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12 *Attorneys for Plaintiff*  
13 **DEWAYNE JOHNSON**

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**FOR THE COUNTY OF SAN FRANCISCO**

DEWAYNE JOHNSON,  
Plaintiff,  
v.  
MONSANTO COMPANY  
Defendants.

Case No. CGC-16-550128

**NOTICE OF MOTION AND PLAINTIFF'S  
MOTION *IN LIMINE* NO. 15 TO EXCLUDE  
ANY EVIDENCE, TESTIMONY, AND  
ARGUMENT RELATING TO PLAINTIFF'S  
EXPOSURE TO HENRY'S WET PATCH  
ROOF CEMENT**

Trial Judge: TBD

Hearing Date: TBD

Time: TBD

Department: TBD

Trial Date: June 18, 2018

[Filed concurrently with Declaration of Curtis  
Hoke and [Proposed] Order]

ELECTRONICALLY  
**FILED**  
*Superior Court of California,  
County of San Francisco*  
**05/24/2018**  
Clerk of the Court  
BY: SANDRA SCHIRO  
Deputy Clerk

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that, at a date and time set by the trial judge assigned to this matter  
3 of the above-entitled Court located at 400 McAllister St. San Francisco, CA 94102-4515, Plaintiff  
4 Dewayne Johnson will and hereby does move *in limine* to exclude any evidence relating to Plaintiff's  
5 exposure to Henry's Wet Patch Roof Cement.

6 This motion *in limine* has been brought pursuant to Evid. Code §§ 210, 350, and 352 and is  
7 based on the grounds that any testimony regarding Plaintiff's exposure to Henry's Wet Patch Roof  
8 Cement is irrelevant to the issues before the Court. Monsanto's experts have not opined that Henry's  
9 Cement has contributed in any way to Mr. Johnson's Non-Hodgkin's lymphoma. Furthermore, any  
10 probative value of the evidence would be outweighed by the danger of confusion of the issues,  
11 misleading the jury, or by considerations of undue delay and waste of time.

12 This Motion *in Limine* is based on this Notice of Motion, the Motion and accompanying  
13 Memorandum of Points and Authorities, the concurrently-filed Declaration of Curtis Hoke, the  
14 concurrently-filed Proposed Order, all pleadings and papers on file in this matter, and such further oral  
15 and documentary evidence and papers as the Court may consider at the time of the hearing.

16 Respectfully Submitted,

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18 Dated: May 24, 2018

**THE MILLER FIRM, LLC**

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20 By: /s/ Curtis G. Hoke

Michael J. Miller (appearance *pro hac vice*)  
Timothy Litzenburg (appearance *pro hac vice*)

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22 Curtis G. Hoke (State Bar No. 282465)

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*Attorneys for Plaintiff*

DEWAYNE JOHNSON

1 **MEMORANUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION AND SUMMARY OF THE ARGUMENT**

3 Plaintiff Dewayne Johnson (“Plaintiff” or Mr. Johnson”) respectfully requests that the Court  
4 exclude the introduction at trial of any evidence, testimony, or argument relating to Plaintiff’s exposure  
5 to Henry’s Wet Patch Cement (“Henry’s Cement”) a product used to seal roof leaks. Plaintiff seeks to  
6 exclude evidence of exposure generally as well as any testimony or argument that Henry’s Cement  
7 caused Mr. Johnson to develop squamous cell carcinoma, a skin cancer unrelated to his Non-Hodgkin’s  
8 lymphoma (“NHL”). Not one expert has opined that Mr. Johnson’s exposure to Henry’s Cement, or  
9 any other product for that matter, caused Mr. Johnson’s squamous cell carcinoma or contributed in any  
10 way to his development of NHL. Any probative value of evidence relating to Henry’s Cement is greatly  
11 outweighed by the highly prejudicial effect of an inference, without any evidentiary support, that Mr.  
12 Johnson’s exposure to an unrelated compound caused his injuries. Further, the introduction of such  
13 evidence would distract and confuse the jury and result in an undue consumption of time relating to the  
14 carcinogenicity profile of a product that is not central to the issues in this case. Accordingly, this  
15 evidence should be excluded.

16 **II. ARGUMENT**

17 In August 2014, Plaintiff, Dewayne Johnson (“Plaintiff” or “Mr. Johnson”), was diagnosed with  
18 NHL. At the time of his diagnosis, Mr. Johnson was employed as a landscaper and “integrated pest  
19 manager” for the Benicia Unified School District in Solano County, California. Mr. Johnson’s job  
20 responsibilities included mixing and spraying glyphosate-based herbicides to school properties in order  
21 to control the growth of common weeds. On one occasion, as part of his maintenance duties, Mr.  
22 Johnson applied Henry’s Cement to fix a leak in the roof of the school. Exhibit A; Deposition of  
23 Dewayne Johnson (“Johnson Dep.”) at 118-119. During the application, Mr. Johnson kneeled in the  
24 Henry’s Cement. *Id.* Later, Mr. Johnson developed squamous cell carcinoma on the same knee. *Id.*

25 Both Plaintiff and Defendant’s causation experts agree that squamous cell carcinoma and NHL  
26 are entirely distinct cancers. Exhibit B; Deposition of Chadi Nabhan, M.D., (“Nabhan Dep.”) at 179:3-  
27 21; Exhibit C; Expert Report of Timothy Kuzel, M.D. (“Kuzel Reep.”) at 4. Monsanto’s expert Dr.

