

1 Sandra A. Edwards (State Bar No. 154578)  
Joshua W. Malone (State Bar No. 301836)  
2 Farella Braun + Martel LLP  
235 Montgomery Street, 17th Floor  
3 San Francisco, CA 94104  
Telephone: (415) 954-4400; Fax: (415) 954-4480  
4 sedwards@fbm.com  
jmalone@fbm.com

5 Joe G. Hollingsworth (appearance *pro hac vice*)  
6 Martin C. Calhoun (appearance *pro hac vice*)  
Kirby T. Griffis (appearance *pro hac vice*)  
7 William J. Cople (appearance *pro hac vice*)  
Hollingsworth LLP  
8 1350 I Street, N.W.  
Washington, DC 20005  
9 Telephone: (202) 898-5800; Fax: (202) 682-1639  
jhollingsworth@hollingsworthllp.com  
10 mcalhoun@hollingsworthllp.com  
kgriffis@hollingsworthllp.com  
11 wcople@hollingsworthllp.com

12 George C. Lombardi (appearance *pro hac vice*)  
James M. Hilmert (appearance *pro hac vice*)  
13 Winston & Strawn LLP  
35 West Wacker Drive  
14 Chicago, IL 60601  
Telephone: (312) 558-5969; Fax: (312) 558-5700  
15 glombard@winston.com  
jhilmert@winston.com

16 *Attorneys for Defendant*  
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

**MONSANTO COMPANY'S OPPOSITION  
TO 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**

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

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

1 Plaintiff Dewayne Johnson (“Plaintiff”) relies on this Court’s order regarding preemption  
2 in an attempt to preclude Defendant Monsanto Company (“Monsanto”) from presenting evidence  
3 of the company’s compliance with standards under the Federal Insecticide, Fungicide, and  
4 Rodenticide Act (“FIFRA”). See Pl.’s Mot. at 2. Plaintiff’s motion consists mainly of rehashing  
5 his arguments from the summary judgment briefing on preemption. But Plaintiff’s motion ignores  
6 the fact that evidence related to the U.S. Environmental Protection Agency (“EPA”) and FIFRA is  
7 relevant to issues other than preemption.

8 While this Court found that Monsanto cannot rely on its compliance with FIFRA as a  
9 complete defense to liability, compliance with EPA standards does absolve Monsanto from  
10 charges of negligence *per se*. See *Amos v. Alpha Prop. Mgmt.*, 73 Cal. App. 4th 895, 901 (1999)  
11 (noting that compliance with standards is “relevant to show due care”). California courts have  
12 repeatedly acknowledged the relevance of regulatory compliance in tort litigation. For example,  
13 in *Carlin v. Superior Court*, 13 Cal. 4th 1104, 1114-1115 (1996), the Court rejected the plaintiff’s  
14 argument that “FDA regulations are essentially irrelevant in a common law action for failure to  
15 warn.” Though the court in *Carlin*, much like this Court, found that the strict liability standard for  
16 failure to warn for prescription drugs was not inconsistent with federal regulatory policy, the court  
17 recognized that “evidence of compliance with FDA requirements is admissible as relevant  
18 evidence in a strict liability case on the issue whether a pharmaceutical manufacturer failed to  
19 provide adequate warnings.” *Id.* (citing *Hatfield v. Sandoz-Wander, Inc.*, 124 Ill.App.3d 780, 787  
20 (1984)). To wit, Plaintiff even admits that “EPA’s registration of [Monsanto’s glyphosate-  
21 containing herbicides] may be admissible on the question of whether Monsanto’s warnings were  
22 adequate.” See Pl.’s Mot. at 2 n.2.

23 //

24 //

25 //

26 //

27 //

28 //


1 For the foregoing reasons, Monsanto respectfully requests that this Court deny Plaintiff's  
2 motion and permit Monsanto to present evidence of the EPA registration of its pesticides.

3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Dated: June 7, 2018

Respectfully submitted,

FARELLA BRAUN + MARTEL LLP

By:   
\_\_\_\_\_  
Sandra A. Edwards

Attorneys for Defendant  
MONSANTO COMPANY