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12 **DEWAYNE JOHNSON**

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO

DEWAYNE JOHNSON,

Plaintiff,

v.

MONSANTO COMPANY

Defendants.

Case No. CGC-16-550128

**DECLARATION OF CURTIS G. HOKE
IN SUPPORT OF PLAINTIFF'S
RESPONSE TO MONSANTO'S
MOTION IN LIMINE NO. 8**

Trial Judge: TBD

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

ELECTRONICALLY
FILED
*Superior Court of California,
County of San Francisco*
06/07/2018
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DECLARATION OF CURTIS G. HOKE

I, Curtis Hoke, declare and state:

1. I am an attorney at law admitted to practice before all of the courts in the state of California. I am an attorney at The Miller Firm, LLC, attorneys of record for Plaintiff Dewayne Johnson. I am over eighteen years of age and am fully competent to make this Declaration in support of Plaintiff's Response To Monsanto's Motion *in limine* No. 8. Except as otherwise expressly stated below, I have personal knowledge of the facts stated in this declaration, and if called to testify, I could and would competently testify to the matters stated herein.

2. Attached hereto as **Exhibit A** is a true and correct copy of Judge Vice Chhabria's Order on October 6, 2017.

3. Attached hereto as **Exhibit B** is a true and correct copy of portions of Kirk Rowland's deposition conducted on April 24, 2017.

4. Attached hereto as **Exhibit C** is a true and correct copy of the Inspector General's letter, dated May 31, 2017.

5. Attached hereto as **Exhibit D** is a true and correct copy of Ms. Marion Copley's letter, dated March 4, 2013.

6. Attached hereto as **Exhibit E** is a true and correct copy of portions of an email chain between William Heydens and Daniel Jenkins from April 27, 2015 – April 28, 2015.

7. Attached hereto as **Exhibit F** is a true and correct copy of a news chipping from Reuters News Agency, dated May 2, 2016.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 7, 2018 in Orange, Virginia.

By: 

Curtis G. Hoke,
Declarant

Exhibit A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE: ROUNDUP PRODUCTS
LIABILITY LITIGATION

MDL No. 2741

Case No. 16-md-02741-VC

This document relates to:

ALL ACTIONS

**PRETRIAL ORDER NO. 32:
DENYING MOTION FOR
ATTORNEYS' FEES; GRANTING IN
PART MOTION TO FILE UNDER
SEAL**

Re: Dkt. Nos. 453, 479

Because the scope of Mr. Rowland's testimony was a relatively close question, and because his testimony was somewhat evasive, the Court finds that an award of attorneys' fees to Mr. Rowland for responding to the motion to compel further testimony would be unjust. *See* Fed. R. Civ. P. 37(a)(5)(B); *see also Pierce v. Underwood*, 487 U.S. 552, 565 (1988). The fee motion is therefore denied.

The plaintiffs' motion to file under seal portions of their opposition to Mr. Rowland's motion for attorneys' fees and the attached excerpt from the transcript of Mr. Rowland's deposition is granted to the extent requested in the Declaration of William E. Lawler, III. Dkt. Nos. 479-4, 479-6, 484. The documents that the plaintiffs requested to seal concern a fee motion that is not more than tangentially related to the merits of this litigation. *See Ctr. for Auto Safety v. Chrysler Grp.*, 809 F.3d 1092, 1101 (9th Cir. 2016). The proposed redactions withhold from public view only specific information regarding Mr. Rowland's post-EPA consulting activities, none of which directly concern Monsanto or glyphosate. Given the limited relevance of this

information to the merits and the importance of client confidentiality to Mr. Rowland's future endeavors, good cause exists at this time to maintain the redactions proposed by Mr. Rowland's attorney. *See id.* at 1097, 1101. Counsel for Mr. Rowland is ordered to provide plaintiffs' counsel with copies of the documents at issue containing redactions identical to those proposed to the Court in conjunction with his declaration.

IT IS SO ORDERED.

