

1 Michael J. Miller (appearance *pro hac vice*)
2 Timothy Litzenburg (appearance *pro hac vice*)
3 Curtis G. Hoke (State Bar No. 282465)
4 **THE MILLER FIRM, LLC**
5 108 Railroad Ave.
6 Orange, VA 22960
7 Phone: (540) 672-4224
8 Fax: (540) 672-3055
9 mmiller@millerfirmllc.com
10 tlitzenburg@millerfirmllc.com
11 choke@millerfirmllc.com

12 *Attorneys for Plaintiff*
13 **DEWAYNE JOHNSON**

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **FOR THE COUNTY OF SAN FRANCISCO**

16 DEWAYNE JOHNSON,

17 Plaintiff,

18 v.

19 MONSANTO COMPANY

20 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]

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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

	Page
I. Introduction	2
II. EPA and Its Enabling Legislation.....	10
III. Science OPP Relies on and the OPP Processes and Requirements in Place to Obtain and Evaluate Data.....	18
IV. How Pesticides Are Evaluated for Carcinogenicity.....	32
V. Labeling.....	45
VI. Concept of Human Health Risk Assessment vs. Hazard Assessment & Difference Between IARC Cancer Classification & Worldwide Risk Assessment	51
VII. Application of Test Results and Labeling – Classification and Risk Assessment	56
VIII. How Pesticides Are Registered and Evaluated Over Time to Ensure Safe Use.....	64
IX. Inert Ingredient Approvals	70
X. Peer Review.....	73
XI. Communications Between EPA and Stakeholders, Including Regulated Entities	75
XII. OPP Safety Evaluation of Glyphosate.....	77
XIII. OPP Safety Evaluation of Inerts Used in Glyphosate Products.....	99
XIV. Industrial Bio-Test (IBT).....	103
XV. Good Laboratory Practices.....	104
XVI. Roles of States in Regulating Pesticides.....	107
XVII. EPA Has Primary Authority for Pesticide Regulation – Other Agencies Support.....	110
XVIII. Worldwide Regulatory Approvals.....	113
XIX. Summary of Opinions and Conclusions	117

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

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

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DEWAYNE JOHNSON,

No. CGC-16-550128

Plaintiff,

v.

Judge: Hon. Curtis E.A. Karnow

MONSANTO COMPANY, et al.,

Dept. 304

Defendants.

-----x

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

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

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

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

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

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

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

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

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