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2
3 IN THE UNITED STATES DISTRICT COURT
4 FOR THE NORTHERN DISTRICT OF CALIFORNIA
5

6 STEPHEN WENDELL and LISA WENDELL,
7 as successors in interest to MAXX
8 WENDELL, deceased,

9 Plaintiffs,

10 v.

11 JOHNSON & JOHNSON; CENTOCOR,
12 INC.; ABBOTT LABORATORIES;
13 SMITHKLINE BEECHAM d/b/a
14 GLAXOSMITHKLINE; TEVA
15 PHARMACEUTICALS USA; GATE
16 PHARMACEUTICALS, a division of
17 TEVA PHARMACEUTICALS USA; PAR
18 PHARMACEUTICAL, INC.,

19 Defendants.
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No. C 09-04124 CW

ORDER GRANTING
MOTIONS FOR
SUMMARY JUDGMENT
(Docket Nos. 177,
179, 183 and 185)

27 This is a pharmaceutical product liability case in which
28 Plaintiffs Stephen and Lisa Wendell have sued as successors-in-
interest to their son, Maxx Wendell, the decedent. The Wendells
allege claims for negligence and strict liability, asserting that
Defendants Abbott Laboratories, GlaxoSmithKline LLC (GSK),¹ TEVA
Pharmaceuticals USA, Gate Pharmaceuticals, a division of TEVA
Pharmaceuticals, and PAR Pharmaceuticals, Inc. failed adequately
to warn about certain risks posed by their products, specifically
two prescription drugs: Humira and mercaptopurine (also known as

¹ GSK was formerly known as and erroneously served and sued
in this action as SmithKline Beecham d/b/a GlaxoSmithKline.

1 6-mercaptopurine, 6-MP and Purinethol). These Defendants have
2 each separately moved for summary judgment, arguing that the
3 Wendells cannot show evidence of proximate causation necessary to
4 establish liability for failure to warn. Docket Nos. 177, 179,
5 183 and 185. Having considered all of the parties' submissions
6 and oral argument, the Court GRANTS the motions.

7
8 BACKGROUND

9 Abbott is the alleged manufacturer, marketer and distributor
10 of Humira in California. GSK and TEVA are purportedly the
11 manufacturers, and the California marketers and distributors of 6-
12 MP, sold under the brand name Purinethol. PAR is allegedly a
13 manufacturer, marketer and distributor of 6-MP in California. The
14 Wendells have also sued Johnson & Johnson and its wholly owned
15 subsidiary, Centocor, Inc., both of which are allegedly involved
16 in the manufacture, marketing, sale and distribution of Remicade.
17 Johnson & Johnson and Centocor have not moved for summary
18 judgment.

19
20 In the fall of 1998, Maxx was diagnosed with inflammatory
21 bowel disease (IBD), and began receiving treatment from Dr. Edward
22 Rich, a pediatric gastroenterologist at Kaiser Permanente in San
23 Francisco. Rich Dep. at 50:5-10, 59:22-60:1, 74:23-25.²

24
25 Dr. Rich testified that it was not his "regular practice to
26 look at drug labeling." Id. at 192:6-7. He received information

27 ² The complete transcript of the deposition is located at
28 Docket No. 199.

1 on medications from multiple sources, including meetings, other
2 professionals in the field, articles and occasional meetings with
3 drug representatives. Id. at 192:7-14. He explained, "Generally
4 I'm looking at drug labeling or the PDR in medicines that I'm less
5 familiar with." Dr. Rich could not remember whether he ever
6 relied on labeling information for 6-MP before prescribing it to
7 patients. Id. at 282:2-283:2.

8
9 With respect to the impact of drug labeling on his decisions
10 regarding treatment, Dr. Rich testified, "Drug labeling is
11 sometimes something I rely on when making decisions on drug use
12 for patients." Id. at 190:21-23. He stated, "When I read the
13 labeling, it's one of the things that is part of my decision-
14 making process. Id. at 191:20-22.

15
16 Initially, Dr. Rich prescribed Prednisone, a steroid, and
17 Asacol, an aspirin, anti-inflammatory drug, to treat Maxx's IBD.
18 Id. at 75:8-12, 79:22-25, 82:6-8. After several months, Dr. Rich
19 sought to wean Maxx from Prednisone, due to the significant side
20 effects and the weakness of the drug as a long-term therapy,
21 replacing it with 6-MP, an immunosuppressive therapy. Id. at
22 82:9-83:16, 86:16-22.

