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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**COUNTY OF SAN FRANCISCO**

DEWAYNE JOHNSON,

Plaintiff,

vs.

MONSANTO COMPANY,

Defendant.

Case No. CGC-16-550128

**DEFENDANT MONSANTO COMPANY'S OPPOSITION TO PLAINTIFF'S MOTION *IN LIMINE* NO. 7 TO EXCLUDE ANY 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**

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

## I. INTRODUCTION

Plaintiff Dewayne Johnson ("Plaintiff") asks this Court to preclude Defendant Monsanto Company ("Monsanto") from offering any testimony or argument about whether the U.S. Environmental Protection Agency ("EPA") would have accepted additional warnings about the risk of non-Hodgkin's lymphoma ("NHL") on the labels of its glyphosate-based herbicides. Plaintiff's Motion is nothing more than an attempt to prevent Monsanto from offering evidence of its compliance with the standards of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA") and regulations set forth by the EPA. Such evidence has been determined to be both relevant and admissible under California law.

## II. ARGUMENT

Plaintiff relies on a rehashing of his summary judgment argument on preemption to support the notion that Monsanto's offering evidence of its compliance with the EPA's pesticide registration process is somehow irrelevant. As noted in Monsanto's Opposition to Plaintiff's Motion *in Limine* No. 12, California courts have held evidence of compliance with regulatory standards is admissible evidence to show the adequacy of a product's labeling and warning. *See Carlin v. Superior Court*, 13 Cal. 4th 1104, 1114-1115 (1996) (holding that while compliance with FDA regulations was not a complete defense to liability, it was admissible evidence relevant to whether a pharmaceutical manufacturer provided adequate warnings).

Plaintiff argues that evidence regarding how the EPA would have handled a request for a labelling change is speculative primarily by citing testimony from Monsanto's expert, John Fowle, III, Ph.D. *See* Pl.'s Mot. at 1. Dr. Fowle is a former EPA employee of 33 years. *See* Declaration of Sandra A. Edwards ("Edwards Decl.") at ¶ 13, Ex. 12 (Dep. of John Fowle ("Fowle Dep.") at 13:8 – 15:12 (Feb. 23, 2018)). While at EPA, Dr. Fowle spent several years in the Office of Pesticides Program Health Division where he was responsible for registration and review. *Id.* Accordingly, Dr. Fowle's testimony regarding how the EPA handles pesticide registration and review is not speculative, but rather based on his specialized knowledge and expertise gained in the course of his years at EPA, and will undoubtedly assist the jury in understanding how EPA undertakes the label approval process. Moreover, as Plaintiff has maintained that Monsanto was

negligent in failing to change its label warning regarding NHL despite no direction to do so from the EPA, Dr. Fowle's testimony regarding how the EPA handles label modification requests, and Monsanto's compliance therewith, is relevant and crucial to Monsanto's ability to meet its burden of showing that its actions were not negligent.

Plaintiff attempts to undermine Dr. Fowle's clear experience and qualification on this issue by noting that he could not name an instance where the EPA denied a request by a pesticide manufacturer to add "enhanced safety warnings" to its label. *See* Pl.'s Mot. at 3. This is a straw-man argument. As Dr. Fowle testified, the EPA has specific rules and requirements for the language and information permitted to be placed on product labeling based on its own assessment of a chemical. *See* Edwards Decl. ¶ 13, Ex. 12 (Fowle Dep. at 313:12 – 23). He noted that based on his experience, a company would not propose, and the EPA would not accept, a product label modification that contradicts the EPA's assessment of the product. *Id.* 313:24 – 315:2. And EPA's assessments of glyphosate have continually concluded that no additional warnings regarding potential carcinogenicity are appropriate. Plaintiff cannot hypothesize an inconceivable and unrealistic scenario and then use it to criticize Dr. Fowle for not having dealt with that fictional scenario. Dr. Fowle's specialized knowledge from years of experience at EPA bears directly on the issue of the adequacy of Monsanto's efforts in creating and maintaining adequate product labels.

## III. CONCLUSION

For the foregoing reasons, Monsanto respectfully requests that this Court deny Plaintiff's Motion *In Limine* No. 7.

Dated: June 7, 2018

Respectfully submitted,

FARELLA BRAUN + MARTEL LLP

By: 

Sandra A. Edwards

Attorneys for Defendant
MONSANTO COMPANY