FINAL RULINGS ON PLAINTIFFS' MOTIONS IN LIMINE

Jennifer Robi v Merck & Co. et al, BC628589

PLAINTIFF'S MOTIONS IN LIMINE

The Court hereby rules on Plaintiff's Motions in Limine as follows:

1) Plaintiff's Motion in Limine No. 1 to Exclude any statements by counsel that give the appearance that the Court has any particular view of this case or the evidence is **MOOT** in light of the parties' resolution of this motion in limine by way of stipulation. (11/27/24 Joint Status Report regarding Motions in Limine, p.3; Joint In Limine Evidentiary Stipulations.)

2) Plaintiff's Motion in Limine No. 2 to Exclude any argument or suggestion by defense counsel that they sympathize with Plaintiff is **DENIED**.

"The usual purpose of motions in limine is to preclude the presentation of evidence deemed inadmissible and prejudicial by the moving party." (*Kelly v. New West Federal Savings* (1996) 49 Cal.App.4th 659, 669 (*Kelly*), italics added.) In *Kelly*, the court criticized the overuse of motions in limine, noting that the defendant had filed 28 such motions. (*Id*. at p. 669.) The court further stated that many motions labelled motions in limine were improper because they did not seek to exclude specific, identifiable evidence. (*Id*. at pp. 670-671.) The court suggested that in lieu of filing improper motions in limine, counsel should raise their concerns orally, thereby reducing "the amount of paperwork the court needed to review prior to impaneling a jury." (*Id.* at p. 671.)

Here, Plaintiff filed 49 motions in limine. Merck filed 20 motions in limine. Kaiser defendants filed 11 motions in limine. Although the parties resolved approximately 30 of the 91 originally filed motions in limine, 60 motions in limine remain unresolved. Many of these motions are improper and unnecessary because they do not seek to exclude specific, identifiable evidence. Plaintiff's Motion in Limine No. 2 is one such motion. As Plaintiff freely concedes, the motion is not directed at any specific evidence to be excluded. Instead, the motion seeks to preclude a certain line of argument or expression of sympathy – one that Plaintiff fails to establish is improper under all circumstances. Neither the parties nor the Court can anticipate in advance every potential argument that may properly or improperly arise during the trial. The Court declines to chill effective advocacy by prematurely and improvidently granting a motion in limine that fails to establish that every potential use of a line of argument is improper. Hence, this motion in limine is **DENIED** at this juncture. The parties may of course make appropriate objections at trial, and the Court will rule on such objections with the benefit of context. Finally, the Court cautions all Counsel not to make improper arguments because the Court may sustain objections to such arguments.

The court thus denies the motion on the ground that it is not a proper motion in limine, but the Court admonishes Counsel to refrain from making improper arguments.

3) Plaintiff's Motion in Limine No. 3 to Exclude any reference to the quantity of documents produced by the parties, including but not limited to the number of files or terabytes of documents produced, is **MOOT** in light of the parties' resolution of this motion in limine by way of stipulation. (11/27/24 Joint Status Report regarding Motions in Limine, p.3; Joint In Limine Evidentiary Stipulations.)

4) Plaintiff's Motion in Limine No. 4 to Exclude any reference to tort reform or a purported "litigation crisis," "lawsuit crisis," or similar concepts or phrases is **MOOT** in light of the parties' resolution of this motion in limine by way of stipulation. (11/27/24 Joint Status Report regarding Motions in Limine, p.3; Joint In Limine Evidentiary Stipulations.)

5) Plaintiff's Motion in Limine No. 5 to Exclude any reference to the filing of motions in limine, the contents thereof, or other such motions to exclude evidence and their contents, and any agreements or proceedings in connection with this motion or reference to any such matter is **MOOT** in light of the parties' resolution of this motion in limine by way of stipulation. (11/27/24 Joint Status Report regarding Motions in Limine, p.3; Joint In Limine Evidentiary Stipulations.)

6) Plaintiff's Motion in Limine No. 6 to Exclude any reference to any settlement negotiations between the parties, or lack thereof, or either party's seeking or refusing to enter into a stipulation is **MOOT** in light of the parties' resolution of this motion in limine by way of stipulation. (11/27/24 Joint Status Report regarding Motions in Limine, p.3; Joint In Limine Evidentiary Stipulations.)

