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9 *Attorneys for Plaintiffs and the Class*

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF ALAMEDA**

12 ALEXANDER GUREVICH, et al.,)
13 Plaintiff,)
14 v.)
15 ROYAL AMBULANCE, INC., et al.,)
16 Defendants.)

**CASE NOS. RG12631895 (Lead case)
RG12639791**

[Assigned to the Hon. Wynne Carvill, Dept. 21]

**DECLARATION OF GERSON H. SMOGER IN
SUPPORT OF MOTION FOR ATTORNEY FEES
AND COSTS**

18 KEVIN DICKENS, et al.,)
19 Plaintiffs,)
20 v.)
21 ROYAL AMBULANCE, INC., et al.,)
22 Defendants.)

**Hearing Date: July 28, 2015
Time: 8:30 a.m.
Place: Dept. 21
Reference No. R-1648298**

Consolidated Complaint Filed: Nov. 12, 2013

1 **DECLARATION OF GERSON H. SMOGER**

2 I, Gerson H. Smoger, declare as follows:

3 1. I am the principal at Smoger & Associates, and counsel for Plaintiff Alexander Gurevich
4 and the Class in the above captioned case, entitled *Alexander Gurevich, et al. v. Royal Ambulance, Inc.,*
5 *et al.*, Case Nos. RG12631895 (Lead case) and RG12639791, I am licensed to practice before all of the
6 Courts of the State of California.

7 2. I have personal knowledge of the facts stated herein and if called as a witness,
8 I could and would competently testify to the following under oath.

9 3. This declaration is submitted in support of the Motion for Attorney’s Fees and Costs.

10 4. Steven M. Bronson, Esq., who works with my firm, and I have been integrally and
11 actively involved in the prosecution of the above entitled case since its inception in May of 2012 (over 4
12 years.)

13 5. On May 24, 2012, Plaintiff Alexander Gurevich filed a class action complaint in the
14 Superior Court of Alameda County, Case No. RG12631895.

15 6. Throughout this case, I have reviewed all court filings, all discovery served on defendant,
16 and all responses. I have continuously communicated with our client, Alexander Gurevich, regarding
17 this case. I personally attended both mediations of this matter, and had many conversations with the
18 mediator to help press this case toward resolution. I communicated with Defense counsel repeatedly,
19 particularly in the time between the last mediation and the filing of the preliminary approval papers. I
20 participated in all aspects of this litigation, particularly the negotiation of the settlement.

21 **Class Counsel’s Requested Attorneys Fees**

22 7. **Exhibit 1**, attached hereto is true and correct copy of my curriculum vitae. I am
23 experienced and have served as class counsel in numerous consumer and employee class actions.

24 8. My hours and billing rates are as follows:

25

Name	Status	Hours	Rate	Loadstar
Gerson H. Smoger	Attorney	101.1	\$975.00	\$98,572.50

26
27

28 9. My customary hourly billing rate is \$975.

EXHIBIT NO. 1

Gerson H. Smoger, Ph.D., J.D. Smoger & Associates



Dr. Smoger has represented a wide range of clients in consumer and personal injury litigation. His special emphasis in personal injury has been in birth and early childhood injuries, injuries related to the brain and neurological system, and injuries caused by errant pharmaceuticals or environmental exposure, including their carcinogenic and adverse immunological properties.

In 2012, Dr. Smoger was named Public Justice's "Trial Lawyer of the Year" after he tried a case for more than three months against a lead smelter that had poisoned young children. The jury's verdict in *Alexander v. Fluor* was \$358.5 million, the highest collectable award in the history of Missouri. He was previously named a finalist for Public Justice's "Trial Lawyer of the Year" award for his role in *Price v. Philip Morris*, where the trial resulted in a 10.1 billion dollar verdict against Philip Morris over the fraud of "light" cigarettes.