23
24 In June 1999, Maxx began taking 6-MP. Id. at 105:14-15. Dr.
25 Rich prescribed varying dosages of 6-MP, while attempting to
26 eliminate gradually Maxx's need for Prednisone. However, as of
27 May 2002, Maxx was still taking Prednisone and 6-MP. Id. at
28 117:4-11.

1 At the time Dr. Rich prescribed 6-MP he was aware of a paper
2 reporting the occurrence of lymphoma in adults taking the drug.
3 Id. at 89:12-90:17. According to Dr. Rich, the frequency of
4 lymphoma occurrences reported in the study was one in one hundred
5 adult patients taking 6-MP. Id. at 89:23-90:4. Dr. Rich found
6 this "significant," prompting him to warn patients of a "small but
7 non-zero increased risk of serious infections or malignancies"
8 when discussing 6-MP treatment with patients. Id. at 89:2-90:17.
9 Dr. Rich testified that he may or may not have included the word
10 "lymphoma" when providing the warning. Id. at 89:7-12.

12 At an appointment with Maxx on May 8, 2002, Dr. Rich
13 discussed in detail prescribing Remicade. Id. at 117:4-118:1.
14 Again, the goal in changing Maxx's medication at this time was to
15 take him off steroids. Id. at 151:17-152:9. On July 10, 2002,
16 Maxx received his first infusion of Remicade. Id. at 147:24-
17 148:16. Maxx received infusions of Remicade approximately every
18 three months, in combination with 6-MP. Id. at 155:4-12, 157:9,
19 170:12-21.

21 Dr. Rich considered Remicade, as well as Humira, part of a
22 class of anti-tumor necrosis factor drugs, also known as "anti-TNF
23 drugs" and "TNF inhibitors." Id. at 175:10-14, 176:9-17, 264:24-
24 25, 265:2-3. He testified that he "virtually always" informed his
25 patients of a "nonzero increased risk" of serious infections and
26 malignancies related to "immunosuppressives and anti-tumor
27 necrosis factor drugs." Id. at 123:6-10. Dr. Rich's notes did
28

1 not mention specific warnings as to malignancies and lymphomas,
2 but he testified that such discussions "might not be documented."
3 Id. at 214:5-9. Other notations indicate that he had informed
4 Maxx of side effects.

5 It is not entirely clear when Dr. Rich began warning his
6 patients about a "nonzero increased risk" of malignancies
7 connection with Remicade. According to Dr. Rich, at a point in
8 time he could not recall, he became aware of a study involving
9 approximately 700 patients on Remicade therapy, a majority of whom
10 had rheumatoid arthritis and a minority of whom had Crohn's
11 disease. Id. at 125:13-19. The study reported incidences of
12 serious infections and malignancies, including lymphomas, within
13 that patient population. Id. at 125:20-126:1. An entry regarding
14 Remicade in the 2002 Physicians' Desk Reference included mention
15 of a clinical study involving 771 patients, seven of whom
16 developed new or recurrent malignancies, including lymphoma. Id.
17 at 133:2-12. However, the PDR also stated that "the observed
18 rates and incidents [of these malignancies] were similar to those
19 expected for the population." Id. at 133:10-12. According to Dr.
20 Rich, in 2002 there were no reports on the risk of therapies
21 combining Remicade and 6-MP. Id. at 132:10-12.

22 In about November 2005, Dr. Rich began to consider
23 discontinuing Maxx's Remicade treatment and discussed Humira with
24 him. Id. at 170:24-173:5. Dr. Rich also testified that in "late
25 2005" he became aware of a "complication" associated with
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1 Remicade, namely the occurrence of hepatosplenic T-cell lymphoma
2 in adolescent and young adult patients taking Remicade with 6-MP.
3 Id. at 204:21-205:22, 215:3-4. Dr. Rich did not testify that new
4 knowledge about "this complication" led him to consider taking
5 Maxx off Remicade.

6 Maxx received an infusion of Remicade in November 2005 and
7 then his final dose of Remicade in March 2006. Id. at 182:15-14;
8 197:16-199:7. In May 2006, Maxx underwent a colonoscopy that
9 revealed no signs of IBD. Id. at 198:1-199:14. According to Dr.
10 Rich, a decision to discontinue Remicade or use an alternative
11 medication would have been made at the time of the colonoscopy,
12 based on the results of the examination. Id. at 172:10-12. Maxx
13 received no further infusions of Remicade.

