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

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

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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

**PLAINTIFF'S NOTICE OF MOTION AND  
MOTION *IN LIMINE* NO. 16 TO FOR  
GRANT OF PERMISSION TO USE  
DEMONSTRATIVE AIDS IN OPENING  
STATEMENT**

Trial Judge: TBD

Hearing Date: TBD

Time: TBD

Department: TBD

Trial Date: June 18, 2018

[Filed concurrently with [Proposed] Order]

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 moves for an order *in limine* permitting plaintiffs' counsel to use demonstrative aids  
5 in the opening statement. In particular, plaintiffs request permission to use relevant photographs,  
6 diagrams, maps, charts, summaries and documentary evidence.

7 Plaintiffs make this motion in accordance with California case law set forth below. The grounds  
8 for this motion are that the proposed demonstrative evidence will support the purpose of opening  
9 statements in general, and the defendants will not be prejudiced.

10 Plaintiffs base this motion on this notice of motion, the supporting memorandum, the pleadings  
11 and papers on file in this action, and upon such evidence and argument as may be presented before or  
12 at the hearing of this matter.

13 Respectfully Submitted,

14 Dated: May 24, 2018

**THE MILLER FIRM, LLC**

15  
16 By: /s/ Curtis G. Hoke

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1 **MEMORNDUM OF POINTS AND AUTHORITIES**

2 Plaintiff hereby submit his Memorandum of Points and Authorities in support of his motion in  
3 limine 16 for a grant of permission to use demonstrative aids in opening statement.

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

5 In August of 2014, Dewayne Johnson was diagnosed with non-Hodgkin lymphoma (“NHL”) at  
6 age 43 after spraying glyphosate-based herbicides (GBHs) for over two years. Mr. Johnson's frequency  
7 of exposure to GBHs was intense, involving approximately 20-40 days per year at about 2-5 hours per  
8 day and starting in June of 2012. Mr. Johnson also suffered acute exposures due to spills which left  
9 him soaked to the skin in GBHs. Mr. Johnson’s NHL subtype is t-cell lymphoma mycosis fungoides,  
10 an aggressive variant, which involves lymphocytes located in the skin. Plaintiff alleges that his injury  
11 was a result of Monsanto’s actions in failing to warn consumers about the risk of GBHs.

12 Plaintiffs’ counsel requests permission to use the following during opening statement:

- 13 (1) Graphics depict the mechanisms of human exposure to GBHs;
- 14 (2) Exemplar photographs depicting spraying of GBHs;
- 15 (3) Exemplar photographs, maps and charts depicting key events and locations in the  
16 history of GBHs;
- 17 (4) Chart, photographs or graphics identifying John Doe’s injuries; (5) Photographs of Mr.  
18 Johnson and his family;
- 19 (5) Graphics depicting carcinogenic, genotoxic and oxidative damage processes;
- 20 (6) Excerpts and images from corporate documents to be introduced as evidence at trial;
- 21 (7) Excerpts of deposition testimony of corporate witnesses and;
- 22 (8) Excerpts and images of study and scientific evaluations of glyphosate
- 23 (9) Chart depicting economic damages caused by Mr. Johnson’s Cancer.
- 24 (10) Charts summarizing the scientific studies on GBHs
- 25 (11) Charts summarizing the key events relevant to the lawsuit.

26 This material will be presented as a PowerPoint and will be provided to defense counsel and the  
27 Court for review and approval before plaintiffs’ opening statement.

1 **II. LEGAL ANALYSIS**

2 The purpose of the opening statement “‘is to prepare the minds of the jury to follow the  
3 evidence and to more readily discern its materiality, force and effect’ [citation]. ...” The use of  
4 photographs and tape recordings, intended later to be admitted in evidence, as visual or auditory aids is  
5 appropriate. Similarly, the illustrative use of an enlarged page of transcript was held not improper,  
6 even where the transcript had been highlighted to emphasize portions of the testimony.  
7 Use of visual aids in opening statement is not a matter of right. Such use is discretionary with this  
8 Court. The trial court may allow use of a chart, diagram, or other visual aid that is not itself admissible  
9 in evidence. “Even where a map or sketch is not independently admissible in evidence it may, within  
10 the discretion of the trial court, if it fairly serves a proper purpose, be used as an aid to the opening  
11 statement.”

12 Plaintiffs respectfully request that this Court exercise its discretion to allow their counsel to  
13 make use of demonstrative aids during the opening statement. These aids will better prepare the jury  
14 for the tasks of analyzing and understanding the evidence that will be adduced at trial.  
15 Defendants will not be prejudiced if this motion is granted. Plaintiffs’ counsel believes that most of the  
16 demonstrative evidence they may use will itself be admissible during the trial. The remaining material  
17 is an accurate factual representation of testimony or documents that will be introduced at trial. All  
18 material will be provided to opposing counsel and the Court to review before it is shown to the jury.

19 In addition, “[n]othing prevents the statement from being presented in a story-like manner that  
20 holds the attention of lay jurors and ties the facts and governing law together in an understandable  
21 way.” (People v. Seumanu (2015) 61 Cal.4th 1293, 1342; People v. Farnam (2002) 28 Cal.4th 107,  
22 168; see also People v. Dennis (1998) 17 Cal.4th 468, 518 [opening statement is not objectionable  
23 because it is “delivered it in a manner meant to hold the jurors’ attention”].) A prosecutor is not  
24 required “to describe relevant events in artificially drab or clinical terms.” (People v. Millwee (1998)  
25 18 Cal.4th 96, 138.) Thus, there is nothing inappropriate about using epithets in describing defendant’s  
26 conduct in opening statement so long as they are “reasonably warranted by the evidence” and are “not  
27 inflammatory and principally aimed at arousing the passion or prejudice of the jury.” (People v.  
28 Farnam (2002) 28 Cal.4th 107, 168 [and finding prosecutor’s opening statement to be “no more than

1 fair comment on what she anticipated the evidence would show” even though, in the course of opening  
2 statement, the prosecutor described defendant as “monstrous,” “cold-blooded,” vicious, and a  
3 “predator,” and called the evidence “horrifying” and “more horrifying than your worst nightmare”].)  
4 Finally, plaintiffs request that the Court advise the jury before the opening statements that “[a]n  
5 opening statement is not evidence. It is simply an outline to help you understand what that party  
6 expects the evidence will show. Also, because it is often difficult to give you the evidence in the order  
7 we would prefer, the opening statement allows you to keep an overview of the case in mind during the  
8 presentation of the evidence. You cannot use it to make any decisions in this case.”

9 **III. CONCLUSION**

10 Plaintiffs Dewayne Johnson respectfully request that the Court grant his Motion *in Limine* No.  
11 16 and order that plaintiffs’ counsel be permitted to use demonstrative aids during plaintiffs’ opening  
12 statement.

13 Respectfully submitted,

14 Dated: May 24, 2018

**THE MILLER FIRM, LLC**

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