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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

**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

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County of San Francisco
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1 **I. INTRODUCTION**

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

10 **II. ARGUMENT**

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

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

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

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

19 **III. CONCLUSION**

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

22 Dated: June 7, 2018

Respectfully submitted,

23 FARELLA BRAUN + MARTEL LLP

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25 By: 

26 Sandra A. Edwards

27 Attorneys for Defendant
MONSANTO COMPANY

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