

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

United States District Court
Southern District of Texas

ENTERED

February 28, 2018

David J. Bradley, Clerk

SANDRA G HALE,

Plaintiff,

VS.

UNITED STATES OF AMERICA, *et al*,

Defendants.

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CIVIL ACTION NO. 4:16-CV-1189

ORDER

Before the Court is Defendant Metrex Research, LLC's ("Metrex") Motion for Judgment on the Pleadings (Doc. #88), Plaintiff's Response (Doc. #92), and Metrex's Reply (Doc. #94).¹ Plaintiff's claims against Metrex focus around allegations that Metrex failed to provide adequate warnings and/or instructions on one of its products, a pesticide called CaviCide.² As Metrex's labeling of CaviCide was approved by the Environmental Protection Agency (*see* Doc. #28, Ex. 1), Plaintiff's claims centering around Metrex's failure to provide adequate warnings and instructions on its products are preempted by The Federal Insecticide Fungicide and Rodenticide Act ("FIFRA"). *See Quest Chem Corp. v. Elam*, 898 S.W.2d 819, 820 (Tex. 1995). As such, Plaintiff's claims against Metrex fail as a matter of law and dismissal is appropriate.

For the foregoing reasons, Plaintiff's Motion to Dismiss is GRANTED.

It is so ORDERED.

FEB 27 2018

Date


The Honorable Alfred H. Bennett
United States District Judge

¹ Plaintiff also filed a sur-reply (Doc. #95). Such a filing is not permitted by this Court's procedures. However, in the interest of fairness, the Court considered this document before determining the merit of Metrex's Motion. Accordingly, the Court grants Plaintiff leave to file such a document, and Metrex's Motion to strike the sur-reply (Doc. #96) is DENIED.

² Plaintiff hints at other potential claims against Metrex associated with CaviCide. However, none of these assertions establish a plausible claim for relief outside of the potential failure to warn claim. As such, any other claims Plaintiff believes were brought against Metrex are dismissed for failure to state a plausible claim for relief.