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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 ISO MOTION *IN LIMINE* NO. 28
TO EXCLUDE EVIDENCE, ARGUMENT,
OR REFERENCE TO MONSANTO'S
FINANCIAL CIRCUMSTANCES,
REVENUE OR PROFITS ASSOCIATED
WITH THE SALE OF ROUNDUP PRO[®],
RANGERPRO[®], OR OTHER
GLYPHOSATE-BASED HERBICIDES**

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

1 **I. INTRODUCTION AND ARGUMENT**

2 Defendant Monsanto Company (“Monsanto”) seeks to exclude evidence, argument, or
3 reference to Monsanto’s financial position, revenue, or profits associated with the sale of Roundup
4 PRO®, Ranger Pro®, or any of its glyphosate-based herbicides (“GBHs”). Evidence of
5 Monsanto’s wealth is irrelevant to any of Plaintiff Dewayne Johnson’s (“Plaintiff”) claims in this
6 case, and it is well-established that such evidence would risk substantial undue prejudicial to
7 Monsanto. This evidence must be excluded.

8 First, Plaintiff claims, without citation to facts or the record, that evidence of Monsanto’s
9 financial circumstances is relevant to rebut any claim by Monsanto that the “proper testing”
10 proposed by Plaintiff is cost-prohibitive. Pl.’s Opp’n to MIL No. 28 at 3 (noting “[i]t is then likely
11 that Monsanto will seek to introduce evidence . . .”). Plaintiff’s speculation has no basis in the
12 record and is in fact incorrect – and it certainly should not be a basis for allowing in irrelevant
13 information about Monsanto’s finances.

14 While its response is devoid of specifics, the testing to which Plaintiff presumably refers is
15 long-term rodent carcinogenicity testing on GBHs, specifically two or three of its most popular
16 Roundup® products. *See, e.g.*, Declaration of Sandra A. Edwards (“Edwards Decl.”) at ¶ 4, Ex. 3
17 (Benbrook Rpt. at ¶ 69) (“Without doubt, Monsanto should have conducted long-term
18 carcinogenicity tests of at least its top two or three Roundup formulations in the 1990s”). Rather
19 than decry the expense of such testing, Monsanto instead intends to show, in part through the
20 admissions of Plaintiff’s own expert, Dr. Charles Benbrook (1) that no pesticide company in
21 history has conducted such testing¹, (2) that neither the U.S. EPA² nor any other worldwide

23 ¹ Edwards Decl. at ¶ 2, Ex. 1 (Dep. of Charles Benbrook (“Benbrook Dep.”) at 211:7-15 (May 23,
24 2018)) (“Q: Given you’re not aware of a single pesticide company in the US or abroad that has
25 conducted a long-term rodent carcinogenicity study on one of its formulated pesticide products, it
26 certainly isn’t industry standard for a company to do that kind of testing, correct? A: Yes, sir,
that’s exactly what I just said.”).

27 ² *Id.* at 205:16-20 (“Q: EPA does not require chronic animal carcinogenic testing on any end use
28 formulated pesticide product, correct? A: Not – certainly not as a routine approach, no.”); *see*
also id. at 205:6-15 (agreeing that EPA does not require chronic animal carcinogenicity testing on
Ranger PRO®).

1 regulator³ require such testing, and (3) that therefore it is entirely reasonable that Monsanto did not
2 conduct that testing. Monsanto’s financial condition is simply not relevant to these arguments.

3 Second, Plaintiff argues that evidence of Monsanto’s financial circumstances is relevant to
4 Plaintiff’s claim that Monsanto “extensively lobbied senators, congressmen, EPA officials, and
5 foreign governments to ensure that glyphosate remained on the market with few restrictions,” and
6 that “evidence of Monsanto’s financial condition will tend to show that it was capable and
7 effective of the lobbying that Plaintiff alleges occurred.” Pl.’s Opp’n to MIL No. 28 at 3.⁴ But
8 whether Monsanto has the financial resources to pay for such lobbying is wholly irrelevant to
9 whether Monsanto used its financial resources to actually lobby. Since Monsanto does not argue
10 that it could not have lobbied because it did not have the financial resources to do so, evidence
11 purporting to rebut this non-argument is inadmissible. Thus, whether Monsanto had the financial
12 means to conduct such lobbying activities is not at issue and thus irrelevant to this case.

13 Third and finally, even assuming evidence of Monsanto’s financial circumstances carries
14 any probative value – which it does not – California courts have consistently excluded such
15 evidence as unduly prejudicial when used to prove liability. *See, e.g., Las Palmas Assocs. v. Las*
16 *Palmas Ctr. Assocs.*, 235 Cal. App. 3d 1220, 1241 (1991) (“[E]vidence of a defendant's wealth can
17 induce fact finders to abandon their objectivity and return a verdict based on passion and
18 prejudice.”); *Collins v. Union Pac. R.R. Co.*, 207 Cal. App. 4th 867, 883 (2012) (“Deliberate
19 attempts by counsel to appeal to the social or economic prejudices of the jury are misconduct,
20 where irrelevant to the issues of the case.”). Plaintiff’s attempt to introduce evidence of
21 Monsanto’s financial position is intended to unfairly sway the jury in favor of liability based
22 solely on Monsanto’s perceived ability to absorb Plaintiff’s damages. Plaintiff’s response to
23 Monsanto’s very real claim of prejudice merely restates his argument that it is somehow relevant

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25 ³ *Id.* at 221:10-222:6 (noting that he is not aware of any formal request by anyone in the public to
26 a regulator to conduct long-term animal carcinogenicity testing on formulated pesticide products,
27 nor is he aware of any statements from regulators regarding such testing).

28 ⁴ At the outset, *there is no* evidence of any such “lobbying” efforts in the record. Indeed, Plaintiff
cites to no record evidence, merely claiming “Monsanto was able to influence government
officials and regulators through lobbying.” Pl.’s Opp’n to MIL No. 28 at 2.

1 to the issue of Monsanto's testing of glyphosate, which is both incorrect and a thinly-veiled
2 pretext for allowing highly prejudicial evidence. Such evidence should be excluded.

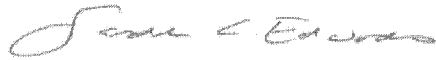
3 **II. CONCLUSION**

4 For the foregoing reasons, the Court should exclude Plaintiff from introducing evidence of
5 Monsanto's financial position, revenue, or profits.

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7 Dated: June 12, 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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