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18 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
19 **COUNTY OF SAN FRANCISCO**

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. 8 TO EXCLUDE LETTER
FROM MARION COPLEY**

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
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1 **I. INTRODUCTION**

2 Plaintiff Dewayne Johnson (“Plaintiff”) seeks to introduce into evidence an unsigned,
3 unauthenticated letter purportedly written by a deceased former United States Environmental
4 Protection Agency (“EPA”) employee, Marion Copley, to another former EPA employee Jesudoss
5 Rowland (the “Copley Letter” or the “Letter”). Plaintiff attempts to avoid the obvious hearsay
6 issue presented by the Copley Letter by contending that he does not intend to use its
7 unsubstantiated claims about glyphosate as proof that it caused his cancer, but instead seeks to use
8 it only to challenge the credibility of Mr. Rowland. *See* Pl.’s Opp’n to MIL No. 8 at 2. However,
9 Plaintiff’s self-admitted intended use of the Letter – to show that Defendant Monsanto Company
10 (“Monsanto”) attempted to mislead the EPA – still violates the rule against hearsay. *Id.* at 3.
11 Furthermore, Plaintiff has not presented any legal precedent that establishes the Copley Letter can
12 be properly authenticated. As it stands, the Copley letter remains unsubstantiated hearsay with
13 very dangerous prejudicial potential and should be excluded under California Code of Evidence §§
14 210, 350, and 352.

15 **II. ARGUMENT**

16 Plaintiff seeks admission of the Copley Letter on the grounds that he does not intend to use
17 its contents as support for his claim that glyphosate caused his cancer, but rather as evidence to
18 challenge the credibility of a witness under California Evidence Code § 780. *See* Pl.’s Opp’n to
19 MIL No. 8 at 2. The Copley Letter, however, contains much more than unproven claims regarding
20 glyphosate. It also contains false and inflammatory allegations of illegal contacts between the
21 EPA and Monsanto, as well as unfounded allegations of improper conduct by Mr. Rowland. By
22 Plaintiff’s own admission, he intends to use the letter to question Mr. Rowland’s truthfulness and
23 credibility by showing that he and other members of the EPA “had improper and illegal contacts
24 with Monsanto.” *Id.* at 4. Thus, Plaintiff still intends to use the Letter (an out-of-court statement)
25 to prove the truth of the matter asserted (that Mr. Rowland’s claims about Monsanto’s contacts
26 with the EPA are false), which makes it hearsay. *See* Cal. Evid. Code § 1200. Hearsay evidence
27 is inadmissible. *Id.*

28 Plaintiff’s reliance on California Evidence Code § 780 to circumvent the hearsay issue is

1 misplaced. Unless the contents of the Copley Letter are accepted as true, Section 780 would only
2 make it admissible non-hearsay evidence as to Ms. Copley if she were to testify at trial in a
3 manner inconsistent with the Letter. That is obviously not the case here. The Copley Letter
4 cannot be probative of Mr. Rowland's truthfulness unless its contents are first accepted by the jury
5 as true. Thus Plaintiff has to assert the Letter for the truth of the matters asserted therein; again
6 making it inadmissible hearsay.

7 The Copley Letter is also due to be excluded from evidence because it cannot be
8 authenticated. Plaintiff contends that the Letter may be authenticated by circumstantial evidence
9 and inferences drawn from Mr. Rowland's deposition testimony. *See* Pl.'s Opp'n to MIL No. 8 at
10 5. While it is correct that a writing may be authenticated by circumstantial evidence, Plaintiff has
11 not presented the type of circumstantial evidence used to support authentication in the cases he
12 cites for this proposition.¹ Instead, Plaintiff points only to tenuous connections between the details
13 of the Letter, publicly available information, and portions of Mr. Rowland's deposition as proof of
14 the Copley Letter's authenticity. For example, Plaintiff contends that the portions of the letter in
15 which the author describes disagreements between Mr. Rowland and Ms. Copley are somehow
16 corroborated by innocuous deposition testimony in which Mr. Rowland describes the discussions
17 held during CARC meetings and wherein he actually denies that he and Ms. Copley were on
18 different sides of scientific issues. *Id.* at 6. Plaintiff also contends that the Letter's very
19 conspicuous reference to Mr. Rowland's collegiate alma mater and year of graduation, a fact that
20 anyone who has ever received Mr. Rowland's curriculum vitae during his career would know,
21 somehow suggests a deep level of personal knowledge. *Id.* Simply put, this is not the type of
22 legitimate circumstantial evidence needed to authenticate the mysterious Copley Letter. Without

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24 ¹ *See, Ramos v. Westlake Services, LLC*, 242 Cal. App. 4th 674 (2015) (contract in dispute
25 contained the signature of the party contesting authenticity and had a print style that matched
26 another document in evidence corroborating the location of its inception); *People v. Valdez*, 201
27 Cal. App. 4th 1429 (2011) (photograph in dispute was pulled from a social networking site which
28 displayed the party opponent's face and he admitted was his); *Daniel v. Wayans*, 8 Cal. App. 5th
367 (2017) (circumstantial evidence included a signed declaration by someone with personal
knowledge of the contents of the writing that corroborated the information contained therein and
the party contesting authenticity did not dispute that the writing in question contained his
signature).

1 any evidence of where the letter came from or other corroboration that it is what it purports to be,
2 it should be excluded from evidence.

3 **III. CONCLUSION**

4 For the foregoing reasons, Monsanto respectfully requests that the Court grant its Motion
5 *in Limine* No. 8 and exclude the Copley Letter.

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7 Dated: June 12, 2018

Respectfully submitted,

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By: 

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MONSANTO COMPANY

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