

1 Kelly A. Evans (*pro hac vice*)
(kevans@efstriallaw.com)
2 Jay J. Schuttert (*pro hac vice*)
(jschuttert@efstriallaw.com)
3 EVANS FEARS & SCHUTTERT LLP
2300 West Sahara Avenue, Suite 900
4 Las Vegas, NV 89102
Tel: (702) 805-0290
5 Fax: (702) 805-0291

6 Tarek Ismail (*pro hac vice*)
(tismail@goldmanismail.com)
7 Joe Tomaselli (*pro hac vice*)
(jtomaselli@goldmanismail.com)
8 GOLDMAN ISMAIL TOMASELLI BRENNAN & BAUM LLP
564 West Randolph Street, Suite 400
9 Chicago, IL 60661
Tel: (312) 881-5970
10 Fax: (312) 881-5191

11 Attorneys for Defendant MONSANTO COMPANY
*Additional counsel listed on signature block

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF ALAMEDA**
14

15 PILLIOD, et al.

16 Plaintiffs,

17 vs.

18 MONSANTO COMPANY,

19 Defendant.
20
21
22
23
24
25
26
27
28

Case No. RG17862702

ASSIGNED FOR ALL PURPOSES TO
JUDGE WINIFRED SMITH
DEPARTMENT 21

MONSANTO COMPANY'S MOTION TO
EXCLUDE IMPROPER CLOSING
ARGUMENT

Trial Date: March 18, 2019

1 **I. INTRODUCTION**

2 Throughout this trial, including in opening statement, Monsanto has been forced to move
3 for mistrial or otherwise object to improper argument and actions by Plaintiffs' counsel. Even if
4 stricken, improper comments or conduct by Plaintiffs' counsel can unduly influence and prejudice
5 the jury. It is nearly impossible to "unring the bell," and improper comments during closing
6 argument have even more influence because they occur just before the jury deliberates. In an
7 effort to minimize the necessity of objections and set forth clear parameters for inappropriate
8 topics, Monsanto files this motion in advance of closing argument.

9 **II. ARGUMENT**

10 Based on Plaintiffs' counsel's past conduct in this case and improper statements made by
11 this same counsel during closing argument in *Johnson*, Monsanto anticipates that Plaintiffs'
12 counsel may engage in similar conduct during closing argument here. Plaintiffs' counsel has
13 already turned this trial into a circus on multiple occasions; for example, counsel has:

- 14 • twice put on gloves in an elaborate show before handling a Roundup bottle that
15 contained only water;
- 16 • purported to spray the jury with the Roundup bottle on one occasion;
- 17 • been admonished for his treatment of Monsanto's expert Dr. Bello; and
- 18 • paraded around celebrities and anti-Monsanto advocates Neil Young and Daryl
19 Hannah during Monsanto's case, including engaging in photo-ops right outside the
20 jury room in a clearly improper attempt to influence the jury.

21 In addition, Plaintiffs' counsel has repeatedly violated pre-trial rulings and court
22 admonishments. For example, during jury selection Plaintiffs' counsel specifically brought up the
23 Bayer acquisition of Monsanto in clear violation of the Court's pre-trial order. *See* Tr. 951:4-9.
24 And during Dr. Benbrook's testimony, counsel attempted to elicit testimony implying Monsanto
25 had a role in the IBT scandal, also in clear violation of the Court's in limine ruling. *See* Tr.
26 3634:4-3635:22

27 Accordingly, Monsanto respectfully asks the Court to preclude improper argument and
28

1 behavior during closing argument, including but not limited to the following.

2 **1. Using Roundup Bottle As Demonstrative/Spraying Water Near Jury.**

3 Plaintiffs' counsel has now twice brought out a Roundup bottle filled with water and
4 unnecessarily sprayed it near the jury. This dramatic demonstration served no purpose other than
5 to try to scare the jury. Indeed, the Court had to instruct the jury that there was no reason to be
6 concerned because the bottle only contained water. Prior to trial, Monsanto filed a motion in
7 limine to exclude any use of "Reptile Theory" type arguments by Plaintiffs' counsel, and this is
8 precisely why. *See* Monsanto's MIL No. 27. It is improper to use physical objects in closing that
9 are not received in evidence, *Weisbart v. Flohr*, 260 Cal. App. 2d 281, 291 (1968), and to "act
10 out" demonstrations that do not fairly reflect the evidence, *id.* at 292-93 (counsel's use of props
11 during closing argument was reversible error). Plaintiffs' counsel should not have been allowed to
12 engage in this improper behavior the first two times, and they should not be allowed to do it again
13 in closing argument.

