

1 Curtis G. Hoke (State Bar No. 282465)
2 Michael J. Miller (appearance *pro hac vice*)
3 Timothy Litzenburg (appearance *pro hac vice*)
4 **THE MILLER FIRM, LLC**
5 108 Railroad Ave.
6 Orange, VA 22960
7 Telephone: (540) 672-4224
8 Facsimile: (540) 672-3055
9 tlitzenburg@millerfirmllc.com
10 choke@millerfirmllc.com

11 *Attorneys for Plaintiff*
12 DEWAYNE JOHNSON

ELECTRONICALLY
FILED

Superior Court of California,
County of San Francisco

06/07/2018

Clerk of the Court

BY: SANDRA SCHIRO

Deputy Clerk

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **COUNTY OF SAN FRANCISCO**

15 DEWAYNE JOHNSON,

16 Plaintiff,

17 v.

18 MONSANTO COMPANY ET. AL,

19 Defendants.

Case No. CGC-16-550128

**PLAINTIFF'S OPPOSITION TO
DEFENDANT MONSANTO COMPANY'S
MOTION *IN LIMINE* NO. 19 TO EXCLUDE
EVIDENCE, ARGUMENT, OR
REFERENCE TO CAREY GILLAM'S
BOOK AND ALL OTHER NEWSPAPER,
BROADCASTS, AND OTHER MEDIA
PUBLICATIONS AND PRODUCTIONS**

Trial Judge: TBD

Trial Date: June 18, 2018

Time: 9:30 AM

Department: TBD

1 **I. INTRODUCTION**

2 In Monsanto’s Motion *in Limine* 19, the Defendant attempts to exclude from the Court
3 evidence, argument, or reference to a book authored by Carey Gillam titled *Whitewash: The Story*
4 *of a Weed Killer, Cancer, and the Corruption of Science*, and any and all news articles, features,
5 reports, broadcasts, videotapes, documentaries, productions created by or published by any
6 newspaper, magazine, television station, network or other media concerning this case, or any
7 litigation against Monsanto, or any other issues related to Monsanto (“Media”).
8

9 The exclusionary request found within the Defendant’s Motion seeks to bar relevant
10 admissible evidence. The Motion is also overbroad and seeks to bar evidence before its purpose is
11 even advanced. Furthermore, the Defendant alleges that introduction of such evidence would
12 distract and confuse the Jury by focusing on irrelevant and prejudicial evidence and result in an
13 undue consumption of time. Nothing could be further from the truth as Mr. Johnson simply wishes
14 for the Jury to hear the relevant facts when procedurally and legally appropriate.
15
16
17

18 **II. ARGUMENT**

19 **A. The Plaintiff’s Use of the Evidence in Contention is Relevant and Admissible**

20 California's standard of relevance is set forth in California Evidence Code section 210.
21 This statute defines “relevant evidence” as “evidence, including evidence relevant to the
22 credibility of a witness or hearsay declarant, having any tendency in reason to prove or disprove
23 any disputed fact that is of consequence to the determination of the action.” See California
24 Evidence Code §210.
25

26 Senate committee comments to California Evidence Code section 1200 explain that a
27

1 statement “offered for some purpose other than to prove the fact stated therein is not hearsay.”
2 (Sen. Com. on Judiciary com., 29B pt. 4 West's Ann. Evid.Code (2015 ed.) foll. § 1200, p. 3; see
3 *People v. Davis* (2005) 36 Cal.4th 510, 535–536, 31 Cal.Rptr.3d 96, 115 P.3d 417)

4 Plaintiff does not intend to utilize Carey Gillam’s book unless Monsanto raises the issue
5 of certain media being biased against Monsanto. Plaintiff would reserve the right to use this type
6 of evidence as impeachment material for cross-examination should Monsanto witnesses attempt
7 to deny certain facts uncovered by Carey Gillam’s investigative reporting. This scenario would
8 likely arise in the context of Monsanto portraying itself as a responsible and conscientious
9 company.
10

11
12 Media or newspaper articles are not inadmissible hearsay if they contain statements that
13 were made by a person authorized by the party to make a statement for Monsanto, specifically
14 concerning the subject matter of the statement. See Cal. Evid. Code § 1222. Such a scenario can
15 occur where a Monsanto employee states via an interview that Roundup is not a carcinogen.
16

17 This is relevant to punitive damages, and also demonstrates the ability of Monsanto to
18 use mass media to convey information about Roundup. Media reports of adverse effects of
19 Roundup could also serve to give Monsanto notice. Monsanto has regularly manipulated media
20 sources to downplay the risk of Roundup, which is admissible evidence.
21

