IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

HENRY HOLYFIELD and TARA HOLYFIELD, Plaintiff, v. CHEVRON U.S.A. Inc., et al., Defendant.	No. 1:20-CV-00165-JAR

MEMORANDUM IN SUPPORT OF
SYNGENTA CROP PROTECTION AND SYNGENTA CORPORATION'S
MOTION TO DISMISS

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INTRODUCTION

Under Fed. R. Civ. P. 12(b)(6), Defendants Syngenta Crop Protection and Syngenta Corp. ("Syngenta")[1] respectfully request that the Court dismiss the Amended Complaint. (Dkt. 22.) Plaintiffs' claims cannot proceed because they are preempted by federal law and fail for additional reasons under Missouri law.

The complaint alleges that Plaintiff Henry Holyfield was diagnosed with Parkinson's disease in 2015, and that he developed the disease as a result of exposure to the herbicide paraquat while working as an agricultural laborer between 1965 and 1975. Mr. Holyfield has sued Chevron and Syngenta, alleging that they made and sold the product to which he allegedly was exposed.

The EPA's review thus far has consistently concluded that any alleged link between Parkinson's and paraquat is unsubstantiated—and Syngenta denies the allegations in the complaint on the merits. But for present purposes, Plaintiffs' claims fail at the pleading stage because federal law preempts them. Paraquat has been heavily regulated by the EPA for decades under the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. §§ 136-136y. Among other things, paraquat must be periodically registered and re-registered with the EPA, the EPA must approve labels, and EPA-approved labels generally cannot be changed without permission. *Id.* § 136a(f)(1); 40 C.F.R. §§ 152.44, 152.46. Through decades of scrutiny, the EPA's judgment continues to be that paraquat is safe for sale and use so long as EPA-prescribed precautions are taken and instructions are followed. To ensure uniformity, FIFRA prohibits states from imposing any labeling requirements "in addition to or different from" FIFRA's requirements and EPA-approved labels, 7 U.S.C. § 136v(b). But that is exactly what the complaint seeks to do. Each count relies on the premise that Syngenta had a duty under state law to have provided different warning

[1] Syngenta AG is named in the Amended Complaint as a defendant, but has not been served.

labels than the labels the EPA approved. Plaintiffs' claims are preempted both by FIFRA's express preemption provision, and for the further reason that it would be impossible to comply simultaneously with federal law and with the alleged state-law duty on which this lawsuit is premised.

The doctrine of primary jurisdiction also provides a separate and independent reason why the Court should dismiss or, at a minimum, stay the case. The factual linchpin of the complaint is the allegation that paraquat causes Parkinson's. The EPA's experts are considering that very question, as part of a rigorous registration assessment that began in 2011, and for which a decision is anticipated in 2020. Courts in this Circuit and elsewhere have long recognized that such considerations within an agency's "particular field of expertise" are "best addressed in the first instance by that agency[,]" *Ellis v. Tribune Television Co.*, 443 F.3d 71, 84 (2d Cir. 2006), which is "better equipped than courts by specialization, by insight gained through experience, and by more flexible procedure." *Iowa Beef Processors, Inc. v. Ill. Cent. Gulf R. Co.*, 685 F.2d 255, 259 (8th Cir. 1982).

Finally, Counts IV and V must be dismissed in any event for failure to state a claim under Missouri law. Count IV should be dismissed because only *purchasers* of a good—or their family members or houseguests—can sue for breach of implied warranty. In the United States, only certified applicators can purchase and use paraquat, and the complaint does not allege that Mr. Holyfield purchased paraquat at all. It states only that he was exposed during his work as an agricultural laborer. Missouri precedent holds that employees of a purchaser cannot sue for breach of implied warranty. Count V should be dismissed because a loss-of-consortium claim must specify what damages the consortium plaintiff (Tara Holyfield) suffered independent of the injured spouse. Merely stating that Tara Holyfield "sustain[ed] damages," (Dkt. 22 ¶93), is not enough.

