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Attorneys for Defendant
MONSANTO COMPANY

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE: ROUNDUP PRODUCTS
LIABILITY LITIGATION

) MDL No. 2741
)
) Case No. 3:16-md-02741-VC

Hardeman v. Monsanto Co., et al.,
3:16-cv-0525-VC
Stevick v. Monsanto Co., et al.,
3:16-cv-2341-VC
Gebeyehou v. Monsanto Co., et al.,
3:16-cv-5813-VC

) **MONSANTO COMPANY'S NOTICE OF**
) **MOTION AND MOTION *IN LIMINE***
) **NO. 10 RE: INTRODUCTION,**
) **ARGUMENT, OR REFERENCE TO**
) **THE SERALINI STUDY AND ANY**
) **INFORMATION THEREIN**
)
)

1 **TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE THAT** in Courtroom 4 of the United States District Court, Northern
3 District of California, located at 450 Golden Gate Avenue, San Francisco, CA 94102, or as
4 ordered by the Court, Defendant Monsanto Company (“Monsanto”) will and hereby does move
5 the Court to preclude the introduction, argument, or reference to the Seralini Study and any
6 information therein.

7 DATED: January 30, 2019

8 Respectfully submitted,

9 /s/ Brian L. Stekloff

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Attorneys for Defendant
MONSANTO COMPANY

1 **I. INTRODUCTION**

2 Defendant Monsanto Company (“Monsanto”) respectfully submits this motion *in limine*
3 to exclude at trial any evidence, argument, or reference to the flawed, unreliable, and ultimately
4 retracted study by Gilles-Eric Seralini, “Long Term Toxicity of a Roundup Herbicide and a
5 Roundup-Tolerant Genetically Modified Maize” (the “Study”), the information and images
6 therein, and Dr. Seralini’s subsequent book and film documentary. Monsanto believes that this
7 Motion impacts both Phase 1 of the trial dealing with causation, as well as Phase 2 to the extent
8 Plaintiff suggests that the Seralini study impacts Monsanto’s potential liability or punitive
9 damages.

10 Monsanto anticipates that Plaintiffs may attempt to elicit testimony and introduce
11 evidence regarding the Study in an attempt to (1) contend that the Roundup products at issue in
12 these cases can cause cancer in humans and in fact did so in the plaintiffs at issue; and (2) argue
13 that Monsanto improperly sought the retraction of this flawed and unreliable Study in order to
14 skew the scientific debate regarding glyphosate. Putting aside for the moment the lack of merit
15 in such claims, the Study and the images therein are inadmissible because they have no probative
16 value and are unfairly prejudicial. *See* Fed. R. Evid. 403. The Study has been rejected by the
17 international scientific community (including one of plaintiffs’ expert witnesses) due to its
18 flawed methodology and unsupported conclusions. Indeed, the Study was not raised in the
19 general causation *Daubert* hearing before this Court because plaintiffs’ experts do not rely on it.
20 Furthermore, the Study contains graphic images of dead rats with overgrown tumors that
21 plaintiffs will use in an attempt to shock the conscience and inflame the passions of the jury
22 against Monsanto while offering no insight to the jury. Accordingly, the Study (and the
23 subsequent book and video related to it) must be excluded because its prejudicial effect far
24 outweighs its complete lack of any probative value. The California state court presiding over the
25 *Johnson* case granted the exclusion of the Study and the images therein for the same reasons
26 asserted here. Tr. of Pretrial Hearing at 131:8-141-5, *Johnson v. Monsanto Co.* (June 20, 2018)
27 (No. CGC-16-550128) (“[T]he [Seralini] study itself cannot come in and none of the photographs
28

1 may come in.”) (Ex. 1).

2 **II. ARGUMENT**

3 **A. The Flawed Science of the Study Has Been Universally Rejected and Should**
4 **Not Be Admitted Into Evidence**

5 The Study is unreliable and not a proper part of any scientific evaluation of whether
6 glyphosate-based herbicides can cause cancer. Plaintiffs’ expert Dr. Christopher Portier
7 acknowledges this fact:

8 Q: Okay, and you have stated before, I think yesterday, that Seralini was in your opinion
9 an unreliable study, right?

A: A study that I couldn’t use.

10 Q: Because it was unreliable?

11 A: That’s a legal term. I’m using a scientific term. The study was underpowered, it was
12 poorly presented and poorly analysed [sic].

Q: Okay. And the IARC working group rejected use of the Seralini study as well?

A: That is correct.

13 *See* Dep. of Christopher Portier, Jr., Ph.D. at 591:8-21, *Kane v. Monsanto Co.*, No. 1622-CC10172
14 (Mo. Cir. Ct. St. Louis City Apr. 17, 2018) (Ex. 2).

15 For the same reasons, the Study was rejected by the International Agency for Research on
16 Cancer (“IARC”), the very agency plaintiffs and their experts so heavily rely upon in this case. In
17 rejecting the Study, IARC deemed it “inadequate for evaluation because the number of animals
18 per group was small, the histopathological description of tumors was poor, and incidences of
19 tumours [sic] for individual animals were not provided.” *See* IARC Monograph on Glyphosate at
20 35 (Ex. 3). European regulators have also rejected the study for reasons similar to Dr. Portier and
21 IARC.¹ The European Food Safety Authority (“EFSA”) found that it was “of
22 insufficient...quality for safety assessments.” EFSA Statement on Final Review of Seralini et al.
23 at 9 (2012) (Ex. 4). EFSA’s rejection of the Study is in agreement with independent assessments
24 of the Study done by organizations in Belgium, Denmark, France, Italy, Germany, and the
25 Netherlands. *Id.* at p. 7.