14 Also in May 2006, the FDA approved Remicade for an additional
15 indication for the treatment of pediatric Crohn's disease, but
16 required a black box warning about the drug. The warning alert
17 physicians to the following:
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20 RARE POSTMARKETING CASES OF HEPATOSPLENIC T-CELL
21 LYMPHOMA HAVE BEEN REPORTED IN ADOLESCENT AND YOUNG
22 ADULT PATIENTS WITH CROHN'S DISEASE TREATED WITH
23 REMICADE. THIS TYPE OF T-CELL LYMPHOMA HAS A VERY
24 AGGRESSIVE DISEASE COURSE AND IS USUALLY FATAL. ALL OF
25 THESE HEPATOSPLENIC T-CELL LYMPHOMAS WITH REMICADE HAVE
26 OCCURRED IN PATIENTS ON CONCOMITANT TREATMENT WITH
27 AZATHIOPRINE OR 6-MERCAPTOPYRIMIDINE.

28 Declaration of Kevin Haverty in Support of Plaintiffs' Opposition
to GSK's Motion for Summary Judgment, Ex. 3.

1 Dr. Rich testified that he would have received this black box
2 warning in the form of a letter or other notification at about the
3 time it was issued. Rich Dep. at 214:23-215:3. However, he also
4 noted that he had learned of this "complication" earlier, in late
5 2005, as previously stated.

6 By November 2006, Maxx experienced a relapse. On November
7 22, 2006, he received his first prescription for Humira, taking
8 the drug in combination with 6-MP. Id. at 217:14-16. Dr. Rich
9 testified that he first treated patients with Humira in early 2005
10 or 2006 when two sixteen year old female patients with IBD
11 received the drug. Id. at 193:3-7; 173:19-25. Dr. Aileen Dillon,
12 a rheumatologist, wrote Maxx's first prescription for Humira
13 because, when Humira was first placed on the Kaiser formulary, it
14 was placed under limited release, only through rheumatologists.
15 Id. at 217:14-218:6. Dr. Rich testified that when he first began
16 prescribing Humira to his patients, he warned them of a "nonzero
17 but increased risk of serious infections and malignancies." Id.
18 at 193:23-194:11. His awareness of this risk was based on
19 literature he had reviewed and discussions he had had with other
20 physicians. Id. at 194:12-18.

21 When asked why he did not treat Maxx with Remicade in
22 November 2006, Dr. Rich responded,

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26 So in November '06, we had been aware for some time of
27 complication of hepatosplenic T-cell lymphoma, so that
28 would have been part of my discussion with the family.
Ease of therapy is always a discussion with Humira
versus Remicade.

1 Id. at 218:13-23. Dr. Rich explained that Humira may be
2 administered by the patient or a family member at home through
3 subcutaneous injections, while Remicade requires a patient to
4 visit a facility for two to three hour infusions. Id. at 174:15-
5 19, 267:5-23.
6

7 When asked whether he opted for Humira because of the black
8 box warning concerning Remicade, Dr. Rich testified, "I think that
9 the concern of hepatosplenic T-cell lymphoma would have been part
10 of my discussion with the family and it would have been part of my
11 thinking about the use of this disease (verbatim)." Id. at
12 219:16-22. Dr. Rich did not recall any similar warning regarding
13 Humira's use in combination with 6-MP and hepatosplenic T-cell
14 lymphoma. Id. at 219:23-220:2. Dr. Rich did not state that he
15 would have forgone prescribing Humira in November 2006, had he
16 learned of a black box warning or similar alert regarding the use
17 of Humira, alone or in combination with 6-MP, and the occurrence
18 of hepatosplenic T-cell lymphoma.
19

20 In deposition, Dr. Rich was asked whether his drug
21 recommendation was informed by the fact that one drug had a black
22 box warning about a rare, aggressive cancer, while the other drug
23 did not. Dr. Rich responded,
24

25 I don't think the black box would have been a primary
26 driving point in the use of medicine, just as FDA
27 indication or not is not a driving point, as FDA
28 doesn't indicate very much of anything in pediatrics.

Id. at 220:1-15.

1 Later, Dr. Rich was asked again whether information that he
2 had about the cases of hepatosplenic T-cell lymphoma associated
3 with Remicade and 6-MP combination use informed in any way his
4 recommendation that Maxx start Humira in November 2006. He
5 answered,

6 The occurrence of hepatosplenic T-cell lymphomas and
7 the information and knowledge about that would have
8 been part of many things that would have gone into my
9 own thinking on how to use this--these medications and
my discussion with the patients on how to use these
medications.