BACKGROUND

A. Paraquat and the Federal Regulatory Framework

"Paraquat" or "paraquat dichloride" is the organic compound $[(C_6H_7N)_2]Cl_2$ and one of the

most widely-used herbicides in the world. It was first synthesized in 1882, its herbicidal properties were discovered in 1955, and it is now sold for commercial use in more than 90 countries. Although other herbicides have been developed over the past 60 years, paraquat remains popular because it is effective and environmentally friendly in ways other herbicides are not. Paraquat is fast-acting and kills the green parts of every plant it touches, but then deactivates in soil. Paraquat does not spread beyond where it is applied, which allows farmers to plant sooner after spraying, and to plant multiple crops in a single growing season. Moreover, by killing weeds without destroying roots, paraquat stabilizes soil. Paraquat does not accumulate, endanger earthworms or soil microorganisms, or leach into groundwater. Using paraquat in conjunction with less soil tillage also lowers the carbon footprint of the crops produced. *See* Paraquat Information Center, *Benefits for the Environment*, https://paraquat.com/en/benefits/benefits-environment

Like all pesticides in the United States, paraquat's use and sale are heavily regulated, primarily under FIFRA. Congress enacted FIFRA in 1947, and later "transformed FIFRA from a labeling law into a comprehensive regulatory statute." *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 991 (1984). "FIFRA regulate[s] the use, as well as the sale and labeling, of pesticides; regulate[s] pesticides produced and sold in both intrastate and interstate commerce; provide[s] for review, cancellation, and suspension of registration, and g[i]ve[s] EPA great[] enforcement authority." *Id.* at 991-92. As a result, any pesticide must be registered with the EPA before it can be sold in the United States. 7 U.S.C. § 136a. Registration is "a scientific, legal, and administrative procedure through which" the EPA evaluates health and environmental risks. EPA, *About Pesticide Registration*, https://www.epa.gov/pesticide-registration/about-pesticide-registration; 7 U.S.C. § 136a(c)(5). Among other things, the EPA considers whether the product "will perform its intended function without unreasonable adverse effects on the environment[,]" 7 U.S.C.

§ 136a(c)(5)(C), defined to include unreasonable adverse effects on human health. *Id.* § 136(bb).

Importantly, a registration application includes health, safety, and environmental data about the risks and effectiveness of the product, 7 U.S.C. § 136a(c)(1)(F), (c)(2), and "a complete copy of the labeling of the pesticide, a statement of all claims to be made for it, and any directions for its use[.]" *Id.* § 136a(c)(1)(C); *see also id.* § 136(p)(1)-(2) (defining "label" and "labeling"); *id.* § 136a(c)(5)(C) (EPA reviews content of labels during registration process); 40 C.F.R. §§ 152.40-152.55 (same). As the U.S. government has emphasized, once approved, "[***t*]*he label is the law***." Br. of the United States as *Amicus Curiae*, *Monsanto Co. v. Hardeman*, 9th Cir. No. 19-16636, Dkt.#32, at 21 (filed Dec. 20, 2019),[2] *available at* 2019 WL 7494588 [hereinafter "U.S. *Hardeman* Amicus Brief"] (quoting EPA, *Pesticide Registration Manual* (last updated Apr. 2017), https://www.epa.gov/pesticide-registration/pesticide-registration-manual-introduction) (emphasis added). After the EPA approves a label, the manufacturer may not make substantive changes without EPA permission. 7 U.S.C. § 136a(f)(1); 40 C.F.R. §§ 152.44, 152.46. If the EPA believes a product violates FIFRA's provisions, it may issue "stop sale, use, or removal" orders, 7 U.S.C. § 136k(a), seize or condemn offending products, *id.* § 136k(b) or pursue civil or criminal remedies against the manufacturer. *Id.* § 136l. States may restrict the sale or use of pesticides within their borders, *id.* § 136v(a), but they cannot "impose or continue in effect any requirements for labeling