14 **2. Arguments About Monsanto's Size or Corporate Status.**

15 It is well established that "[a]ppeals to the sympathy of the jury based on the size or
16 corporate status of a defendant are improper." *Brokopp v. Ford Motor Co.*, 71 Cal. App. 3d 841,
17 860 (1977) (holding the following closing argument impermissible: "'Save a buck, and that is the
18 only reason I can think of why they would handle things the way they do. These large
19 corporations, in effect, crippled [plaintiff]; they took his manhood away from him; they took his
20 privacy from him; they took his body away from him; and they left him in pain. . . .')"; *accord*
21 *Weaver v. Shell Oil Co.*, 129 Cal. App. 232, 234 (1933) (affirming grant of new trial based upon
22 statement by plaintiff's counsel during closing argument that "[s]omeone must take care of this
23 widow and those four children, and the Shell Company is a great big, rich corporation, has
24 millions, and it can afford to take care of them.').

25 In *Johnson*, Plaintiffs' counsel, Mr. Wisner, was reprimanded by Judge Bolanos for
26 making outrageous comments during closing argument that were not based on the evidence and
27 were clearly designed to inflame the jury. Specifically, Mr. Wisner made up a fantastical story
28

1 about how Monsanto's corporate representative was sitting in the courtroom with a conference
2 room in St. Louis, Missouri "on speed dial." Declaration of Sandra Edwards ("Edwards Decl.")
3 Exh. A. He continued, "in that board room, there's a bunch of executives waiting for the phone to
4 ring. Behind them is champagne on ice." *Id.* Even after the Court sustained Monsanto's
5 objection to that line of argument, Mr. Wisner continued, undeterred:

7 The number you have to come out with is the number that tells those people -- they
8 hear it, and they have to put the phone down, look at each other, and say, "We have
9 to change what we're doing." Because if the number comes out and it's not
10 significant enough, champagne corks will pop. "Attaboys," are everywhere.

11 *Id.* Although the Court sustained Monsanto's objections, the damage had been done.
12 Accordingly, Plaintiffs' counsel must be unambiguously precluded from using these flagrantly
13 improper types of arguments in this case.

13 **3. Arguments About The Alleged Historic Context of Case Or Changing the World.**

14 "An attorney's appeal in closing argument to the jurors' self-interest is improper and thus
15 is misconduct because such arguments tend to undermine the jury's impartiality." *Cassim v.*
16 *Allstate Ins. Co.*, 33 Cal. 4th 780, 796 (2004). Moreover, arguments that ask "each juror to
17 become a personal partisan advocate" are improper because they "tend[] to denigrate the jurors'
18 oath to well and truly try the issue and render a true verdict according to the evidence." *Loth v.*
19 *Truck-A-Way Corp.*, 60 Cal. App. 4th 757, 765 (1998).

20 In *Johnson*, Mr. Wisner began his closing argument by improperly suggesting to the jury
21 that a verdict in his client's favor would "actually change[] the world":

22 And if you return a verdict today that does that, that actually
23 changes the world. I mean, it's crazy to say that; right? I told you
24 all at the beginning of this trial that you were part of history, and
25 you really are, and so let me just say thank you.

26 Edwards Decl. Exh. A.

27 Mr. Wisner previewed this theme in opening statement in this case as well, both starting
28 and ending his opening statement by telling the jury that this is a "historic" case:

- "Hi. My name is Brent Wisner. I'm the attorney that represents Alberta and Alva Pilliod

1 in this lawsuit in their historic fight against Monsanto.” Tr. 1309:14-16.

- 2 • “The fact that you’re here today, part of this historic case, means everything to them.” Tr.
3 1429:12-13.