7) Plaintiff's Motion in Limine No. 7 to Exclude any reference to attorney fee arrangements, the fact that Plaintiff's counsel routinely employ contingent fee arrangements, or who is paying or responsible for expenses associated with this or any similar litigation is MOOT in light of the parties' resolution of this motion in limine by way of stipulation. (11/27/24 Joint Status Report regarding Motions in Limine, p.3; Joint In Limine Evidentiary Stipulations.)

8) Plaintiff's Motion in Limine No. 8 seeks to exclude any reference to how, when, or under what circumstances the parties selected, hired, or employed their attorneys, or to any referral agreements, or other counsel the parties may have retained or consulted beyond their current counsel at trial. In the 11/27/24 Joint Statement re Motions in Limine, Merck states that it does not intend to introduce evidence of referral agreements, and thus, this portion of Plaintiff's Motion in Limine No. 8 is moot. As to the balance of Plaintiff's Motion in Limine No. 8, the Court finds that the evidence is relevant to Plaintiff's credibility. For example, if it is true – as Merck contends – that as Plaintiff retained additional counsel, her list of injuries continued to grow – this evidence would be relevant to Plaintiff's credibility with respect to her claimed injuries. The Court has weighed the probative value of such evidence against the danger of undue prejudice and risk of necessitating undue consumption of time. The Court has determined that the probative value of such evidence is not substantially outweighed by the probability that its admission will necessitate undue consumption of time or create substantial danger of undue prejudice, confusing the issues, or misleading the jury. (EV. CODE § 352.) Notwithstanding the

denial of this motion in limine, the moving party may renew the objection to the introduction of this evidence at trial, and the Court will rule on the evidentiary objection anew in the context of the other evidence that is presented at trial. Accordingly, with the exception of referral agreements, Plaintiff's Motion in Limine No. 8 is **DENIED**.

9) Plaintiff's Motion in Limine No. 9 to Exclude any reference to other cases involving the parties' counsel, including the fact that Plaintiff's counsel has primarily represented plaintiffs in lawsuits or specializes in personal injury, products liability, pharmaceutical, or any other area of litigation, and how they obtain clients is *MOOT* in light of the parties' resolution of this motion in limine by way of stipulation. (11/27/24 Joint Status Report regarding Motions in Limine, p.3; Joint In Limine Evidentiary Stipulations.)

10) Plaintiff's Motion in Limine No. 10 to Exclude any reference to the financial status, resources, or size of the parties' attorneys and law firms, or to their other business or cases is **MOOT** in light of the parties' resolution of this motion in limine by way of stipulation. (11/27/24 Joint Status Report regarding Motions in Limine, p.3; Joint In Limine Evidentiary Stipulations.)

11) Plaintiff's Motion in Limine No. 11 to Exclude any references to the accommodations of, or the use of private aircraft for transportation by, any witnesses, parties, or counsel is **MOOT** in light of the parties' resolution of this motion in limine by way of stipulation. (11/27/24 Joint Status Report regarding Motions in Limine, p.3; Joint In Limine Evidentiary Stipulations.)

12) Plaintiff's Motion in Limine No. 12 to Exclude any reference to any lawyers' or firm's advertisements is **MOOT** in light of the parties' resolution of this motion in limine by way of stipulation. (11/27/24 Joint Status Report regarding Motions in Limine, p.3; Joint In Limine Evidentiary Stipulations.)

13) Plaintiff's Motion in Limine No. 13 to Exclude any reference to counsels' use of jury consultants and related jury trial resources is **MOOT** in light of the parties' resolution of this motion in limine by way of stipulation. (11/27/24 Joint Status Report regarding Motions in Limine, p.3; Joint In Limine Evidentiary Stipulations.)

14) Plaintiff's Motion in Limine No. 14 to Exclude any reference to counsels' professional associations or engagement in educational seminars is **MOOT** in light of the parties' resolution of this motion in limine by way of stipulation. (11/27/24 Joint Status Report regarding Motions in Limine, p.3; Joint In Limine Evidentiary Stipulations.)