22
23 **B. Defendant’s Motion *in limine* is Overbroad and Seeks to Bar Evidence Before its**
24 **Purpose is Advanced.**

25 Motions in limine are designed to facilitate management of a case by deciding difficult
26 evidentiary issues in advance of trial. *Amtower v. Photon Dynamics, Inc.* (2008) 158 Cal.App.4th
27

1 1582, 1593 [71 Cal.Rptr.3d 361]; see Super. Ct. San Diego County, Local Rules, rule 2.1.18
2 (“Motions in limine must be limited in scope in accordance with *Clemens v. American Warranty*
3 *Corp.* (1978) 193 Cal.App.3d 444, 451 [238 Cal.Rptr. 339]).

4 Motions in limine are intended to enable the court to preclude specific items of evidence.
5 They are not intended to permit entire topics or unspecific items, which may, or may not, be
6 offered during trial. Yet, that is exactly what Defendants attempt to do here, by failing to identify
7 any specific documents other than the Carey Gillam’s book.

8 A motion in limine may be denied for being vague and overbroad. *Lopez v. Chula Vista*
9 *Police Dep’t*, 2010 WL 685014, at *7 (S.D. Cal. Feb. 18, 2010); *R & B Auto Center, Inc. v.*
10 *Farmers Group, Inc.* (2006) 140 Cal.App.4th 327, 332,44 Cal.Rptr.3d 426. Defendants’ motion
11 for blanket exclusion of all media should be denied because the motion does not even identify
12 with any specificity, the particular evidence that it seeks to exclude. Defendants describe the
13 challenged evidence in their Motion as “news articles, features, reports, broadcasts, videotapes,
14 documentaries, productions created by or published by any newspaper, magazine, television
15 station, network or other media concerning this case.” See Defendant’s Motion *in Limine* 19 at
16 Pg.1:5-7.

17 Other than their reference to Carey Gillam’s book, Defendants fail to identify a single
18 specific media item within this broad classification that they seek to exclude. This is
19 insufficient. *Kelly v. New West Federal Savings* (1996) 49 Cal.App.4th 659, 677, 56 Cal.Rptr.2d
20 803 (“Under appropriate circumstances, a motion in limine can serve the function of a 'motion to
21 exclude' under Evidence Code section 353 by allowing the trial court to rule on a specific
22 objection to particular evidence.... [¶] In other cases, however, a motion in limine may not satisfy
23
24
25
26
27

1 the requirements of Evidence Code section 353. For example, it may be difficult to specify
2 exactly what evidence is the subject of the motion until that evidence is offered.”)

3 In some circumstances until the evidence is actually offered and the court is aware of its
4 relevance within a specific context, its probative value, its potential for prejudice, and matters
5 related to the state of the evidence at the time an objection is made, the court cannot intelligently
6 rule on admissibility. See *People v. Jennings* [(1988) 46 Cal.3d 963 (251 Cal.Rptr. 278, 760 P.2d
7 475).

8
9 Here, but for the Carey Gillam book, the Defendant fails to identify the specific
10 documents or other materials at issue and instead provides a generic, catch-all description. As
11 such, Defendant’s request that the alleged media evidence be excluded should be denied, because
12 the admission of such as-yet-unidentified media is premature.
13

14
15 **C. The Plaintiff’s Use of The Evidence in Contention Will Not Unduly Prejudice the**
16 **Defendant or Produce A Time-Wasting Confusion of Issues.**
17

18 Evidence Code section 352, allows trial courts to exclude otherwise admissible evidence
19 whose “probative value is substantially outweighed” by its potential for unfair prejudice,
20 confusion, or undue consumption of time. *People v. Beagle* (1972) 6 Cal.3d 441, 451–453, 99
21 Cal.Rptr. 313, 492 P.2d 1; California Evidence Code §352. Evidence is not prejudicial merely
22 because it undermines the opponent's position or shores up that of the proponent. *People v.*
23 *Doolin* (2009) 45 Cal.4th 390, 417, 87 Cal.Rptr.3d 209, 198 P.3d 11.
24

25 The Defendant’s concerns over the evidence’s potential to create undue prejudice against
26 the Defendant and or result in a time-wasting confusion of issues are unwarranted. As stated
27

1 before other than Carey Gillam's book, the Defendant has not specified which media they wish
2 to exclude. Therefore the exact impact of this yet to be called media is unknowable at this point.