4 Such argument was clearly improper and Monsanto already had to move for mistrial once
5 on this basis. *See* Tr. 1430:3-6. Plaintiffs’ characterization of the case as “historic” should not be
6 allowed again. Similarly, counsel should not be allowed to suggest that the verdict will change the
7 world or have any effect outside of this case, such as influencing the EPA to change its
8 determinations regarding glyphosate safety and/or registration. *See* Tr. 1404:10-16 (“But the most
9 recent iteration of [EPA’s] opinion is that it doesn’t cause cancer. That’s where the EPA, we
10 think, stands right now. Although they could change after – well, after this trial. Who knows?”).

11 **4. Referencing Facts Not In Evidence.**

12 It is elementary that argument made in closing that is unsupported by evidence is improper.
13 *Karlsson v. Ford Motor Co.*, 140 Cal. App. 4th 1202, 1227 (2006) (“We agree that any references
14 to Ford having destroyed or torn up documents was not supported by the evidence and constituted
15 improper argument.”). “While a counsel in summing up may indulge in all fair arguments in favor
16 of his client’s case, he may not assume facts not in evidence or invite the jury to speculate as to
17 unsupported inferences.” *Malkasian v. Irwin*, 61 Cal. 2d 738, 746 (1964) (affirming grant of new
18 trial where counsel hypothesized about a motor vehicle accident in a manner that was “contrary to
19 physical facts” and where “[t]here was no testimony that even remotely suggested” his
20 hypothetical occurred). Additionally, it is wholly improper to argue the importance of a court-
21 excluded document and ask the jury to draw negative inferences because it wasn’t admitted into
22 evidence. *Hansen v. Warco Steel Corp.*, 237 Cal. App. 2d 870, 877 (1965) (“Counsel was guilty
23 of *serious misconduct* in arguing the importance of the excluded document and in asking the jury
24 to draw an inference because plaintiff’s attorney had made an objection which the court had
25 sustained.” (emphasis added)).

26 Plaintiffs’ counsel must be precluded from commenting on matters not in evidence and
27 from encouraging the jury to speculate as to why any document is not in evidence. For example,
28

1 in *Johnson*, counsel specifically told the jury that Monsanto did not call anybody to testify on
2 certain topics because they could not find anyone to do so. Edwards Decl. Exh. A. He also stated
3 his “theory”—which was wrong as a matter of law—that the reason certain EPA documents were
4 not admitted into evidence was because the EPA did not want to admit that they had made a
5 mistake about glyphosate. *Id.*

6 This type of misconduct has continued in this case. During opening statements, for
7 example, Mr. Wisner improperly stated that Dr. Zhang was a member of the EPA Scientific
8 Advisory Panel and that she and other SAP scientists were “so outraged by what the EPA was
9 doing, they went and did their own study and published it last month.” Tr. 1405:24-1406:8. There
10 is no evidence whatsoever to support this statement; it was pure uncorroborated attorney
11 testimony, and counsel should not be allowed to repeat it during closing argument. He has also
12 suggested on multiple occasions that recent findings of the EPA Office of Pesticide Programs are
13 preliminary and that EPA may change its determination, but we now know that the most recent
14 EPA report has been released and its findings are consistent with the earlier reports. *See* Tr.
15 1404:10-16; 1408:12-16. Plaintiffs’ counsel cannot make any statements that affirmatively
16 suggest that the most recent report does not exist.

17 **5. Counsel’s Personal Opinion/Personal Attacks on Monsanto Witnesses**

18 “Personal attacks on the character or motives of the adverse party, his counsel, or his
19 witnesses are misconduct.” *Stone v. Foster*, 106 Cal. App. 3d 334, 355 (1980) (comment that “I
20 wouldn’t believe one word he said . . .” was improper). “The rule [forbidding an attorney to
21 pander to the prejudice, passion or sympathy of the jury] also manifests itself by prohibiting
22 irrelevant ad hominem attacks.” *Martinez v. Dep’t of Transp.*, 238 Cal. App. 4th 559, 566 (2015);
23 *accord Las Palmas Assoc. v. Las Palmas Center Assoc.*, 235 Cal. App. 3d 1220, 1246 (1991)
24 (“Personal attacks on opposing parties and their attorneys, whether outright or by insinuation,
25 constitute misconduct. Such behavior only serves to inflame the passion and prejudice of the jury,
26 distracting them from fulfilling their solemn oath to render a verdict based solely on the evidence
27 admitted at trial.”); *People v. Johnson*, 121 Cal. App. 3d 94, 103 (1981) (counsel’s comment that
28

1 he believed the witness to be telling an “outright lie” was improper).

