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17 MONSANTO COMPANY

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

20 DEWAYNE JOHNSON,
21 Plaintiff,

22 vs.

23 MONSANTO COMPANY,
24 Defendant.

Case No. CGC-16-550128

**DEFENDANT MONSANTO COMPANY'S
REPLY IN SUPPORT OF MOTION *IN*
LIMINE NO. 19 TO EXCLUDE
EVIDENCE, ARGUMENT, OR
REFERENCE TO CAREY GILLAM'S
BOOK AND ALL OTHER NEWSPAPER,
BROADCASTS, AND OTHER MEDIA
PUBLICATIONS AND PRODUCTIONS**

25
26 Trial Date: June 18, 2018
Time: 9:30 a.m.
27 Department: TBD

1 **I. INTRODUCTION AND ARGUMENT**

2 Cary Gillam’s secondhand, sensationalized statements about Monsanto made in her book
3 constitute inadmissible hearsay and should not be introduced at trial. *See* Cal. Evid. Code § 1200.
4 The statements are not scientific or verified factual evidence that have any bearing on this case.
5 Plaintiff argues that Ms. Gillam’s book should be admissible as impeachment evidence should
6 “Monsanto witnesses attempt to deny certain facts uncovered by Cary Gillam’s investigative
7 reporting” such as if Monsanto portrays itself as a “responsible and conscientious company.” Pl.’s
8 Opp’n to MIL No. 19 at 2:4-11. The statements in Ms. Gillam’s book do not constitute
9 admissible facts of which Monsanto must refute.

10 Even on cross-examination, Plaintiff should not introduce Ms. Gillam’s hearsay statements
11 to impeach—Ms. Gillam’s statements do not constitute proper impeachment material, and are not
12 prior statements made by Monsanto or Monsanto’s experts. *See* Cal. Evid. Code §§ 770, 1235.
13 As for Ms. Gillam’s claims about what Monsanto did or did not say, those statements constitute
14 inadmissible hearsay within hearsay, and should be excluded. *See Cruely v. Gannett Co.*, 64 Cal.
15 App. 4th 356, 366 (1998) (“Under Evid. Code § 1201, where a statement involves multiple levels
16 of hearsay, each level must satisfy a hearsay exception in order for the entire statement to be
17 admissible.”) Moreover, impeachment statements made in writing must be authenticated. *See*
18 Cal. Evid. Code § 1401. No witness could possibly testify as to the veracity of Ms. Gillam’s
19 sensationalized statements made in her book and purported to be attributable to Monsanto. *See*
20 Cal. Evid. Code § 1401.

21 Even if the book could overcome hearsay, which it cannot, Ms. Gillam’s book is not
22 relevant to anything in this litigation. Plaintiff argues the book and other Media could be relevant
23 to punitive damages, to demonstrate “the ability of Monsanto to use mass media to convey
24 information about Roundup,” and to “serve to give Monsanto notice.” Pl.’s Opp’n to MIL. No. 19
25 at 2:16-21. Unsubstantiated, sensationalized, out-of-court statements made by a third-party author
26 should not serve as credible evidence against Monsanto in any of the situations Plaintiff provides –
27 the evidence is not relevant to punitive damages and could not serve to put Monsanto on notice of
28 anything.

1 Second, Plaintiff argues Monsanto’s motion is overbroad because it seeks to bar evidence
2 prior to its introduction. Monsanto seeks to exclude Media statements,¹ which constitutes hearsay
3 evidence and serve solely to distract the jury with irrelevant and unsubstantiated “reporting”
4 regarding Monsanto. Media statements were not made under oath, and Monsanto had no
5 opportunity to cross-examine any declarant; the trustworthiness and reliability of these reports and
6 articles cannot be validated, and thus, should not be presented to the jury. *See Baker v. Beech*
7 *Aircraft*, 96 Cal. App. 3d 321, 338 (1979). Monsanto’s motion is not overbroad as this type of
8 Media is irrelevant and should not be introduced at trial.

9 Last, Plaintiff argues that Monsanto’s argument that the evidence will create an undue
10 prejudice is premature because Monsanto did not precisely identify which Media is at issue.
11 Monsanto seeks to exclude Gillam’s book and other Media concerning the case and litigation,
12 because it would serve only to attack Monsanto’s reputation as a corporation, by introducing
13 sensationalized claims of profits and revenue, claims about other lawsuits or litigation, and
14 unverified accounts regarding glyphosate that would inflame the passions of the jury and distract
15 jurors from their task at hand: a rational, dispassionate review of the scientific and factual
16 evidence regarding this case. *See People v. Waidla*, 22 Cal. 4th 690, 724 (2000) (exclusion of
17 relevant evidence is proper when its probative value is outweighed by its potential for creating an
18 emotional bias against a defendant); *Hernandez v. Cty. of Los Angeles.*, 226 Cal. App. 4th 1599,
19 1613 (2014) (California courts exclude even relevant evidence when it tends to evoke an
20 emotional bias against one party, and would motivate the jury to use the information for an
21 illegitimate purpose – *i.e.*, to reward or punish one party because of the jurors’ emotional
22 reaction). Such evidence is highly prejudicial against Monsanto, has no place in this litigation,
23 would necessitate a waste of time, and serve only to distract the jury from the primary issues of the
24 case. *See Cal. Evid. Code § 352.*

25 ¹ “Media” means any evidence, argument, or reference to a book authored by Carey Gillam titled
26 *Whitewash: The Story of a Weed Killer, Cancer, and the Corruption of Science*, and any and all
27 news articles, features, reports, broadcasts, videotapes, documentaries, productions created by or
28 published by any newspaper, magazine, television station, network or other media concerning this
case, or any litigation against Monsanto, or any other issues related to Monsanto.

1 **II. CONCLUSION**

2 For the aforementioned reasons, the Court should grant this motion *in limine* and exclude
3 any evidence, argument, or reference to Media, which includes the Carey Gillam book titled
4 *Whitewash: The Story of a Weed Killer, Cancer, and the Corruption of Science*, and any and all
5 news articles, features, reports, broadcasts, videotapes, documentaries, productions created by or
6 published by any newspaper, magazine, television station, network or other Media.

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Dated: June 12, 2018

Respectfully submitted,
FARELLA BRAUN + MARTEL LLP

By: 

Sandra A. Edwards

Attorneys for Defendant
MONSANTO COMPANY