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

DEWAYNE JOHNSON,
Plaintiff,
v.
MONSANTO COMPANY ET. AL,
Defendants.

Case No. CGC-16-550128

**NOTICE OF MOTION AND PLAINTIFF'S
MOTION *IN LIMINE* NO. 9 TO EXCLUDE
EVIDENCE OF EXPERT'S FINANCES
AND PERSONAL ASSETS THAT ARE
UNRELATED TO LITIGATION
INVOLVING GLYPHOSATE-
CONTAINING HERBICIDES AND NON-
HODGKIN'S LYMPHOMA**

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 of his expert's finances and
5 personal assets that are unrelated to litigation involving glyphosate-containing herbicides and non-
6 Hodgkin's lymphoma.

7 Plaintiff hereby seeks an *in limine* order instructing Defendants and their counsel not to refer to,
8 interrogate any witness concerning, comment on, or attempt to suggest to the jury any argument relating
9 to the finances and personal assets of Plaintiff's expert witnesses, and to inform their witnesses of these
10 instructions and direct them not to make any reference to the topic. This Motion will be made upon the
11 ground that the finances and personal assets of Plaintiff's experts are irrelevant, and any attempt to
12 convey this information to the jury would be against public policy, highly improper and prejudicial to
13 Plaintiff, even if the Court were to sustain an objection and instruct the jury not to consider such facts or
14 arguments.

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

19 Respectfully Submitted,

20 Dated: May 24, 2018

THE MILLER FIRM, LLC

21
22 By: /s/ Curtis G. Hoke

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

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Plaintiff retained the services of Dr. William Sawyer for the purposes of analyzing causation and
3 exposure. During the deposition of Dr. Sawyer on February 26, 2018, several statements were disclosed
4 that detailed Dr. Sawyer’s financial information and personal assets. This included the total amounts of
5 income per year Dr. Sawyer has earned, financial information for services that were performed which
6 were unrelated to the current litigation and descriptions about his personal assets. *See*, Decl. of Curtis
7 Hoke in Support of Motion *in limine*, **Exhibit A** (Deposition of William Sawyer) at 11:22-14:6; 17:2-
8 18:25.

9 **I. ARGUMENT**

10 Evidence of Plaintiffs expert’s finances and personal assets that are unrelated to litigation
11 involving glyphosate-containing herbicides and Non-Hodgkin’s lymphoma is not relevant to any issue in
12 this case and, even if found to be relevant, its probative value is substantially outweighed by the danger
13 of unfair prejudice, undue delay and a waste of judicial time. *See* Cal. Evid. Code § 352. Additionally,
14 such evidence is inadmissible evidence of the character of Plaintiff’s experts and cannot be used to
15 impeach their credibility. *See* Cal. Evid. Code § 1101. Therefore, such evidence should be excluded.

16
17 **A. Plaintiffs’ Expert’s Financial Information and Personal Assets Unrelated to**
18 **Litigation Involving Glyphosate-Containing Herbicides and Non-Hodgkin’s**
19 **Lymphoma Is Irrelevant to The Matters at Issue in This Case**

20 California’s evidence code illustrates which type of evidence should be admissible. “No
21 evidence is admissible except relevant evidence”. *See*, Evid. Code § 350. Furthermore, “relevant
22 evidence means evidence ... having any tendency in reason to prove or disprove any disputed fact that is
23 of consequence to the determination of the action.” *See*, Cal. Evid. Code § 210. “The test of relevance is
24 whether the evidence tends logically, naturally, and by reasonable inference to establish material
25 facts....”. *People v. Scheid* (1997) 16 Cal.4th 1, 13, [65 Cal.Rptr.2d 348, 939 P.2d 748].

26 A trial court “is vested with wide discretion in determining the relevance of evidence,” but it has
27 “no discretion to admit irrelevant evidence.” *People v. Babbitt* (1998) 45 Cal.3d 660, 681, [248 Cal.Rptr.
28 69, 755 P.2d 253]. An expert’s testimony must be based on matter ‘that is of a type that reasonably may
be relied upon by an expert’ *See*, Cal. Evid. Code § 801, subd. (b); *People v. Leahy, supra*, 8 Cal.4th at

1 pp. 597–598 [34 Cal.Rptr.2d 663, 882 P.2d 321]; *People v. Mitchell, supra*, 110 Cal.App.4th 772, 783–
2 784.