10 Id. at 225:7-113.

11 In addressing whether all anti-TNF drugs carry the same
12 risks, Dr. Rich testified that Humira was "entirely humanized,"
13 whereas Remicade was "75 percent humanized and 25 percent mouse."

14 Id. at 194:24-25. Dr. Rich engaged in the following exchange with
15 counsel,

16
17 A: So I presented [anti-TNF] medications always as
18 having an increased but nonzero increased risk. And
19 if I was asked by a patient, "Why do you use one
20 versus the other," or why we were considering Humira,
21 it may have come up in discussions that Humira was
fully humanized and may have--my statement would have
--would have been, "It may have a better safety
profile."

22 Q: What was the basis of your thinking that it may
23 have a better safety profile?

24 A: That it was fully humanized.

25 Q: What--

26 A: That there are allergy side effects to these
27 medicines.

28

1 Q: Okay. Other than allergies, did the fact that
2 Humira was fully humanized, monoclonal antibody, as
3 opposed to Remicade, affect, in your mind, the risk of
4 malignancies?

5 A: I can't recall whether I thought that or not. The
6 fact that there--I'm not an immunologist, and I'm not
7 sure they can answer that question. But the fact that
8 there is no mouse suggests that it might have been a
9 consideration in my thinking, that it's a possibility.

10 Id. at 195:13-196:12.

11 Based on Dr. Rich's recommendation, Maxx took Humira for at
12 least eight months. In mid-July 2007, Maxx was diagnosed with
13 hepatosplenic T-cell lymphoma. In December 2007, he passed away.

14 After Maxx's death and as part of this litigation, Ms.
15 Wendell testified, "I didn't know that there had been a black box
16 warning on Remicade . . . [W]e were not informed of that and there
17 would have been no reason for [Dr. Rich] to inform us of that
18 because [Maxx] wasn't taking Remicade at the time." Haverty Dec.,
19 Ex. 2, Lisa Wendell Dep. at 77:4-8. Ms. Wendell recalled that Dr.
20 Rich told her that Humira offered the convenience of self-
21 injection and had a better safety profile. Id. at 77:9-13. The
22 issue of convenience was considered because Maxx was moving to
23 Davis to attend college. Id. at 76:20-24. She answered
24 affirmatively when asked whether she would have discontinued the
25 use of any of the medications if she had been told that there was
26 a risk of hepatosplenic T-cell lymphoma. Id. at 75:8-12.

27 During 2007 Dr. Rich continued to treat patients using
28 therapies combining anti-TNF drugs with 6-MP, although he could

1 not recall whether the "combination therapy" consisted of 6-MP
2 combined with Remicade or 6-MP combined with Humira or both. Rich
3 Dep. at 208:11-209:5. Most likely in 2008, Dr. Rich switched to
4 using "mono-therapy," treating patients with an anti-TNF drug
5 alone without concomitant use of 6-MP. Id. at 208:16-17, 288:13-
6 16. Maxx's case played an "important role" in influencing Dr.
7 Rich's decision to use monotherapy as opposed to combination
8 therapy. Id. at 230:16-20. Dr. Rich reported that the majority
9 of practitioners, including many pediatric gastroenterologists,
10 use combination therapy, although that is no longer his practice.
11 Id. at 230:12-15.

12
13 LEGAL STANDARD

14 Summary judgment is properly granted when no genuine and
15 disputed issues of material fact remain, and when, viewing the
16 evidence most favorably to the non-moving party, the movant is
17 clearly entitled to prevail as a matter of law. Fed. R. Civ. P.
18 56. Celotex Corp v. Catrett, 477 U.S. 317, 322-23 (1986);
19 Eisenberg v. Ins. Co. of N. Am., 815 F.2d 1285, 1289 (9th Cir.
20 1987). The court must draw all reasonable inferences in favor of
21 the party against whom summary judgment is sought. Matsushita
22 Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986);
23 Intel Corp. v. Hartford Accident & Indem. Co., 952 F.2d 1551, 1558
24 (9th Cir. 1991).

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26
27 Material facts which would preclude entry of summary judgment
28 are those which, under applicable substantive law, may affect the

1 outcome of the case. The substantive law will identify which
2 facts are material. Anderson v. Liberty Lobby, Inc., 477 U.S.
3 242, 248 (1986).

