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17 MONSANTO COMPANY

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

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

Case No. CGC-16-550128
**DEFENDANT MONSANTO COMPANY'S
MOTION *IN LIMINE* NO. 29 TO
EXCLUDE DAMAGES AND EVIDENCE
REGARDING LOSS OF CONSORTIUM**
Trial Date: June 18, 2018
Time: 9:30 a.m.
Department: TBD

ELECTRONICALLY
FILED
*Superior Court of California,
County of San Francisco*
05/24/2018
Clerk of the Court
BY: ERNALYN BURA
Deputy Clerk

1 **I. INTRODUCTION**

2 Defendant Monsanto Company (“Monsanto”) respectfully requests that this Court exclude
3 Plaintiff Dewayne Johnson’s (“Plaintiff”) impermissible claim for loss of consortium damages,
4 and the introduction at trial of any evidence or argument concerning Plaintiff’s or Plaintiff’s wife’s
5 loss of consortium. Although Plaintiff has asserted he intends to seek damages related to an
6 alleged loss of consortium, he is not the proper party to do so. Nor is Plaintiff’s spouse a party to
7 this lawsuit. Evidence, including testimony from either Plaintiff or his spouse regarding the
8 deprivation of the benefits of their marriage—such as the loss of enjoyment of sexual relations, the
9 ability to have children, the loss of companionship, love, comfort, care, assistance, protection, or
10 moral support—should therefore be excluded because it is irrelevant to the litigation, would
11 constitute cumulative evidence, cause an undue consumption of time, confuse the issues, and
12 mislead the jury.

13 **II. ARGUMENT**

14 **A. Plaintiff Cannot Claim Damages for Loss of Consortium**

15 A claim “for loss of ‘consortium,’ i.e., for loss of conjugal fellowship and sexual relations”
16 can be asserted by “a married person whose spouse has been injured by the negligence of a third
17 party.” *Rodriguez v. Bethlehem Steel Corp.*, 12 Cal. 3d 382, 385 (1974). Loss of consortium
18 includes the loss of companionship, emotional and moral support, love, assistance, felicity, sexual
19 relations, conjugal society, comfort, affection, and the ability to have children. *Id.* at 404-06, 408
20 (declaring “that in California each spouse has a cause of action for loss of consortium, as defined
21 herein, caused by a negligent or intentional injury to the other spouse by a third party.”).

22 On February 22, 2018, Plaintiff served a Statement of Damages seeking general damages
23 in the amount of \$10 million for loss of consortium, which are distinct from his claims for pain,
24 suffering, and inconvenience damages, and emotional distress damages. Plaintiff cannot seek
25 damages for a loss of consortium: the cause of action may only originate with Plaintiff’s wife.
26 *Rodriguez*, 12 Cal. 3d at 385. Because Plaintiff’s wife is not a party to this litigation, and Plaintiff
27 is not the proper party to seek such damages, any damages for and evidence of loss of consortium
28 should be excluded at trial.

1 **B. Any Evidence Regarding A Loss of Consortium Should be Excluded At Trial**

2 Monsanto anticipates Plaintiff will introduce evidence from Plaintiff or his wife to
3 demonstrate a loss of conjugal fellowship and sexual relations. This evidence may include private
4 and intimate testimony from Plaintiff or his wife concerning their sexual relations and spousal
5 companionship prior to and following Plaintiff’s diagnosis of non-Hodgkin’s lymphoma. Plaintiff
6 does not properly allege a loss of consortium cause of action and any such evidence and testimony
7 from either Plaintiff or his wife is not relevant because it is not a disputed fact that is of
8 consequence in this litigation. *See* Cal. Evid. Code § 210 (defining relevant evidence as “having
9 any tendency in reason to prove or disprove any disputed fact that is of consequence to the
10 determination of the action.”); *see also* Cal. Evid. Code § 350 (“No evidence is admissible except
11 relevant evidence.”).

12 In addition to being irrelevant, evidence of any of Plaintiff’s wife’s loss of consortium
13 should be excluded because it would be cumulative to Plaintiff’s testimony on other possible non-
14 economic causes of action, creating an inappropriate emotional plea, resulting in an undue
15 emphasis of issues, and necessitating an undue consumption of time. Cal. Evid. Code § 352. It
16 would also mislead the jury into believing that the companionship and sexual relations between
17 Plaintiff and his wife are somehow relevant to Plaintiff’s alleged damages even though Plaintiff’s
18 wife is not a party to the litigation. Cal. Evid. Code § 352. Further, such testimony from
19 Plaintiff’s wife would confuse the jury by requiring it to differentiate between Plaintiff’s other
20 alleged non-economic damage claims, such as emotional distress, and the irrelevant evidence
21 concerning loss of consortium. Cal. Evid. Code § 352 (court may exclude evidence where
22 probative value is substantially outweighed by the probability that its admission will . . . create
23 substantial danger of undue prejudice, of confusing the issues, or of misleading the jury.”)

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1 **III. CONCLUSION**

2 For the foregoing reasons, the Court should exclude Plaintiff's claim of general damages
3 for loss of consortium, and any evidence or argument regarding Plaintiff's or his wife's alleged
4 loss of consortium.

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6 Dated: May 24, 2018

Respectfully submitted,

7 FARELLA BRAUN + MARTEL LLP

8 By: 

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Sandra A. Edwards

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11 Attorneys for Defendant
MONSANTO COMPANY

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