3 In the context of this case, financial information unrelated to litigation involving glyphosate-
4 containing herbicides and non-Hodgkin’s lymphoma, is irrelevant to this matter, as it is wholly unrelated
5 to any fact at issue in the case. Dr. Sawyer’s net worth has no bearing on any analysis that he conducted
6 during this litigation. The total income amounts for the previous years consisted of various services that
7 Dr. Sawyer has performed and is distinguishable from the fee paid for this specific litigation or litigation
8 in general.

9 At deposition, Monsanto also questioned Dr. Sawyer about his personal property and assets and
10 where they are located including asking as to whether he owns a boat. *See* Declaration of Curtis Hoke in
11 Support of Motion *in limine*, **Exhibit A** (Dewayne Johnson Deposition) at 11:22-14:6. Such evidence
12 has no bearing on this litigation and is completely unrelated to Dr. Sawyer’s expert testimony. As such it
13 should be excluded from being entered into as admissible evidence.

14
15 **B. Plaintiffs’ Expert’s Financial Information and Description of Personal Assets is
16 Improper Character Evidence**

17 With certain exceptions, “evidence of a person's character or a trait of his or her character
18 (whether in the form of an opinion, evidence of reputation, or evidence of specific instances of his or her
19 conduct) is inadmissible when offered to prove his or her conduct on a specified occasion.” See Cal.
20 Evid. Code § 1101, subd. (a). “Section 1101 excludes evidence of character to prove conduct in a civil
21 case for the following reasons. *First*, character evidence is of slight probative value and may be very
22 prejudicial. *Second*, character evidence tends to distract the trier of fact from the main question of what
23 actually happened on the particular occasion and permits the trier of fact to reward the good man and to
24 punish the bad man because of their respective characters. *Third*, introduction of character evidence may
25 result in confusion of issues and require extended collateral inquiry.” See Cal. Law Rev. Com. com.,
26 29B West's Ann. Evid.Code (1995 ed.) foll. § 1101, p. 438.

27 The only plausible reason for an attempt by Defendant to introduce an expert’s financial
28 information and evidence of his personal assets that are unrelated to his/her services as an expert

1 witness is to impeach the credibility of that expert by attacking his/her character. However, allowing
2 Defendant to introduce this information, as evidence to show bias or interest would be improper because
3 this type of evidence is irrelevant to a showing of character for truthfulness or untruthfulness.

4 Information as to number of cases and amounts of compensation paid to medical experts is
5 unnecessary for the purpose of showing a bias. *Allen v. Superior Court, supra*, 151 Cal.App.3d at p. 453,
6 198 Cal.Rptr. 737. A litigant's right to evidence of an expert's potential bias is not unfettered or
7 unconditional. In *Allen v. Superior Court, supra*, 151 Cal.App.3d at page 449, 198 Cal.Rptr. 737, a
8 personal injury plaintiff subpoenaed financial records of a defense medical expert for the purpose of
9 determining how much defense work the expert performed. The defendant moved for a protective order
10 and his motion was denied. In directing that a protective order be issued, the Court of Appeal stated: “A
11 constitutional amendment adopted in 1974 elevated the right of privacy to an “inalienable right”
12 expressly protected by force of a constitutional mandate. [Citation.] When the interest of a private
13 litigant in discovering relevant facts conflicts with the right of others to maintain reasonable privacy
14 regarding their financial affairs, a court must “indulge in a careful balancing” before ordering disclosure.
15 [Citation.] It follows that a court must not generously order disclosure of the private financial affairs of
16 nonparties without a careful scrutiny of the real needs of the litigant who seeks discovery....” *Id.* at p.
17 453, 198 Cal.Rptr. 737.

18 In the deposition defense counsel asks questions about Dr. Sawyer’s personal assets and their
19 location along with information on his financial data. See Declaration of Curtis Hoke in Support of
20 Motion *in limine*, **Exhibit A** (Dewayne Johnson Deposition) at 11:22-14:6; 17:2-18:25. Plaintiff
21 anticipates that Monsanto will attempt to introduce this irrelevant and prejudicial evidence at trial in
22 order to damage the credibility of Dr. Sawyer by painting a misleading picture of his wealth and
23 litigation experience.

24 Dr. Sawyer’s previous income and personal assets, including evidence of financial information
25 unrelated to any expert litigation services he has performed in this current litigation, is irrelevant to
26 character for truthfulness or untruthfulness and is improper evidence for impeachment and therefore
27 should not be admitted as evidence.

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