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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. 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*
06/12/2018
Clerk of the Court
BY: VANESSA WU
Deputy Clerk

1 **I. INTRODUCTION**

2 Plaintiff Dewayne Johnson (“Plaintiff”) seeks to introduce a study rejected by his own
3 experts, his favored group--the International Agency for Research on Cancer (“IARC”), and
4 international regulators so that he can show pictures of rats covered with giant tumors and claim
5 that this is what happens when you conduct long-term rodent carcinogenicity studies with
6 Roundup® (as opposed to glyphosate alone). Plaintiff would attempt to introduce the study via his
7 company documents expert, Dr. Charles Benbrook, given his rodent carcinogenicity expert, Dr.
8 Christopher Portier, disavowed any reliance on the study. Introducing a subject divorced from the
9 causation inquiry and for which no reliable expert testimony exists is highly prejudicial and
10 improper.

11 **II. ARGUMENT**

12 One of Plaintiff’s primary themes in this case is that Monsanto did not adequately test
13 glyphosate-based herbicides (“GBHs”). *See* Plaintiff’s Opp’n to MIL No. 13 (“Pl.’s Opp.”) at 3
14 (noting “[t]he extent of Monsanto’s testing of Roundup, and studies reaching conclusions
15 regarding the carcinogenic potential of the formulated Roundup product, are at the heart of the
16 issues in this case”); *see also* Declaration of Sandra A. Edwards (“Edwards Decl.”) at ¶ 4, Ex. 3
17 (Report of Charles Benbrook (“Benbrook Rpt.”) at ¶ 69) (noting that “[w]ithout doubt, Monsanto
18 should have conducted long-term carcinogenicity tests of at least its top two or three Roundup
19 formulations”). Dr. Benbrook has “no doubt” that long-term rodent carcinogenicity testing should
20 have been conducted on Roundup®, despite admitting 1) neither EPA nor any other worldwide
21 regulators require such studies; 2) there are regulatory policy reasons such studies are not
22 conducted); and 3) no other pesticide company has conducted such studies. *See, e.g.*, Edwards
23 Decl. at ¶ 2, Ex. 1 (Dep. of Benbrook at 205:16-20, 206:21-207:5, 210:21-211:15 (May 23,
24 2018)). Monsanto should not be held to a standard to which no other pesticide company in history
25 has been held, and the jury should not consider a study that is irrelevant to whether Monsanto
26 failed to adequately test or adequately warn.

27 Again, Dr. Benbrook’s accusations rely on a string of emails (on which his opinions are
28 excluded, *see* 5/17/2018 Order on *Sargon* and Summary Judgement at 30-31) from which he infers

1 Monsanto’s intent and knowledge, while he ignores primary studies indicating that Monsanto
2 adequately studied Roundup[®] formulations. *Compare* Edwards Decl. at ¶ 4 Ex. 3 (Benbrook Rpt.
3 at ¶¶ 803-833) (discussing a “remarkable exchange of emails” regarding Seralini) *with* Edwards
4 Decl. at ¶ 2, Ex. 1 (Benbrook Dep. at 88:20-25) (admitting that the “record that [he] reviewed on
5 the genotoxicity of the formulated products is based on company e-mails either given to [him] by
6 the Miller Firm or [his] own search”); *see also id.* at 92:9-14 (agreeing he was “quite confident
7 studies didn’t exist with respect to Monsanto’s formulated product genotoxicity studies based on
8 [his] review of the company e-mails given to [him] by the Miller Firm”); *id.* at 271:22-273:11
9 (admitting Monsanto conducted and EPA is in possession of genotoxicity tests on the formulated
10 product after being shown the primary studies).

11 Realizing the Seralini study is itself of highly questionable scientific validity, Plaintiff
12 attempts to argue that “the actions of Monsanto related to the study are relevant” as “evidence of
13 Monsanto improperly influencing journals and third-party scientists.” Pl.’s Opp. at 4. As the
14 Court may be aware, Dr. Benbrook discusses numerous other examples of Monsanto purportedly
15 influencing journals and third-party scientists for more than 200 pages of his expert report, and
16 Plaintiff submits hundreds of exhibits detached from the questionable study to support the theme
17 of Monsanto influencing the science. Inclusion of the highly prejudicial Seralini study and
18 associated photos of tumor-ridden rats greatly exceeds any probative value on the issue of
19 Monsanto influencing the science.

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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.

5 Dated: June 12, 2018

Respectfully submitted,

6 FARELLA BRAUN + MARTEL LLP

7
8 By: 

9 Sandra A. Edwards

10 Attorneys for Defendant
11 MONSANTO COMPANY

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