[2] Pending appeals in California raise similar preemption issues regarding a different pesticide. State trial courts and a federal district court have thus far concluded that FIFRA does not preempt state-law claims concerning Monsanto's Roundup product. *See, e.g.*, *Johnson v. Monsanto Co.*, 52 Cal. App. 5th 434, 2020 WL 4047332, at *1 (2020) (referring to unpublished preemption ruling); *In re Roundup Prods. Liab. Litig.*, Nos. 16-md-02741-VC & 16-cv-0525-VC, 2019 WL 3219360 (N.D. Cal. Jul. 12, 2019); *Hardeman v. Monsanto Co.*, 216 F. Supp. 3d 1037 (N.D. Cal. 2016). None of those rulings had the benefit of the views of the United States, which has since filed an *amicus curiae* brief before the U.S. Court of Appeals emphasizing that FIFRA does preempt plaintiffs' claims and that the district court's contrary rulings were incorrect. U.S. *Hardeman* Amicus Brief, at 14-27 (filed Dec. 20, 2019). That case remains pending on appeal.

or packaging in addition to or different from those required under [FIFRA]." *Id.* § 136v(b).

Registered pesticides must undergo "registration review" every fifteen years, *see* 7 U.S.C. §§ 136a(g)(1)(A), 136a-1, a process by which the EPA conducts science reviews, develops a risk assessment and publishes it for public comment, and issues a Registration Review Decision. EPA, *Registration Review Process*, https://www.epa.gov/pesticide-reevaluation/registration-review-process. A registrant who seeks permission for a new or different use must follow additional procedures and meet additional requirements. *See* 7 U.S.C. § 136a(c)(7)(B).

Consistent with FIFRA, the EPA has scrutinized and re-scrutinized the health and environmental risks of paraquat periodically. Paraquat was first registered in 1964. EPA, *Reregistration Eligibility Decision (RED): Paraquat Dichloride* at 9 (Aug. 1997), https://archive.epa.gov/pesticides/reregistration/web/pdf/0262red.pdf. In the 1970s, following the 1972 amendments to FIFRA, the EPA reviewed paraquat's registration again. *Id.* In 1982 and 1987, the EPA considered whether to place paraquat into an intensive "Special Review" process, previously called the "Rebuttable Presumption Against Registration." *Id.* Each time, the EPA obtained additional safety data before concluding that paraquat was safe for humans and the environment so long as it was used as directed, and could be approved without the Special Review process. *Id.*

In 1997, the EPA again reviewed paraquat's registration and concluded that it should be reregistered. *Id.* at 94. The EPA found, based on all available scientific data, that there was "*no evidence* to suggest the need for" neurological studies related to paraquat. *Id.* at 33 (emphasis added). The EPA also concluded that "spray droplets of paraquat from all currently registered products are not of respirable size and inhalation is not an exposure route of concern." *Id.* at 116.

In 2011, the EPA initiated another registration review. EPA, *Paraquat Dichloride (Paraquat): Human Health Risk Scoping Document in Support of Registration Review* (Dec. 6, 2011),

https://www.regulations.gov/document?D=EPA-HQ-OPP-2011-0855-0004. For approximately eight years, the EPA collected and analyzed scientific data concerning paraquat's health and environmental risks. During that process, the EPA has specifically examined the alleged link between paraquat and Parkinson's disease. In June 2019, the EPA produced a health assessment, "concluding that the weight of evidence was *insufficient to link paraquat exposure from pesticidal use of US registered products to [Parkinson's disease] in humans*." Mem. of June 26, 2019 at 1, 5-6 ("EPA Paraquat Parkinson's Review"), https://www.regulations.gov/document?D=EPA-HQ-OPP-2011-0855-0125 (emphasis added). The EPA solicited public comments (due last December), and its Registration Review Proposed Interim Decision is expected this year. EPA, *Paraquat Dichloride*, https://www.epa.gov/ingredients-used-pesticide-products/paraquat-dichloride.

B. Plaintiffs' Claims

Plaintiffs Henry and Tara Holyfield originally filed suit in Missouri state court, after which the defendants removed because this Court has diversity jurisdiction. (Dkt. 1.) The Holyfields' amended complaint states that Mr. Holyfield "was diagnosed with Parkinson's disease on August 5, 2015," and contends that the cause was his exposure to paraquat decades earlier. (Dkt. 22 ¶¶53-58.) The complaint contends that "[f]rom approximately 1965 through 1975," Mr. Holyfield "worked as an agricultural laborer assisting in, among other things, the business of aerial application of pesticides ('crop dusting')," and that he "was exposed to paraquat being applied by crop dusting" "[i]n the course of his work." (Dkt. 22 ¶¶53-54.) The complaint purports to state five causes of action under Missouri state law: **(1)** "Strict Liability in Tort—Design Defect" (Dkt. 22 ¶¶61-67), **(2)** "Strict Liability in Tort—Failure to Warn" (*Id.* ¶¶68-73), **(3)** "Negligence" (*Id.*, ¶¶74-80); **(4)** "Breach of Implied Warranty" (*Id.* ¶¶81-90), and **(5)** "Loss of Consortium" (*Id.* ¶¶91-94). The first four counts allege that defendants knew or should have known that paraquat causes