He has also served as lead counsel in a number of significant cases, such as the representation of the people of Times Beach in Missouri, groundwater contamination by Teledyne, Fairchild, and IBM in Silicon Valley, chlorine gas exposure in Alberton, Montana, and childhood lead contamination in Herculaneum, Mo. He successfully argued before the U.S. Supreme Court the right of Vietnam veterans to bring suit for Agent Orange exposure, although the case was later dismissed for other reasons. He has handled numerous consumer class actions, ranging from the fraud of light cigarettes to suits against almost every major bank for mortgage fraud. Always on a *pro bono* basis, he has represented a wide range of *amici* before the U.S. Supreme Court, including such diverse groups as the editors of the New England Journal of Medicine, the AMA, the American Legion, Public Citizen, and the Campaign for Tobacco Free Kids.

Dr. Smoger currently serves on the boards of Public Citizen, Public Justice (as a past President) and Physicians for Human Rights (as Secretary of the Board), and as a trustee of the Pound Civil Justice Institute. Previously, he served on the Board of Governors of AAJ (1996 - 2006), as a Vice-Chair of the American Bar Association's Toxic Torts, Hazardous Substances and Environmental Law committee (1993-2001) and from 2009-2012 and currently as AAJ's Chair of Legal Affairs. He also is a co-sponsor of a national law school competition (the "Hogan/Smoger Access to Justice Essay Contest"). In 2012, he was named Missouri's Environmentalist of the Year. He has been acknowledged every year as a "SuperLawyer" since that program began in 2003.

Dr. Smoger earned his Bachelor's Degree from Lycoming College (Summa Cum Laude) before he undertook graduate studies at Stanford University and the U. of Pennsylvania, where he passed his orals with distinction at the age of 21 and subsequently was awarded his Ph.D. He received his Juris Doctor's Degree from the U. of California - Berkeley's Boalt Hall School of Law. He is a member of the bars of CA, TX, and the U.S. Supreme Court.

I. EDUCATION

UNIVERSITY OF PENNSYLVANIA, Philadelphia, PA: Ph.D. (With distinction)

UNIVERSITY OF CALIFORNIA, BERKELEY - BOALT HALL: J.D.

LYCOMING COLLEGE, Williamsport, PA: B.A. (Summa Cum Laude)

II. MEMBERSHIP ORGANIZATIONS

PHYSICIANS FOR HUMAN RIGHTS

Board of Directors (2011-present)

Secretary of the Board of Directors (2014 - present)

PUBLIC CITIZEN

Board of Directors (2015 - present)

PUBLIC JUSTICE FOUNDATION (FORMERLY “TLPJ”):

President (2008-2009)

Board of Directors (1996-present)

Trial Lawyer of the Year (2012); Finalist (2003)

ETHICS AND PROFESSIONAL POLICY COMMITTEE OF THE AMERICAN COLLEGE OF MEDICAL QUALITY

Advisory panel (2012-present)

AMERICAN ASSOCIATION FOR JUSTICE (FORMERLY “ATLA”):

Amicus Curiae Committee, Chair (2001-2008; member to present)

Herbicides and Pesticides Litigation Group (Including Dioxin and Agent Orange)
(Chair 1991-present)

Section on Toxic, Environmental and Pharmaceutical Torts (Chair
1994-1995; Vice-Chair 1997-2008);

Legal Affairs Committee (1996-present; Chair 2009-2012, 2015-present)

Scientific, Medical and Technical Committee (Chair 1996-1999);

Executive Committee (2003-2006)

Board of Governors (1996-2006)

THE POUND CIVIL JUSTICE INSTITUTE

Trustee (2010-present)

AMERICAN BAR ASSOCIATION (ABA): Toxic Torts, Hazardous Substances, and
Environmental Law Committee (Vice-Chair 1993-2001)

CENTER FOR CONSTITUTIONAL LITIGATION (“CCL”):

