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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. 9 TO EXCLUDE EVIDENCE
OF EXPERT'S FINANCES THAT ARE
UNRELATED TO LITIGATION
INVOLVING GLYPHOSATE-CONTAINING
HERBICIDE AND NON-HODGKIN'S
LYMPHOMA**

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

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County of San Francisco*
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1 **I. INTRODUCTION**

2 Plaintiff Dewayne Johnson (“Plaintiff”)’s Motion *in Limine* No. 9 (hereinafter “Plaintiff’s
3 Motion”) seeks to preclude evidence related to the compensation and finances of his expert
4 witnesses. It is in direct conflict with the relevant statute and associated case law. Evidence of a
5 witness’s financial gain as a result of offering opinions as an expert in litigation is relevant as it
6 goes to credibility and potential for bias. Moreover, it has been explicitly authorized by California
7 law. As such, Plaintiff’s Motion should be denied.

8 **II. ARGUMENT**

9 There is no debate that evidence related to a witness’ payment for service as an expert in a
10 lawsuit is permissible evidence under California Evidence Code § 722(b), which states:

11 The compensation and expenses paid or to be paid to an expert witness by the party
12 calling him is a proper subject of inquiry by any adverse party as relevant to the
credibility of the witness and the weight of his testimony.

13 The inquiry here is solely whether evidence of a witness’ compensation as an expert in matters
14 beyond the present litigation is admissible – to which the answer is a resounding yes.

15 Plaintiff relies on *Allen v. Superior Court*, 151 Cal. App. 3d 447 (1984), for the proposition
16 that access to an expert’s compensation beyond the present litigation as evidence of potential bias
17 is limited. *See* Plaintiff’s Mot. at 3. This reliance on *Allen*, however, is misplaced. *Allen*
18 involved a plaintiff’s subpoena for financial records related to the defense expert witness’s work in
19 other litigation. *Id.* at 449. While limiting the burden of substantial document production, the
20 *Allen* court made the scope of its ruling abundantly clear, noting that “Petitioner’s attack here is
21 not upon questions asked at a deposition or at trial, but upon a subpoena *duces tecum* and the
22 burden it places on Dr. Samilson.” *Id.* That is distinctly different than what Plaintiff seeks here –
23 to preclude Monsanto from questioning his experts at trial regarding the extent of their expert
24 witness practice and the extent of compensation received therefrom. And despite issuing a
25 protective order with respect to the document production requested, the *Allen* Court explicitly
26 allowed questioning “directed toward disclosing what percentage of his practice involves
27 examining patients for the defense and how much compensation he derives from defense work.”
28 *Id.* In allowing discovery of the witness’ compensation for expert witness work beyond the case at

1 hand, the *Allen* court also commented on the probative value of such evidence. The court stated:

2 The Law Revision Commission commented that the rule of section 722 was a
3 desirable rule because of '[t]he tendency of some experts to become advocates for
4 the party employing them. Just as payment in the instant case is some evidence of
5 advocacy, so too would be evidence that the particular expert usually or always
6 testifies for one side of a particular class of lawsuit.' Nothing in the Evidence
Code suggests that such advocacy may be proven only by evidence of payment in
the instant case."

7 *Id.*


8 California courts have found that "there is no serious dispute here that [a party] is entitled
9 to know what percentage of [an opposing] expert's practice involving examining patients for the
10 defense and how much compensation [the expert] derives from defense work." *Stony Brook I*
11 *Homeowners Ass'n v. Superior Court*, 84 Cal. App. 4th 691, quoting *Allen* at 737 (internal
12 quotations omitted). The *Stony Brook* Court held that in order to establish enough relevant
13 information regarding an expert's practice "sufficient to permit a factfinder to determine whether
14 his opinions in this case have been influenced by any bias in favor of lawyers or parties who have
15 retained his services" the expert was required to provide the opposing party with "a numerical
16 estimate of defense- and plaintiff-related medical-legal work...and a numerical estimate of the
17 amount of income generated from said defense- and plaintiff-related litigation." *Id.* at 700.

18 For the foregoing reasons, Monsanto respectfully requests that this Court deny Plaintiff's
19 Motion *in Limine* No. 9.

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21 Dated: June 7, 2018

Respectfully submitted,

22 FARELLA BRAUN + MARTEL LLP

23 By: 
24 _____
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27 MONSANTO COMPANY
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