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17 MONSANTO COMPANY

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

21 DEWAYNE JOHNSON,
22 Plaintiff,

23 vs.

24 MONSANTO COMPANY,
25 Defendant.

Case No. CGC-16-550128

**DEFENDANT MONSANTO COMPANY'S
OPPOSITION TO PLAINTIFF'S
REQUEST FOR JUDICIAL NOTICE OF
COMPLAINTS FILED AGAINST
MONSANTO**

Honorable Judge Suzanne R. Bolanos

Department: 504
Trial Date: June 18, 2018

1 **I. INTRODUCTION**

2 Plaintiff Dewayne Johnson (“Plaintiff”) requests judicial notice of ten complaints filed
3 against Defendant Monsanto Company (“Monsanto”) in various state and federal courts from
4 October 30, 1991 through November 5, 2015. Monsanto hereby opposes Plaintiff’s request for the
5 following reasons: First, the Court should not permit Plaintiff to introduce *actual complaints* into
6 evidence at trial—rather than just referring to the complaints—since there is nothing in the
7 complaints that is not an untested and unproven allegation, and since the complaints would
8 inevitably confuse, mislead, and distract the jury, and cause an undue consumption of time. *See*
9 Cal. Evid. Code § 352.

10 Second, Monsanto opposes Plaintiff’s request for notice of Exhibits 4, 6, and 7, because
11 these complaints do not allege that the plaintiff was diagnosed with non-Hodgkin lymphoma
12 (“NHL”), and therefore cannot put Monsanto on notice of the alleged connection between
13 glyphosate and the injury at issue in this case, pursuant to Judge Karnow’s Order on Motions in
14 Limine.

15 Third, Monsanto objects to Plaintiff’s request because none of the complaints Plaintiff
16 attaches have been certified as required by San Francisco Local Rule (“SF LR”) 8.6(b); Plaintiff
17 must first lodge with the Court the certified copies prior to introducing any complaint at trial.

18 Last, Monsanto requests that the Court remind Plaintiff that he must still lay the proper
19 foundation prior to introducing the complaints. In addition, Monsanto requests that the Court
20 instruct the jury that the fact of the filing of the complaints does not establish the truth of any of
21 the allegations in the complaints and that Plaintiff instruct his witnesses that they cannot volunteer
22 or discuss the 4,000 other cases that they may be working on related to Monsanto.

23 **II. ARGUMENT**

24 Judge Karnow ruled in his April 3, 2018 Order that Plaintiff may “introduce the facts of
25 the filing of the 6 or 7 cases [that pre-date Plaintiff’s last exposure] to show notice. Monsanto
26 may propose to the trial judge a short limiting instruction that makes it clear the fact of the filing
27 of the complaints does not establish the truth of any of the allegations in them.” 4/3/2018 Order at
28 6. At the hearing on June 20, 2018, Plaintiff’s counsel confirmed to this Court “we’re seeking

1 simply to introduce the fact that [Monsanto] had been sued by applicators of Roundup and other
2 glyphosate-based formulations in the past for these injuries, non-Hodgkin lymphoma, cancers. . .”
3 Declaration of Sandra A. Edwards (“Edwards Decl.”) at ¶ 2, Ex. 1 (Transcript at 189:20-24 (June
4 20, 2018)). Based on Plaintiff’s representation, this Court then ordered as follows:

5 I don’t want any reference to the 4000 cases that are not relevant to the issues or to
6 this lawsuit or the allegations that have to be proven in this lawsuit.

7 You can introduce into evidence the limited number of cases that you can argue
8 show notice to Monsanto, but you have to lay a foundation for that evidence. And I
9 don’t know how or if you are going to be able to do that, but if there is an issue we
10 will address it at that time.

11 With regard to the 4,000 other cases, just please advise your witnesses of the
12 rulings that I have made on these motions in limine, and specifically on this
13 motion with regard to the testimony of your experts, so that they know they are not
14 permitted to volunteer or discuss the 4,000 other cases that they may be working on
15 for you. I don’t know, but in any event I don’t want any of that information to be
16 discussed in front of the jury.

17 *Id.* at 194:18-195:13.

18 **A. Monsanto Objects To Introducing The Complaints Into Evidence**

19 Monsanto requests that the Court preclude Plaintiff from admitting the actual complaints
20 into evidence at trial, rather than merely referring to the fact of the filing of the complaint. The
21 complaints are extremely lengthy, with one complaint being more than 300 pages and the sum
22 total being over 700 pages, and would be extremely prejudicial to Monsanto if introduced into
23 evidence. *See, e.g.*, Plaintiff’s RJN Exhibit 4 (Walsh Complaint is 380 pages long); Cal. Evid.
24 Code § 352. They consist of *allegations* that have been subject to no scrutiny or factual challenge
25 whatsoever, and have never been adjudicated. Moreover, allowing the jury to review long
26 complaints containing unsubstantiated allegations, many of which name numerous defendants and
27 numerous products and chemicals unrelated to this litigation would confuse the issue—that the
28 complaint is solely relevant for purposes of notice—cause an undue consumption of time, and
prejudice Monsanto. *See* Cal. Evid. Code § 352. Instead, if Plaintiff demonstrates that he can lay
the appropriate foundation, Monsanto requests that the Court instruct the jury only that seven
complaints were filed over the course of the 24 years prior to Plaintiff’s last exposure, rather than
allowing the pleadings into evidence at trial.