Parkinson's, and are liable for selling it anyway and failing to warn of that risk. The loss-of-consortium claim seeks derivative remedies for Mr. Holyfield's spouse. (*Id.* ¶¶3, 91-94).

ARGUMENT

I. FIFRA PREEMPTS ALL OF PLAINTIFFS' CLAIMS.

A. FIFRA Expressly Preempts Plaintiffs' Claims.

Plaintiffs' claims are preempted because they all depend on the premise that Missouri tort law imposes a duty to warn of an alleged risk of Parkinson's that goes beyond the labeling and packaging requirements defendants satisfied when the EPA registered paraquat under FIFRA. No one may sell or distribute pesticides in the United States without EPA approval of the labels and packaging. *Background §A, supra*; 7 U.S.C. § 136a(a), (c)(1). Manufacturers have a continuing obligation to adhere to FIFRA's labeling requirements, and must seek EPA approval before revising the labels. *Id.* § 136a(f)(1). Once approved, the label is the law. *Background §A, supra*; *Merck Sharp & Dohme Corp. v Albrecht*, 139 S. Ct. 1668, 1679 (2019) (EPA's approval "carr[ies] the force of law[.]"). Further confirming that Congress entrusted the EPA with evaluating the warnings on FIFRA-registered pesticides—and not the juries of 50 states—FIFRA expressly preempts "*any requirements for labeling or packaging in addition to or different from those required*" under FIFRA. 7 U.S.C. § 136v(b) (emphasis added). "'[R]equirements' in § 136v(b) reaches beyond positive enactments, such as statutes and regulations, to embrace common-law duties." *Bates v. Dow Agrosciences LLC*, 544 U.S. 431, 443 (2005). In other words, FIFRA preempts common-law duties of care that amount to additional or different requirements for labeling or packaging.

Every count in the complaint fits that description, and is thus preempted, as each one boils down to the assertion that defendants' EPA-approved labels are deficient under Missouri tort law for failing to warn of the alleged link between paraquat exposure and Parkinson's. Counts I-III each repeatedly allege that defendants' liability arises from their "failure" to "instruct or warn" of

that alleged link. (Dkt. 22 ¶¶65-66 (Count I), 69-72 (Count II), 76d-g (Count III).) Indeed, Count II is titled "Strict Liability in Tort—*Failure to Warn*." Count IV ("Breach of Implied Warranty") relies on the same duty by asserting that "defendants impliedly warranted" certain things about paraquat that were false, in plaintiffs' view, because paraquat "caused, or contributed to cause, Parkinson's." (*Id.* ¶¶86-87); *see also Witherspoon v. Gen. Motors Corp.*, 535 F. Supp. 432, 434 (W.D. Mo. 1982) ("[L]iability imposed for breach of an implied warranty is of 'tort nature' and, in Missouri, the difference between 'strict liability' or 'implied warranty' is not one of substance."). Count V is a derivative loss-of-consortium claim that depends on a valid underlying claim for personal injuries, and thus rises or falls with the others. *See Richardson v. State Hwy & Transp. Comm'n*, 863 S.W.2d 876, 880 (Mo. 1993).

