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17 MONSANTO COMPANY

18 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
19 **COUNTY OF SAN FRANCISCO**

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

Case No. CGC-16-550128

**DEFENDANT MONSANTO COMPANY'S
REPLY REGARDING MOTION IN
LIMINE NO. 14 TO EXCLUDE
EVIDENCE, ARGUMENT, OR
REFERENCE TO COMPARISON TO
THE TOBACCO INDUSTRY**

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

1 **I. INTRODUCTION**

2 Plaintiff Dewayne Johnson (“Plaintiff”) seeks to refer to and compare Defendant Monsanto
3 Company (“Monsanto”) to the tobacco industry in support of his claims in this lawsuit. He
4 contends that evidence and discussion of the tobacco industry will aid the jury in understanding
5 certain scientific principles and evaluating the weight of the evidence. Plaintiff does not, however,
6 offer any explanation as to why reference to the heavily stigmatized tobacco industry is necessary
7 to accomplish this. In fact, Plaintiff fails to provide any compelling reason why reference to an
8 industry in no way related to glyphosate and/or herbicides is at all relevant to this case. As such,
9 any reference to the tobacco industry remains highly prejudicial and improper for admission into
10 evidence at trial.

11 **II. ARGUMENT**

12 Most notably in Plaintiff’s Opposition to Monsanto’s Motion *In Limine* No. 14, there is no
13 argument that comparison between industries is appropriate or should not be precluded. Instead,
14 Plaintiff attempts to characterize his intended reference to the tobacco industry as simply giving
15 the jury “real world examples” to help them understand the principles of confounding and
16 undisclosed conflicts of interest. *See* Pl.’s Opp’n to MIL No. 14 at 4. This effort fails, however,
17 because the way in which Plaintiff seeks to use the tobacco industry to provide his so-called real
18 world examples is by comparison.

19 On the issue of confounding, Plaintiff seeks to rebut Monsanto’s contention that certain
20 epidemiological studies on glyphosate exposure are flawed due to the phenomenon of
21 confounding resulting from exposure to multiple pesticides. Plaintiff contends that any reference
22 to the tobacco industry on this issue will come in the form of showing the jury that tobacco
23 companies’ use of a similar argument to discredit epidemiological studies was unsuccessful in
24 other unrelated litigation, and thus it is flawed science. *See* Pl.’s Opp’n to MIL No. 14 at 2 – 3.¹
25 There is no word for Plaintiff’s intended argument other than comparison. He has not asserted
26

27 ¹ *See also* 5/24/18 Edwards Decl. at ¶ 21, Ex. 20 (Pl.’s Supp. Mem. In Response to Monsanto’s
28 Contention that Pl. Offered New Opinions, *In re: Roundup Prod. Liab. Litig.*, 3:16-md-02741-VC
(N.D. Cal.), ECF No. 1356 at 4).

1 that a jury will be unable to understand the concept of confounding. Nor does his intended use of
2 the tobacco industry example do anything to further explain the concept. Instead, Plaintiff seeks
3 to tell the jury that Monsanto is arguing the same thing that the big, bad tobacco companies did
4 and it was rejected in those cases, so it should be rejected here. That is an improper comparison
5 and should not be permitted.

6 Similarly, on the issue of undisclosed conflicts of interest, Plaintiff intends to tell the jury
7 that Monsanto allegedly ghostwrote some of the scientific articles that it relies upon in its defense
8 and that those articles should be afforded less weight in the jury's deliberation. *See* Pl.'s Opp'n at
9 3. In his opposition, Plaintiff makes no argument as to how it intends to reference the tobacco
10 industry on this topic or how any mention of it would be relevant. He offers no explanation as to
11 why reference to the tobacco industry, or any other industry for that matter, is needed for the jury
12 to understand the concept of alleged conflicts of interest. As noted in Monsanto's Motion *in*
13 *Limine* No. 14 ("Monsanto's Motion"), in the past Plaintiff's counsel has told a court to "imagine
14 that it was 30 years ago, and this is a tobacco lawyer." *See* Monsanto's Mtn. at 1 fn1. Again, this
15 is a clear attempt to improperly compare and conflate Monsanto with the tobacco industry and
16 Plaintiff should be precluded from offering any such evidence at trial.

17 Plaintiff's Opposition fails to demonstrate any truly probative value in the reference to or
18 use of information related to the tobacco industry at trial. Instead it only further confirms that
19 Plaintiff intends to use the negative perception of the tobacco industry to impugn Monsanto. As
20 set forth in Monsanto's Motion, the danger of unfair prejudice resulting from reference and
21 comparison to the tobacco industry is clear and has been noted by California courts. *See*
22 Monsanto's Mtn. at 3.

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1 **III. CONCLUSION**

2 For the foregoing reasons, Monsanto respectfully requests that the Court grant its Motion
3 *in Limine* No. 14 and preclude Plaintiff from presenting any evidence, reference, or argument
4 comparing Monsanto to the tobacco industry.

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6 Dated: June 12, 2018

Respectfully submitted,

7 FARELLA BRAUN + MARTEL LLP

8 By: 

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Sandra A. Edwards

10 Attorneys for Defendant
11 MONSANTO COMPANY

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