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MONSANTO COMPANY

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

DEWAYNE JOHNSON,  
Plaintiff,

vs.

MONSANTO COMPANY,  
Defendant.

Case No. CGC-16-550128

**DECLARATION OF SANDRA A.  
EDWARDS IN SUPPORT OF  
DEFENDANT MONSANTO COMPANY'S  
TRIAL BRIEF IN SUPPORT OF MOTION  
FOR MISTRIAL**

Hon. Judge Suzanne R. Bolanos

Department: 504  
Trial Date: June 18, 2018

ELECTRONICALLY  
**FILED**  
Superior Court of California,  
County of San Francisco  
**08/08/2018**  
Clerk of the Court  
BY: VANESSA WU  
Deputy Clerk

1 I, Sandra A. Edwards, declare as follows:

2 1. I am an attorney duly admitted to practice before this Court. I am a partner with  
3 Farella Braun + Martel LLP, attorneys of record for Defendant Monsanto Company ("Monsanto").

4 I submit this Declaration in support of Monsanto's Trial Brief in Support of Motion for Mistrial

5 2. Attached as **Exhibit 1** is a true and correct copy of excerpts of the trial transcript  
6 from August 7, 2018.

7 I declare under penalty of perjury under the laws of the State of California that the  
8 foregoing is true and correct, and that this declaration was executed on August 8, 2018, at  
9 San Francisco, California.

10 

11 \_\_\_\_\_  
12 Sandra A. Edwards

# **Exhibit 1**

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO

DEWAYNE JOHNSON,  
Plaintiff,  
vs. Case No. CGC-16-550128  
MONSANTO COMPANY, et al.,  
Defendants.  
-----/

Proceedings held on Tuesday, August 7, 2018,  
Volume 25, before the Honorable Suzanne R. Bolanos,  
at 9:07 a.m.

REPORTED BY:  
LESLIE ROCKWOOD ROSAS, RPR, CSR 3462  
Job No. 2983883A  
Pages 5001 - 5129

1 correctly pointed out, is in evidence. The witness has  
2 responded and gave these answers. And any objection,  
3 including any objection that it's prejudicial, was not  
4 made at that time and, therefore, now it's waived.

09:41:10

5 Having said that, though, the quotes are taken  
6 out of context -- out of the context of the witness'  
7 entire testimony. And it can be -- and there's certainly  
8 an argument to be made that they're given undue influence  
9 by isolating these statements and putting them on the  
10 slide in bold, red print.

09:41:29

11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]

09:41:45

15 MR. WISNER: Here's the problem with that -- and  
16 I appreciate the Court's advice. I do.

17 The problem with that is literally my job is to  
18 point out evidence that supports my position, that  
19 persuades the jury into agreeing with me. And that's not  
20 prejudicial in the sense that it's undue prejudice. I  
21 can make arguments based on the evidence in the record.

09:41:59

22 And I have every intention of telling this jury  
23 that every major carcinogenic thing that's occurred  
24 throughout time had the same story of Monsanto, whether  
25 it be tobacco, whether it be asbestos, whether it be

09:42:17

1 carcinogenic and ultimately proved to be carcinogenic was  
2 defended by these same methods, by arguments about  
3 confounding, that this happened with asbestos, this  
4 happened with tobacco, et cetera. That's something  
09:43:42 5 Mr. Wisner came up with, and it's far beyond the record  
6 and would require many, many, many trials to adequately  
7 place that before the jury.

8 THE COURT: Yes, I agree.

09:43:55

9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
09:44:07 15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED].

09:44:25

20 THE COURT: Okay. All right.  
21 Anything else, then, before --

09:44:38

22 MR. GRIFFIS: Yes. I want to lodge an objection  
23 to this slide, which is the third. It's a scale with a  
24 feather on it, and my objection is that it says, "The  
25 preponderance of the evidence: 50.01 percent." The

