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17 MONSANTO COMPANY

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

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

Case No. CGC-16-550128

**DEFENDANT MONSANTO COMPANY'S
OPPOSITION TO PLAINTIFF'S
MOTION *IN LIMINE* NO. 5 TO
EXCLUDE EVIDENCE, TESTIMONY AND
ARGUMENT REGARDING ATTORNEY
RETENTION AND ADVERTISING**

Hon. Judge Curtis E.A. Karnow

Trial Date: June 18, 2018
Time: 9:30 p.m.
Department: TBD

1 **I. INTRODUCTION AND ARGUMENT**

2 Defendant Monsanto Company (“Monsanto”) opposes Plaintiff Dewayne Johnson’s
3 (“Plaintiff”) motion in part. Monsanto does not intend to introduce evidence about the number of
4 cases filed against Monsanto, or to present evidence about advertisements seeking to recruit
5 plaintiffs to file similar lawsuits against Monsanto. *See* Pl. Mot. at 1. Indeed, Monsanto has
6 moved to exclude all evidence about other litigation, and it has filed a motion to reconsider Judge
7 Karnow’s preliminary ruling directed to that issue. However, if Plaintiff is allowed to present
8 evidence regarding other irrelevant litigations, that would open the door to evidence about the
9 circumstances of those lawsuits and the advertisements that prompted them.

10 Plaintiff’s argument for introducing evidence about other glyphosate product liability
11 litigation is that the unrelated cases provided “notice” to Monsanto that Roundup® is defective.
12 That is illogical and such evidence should be excluded for all of the reasons Monsanto has detailed
13 elsewhere.¹ But if Plaintiff is allowed to introduce such evidence, Monsanto would have the right
14 to introduce evidence to explain that the allegations in the other lawsuits do not represent
15 legitimate “notice” of anything wrong with Roundup®. Instead, the lawsuits represent the results
16 of a massive, orchestrated, promotional campaign of contingency-fee attorneys recruiting plaintiffs
17 to sue Monsanto. Plaintiff’s professed concern about the introduction of such “highly prejudicial”
18 evidence of attorney advertisements underscores why *all* evidence about other litigation should be
19 excluded.

20 Likewise, Plaintiff may open the door to evidence about the role of attorney advertisements
21 in his decision to bring this case. Plaintiff has testified that he decided to file a lawsuit against
22 Monsanto after seeing an attorney advertisement on television and realizing that “[t]hey’re
23 actually starting to get this going.” *See* Edwards Decl. at ¶ 2, Ex. 1 (Deposition of Dewayne
24 Johnson at 173:16–177:3 (Dec. 7, 2017)). If Plaintiff testifies about his motivations for filing this
25 lawsuit, then this evidence is admissible on cross-examination. Courts allow such evidence to

26 _____
27 ¹ *See* Monsanto’s Motion *in Limine* No. 3; Monsanto’s Motion *in Limine* No. 25. Judge Karnow
28 has ruled that evidence concerning the number of other lawsuits is prejudicial to Monsanto and
should be excluded. *See* 04/03/2018 Motion *in Limine* Order at 6 n.2.

1 undermine a plaintiff's credibility with respect to his belief about the actual cause of his injuries
2 and the reason he brought a lawsuit. *See, e.g., In re Ethicon, Inc., Pelvic Repair Sys. Prod. Liab.*
3 *Litig.*, 2014 WL 505234, at *3 (S.D.W. Va. Feb. 5, 2014) (denying motion *in limine* to exclude
4 evidence of attorney advertisement seen by plaintiff, and holding that evidence that plaintiff "was
5 prompted by a television commercial to file suit ... is probative of her credibility regarding her
6 injuries").

7 **II. CONCLUSION**

8 The Court should deny Plaintiff's motion *in limine* in part as set forth herein.

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Dated: June 7, 2018

Respectfully submitted,

FARELLA BRAUN + MARTEL LLP

By: 

Sandra A. Edwards

Attorneys for Defendant
MONSANTO COMPANY