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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  
REPLY ISO MOTION *IN LIMINE* NO. 30  
TO EXCLUDE CERTAIN EVIDENCE  
REGARDING PLAINTIFF'S ALLEGED  
MEDICAL EXPENSES**

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

1 **I. INTRODUCTION**

2 The law in California is clear: a plaintiff may recover no more than the amount of medical  
3 expenses actually paid or incurred. *See Howell v. Hamilton Meats & Provisions, Inc.*, 52 Cal. 4th  
4 541 (2011); *see also Corenbaum v. Lampkin*, 215 Cal. App. 4th 1308 (2013). Plaintiff makes no  
5 attempt to distinguish these cases, instead arguing that “as a matter of fairness and public policy,”  
6 this Court should depart from established precedent and allow Plaintiff to introduce evidence of  
7 the full amount of Plaintiff’s medical bills. This would be clear error. Consistent with *Howell* and  
8 *Corenbaum*, this Court should preclude Plaintiff from presenting evidence regarding any alleged  
9 medical expenses for which he seeks damages unless he first establishes that he actually paid or  
10 incurred such medical expenses.

11 **II. ARGUMENT**

12 The California Supreme Court held that a personal injury plaintiff whose medical expenses  
13 are paid out-of-pocket or through insurance “may recover as economic damages no more than the  
14 amounts paid by the plaintiff or his or her insurer for the medical services received or still owing  
15 at the time of trial.” *Howell*, 52 Cal. 4th at 566; *see also Corenbaum*, 215 Cal. App. 4th at 1330-  
16 31, 1332-34 (extending *Howell* to exclude evidence of the full amount of a plaintiff’s medical bills  
17 to prove future medical expenses and noneconomic damages).

18 Plaintiff devotes most of his opposition to summarizing, without contesting, the holdings  
19 from *Howell* and *Corenbaum*, apparently conceding that *Howell* and *Corenbaum* are directly on  
20 point here. Nonetheless, Plaintiff offers several arguments why “as a matter of fairness and public  
21 policy” this Court should depart from precedent established by the California Supreme Court and  
22 still admit evidence of the full amount of his medical bills. First, Plaintiff argues that the full  
23 amount of his past medical bills should be admitted “to establish the reasonable value of his future  
24 medical expenses.” Pl.’s Opp’n to MIL No. 30 at 3. However, *Corenbaum* explicitly foreclosed  
25 that argument. *See Corenbaum*, 215 Cal. App. 4th at 1330 (“The argument that the full amount  
26 billed for past medical services is relevant to the reasonable value of future medical services that  
27 the plaintiff is reasonably certain to require necessarily assumes that the full amount billed for past  
28 medical services is relevant to the value of those past medical services. *In our view*, [*Howell*]

1 *negates such an assumption and precludes this argument.*”) (emphasis added). Instead, plaintiffs  
2 must prove, usually through expert testimony, both that future medical treatment is reasonably  
3 certain and the estimated costs of such treatment. *See J.P. v. Carlsbad Unified School Dist.*, 232  
4 Cal. App. 4th 323, 342 (2014) (“[What is] required to establish future disability is that from all the  
5 evidence, including the expert testimony, if there be any, it satisfactorily appears that such  
6 disability will occur with reasonable certainty.”); *see also Markow v. Rosner*, 3 Cal. App. 5th  
7 1027, 1050-51 (2016) (noting that plaintiff’s expert witness estimated the total amount of future  
8 hospitalizations at \$2 million). However, contrary to Plaintiff’s argument and consistent with  
9 *Corenbaum*, future medical expenses should still reflect the discounted or actual amount that  
10 plaintiff’s insurer pays the medical provider and not the full amount of plaintiff’s bills. *See*  
11 *Markow*, 3 Cal. App. 5th at 1051 (“Based on her research, knowledge, and experience, [plaintiff’s  
12 expert] testified that the amount actually paid is usually 50 to 75 percent of the total amount  
13 billed.”).

14         Second, he claims that *Howell* and *Corenbaum* “fail to adequately consider that should a  
15 plaintiff change or lose his/her insurance in the future, or should his insurance company’s  
16 negotiated rates differ from the negotiated rates at the time his/her medical care was initially  
17 rendered,” an award based solely on the negotiated rate differential may be inadequate. Pl.’s  
18 Opp’n to MIL No. 30 at 3-4. Plaintiff fails to clarify exactly how this might result in an  
19 insufficient damage award. Indeed, the amounts “written off” from Plaintiff’s bills from Stanford  
20 Health Care were established at the time he was initially billed, and there is thus no concern that  
21 this amount might somehow change over time to the Plaintiff’s detriment. *See Declaration of*  
22 *Kristine Grajo* at ¶ 4. And regardless, Plaintiff does not claim that any of his hypotheticals are  
23 applicable in this case. Second, Plaintiff argues that excluding evidence of the full amount of a  
24 plaintiff’s medical bills “may unnecessarily limit a plaintiff’s choice for medical care.” Pl.’s  
25 Opp’n to MIL No. 30 at 4. Plaintiff again offers no analysis to support his claim, leaving  
26 Monsanto nothing to rebut.

27         Finally, Plaintiff suggests that this Court allow Plaintiff to present his full medical bills to  
28 the jury and to defer any reduction of those bills to a post-trial *Hanif* motion. *See Hanif v.*

1 *Housing Authority*, 200 Cal. App. 3d 635 (1988). Plaintiff cites no authority supporting his claim  
2 that, post-*Howell*, this extra procedural step is still warranted – especially now that *Howell* has  
3 unequivocally held that a plaintiff may not recover “amounts that were included in a provider’s  
4 bill but for which the plaintiff never incurred liability.” *Howell*, 52 Cal. 4th at 549 (“Such sums  
5 are not damages the plaintiff would otherwise have collected from the defendant. They are neither  
6 paid to the providers on the plaintiff’s behalf nor paid to the plaintiff in indemnity of his or her  
7 expenses. Because they do not represent an economic loss for the plaintiff, they are not  
8 recoverable in the first instance.”). Consistent with *Howell* and *Corenbaum*, if Plaintiff cannot  
9 first establish that he actually paid or incurred such medical expenses, this Court should exclude  
10 evidence of the full amount of Plaintiff’s medical bills.

11 **III. CONCLUSION**

12 For the foregoing reasons, the Court should exclude evidence of any amounts billed by  
13 Plaintiff’s medical providers that were not actually incurred, *i.e.* paid, either by Plaintiff or his  
14 insurers.

15  
16 Dated: June 12, 2018

Respectfully submitted,

17 FARELLA BRAUN + MARTEL LLP

18 By: 

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Sandra A. Edwards

20 Attorneys for Defendant  
21 MONSANTO COMPANY

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