10:22:50

10:23:06

10:23:25

10:23:41

10:24:00

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 I know you guys didn't actually have a choice to  
7 be on this jury, so it's kind of a weird thing to thank  
8 you for your service, but you could be on a jury and not  
9 pay attention, and not one of you has done that. You've  
10 asked incredibly good questions. Some of them we were  
11 able to answer. Some of them we were not. But the  
12 questions told us exactly how closely you were tracking  
13 this case. Some of you have five notebooks of notes.  
14 That's unbelievable. The level with which you've paid  
15 attention to this case, thank you, and I really mean  
16 that.  
17 Not just for me, though, for Mr. Johnson and his  
18 family. And Mrs. Johnson would be here, but her job  
19 wouldn't let her off today, so she actually is working  
20 right now. A consequence of the bills, you know, and  
21 hopefully she'll be here tomorrow, but they wouldn't give  
22 her paid leave, and they need the money to pay the bills,  
23 so I'm sorry she couldn't be here today.  
24 All right. So this case really involves three  
25 fundamental questions. And the jury verdict form we're

1 literally one epidemiology study, and then Dr. Al-Khatib  
2 when actually had no opinions about caution whatsoever,  
3 so he's really off the table.

4           What did they do? They atomized the science.

10:29:33 5 They broke it into little parts and put everyone on their  
6 little island and said, on this island, you don't have  
7 enough. But that's not science.

8           We actually called five experts, and every  
9 single one -- Dr. Portier, Dr. Neugut, Dr. Sawyer,  
10:29:48 10 Dr. Benbrook and Dr. Nabhan -- looked at everything,  
11 every animal study. They looked at every epidemiological  
12 study. They looked at the hundreds of mechanism studies.  
13 And when you look at the totality of the evidence, it  
14 causes cancer.

10:30:03 15           That's what IARC did. Because if you look at  
16 just the epi -- we all agree, the epi by itself, you  
17 don't get causation. The rodents alone, you don't get  
18 causation. But when you put all three together, then you  
19 have causation.

10:30:23 20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
10:30:40 25 [REDACTED]



10:30:55

10:31:12

10:31:28

10:31:46

10:32:04

1 [REDACTED] [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED] [REDACTED] [REDACTED]  
6 [REDACTED] [REDACTED]  
7 [REDACTED] [REDACTED]  
8 [REDACTED]  
9 [REDACTED] The  
10 fact that Monsanto hasn't brought a single witness to  
11 testify about all of this is glaring. It is astonishing.  
12 It shows just actually how Monsanto likes to deal with  
13 the science.  
14 Now, the only group, person or entity that  
15 Monsanto points to that did look at all the evidence,  
16 supposedly, is the EPA. But there's a special -- this is  
17 the report. It's the OPP report from 2016,  
18 September 12th, and it says it's an issue paper; right?  
19 So what this was is a document that was actually sent to  
20 the scientific advisory panel for their comments, that  
21 group of 16 scientists who reviewed the merits of this  
22 document.  
23 Here's the instruction: "The following exhibits  
24 may be admitted for the limited purpose of evaluating  
25 Monsanto's state of mind regarding the state of science

1 and for no other purpose." This instruction does not  
2 apply to the IARC Monograph. You can look at that  
3 document, and you can believe the truth of the statements  
4 made in it, but you cannot believe the truth of this  
10:32:21 5 document. It has not been admitted for that purpose.

6 And the reason why is a really important one,  
7 because Monsanto didn't put anyone in this stand right  
8 here to talk to you about it intelligently. We didn't  
9 get to cross-examine the guy who authored this, ask him,  
10:32:38 10 hey, why did you do this why did you violate your EPA  
11 guidelines? They didn't put anyone up there because they  
12 know if they did, I would have torn that person apart.

13 It wouldn't have been my criticisms. It would  
14 be the scientific advisory panel's criticisms. They  
10:32:53 15 didn't follow their own guidelines. Dr. Foster, he goes,  
16 guidelines, well people, sometimes you go outside the  
17 guidelines. That's not science. Okay?

18 Science is not sticking an arrow in the wall and  
19 drawing the bullseye around it. Guidelines dictate how  
10:33:09 20 you do things and how you look at it and how you assess  
21 it, how you weight things, and the only thing that the  
22 independent scientists that reviewed this document agreed  
23 on, all across the board, was that the EPA didn't follow  
24 the guidelines. That's what this document says.

