

1 Timothy Litzenburg (appearance *pro hac vice*)
2 Curtis G. Hoke (State Bar No. 282465)
3 **THE MILLER FIRM, LLC**
4 108 Railroad Ave.
5 Orange, VA 22960
6 Telephone: (540) 672-4224
Facsimile: (540) 672-3055
tlitzenburg@millerfirmllc.com
choke@millerfirmllc.com

7 *Attorneys for Plaintiff*
8 DEWAYNE JOHNSON

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF SAN FRANCISCO**

11
12 DEWAYNE JOHNSON,
13
14 *Plaintiffs,*
15
16 vs.
17
18 MONSANTO COMPANY,
19
20 *Defendant.*
21
22

Case No.: CGC-16-550128

**PLAINTIFF'S OPPOSITION TO
MONSANTO'S MOTION IN LIMINE
NO. 28**

Trial Judge: TBD

Trial Date: June 18, 2018

Time: 9:30 a.m.

Department: TBD

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2 **I. INTRODUCTION**

3 Defendant Monsanto Company (“Monsanto”) seeks to exclude “[a]ny mention of
4 Monsanto's profits or financial position." Def’s Mot. at 2:21-22. In its Motion, it argues that even
5 a mention of its profits would "incite the jury to abandon its ability to objectively observe and
6 assess the facts . . ." Def’s Mot. at 2:22-23. Not so. First, Monsanto is grossly underestimating a
7 California jury. Second, Monsanto’s sweeping motion is overly broad and not limited in the
8 scope of the evidence that Monsanto seeks to exclude – “[a]ny mention of Monsanto's profits or
9 financial position." Def’s Mot. at 2:21-22 (emphasis added). Third, Monsanto would seek to
10 exclude any mention of its profits and finances, but at the same time claim that the proper studies
11 and testing of glyphosate-based products is cost prohibitive. Monsanto cannot have it both ways.
12 Fourth, Monsanto’s financial condition supports Plaintiff’s claim that Monsanto was able to
13 influence government officials and regulators through lobbying.
14

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16 **II. ARGUMENT**

17 Only evidence that is relevant to the issues before the Court is admissible. California
18 Evidence Code Section § 350. However, evidence need not bear directly on any issue, and it is
19 still "admissible if it tends to prove the issue, or constitutes a link in the chain of proof." *Dike v.*
20 *Golden State Co.*, 269 P.2d 619, 622 (Cal. App. 3d Dist. 1954)(quoting *Firlotte v. Jessee*, 172
21 P.2d 710, 711 (Cal. App. 3d Dist. 1946).
22

23 **A). Evidence Of Monsanto's Financial Circumstances and Profits Is Relevant To**
24 **Rebut Monsanto's Anticipated Argument That Proper Testing Proposed By**
25 **The Plaintiff Is Cost Prohibitive**

26 In order to prove his failure to warn claim, Plaintiff is required to show "that the
27

1 defendant did not adequately warn of a particular risk that was known or knowable in light of the
2 generally recognized and prevailing best scientific and medical knowledge available at the time
3 of manufacture and distribution." *Carlin v. Super. Ct.*, 920 P.2d 1347, 1351 (Cal. 1996). In order
4 to prove this claim, in part, Plaintiff will seek to introduce evidence at trial that Monsanto did not
5 properly test the glyphosate-based products, and as such breached its duty to test its products
6 before introducing them to the public. *Oxford v. Foster Wheeler LLC*, 99 Cal. Rptr. 3d 418, 435
7 (Cal. App. 1st Dist. 2009). It is then likely that Monsanto will seek to introduce evidence of the
8 cost and expense of conducting studies that Plaintiff puts forth as the proper testing that
9 Monsanto should have done before introducing glyphosate-based products to the public. If
10 Monsanto does such, it will open the door to allow Plaintiff to introduce evidence to the jury of
11 Monsanto's financial circumstances and profits.

