

1 Michael J. Miller (appearance *pro hac vice*)
2 Timothy Litzenburg (appearance *pro hac vice*)
3 Curtis G. Hoke (State Bar No. 282465)
4 **THE MILLER FIRM, LLC**
5 108 Railroad Ave.
6 Orange, VA 22960
7 (540) 672-4224 phone; (540) 672-3055 fax
8 mmiller@millerfirmllc.com
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
03/20/2018
Clerk of the Court
BY: SANDRA SCHIRO
Deputy Clerk

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO

DEWAYNE JOHNSON,

Plaintiff,

v.

MONSANTO COMPANY

Defendants.

Case No. CGC-16-550128

**DECLARATION OF TIMOTHY
LITZENBURG IN SUPPORT OF
PLAINTIFF'S OPPOSITION TO
DEFENDANT'S MOTION FOR
CONTINUANCE OF TRIAL DATE**

Hon. Judge Curtis E.A. Karnow

Hearing Date: April 3, 2018
Time: 9:00 a.m.
Department: 304

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DECLARATION OF TIMOTHY LITZENBURG

I, Timothy Litzenburg, declare and state:

1. I am an attorney at The Miller Firm, LLC, attorneys of record for Plaintiff Dewayne Johnson. I am over eighteen years of age and am fully competent to make this Declaration in support of Plaintiff's Opposition to Defendant's Motion for Continuance of Trial Date. Except as otherwise expressly stated below, I have personal knowledge of the facts stated in this declaration, and if called to testify, I could and would competently testify to the matters stated herein.

2. Attached as **Exhibit A** is a true and correct copy of a signed declaration by Chadi Nabhan, M.D.

3. Attached as **Exhibit B** is a true and correct copy of a signed declaration by Thac-Giao Truong, M.D.

4. Attached as **Exhibit C** is a true and correct copy of the Joint Stipulation and Order Regarding Plaintiff's Motion for Trial Preference.

5. Attached as **Exhibit D** is a true and correct copy of a relevant excerpt from the Deposition of Thach-Giao Truong, M.D taken on January 18, 2018.

6. Attached as **Exhibit E** is a true and correct copy of a relevant excerpt from the Deposition of Chadi Nabhan, M.D. taken on January 30, 2018.

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

Executed on March 20, 2018 in Orange, Virginia.

By: 

Timothy Litzenburg,
Declarant

EXHIBIT A

1 Curtis G. Hoke (SBN 282465)
2 Michael Miller (pro hac vice)
3 Timothy Litzenburg (Admitted *Pro Hac Vice*)
4 **THE MILLER FIRM, LLC**
5 108 Railroad Avenue
6 Orange, Virginia 22960
7 Phone: (540) 672-4224
8 Fax: (540) 672-3055
9 choke@millerfirmllc.com
10 tlitzenburg@millerfirmllc.com
11

12 *Attorneys for Plaintiff*

13
14
15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16
17 **FOR THE COUNTY OF SAN FRANCISCO**
18

19 DEWAYNE JOHNSON,
20
21 Plaintiff,

22 vs.

23 MONSANTO COMPANY, STEVEN D.
24 GOULD, WILBUR-ELLIS COMPANY LLC,
25 AND WILBUR-ELLIS FEED, LLC,
26
27 Defendants.

Case No.: CGC-16-550128

Judge: Hon. Curtis E.A. Karnow

Dept. 304

DECLARATION OF CHADI NABHAN,
M.D.

28 I, Chadi Nabhan, M.D, MBA declare:

I am a physician, licensed in the state of Illinois to practice medicine.

I am over the age of 18 and a resident of Illinois.

I am a hematologist and a medical oncologist with over 18 years of clinical and research experience focusing on lymphoid malignancies. I am board certified in internal medicine, hematology, and medical oncology. I have over 200 peer-reviewed manuscripts, abstracts, and book chapters in the

1 field of hematologic malignancies and specifically lymphomas. My research findings have been
2 presented at regional, national, and international meetings. I have been retained by Dewayne
3 Johnson to consult on this case. I have submitted two prior signed declarations to the Court in this
4 matter.

5
6 Based on my education, experience, training, a review of his medical records, and a physical
7 examination of the patient, I have knowledge of Mr. Johnson's care, treatment, condition and
8 prognosis.

9
10 My last declaration, dated July 18, 2017, contained an in-depth discussion of Mr. Johnson's
11 condition and life expectancy. The opinions in that document have not changed. Mr. Johnson has,
12 fortunately, outlived the median life expectancy for a patient with his particular disease.
13 HOWEVER, his non-Hodgkin lymphoma is NOT in complete remission. The prior declaration
14 contains a discussion about the life expectancy of patients with mycosis fungoides who have large
15 cell transformation with citations to the relevant medical literature. A median life expectancy is
16 just that; an average. Some patients live longer, some die earlier. I am pleased that Mr. Johnson
17 has shown some response to recent chemotherapy treatments. However, the fact remains that his
18 cancer is incurable, and his prognosis is grim.