Board of Advisors 2001-2008

BAR MEMBER: California, Texas, U.S. Supreme Court

III. LECTURES AND SPEECHES

The American Bar Association

- Direct and Cross-Examination of Expert Witnesses in Toxic Tort Cases (Charleston 1992)
- Managing Multiple Plaintiff Toxic Tort Cases (San Diego 1995)
- Mass Case Management: Tort Reform (Washington D.C. 1996)
- The Plaintiff's Approach When Corporate Defendants Indicate the Potential For Bankruptcy (Phoenix 1997)
- Handling Challenges to the Admissibility of Expert Witnesses Under *Daubert*, *Joiner*, and *Kumho Tire* (San Diego 1999)
- The Class Action Fairness Act (Washington D.C. 2005)
- 10th Annual Institute on Class Actions: Plaintiff's Opening Statement in Support of Class Certification (San Diego 2006)

Australian Trial Lawyers Association

- Use and Abuse of Class Actions in America (Sydney 1995)
- Class Actions in America and Australia (Aspen 1996)

California Association of Consumer Attorneys

- Class Actions: Use and Abuse (San Francisco 1996)
- Class Actions: An Update on the Law (San Francisco 2007)
- Preserving Access to Justice: Class Actions (Los Angeles 2007)

The Center for Continuing Legal Education

- Toxic Torts (San Francisco and Sacramento 1988)
- The Use of Expert Witnesses Under the New Discovery Act (San Diego, Los Angeles, San Francisco, Newport Beach, Sacramento, San Jose 1988)

Dioxin 1993 (Vienna 1993)

- In-Utero and Postnatal Exposure to 2,3,7,8-TCDD in Times Beach, Missouri: 1) Immunological Effects: Lymphocyte Phenotype Frequencies
2) Impact on Neurophysiological Functioning

Hastings College of Law (San Francisco 1998)

- The Environmental Audit Privilege: An Idea Whose Time Has Not Come

Herbicides in War: 2nd International Symposium (Hanoi 1993)

- Exposure to Agent Orange: Birth Defects
- The Current Status of Compensation for American Veterans and Their Families Subsequent to Agent Orange Exposure

International Conference on Hazardous Waste St. Petersburg, Russia 1993)

(Sponsored by the Russian Ministry of Ecology)

- American Regulations and Dangers
- Prospects and Proposals for the C.I.S.

Law and Organizational Economics Center (for State Court Judges) Kansas 1999)

- The Application of Supreme Court Expert Witness Decisions to the States;
- The Use of Animal Studies to Prove Causality;
- Focusing on the Methodology of Toxicology and Epidemiology;

Minnesota Trial Lawyers Association (November 2000)

- Use of Expert Witnesses in Federal Court

Mothers Against Drunk Driving

- Litigating Closed Head Injury Cases (Dallas 1996)

National Judicial College

- Toxic Torts for Trial Judges (Reno 1989)
- Assessment and Distribution of Damage Awards (Reno 1989)

Pound Forum for State Court Judges

- Scientific Evidence in the Courtroom (San Diego 1997)
- Discovery in Federal Courts (San Francisco 1999)
- The Jury System (Montreal 2001)
- State-Federal Relations (Atlanta 2002)

The National College of Advocacy

- Medical Causation in Toxic Tort Cases (San Francisco 1986)
- Typical Toxic Exposure Litigation Issues in the Workplace (Las Vegas 1992)
- Turning the Expert's Perspective Into Your Own Winning Strategy (Las Vegas 1992)
- Case Management: Settlement Perspectives (Dallas 1993)
- Demonstration of Direct and Cross-Examination of the Expert Witness (Dallas 1993)
- Corporate Use of Public Relations to Manipulate Juries and Lessen Governmental Standards (San Francisco 1993)
- Use and Abuse of Class Actions (Chicago 1994)
- Use of Experts in Pesticide Cases (Chicago 1994)
- Toxic Tort Case Management: Financial Considerations (San Francisco 1995)
- Considering Children in the Prosecution of Mass Toxic Tort Actions (New York 1995)
- Children and Toxic Exposure (Chicago 1995 and Santa Fe 1995)
- Experts: The Use of *Daubert* By Plaintiffs (Dallas 1996)
- Poisoning the Studies: The Manipulation of Science Regarding the Neurological Effects of Lead on Children (Boston 1996)
- The Ultimate Trial Advocacy Course: Cross-Examination with a Purpose (Berkeley 1996)
- Juries and Public Perception (San Diego 1997)
- The Federal Rules of Civil Procedure: Where Are We Going -- An Update on Discovery (Maui 1998)