Plaintiffs may respond that not every claim is titled "failure to warn," but courts consistently reject that reasoning when the substance of a claim would impose state-law duties that conflict with federal law. In *Mut. Pharm. Co. v. Bartlett*, 570 U.S. 472, 492 (2013), the Supreme Court held that "[i]n cases where it is impossible—in fact or by law—to alter a product's design (and thus to increase the product's 'usefulness' or decrease its 'risk of danger'), *the duty to render a product 'reasonably safe' boils down to a duty to ensure the presence and efficacy of a warning* to avoid an unreasonable risk of harm from hidden dangers or from foreseeable uses." (citation omitted, emphasis added); *see Wilgus v. Hartz Mt. Corp.*, No. 12-CV-86, 2013 WL 653707, at *6 (N.D. Ind. Feb. 19, 2013) (dismissing complaint as preempted by FIFRA where, as here, "[a]ll of the plaintiffs' claims are implicitly, if not expressly, based on a failure to warn argument"); *Mirzaie v. Monsanto Co.*, No. 15-CV-4361, 2016 WL 146421, at *2 (C.D. Cal. Jan. 12, 2016) (similar).

Nor can plaintiffs respond that their proposed state-law duty is not a labeling requirement because defendants could have refrained from selling paraquat. Supreme Court precedent rejects

that reasoning. *Bartlett*, 570 U.S. at 475, 488, 513 ("stop-selling rationale" would "work a revolution in … pre-emption caselaw," which "presume[s] that an actor seeking to satisfy both his federal- and state-law obligation is not required to cease acting altogether in order to avoid liability").

Finally, *Bates* is not to the contrary. The dispute in *Bates* was whether a pesticide manufacturer should have included an "efficacy" warning that the pesticide would stunt farmers' crops. 544 U.S. at 440. The EPA had taken no position on that warning, and for decades had waived any review of "efficacy" warnings. *Id.* Thus, it was not clear whether the claims in *Bates* sought to enforce FIFRA's existing requirements or to impose additional requirements. *Id.* at 453. This case, however, concerns an alleged duty to provide a warning of the type that the EPA has specifically considered and rejected. The EPA has specifically scrutinized the adequacy of paraquat's health warnings for decades. This includes consideration in 1997 of whether neurological studies were needed, and consideration during the current registration review cycle of the alleged link between paraquat exposure and Parkinson's. *Background §A, supra*. And again, the EPA's view continues to be "that the weight of evidence was *insufficient to link paraquat exposure from pesticidal use of US registered products to [Parkinson's disease] in humans*." EPA Paraquat Parkinson's Review, *supra*, at 1, 5-6 (emphasis added). For decades, the EPA has concluded that paraquat's labeling adequately warns of the risks to human health. Once approved, the label is the law and cannot be changed without EPA approval. Plaintiffs' claims are thus necessarily preempted because they are premised on a state-law duty to provide warnings "in addition to or different from those required" under FIFRA. 7 U.S.C. § 136v(b) (emphasis added).

B. Impossibility/Implied Preemption Also Bars Plaintiffs' Claims.

Separate and apart from express preemption, the Court also should dismiss the complaint because it would have been impossible for defendants to comply with both FIFRA and the state-law duty of care that Plaintiffs posit—which means that implied preemption bars Plaintiffs' claims.

The Supreme Court "has found state law to be impliedly pre-empted where it is 'impossible for a private party to comply with both state and federal requirements." *Bartlett*, 570 U.S. at 480 (quoting *English v. Gen. Elec. Co.*, 496 U.S. 72, 79 (1990)); *see also Geier v. Am. Honda Motor Co.*, 529 U.S. 861, 873 (2000). One such circumstance is where a private party cannot comply with state law without first obtaining the approval of a federal regulatory agency. In *PLIVA Inc. v. Mensing*, the Supreme Court held that a state-law failure-to-warn claim was preempted where it was based on a duty to provide a warning that a drug manufacturer could not have added to the label without prior FDA approval. 564 U.S. 604, 617-18 (2011); *see also In re Celexa & Lexapro Mktg. Litig.*, 779 F.3d 34, 41 (1st Cir. 2015) ("The line *Wyeth* and *PLIVA* thus draw between changes that can be independently made … and changes that require prior FDA approval also makes some pragmatic sense."); *Gibbons v. Bristol-Myers Squibb Co.*, 919 F.3d 699, 708 (2d Cir. 2019) (state-law failure-to-warn claim preempted because it did not plausibly allege that drug manufacturer could have revised warnings without FDA approval); *Dolin v. GlaxoSmithKline LLC*, 901 F.3d 803, 812 (7th Cir. 2018) (defendant could not have added warning without FDA permission). The existence of an express preemption clause does not resolve whether an implied preemption problem remains. *Buckman Co. v. Plaintiffs' Legal Comm.*, 531 U.S. 341, 352 (2001).

