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MONSANTO COMPANY

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

19 DEWAYNE JOHNSON,
20 Plaintiff,
21 vs.
22 MONSANTO COMPANY,
23 Defendant.

Case No. CGC-16-550128

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MONSANTO COMPANY'S EX PARTE
APPLICATION FOR LEAVE TO
EXCEED PAGE LIMITS FOR MOTIONS
FOR NEW TRIAL AND JUDGMENT
NOTWITHSTANDING THE
VERDICT**

Honorable Judge Suzanne R. Bolanos

Hearing Date: September 11, 2018
Time: 2:00 p.m.
Dept: 504
Trial Date: June 18, 2018

1 Pursuant to California Rules of Court 3.1200, *et seq.*, Defendant Monsanto Company
2 (“Monsanto”) files this Memorandum in support of its *ex parte* Application seeking leave to file
3 opening Memoranda of Points and Authorities, each up to forty (40) pages in total, in support of
4 its Motions for New Trial and Judgment Notwithstanding the Verdict (“Motions”); and reply
5 Memoranda of Points and Authorities, each up to twenty (20) pages in total, in support of its
6 Motions.

7 **I. INTRODUCTION AND ARGUMENT**

8 On August 10, 2018, after a nearly eight week trial, the jury in this matter reached a
9 stunning \$289.2 million verdict in the first trial in the country involving allegations that a
10 plaintiff’s exposure to Monsanto’s glyphosate-based herbicides (“GBH”) allegedly caused Non-
11 Hodgkin’s Lymphoma. Given the complexity and length of the trial, and the magnitude of what is
12 at stake, Monsanto cannot address the litany of ways in which the evidence received at trial is
13 insufficient to support the verdict as a matter of law without leave to exceed the page limits set
14 forth in California Rules of Court (“CRC”) Rule 3.1113. Indeed, Plaintiff has also requested (and
15 Monsanto agreed, subject to a stipulation) to extend the page limitation for his opposition briefs to
16 forty pages, given the extensive testimony and evidence during trial and the significance of the
17 issues in dispute.

18 Specifically, for both Motions, Monsanto must address the sufficiency of the evidence that
19 was introduced in this lengthy trial, during which Plaintiff alone required nearly three weeks to
20 present his case. Nine different experts from both parties provided highly technical, scientific, and
21 complex testimony about, among other topics, glyphosate and GBH products, the state of
22 knowledge of the scientific community, various domestic and regulatory assessments, and
23 complicated issues involving both general and specific causation. Testimony from twelve fact
24 witnesses was introduced at trial, including testimony from Monsanto employees (current and
25 former), scientists working with the IARC Working Group 112 and others, on highly technical and
26 scientific issues. Both Motions must also address the sufficiency, and lack thereof, of evidence to
27 support the jury’s \$250 million punitive damage award, as well as issues of irregularity in the
28 proceedings, excessive damages, and errors of law.

1 Monsanto asked Plaintiff to stipulate to allow it to file forty page opening memoranda, and
2 Plaintiff agreed on the condition that: (1) he be allowed forty pages for each of his oppositions to
3 Monsanto’s Motions, and (2) he be granted a ten (10) day extension of time for filing those
4 oppositions. *See* Declaration of Sandra A. Edwards (“Edwards Decl.”) at ¶¶ 3 and 4, Ex. 1.
5 Monsanto agreed to allow Plaintiff forty pages for his opposition briefs, in light of the volume of
6 evidence and testimony to be resolved by the Court. *Id.* However, Plaintiff’s proposed extension
7 of time would completely deprive the Court of necessary time to fully review the papers and issue
8 its Order within the statutorily mandated deadlines that govern the Motions. The deadline for the
9 filing of Monsanto’s moving papers is September 17; plaintiff’s oppositions are due September
10 27; and Monsanto’s replies are due October 2. The Court must decide Monsanto’s Motions by, at
11 the very latest, October 22, 2018. Cal. Code Civ. Proc. §§ 629(b), 660. If Monsanto were to agree
12 to Plaintiff’s proposed extension of time, his oppositions would not be due until October 9, 2018,
13 and Monsanto’s reply would be delayed until October 15, 2018. This schedule, or indeed any
14 extension of time to the opposition and reply papers, would deprive the Court of sufficient time to
15 adequately review the moving, opposition, and reply papers prior to the hearing on issues that are
16 of great importance to both parties, and risks substantial prejudice to Monsanto. *See* Cal. Civ.
17 Proc. Code § 660 (if the Order is not entered within 60 days of service of the notice of entry of
18 judgment, “the effect shall be a denial of the motion without further order of the court.”).
19 Monsanto informed Plaintiff it therefore could not agree to any extension of time for his
20 oppositions, but would have agreed to extend the page limits for his oppositions. *See* Edwards
21 Decl. at ¶ 4.¹ Accordingly, the parties were unable to reach an agreement. *Id.* Because the parties
22 were unable to agree upon an extension to the page limit for the opening Memoranda, it was clear
23 to Monsanto that Plaintiff would not agree to a ten page extension for its reply memoranda.

24 **II. CONCLUSION**

25 Monsanto’s counsel has found it prohibitively difficult – indeed, impossible – to


26 _____
27 ¹ Plaintiff’s counsel responded that day and offered thirty pages for both Monsanto’s opening
28 memoranda and his opposition in exchange for a four day extension of time for filing Plaintiff’s
opposition brief. Because this proposal posed the same constraints with respect to the statutory
deadline for this Court to issue its ruling, Monsanto declined Plaintiff’s offer. *Id.*

1 adequately address each of the issues necessary for full consideration of the Motions within the
2 page limits provided by the California Rules of Court. To provide the Court with the law and facts
3 necessary to fully evaluate all of the issues raised by these critically important Motions, Monsanto
4 requests leave to file opening memoranda of up to forty pages and reply memoranda of up to
5 twenty pages.

6
7 Dated: September 11, 2018

Respectfully submitted,

8 FARELLA BRAUN + MARTEL LLP

9
10 By: 
Sandra A. Edwards

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12 Attorneys for Defendant
MONSANTO COMPANY

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