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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
MOTION *IN LIMINE* NO. 8 TO
EXCLUDE LETTER FROM MARION
COPLEY**

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

1 **I. INTRODUCTION**

2 Defendant Monsanto Company (“Monsanto”) respectfully requests that this Court exclude
3 a letter allegedly written by Marion Copley to Jess Rowland in 2013 (the “Copley letter”). The
4 letter is inadmissible hearsay that Plaintiff cannot properly authenticate. *See* Cal. Evid. Code §§
5 1220, 1400. Moreover, this letter, which contains nothing but unsupported contentions, is
6 irrelevant to the issues in this case and unfairly prejudicial to Monsanto and therefore inadmissible
7 under California Code of Evidence §§ 210, 350 and 352.

8 **II. ARGUMENT**

9 **A. The Copley Letter Must Be Excluded As Inadmissible Hearsay**

10 It is anticipated that will Plaintiff seek to enter into evidence the Copley Letter allegedly
11 written by Marion Copley, a former employee of the U.S. Environmental Protection Agency
12 (“EPA”) who was involved in agency risk assessments for glyphosate, to Jesudoss Rowland, also
13 a former employee of EPA. In the letter, Copley claims to have “studied the tumor process
14 extensively” since leaving her employment with EPA. She goes on to detail, without references,
15 the process by which she believes glyphosate causes tumors and asserts that EPA should deem
16 glyphosate a “probable human carcinogen.” Noting that she and Rowland “have argued many
17 times,” she ends the letter with attacks on Rowland’s education and his interactions with
18 registrants, accusing him of playing “political conniving games with the science to favor the
19 registrants.”

20 The Court should exclude the Copley Letter as inadmissible hearsay. The letter is an out-
21 of-court statement¹ that Plaintiff will use to attempt to prove the truth of the matters asserted (e.g.,
22 how glyphosate allegedly forms tumors, that glyphosate should be considered a “probable human
23 carcinogen,” and Mr. Rowland’s relationship with Monsanto), to which no hearsay exception
24 applies. *See* Cal. Evid. Code § 1220. Monsanto disputes the assertions made in this letter, and the
25

26 ¹ No exceptions to the hearsay rule apply here. Plaintiff may argue that he offers the letter not for
27 its truth but to demonstrate that Monsanto had notice of the matters discussed in the letter. The
28 letter could not have put Monsanto of notice of anything, however, given that the recipient of the
letter was Dr. Rowland, an employee of EPA – not Monsanto.

1 letter does not indicate what methods Dr. Copley used to come to her conclusions or include
2 citations to support them. Admitting this letter into evidence would present an out-of-court
3 statement to the jury with no possibility for Monsanto to cross-examine the alleged declarant, Dr.
4 Copley, who is now deceased.

5 **B. The Copley Letter Must Be Excluded Because It Cannot Be Authenticated**

6 Nor can Plaintiff properly authenticate the letter as required by California Code of
7 Evidence § 1400, which requires “the introduction of evidence sufficient to sustain a finding that it
8 is the writing that the proponent of the evidence claims it is.” Here, Plaintiff has provided no
9 evidence “to sustain a finding that the writing is what the proponent claims[.]” *McAllister v.*
10 *George*, 73 Cal. App. 3d 258, 262 (1977). The letter contains no signature, and Plaintiff provided
11 no evidence of how the letter was sent or received. Moreover, Dr. Copley is now deceased and
12 cannot authenticate the letter. It should therefore be excluded. *See Magnecomp Corp. v. Athene*
13 *Co.*, 209 Cal. App. 3d 526, 537 (1989) (excluding from evidence letter that was not authenticated).

14 **C. The Copley Letter Is Not Relevant to Any Issues in This Case, and Is Unduly**
15 **Prejudicial to Monsanto**

16 The Copley Letter should also be excluded because it will not assist the jury in determining
17 whether Plaintiff’s use of Ranger Pro[®], Monsanto’s glyphosate-containing herbicide, caused
18 Plaintiff to develop mycosis fungoides (a type of non-Hodgkin’s lymphoma), and it is therefore
19 irrelevant. *See* Cal. Evid. Code §§ 210, 350. There is no evidence that Plaintiff saw or read the
20 Copley Letter before deciding whether to use the specific Ranger Pro[®] and Roundup PRO[®]
21 products he allegedly used; accordingly, the letter could not have influenced, in any way,
22 Plaintiff’s decision to use those products, and does not “hav[e] any tendency in reason to prove or
23 disprove any disputed fact that is of consequence” to this action. Cal. Evid. Code § 210. The
24 letter should be excluded on this basis alone. *See* Cal. Evid. Code § 350 (only relevant evidence is
25 admissible).

26 Such evidence would also confuse the jury by placing before it information immaterial to
27 its decision. *See id.* §§ 350, 352 (evidence may be excluded if its probative value is substantially
28 outweighed by the probability that its admission will (a) necessitate undue consumption of time or

1 (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the
2 jury). Further, admission of the letter will unduly prejudice Monsanto by insinuating an improper
3 relationship between the company and the EPA. *See id.* § 352. Allowing Plaintiff to present the
4 letter at trial would serve only to waste the jury's time with evidence designed to evoke an
5 emotional bias against Monsanto, and motivate the jury to reward or punish Monsanto based on
6 the jurors' emotional reaction. *See Hernandez v. Cty. of Los Angeles.*, 226 Cal. App. 4th 1599,
7 1613 (2014) (explaining this would be an illegitimate purpose).


8 **III. CONCLUSION**

9 For the foregoing reasons, Monsanto respectfully requests that this Court exclude the
10 Copley Letter.

11
12 Dated: May 24, 2018

Respectfully submitted.

13 FARELLA BRAUN + MARTEL LLP

14 By: 
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16 Sandra A. Edwards

17 Attorneys for Defendant
18 MONSANTO COMPANY

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