Dated: October 6, 2017



VINCE CHHABRIA
United States District Judge

Exhibit B

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE: ROUNDUP)
PRODUCTS LIABILITY) MDL No. 2741
LITIGATION)
_____) Case No.
THIS DOCUMENT RELATES) 16-md-02741-VC
TO ALL CASES)

MONDAY, APRIL 24, 2017

CONFIDENTIAL - PURSUANT TO PROTECTIVE ORDER

- - -

Videotaped deposition of Jesudoss
Rowland, held at the offices of VINSON &
ELKINS LLP, 2200 Pennsylvania Avenue NW,
Suite 500, Washington, DC, commencing at
12:05 p.m., on the above date, before Carrie
A. Campbell, Registered Diplomate Reporter,
Certified Realtime Reporter, Illinois,
California & Texas Certified Shorthand
Reporter, Missouri & Kansas Certified Court
Reporter.

- - -

GOLKOW TECHNOLOGIES, INC.

877.370.DEPS
deps@golkow.com

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Counsel for the Environmental
Protection Agency

1 V I D E O G R A P H E R :

2 DAN LAWLOR,

 Golkow Technologies, Inc.

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1 QUESTIONS BY MR. MILLER:

2 Q. Okay. Marking as Exhibit 11-18
3 a letter to Jess from Marion Copley dated
4 March 4, 2013.

5 MR. COPLE: I'm going to object
6 to any use of that document. It has
7 not been authenticated in any way.

8 QUESTIONS BY MR. MILLER:

9 Q. Here is a copy for you, sir,
10 and a copy --

11 Did you receive that by e-mail
12 or regular mail?

13 A. I never received the letter.

14 Q. When you say you "never
15 received the letter," have you ever seen it
16 before today?

17 A. I seen it when I was discussing
18 it with my attorneys.

19 Q. I can't hear you.

20 A. I saw it when I was discussing
21 the case with my attorneys.

22 Q. So I want to be clear, your
23 testimony is prior to hiring Vincent & Elkins
24 in 2017, while you were working at the EPA,
25 you never saw Exhibit 11-18?

1 QUESTIONS BY MR. MILLER:

2 Q. Would it be -- would it be fair
3 to say that you and Marion Copley had
4 arguments while you were both on this CARC
5 committee?

6 MR. COPLE: Objection. Vague.
7 Lacks foundation.

8 THE WITNESS: You know, the
9 CARC committee is made of 13 to 15
10 members, and everybody has their
11 expertise and they can give their
12 opinions. And it's not an argument.
13 It's just a discussion of the subject
14 matter.

15 QUESTIONS BY MR. MILLER:

16 Q. Would it be fair to say that
17 you and Marion Copley were on different sides
18 of scientific issues as you debated issues
19 within CARC?

20 MR. COPLE: Objection. Vague.
21 Lacks foundation.

22 THE WITNESS: I wouldn't say
23 that, no.

24 QUESTIONS BY MR. MILLER:

25 Q. Did Marion Copley ever accuse

Exhibit C



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

THE INSPECTOR GENERAL

MAY 31 2017

The Honorable Ted W. Lieu
U.S. House of Representatives
Washington, D.C. 20515

Dear Representative Lieu:

Thank you for your May 19, 2017, letter to the U.S. Environmental Protection Agency (EPA's) Office of Inspector General (OIG) requesting an investigation into reports that an EPA employee may have colluded with Monsanto to conduct a biased review of glyphosate.

As you are aware, there is considerable public interest regarding allegations of such collusion. As a result, I have asked the EPA OIG Office of Investigations to conduct an inquiry into several agency glyphosate review-related matters. Your letter has been forwarded to the EPA OIG Office of Investigations for inclusion and consideration.

Following the completion of the review, we will notify your staff and prepare the appropriate response to your concerns.

We appreciate your interest in the work of the EPA OIG. If you have any questions regarding this or any other matter, please contact Alan Larsen, Counsel to the Inspector General, at (202) 566-2391.

Sincerely,

Arthur A. Elkins Jr.