26 _____
27 ¹ In a 2013 article, the European Cooperation in Science and Technology (“COST”), proclaimed that the study was
28 “disregarded by the scientific community, based on incorrect experimental designs and statistical analysis.” *See*
Martinelli, L. et al., *Science, Safety and Trust: The Case of Transgenic Food*, 54 J. Croat. Med. 91, 91 (2013) (Ex. 5).

1 The rejection of the Study as both unreliable and inconclusive by the scientific community
 2 even led to the rejection of the study by Food and Chemical Toxicology, the journal that initially
 3 published the study in 2012.² Plaintiffs' have a conspiracy theory that Monsanto was behind the
 4 journal's retraction, but they have no evidence that the rejection was not on the merits. Regardless,
 5 such evidence would be irrelevant because no one thinks that the Study deserves consideration,
 6 including plaintiffs' own scientific experts.

7 This oft-rejected Study is not probative of that for which it purports to stand (scientific
 8 causation), and would serve only to distract and inflame the jury with discredited information and
 9 misleading images. *See Hill v. Novartis Pharm. Corp.*, 944 F. Supp. 2d 943, 957-59 (E.D. Cal.
 10 2013) (excluding a scientific article because it would be "more prejudicial than probative under
 11 Federal Rule of Evidence 403" due to "the lack of any scientific foundation" and vagueness of the
 12 opinions).

13 **B. The Study Would be Significantly Prejudicial and Mislead the Jury**

14 The only purpose that could be served by the introduction of the Study would be to attempt
 15 to shock the conscience of the jury, which would be inadmissible under Rule 403. *See United*
 16 *States v. Hankey*, 203 F.3d 1160, 1172 (9th Cir. 2000) (describing unfair prejudice as the tendency
 17 to suggest the jury make a decision based on improper, often *emotional*, grounds); *Walker v.*
 18 *Werner Enter., Inc.*, No. 8:07-cv-631-T-24EAJ, 2008 WL 2816248, at *7 (M.D. Fla. May 14,
 19 2008) (granting motion to exclude photograph that was intended to appeal to the sympathy or
 20 prejudice of the jury). The Study contains graphic images of tumor-prone rats with large tumors
 21 that are designed to evoke a visceral reaction from the viewer.³ There is no scientific evidence,
 22 however, that the tumors depicted in the images bear any relation to the rats' exposure to
 23 glyphosate. The authors' true intent in displaying the photographs as part of the Study was very
 24

25 ² The study was re-published in nearly identical form with no additional peer review in another journal,
 26 Environmental Sciences Europe. As both versions of the study contain the same flawed and ultimately rejected
 scientific methodology, this motion seeks to exclude both versions and all related materials.

27 ³ For the Court's reference, a small excerpt of the graphic images contained in the Study is attached hereto. *See*
 28 Seralini, G, et al., *Long Term Toxicity of a Roundup Herbicide and a Roundup-Tolerant Genetically Modified Maize*,
 Food and Chem. Toxicology (2012) (Ex. 6).

1 transparent to the scientific community: “[g]iven that the tumors seen on the photos are not
2 specific for treated animals and can be seen in aged rats, they are not informative, their inclusion is
3 highly objectionable, and we can only guess they regretfully serve public relation, but not
4 scientific purposes.” Barale-Thomas, E. *Letter to the Editor*, Food Chem. Toxicol. 53:473 (2013)
5 (Ex. 7). The COST article, referenced in footnote one, also notes that the inclusion of these
6 graphic images that resonated in the public eye, in part, led to the response from top scientists
7 rejecting the article. See Martinelli, L. et al., *Science, Safety and Trust: The Case of Transgenic*
8 *Food*, 54 J. Croat. Med. 91, 93 (2013) (Ex. 5).

9 Monsanto will be severely prejudiced if the jury is told about debunked science in the
10 Study and allowed to view the graphic images associated with it. Jurors could easily conflate the
11 size and graphic nature of the tumors pictured in the Study with what plaintiffs allege happens to
12 human exposure to glyphosate, which would certainly prejudice Monsanto. See *Francois v.*
13 *Colonial Freight Sys., Inc.*, No. CIV.A.3:06CV434WHB-L, 2007 WL 4564866, at *7 (S.D. Miss.
14 Dec. 21, 2007) (excluding photographs of vehicle damage where jurors could conflate what the
15 photograph depicted with what actually happened); *King v. Ford Motor Co.*, 597 F.2d 436, 445
16 (5th Cir. 1979) (upholding exclusion of photographs that could confuse or mislead the jury). The
17 Study is highly prejudicial to Monsanto, entirely misleading given it is discredited, and would
18 serve solely to confuse and mislead the jury. Its prejudicial value greatly outweighs any probative
19 value, of which there is none, and for that reason it must be excluded during either phase of trial.

20 III. CONCLUSION

21 Monsanto respectfully requests that the Court preclude introduction, argument, or
22 reference to the Study, as well as Dr. Seralini’s subsequent book and film documentary, and any
23 information and images contained therein.

1 DATED: January 30, 2019

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Respectfully submitted,

/s/ Brian L. Stekloff

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of January 2019, a copy of the foregoing was served via electronic mail to opposing counsel.

/s/ Brian L. Stekloff_____