Like the defendants in *PLIVA*, *Celexa*, *Bristol-Myers*, and *Dolin*, Syngenta lacked any authority under FIFRA to make substantive changes to paraquat's labels without the EPA's permission. 7 U.S.C. § 136a(f)(1); 40 C.F.R. §§ 152.44, 152.46. FIFRA allows pesticide manufacturers to make only "minor modifications" on a unilateral basis, such as changing a brand name or adding bilingual wording. *See* 40 C.F.R. § 152.46. In all other respects, "the label is the law," and a manufacturer that unilaterally alters an EPA-approved label by adding or subtracting warnings engages in misbranding in violation of federal law. 7 U.S.C. §§ 136(q)(1)(A), 136j(a)(1)(E). Where, as

here, a lawsuit is premised on an alleged state-law duty to violate federal law, the lawsuit is preempted. The Court therefore should dismiss the complaint.

II. THE EPA HAS PRIMARY JURISDICTION OVER PLAINTIFFS' CLAIMS.

If the Court does not dismiss Plaintiffs' claims as preempted, it should dismiss or stay the action in deference to the EPA's active consideration of paraquat's registration. Under the doctrine of primary jurisdiction, courts dismiss or stay claims that implicate the special competence of an administrative agency and are the subject of an ongoing proceeding. *See United States. v. W. Pac R.R. Co.*, 352 U.S. 59, 63-64 (1956); *see also Chlorine Inst. v. Soo Line R.R.*, 792 F.3d 903, 908-12 (8th Cir. 2015) (affirming dismissal on primary jurisdiction grounds); *Iowa Beef*, 685 F.2d at 260-61 (vacating and remanding where district court did not apply primary jurisdiction doctrine); *U.S. v. Homestake Mining Co.*, 595 F.2d 421, 429-31 (8th Cir. 1979) (vacating and remanding where "district court invaded the [EPA]'s primary jurisdiction.").

There is "no fixed formula for determining whether to apply the doctrine of primary jurisdiction." *Access Telecommc'ns v. S.W. Bell Tel. Co.*, 137 F.3d 605, 608 (8th Cir. 1998). In each case courts consider whether the purposes of the doctrine would be served. *Id.* "[A]gency expertise is the most common reason for applying the doctrine." *Id.* "Another reason is to promote uniformity and consistency with the particular field of regulation." *Id.*; *see also Pharm. Research & Mfrs. of Am. v. Walsh*, 538 U.S. 644, 673 (2003) (Breyer, J., concurring) (primary jurisdiction aims "to produce better informed and uniform legal rulings by allowing courts to take advantage of an agency's specialized knowledge, expertise, and central position within a regulatory regime").[3]

[3] Plaintiffs may note that two state trial courts found similar claims not preempted and declined to apply the primary jurisdiction doctrine. Order on Syngenta Defs' Mot. to Dismiss, *Hoffman v. Syngenta Crop Prot. LLC*, No. 17-L-517 (Ill., St. Clair Cty. Cir. Ct. Jul. 31, 2018); Order re: Defs' Demurrer, *Paraquat Coordinated Cases*, No. JCCP MS5031 (Cal. Super. Ct., Contra Costa Cty. Dec. 23, 2019). Those decisions do not apply Missouri law, and lacked the benefit of the United States' views on FIFRA's preemptive scope. *See* U.S. *Hardeman* Amicus Brief, *supra*, at 14-27.