2 Again, Plaintiffs’ counsel blatantly violated these rules in *Johnson*. There, he described
3 one of Monsanto’s witnesses testimony as “offensive,” “completely bonkers,” “disgusting,” and
4 “reprehensible,” and argued that the witness “has no dignity.” Edwards Decl. Exh. A. After
5 Plaintiffs’ counsel blurted out these inappropriate attacks, the bell could not be unrung in that case.
6 Accordingly, the Court here should make explicit that these types of arguments will not be
7 tolerated here.

8 **6. Coordinated Efforts With Celebrities to Improperly Influence the Jury.**

9 Parties have the right to an impartial jury. “An impartial jury is one in which no member
10 has been improperly influenced . . . and every member is capable and willing to decide the case
11 solely on the evidence before it.” *In re Hamilton*, 20 Cal. 4th 273, 294 (1999) (internal quotation
12 marks and citations omitted).

13 On May 1, celebrities and anti-Monsanto advocates Neil Young and Daryl Hannah sat with
14 Plaintiffs’ counsel to observe trial. Declaration of Sandra Edwards (“Edwards Decl.”) at ¶ 2;
15 Declaration of Eugene Brown (“Brown Decl.”) at ¶ 2. Monsanto does not take issue with their
16 presence in the courtroom as observers, as is their right. However, during court recesses and after
17 court adjourned for the day, Plaintiffs’ counsel, Michael Baum, deliberately chose to make a scene
18 by taking photographs with Mr. Young and Ms. Hannah right in front of the jury assembly room,
19 *as jurors were exiting the room*. Brown Decl. at ¶ 3. Mr. Baum’s photo-op can only be described
20 as a calculated effort to draw attention and influence jurors. It worked: a juror was heard
21 commenting that he wondered if he could get a photo with Mr. Young and Ms. Hannah. Edwards
22 Decl. at ¶ 3. When Monsanto’s counsel approached Plaintiffs’ counsel, Mr. Miller, and stated that
23 this behavior was inappropriate, Mr. Miller’s only response was to say that his co-counsel Mr.
24 Baum’s conduct was outside of his control. Brown Decl. at ¶ 4.

25 Not only did Mr. Young and Ms. Hannah sit with Plaintiffs’ counsel during trial and take
26 photographs with them in front of jurors, they had lunch with them in public (which was
27 documented on Ms. Hannah’s Twitter) and were mingling with them in front of the courthouse
28

1 after trial for all—including the jury—to see. *See* Edwards Decl. at ¶¶ 2-4; Brown Decl. at ¶¶ 2-3.
2 It was thus apparent to any onlooker that they were associated with Plaintiffs’ counsel.

3 This spectacle can be categorized as nothing other than an intentional attempt by Plaintiffs’
4 counsel to use Mr. Young and Ms. Hannah’s celebrity status to improperly influence the jurors
5 and pressure them to find for Plaintiffs. Plaintiffs’ counsel also undoubtedly knew that seeing
6 these celebrities associating with Plaintiffs’ counsel would likely prompt jurors to research their
7 involvement in the trial. If any members of the jury were to perform a simple Google search for
8 Mr. Young or Ms. Hannah, they would quickly learn of their strong anti-Monsanto sentiment.
9 Indeed, in 2015, Mr. Young produced an album called “the Monsanto Years.” And after the
10 *Johnson* trial, Mr. Young and Ms. Hannah co-authored an opinion piece in the San Francisco
11 Chronicle entitled “Let \$289 million jury award stand in Monsanto case.” *See*
12 [https://www.sfchronicle.com/opinion/openforum/article/Let-289-million-jury-award-stand-in-](https://www.sfchronicle.com/opinion/openforum/article/Let-289-million-jury-award-stand-in-Monsanto-case-13303640.php)
13 [Monsanto-case-13303640.php](https://www.sfchronicle.com/opinion/openforum/article/Let-289-million-jury-award-stand-in-Monsanto-case-13303640.php). In addition, Ms. Hannah’s Twitter account contains numerous
14 tweets about the Roundup trials, including one where she specifically wrote about her experience
15 in court *during this trial*: “Well that was a trip! – of course I know these skeezy corporate cronies
16 manipulate & lie – but to see it right in front of your eyes is soooo depressing & creepy.”
17 Edwards Decl. at ¶ 4.

