

1 Michael J. Miller (appearance *pro hac vice*)
2 Timothy Litzenburg (appearance *pro hac vice*)
3 Curtis G. Hoke (State Bar No. 282465)
4 **THE MILLER FIRM, LLC**
5 108 Railroad Ave.
6 Orange, VA 22960
7 Phone: (540) 672-4224
8 Fax: (540) 672-3055
9 mmiller@millerfirmllc.com
10 tlitzenburg@millerfirmllc.com
11 choke@millerfirmllc.com

12 *Attorneys for Plaintiff*
13 **DEWAYNE JOHNSON**

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO

DEWAYNE JOHNSON,

Plaintiff,

v.

MONSANTO COMPANY

Defendants.

Case No. CGC-16-550128

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION *IN LIMINE* NO. 6 TO EXCLUDE
PREVIOUS ARRESTS, CRIMINAL
RECORD, AND OTHER "BAD ACTS"**

Trial Judge: TBD

Hearing Date: TBD

Time: TBD

Department: TBD

Trial Date: June 18, 2018

[Filed concurrently with Declaration of Curtis
Hoke and [Proposed] Order]

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

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that, at a date and time set by the trial judge assigned to this matter
3 of the above-entitled Court located at 400 McAllister St. San Francisco, CA 94102-4515, Plaintiff
4 Dewayne Johnson will and hereby does move *in limine* to exclude evidence and testimony regarding
5 previous arrests and references to Mr. Johnson's criminal record and other bad acts.

6 This motion *in limine* has been brought pursuant to Evid. Code §§ 350 and 352 and is based on
7 the grounds that attorney retention and attorney advertising are irrelevant in this case. This Court should
8 exclude *in limine* any evidence of Mr. Johnson's prior misdemeanor arrests and or other non-felony
9 related criminal history. Such remarks are inflammatory and are an improper attempt to prejudice the
10 jury. This evidence is irrelevant and unduly prejudicial.

11 This Motion *in Limine* is based on this Notice of Motion, the Motion and accompanying
12 Memorandum of Points and Authorities, the concurrently-filed Declaration of Curtis Hoke, the
13 concurrently-filed Proposed Order, all pleadings and papers on file in this matter, and such further oral
14 and documentary evidence and papers as the Court may consider at the time of the hearing.

15
16 Respectfully Submitted,

17 Dated: May 24, 2018

THE MILLER FIRM, LLC

18 By: /s/ Curtis G. Hoke

19 Michael J. Miller (appearance *pro hac vice*)
20 Timothy Litzenburg (appearance *pro hac vice*)
21 Curtis G. Hoke (State Bar No. 282465)

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Attorneys for Plaintiff

DEWAYNE JOHNSON

1 **MEMORNADUM OF POINTS AND AUTHORITIES**

2 Plaintiff hereby submits his memorandum of points and authorities in support of his motion in
3 limine to preclude any mention of previous arrests and/or his criminal record and other “bad acts.”

4 **I. INTRODUCTION AND SUMMARY OF THE ARGUMENT**

5 In August of 2014, Dewayne Johnson was diagnosed with non-Hodgkin lymphoma (“NHL”) at
6 age 43 after spraying glyphosate-based herbicides (GBHs) for over two years. Mr. Johnson's frequency
7 of exposure to GBHs was intense, involving approximately 20-40 days per year at about 2-5 hours per
8 day and starting in June of 2012. Mr. Johnson also suffered acute exposures due to spills which left
9 him soaked to the skin in GBHs. Mr. Johnson’s NHL subtype is t-cell lymphoma mycosis fungoides,
10 an aggressive variant, which involves lymphocytes located in the skin.

11 During Mr. Johnson’s deposition, Defense Counsel asked questions about his prior arrests and
12 criminal history that are both non-relevant and highly prejudicial. See Generally Hoke Dec. Exhibit A
13 (areas of inquiry included prior misdemeanor offenses of assault, domestic violence, a weapons charge,
14 and an incident where he was blood tested for alcohol following a car accident).

15 Defendants will certainly attempt to introduce this evidence in an effort to discredit Plaintiff.
16 Significantly, Plaintiff has never been convicted of a felony. Evidence of and references to Plaintiff's
17 past criminal records, arrests, and misdemeanor convictions are inadmissible under Evidence Code
18 section 788 and California case law, and will create a substantial danger of unfairly prejudicing
19 Plaintiff's case, confusing the issues, and misleading the jury.

20 **II. ARGUMENT**

21 **A. Misdemeanor Convictions Are Not Admissible.**

22 Courts have routinely excluded misdemeanor convictions. *People v. Covert*, 249 Cal. App. 2d
23 81, 90 (1967); *People v. Lent*, 15 Cal.3d 481, 484 (1975); *People v. Bryson*, 257 Cal. App. 2d 201
24 (1967); *Truman v. Thomas*, 27 Cal. 3d 285, 296 (1980). Only felony convictions which constitute
25 “moral turpitude” are admissible under California law. Even then, their admissibility has become the
26 exception rather than the rule. See, *People v. Beagle* 6 Cal.3d 441 (1972); *People v. Castro* 38 Cal.3d
27 301 (1985).
28

1 Further, California Appellate Courts have made it clear that it is highly improper to attempt to
2 evade the rule excluding misdemeanor convictions by indirect questioning such as asking a witness
3 “Where are you presently residing?” to elicit the response “In the County Jail.” (See *People v. Sutton*,
4 231 Cal. App. 2d 511, 514 (1964)).