4 DISCUSSION

5 Under the learned intermediary doctrine, a manufacturer of a
6 prescription drug is obliged to warn doctors, not patients, of
7 potential side-effects associated with its pharmaceutical
8 products. Carlin v. Superior Court, 13 Cal. 4th 1104, 1116
9 (1996). A plaintiff asserting causes of action for failure to
10 warn must prove not only that no warning was provided or that the
11 warning was inadequate, but also that the inadequacy or absence of
12 a warning caused the plaintiff's injury. Plummer v. Lederle
13 Laboratories, 819 F.2d 349, 358 (2d Cir. 1987) (applying
14 California law).

15 Under Motus v. Pfizer, Inc., 358 F.3d 659, 661 (9th Cir.
16 2004), "a product defect claim based on insufficient warnings
17 cannot survive summary judgment if stronger warnings would not
18 have altered the conduct of the prescribing physician." In Motus
19 the treating physician testified unequivocally that he neglected
20 to read the published warnings and did not rely on information
21 from Pfizer's detail men before prescribing the drug that
22 allegedly induced the decedent to commit suicide. 385 F.3d at
23 661. On this basis, the plaintiff could not establish a causal
24 connection between the representations or omissions that
25 accompanied the product and the plaintiff's injury.
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1 The present action is distinguishable from Motus because Dr.
2 Rich testified that he sometimes read drug labeling, in particular
3 when dealing with unfamiliar drugs. Although Dr. Rich learned of
4 6-MP during his training, there is evidence that Humira was
5 relatively new to Dr. Rich as a treatment for IBD when he
6 prescribed it to Maxx.

7
8 However, even assuming that Dr. Rich would have read a
9 warning on the labels of Humira and 6-MP, summary judgment in
10 favor of Movants is warranted. In Plummer, the Second Circuit,
11 applying California law, found that judgment should have been
12 entered for the defendant, because the physician knew of the risk
13 for which the plaintiff sought a warning, and yet the physician
14 still failed to warn the patient's mother about the risk. 819
15 F.2d at 358-59. Plummer, citing Rosburg v. Minnesota Mining &
16 Mfg. Co., 181 Cal. App. 3d 726, 730 (1986), concluded that "no
17 harm could have been caused by failure to warn of a risk already
18 known." 819 F.2d at 359. As in Plummer, Dr. Rich knew of the
19 risk of malignancies associated with 6-MP and Humira, but still
20 prescribed the medication. Thus, there is insufficient evidence
21 to create a material dispute of fact as to whether the warnings
22 that Plaintiffs contend should have been given would have changed
23 Maxx's treatment.
24

25
26 A. 6-MP

27 The Wendells assert that GSK, TEVA and PAR, allegedly
28 involved in the manufacture, marketing and distribution of 6-MP,

1 negligently failed to discover and/or provide an adequate warning
2 about the risk of hepatosplenic T-cell lymphoma posed by 6-MP when
3 used singly or in combination with Remicade or Humira. Dr. Rich,
4 however, was already aware of a significant risk of lymphomas
5 associated with 6-MP treatment. Yet he continued to prescribe the
6 drug. It appears that Dr. Rich's knowledge of this risk prompted
7 him to warn his pediatric patients about the nonzero increased
8 risk of developing malignancies or lymphomas while taking the
9 medication, but there is no evidence that the risk persuaded him
10 to cease recommending or prescribing the drug.
11

12 Moreover, there is insufficient evidence for a jury to infer
13 that Dr. Rich ceased treating Maxx with Remicade because of the
14 May 2006 black box warning regarding the risk of lymphoma
15 associated with therapy combining Remicade and 6-MP. Dr. Rich
16 began considering taking Maxx off Remicade in November 2005,
17 before the black box warning was issued. In addition, he
18 testified that black box warnings were not the driving force in
19 making decisions about the prescription of medication. Thus, the
20 Remicade black box warning does not provide a basis from which to
21 infer that, had Dr. Rich received a similar warning regarding
22 Humira and 6-MP prescribed in combination, he would have ceased
23 treating Maxx with that combination of drugs.
24

25 Nor is there evidence that a warning specific to pediatric
26 patients or specific to treatments combining 6-MP with TNF-
27 blockers would have led Dr. Rich to stop prescribing 6-MP alone or
28

1 in combination with Remicade or Humira. Contrary to the Wendells'
2 contention, evidence that Dr. Rich ceased prescribing TNF-blockers
3 in combination with 6-MP after Maxx was diagnosed with
4 hepatosplenic lymphoma does not prove that he would have changed
5 his prescription practices based on the warning they suggest. A
6 warning about rare occurrences of hepatosplenic lymphoma
7 associated with therapy combining 6-MP and Remicade is bound to
8 have less persuasive power than an instance of the disease
9 affecting a doctor's own patient followed that therapy.
10