Exhibit D

Exhibit E

Message

From: HEYDENS, WILLIAM F [AG/1000] [/o=Monsanto/ou=NA-1000-01/cn=Recipients/cn=230737]
on behalf of HEYDENS, WILLIAM F [AG/1000]
Sent: 4/28/2015 2:52:30 PM
To: JENKINS, DANIEL J [AG/1920] [/o=Monsanto/ou=NA-1000-01/cn=Recipients/cn=813004]
CC: LISTELLO, JENNIFER J [AG/1000] [/o=Monsanto/ou=NA-1000-01/cn=Recipients/cn=533682]
Subject: RE: Glyphosate IARC Question

Dan,

Wow! - that's very encouraging. Thanks for the news update.

Regarding the sarcomas Jess mentions in Cheminova's mouse study, I'm assuming he is talking about the Haemangiosarcomas in high dose males (1000 mg/kg/day, the limit dose) and low numbers (1-3) of histiocytic sarcomas 'spattered' across all dose groups. These were discussed in the 2004 WHO/FAO JMPR documents which states: "Owing to the lack of a dose-response relationship, the lack of statistical significance and the fact that the incidences recorded in this study fell within the historical ranges for control, these changes are not considered to be caused by administration of glyphosate."

Bill

From: JENKINS, DANIEL J [AG/1920]
Sent: Tuesday, April 28, 2015 9:33 AM
To: HEYDENS, WILLIAM F [AG/1000]
Cc: LISTELLO, JENNIFER J [AG/1000]
Subject: RE: Glyphosate IARC Question

Hey- cc'ing Jen

So...Jess called me out of the blue this morning:

"We have enough to sustain our conclusions. Don't need gene tox or epi. The only thing is the cheminova study with the sarcoma in mice- we have that study now and its conclusions are irrelevant (bc at limit dose...?). I am the chair of the CARC and my folks are running this process for glyphosate in reg review. I have called a CARC meeting in June..."

Also, Jess called to ask for a contact name at ATSDR. I passed on Jesslyn's email. He told me no coordination is going on and he wanted to establish some saying "If I can kill this I should get a medal". However, don't get your hopes up, I doubt EPA and Jess can kill this; but it's good to know they are going to actually make the effort now to coordinate due to our pressing and their shared concern that ATSDR is consistent in its conclusions w EPA.

Dan Jenkins
U.S. Agency Lead

Regulatory Affairs
Monsanto Company
1300 I St., NW
Suite 450 East
Washington, DC 20005

Office: 202-383-2851

Cell: 571-732-6575

From: HEYDENS, WILLIAM F [AG/1000]
Sent: Monday, April 27, 2015 1:20 PM
To: JENKINS, DANIEL J [AG/1920]
Subject: RE: Glyphosate IARC Question

That would be great, Dan.

From: JENKINS, DANIEL J [AG/1920]
Sent: Monday, April 27, 2015 11:51 AM
To: HEYDENS, WILLIAM F [AG/1000]
Subject: Re: Glyphosate IARC Question

I think you and I could get on the phone w Jess Rowland and discuss this pretty openly. He'll give us straight talk.

Dan Jenkins

US Agency Lead

Monsanto Company

202.383.2851 office

571.732.6575 cell

On Apr 27, 2015, at 8:02 AM, HEYDENS, WILLIAM F [AG/1000] <william.f.heydens@monsanto.com> wrote:

Dan,

As you know, we are considering the value/advisability of doing more work to help us deal with the IARC fallout (see attached), and we are trying to get feedback from various stakeholders to help us decide on pulling any triggers.

The first two suggestions (New Meta-analysis & AHS Collaboration) would involve beefing-up the Epidemiology area with two new/updated analyses culminating in 2 new publications.

The 3rd possible endeavor would be an expert panel meeting and subsequent publication. This would be very expensive to do well with sufficient big names. An alternative approach would be one or two smaller expert panels two address one or two areas of most need/value (Epidemiology, Animal Bioassay data, and/or genetox/MOA).

Finally, we are considering doing some additional experiment to directly address all the positive in vitro formulation genetox studies out there – we have had only a very early/superficial talk with Gary Williams so there are no details yet.

NOW THE QUESTION - What are your thoughts on approaching EPA and having a conversation, probably a generic one, about what area they see as most problematic (e.g., human epidemiology vs. animal bioassays vs. genetox) or just ask if there is anything that would help them defend the situation?