5 In *People v. Lent*, 15 Cal. 3d 481 (1975), the Supreme Court (per Justice Mosk) stated:

6
7 From the celebrated case of *Sharon v. Sharon*, 79 Cal. 633, 22 P.2d 26 (1889), to date, it
8 has been hornbook law that testimony relating to specific instances of misconduct is
9 inadmissible to attack the credibility of a witness. This has always been interpreted to
10 require exclusion of evidence concerning prior misdemeanor convictions (*Stickel v. San*
11 *Diego Electric Railway Company*, 32 Cal. 2d 157, 195 P.2d 416 (1948); *People v.*
12 *Matlock*, 11 Cal. App. 3d 453, 89 Cal. Rptr. 862 (1970). Indeed, the rule has been
13 described as “elementary” (*People v. Sutton*, 231 Cal. App. 2d 511, 514, 41 Cal. Rptr.
14 912 (1964).) The only exception is specifically provided in Evidence Code Section 788,
15 which permits impeachment by prior felony convictions (*Grundt v. City of Los Angeles*,
16 2 Cal. 3d 575, 591, 86 Cal. Rptr. 465 (1970); *People v. Meyer*, 216 Cal. App. 2d 618,
17 634-635, 31 Cal. Rptr. 285 (1963).) We decline the invitation to extend its application to
18 misdemeanors.

14 Indeed, the current trend is toward refinement and limitation of the use even of prior felonies for
15 impeachment. *People v. Beagle*, 6 Cal. 3d 441, (1972). Thus, any evidence of Mr. Johnson’s
16 misdemeanor convictions must be excluded.

17
18 **B. Evidence of Arrests And Accusations Of Crimes Cannot Be Brought To The Attention
19 Of The Jury, And Any Such Inquiries May Constitute Reversible Error.**

19 Beyond misdemeanor convictions, arrests and alleged bad acts that did not result in felony
20 convictions must also be excluded. In *Grundt v. City of Los Angeles*, the Supreme Court held that
21 questioning of witnesses regarding arrests and accusations, where the witnesses had not been convicted
22 of a felony, was improper. *Grundt v. City of Los Angeles*, 2 Cal. 3d 575, Cal. Rptr. 465 (1970). The
23 unanimous Supreme Court held that such questioning was severely prejudicial and reversible error. *Id.*
24 It found that presenting evidence to the jury on the witness’ general bad character and prior run ins
25 with the police was expressly prohibited but for the felony conviction exception in the evidence code
26 section 788. Thus, in addition to the misdemeanor convictions, any evidence of arrests or charges not
27 resulting in felonies must be similarly excluded.
28

1 **C. Evidence Of Misdemeanor Arrests And Accusations Would Create A Substantial**
2 **Danger Of Unfairly Prejudicing Plaintiff's Case, Confusing The Issues, And**
3 **Misleading The Jury, And Should Be Excluded.**

4 California Evidence Code Section 352 provides:

5 The court in its discretion may exclude evidence if its probative value is substantially
6 outweighed by the probability that its admission will ... (b) create substantial danger of undue
7 prejudice, of confusing the issues, or of misleading the jury.

8 California Evidence Code Section 352 requires the trial judge to balance the probative value of the
9 proffered evidence against its harmful effects, in order to decide whether to admit or exclude it.

10 *Kessler v. Gray* 77 Cal.App.3d 284 (1978).

11 As indicated above, evidence of arrests and misdemeanor convictions are inadmissible, based
12 on Evidence Code section 788 and California case law. The probative value of this evidence is
13 substantially outweighed by the danger of unfair prejudice, since such evidence is likely to cause the
14 jury to evaluate the merits of the case solely on the basis of such highly prejudicial and irrelevant
15 evidence.

16 No relevant inferences can be drawn from plaintiff's prior arrests or misdemeanor convictions
17 on the fundamental issues of did Monsanto fail to warn consumers and did Roundup cause Mr.
18 Johnson's non-Hodgkin's lymphoma. The admission of this highly prejudicial evidence could only
19 serve to distract the jury from the true issues in this case.

20 **III. CONCLUSION**

21 For the foregoing reasons, Plaintiffs respectfully request that this Court exclude this evidence.

22
23 Respectfully submitted,

24 Dated: May 24, 2018

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25 By: /s/ Curtis G. Hoke

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(540) 672-4224 phone; (540) 672-3055 fax
mmiller@millerfirmllc.com
tlitzenburg@millerfirmllc.com
choke@millerfirmllc.com

Attorneys for Plaintiff
DEWAYNE JOHNSON