11 Because there is insufficient evidence for a reasonable jury
12 to find that the failure to warn of the risk of hepatosplenic T-
13 cell lymphoma posed by 6-MP when used singly or in combination
14 with Remicade or Humira proximately caused Maxx's death, summary
15 judgment is granted in favor of GSK, TEVA and PAR.
16

17 The Wendells also argue that it is premature to grant summary
18 judgment in favor of GSK because further discovery may reveal that
19 Dr. Rich relied on information from GSK concerning the risks
20 associated with 6-MP. Apparently, GSK served a voluminous
21 response to a request for documents, and the Wendells had not had
22 time to sift through the discovery. However, the Wendells have
23 not demonstrated how documents from GSK could prove proximate
24 causation in this case, where the undisputed fact is that Dr. Rich
25 was already aware of the risk of lymphomas associated with 6-MP,
26 but still chose to prescribe the drug. Furthermore, Plaintiffs
27 lack evidence that any further warning regarding the use of 6-MP,
28

1 such as a warning about its use in combination with Humira, would
2 have changed the manner in which Dr. Rich treated Maxx. Summary
3 judgment is not premature.

4 B. Humira

5 The Wendells claim that Abbott should have provided a label
6 warning Dr. Rich about the risk of hepatosplenic T-cell lymphoma
7 associated with treatment combining Humira and 6-MP. However,
8 none of the evidence that the Wendells point to is sufficient to
9 create a dispute of fact as to whether the warning would have
10 altered Dr. Rich's decision to treat Maxx with Humira and 6-MP.
11 First, for the reasons already explained above, Dr. Rich's
12 subsequent decision to prescribe anti-TNF drugs alone, rather than
13 in combination with 6-MP, is not probative of whether a warning
14 about risks associated with Humira, used singly or in combination
15 with 6-MP, would have altered Maxx's treatment.
16

17
18 Next, Dr. Rich's testimony regarding Humira's comparatively
19 better safety profile is not helpful to the Wendells' case. When
20 read in context, Dr. Rich's testimony indicates that he believed
21 that Humira may have had a better safety profile based on the fact
22 that it was fully humanized and, thus, had fewer allergy side
23 effects.

24
25 Evidence that Dr. Rich did not warn Maxx about the risk of
26 combination therapy is not sufficient to establish proximate
27 causation with respect to Humira. Rather, Dr. Rich testified that
28 black box warnings were not the primary driver for his decisions

1 regarding medication. The timing of Dr. Rich's decision to
2 discontinue treating Maxx with Remicade is not evidence that a
3 black box warning as to Humira would have changed the course of
4 Maxx's treatment. Dr. Rich began considering whether to
5 discontinue Maxx's Remicade treatment before the black box warning
6 issued in May 2006. These grounds are insufficient to raise a
7 dispute of fact that a warning would have made a difference in
8 Maxx's treatment.
9

10 That Dr. Rich did not suspect Humira as a cause of Max's
11 lymphoma after his diagnosis fails to establish that a warning
12 about Humira would have persuaded him to stop prescribing the
13 medication. In other words, that Dr. Rich did not associate a
14 risk with Humira while the warning had not yet been announced does
15 not mean that, had the warning been provided, Dr. Rich would have
16 associated such a strong risk with Humira that he would have
17 decided against prescribing the drug.
18

19 Furthermore, Ms. Wendell's testimony that the family would
20 have discontinued the drug treatment if they had been warned is
21 insufficient. Maxx was born on August 20, 1986. At the time Maxx
22 received Humira in November 2006, he was twenty years old. There
23 is no evidence that Ms. Wendell made health care decisions for
24 Maxx. Ms. Wendell's statement as to what Maxx would have done
25 lacks foundation.
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Because the Wendells have failed to provide sufficient evidence to raise a dispute of fact as to the element of proximate causation, summary judgment in favor of Abbott is warranted.

CONCLUSION

The Wendells' loss of their son is tragic. However, because they have failed to provide sufficient evidence of proximate causation by GSK, TEVA, PAR and Abbott, the motions for summary judgment submitted by these Defendants are granted. In the event that the Wendells or remaining Defendants move for summary judgment, the motions shall be noticed for January 26, 2012.

IT IS SO ORDERED.

Dated: 12/15/2011



CLAUDIA WILKEN
United States District Judge