14 A litigant opens the door to prejudicial testimony when he submits evidence that leaves a
15 false or misleading impression if not corrected by the prejudicial testimony he seeks to exclude.
16 *United States v. Maldonado* (5th Cir. 1994) 472 F.3d 388, 398 abrogated on other grounds,
17 *Kentucky v. King*, (2011) 563 U.S. 452, 131 S.Ct. 1849. Monsanto should not be allowed to
18 exclude evidence of its financial circumstances and profits while at the same time claiming that
19 certain studies and tests of glyphosate products is cost prohibitive.

21 Finally, Monsanto extensively lobbied senators, congressman, EPA officials, and foreign
22 governments to ensure that glyphosate remained on the market with few restrictions. It takes
23 substantial financial resources to have this extensive influence on government officials.
24 Evidence of Monsanto's financial condition will tend to show that it was capable and effective of
25 the lobbying that Plaintiff alleges occurred.

1 Monsanto's Motion *in limine* No. 28.

2 Respectfully submitted,

3 **THE MILLER FIRM, LLC**

4
5 DATED: June 7, 2018

6 By:/s/ Timothy Litzenburg
7 Timothy Litzenburg (appearance *pro hac vice*)
8 Curtis G. Hoke (SBN 282465)
9 **THE MILLER FIRM, LLC**
10 108 Railroad Ave.
11 Orange, VA 22960
12 (540) 672-4224 phone
13 (540) 672-3055 fax
14 tlitzenburg@millerfirmllc.com
15 choke@millerfirmllc.com

16 *Attorneys for Plaintiff,*
17 *DEWAYNE JOHNSON*

1 PROOF OF SERVICE

2 I, Curtis G. Hoke, declare as follows:

3 I am a citizen of the United States and am employed in Orange County, Virginia. I am over the
4 age of eighteen years and not a party to the within action. My business address is 108 Railroad
5 Avenue, Orange, Virginia 22960. On June 7, 2018 _____, I served the following
6 documents by the method indicated below:

7 PLAINTIFF'S OPPOSITION TO MONSANTO'S MOTION IN LIMINE NO. 28

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15 **By Electronically Serving** the document(s) described above via LexisNexis File & Serve
16 by 7:00 p.m. Pacific Standard Time on all parties appearing on the LexisNexis File & Serve
17 service list.

18 **SEE ATTACHED SERVICE LIST**

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

21 Executed on this June 7, 2018 at Orange, Virginia.

22 

23
24 Curtis G. Hoke,
25 Declarant

1 *Johnson v. Monsanto Company, et al.*
2 **San Francisco Superior Court Case No.: CGC-16-550128**

3 **SERVICE LIST**

4 George C. Lombardi, Esq. 5 James M. Hilmert, Esq. 6 WINSTON & STRAWN LLP 7 35 West Wacker Drive 8 Chicago, IL 60601 9 Tel: (312) 558-5969 10 Fax: (312) 558-5700 11 glombard@winston.com 12 jhilmert@winston.com	Counsel for Defendant Served electronically Via Lexis Nexis File&Serve Xpress
13 Joe G. Hollingsworth, Esq. 14 Eric G. Lasker, Esq. 15 Martin C. Calhoun, Esq. 16 Kirby T. Griffis, Esq. 17 William J. Cople III, Esq. 18 HOLLINGSWORTH LLP 19 1350 I Street, N.W. 20 Washington, DC 20005 21 Tel: (202) 898-5800 22 Fax: (202) 682-1639 23 jhollingsworth@hollingsworthllp.com 24 elasker@hollingsworthllp.com 25 mcalhoun@hollingsworthllp.com 26 kgriffis@hollingsworthllp.com 27 wcople@hollingsworthllp.com	Counsel for Defendant Served electronically via Lexis Nexis File&Serve Xpress
28 Sandra A. Edwards, Esq. Joshua W. Malone, Esq. Farella Braun + Martel LLP 235 Montgomery Street, 17 th Floor San Francisco, California 94104 Tel: (415) 95404400 Fax: (415) 954-4480 sedwards@fbm.com jmalone@fbm.com	Counsel for Defendant Served electronically via Lexis Nexis File&Serve Xpress

28 PROOF OF SERVICE