18 Plaintiffs’ counsel’s calculated effort to coordinate with celebrities to improperly influence
19 the jury is wholly inappropriate, and the Court should admonish them not to do it again.

20 **III. CONCLUSION**

21 These examples of Plaintiffs’ counsel’s past behavior demonstrate why Monsanto has a
22 real concern that counsel’s closing argument in this case will be replete with misconduct.
23 Monsanto thus seeks an order prohibiting the types of improper arguments mentioned herein.
24
25
26
27
28

1 /s/ Kirby Griffis
2 Kirby Griffis (*pro hac vice*)
3 (kgriffis@hollingsworthllp.com)
4 Martin C. Calhoun (*pro hac vice*)
5 (mcalhoun@hollingsworthllp.com)
6 HOLLINGSWORTH LLP
7 1350 I Street, N.W.
8 Washington, DC 20005
9 Tel: (202) 898-5800
10 Fax: (202) 682-1639

11 Kelly A. Evans (*pro hac vice*)
12 (kevans@efstriallaw.com)
13 Jay J. Schuttert (*pro hac vice*)
14 (jschuttert@efstriallaw.com)
15 EVANS FEARS & SCHUTTERT LLP
16 2300 West Sahara Avenue, Suite 900
17 Las Vegas, NV 89102
18 Tel: (702) 805-0290
19 Fax: (702) 805-0291

20 Tarek Ismail (*pro hac vice*)
21 (tismail@goldmanismail.com)
22 Joe Tomaselli (*pro hac vice*)
23 (jtomaselli@goldmanismail.com)
24 GOLDMAN ISMAIL TOMASELLI
25 BRENNAN & BAUM LLP
26 564 West Randolph Street, Suite 400
27 Chicago, IL 60661
28 Tel: (312) 881-5970
 Fax: (312) 881-5191

 Eugene Brown
 (ebrown@hinshawlaw.com)
 Amee Mikacich
 (amikacich@hinshawlaw.com)
 HINSHAW & CULBERTSON LLP
 One California Street, 18th Floor
 San Francisco, CA 94111
 Tel: (415) 362-6000
 Fax: (415) 834-9070

 Attorneys for Defendant
 MONSANTO COMPANY

Kelly A. Evans (*pro hac vice*)
(kevans@efstrialaw.com)
Jay J. Schuttert (*pro hac vice*)
(jschuttert@efstrialaw.com)
EVANS FEARS & SCHUTTERT LLP
2300 West Sahara Avenue, Suite 900
Las Vegas, NV 89102
Tel: (702) 805-0290
Fax: (702) 805-0291

Tarek Ismail (*pro hac vice*)
(tismail@goldmanismail.com)
Joe Tomaselli (*pro hac vice*)
(jtomaselli@goldmanismail.com)
GOLDMAN ISMAIL TOMASELLI
BRENNAN & BAUM LLP
564 West Randolph Street, Suite 400
Chicago, IL 60661
Tel: (312) 881-5970
Fax: (312) 881-5191

Attorneys for Defendant MONSANTO
COMPANY

*Additional counsel listed on signature block

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

PILLIOD, et al.	) Case No. RG17862702
)
Plaintiffs,	) <u>DECLARATION OF EUGENE BROWN</u>
	) <u>JR. IN SUPPORT OF DEFENDANT</u>
vs.	) <u>MONSANTO COMPANY'S MOTION</u>
	) <u>TO EXCLUDE IMPROPER CLOSING</u>
MONSANTO COMPANY,	) <u>ARGUMENT</u>
)
Defendant.)
)
)
)

1 I, Eugene Brown, hereby declare as follows:

2 1. I am an attorney at law, duly licensed to practice before all of the courts of the
3 State of California, and a partner at the law firm of Hinshaw and Culbertson, a counsel of
4 record for defendant Monsanto Company ("Monsanto"). I make this declaration in support
5 of Monsanto's Motion To Exclude Improper Closing Argument.

