Michael J. Miller (appearance *pro hac vice*)
Timothy Litzenburg (appearance *pro hac vice*)
Curtis G. Hoke (State Bar No. 282465)
THE MILLER FIRM, LLC
108 Railroad Ave.
Orange, VA 22960
Phone: (540) 672-4224
Fax: (540) 672-3055
mmiller@millerfirmllc.com
tlitzenburg@millerfirmllc.com
choke@millerfirmllc.com

Attorneys for Plaintiff
DEWAYNE JOHNSON

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

DECLARATION OF CURTIS G. HOKE IN SUPPORT OF PLAINTIFF'S MOTION *IN LIMINE* NO. 12 TO EXCLUDE ANY ARGUMENT AND TESTIMONY THAT EPA REGISTRATION PRECLUDED MONSANTO FROM WARNING OF THE RISK OF NON-HODGKIN'S LYMPHOMA

Trial Judge: TBD

Hearing Date: TBD
Time: TBD
Department: TBD

Trial Date: June 18, 2018

[Filed Concurrently with Memorandum of Points and Authorities and [*Proposed*] Order]

DECLARATION OF CURTIS G. HOKE

I, Curtis Hoke, declare and state:

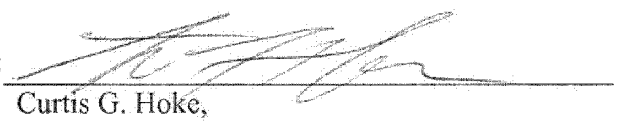
1. I am an attorney at law admitted to practice before all of the courts in the state of California. I am an attorney at The Miller Firm, LLC, attorneys of record for Plaintiff Dewayne Johnson. I am over eighteen years of age and am fully competent to make this Declaration in support of Plaintiff's Motion *in Limine* No. 12 to Exclude Argument and Testimony Regarding What the EPA Would Have Done Had Monsanto Attempted to Add a Warning of Non-Hodgkin's Lymphoma to its Labeling. Except as otherwise expressly stated below, I have personal knowledge of the facts stated in this declaration, and if called to testify, I could and would competently testify to the matters stated herein.

2. Attached hereto as **Exhibit A** is a true and correct copy of excerpts from the Expert Report of John R. Fowle, III, Ph.D.

3. Attached hereto as **Exhibit B** is a true and correct copy of excerpts from the deposition of John R. Fowle, III, Ph.D. taken on February 22, 2018.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 24, 2018 in Orange, Virginia.

By: 

Curtis G. Hoke,
Declarant

EXHIBIT A

Expert Report
Regarding the Regulatory Review of Glyphosate
John R. Fowle III, Ph.D., DABT
Principal, Science to Inform, LLC

TABLE OF CONTENTS

EPA retains primary jurisdiction over labeling. Any label that deviates from EPA's approved safety labeling may be deemed "misbranded" by the Agency. This would include labeling that deviates from EPA-required labeling regarding carcinogenicity. Beyond the specific legal requirements, there is the common sense issue that the labels must mean something. EPA's mandate is to protect public health and the environment, and, in order to do so, EPA must protect the integrity of its pesticide labeling framework. EPA is required by law to ensure that labels are prepared properly, and in such a manner that the information on the label specifies the manner in which a pesticide must be used to ensure public safety. Thus, EPA takes label approval very seriously, and it does not allow companies the freedom to choose to place a warning on the label that the product might cause cancer when EPA has determined that it does not. EPA is concerned about protecting public health, not providing product liability protection. The Agency has never classified glyphosate as being a carcinogen. In fact it has classified it as "not likely to be carcinogenic" multiple times since 1991 through its reregistration and registration review processes. Accordingly, EPA would likely foreclose registrants from placing a warning on the label of glyphosate-containing products stating that the products are or may be carcinogenic because such a statement would constitute misbranding.

In addition, the potential toxicity of glyphosate is considered every time a tolerance is set or revised for each use of glyphosate on a food crop. Pursuant to FQPA, EPA has repeatedly reviewed residue tolerances for all crops on which glyphosate is applied. In several instances, EPA specifically responded to comments on the public docket raising concerns about increased risk of carcinogenicity resulting from the increased use of

glyphosate on that crop. EPA's responses to these public concerns explicitly affirmed that glyphosate was not carcinogenic, and it is also important to remember that EPA assesses the cumulative risks of exposure with each new crop, such that each registered tolerance supports an additional finding of non-carcinogenicity.

For instance, in 1997, with respect to establishing tolerances for glyphosate on animal feed, EPA released a Tolerance Reassessment and Risk Management Decision (TRED) for glyphosate. EPA provided a response to the comments from Patricia Clary alleging that glyphosate is a "possible carcinogen and a mutagen." EPA directly responded and concluded "data indicate that glyphosate is a group E carcinogen (evidence of noncarcinogenicity for humans)… and is not a mutagen" Glyphosate: Pesticide Tolerances, 62 Fed. Reg. 17723 (Apr. 11, 1997) (to be codified at 40 CFR part 180).

Similarly, in response to comments from the Northwest Coalition for Alternatives to Pesticides (NCAP) that essentially mirror the current plaintiff's claims that glyphosate is a genotoxin, and that animal and epidemiology studies show that it is a carcinogen, the Agency responded stating that "the Agency has concluded that the use of glyphosate and glyphosate products do not pose unreasonable risks or adverse effects to humans." 60.936. Glyphosate: Pesticide Tolerances. 67 Fed. Reg. 60.934, 60.943 (Sept. 27, 2002) (to be codified at 4 CFR part 180).

Thus, EPA would likely consider it to be false or misleading for a registrant to put a cancer warning on its glyphosate product labels, as EPA has repeatedly considered

EXHIBIT B

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

DEWAYNE JOHNSON,
Plaintiff,
v.
MONSANTO COMPANY, et al.,
Defendants.

No. CGC-16-550128

Judge: Hon. Curtis E.A. Karnow

Dept. 304

C O N F I D E N T I A L

DEPOSITION OF JOHN R. FOWLE, III, Ph.D.

Washington, D.C.

February 22, 2018

GOLKOW LITIGATION SERVICES

T 877.370.3377 | F 917.591.5672

deps@golkow.com

So I have no, you know, I have no opinion on -- on anything regarding that, in that sense, because that's not the focus.

Q. You were not asked, then, to analyze and answer the question of whether Monsanto acted reasonably throughout this regulatory period?

MR. COPLE: Objection, vague, lacks foundation, argumentative.

A. I was asked to look at the EPA processes and procedures to evaluate the safety of glyphosate.

Q. Okay. Do you have any opinions one way or another whether Monsanto was reasonable in warning consumers or the public about the risks of its glyphosate-containing products?

MR. COPLE: Objection, argumentative, lacks foundation, vague.

A. As I said, my -- my opinion really doesn't matter, but what I can tell you is that EPA has the proper processes and procedures and requirements in place to make sure that those -- that the public is notified of how to properly use a pesticide, and that stems from the FIFRA, the requirements in FIFRA, that EPA register pesticides.

That registration process includes extensive toxicity testing and evaluation, and, based on that,