10:33:25 25 Now, why is that? W\_\_\_\_\_

10:33:45

10:34:04

10:34:20

10:34:40

10:34:56

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED] and  
15 that's why the SAP panel -- Monsanto didn't put that in  
16 evidence. They only want you to see this little part of  
17 the story, and even this part of the story is limited.  
18 I think everybody here can agree that no one's  
19 perfect, but the EPA has made mistakes before.  
20 Government agencies make mistakes. We've heard time and  
21 time again about the various things that we found out  
22 were cancer after decades, if not hundreds of years, of  
23 thinking they were safe. We've heard about it over and  
24 over again, and that's what's going on here.  
25 It's also important to realize on page 19 of

1 One was confounding, the second was proxy bias. And then  
2 their argument was you have to look at the NAPP and the  
3 AHS; right? Those are the issues at stake, so let's go  
4 through those quickly.

10:43:16

5 On confounding, it's not an issue here, okay?  
6 In De Roos 2003 they examined 47 different pesticides.  
7 They looked at whether or not there was any confounding,  
8 and they said there was not. That's primarily the data  
9 this is based on. So the idea that there's confounding,

10:43:31

10 it's just garbage and it's out of a playbook. Okay?  
11 This is what Dr. Mucci agreed to.

12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]

10:43:46

15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED] [REDACTED]

10:44:00

20 [REDACTED]  
21 [REDACTED] [REDACTED] [REDACTED]  
22 [REDACTED] [REDACTED]  
23 [REDACTED]  
24 [REDACTED] [REDACTED]

10:44:15

25 MR. WISNER: Let's look at another document.

1 This is Exhibit 321, also in evidence. This is an e-mail  
2 from Dr. Goldstein. The subject is ACSH. It's an  
3 organization. He said, "While I would love to have more  
4 friends and more choices" -- by the way this is in  
10:44:36 5 February 2015, just before the IARC classification.

6 "While I'd like to have more friends and more  
7 choices, we don't have a lot of supporters and can't  
8 afford to lose the few we have. I am well aware of the  
9 challenges of ACSH, and I know Eric has valid concerns,  
10:44:49 10 so I can assure you I'm not all starry-eyed about ACSH.  
11 They have plenty of warts, but you will not get a better  
12 value for your dollar than ACSH."

13 Out of context, this e-mail doesn't tell you  
14 much. [REDACTED]

10:45:05 15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]

10:45:16 20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]

10:45:31 25 [REDACTED]

1 [REDACTED]

2 [REDACTED]

3 The next problem, proxy bias.

4 Now, I have the slides in here, but I don't have  
10:45:53 5 enough time to get through it all. We looked at a study  
6 by Dr. Blair from 1993. During Dr. Mucci's cross-  
7 examination, I put it up there and showed her the portion  
8 when they discussed the issue of proxy bias. Basically  
9 what they said was when you talk to proxies, they tend to  
10:46:11 10 understand estimate the use of pesticides; right?

11 And so if you add that to your data, it will  
12 tend to underestimate exposures. What that does is it  
13 creates classification exposure -- misclassification  
14 exposure error, and what that does is it doesn't inflate  
10:46:29 15 risks. It pushes it towards one. That's what it does.

16 Now, Dr. Mucci she took a remarkable position.  
17 She said you have to exclude them from your analysis  
18 completely. That's insane. You're looking at people who  
19 have cancer and you're going to cut out everyone who's  
10:46:49 20 already died? That is the definition of selection bias;  
21 right? How can you estimate a risk when you ignore the  
22 data from the people who've already died from the  
23 disease?

24 Of course, if you do that, your risk is going to  
10:47:01 25 disappear. But that's not how this works. People who

1 Finally, in January of 2016, Mr. Johnson  
2 succeeds in stopping the spraying, and as we know, the  
3 story goes on. The cancer gets worse. This is  
4 August 2016. You can see the lesions and the plaques are  
11:47:03 5 getting worse, concentrated. December 2016, they're  
6 getting higher and thicker, and you can start seeing the  
7 plaquing all over his skin. You can see just chunks of  
8 skin basically falling off his body. This is January of  
9 2017. You can see it's literally everywhere, all over  
11:47:19 10 his body.