15) Plaintiff's Motion in Limine No. 15 seeks to exclude reference to current and former political candidates and their family members. In opposition, Merck indicates that it seeks to inquire about certain former political candidates and their family members only to the extent of relevance to a witness's credibility. Specifically, Robert F. Kennedy, Jr., is one of Plaintiff's counsel of record in this case, and is also Founder, Chairman of the Board and Chief Legal Counsel for the Children's Health Defense. Children's Health Defense has taken active part in litigating Ms. Robi's case, and Children's Health Defense employed Plaintiff's expert, Dr. Lucija Tomljenovic, for many years. Defendants correctly note that the scope of cross-examination of

an expert witness is broad, allowing for extensive and searching questioning to discredit the expert's opinion. Accordingly, if Lucija Tomljenovic testifies, the Court will allow Defendants to probe Dr. Tomljenovic's relationship and former employment with Children's Health Defense, and in turn the relationship between Children's Health Defense and Plaintiff's current or former counsel, Mr. Kennedy. However, Defendant has not identified any relevance as to the full name of Plaintiff's current or former counsel – Robert F. Kennedy, Jr. Nor has Defendant identified any relevance as to Robert F. Kennedy, Jr.'s affiliation with President Elect Donald Trump or his presumptive nomination as United States Secretary of Health and Human Services. The Court finds that any cross-examination of Dr. Tomljenovic as to these subjects will be equally effective if the parties reference Plaintiff's counsel simply by last name – "Mr. Kennedy" – and refrain from referring to him by his full name. The Court further finds that use of Mr. Kennedy's full name or political affiliations will not add anything of relevance and will create a risk of undue prejudice. The Court has weighed the probative value of use of Mr. Kennedy's full name against the danger of undue prejudice and risk of necessitating undue consumption of time. The Court has determined that the probative value of the use of Mr. Kennedy's full name is substantially outweighed by the probability that its admission will necessitate undue consumption of time and create substantial danger of undue prejudice, confusing the issues, and misleading the jury. (EV. CODE § 352.) Accordingly, Plaintiff's Motion in Limine No. 15 is **GRANTED ONLY TO THE EXTENT** that Defendants may not reference Mr. Kennedy by his full name or refer to Mr. Kennedy's political affiliations and presumptive nomination as Secretary of Health and Human Services. However, Defendants may refer to him in questioning and argument by his last name.

16) Plaintiff's Motion in Limine No. 16 to Exclude reference to any counsel's or expert witness' religious beliefs is **MOOT** in light of the parties' resolution of this motion in limine by way of stipulation. (11/27/24 Joint Status Report regarding Motions in Limine, p.3; Joint In Limine Evidentiary Stipulations.)

17) Plaintiff's Motion in Limine No. 17 to Exclude disparaging comments about counsel is **MOOT** in light of the parties' resolution of this motion in limine by way of stipulation. (11/27/24 Joint Status Report regarding Motions in Limine, p.3; Joint In Limine Evidentiary Stipulations.)

18) Plaintiff's Motion in Limine No. 18 seeks to exclude references by Defendants to general "good deeds" of Defendants or their employees, including corporate philanthropy. In opposition, Merck states that it seeks to offer a basic introduction to Merck's business and explain the work its employees do to ensure the safety of Gardasil. However, Merck has misconstrued Plaintiff's Motion in Limine No. 18 insofar as Merck believes that it seeks to exclude evidence of Merck's business and the work its employees do to ensure the safety of Gardasil. As Plaintiff makes clear in the Parties' 11/27/24 Joint Statement, this is not the subject of Plaintiff's Motion in Limine No. 18. Merck will certainly be permitted to introduce of its business and the work its employees perform to ensure the safety of Gardasil.

The other evidence that Merck proffers it will seek to introduce – charitable donations of medicines and vaccines to other countries – will be relevant at most – if at all – during the punitive damages phase. The Court has weighed the probative value of evidence of Merck's charitable donations of medicines and vaccines to other countries against the danger of undue prejudice and risk of necessitating undue consumption of time. The Court has determined that during the liability phase, the probative value of evidence of Merck's charitable donations of medicines and vaccines to other countries is substantially outweighed by the probability that its admission will necessitate undue consumption of time and create substantial danger of undue prejudice, confusing the issues, and misleading the jury. (EV. CODE § 352.) Accordingly, Plaintiff's Motion in Limine No. 18 to exclude evidence of Merck's charitable donations of medicines and vaccines to other countries is **GRANTED** during the liability phase.

The Court will defer ruling on the admissibility of evidence of Merck's charitable donations of medicines and vaccines to other countries during the punitive damages phase. Thus far, the parties have cited only published federal district court opinions that address the admissibility of such evidence during a punitive damages phase, which are not binding on this court. No later than January 31, 2025, the parties are to submit further briefing on the admissibility of evidence of Merck's charitable donations of medicines and vaccines to other countries during the punitive damages phase. Most helpful would be citation to any California appellate authority. In the absence of such authority, the parties should reference the jury instructions on punitive damages and explain what element or issue concerning punitive damages the proposed evidence would relate to.