3 At the point when such evidence is in fact advanced, depending on the utilization of the
4 evidence, the Court at its discretion may use specifically fashioned limiting instructions to guard
5 against the Jury possibly conflating issues or being unduly influenced. *Shade Foods, Inc. v.*
6 *Innovative Products Sales & Marketing, Inc.* (2000) 78 Cal.App.4th 847, 915, 93 Cal.Rptr.2d
7 364.
8

9 **III. CONCLUSION**

10 For the above stated reasons, Plaintiff respectfully requests that this honorable Court
11 DENY Defendant Monsanto Company's Motion *in limine* No. 19.
12

13 Respectfully submitted,

14 **THE MILLER FIRM, LLC**

15
16 DATED: June 7, 2018

17 By: /s/ Curtis Hoke
18 Curtis G. Hoke (SBN 282465)
19 Timothy Litzenburg (*Appearance pro hac vice*)
20 Michael J. Miller (*Appearance Pro Hac Vice*)
21 **THE MILLER FIRM, LLC**
22 108 Railroad Ave.
23 Orange, VA 22960
24 (540) 672-4224 phone
25 (540) 672-3055 fax
26 tlitzenburg@millerfirmllc.com
27 choke@millerfirmllc.com
28 mmiller@millerfirmllc.com

Attorneys for Plaintiff,
DEWAYNE JOHNSON

1 PROOF OF SERVICE

2 I, Curtis G. Hoke, declare as follows:

3 I am a citizen of the United States and am employed in Orange County, Virginia. I am over the
4 age of eighteen years and not a party to the within action. My business address is 108 Railroad
5 Avenue, Orange, Virginia 22960. On June 7, 2018 _____, I served the following
6 documents by the method indicated below:

7 PLAINTIFF'S OPPOSITION TO DEFENDANT MONSANTO COMPANY'S MOTION
8 IN LIMINE NO. 19 TO EXCLUDE EVIDENCE, ARGUMENT, OR REFERENCE TO
9 CAREY GILLAM'S BOOK AND ALL OTHER NEWSPAPER, BROADCASTS, AND
10 OTHER MEDIA PUBLICATIONS AND PRODUCTIONS

11
12
13
14
15 **By Electronically Serving** the document(s) described above via LexisNexis File & Serve
16 by 7:00 p.m. Pacific Standard Time on all parties appearing on the LexisNexis File & Serve
17 service list.

18 **SEE ATTACHED SERVICE LIST**

19 I declare under penalty of perjury under the laws of the State of California that the above
20 is true and correct.

21 Executed on this June 7, 2018 at Orange, Virginia.

22 

23
24 Curtis G. Hoke,
25 Declarant

1 *Johnson v. Monsanto Company, et al.*
2 **San Francisco Superior Court Case No.: CGC-16-550128**

3 **SERVICE LIST**

4 George C. Lombardi, Esq.
5 James M. Hilmert, Esq.
6 **WINSTON & STRAWN LLP**
7 35 West Wacker Drive
8 Chicago, IL 60601
9 Tel: (312) 558-5969
10 Fax: (312) 558-5700
11 glombard@winston.com
12 jhilmert@winston.com

Counsel for Defendant
Served electronically Via Lexis Nexis
File&Serve Xpress

10 Joe G. Hollingsworth, Esq.
11 Eric G. Lasker, Esq.
12 Martin C. Calhoun, Esq.
13 Kirby T. Griffis, Esq.
14 William J. Cople III, Esq.
15 **HOLLINGSWORTH LLP**
16 1350 I Street, N.W.
17 Washington, DC 20005
18 Tel: (202) 898-5800
19 Fax: (202) 682-1639
20 jhollingsworth@hollingsworthllp.com
21 elasker@hollingsworthllp.com
22 mcalhoun@hollingsworthllp.com
23 kgriffis@hollingsworthllp.com
24 wcople@hollingsworthllp.com

Counsel for Defendant
Served electronically via Lexis Nexis
File&Serve Xpress

20 Sandra A. Edwards, Esq.
21 Joshua W. Malone, Esq.
22 **Farella Braun + Martel LLP**
23 235 Montgomery Street, 17th Floor
24 San Francisco, California 94104
25 Tel: (415) 95404400
26 Fax: (415) 954-4480
27 sedwards@fbm.com
28 jmalone@fbm.com

Counsel for Defendant
Served electronically via Lexis Nexis
File&Serve Xpress