1 Timothy Kuzel also agreed that Mr. Johnson's squamous cell carcinoma and NHL are "unrelated."  
2 Exhibit D; Deposition of Timothy Kuzel ("Kuzel Dep.") at 197:9-16. Dr. Kuzel, nor any other of  
3 Monsanto's experts, has offered an opinion that Mr. Johnson's use of Henry's Cement on a single  
4 occasion contributed in any way to his development of cancer. Nonetheless, Monsanto extensively  
5 questioned both Plaintiff and Dr. Nabhan regarding the significance of the Henry's Cement exposure.

6 Dr. Nabhan testified as follows:

7 Q. Do you have an opinion as to the cause of Mr. Johnson's squamous cell carcinoma?

8 A. I don't.

9 Q. Did you read the opinion of Dr. Shear that his squamous cell carcinoma was caused by  
10 the kneeling in Henry's Wet Patch Cement?<sup>1</sup>

11 A. I don't remember reading Dr. Shear's opinion on that, and it's – I don't remember that  
12 particular opinion.

13 Q. Okay. Well, I'll explain. Henry's Wet Patch Roof Cement is an asphalt containing  
14 things you use to fix roofs.

15 A. Right

16 Q. Mr. Johnson testified that he kneeled in some for a few hours while he was repairing a  
17 roof. And a workers' comp. doctor, Dr. Shear, gave as an opinion that was the cause of  
18 his squamous cell carcinoma.

19 Do you have an opinion that being in physical contact with asphalt can lead to squamous  
20 cell carcinoma?

21 A. I have no opinion on that.

22 Q. And if asphalt is a known carcinogen, would that affect your opinion or lack of opinion?

23 A. I have no opinion on the relationship between asphalt and his squamous cell carcinoma.

24 Q. Is there a way for you to rule out what caused his squamous cell carcinoma as also being  
25 the cause of his mycosis fungoides?

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26 <sup>1</sup> Dr. Shear is a physician that provided an opinion in a workers' compensation case involving Mr.  
27 Johnson. The parties have agreed to a Stipulation that all evidence and testimony from Mr. Johnson's  
28 workers' compensation proceeding shall be excluded from the trial of this matter. Thus, Dr. Shear will  
not be a witness and will not be expressing any opinions regarding Henry's Cement at trial. None of  
Monsanto's experts have adopted Dr. Shear's testimony or opinions.

1 A. I don't think you can. I think they are two different cancers. They're completely two  
2 different entities, so it's – it would be complete speculation, so I'm not sure that you can  
3 tell that's what has caused one is what's caused the other.

4 Exhibit B; Nabhan Dep. 170:5- 181:21.

5 There is no evidence that Henry's Cement causes, or is associated in any way, to NHL. The  
6 only purpose for introducing evidence of Mr. Johnson's exposure to Henry's Cement would be to  
7 suggest and infer that it caused Mr. Johnson's NHL. Without any evidence of an association between  
8 Henry's cement and NHL, and no expert to opine that Mr. Johnson's exposure is relevant, this evidence  
9 or argument would be irrelevant and entirely speculative.

10 Furthermore, even if the Court were to conclude that Mr. Johnson's exposure to Henry's  
11 Cement may be relevant to the issues presented in this case, any probative value of that evidence would  
12 be substantially outweighed by the danger of confusion of the issues, misleading the jury, or by  
13 considerations of undue delay and waste of time. Cal. Evid. Code § 352. In order to make sense of the  
14 importance of Mr. Johnson's exposure to Henry's Cement, the parties would be required to introduce  
15 evidence as to Henry's Cement carcinogenicity profile and the types of cancer associated with the  
16 formulated product. The Court would be required to conduct a mini-trial as to Henry's Cement. Such  
17 evidence would confuse the jury, distract from the core issues, and substantially lengthen the trial of  
18 this matter. As there is no witness that holds the opinion that Henry's Cement contributed in any way  
19 to Mr. Johnson's cancer, all evidence relating to Mr. Johnson's exposure should be excluded as highly  
20 prejudicial.  
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### 22 **III. CONCLUSION**

23  
24 Based on the foregoing, Plaintiff Dewayne Johnson respectfully requests that the Court enter an  
25 Order granting this motion *in limine* and excluding any evidence, argument, and testimony relating to  
26 Plaintiff's exposure to Henry's Wet Patch Cement.

27 Respectfully submitted,

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Dated: May 24, 2018

**THE MILLER FIRM, LLC**

By: /s/ Curtis G. Hoke

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Timothy Litzenburg (appearance *pro hac vice*)  
Curtis G. Hoke (State Bar No. 282465)  
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