- Coping With the Financial and Emotional Stress of Mass Litigation in Pharmaceutical and Toxic Tort Cases (Washington D.C. 1998)
- *Daubert, Joiner, and Kumho Tire* (Washington, D.C. 1999; Chicago 2000)
- Litigating Sudden Toxic Release Cases (Plant Explosions and Railroad Tank Cars) (San Francisco 1999)
- Pharmaceutical Litigation: Meeting Daubert Challenges (Chicago 2000)
- From *Daubert* to *Weisgram* and the new F.R.E. 702 (New Orleans 2001)
- Expert Witnesses (Las Vegas 2001)
- Understanding, Evaluating and Critiquing Epidemiology and Toxicology in the Court Room; From *Daubert* to *Weisgram* and the new F.R.E. 702 (Phoenix 2001)
- Pharmaceutical Cases: Understanding the Medicine (Phoenix 2001)
- Ethical Aspects of Funding Mass Tort Cases (Montreal 2001)
- Litigating Pharmaceutical Cases (Dallas 2001)
- Surviving Challenges to Epidemiological and Toxicological Testimony (Atlanta 2002)
- Epidemiology and Toxicology Experts in the Daubert Era (Maui 2003)
- The Settlement of Mass Tort Cases (San Francisco 2003)
- The Admissibility of Expert Testimony (Palm Springs 2005)
- Coping with the Class Action Fairness Act (Washington D.C. 2005)
- E-Discovery (Seattle 2006)
- Issues Regarding Removal to Federal Court (Chicago 2007)
- Update on Issues of Preemption (Chicago 2007)
- The Supreme Court and Preemption: Wyeth (Philadelphia 2008)
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IV. **PUBLICATIONS (NOT RELATED TO SPEECHES)**

Smoger, Gerson H. And David M. Arbogast, "The Post-Dukes Rigorous Analysis and Pre-certification." *George Washington Law Review*, 2015 (in press)

Smoger, G.H and Baller, M., "'Implied' Preemption: Public Justice Joins the Prestigious New England Journal of Medicine in Taking on the Supreme Court " *Plaintiff*, (November 2008), pp. 32-35

Smoger, G.H., "Knocking Down Windmills," *Trial*, (July 2003), pp. 56-61

Smoger, G.H., "New Environmental Laws Muzzle Critics," *Trial*, (October 1997), pp. 70-74

Smoger, G.H., Wolf, A., and Hoffman, M., "FIFRA Preemption: Overview and Tactical Considerations, " *Trial*, (July 1995), pp. 34-41

Smoger, G.H., "Using Experts Wisely in Toxic Tort Cases," *Trial*, (Sept. 1993), pp. 30-35

Smoger, G.H., Kahn, P.C., Rodgers, G.C., Suffin, S., McConnachie, P., "In Utero and Postnatal Exposure to 2,3,7,8-TCDD in Times Beach, Missouri: 1. Immunological

Effects: Lymphocyte Phenotype Frequencies, "Vol. 13, pp. 345-348 in Fiedler, ed., *et. al.*, Organohalogen Compounds, 1993

Cantor, D.S., Holder, G. , Cantor, W., Kahn, P.C., Smoger, G.H., Rodgers, G.C., Swain, W., Berger, H., Suffin, S., "In Utero and Postnatal Exposure to 2,3,7,8-TCDD in Times Beach, Missouri: "2. Impact on Neurophysiological Functioning" Vol. 13, pp. 341-344 in Fiedler, ed., *et. al.*, Organohalogen Compounds, 1993

Smoger, G.H., "Whither the Commission on Human Rights," *Vanderbilt Journal of Transnational Law*, (1979) Vol. 12: 943-968

V. SELECT SUPREME COURT AND FEDERAL RULES INVOLVEMENT

A. Class Action Issues

Testimony on behalf of the Association of Trial Lawyers of America (now "AAJ") before the Federal Advisory Committee on Discovery Rules, Subcommittee on Class Actions, January 2, 2002; San Francisco, CA.

