United States District Court
Northern District of California

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

MARY BETH MONTERA,

Plaintiff,

v.

PREMIER NUTRITION CORPORATION,

Defendant.

Case No. 16-cv-06980-RS

ORDER ON ADDITIONAL MOTIONS IN LIMINE

On May 24, 2022, Plaintiff filed three motions in limine. This order addresses two of those motions: the motion for a curative instruction regarding FDA inaction and the motion to exclude evidence and argument that Defendant and its employees relied on the advice of counsel.

Considering first the motion for a curative instruction, the first order on motions in limine in this case addressed this issue. As Defendant was cautioned in both the prior order and in court on the record, "argument implying that FDA or FTC inaction amounts to a finding by those agencies that Premier's labels were not misleading is improper, and will [be] exclude[d]." Order on Motions in Limine, pp. 3-4. Limited information concerning FDA inaction is relevant to rebut Plaintiff's argument that Defendant intended to create an implied message of pain and/or arthritis relief. As stated on the record, information concerning FDA action as to other companies selling glucosamine supplements is irrelevant and will be excluded. At the close of evidence, the jury will

be given an instruction on FDA inaction.[1]

As for evidence concerning advice of counsel, to reiterate what was said in open court, Defendant may elicit information that it had a legal review process, but may not present any evidence concerning any conclusions or views from lawyers. Inappropriate information concerning conclusions includes statements that claims on the Joint Juice label "passed legal review[,]" as characterized by Defendant in opening statement.

IT IS SO ORDERED.

Dated: May 24, 2022

RICHARD SEEBORG
Chief United States District Judge

[1] The Court plans to give the following instruction: "The Food and Drug Administration ('FDA') does not review every advertisement of a dietary supplement. Therefore inaction by the FDA does not mean that the FDA has decided that an advertisement is not deceptive or misleading." Any further discussion of this instruction will occur at the charging conference.