphosate.
6 Plaintiff is wrong. A general discussion of the uses and benefits of Roundup® in killing weeds
7 does not “open the door” for Plaintiff to dredge up any and all evidence that it can manufacture of
8 speculative harms—particularly, speculative and unreliable assertions that lack a competent
9 sponsoring witness.

10 Relying exclusively on criminal cases, Plaintiff avers that “[r]ebuttal evidence is relevant
11 and thus admissible if it ‘tend[s] to disprove a fact of consequence on which the defendant has
12 introduced evidence.’” *People v. Nunez*, 57 Cal. 4th 1, 27 (2013) (cited in Pl.’s Opp’n to MIL No.
13 22 at 2). Be that as it may, Monsanto’s expert, Dr. al-Khatib, is not offering testimony that
14 implicates endocrine disruption, or gut bacteria, or birth defects. The presentation of evidence that
15 Monsanto’s Roundup®-branded herbicides effectively kills weeds does not logically open the door
16 to unfounded speculation about an alleged “diverse range of health problems associated with
17 Roundup” unsupported by any competent evidence. *See* Pl.’s Opp’n to MIL No. 22 at 1; *cf.*
18 *People v. Loker*, 44 Cal. 4th 691, 709 (2008). Indeed, Plaintiff’s claim of introducing such
19 evidence in “rebuttal” is belied by the procedural history of this case. After Monsanto presented
20 the expert report of Dr. al-Khatib, Plaintiff failed to depose Dr. al-Khatib on his opinions.

21 Plaintiff’s brief also ignores the fact that a party cannot “open the door” to incompetent or
22 speculative evidence. As Monsanto has explained previously, there is no scientific foundation for
23 any of the claimed speculated effects. The only proffering witness for putative endocrine
24 disruption is Dr. Charles Benbrook—an *economist* with no scientific background whatsoever. Dr.
25 William Sawyer, who mentions “gut bacteria” in passing, does not allege that any person’s gut
26 bacteria has ever been harmed by Roundup®, much less Plaintiff’s. *See* Declaration of Sandra A.
27 Edwards (“Edwards Decl.”) at ¶ 9, Ex. 8 (Sawyer Rpt. at 37).

28 Admitting this irrelevant and otherwise incompetent testimony presents an intolerable risk


1 of unfair prejudice. Unsupported assertions intended to raise fear of birth defects, endocrine
2 disruption, and the like, are plainly calculated to play on the jury's fears and emotions that *they* or
3 *their children* are at risk of harm. *See People v. Rivera*, 201 Cal. App. 4th 353, 362 (2011). The
4 evidence has no logical connection to Plaintiff's claim of harm or to Monsanto's proffered
5 testimony, is clearly prejudicial and misleading, and should be excluded in its entirety.

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Dated: June 12, 2018

Respectfully submitted,

FARELLA BRAUN + MARTEL LLP

By: 

Sandra A. Edwards

Attorneys for Defendant
MONSANTO COMPANY