6 2. On Wednesday, May 1, 2019, I observed Neil Young and Daryl Hannah sitting
7 with Plaintiffs' counsel on Plaintiffs' side of the courtroom the entire day. I also saw Mr.
8 Young and Ms. Hannah having lunch with Plaintiffs' counsel in public during the lunch
9 break.

10 3. When court recessed for the day, Mr. Young and Ms. Hannah posed for
11 photographs taken by Mr. Baum, Plaintiffs' counsel, immediately adjacent to the door
12 leading to the Department 21 jury assembly room, as jurors were exiting the room. I am
13 informed and believe that a photograph taken directly outside of Department 21 and featuring
14 Plaintiffs' counsel Michael Baum with Mr. Young, Ms. Hannah, and Robert F. Kennedy Jr.
15 has been posted on Robert F. Kennedy Jr.'s Twitter. See
16 [https://twitter.com/RobertKennedyJr?ref_src=twsrc%5Egoogle%7Ctwcamp%5Eserp%7Ctw](https://twitter.com/RobertKennedyJr?ref_src=twsrc%5Egoogle%7Ctwcamp%5Eserp%7Ctwgr%5Eauthor)
17 [gr%5Eauthor](https://twitter.com/RobertKennedyJr?ref_src=twsrc%5Egoogle%7Ctwcamp%5Eserp%7Ctwgr%5Eauthor).

18 4. I approached Plaintiffs' counsel, Mr. Miller, and told him I believed this behavior
19 was inappropriate. His only response to me was that Mr. Baum's conduct was out of his
20 control.

21 I hereby declare under penalty of perjury under the laws of the United States and State of
22 California that the facts set forth herein are true and correct.

23 Executed on May 6, 2019, in San Francisco, California.

24
25 /s/ Eugene Brown
26 Eugene Brown

Kelly A. Evans (*pro hac vice*)
(kevans@efstrialaw.com)
Jay J. Schuttert (*pro hac vice*)
(jschuttert@efstrialaw.com)
EVANS FEARS & SCHUTTERT LLP
2300 West Sahara Avenue, Suite 900
Las Vegas, NV 89102
Tel: (702) 805-0290
Fax: (702) 805-0291

Tarek Ismail (*pro hac vice*)
(tismail@goldmanismail.com)
Joe Tomaselli (*pro hac vice*)
(jtomaselli@goldmanismail.com)
GOLDMAN ISMAIL TOMASELLI
BRENNAN & BAUM LLP
564 West Randolph Street, Suite 400
Chicago, IL 60661
Tel: (312) 881-5970
Fax: (312) 881-5191

Attorneys for Defendant MONSANTO
COMPANY

*Additional counsel listed on signature block

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

PILLIOD, et al.	) Case No. RG17862702
)
Plaintiffs,	) <u>DECLARATION OF SANDRA</u>
	) <u>EDWARDS IN SUPPORT OF</u>
vs.	) <u>DEFENDANT MONSANTO COMPANY'S</u>
	) <u>MOTION TO EXCLUDE IMPROPER</u>
MONSANTO COMPANY,	) <u>CLOSING ARGUMENT</u>
)
Defendant.)
)
)
)

1 I, Sandra Edwards, hereby declare as follows:

2 1. I am a partner at the law firm of Farella Braun & Martel LLP, counsel for
3 defendant Monsanto Company ("Monsanto"). I make this declaration in support of
4 Monsanto's Motion to Exclude Improper Closing Argument. I make this declaration based
5 on my personal knowledge and, if called as a witness, I would and could testify competently
6 to these matters.