19) Plaintiff's Motion in Limine No. 19 to exclude any comment that bolsters the unchallenged character or traits of Defendants' current or former employees, managers, consultants, experts, agents, or fiduciaries is plagued by the same defects noted by the Court of Appeal in *Kelly v. New West Federal Savings* (1996) 49 Cal.App.4th 659:

> On the other hand, many of the motions filed by Amtech were not properly the subject of motions in limine, were not adequately presented, or sought rulings which would merely be declaratory of existing law or would not provide any meaningful guidance for the parties or witnesses. For example, motion No. 19 sought to "... exclude any testimony of the plaintiffs which is speculative." No factual support or argument was presented to suggest the nature and type of speculative testimony which Amtech expected to be elicited from plaintiffs. Motions No. 8, 20 and 21 sought to exclude evidence of prior incidents unless an appropriate foundation was established to show the relevance of such evidence or that the prior incidents were similar in nature to the incident involved in the suit. Again, no factual support was presented in connection with the motions, meaning the court would have to rule in a vacuum. Motion No. 7, previously referred to, sought to limit the opinions of plaintiffs experts to those "rendered at deposition and in written reports." Again, there was no supporting evidence to suggest what opinions had been rendered at the depositions, leaving the court and the parties to guess what opinions during trial may be included within the scope of the ruling. Motion No. 6 sought an order precluding plaintiffs from calling any witnesses "not previously identified in plaintiffs'

> discovery responses." Absent a meaningful and expressed belief that this may occur, this was a meaningless motion unless and until plaintiffs attempted to call such witnesses."

(*Kelly v. New West Federal Savings* (1996) 49 Cal.App.4th 659, 670–671.)

For the same reasons stated in *Kelly v. New West Federal Savings*, the motion in limine here is not specific enough for the Court to make a meaningful order. The motion fails to identify what specific evidence the moving party seeks to exclude, i.e. what evidence Plaintiff considers to be evidence that bolsters unchallenged character traits. As such, the motion in limine also fails to comply with Local Rule 3.57. (CA R LOS ANGELES SUPER CT Rule 3.57(a)(1) ["Motions made for the purpose of precluding the mention or display of inadmissible and prejudicial matter in the presence of the jury must be accompanied by a declaration that includes the following: (1) Specific identification of the matter alleged to be inadmissible and prejudicial."].) Instead of identifying the specific evidence that the motion seeks to exclude, this motion in limine amounts to little more than a restatement of the law and general legal principles. Plaintiff fails to demonstrate that there are no circumstances which would permit admission of this evidence. The Court declines to rule on this motion in limine in a vacuum. Accordingly, Plaintiff's Motion in Limine No. 19 is **DENIED**. The moving party may at trial assert an objection to the introduction of specific evidence if and when this issue arises.

20) Plaintiff's Motion in Limine No. 20 to Exclude any reference by defense counsel and defense witnesses that Gardasil or vaccines generally are a "godsend," "miracle drugs," and any other unverifiable, medical opinion about the efficacy of vaccines is **MOOT insofar as Plaintiff seeks to exclude reference to Gardasil as a "godsend" or "miracle drug."** However, Plaintiff also seeks to exclude "any similar comments of that kind." (11/27/24 Joint Status Report, p. 12.) To the extent that Plaintiff seeks to preclude "any similar comments of that kind," this motion in limine fails to identify specific evidence that Plaintiff seeks to exclude. Plaintiff fails to specify what comments she deems to be similar in kind. Again, the Court declines to rule in a vacuum. Accordingly, Plaintiff's Motion in Limine No. 20 is **DENIED**. Plaintiff may of course raise objections as appropriate at trial, and the Court will rule on such objections.

21) Plaintiff's Motion in Limine No. 21 to Exclude any suggestion that this case or similar litigation may negatively impact Defendants' or other pharmaceutical companies' stock prices, cause their employees financial hardship or loss of employment, or adversely affect the economy is **MOOT** in light of the parties' resolution of this motion in limine by way of stipulation. (11/27/24 Joint Status Report regarding Motions in Limine, p.3; Joint In Limine Evidentiary Stipulations.)

