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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
REPLY REGARDING 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

ELECTRONICALLY
FILED
*Superior Court of California,
County of San Francisco*
06/12/2018
Clerk of the Court
BY: VANESSA WU
Deputy Clerk

1 **I. INTRODUCTION**

2 Plaintiff Dewayne Johnson (“Plaintiff”) seeks to introduce deposition testimony from a
3 completely separate glyphosate-based herbicide lawsuit pending in Missouri wherein Kirk
4 Azevedo, a former employee of Defendant Monsanto Company (“Monsanto”), discusses the
5 details of an alleged conversation with a superior over twenty years ago. Mr. Azevedo’s
6 testimony is due to be excluded because it is textbook hearsay and completely irrelevant to the
7 issues in this case. In support of his opposition, Plaintiff mainly relies on two California rules
8 regarding the introduction of former deposition testimony, both of which are inapplicable.
9 Plaintiff also fails to show how Mr. Azevedo’s testimony is relevant to any issues in this case.
10 Accordingly, Mr. Azevedo’s testimony should be excluded from evidence.

11 **II. ARGUMENT**

12 Plaintiff contends that Mr. Azevedo’s testimony fits within the California Evidence Code §
13 1291(a)(2) exception to the hearsay rule regarding former testimony of an unavailable witness.
14 *See* Pl.’s Opp’n to MIL No. 12 at 2. Plaintiff’s reliance on this rule completely misses the mark.
15 It does not matter whether the deposition transcript comes in under Section 1291(a)(2) because the
16 underlying testimony Plaintiff seeks to admit into evidence is also hearsay. Plaintiff seeks to
17 introduce deposition testimony from Mr. Azevedo wherein he replays the details of an alleged
18 conversation he had with a Monsanto vice president approximately 20 years ago. The other
19 participant to the conversation is unavailable and cannot be cross-examined. Plaintiff offers the
20 testimony for the truth of the matter asserted – Monsanto’s alleged attitude towards profits and
21 safety. This is textbook hearsay. *See* Cal. Evid. Code § 1200 (“Hearsay evidence is evidence of a
22 statement that was made other than by a witness while testifying at the hearing that is offered to
23 prove the truth of the matter stated.”). As such, regardless of Section 1291, Mr. Azevedo’s
24 testimony is inadmissible.

25 Plaintiff also contends that Mr. Azevedo’s testimony is admissible under California Code
26 of Civil Procedure § 2025.620. *See* Pl.’s Opp’n to MIL No. 12 at 3. The rule permits a party to
27 use deposition testimony of a witness who resides more than 150 miles from the tribunal if the
28 testimony was offered in “another action involving the same subject matter...*between the same*

1 *parties* or their representatives or successors in interest.” Cal. Civ. Proc. Code § 2025.620(g)
2 (emphasis added). The rule was intended to prevent a plaintiff from burying adverse deposition
3 testimony by dismissing a case and filing a new suit. *See* Weil & Brown, Cal. Prac. Guide: Civil
4 Procedure Before Trial (The Rutter Group 2018) ¶ 8:892.1. Plaintiff’s reliance on this rule fails
5 because this case is not between the same parties as the Missouri lawsuit. Mr. Azevedo’s
6 testimony should not be admitted under Section 2025.620 either.

7 It is undisputed that Mr. Azevedo does not know Plaintiff and has no connection to the
8 facts of this case. Instead, Mr. Azevedo contends that while working as a pest control trainer for
9 Monsanto he was never warned of any connection between glyphosate and cancer, and thus never
10 warned his customers. Plaintiff contends that this testimony supports his claim for punitive
11 damages based on an allegation that Monsanto willfully and consciously refused to warn
12 consumers of a known danger. *See* Pl.’s Opp’n at 4. However, Plaintiff cannot point to any
13 testimony where Mr. Azevedo purports to have any knowledge of Monsanto’s institutional
14 knowledge concerning the safety of glyphosate-based herbicides at the time of his employment.
15 Mr. Azevedo acknowledges that he was not involved in any product testing while a Monsanto
16 employee and did not know how it was done. *See* Declaration of Sandra A. Edwards at ¶ 7, Ex. 6
17 (Dep. of Kirk Azevedo (“Azevedo Dep.”) at 49:13–19, 128:5–12 (June 8, 2016)). Similarly, he
18 acknowledges that he was not privy to the full extent of Monsanto’s sales and marketing strategy
19 while an employee. *Id.* at 28:4 - 18. Mr. Azevedo admits that he did not rely on any instruction
20 from his superiors in advising his customers regarding the safety of glyphosate, but instead
21 referred them to the product label. *Id.* at 82:1 – 18. In fact, he notes that most of the time
22 customers did not question him regarding the safety of Roundup. *Id.* Now Plaintiff seeks to
23 concoct a narrative of corporate deceit and misconduct based on one alleged conversation and Mr.
24 Azevedo’s vague perception of the corporate culture at Monsanto during his brief two-year period
25 of employment. This type of speculative testimony from a witness that admittedly has no
26 connection to Plaintiff has no relevance to this case and is too attenuated for use in determining
27 punitive damages.

28

1 **III. CONCLUSION**

2 For the foregoing reasons, Monsanto respectfully requests that this Court exclude all
3 evidence, argument, reference to, or testimony from Kirk Azevedo.

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5 Dated: June 12, 2018

Respectfully submitted,

6 FARELLA BRAUN + MARTEL LLP

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8 By: 

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