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16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
17 **FOR THE COUNTY OF ALAMEDA**

18 Alva and Alberta Pilliod,

19 Plaintiffs,

20 vs.

21 Monsanto Company,

22 Defendant.

Case No.: RG17862702

**MEMORANDUM 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**

Hon. Winifred Smith
Dept. 21
Trial Date: March 18, 2019

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

3 ...
4 (6) Where the restraint is necessary to prevent a multiplicity of judicial proceedings.
5 (Code of Civil Procedure §526(a).)

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

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

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

24 ¹ *Crosswhite* involved a contempt charge against an outside citizen for publishing his personal opinion on the
25 subject matter of a pending trial. Because that case involved contempt, a necessary element was showing a
26 “clear and present danger” to the administration of justice. This case, however, involves a party, not an
27 independent opinion, which purchased an advertisement unquestionably seeking to influence minds on the
28 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.

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

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

6 Preconditioning a juror by a voir dire question is strictly prohibited. Code of Civil Procedure
7 §222.5(b)(3).⁴ This ad circumvents that prohibition. It seeks to precondition these prospective
8 jurors to a particular result [safety] and to indoctrinate the jury [intensely studied and proven by the
9 test of time] to thereby eliminate any finding of negligence or strict liability for a defective product.
10 Monsanto cannot be allowed to subvert this critical rule of jurisprudence by buying itself outside
11 advertising to serve the same improper purpose.

12
13 The other evil feared, disorderly and unfair administration of justice, is more plausibly
14 associated with restricting publications which touch upon pending litigation. The very word
15 'trial' connotes decisions on the evidence and arguments properly advanced in open court.
16 Legal trials are not like elections, to be won through the use of the meeting-hall, the radio,
17 and the newspaper.
18 (*Bridges v. State*, 314 U.S. 252, 62 S.Ct. 190, 86 L.Ed. 192, 159 A.L.R. 1346 (1941).)

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

28 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.

1 **CONCLUSION**

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

5 Respectfully submitted,

6 Dated: April 2, 2019

BRADY LAW GROUP

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By _____

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10 Attorney for Plaintiffs

