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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. 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

1 **I. INTRODUCTION**

2 Plaintiff Dewayne Johnson’s (“Plaintiff”) opposition brief only confirms that the Court  
3 should exclude all evidence about decades-old fraud by third-party laboratories. Plaintiff makes  
4 clear that he intends to use third-party fraud simply to litigate a smear campaign against Defendant  
5 Monsanto Company (“Monsanto”)—a *victim* of the fraud—by insinuating that Monsanto was  
6 guilty by association. Plaintiff’s insinuations are calculated to distract the jury from the actual  
7 issues at trial. The fraud by Craven and Industrial Bio Test (“IBT”) laboratories, perpetrated  
8 between 2 and 4 decades ago, has nothing to do with the current registration of Roundup®, the  
9 cause of Plaintiff’s mycosis fungoides, or whether Roundup® products should have contained a  
10 cancer warning. All reference to Craven or IBT should be excluded.

11 **II. ARGUMENT**

12 **A. There is No Conceivable Relevance to Any Allegations About IBT or Craven**  
13 **Laboratories.**

14 There is absolutely no evidence for Plaintiff’s assertion that Monsanto colluded with IBT  
15 to commit fraud involving Roundup®. Plaintiff bases this conspiracy theory on: (1) a hearsay  
16 quotation from a case stating that Paul Wright left IBT for Monsanto Corporation in 1972, *United*  
17 *States v. Keplinger*, 776 F.2d 678, 684 (7th Cir. 1985), and (2) a hearsay statement found in a  
18 newsletter published by environmental activists in 1994. *See* Pl.’s Opp’n to MIL No. 6 at 1-2.  
19 Neither quotation is admissible nor has anything to do with Roundup®. The *Keplinger* case  
20 involved a fraud committed at IBT involving a “Trichlorocarbonilide (“TCC”), an ingredient in  
21 *deodorant soaps.*” 776 F.2d at 684. The cited Sierra Club newsletter involved an allegation  
22 involving *PCBs*, chemicals completely unrelated to Roundup® products. While Plaintiff states  
23 that the Craven fraud involved testing of food residues in Roundup®, Plaintiff presents absolutely  
24 no evidence that Monsanto was involved in that fraud, because it was not.

25 In the complete absence of any admissible evidence, Plaintiff’s arguments for presenting a  
26 smear campaign against Monsanto are meritless. First, Plaintiff argues that the IBT scandal is  
27 relevant as “impeachment” evidence to rebut allegations that “Monsanto is an ethical company  
28 that makes a patient’s safety its top priority.” Pl.’s Opp’n to MIL No. 6 at 4. That argument is

1 nonsensical. Plaintiff was a certified pesticide applicator using an herbicide, not a patient taking a  
2 pharmaceutical product. Monsanto does not intend to open the door to evidence about its  
3 corporate ethics, and even if it did, Plaintiff has no evidence that decades-old scandals involving  
4 third parties have anything to do with Monsanto's corporate ethics.

5       Second, Plaintiff says that its allegations "show [Monsanto's] state of mind with respect to  
6 the sacrifice of patient safety through the suppression of safety data, and hence is relevant punitive  
7 damages [sic]." Pl.'s Opp'n to MIL No. 6 at 4. But punitive damages must be proven by clear  
8 and convincing *evidence*, not allegations. Further, punitive damages must relate to the actual harm  
9 that the Plaintiff claims to have suffered. *See State Farm Mut. Auto. Ins. Co. v. Campbell*, 538  
10 U.S. 408, 422–23 (2003) ("A defendant's dissimilar acts, independent from the acts upon which  
11 liability was premised, may not serve as the basis for punitive damages. A defendant should be  
12 punished for the conduct that harmed the plaintiff, not for being an unsavory individual or  
13 business."). Plaintiff cannot allege to have suffered harm through the IBT and Craven scandals,  
14 all of which took place decades before his first use of Roundup®.

15       Third, Plaintiff claims that the IBT scandal is relevant as evidence of habit or custom. Pl.'s  
16 Opp'n to MIL No. 6 at 5. Plaintiff's theory is apparently that Monsanto is a "bad" company and  
17 that any allegation it can come up with that can smear Monsanto is relevant to show Monsanto  
18 acted in conformance with its "bad" habits. The assertion is patently frivolous.

19       Finally, Plaintiff claims that "if glyphosate was never approved by the EPA, then Mr.  
20 Johnson would never have been exposed to glyphosate and would not have cancer," and "the EPA  
21 would not have approved glyphosate if Monsanto informed them the data was fraudulent." *Id.*  
22 That too is false, as Plaintiff well knows. As Monsanto explained in its opening brief, and  
23 Plaintiff wholly ignores, Monsanto was required to submit new animal carcinogenicity tests in the  
24 1980s to support registration after the IBT fraud in the 1970s. *See* Opening Br. at 1. Based on a  
25 new set of data conducted by other laboratories, the EPA reregistered Roundup® in 1993, and has  
26 continued to approve the safe use of Roundup® as a safe chemical ever since that time. By the  
27 time Plaintiff was first exposed to Roundup® in 2012, Roundup® had been re-registered for  
28 nearly two decades, without any reliance on any IBT data.

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**B. Plaintiff's Insinuations Are Designed to Distract the Jury from the Legitimate Issues in this Case and Unfairly Besmirch Monsanto.**

Plaintiff's opposition confirms his intention to distract the jury, rather than focus on the actual issues in this litigation. The relevant issues in this case involve the cause of Plaintiff's mycosis fungoides, whether Roundup® is a defective product, and whether it should have included a cancer warning. Plaintiff's baseless conspiracy theory is not the least bit probative of any of these issues, and the capacity for prejudice, confusion, and waste of time is obvious. Monsanto should not be required to prove its innocence in a decades-old fraud perpetrated by third parties in order to defend the present product liability lawsuit.

**III. CONCLUSION**

All evidence and allegations about IBT and Craven Labs should be excluded.

Dated: June 12, 2018

Respectfully submitted,

FARELLA BRAUN + MARTEL LLP

By: 

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Sandra A. Edwards

Attorneys for Defendant  
MONSANTO COMPANY