7 2. I was counsel of record in the case of *Johnson v. Monsanto*, San Francisco
8 Superior Court Case No. CGC-16-550128. Attached hereto as Exhibit A is a true and correct
9 copy of excerpts from the trial transcript in that case.

10 3. On Wednesday, May 1, 2019, I was present at the trial in this case. I observed
11 Neil Young and Daryl Hannah sitting with Plaintiffs' counsel on Plaintiffs' side of the
12 courtroom the entire day. I also saw Mr. Young and Ms. Hannah leave with Plaintiffs'
13 counsel during the lunch break.

14 3. At the end of trial, one of the jurors in this case came and stood in close proximity
15 to me with his phone in his hand. While looking at Mr. Young and Ms. Hannah, I overheard
16 him say something to the effect of "I wonder if I could get a picture with them."

17 4. After trial concluded for the day, Mr. Young and Ms. Hannah were mingling with
18 Plaintiffs' counsel directly in front of the courthouse exit where many members of the public,
19 including members of the jury, could see them together. I saw one juror walk by and look at
20 them as he walked to his bus stop.

21 6. Pictures of Mr. Young and Ms. Hannah with Plaintiffs' counsel can be found on
22 Ms. Hannah's Twitter, found at
23 [https://twitter.com/dhlovelife?ref_src=twsrc%5Egoogle%7Ctwcamp%5Eserp%7Ctwgr%5Ea](https://twitter.com/dhlovelife?ref_src=twsrc%5Egoogle%7Ctwcamp%5Eserp%7Ctwgr%5Eauthor)
24 [uthor](https://twitter.com/dhlovelife?ref_src=twsrc%5Egoogle%7Ctwcamp%5Eserp%7Ctwgr%5Eauthor).

1 I hereby declare under penalty of perjury under the laws of the United States and State of
2 California that the facts set forth herein are true and correct.

3 Executed on May 6, 2019, in San Francisco, California.

4
5 /s/ Sandra Edwards
6 Sandra Edwards
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit A

1 And if you return a verdict today that does
2 that, that actually changes the world. I mean, it's
3 crazy to say that; right? I told you all at the
4 beginning of this trial that you were part of history,
10:22:50 5 and you really are, and so let me just say thank you.

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
10:23:06 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
10:23:25 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
10:23:41 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
10:24:00 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 Why didn't Monsanto call somebody who could
21 testify to all three topics? They didn't present anybody
22 about mechanism, by the way, at all. Why didn't they
23 call somebody? Because they couldn't find anybody.
24 You've seen hundreds and hundreds of scientists sign
10:30:40 25 their names on Dr. Portier's letter, sign their names on

1 And so this idea that Dr. Nabhan, in his head,
2 figured out that mycosis fungoides causes cancer -- or
3 excuse me -- that Roundup causes mycosis fungoides, that
4 he's the first person in the world, is a product of this
14:29:42 5 litigation and nothing else.

6 And you're right to ask: If Dr. Nabhan really
7 did this, if he really did this, why isn't he telling the
8 scientific community? And why isn't he being applauded
9 for it?

14:30:00 10 Now, there's one other thing about Dr. Nabhan
11 and the treating physician I want to talk to you about.
12 And that's Dr. Kim, the doctor at Stanford.
13 Dr. Nabhan reviewed her deposition in this case.

14 Now, Dr. Kim is one of the doctors who is a true
14:30:18 15 expert in mycosis fungoides. And here's what we asked
16 Dr. Nabhan on cross-examination, as we went through this:
17 "And the other doctor he saw at Stanford was Dr. Kim, a
18 dermatologist. She's an expert in mycosis fungoides?

19 "Correct.

14:30:32 20 "She's a published author on mycosis fungoides?
21 "Absolutely." Dr. Nabhan is not.

22 "And she is known not just in California. She's
23 known nationally for her work on mycosis fungoides?

24 "She is.

14:30:45 25 "Internationally?

1 "Yes, she is.

2 "So this is a true expert?

3 "She is an expert, yes.

4 "And so is Dr. Hoppe, the other doctor at
5 Stanford."

6 And we showed Dr. Nabhan what Dr. Kim said in
7 her deposition in this case about mycosis fungoides. So
8 this is a true expert on mycosis fungoides.