19
20 I have reviewed Dr. Truong's testimony in this case; she said nothing to contradict her earlier
21 declaration in this case. She did not give a revised life expectancy.

22
23
24 Mr. Johnson's current condition CONTINUES TO raise substantial medical doubt of survival
25 beyond six months.

26 I declare under penalty of perjury under the laws of the state of California that the foregoing is true
27 and correct and if called as a witness I could and would competently testify thereto.

Executed this 19th day of March 2018

A handwritten signature in black ink, appearing to read 'Chadi Nabhan', written over a horizontal line.

CHADI NABHAN, M.D. MBA, FACP

EXHIBIT B

1 Curtis G. Hoke (SBN 282465)
2 Timothy Litzenburg (Admitted *Pro Hac Vice*)
3 THE MILLER FIRM, LLC
4 108 Railroad Avenue
5 Orange, Virginia 22960
6 Phone: (540) 672-4224
7 Fax: (540) 672-3055
8 choke@millerfirmllc.com
9 tlitzenburg@millerfirmllc.com

10 Attorneys for Plaintiff

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF SAN FRANCISCO

13 DEWAYNE JOHNSON,

14 Plaintiff,

15 vs.

16 MONSANTO COMPANY, STEVEN D.
17 GOULD, WILBUR-ELLIS COMPANY LLC,
18 AND WILBUR-ELLIS FEED, LLC,

19 Defendants.

Case No.: CGC-16-550128

Judge: Hon. Curtis E.A. Karnow

Dept. 304

DECLARATION OF THACH-GIAO
TRUONG, M.D. IN SUPPORT OF AN
EXPEDITED TRIAL DATE

21 I, Thach-Giao Truong, M.D., declare:

22 I am a physician, licensed in the state of California to practice medicine.

23 I am over the age of 18 and a resident of California.

24 I am a practicing medical oncologist and have, for the past year, treated Dewayne "Lee" Johnson
25 for non-Hodgkin lymphoma.

1 In my role as Mr. Johnson's treating oncologist, I have personal knowledge of his care, treatment,
2 condition and prognosis.

3 Mr. Johnson's lymphoma, diagnosed in 2014, was confirmed pathologically to have large cell
4 transformation on September 17, 2015.

5 Median survival after this transformation, for the subtype of lymphoma Mr. Johnson suffers from,
6 is 1.5 years.

7 At this time, Mr. Johnson has lived beyond that median survival. However, his disease continues
8 to progress. He is undergoing active chemotherapy, but realistically, there is very little chance of
9 cure.

10 Mr. Johnson's current condition raises medical doubt of survival beyond six months.

11 Furthermore, given his condition and prognosis, it is not clear whether Mr. Johnson would be able
12 to meaningfully attend or participate in any trial beginning later than January 2018.

13 I declare under penalty of perjury under the laws of the state of California that the foregoing is true
14 and correct and if called as a witness I could and would competently testify thereto.

15 Executed this 17 day of July 2017

16
17
18
19
20
21
22
23
24
25
26
27
28



THACH-GIAO TRUONG, M.D.

EXHIBIT C

AUG 21 2017

CLERK OF THE COURT

BY: [Signature] Deputy Clerk

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

9 Attorneys for Plaintiff DEWAYNE JOHNSON

10 Richard A. Clark SBN 39558
11 Steven R. Platt SBN 245510
12 PARKER, MILLIKEN, CLARK,
13 O'HARA & SAMUELIAN, A P.C.
14 555 S. Flower Street, 30th Floor
15 Los Angeles, CA 90071-2440
16 Telephone: (213) 683-6500
17 Facsimile: (213) 683-6669
18 rclark@pmcos.com; splatt@pmcos.com

19 Joe G. Hollingsworth (appearance *pro hac vice*)
20 Eric G. Lasker (appearance *pro hac vice*)
21 Martin C. Calhoun (appearance *pro hac vice*)
22 HOLLINGSWORTH LLP
23 1350 I Street, N.W.
24 Washington, DC 20005
25 Telephone: (202) 898-5800
26 Facsimile: (202) 682-1639
27 jhollingsworth@hollingsworthllp.com
28 clasker@hollingsworthllp.com
mcalhoun@hollingsworthllp.com

Attorneys for Defendants MONSANTO COMPANY, STEVEN
D. GOULD, WILBUR-ELLIS COMPANY LLC, AND
WILBUR-ELLIS FEED, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

DEWAYNE JOHNSON,

Plaintiff,

v.

