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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. 12 TO
EXCLUDE REFERENCE TO OR
TESTIMONY FROM KIRK AZEVEDO**

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

1 **I. INTRODUCTION**

2 Defendant Monsanto Company (“Monsanto”) respectfully submits this motion *in limine*
3 requesting that the Court exclude any evidence, argument, reference to, or testimony from Kirk
4 Azevedo. Mr. Azevedo, a former pest control trainer for Monsanto turned whistle-blower, now
5 claims that Monsanto failed to inform him of the alleged risk of cancer associated with its
6 herbicides, which in turn caused him to inform herbicide applicators that the products were safe.
7 *See* Declaration of Sandra A. Edwards (“Edwards Decl.”) at ¶ 17, Ex. 16 (Dep. of Kirk Azevedo
8 (“Azevedo Dep.”) at 64:17-65:6 (June 8, 2016)). Mr. Azevedo was not deposed in this case, but
9 was deposed in other glyphosate-based herbicide litigation, not involving Plaintiff Dewayne
10 Johnson (“Plaintiff”), pending in the state of Missouri. *Id.* (Azevedo Dep. at 4:4-8). To wit, there
11 is no evidence that Mr. Azevedo ever met the Plaintiff in this case, much less trained him or
12 provided him with any information about the safety of Monsanto’s herbicides. Additionally, Mr.
13 Azevedo’s out-of-court statements regarding what he was told by Monsanto concerning the safety
14 of glyphosate constitute inadmissible hearsay.

15 Because Mr. Azevedo never trained or even met Plaintiff, his hearsay testimony is
16 irrelevant to any disputed fact of consequence in this case and should be excluded. *See* Cal. Evid.
17 Code §§ 210, 350.

18 **II. ARGUMENT**

19 Monsanto anticipates that Plaintiff may offer Mr. Azevedo’s testimony on the alleged
20 statements made by Monsanto in educating its pest control trainers on its glyphosate-based
21 herbicides, as proof that Monsanto somehow misrepresented the safety of its products – with the
22 implication that Monsanto made those same misrepresentations to Plaintiff. This is classic
23 hearsay and is not admissible. *See* Cal. Evid. Code §1200 (“Hearsay evidence is evidence of a
24 statement that was made other than by a witness while testifying at the hearing and that is offered
25 to prove the truth of the matter stated.”). As Mr. Azevedo is no longer a Monsanto employee, and
26 he is not a party in this case. He has not been designated as an expert witness. His testimony does
27 not fit within any of the recognized exceptions to the rule against hearsay. *See generally* Cal.
28 Evid. Code § 1220 et seq. Moreover, because he is an out-of-state witness and will not appear at

1 trial, his third-party testimony would not be subject to cross-examination in this case. Therefore,
2 Plaintiff should be precluded from offering this irrelevant hearsay testimony at trial.

3 Even if Mr. Azevedo's testimony did not constitute inadmissible hearsay, which it does, it
4 should also be excluded for a complete lack of relevance. He never interacted with Plaintiff and
5 there is no evidence that Mr. Azevedo has any testimony relevant to the training and safety
6 information provided to Plaintiff. Thus, his purported testimony and opinions could not have
7 impacted Plaintiff's decision to apply Roundup PRO[®] and Ranger PRO[®] herbicides and cannot be
8 the proximate cause of his injury. *See, e.g., Setliff v. E.I. Du Pont de Nemours & Co.*, 32 Cal.
9 App. 4th 1525, 1533 (1995) ("Proximate cause is a necessary element of actions for both
10 negligence and strict products liability."). Because Plaintiff can adduce no evidence that he ever
11 relied on Mr. Azevedo's opinions (or that he has ever even heard of Mr. Azevedo) in making his
12 decision to use Ranger PRO[®] and Roundup Pro[®], this evidence is irrelevant and should be
13 excluded. *See* Cal. Evid. Code § 210 (evidence which does not "hav[e] any tendency in reason to
14 prove or disprove any disputed fact that is of consequence" to this action is irrelevant); Cal. Evid.
15 Code § 350 (only relevant evidence is admissible).

16 **III. CONCLUSION**

17 For the foregoing reasons, the Court should exclude all evidence, argument, reference to,
18 or testimony from Kirk Azevedo.

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20 Dated: May 24, 2018

Respectfully submitted,

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By: 

Sandra A. Edwards

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MONSANTO COMPANY

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