11 June 2017, this is one of those ruptures that  
12 you talked about where it's exposed skin and it's  
13 painful. This is literally on his eyelid, so this is --  
14 every time he blinks, he's in pain. Every time. It's  
11:47:35 15 all over his back, his feet, his legs. This is  
16 November 2017. This is getting worse and worse. And  
17 this is January of 2018.

18 Monsanto called a doctor who took this stand and  
19 said to you that Mr. Johnson was in complete remission.  
11:47:54 20 What the heck is he talking about? [REDACTED]

21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
11:48:13 25 [REDACTED]

11:48:30

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11:49:37

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED] [REDACTED] [REDACTED]  
7 [REDACTED] [REDACTED]  
8 [REDACTED] [REDACTED]  
9 [REDACTED] [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED] [REDACTED]  
14 [REDACTED]  
15 We have testimony from Dr. Nabhan -- I'll be  
16 quick about this -- it's about the differential  
17 diagnosis. He looked at all the potential risk factors.  
18 All of them didn't play. The only one that made sense  
19 was Roundup. Supported by the animal data. Supported by  
20 the epidemiology.  
21 And so the question is: Did -- is there  
22 evidence, more likely than not, that Roundup  
23 substantially contributed to his cancer? Absolutely.  
24 There is no real -- I mean, this is overwhelming  
25 evidence.



1 future wrongful conduct?"

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

12:01:18

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

12:01:30

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

12:01:43

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

12:01:58

20 [REDACTED]

21 [REDACTED].

22 THE COURT: Sustained.

23 Mr. Wisner, please do not engage in speculation.

24 You may continue.

12:02:11

25 MR. WISNER: Their net worth is \$6.6 billion.

REPORTER'S CERTIFICATE

I certify that the proceedings in the within-titled cause were taken at the time and place herein named; that the proceedings were reported by me, a duly Certified Shorthand Reporter of the State of California authorized to administer oaths and affirmations, and said proceedings were thereafter transcribed into typewriting.

I further certify that I am not of counsel or Attorney for either or any of the parties to said Proceedings, not in any way interested in the outcome of the cause named in said proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand:  
August 7th, 2018.

<%signature%>  
Leslie Rockwood Rosas  
Certified Shorthand Reporter  
State of California  
Certificate No. 3462

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO

DEWAYNE JOHNSON,  
Plaintiff,  
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MONSANTO COMPANY, et al.,  
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Proceedings held on Tuesday, August 7, 2018,  
Volume 25, Afternoon Session, before the Honorable  
Suzanne R. Bolanos, at 1:44 p.m.

REPORTED BY:  
LESLIE ROCKWOOD ROSAS, RPR, CSR 3462  
Job No. 2983883B  
Pages 5130 - 5249

1 not what I showed him. This is misrepresenting the  
2 record. This is actually from -- this is from the direct  
3 examination, not from the cross.

16:47:51 4 MR. WISNER: This is the testimony of  
5 Dr. Nabhan.

6 THE COURT: Okay. Very well, if it's the  
7 testimony of Dr. Nabhan.

8 MR. WISNER: Yeah, testimony Mr. Lombardi didn't  
9 show them.

16:47:59 10 "And to a reasonable degree of medical  
11 probability, is it true that but/for Mr. Johnson's  
12 exposure to Roundup, he would not have developed  
13 non-Hodgkin's lymphoma?" "Absolutely."

14 This idea that he would have gotten cancer no  
16:48:13 15 matter what and that Dr. Nabhan said that is a complete  
16 fabrication. That's the testimony. [REDACTED]

17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]

16:48:31 20 And my client deserves the truth. And if you  
21 have any questions as you're deliberating, ask. We'll  
22 find the document. We'll find whatever it is that you  
23 need to prove up whatever issue you're trying to figure  
24 out. Because at the end of the day, the evidence is  
16:48:47 25 actually overwhelming.

REPORTER'S CERTIFICATE

I certify that the proceedings in the within-titled cause were taken at the time and place herein named; that the proceedings were reported by me, a duly Certified Shorthand Reporter of the State of California authorized to administer oaths and affirmations, and said proceedings were thereafter transcribed into typewriting.

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