MONSANTO COMPANY, STEVEN D.
GOULD, WILBUR-ELLIS COMPANY
LLC, and WILBUR-ELLIS FEED, LLC,

Defendants.

Case No. CGC-16-550128

**Joint Stipulation and ~~Proposed~~ Order
Regarding Plaintiff's Motion for Trial
Preference**

Hon. Judge Curtis E.A. Karnow

Hearing Date: August 29, 2017

Time: 9:00 a.m.

Department: 304

1 Plaintiff Dewayne Johnson and Defendants Monsanto Company ("Monsanto"), Steven D.
2 Gould, Wilbur-Ellis Company LLC, and Wilbur-Ellis Feed, LLC (collectively, "Defendants")
3 hereby stipulate as follows and request entry of the proposed order set forth below:

4 **RECITALS**

5 WHEREAS, Plaintiff filed a Motion for Trial Preference ("the Motion") in the above-
6 captioned lawsuit;

7 WHEREAS, Defendants recently filed an opposition to the Motion and other
8 submissions in response to the Motion;

9 WHEREAS, the Motion is currently scheduled for oral argument on August 29, 2017;

10 WHEREAS, Plaintiff's counsel and Defendants' counsel have conferred about the
11 Motion and have agreed to resolve the Motion without further briefing or argument, as set forth
12 below;

13 WHEREAS, Plaintiff agrees to voluntarily dismiss with prejudice all claims asserted
14 against Defendants Steven D. Gould, Wilbur-Ellis Company LLC, and Wilbur-Ellis Feed, LLC:

15 (a) by Judicial Council of California Form CIV-110 ("Request for Dismissal") to be signed by
16 Plaintiff's counsel and filed by Defendants' counsel contemporaneously with the filing of this
17 Stipulation and Proposed Order; and (b) with Plaintiff and Defendants Steven D. Gould,
18 Wilbur-Ellis Company LLC, and Wilbur-Ellis Feed, LLC to bear their own fees and costs;

19 WHEREAS, Monsanto agrees not to remove this case to federal court;

20 WHEREAS, Plaintiff and Monsanto agree and request that a trial date be set in this case
21 for June 2018 and that the trial date remain even in the event that Plaintiff passes away prior to
22 that date;

23 WHEREAS, Plaintiff and Monsanto agree and request that this trial date be set, if
24 possible, on the calendar of this member of the Court – i.e., Department 304;

25 WHEREAS, Plaintiff and Monsanto agree and request that, if a trial date in June 2018 is
26 not feasible for Department 304, the Court refer this lawsuit to the presiding judge for
27 assignment to another judge for trial in June 2018;

1 WHEREAS, by entering into this agreement, Monsanto does not concede that this case
2 should reach trial and does not waive its right to argue in motions (including but not limited to
3 motions for summary judgment or summary adjudication or *Sargon* motions) or otherwise that
4 the Court should dispose of some or all of Plaintiff's claims before trial;

5 WHEREAS, Plaintiff hereby withdraws the Motion;

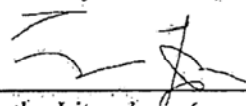
6 WHEREAS, Plaintiff and Defendant Monsanto agree and request that the hearing
7 currently scheduled for the Motion be converted to a status conference;

8 **STIPULATION**

9 THEREFORE, Plaintiff and Defendants hereby stipulate to the agreements set forth
10 herein and request that the Court enter the proposed order set forth below.

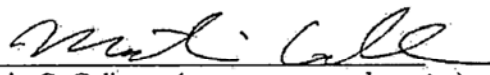
11 DATED: August 21, 2017

Respectfully submitted,

12
13 /s/ 

Timothy Litzenburg (appearance *pro hac vice*)
Curtis G. Hoke (SBN 282465)
THE MILLER FIRM, LLC

15 Attorneys for Plaintiff DEWAYNE JOHNSON

16
17 /s/ 

Martin C. Calhoun (appearance *pro hac vice*)
Joe G. Hollingsworth (appearance *pro hac*
vice)
Eric G. Lasker (appearance *pro hac vice*)
HOLLINGSWORTH LLP

21 Richard A. Clark (SBN 39558)
Steven R. Platt (SBN 245510)
PARKER, MILLIKEN, CLARK, O'HARA &
SAMUELIAN, A P.C.

23 Attorneys for Defendants MONSANTO
24 COMPANY, STEVEN D. GOULD,
25 WILBUR-ELLIS COMPANY LLC, AND
26 WILBUR-ELLIS FEED, LLC
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROPOSED ORDER

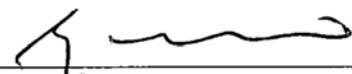
Pursuant to the stipulation set forth above and for good cause stated therein, it is
HEREBY ORDERED that the hearing scheduled for August 29, 2017 on Plaintiff's Motion for
Trial Preference, which Plaintiff has withdrawn, shall be converted to a status conference.