1 **B. Exhibits 4, 6, And 7 Are Not Proper For Judicial Notice Because They Do Not**
2 **Relate To Plaintiff's Injury**

3 Only seven of the ten complaints of which Plaintiff requests judicial notice allege that a
4 Monsanto product caused an alleged injury subject to this litigation: NHL. *See* Plaintiff's RJN at
5 Exhibits 1-3, 5, and 8-10. Plaintiff represented to the Court that it would only introduce
6 complaints related to Plaintiff's diagnosis. *See* Edwards Decl. at ¶ 2, Ex. 1 (Transcript at 189:20-
7 24 (June 20, 2018)); Plaintiff's RJN at 3 (Plaintiff intends to introduce the complaints to show
8 Monsanto was on notice of the allegations of cancers of blood cells, which are the "same type of
9 cancer suffered by Plaintiff."). The remaining three complaints cannot be introduced for purposes
10 of notice because those complaints allege injuries different from that of Plaintiff Johnson; those
11 complaints allege injuries of acute myeloid leukemia and myelodysplastic syndrome. *See*
12 Plaintiff's RJN at Exhibits 4, 6, and 7. The Court should deny Plaintiff's request for judicial
13 notice of Exhibits 4, 6, and 7 because these complaints cannot feasibly put Monsanto on notice of
14 the alleged injury in this litigation. *See* 4/3/2018 Order at 6.

15 **C. Plaintiff Must Submit Certified Copies to the Court**

16 Monsanto also objects to introducing any non-certified copy of a complaint that was filed
17 outside of the San Francisco Superior Court.¹ *See* SF LR 8.6(b) (requiring certified copies of
18 court records filed outside of San Francisco Superior Court). Plaintiff failed to attach any certified
19 copies of the complaints to his request for judicial notice and in order to demonstrate to the Court
20 that the complaint is, in fact, what it purports to be, the Court should require Plaintiff to submit
21 certified copies.

22 **D. Monsanto Requests The Court Require Plaintiff to Lay the Proper Foundation**
23 **and Instruct the Jury as to the Limited Purpose of the Complaints**

24 In addition, whether or not this Court grants judicial notice, Monsanto requests that the
25 Court remind Plaintiff that he still must lay the proper foundation before introducing or referring
26 to any complaint at trial, as Plaintiff has yet to articulate how a proper foundation could possibly
27 _____

28 ¹ If Plaintiff can lay the proper foundation, Monsanto agrees that Exhibit 3, which is a complaint
filed in San Francisco Superior Court, need not be certified. *See* SF LR 8.6(a).

1 be established. Moreover, prior to referring to or introducing the complaints at trial, Monsanto
2 requests that the Court instruct the jury that the fact that a plaintiff has chosen to file a complaint
3 does not establish the truth of any of the allegations within the complaint. *See* 4/3/2018 Order
4 at 6.

5 **III. CONCLUSION**

6 For the foregoing reasons, this Court should preclude Plaintiff from admitting the actual
7 complaints into evidence, rather than referring to the complaints at trial. In addition, the Court
8 should deny Plaintiff's request for judicial notice of Exhibits 4, 6, and 7 because they do not relate
9 to Plaintiff's injury. Notwithstanding Monsanto's request, the Court should not allow Plaintiff to
10 introduce any of the complaints at trial without first laying the proper foundation, submitting
11 certified copies to the court, and instructing the jury that the filing of the complaints does not
12 establish the truth of any of the allegations within the complaints.

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14 Dated: June 25, 2018

Respectfully submitted,

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FARELLA BRAUN + MARTEL LLP

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By: 

Sandra A. Edwards

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Attorneys for Defendant
MONSANTO COMPANY

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CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of June, 2018, I electronically filed the foregoing

- **DEFENDANT MONSANTO COMPANY'S OPPOSITION TO PLAINTIFF'S REQUEST FOR JUDICIAL NOTICE OF COMPLAINTS FILED AGAINST MONSANTO**
- **DECLARATION OF SANDRA A. EDWARDS IN SUPPORT OF DEFENDANT MONSANTO COMPANY'S OPPOSITION TO PLAINTIFF'S REQUEST FOR JUDICIAL NOTICE OF COMPLAINTS FILED AGAINST MONSANTO**

with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Curtis G. Hoke, Esq.
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108 Railroad Avenue
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Susan C. Hunt