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14	SUPERIOR COURT O	F THE STATE OF CALIFORNIA
15	FOR THE COUNTY OF ALAMEDA	
16	Alva and Alberta Pilliod,	Case No.: RG17862702
17	Plaintiffs,	MEMORANDUM OF POINTS &
18	VS.	AUTHORITIES IN SUPPORT OF MOTION FOR TEMPORARY
19		INJUNCTION PRECLUDING
20	Monsanto Company,	ADVERTISEMENTS BY DEFENDANT RELATING TO SAFETY, TESTING,
21 22	Defendant.	AND STUDIES ON ITS PRODUCTS UNTIL AFTER ENTRY OF JUDGMENT IN THIS ACTION
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24		Hon. Winifred Smith Dept. 21
25		Trial Date: March 18, 2019
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INTRODUCTION

On March 25, 2019, voir dire began in the jury selection in this matter. On the same date, Defendant Monsanto took out a full-page advertisement in the Wall Street Journal ["WSJ"], heralding "40 years" of testing, regulatory approval, and safety of RoundUp. This jury must consider only the evidence; it should not be influenced by such outside proclamations. Such advertisements serve to indoctrinate the jury before it has heard the evidence, jeopardizing plaintiff's right to a fair trial.

Accordingly, plaintiff requests temporary injunctive relief prohibiting defendant Monsanto [and its recent acquirer, Bayer] from any further publication of such material until conclusion of this trial via entry of Judgment.

FACTUAL BACKGROUND

This case alleges personal injuries induced by use of Monsanto's product, RoundUp.

On March 25, 2019, voir dire began in the jury selection in this matter. On that day, the Wall Street Journal published a full-page advertisement on the 40 years of testing, regulatory approval, and safety of RoundUp. [Exhibit 1 to Esfandiary Declaration.] Monsanto admitted that it has used digital advertising to address "widespread misinformation and confusions about the safety of its products," targeted to, *inter alia*, San Francisco. [Exhibit 2 to Esfandiary Declaration, Answer to Interrogatory 12.] It also admitted to placing sponsored content in internet search results, and placing "digital advertisements in other web properties" allowing access to certain content as "sponsored links." [*Ibid*.]

LEGAL ANALYSIS

Code of Civil Procedure §526(a) permits grant of a preliminary injunction under circumstances where, *inter alia*,

- (2) When it appears by the complaint or affidavits that the commission or continuance of some act during the litigation would produce waste, or great or irreparable injury, to a party to the action.
- (3) When it appears, during the litigation, that a party to the action is doing, or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the rights of

another party to the action respecting the subject of the action and tending to render the judgment ineffectual.

(6) Where the restraint is necessary to prevent a multiplicity of judicial proceedings. (Code of Civil Procedure §526(a).)

"The purpose of a preliminary injunction `is to **preserve the status quo** until a final determination following a trial.' [Citation]." *Nutro Products, Inc. v. Cole Grain Co.* (1992) 3 Cal.App.4th 860, 865 [emphasis added.] In doing so, this court must the balance of equities of both parties, and determine which party is the more likely to be injured by the exercise of its discretion in granting or denying a preliminary injunction. *Weingand v. Atlantic Sav. & Loan Assn.* (1970) 1 Cal.3d 806, 820.

"Trial by jury is an inviolate right..." California Constitution Art. 1, §16. "The right to unbiased and unprejudiced jurors is an inseparable and inalienable part of the right to a trial by jury guarantied by the constitution. Upon this proposition all the authorities agree." *Lombardi v. California Street Cable R. Co.* (1899) 124 Cal. 311, 317. A court has a "high duty to keep out-of-court influences from directing the course of a jury's verdict. We give merited respect to the rule that 'the atmosphere essential to the preservation of a fair trial—the most fundamental of all freedoms—must be maintained at all costs.' [Citation.]" *Crosswhite v. Municipal Court of Eureka Judicial Dist., Humboldt County* (1968) 260 Cal.App.2d 428, 433–434.¹

The subject advertisement serves to precondition the jury before it hears the evidence via reference to RoundUp being "the most rigorously studied product[]," with "hundreds of studies submitted to regulators ..." The very inference that the product passed muster with regulatory authorities elevates the "safety" theme in any individual's mind; we necessarily rely upon those

¹ Crosswhite involved a contempt charge against an outside citizen for publishing his personal opinion on the subject matter of a pending trial. Because that case involved contempt, a necessary element was showing a "clear and present danger" to the administration of justice. This case, however, involves a party, not an independent opinion, which purchased an advertisement unquestionably seeking to influence minds on the safety of its product. Notably, this is not the only jury potentially affected; the Federal action was submitted to the jury on March 26, 2019, one day after publication of the advertisement. [Esfandiary Declaration, ¶3.] This motion does not involve "contempt," but rather a prohibition of further conduct threatening the integrity of this trial and plaintiffs' right to an unbiased jury.

regulatory authorities to protect us from harmful products every day. Such official approval is prejudicial.² *Sherrell v. Kelso* (1981) 116 Cal.App.3d Supp. 22, 31.