IT IS FURTHERED ORDERED that this lawsuit shall be set for trial starting on June
____, 2018 in Department 304; if this Department cannot accommodate the trial on that date it
shall be referred to the presiding judge for assignment to another judge for trial starting the
same date.

*Matter to be
discussed at CMC*

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATE: August 21, 2017



Judge Curtis E.A. Karnow
Superior Court Judge, San Francisco County

EXHIBIT D

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO

)
DEWAYNE JOHNSON,)
)
Plaintiff,)
)
vs.) Case No.
) CGC-16-550128
MONSANTO COMPANY,)
)
Defendant.)
-----)

DEPOSITION OF THACH-GIAO TRUONG, M.D.
Vallejo, California
Thursday, January 18, 2018
Volume I

Reported by: SUZANNE F. GUDELJ
CSR No. 5111
Job No. 2787965A

PAGES 1 - 161

1 distribution of his skin lesions.

2 Q Was there a single biopsy that determined the
3 diagnosis?

4 A Mycosis fungoides is a collection of several
5 features to make the diagnosis.

6 Q And what are the features?

7 A It's partly the biopsy as well as the
8 distribution of the lesions, whether there's any nodal
9 involvement.

10 Q Let's start with the distribution of the
11 lesions. How is the distribution evaluated?

12 A By our physical exam.

13 Q Is there any other clinical or laboratory step
14 that's taken to do that part of the evaluation?

15 A No.

16 Q And what part of the -- extent or nature of the
17 lesions comes into part of that evaluation on the
18 distribution of those lesions for MF determination?

19 A How much of the body surface is involved.

20 Q How much body surface is involved with Mr.
21 Johnson today with respect to the distribution of his
22 lesions?

23 A Today?

24 Q Yes.

25 A From my recent visit with him, I would say it

1 would be more than 80 percent but improving.

2 Q It's improving?

3 A Yes.

4 Q Do you have an assessment as to why it's

5 improving?

6 A He's responding to treatment.

7 Q What treatment is he responding to?

8 A He's receiving pralatrexate.

9 Q He had not received it before he was in your

10 care; is that correct?

11 A Correct.

12 Q Do you know why?

13 A I do not.

14 Q When did he start receiving pralatrexate?

15 A This -- this fall, after November.

16 Q And that -- that was -- that was your course of

17 treatment for Mr. Johnson, correct?

18 A Yes.

19 Q How many courses or cycles of pralatrexate has

20 he received so far?

21 A He is getting into his second cycle.

22 Q And does that mean that he's had pralatrexate

23 twice?

24 A He has had it four times.

25 Q So there would be two in the first cycle; is

1 as far as I know, 2016, and so he'll be approaching at
2 some point two years.

3 Q Two years now?

4 A I don't recall the exact date --

5 Q Okay.

6 A -- of his biopsy.

7 Q But you think -- you agree he's exceeded the
8 median survival already?

9 A Yes.

10 Q And his lesions are improving because of the
11 treatment you're prescribing now?

12 A Yes, which occurred after I wrote this letter.

13 Q Okay. Which is -- has that changed? Has his
14 treatment that you have administered or prescribed for
15 Mr. Johnson after you wrote the letter changed his
16 prognosis for survival?

17 A So the prognosis for someone with mycosis
18 fungoides is based on what other people have
19 experienced. Each person's personal survival depends on
20 how they do.

21 Q Is it your practice to write letters on --
22 about patients and their median survival expectation
23 based on the literature when you're asked to do so by
24 lawyers for the patients?

25 MR. TRAVERS: Objection. Compound.

EXHIBIT E

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

)

)

)

)

) No. CGC-16-550128

)

)

)

)

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

11

12

13

14

15

16

1 impressed at his condition when you saw him and
2 partly the fact that he had survived to this point
3 in time?

4 A. I really think it's the former that was
5 impressing me the most. I mean, it's -- I mean, I
6 have seen a lot of patients, that's all I have done
7 for 20 years before, and I think you can never
8 underestimate the impact of performance status and
9 how patients' conditions are, and that really gives
10 you the most clues into how well a patient will do.

11 Certainly, the second explanation
12 that you stated is also valuable. You already
13 survived the 24 months I have projected, so you
14 probably are on the higher end of things, and that
15 obviously persuaded me that he probably will live
16 longer than I originally predicted.

17 Q. And if he did not live into 2019 as you
18 say here, the most likely causes would be either
19 infection, a secondary infection secondary to the
20 cancer, or internal organ involvement, correct?

21 A. Yes, as long as we acknowledge that the
22 infection is secondary to the cancer. He's not
23 going to get just an infection. He would not get an
24 infection that would lead to his death if he did not
25 have the cancer.