Both reasons underscore why the doctrine of primary jurisdiction applies here. The fundamental question underlying all of plaintiffs' claims is whether the chemical compound paraquat is safe for use as an agricultural herbicide if reasonable (and communicated) precautions are taken. To answer that question, jurors will have to evaluate, among other things, the scientific evidence bearing on an alleged link between paraquat exposure and Parkinson's, the state of that evidence in the 1960s and 1970s when Mr. Holyfield was allegedly exposed, the foreseeability and significance of the alleged risks (now and in the 1960s and 1970s), and the relative weight to be given to paraquat's undisputed benefits to farmers and rural communities. Those issues plainly implicate the EPA's expertise. The issues are highly technical, scientifically complex, and go the heart of the EPA's congressionally-mandated role in the registration and regulation of pesticides. As explained above, EPA is not only uniquely suited to consider those issues; it is *currently* doing so, nearing the end of a multi-year, data-driven process based on scientific expertise, with a Proposed Interim Decision expected this year. *Background §A*, *supra*. Those issues also implicate uniformity and consistency under the FIFRA scheme. Whether scientific evidence substantiates a link between paraquat exposure and Parkinson's, and if so whether manufacturers should warn of that risk or should have warned of that risk decades ago, are weighty issues that should be answered uniformly by the expert agency charged with addressing them, not on an ad hoc basis by juries who may reach different determinations from one case to the next. The EPA's re-registration review makes this a textbook case for at least hearing what the agency has to say.

III. COUNT IV SHOULD BE DISMISSED BECAUSE MISSOURI LAW DOES NOT PERMIT IMPLIED-WARRANTY CLAIMS BY EMPLOYEES OF A COMPANY THAT PURCHASED A PRODUCT.

Count IV should be dismissed because Missouri law only provides a cause of action for breach of implied warranty to the actual buyer of a product, and to the purchaser's household members or guests who would foreseeably use or be injured by its use.

An "implied warranty" is an implied term of transactions, where the law concludes that sellers have promised buyers that a product is reasonably safe and fit for its intended use. 18 Williston on Contracts § 52:67 (4th ed.). Under Missouri's Commercial Code, most remedies for breach of warranty thus belong only to buyers, Mo. Rev. Stat. §§ 400.2-711 to 2-716, or to family members or houseguests who would foreseeably use or be injured by the good (*Id.* §400.2-318):

> A seller's warranty whether express or implied extends to any natural person who is in the family or household of his buyer or who is a guest in his home if it is reasonable to expect that such person may use, consume or be affected by the goods and who is injured in person by breach of the warranty.

Courts applying that provision consistently hold that Missouri law does not recognize warranty claims by a buyer's employees. *See Cowens v. Siemens-Elema AB*, 837 F.2d 817, 822 (8th Cir. 1988) (affirming dismissal of warranty claim because § 2-318 "d[oes] not permit a warranty claim brought by an employee of a purchaser"); *Teel v. Am. Steel Foundries*, 529 F. Supp. 337, 345 (E.D. Mo. 1981) ("There is nothing in the express wording of this section to indicate that an employee of a buyer may benefit from the seller's warranty."); *Leonard v. BASF Corp.*, No. 06-CV-33, 2006 WL 3702700, at *5 (E.D. Mo. Dec. 13, 2006); *Johnson v. Ponderosa Trailers*, No. 07-CV-6089, 2008 WL 4335596, at *5 (W.D. Mo. Sep. 17, 2008). Courts in other states have drawn the same conclusion from identical language in their commercial codes. *See Taylor v. Southwire Tools & Equip.*, 130 F. Supp. 3d 1017, 1021 (E.D. Ky. 2015) ("[A] warranty extends only to the buyer's family members and household residents or guests … [not] to employees of a commercial purchaser."); *Franklin v. Caterpillar, Inc.*, No. 08-CV-0583, 2009 WL 10728499, at *4 (N.D. Okla. Oct. 1, 2009) ("[E]mployees of the buyer are not included …" (citation omitted)).

That conclusion follows from the plain text of Section 2-318, and from the Missouri legislature's decision to reject broader alternatives. *See Teel*, 529 F. Supp. at 345. The Uniform Commercial Code includes three alternative provisions extending warranty rights to third-party non-

purchasers. The first alternative, which Missouri chose, is the narrowest: it limits such rights to buyers and foreseeably injured family members and guests of buyers. The other two, which Missouri rejected, extend such rights more broadly to all reasonably foreseeable users:

Alternative A	**Alternatives B & C**
A seller's warranty whether express or implied extends to any natural person ***who is in the family or household of his buyer or who is a guest in his home*** if it is reasonable to expect that such person may use, consume or be affected by the goods and who is injured in person by breach of the warranty.	A seller's warranty whether express or implied extends to any natural person who may reasonably be expected to use, consume or be affected by the goods and who is injured in person by breach of the warranty.