Bill

<Post-IARC Meeting Science Proposals.pptx>

Exhibit F

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HEALTH NEWS | Mon May 2, 2016 | 9:12pm EDT

EPA takes offline report that says glyphosate not likely carcinogenic



Monsanto's Roundup weedkiller atomizers are displayed for sale at a garden shop at Bonneuil-Sur-Marne near Paris, France, June 16, 2015. REUTERS/Charles Platiau

By P.J. Huffstutter | CHICAGO

The U.S. Environmental Protection Agency on Monday pulled a report offline that concluded glyphosate is not likely to be carcinogenic to humans, saying the document was inadvertently published and the agency had not finished its review of the chemical, which is the key ingredient in Monsanto's herbicides.

The 86-page report, seen by Reuters and published on Friday on the regulations.gov website that the EPA manages, was from the EPA's cancer assessment review committee (CARC). It found that glyphosate, the active ingredient in the world's mostly widely used weedkiller, was "not likely to be carcinogenic to humans."

The EPA took down the report and other documents on Monday afternoon, saying it did so "because our assessment is not final," in an emailed statement to Reuters. The agency said the documents were "preliminary" and that they were published "inadvertently."

But a covering memo that was part of the documents seen by Reuters described the report as the committee's "final Cancer Assessment Document." "FINAL" was printed on each page of the report, which was dated Oct. 1, 2015.

The EPA declined to comment on whether the report, or the 13 other documents that were also published and subsequently taken down on Monday, indicate whether the agency ultimately will conclude that glyphosate is not carcinogenic.

xfinity

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year, the World Health Organization's cancer arm, the International Agency for Research on Cancer, classified glyphosate as "probably carcinogenic to humans."

Other government authorities have issued a variety of opinions on glyphosate. The European Food Safety Authority last November said glyphosate was "unlikely to pose a carcinogenic hazard to humans."

MONSANTO: REPORT "CLEARLY LABELED"

Monsanto Co, whose Roundup herbicide line uses glyphosate as a key active ingredient, responded to the EPA's document, saying in a statement on Monday that the agency had issued an "official classification" that glyphosate was not likely to be carcinogenic.

Monsanto said the document was "clearly labeled and signed as the final report of EPA's Cancer Assessment Review Committee," in an email to Reuters on Monday after the documents had been removed.

The EPA said its documents are part of its broader registration review, which began in 2009, of glyphosate and its potential human health and environmental risks.

"EPA has not completed our cancer review," the EPA told Reuters in a statement. "We will look at the work of other governments as well as work by (the U.S. Department of Health and Human Services') Agricultural Health Study as we move to make a decision on glyphosate."

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Trump presses Democrats on Obamacare, urges bipartisan fix

The EPA said its assessment will be peer reviewed and completed by the end of 2016.

A reporter with Bloomberg BNA, a subsidiary of Bloomberg, had posted a link to the documents on Twitter on Monday morning. The EPA documents, while available, sparked strong reactions from critics of the world's most widely used weed killer.

"All they're doing is reviewing studies that are funded by the industry," said Jennifer Sass, a senior scientist at Natural Resources Defense Council, an environmental and public health advocacy group.

In addition to the cancer assessment report, the documents that the EPA removed included summaries of three 2015 meetings between EPA officials and Monsanto; preliminary ecological risk assessments of glyphosate on milkweed, which is key to the health of monarch butterflies; a report discussing possible label amendments to two of Monsanto's Roundup products when used on oilseeds, fruit and other crops; and a six-slide Monsanto presentation to the EPA officials.

(Reporting by P.J. Huffstutter; Editing by Jo Winterbottom and Leslie Adler)

NEXT IN HEALTH NEWS

China confirms latest human death from H7N9 bird flu



BEIJING A man in China's eastern province of Shandong has become at least the fourth person to die this winter from H7N9 bird flu, state media said on Thursday, while officials in southern Guangdong confirmed 14 cases of the virus in December.

Austrian farms told to keep poultry indoors to combat bird flu



VIENNA Austria has ordered its farmers to keep all poultry indoors from next week, extending measures to fight bird flu as the contagious virus spreads in neighboring European countries.

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