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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
OPPOSITION TO 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 Date: June 18, 2018
Time: 9:30 a.m.
Department: TBD

ELECTRONICALLY
FILED
*Superior Court of California,
County of San Francisco*
06/07/2018
Clerk of the Court
BY: VANESSA WU
Deputy Clerk

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1 **I. INTRODUCTION**

2 Plaintiff Dewayne Johnson (“Plaintiff”) seeks to exclude evidence, testimony, and
3 argument relating to Plaintiff’s exposure to Henry’s Wet Patch Cement (“Henry’s Cement”), a
4 product used to seal roof leaks, and testimony or argument that Henry’s Cement caused Plaintiff to
5 develop squamous cell carcinoma. Such testimony is, however, relevant to Plaintiff’s
6 understanding of his exposure to chemicals other than Ranger Pro®, and his belief that his
7 exposure to chemicals caused his disease. Both parties’ experts agree that his squamous cell
8 carcinoma is distinct from his non-Hodgkin’s lymphoma (“NHL”). If Plaintiff, however, testifies
9 that his squamous cell carcinoma was related to, or caused by, his NHL, the jury should also hear
10 that Plaintiff testified he was exposed to other chemicals that may have caused his disease.
11 Accordingly, the Court should deny Plaintiff’s motion *in limine* and allow evidence of Henry’s
12 Cement at trial.

13 **II. ARGUMENT**

14 Plaintiff testified in response to questions regarding his exposure to chemicals at work that
15 he came in contact with Henry’s Cement while working at the Benicia Unified School District
16 (“BUSD”), the same position where he alleges to have sprayed glyphosate-based herbicides
17 (“GBH”) products Roundup PRO® and Ranger Pro® as the Integrated Pest Manager. *See*
18 Declaration of Sandra A. Edwards (“Edwards Decl.”) at ¶ 2, Ex. 1 (Dep. of Dewayne Johnson
19 (“Johnson Dep.”) at 15:20-22; 16:13-18; 118:19-25, 325:2-14 (Dec. 7, 2017)). Specifically,
20 Plaintiff testified to kneeling in the Henry’s Cement without protective gear such that the product
21 went through his jeans, on to his knee, and up his leg. *Id.* at 119:1-120:2. Later, Plaintiff
22 discovered a nodule on the same right knee and was diagnosed as squamous cell carcinoma, a type
23 of skin cancer. *Id.* at 120:3-11. Plaintiff also alleges that he was diagnosed with mycosis
24 fungoides, a type of NHL, in August of 2014. *See* Complaint at ¶ 75. Both Plaintiff’s and
25 Monsanto’s experts do not believe Plaintiff’s squamous cell carcinoma and NHL are related. *See*
26 Edwards Decl. ¶ 10, Ex. 9 (Dep. of Timothy Kuzel at 197:14-16 (Feb. 17, 2018)) (“Q. You don’t
27 hold the opinion that squamous cell carcinoma caused his mycosis fungoides? A. It’s my opinion
28 they’re unrelated.”); *see* Edwards Decl. ¶ 11, Ex. 10 (Dep. of Chadi Nabhan at 182:18-21 (Jan. 30,

1 2018)) (“Q. Do you have an opinion that his squamous cell carcinoma caused his mycosis
2 fungoides? A. I don’t have an opinion. I don’t believe one caused the other.”).

3 Plaintiff may testify that he believes his squamous cell carcinoma diagnosis is related to
4 his NHL diagnosis. If he does, Monsanto should be allowed to also elicit Plaintiff’s testimony that
5 he believes he was exposed to “a very serious chemical” when he came in contact with Henry’s
6 Cement, and that “if I came in contact with other chemicals, they got me.” *See* Edwards Decl. ¶
7 12, Ex. 11 (Johnson Dep. at 96:2-23 (Oct. 28, 2015)) (“I would say that that Henry’s patch... is a
8 very serious chemical.”); 98:8-18 (“[I]t could have been anything at any time....”). By allowing
9 Plaintiff to testify that he believes his exposure to GBH products caused his mycosis fungoides,
10 but excluding his testimony about exposure to other chemicals – chemicals Plaintiff himself
11 believes may have caused his squamous cell carcinoma – the jury would be misled to believe that
12 Roundup PRO® and Ranger Pro® were the only “chemicals” to which he was exposed, and
13 therefore the only possible cause of Plaintiff’s cancers. Plaintiff was diagnosed with two distinct
14 forms of cancer and both Plaintiff’s and Monsanto’s experts agree that squamous cell carcinoma is
15 unrelated to mycosis fungoides, begging the question as to whether Plaintiff was also exposed to
16 some other non-GBH product that may have caused both types of cancer. Moreover, the absence
17 of any discussion on Henry’s Cement at trial may confuse the jury as to how the squamous cell
18 carcinoma is even relevant to this litigation if it is unrelated to exposure to glyphosate (which it
19 is). *See* Edwards Decl. ¶ 10, Ex. 9 (Dep. of Timothy Kuzel at 197:14-16 (Feb. 17, 2018)); *see*
20 Edwards Decl. at ¶ 11, Ex. 10 (Dep. of Chadi Nabhan at 182:18-21 (Jan. 30, 2018)).

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1 **III. CONCLUSION**

2 For the foregoing reasons, the Court should deny Plaintiff's motion *in limine* to exclude
3 evidence of Henry's Cement, and testimony or argument that Henry's Cement caused Plaintiff to
4 develop squamous cell carcinoma.

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6 Dated: June 7, 2018

Respectfully submitted,

7 FARELLA BRAUN + MARTEL LLP

8 By: 

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Sandra A. Edwards

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11 Attorneys for Defendant
MONSANTO COMPANY

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