

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

12 *Attorneys for Plaintiff*
13 DEWAYNE JOHNSON

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Deputy Clerk

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **COUNTY OF SAN FRANCISCO**

16 Dwayne Johnson)

17 Plaintiff,)

18 vs.)

19 Monsanto Company)

20 Defendant)

Case No. CGC-16-550128

**PLAINTIFF'S OPPOSITION TO
MONSANTO'S MOTION *IN LIMINE*
NO. 22 TO EXCLUDE EVIDENCE,
ARGUMENT, OR REFERENCE TO
ENDOCRINE DISRUPTION, BIRTH
DEFECTS, OR EFFECTS ON GUT
BACTERIA**

Trial Judge: TBD

Trial Date: June 18, 2018

Time: 9:30 a.m.

Department: TBD

21 **INTRODUCTION**

22 Monsanto moves to "exclude any evidence or argument that glyphosate causes
23 endocrine disruption, causes birth defects, or affects gut bacteria." Monsanto MIL No. 22 at 1,
24 arguing that Plaintiff has not alleged such injuries. However, if Monsanto presents evidence
25 regarding the ostensible benefits of Roundup, Plaintiff should be permitted to rebut such
26 evidence with argument pertaining to the diverse range of health problems associated with
27 Roundup. Thus, Plaintiff's presentation of evidence regarding Roundup's effects on gut
28 bacteria, potential to cause birth defects or endocrine disruption is merely tethered to Monsanto

1 opening the door to such arguments.

2 In its Motion, Monsanto challenges the weight of any rebuttal evidence that Plaintiff
3 may offer, but Monsanto ignores the fact that questions regarding conflicts of evidence are for
4 the jury to resolve. If Monsanto opens the door to certain issues, Plaintiff ought to be afforded
5 the opportunity to rebut, thereby allowing the jury to decide the weight of the evidence
6 presented by both sides absent any risk of prejudice.

7
8 **ARGUMENT**

9 Evidence is relevant if it has a “*tendency in reason* to prove or disprove any disputed
10 fact of consequence to the determination of the action...” Cal. Evid. Code § 210 (emphasis
11 added); *People v. Nelson* (2008) 43 Cal.4th 1242, 1266; *Donlen v. Ford Motor*
12 *Company* (2013) 217 Cal.App.4th 138, 148 *as modified on denial of reh'g* (July 8, 2013).
13 Moreover, section 352 “speaks in terms of *undue* prejudice. Unless the dangers of undue
14 prejudice, confusion, or time consumption ‘substantially outweigh’ the probative value of
15 relevant evidence, a section 352 objection should fail.” *People v. Scott* (2011) 52 Cal.4th 452,
16 490–491 (emphasis in original) (quoting *People v. Cudjo* (1993) 6 Cal.4th 585, 609); *People v.*
17 *Yu* (1983) 143 Cal.App.3d 358, 377 (when applying Section 352, “prejudicial” is not
18 synonymous with “damaging.”).

19 This is a simple matter. If Monsanto does not argue to the jury that Roundup confers
20 benefits on food production, the environment, economy, and people in general, Plaintiff will
21 not raise evidence regarding Roundup’s connection with a host of adverse health effects.
22 Otherwise, Plaintiff should be permitted to offer rebuttal evidence to Monsanto’s touting of
23 Roundup’s ostensible benefits. *People v. Nunez* (2013) 57 Cal.4th 1, 27 (“Rebuttal evidence is
24 relevant and thus admissible if it ‘tend[s] to disprove a fact of consequence on which the
25 defendant has introduced evidence.”). For example, if Monsanto argues that Roundup has a
26 beneficial impact on food production, it is legitimate for Plaintiff to present compelling
27 evidence that the ingestion of Roundup via the food supply has an adverse effect on gut
28

1 bacteria, resulting in a host of diseases. See, e.g., Shehata, et al. *The Effect of Glyphosate on*
2 *Potential Pathogens and Beneficial Members of Poultry Microbiota In Vitro*, 66 CURR.
3 MICROBIOL. 350-8 (2013); Aitbali, et al., *Glyphosate-Based Herbicide Exposure Affects Gut*
4 *Microbiota, Anxiety and Depression-Like Behaviors in Mice* 67 NEUROTOXICOL. TERATOL. 44-
5 49, 48 (“Consistent with the potential of pesticide-contaminated foods to induce gut microflora
6 dysbiosis in rodent models...we found that the anxiogenic and depressive-like behaviors
7 observed in the present work paralleled by an altered gut microbiota in GBH-treated mice in
8 term of abundance and bacteria species.”); Samsel, A. and Seneff, S, *Glyphosate's Suppression*
9 *of Cytochrome P450 Enzymes and Amino Acid Biosynthesis by the Gut microbiome: Pathways*
10 *to Modern Diseases*, 15 ENTROPY, 1416-1463.

11 Thus, if Monsanto opens the door to Roundup’s benefits to the environment and people,
12 it is unlikely that the presentation of proper rebuttal evidence will pose “an *intolerable ‘risk*
13 *to the fairness of the proceedings or the reliability of the outcome’*” *People v. Jones* (2013) 57
14 Cal.4th 899, 948, *as modified on denial of reh'g* (Oct. 2, 2013) (quoting (*People v. Tran* (2011)
15 51 Cal.4th 1040, 1047) (discussing the standards for exclusion under Section 352).

16 Monsanto argues that “No evidence from any witness supports a claim that glyphosate
17 causes any birth defects or causes harm by inhibiting gut microbes,” and asserts that Dr.
18 Sawyer’s opinions to that effect are “baseless.” Monsanto MIL No. 22 at 3, 2. However,
19 Monsanto is conflating weight with admissibility. *People v. Venegas* (1998) 18 Cal.4th 47, 74
20 (questions of method “simply go to the weight of the evidence, not its admissibility, and hence
21 can be determined by the jury.”); *Humane Society of the United States v. Superior Court of Yolo*
22 *County* (2013) 214 Cal.App.4th 1233, 1257 (“where expert has sufficient knowledge to allow his
23 opinion to go to the jury, question of degree of knowledge goes to weight, not admissibility of
24 evidence.”). Monsanto cannot open the door to arguments regarding Roundup’s effects on gut
25 bacteria and potential to cause birth defects and then preclude Plaintiff from presenting such
26 evidence by challenging the weight of the evidence *a priori*.

1 DATED: June 7, 2018

Respectfully submitted,

2 By: /s/ Curtis G. Hoke

3 Curtis G. Hoke (SBN 282465)

4 Timothy Litzenburg (appearance *pro hac vice*)

5 Michael J. Miller (appearance *pro hac vice*)

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7 Orange, VA 22960

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(540) 672-3055 fax

8 choke@millerfirmllc.com

9 tlitzenburg@millerfirmllc.com

10 mmiller@millerfirmllc.com

11 *Attorneys for Plaintiff*