U.C.C. § 2-318 (emphasis added). Missouri's choice shows "a legislative intent to limit the class of third party beneficiaries of the seller's warranty to the class of persons specifically enumerated in the statute." *Teel*, 529 F. Supp. at 345.

All of this confirms that Mr. Holyfield does not have a cause of action for breach of implied warranty. The complaint does not identify any buyer at all; it states only that "Defendants placed paraquat into the stream of commerce," (Dkt. 22 ¶82), and that it caused Mr. Holyfield's injuries. (*Id.* ¶88). The complaint does not allege that Mr. Holyfield was a buyer, or family member or houseguest of a buyer, of paraquat. Instead, it states that Mr. Holyfield was exposed to paraquat "in the course of his work," (*Id.* ¶ 54) "as an agricultural aircraft laborer assisting in … crop dusting." (*Id.* ¶53). The only plausible inference is that the buyer was Mr. Holyfield's employer or an entity even further removed. Mr. Holyfield therefore cannot state a claim for breach of implied warranty, and Count IV should be dismissed. *Teel*, 529 F. Supp. at 345; *Leonard*, 2006 WL 3702700, at *5; *Cowens*, 837 F.2d at 822.

IV. COUNT V SHOULD BE DISMISSED FOR FAILURE TO PLEAD IDENTIFIABLE DAMAGES.

Count V should be dismissed because it fails to plead any specific damages to Tara Holyfield independent of Henry Holyfield's injuries. In Missouri, a loss-of-consortium plaintiff must

allege damages independent of those of the injured spouse. *Lear v. Norfolk & W. Ry. Co.*, 815 S.W. 2d 12, 14 (Mo. Ct. App. 1991); *Thompson v. Brown & Williamson Tobacco Corp.*, 207 S.W.3d 76, 113 (Mo. Ct. App. 2006) ("[T]he spouse seeking damages for loss of consortium is not entitled to recover merely because the tortfeasors were found to be liable to the injured spouse."). And under Rule 8 of the Federal Rules of Civil Procedure, the complaint must offer more than "labels and conclusions" or "a formulaic recitation of the elements of a cause of action." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

That is all the complaint offers here: it states only that "[t]he conduct of defendants [Chevron and Syngenta] as described above, caused or contributed *to cause Plaintiff Tara Holyfield to sustain damages* as a direct result of the injury to her husband Henry Holyfield." (Dkt. 22 ¶93.) Count V therefore should be dismissed as deficient. *See Myers v. Sander*, No. 13-CV-2192, 2014 WL 409081, at *9 (E.D. Mo. Feb. 3, 2014) (dismissing loss-of-consortium claim for failure to "allege[] any derivative loss of society, services, affection, companionship, or conjugal rights")); *Rill v. Trautman*, 950 F. Supp. 268, 273 (E.D. Mo. 1996) (similar). If Plaintiffs believe the deficiency can be cured, any amended pleading also should be required to omit the demand for punitive damages. (Dkt. 22 ¶94.) In Missouri, "punitive damages are not recoverable for loss of consortium." *Hale v. Firestone Tire & Rubber Co.*, 756 F.2d 1322, 1337 (8th Cir. 1985); *Oliver v. SL W. Lounge, LLC*, No. 17-CV-1556, 2017 WL 2955181, at *2 (E.D. Mo. July 11, 2017); *McConnell v. Commercial Carriers, Inc.*, No. 03-CV-253, 2011 WL 5325568, at *1 (E.D. Mo. Nov. 3, 2011).

CONCLUSION

For the foregoing reasons, Syngenta respectfully requests that the Court dismiss the Amended Complaint.

September 9, 2020

Respectfully submitted,

Syngenta Crop Protection, LLC
Syngenta Corporation

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CERTIFICATE OF SERVICE

I, Michael J. Nester, an attorney, on oath hereby certify that on September 9, 2020, I electronically filed the foregoing **Syngenta Crop Protection and Syngenta Corporation's Memorandum in Support of Motion to Dismiss** with the Clerk of the United States District Court, Eastern District of Missouri, Eastern Divisions, using the Court's ECF filing system.

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