9 "If we knew there was a cause, I would know.

14:31:10 10 But right now, the scientific fact -- not my opinion, the
11 scientific fact is that so far there is no established
12 cause for this particular rare disease. Now, anything
13 else would be, like, guess, implication. But there is no
14 link to cause and effect. And a lot them are questioned
14:31:30 15 routinely. And a lot of causes. But scientifically it
16 has not been established."

17 This is a woman who works with mycosis fungoides
18 every day, is respected, knows Mr. Johnson, knows his
19 condition, knows his disease. And she's telling you that
14:31:55 20 nobody knows a cause.

21 Who's more credible? The retained expert or the
22 expert in the field?

23 Now, here's one more thing that Dr. Nabhan said.
24 And this was kind of at the end of his time on the stand.
14:32:14 25 He had answered a question at his deposition and then

1 gave a different answer in front of you.

2 But that is very important in light of that jury
3 instruction I told you about on conduct and substantial
4 factor.

14:32:26

5 So I said to him, because he gave a different
6 answer when he was on the witness stand, I said, "Did you
7 give this answer to the very same question I just asked
8 you under oath at the deposition? Quote, 'Mr. Johnson
9 could well be someone who would have developed mycosis

14:32:41

10 fungoides when he did, whether he was exposed to
11 glyphosate or not for all you know; correct?' And your
12 answer under oath was, 'He could have. He could have.'"

13 So Dr. Nabhan, in the end, finally said that
14 Mr. Johnson's cancer could well have developed whether
15 he's exposed to glyphosate or not.

14:33:03

16 What does that jury instruction tell you?
17 Conduct is not a substantial factor in causing harm if
18 the same harm would have occurred without that conduct.

19 Dr. Nabhan is admitting that Monsanto's conduct
20 in selling Ranger Pro is not a substantial factor. Is
21 not a substantial factor. That's what Dr. Nabhan
22 ultimately admitted. Conduct is not a substantial factor
23 in causing harm if the same harm would have occurred
24 without that conduct.

14:33:41

25 Now, there's been a lot of talk in this case

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? I mean, there's
21 offensive, and then there's completely bonkers.

22 Mr. Johnson is not in complete remission. He's
23 starting chemo in a few weeks. And everyone agrees --
24 and I'm sorry, but everyone agrees that if he makes it to
11:48:13 25 2020 -- he won't make it to 2020 absent a miracle.

1 That's the facts.

2 That Monsanto would call someone up here and
3 speculate about bone marrow transplants that no one has
4 ever offered to him, that he might live until he's 30,
11:48:30 5 when his most recent scan showed the exact opposite, is
6 outrageous. It is disgusting. It is reprehensible.
7 That man has no dignity. I'm thankfully I wasn't here
8 for that direct. I was writing a brief in the back room
9 for most of it. When I was reading the transcripts, I
11:48:46 10 turned red.

11 I go to sleep every night thinking about this
12 man and his family, because I know the consequences of
13 what's happening to him. It haunts me, and he cavalierly
14 says complete remission.

11:49:05 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
11:49:21 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
11:49:37 25 evidence.

1 future wrongful conduct?"

2 Right now, Ms. Buck -- she's sitting over there
3 in that corner. On her cell phone is a speed dial to a
4 conference room in St. Louis, Missouri. And in that
12:01:18 5 conference room, in that board room, there's a bunch of
6 executives waiting for the phone to ring. Behind them is
7 a bunch of champagne on ice.

8 MR. LOMBARDI: Your Honor, I object. This is
9 supposed to be about the evidence. This is complete
12:01:30 10 fantasy.

11 THE COURT: Sustained.

12 MR. WISNER: The number that you have to come
13 out with is the number that tells those people -- they
14 hear it, and they have to put the phone down, look at
12:01:43 15 each other, and say, "We have to change what we're
16 doing."

17 Because if the number comes out and it's not
18 significant enough, champagne corks will pop.
19 "Attaboys," are everywhere.

12:01:58 20 MR. LOMBARDI: Your Honor, it's the same
21 objection.

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.