Testimony on behalf of the Association of Trial Lawyers of America (now "AAJ") before the Federal Advisory Committee on Discovery Rules, Subcommittee on Class Actions, 1996; San Francisco, CA

Counsel of Record before the U.S. Supreme Court for Respondents Daniel Stephenson and Joe Isaacson in the case of *Dow Chemical Co., et. al., Petitioners, v. Daniel Stephenson, et. al., Respondents*. No. 02-271

B. Expert Witness Issues

Counsel of Record before the U.S. Supreme Court on behalf of Trial Lawyers for Public Justice, P.C., Public Citizen, Inc., and the Center for Auto Safety as *Amici Curiae* in support of Respondents in the case of *Kumho Tire Company, Ltd., Kumho U.S.A., Inc. and Hercules Tire & Rubber Company, Inc., Petitioners, v. Patrick Carmichael, et. al., Respondents*. No. 97-1709

Counsel of Record before the U.S. Supreme Court on behalf of OCAW (Oil, Chemical & Atomic Workers Int'l. Union, AFL-CIO) as *Amicus Curiae* in support of Respondents in the case of *General Electric Company, Westinghouse Electric Corporation, and Monsanto Company, Petitioners, v. Robert K. Joiner and Karen P. Joiner, Respondents*. No. 96-188

Testimony on behalf of the Association of Trial Lawyers of America before the Federal Advisory Committee on Evidence Rules (Rule 702); 1998; Washington, D.C.

C. Discovery and Damages Issues

Testimony before the Federal Advisory Committee on Discovery Rules, Subcommittee on Electronic Discovery; 2005; San Francisco, CA and participation as one of the coordinators of ATLA's response to electronic discovery restrictions

Testimony on behalf of the Association of Trial Lawyers of America before the Federal Advisory Committee on Discovery Rules, 1998; San Francisco, CA

Counsel of Record before the U.S. Supreme Court on behalf of The Association of Trial Lawyers of America as *Amicus Curiae* in support of Respondent in the case of *Philip Morris USA, Petitioner, v. Mayola Williams, Respondent*. No. 05-1256.

Counsel of Record before the U.S. Supreme Court on behalf of Jean-Michel Cousteau and Other Natural and Social Scientists as *Amici Curiae* in support of Respondents in the case of *Exxon Shipping Co. and Exxon Mobil Corp., Petitioners, v. Grant Baker, et. al., Respondents*. No. 07-219

D. Federal Preemption Issues

Counsel of Record before the U.S. Supreme Court on behalf of the American Medical Association, ACS, Campaign for Tobacco-Free Kids, AHA, ALA, APHA, American Legacy Foundation, American College of Chest Physicians, ONS, and the American Academy of Pediatrics as *Amici Curiae* in support of Respondents in the case of *Altria Group, Inc., et. al., Petitioners, v. Stephanie Good, et. al., Respondents*. No. 07-562

Counsel of Record before the U.S. Supreme Court on behalf of the *New England Journal of Medicine* Editors and Authors as *Amici Curiae* in support of Respondent in the case of *Wyeth, Petitioner v. Diana Levine, Respondent*. No. 06-1249

VII. OTHER

A. Named Missouri Environmentalist of the Year – 2012

B. Named a “Super Lawyer” every year since its inception (2003-2015)

C. Along with Jeffrey Sorkin wrote the book, music and lyrics for the musical play, “Some People Hear Thunder” (first performed in 2015 in San Francisco)