

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION**

NUTRIMATIX INC.,

Plaintiff,

v.

Case No. 6:15-cv-790-Orl-37GJK

XYMOGEN, INC.,

Defendant.

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**ORDER**

This cause is before the Court on the following:

1. Defendant's Proposed Jury Instruction Regarding the Requisite Federal Drug Act Nutritional Testing Method for FDA Violation Claims, submitted to the Court on February 10, 2017;
2. Defendant's Notice of Filing Authority Regarding the Necessary Compliance with the Federal Drug Act's Requirements for Sampling and Testing (Doc. 100), filed February 12, 2017;
3. Defendant's Notice of Filing Authority Regarding the Necessary Compliance with the Federal Drug Act's Requirements for Sampling and Testing (Doc. 101), filed February 12, 2017;
4. Defendant's Motion to Strike Expert Testimony of Richard Rampell and Incorporated Memorandum of Law (Doc. 102), filed February 12, 2017; and
5. Plaintiff's Memorandum in Opposition to Defendant's *Ore Tenus* Motion to Exclude (Doc. 103), filed February 12, 2017.

The Court issues the instant summary Order to provide the parties with rulings on critical pending issues prior to closing arguments:

1. Upon review of the authority submitted by Defendant in support of its proposed jury instruction on FDA sampling and testing requirements (“**FDA Regulation Instruction**”), the Court finds that the FDA Regulation Instruction is an accurate statement of the law. As such, the Court elects to include the FDA Regulation Instruction in its final instructions to the jury.
2. Upon consideration, Defendant’s motion to strike the testimony of Plaintiff’s damages expert, Richard Rampell, is due to be denied. Importantly, the Court finds that: (1) Defendant has failed to demonstrate that it was prejudiced by any of the omissions alleged in its motion to strike; and (2) Defendant’s cross-examination of Plaintiff’s witnesses sufficiently raised jury questions on credibility and reliability with regard to the allegedly undisclosed information referenced in Defendant’s motion to strike.

Accordingly, it is hereby **ORDERED AND ADJUDGED**:

1. Plaintiff’s objections to Defendant’s proposed FDA Regulation Instruction are **OVERULLED**.
2. Defendant’s Motion to Strike Expert Testimony of Richard Rampell and Incorporated Memorandum of Law (Doc. 102) is **DENIED**.

**DONE AND ORDERED** in Chambers in Orlando, Florida, on February 13, 2017.



  
ROY B. DALTON JR.  
United States District Judge

Copies:

Counsel of Record