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9	SUPERIOR COURT OF THE STATE OF CALIFORNIA	
10	COUNTY OF SAN FRANCISCO	
11	DEWAYNE JOHNSON,	Case No.: CGC-16-550128
13	Plaintiffs,	
14	VS.	PLAINTIFF'S OPPOSITION TO
15		MONSANTO'S MOTION IN LIMINE NO. 28
16	MONSANTO COMPANY,	
17	Defendant.	
18		Trial Judge: TBD
19		Trial Date: June 18, 2018 Time: 9:30 a.m.
20		Department: TBD
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28	PLAINTIFF'S OPPOSITION TO MONSANTO'S MOTION IN LIMINE NO. 28	

### I. INTRODUCTION

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

### II. ARGUMENT

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

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

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

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

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

Finally, Monsanto extensively lobbied senators, congressman, EPA officials, and foreign governments to ensure that glyphosate remained on the market with few restrictions. It takes substantial financial resources to have this extensive influence on government officials.

Evidence of Monsanto's financial condition will tend to show that it was capable and effective of the lobbying that Plaintiff alleges occurred.

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# B). Evidence Of Monsanto's Profits And Financial Position Is Relevant and It Is Not Unduly Prejudicial To Monsanto

"In general, evidence is substantially more prejudicial than probative if it poses an intolerable risk to the fairness of the proceedings or the reliability of the outcome." *Hernandez v. County of Los Angeles*, 173 Cal. Rptr. 3d 226, 237 (Cal. App. 2d Dist. 2014)(*emphasis added*).

While it is right and good that both "the pauper and the millionaire are entitled to be treated fairly before the trier of fact." *Las Palmas Associates v. Las Palmas Ctr. Associates*, 1 Cal. Rptr. 2d 301 (Cal. App. 2d Dist. 1991). Plaintiff would not seek to introduce such evidence in the first phase of the trial to show that Monsanto can pay the jury award. Instead, such evidence would be introduced to rebut Monsanto's claims of excessive costs.

Here, it seems that Monsanto has confused what is prejudicial evidence to its defense with the meaning of unduly prejudicial evidence. However, damaging evidence is not synonymous with unduly prejudicial evidence. Monsanto should not be allowed to escape the former.

Evidence used to rebut Monsanto's assertions that proper testing of glyphosate-based products is cost prohibitive is relevant and it is indeed a central issue in this case. Monsanto's profits from its glyphosate-based products will clearly show the jury that Monsanto had the finances to properly test the glyphosate-based products but that it failed to do so. Indeed this evidence will be prejudicial to Monsanto, but it is not an intolerable risk to the fairness of the trial.

### IV. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests this this honorable Court DENY

1	Monsanto's Motion in limine No. 28.	
2		Respectfully submitted,
3		THE MILLER FIRM, LLC
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5	DATED: June 7, 2018	By:/s/ Timothy Litzenburg
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	PLAINTIFF'S OPPOSITION TO MONSANTO'S MOTION IN LIMINE NO. 28	

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 Avenue, Orange, Virginia 22960. On June 7, 2018 , I served the following		
5	documents by the method indicated below:		
6	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 & Serving		
16	by 7:00 p.m. Pacific Standard Time on all parties appearing on the LexisNexis File & Serve service list.		
17	SEE ATTACHED SERVICE LIST		
18	I declare under penalty of perjury under the laws of the State of California that the above		
19	is true and correct.		
20	77 7 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1		
22	Executed on this June 7, 2018 at Orange, Virginia.		
23			
24	Curtis G. Hoke,		
25	Declarant		
26			
27			
28	PROOF OF SERVICE		

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

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