In addition, critically, the average juror does not understand that mere compliance with government regulations is a minimum standard which does not defeat a cause of action for product liability.³ This jury will not learn of this until it is so instructed.

Preconditioning a juror by a voir dire question is strictly prohibited. Code of Civil Procedure §222.5(b)(3).⁴ This ad circumvents that prohibition. It seeks to precondition these prospective jurors to a particular result [safety] and to indoctrinate the jury [intensely studied and proven by the test of time] to thereby eliminate any finding of negligence or strict liability for a defective product. Monsanto cannot be allowed to subvert this critical rule of jurisprudence by buying itself outside advertising to serve the same improper purpose.

The other evil feared, disorderly and unfair administration of justice, is more plausibly associated with restricting publications which touch upon pending litigation. The very word 'trial' connotes decisions on the evidence and arguments properly advanced in open court. Legal trials are not like elections, to be won through the use of the meeting-hall, the radio, and the newspaper.

(Bridges v. State, 314 U.S. 252, 62 S.Ct. 190, 86 L.Ed. 192, 159 A.L.R. 1346 (1941).)

² "By permitting the report itself to be introduced into evidence there is a danger that it would be considered by the jury as 'official', and thus be given more weight than that to which it fairly is entitled. ... Not only is the report an 'official' document per se, but it even looks 'official'. **And therein lies the danger**. [¶] The chance that undue weight would be given a report is not remote, considering the respect, grudging or not, that most citizens accord to so called 'official' documents. ... Even an envelope with an 'official' return address to the draft board, or to the Internal Revenue Service, is sufficiently awe-inspiring to cause one's hands to tremble a bit as the envelope is opened. No doubt, **this well known respect that we have for officialdom** fostered such paraphernalia as notary and corporate seals, ...". *Sherrell v. Kelso* (1981) 116 Cal.App.3d Supp. 22, 31 [italics omitted, emphasis added].

³ See, *e.g.*, *Ketchum v. Hyundai Motor Co.* (1996) 49 Cal.App.4th 1672, 1679; *Medtronic, Inc. v. Lohr* (1996) 116 S.Ct. 2240, noting that the "general standards" are "the lowest level of protection applicable."

⁴ Code of Civil Procedure §222.5(b)(3) provides: For purposes of this section, an "improper question" is any question that, as its dominant purpose, attempts to precondition the prospective jurors to a particular result, indoctrinate the jury, or question the prospective jurors concerning the pleadings or the applicable law.

Dated: April 2, 2019

CONCLUSION

A temporary injunction prohibiting any further advertising on the safety, efficacy, testing, studies, etc. of RoundUp must be issued immediately to prevent any further influence of potential jurors in this trial.

Respectfully submitted,

BRADY LAW GROUP

Bv

Steven J. Brady Attorney for Plaintiffs

1	PROOF OF SERVICE	
2	STATE OF CALIFORNIA, COUNTY OF LOS ANGELES.	
3	I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 10940 Wilshire Blvd., 17th Floor, Los Angeles, CA 90024. On April 2, 2019, I served the foregoing document described as MEMORARNDUM OF POINTS & AUTHORITIES IN SUPPORT OF MOTION FOR TEMPORARY INJUNCTION PRECLUDING ADVERTISEMENTS BY DEFENDANT RELATING TO SAFETY, TESTING, AND STUDIES ON ITS PRODUCTS UNTIL AFTER ENTRY OF JUDGMENT IN THIS ACTION on the interested parties and/or through their attorneys of record by depositing the original or true copy thereof as designated below, at Los Angeles, California, addressed to the following: (X) E-MAIL OR ELECTRONIC TRANSMISSION: In accordance with the Court's Order (CMO No. 2) governing Case No. JCCP 4953 authorizing all documents to be served electronically upon interested parties via Case Anywhere and its litigation system.	
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11	(X) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.	
13	Executed on April 2, 2019 at Los Angeles, California.	
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15	<u>/s/</u> Valeriya Adlivankina	
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