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17 MONSANTO COMPANY

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

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

Case No. CGC-16-550128

**DEFENDANT MONSANTO COMPANY'S
REPLY IN SUPPORT OF MOTION *IN*
LIMINE NO. 29 TO EXCLUDE
DAMAGES AND EVIDENCE
REGARDING LOSS OF CONSORTIUM**

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

1 **I. INTRODUCTION AND ARGUMENT**

2 Plaintiff Dewayne Johnson (“Plaintiff”) articulates no valid basis for the Court to allow his
3 impermissible claim for loss of consortium damages, and to introduce at trial evidence of or
4 argument concerning Plaintiff’s or Plaintiff’s wife’s loss of consortium. Plaintiff opposes the
5 motion *in limine* for three reasons: (1) the cause of action for loss of consortium may originate
6 with Plaintiff, which it cannot; (2) Plaintiff should be permitted to testify as to his pain and
7 suffering, which Defendant Monsanto Company (“Monsanto”) does not protest; and (3) evidence
8 of Plaintiff’s marital relations are relevant to his pain and suffering claim. Plaintiff misses the
9 gravamen of Monsanto’s Motion – a claim for loss of consortium is not appropriate, because, as
10 Plaintiff concedes “[i]n candor, Mr. Johnson’s wife, Araceli Johnson, is not a named party to this
11 lawsuit.” See Pl.’s Opp’n to MIL No. 29 at 1:13-15.

12 Under California law, a loss of consortium claim exists where a spouse suffers loss of
13 conjugal fellowship or sexual relations due to the injury of his or her spouse caused by the
14 negligence of a third party. *Rodriguez v. Bethlehem Steel Corp.*, 12 Cal. 3d 382, 385 (1974).
15 Plaintiff’s wife is not a party to this action, and the jury may not award loss of consortium
16 damages to her. Plaintiff himself cannot seek \$10 million in loss of consortium damages, as he
17 identified in his February 22, 2018 Statement of Damages, because he is not the proper party to do
18 so. Plaintiff alleges he suffered an injury caused by a third party. The Court should therefore
19 exclude Plaintiff’s impermissible claim for loss of consortium damages, and any evidence or
20 argument in support, as it is contrary to California law.

21 Plaintiff’s fear that excluding evidence of a loss of consortium would somehow lead to the
22 exclusion of evidence concerning his pain and suffering if the Court grants the Motion is
23 unfounded and not a valid basis to include irrelevant evidence at trial. Evidence of pain and
24 suffering is distinct from evidence for loss of consortium, though both are a form of mental
25 suffering. *Rodriguez*, 12 Cal. 3d at 401-402. To recover damages for pain and suffering, Plaintiff
26 must demonstrate physical, mental, and emotional suffering, such as fright, nervousness, and grief,
27 due to his cancer. *Id.* at 401. To recover damages for loss of consortium, Plaintiff’s *wife* must be
28 a party and demonstrate her loss of companionship, emotional and moral support, love, assistance,

1 felicity, sexual relations, conjugal society, comfort, affection, and the ability to have children. *Id.*
2 at 404-06, 408. The evidence of loss of consortium is distinct, and could require Plaintiff's wife to
3 testify as to the sexual relations of her marriage, which is irrelevant to Plaintiff's claims. Given
4 loss of consortium is not at issue in this litigation, the evidence should be excluded. *See* Cal. Evid.
5 Code §§ 210, 350.

6 Similarly, Plaintiff's argument that evidence of his pain and suffering cannot be excluded
7 even if it touches on marital relations misses Monsanto's request to the Court – Monsanto seeks to
8 exclude evidence of any of Plaintiff's *wife's* loss of consortium because it would be cumulative to
9 Plaintiff's testimony on other possible non-economic causes of action, creating an inappropriate
10 emotional plea, resulting in an undue emphasis of issues, and necessitating an undue consumption
11 of time. *See* Cal. Evid. Code § 352.

12 **II. CONCLUSION**

13 For the foregoing reasons, the Court should exclude Plaintiff's claim of general damages
14 for loss of consortium, and any evidence or argument regarding Plaintiff's or his wife's alleged
15 loss of consortium.

16
17 Dated: June 12, 2018

Respectfully submitted,

18 FARELLA BRAUN + MARTEL LLP

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20 By: 

21 Sandra A. Edwards

22 Attorneys for Defendant
23 MONSANTO COMPANY

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