22) Plaintiff's Motion in Limine No. 22 to Exclude any suggestion that this case or similar litigation may adversely impact Defendants' or other pharmaceutical companies' incentive or ability to develop new medications is **MOOT** in light of the parties' resolution of this motion in limine by way of stipulation. (11/27/24 Joint Status Report regarding Motions in Limine, p.3; Joint In Limine Evidentiary Stipulations.)

23) Plaintiff's Motion in Limine No. 23 to Exclude any suggestion that this case or similar litigation may adversely affect anyone's ability to purchase medications in the future, or affect the cost or availability of medical or health products, or affect doctors' or patients' prescription choices is **MOOT** in light of the parties' resolution of this motion in limine by way of stipulation. (11/27/24 Joint Status Report regarding Motions in Limine, p.3; Joint In Limine Evidentiary Stipulations.)

24) Plaintiff's Motion in Limine No. 24 to Exclude any suggestion that Defendants and the pharmaceutical industry have to factor in costs of lawsuits when determining costs of their products to the public is **MOOT** in light of the parties' resolution of this motion in limine by way of stipulation. (11/27/24 Joint Status Report regarding Motions in Limine, p.3; Joint In Limine Evidentiary Stipulations.)

25) Plaintiff's Motion in Limine No. 25 to Exclude any suggestion that Defendants may have limited insurance policy limits or cash, or that this case or similar litigation may adversely affect their insurance rates, premiums, finances, or ability to compete in the marketplace is **MOOT** in light of the parties' resolution of this motion in limine by way of stipulation. (11/27/24 Joint Status Report regarding Motions in Limine, p.3; Joint In Limine Evidentiary Stipulations.)

26) Plaintiff's Motion in Limine No. 26 seeks to exclude any suggestion that the FDA is ultimately responsible for adequacy of vaccine labeling, that Merck is not liable because the FDA approved Gardasil labeling, that Merck could not have amended the label without FDA approval, or that the FDA agreed with Merck's actions and/or conclusions. On page 16 of the 11/27/24 Joint Status Report regarding Motions in Limine, Merck makes clear that it does not intend to argue "that FDA is ultimately responsible for [the] adequacy of vaccine labeling" or that the FDA's approval of "Gardasil labeling" is, in and of itself, an absolute, complete defense to Plaintiff's claims. Plaintiff's Motion in Limine No. 26 is moot with respect to these two areas of testimony that Merck does not intend to elicit from its witnesses. Apart from this evidence that Defendant states it will not seek to introduce, Plaintiff's motion fails to identify what specific testimony or evidence Plaintiff seeks to exclude, for example, what testimony would constitute "a suggestion" that is improper. Plaintiff's Motion in Limine No. 26 is also overbroad in that it would prevent Defendant from introducing interactions between the FDA and Merck during the pre-approval and post-approval process; such evidence of what Merck may have disclosed to the FDA and what Merck may have withheld from the FDA, as well as the FDA's actions in response, are highly relevant to Plaintiff's fraud claim and Plaintiff's allegations that Merck willfully withheld from the FDA. (Complaint ¶¶ 14, 15.) Accordingly, those portions of Plaintiff's Motion in Limine No. 26 that are not moot are **DENIED**.

The Court has weighed the probative value of such evidence against the danger of undue prejudice and risk of necessitating undue consumption of time. The Court has determined that the probative value of such evidence is not substantially outweighed by the probability that its admission will necessitate undue consumption of time or create substantial danger of undue prejudice, confusing the issues, or misleading the jury. (EV. CODE § 352.)

Notwithstanding the denial of this motion in limine, the moving party may renew the objection to the introduction of this evidence at trial, and the Court will rule on the evidentiary objection anew in the context of the other evidence that is presented at trial. Further, the Court provides the further guidance as to how the Court will likely rule if an objection is made by either party: The Court will likely sustain an objection to testimony by any witness as to what governing laws and regulations require or permit with respect to vaccine labeling; such subjects are issues of law which the parties should include in their proposed jury instructions. If any witness testifies as to what the law or regulations allow or require, the Court would likely sustain an objection to such testimony about the requirements of the law.

27) In the 11/27/24 Joint Status Report regarding Motions in Limine, Plaintiff clarifies that Plaintiff's Motion in Limine No. 27 seeks to exclude any reference to the dismissal of claims against other defendants, including Drs. Garza and Fuller, and the dismissal of certain causes of action, i.e. medical battery. (11/27/24 Joint Status Report regarding Motions in Limine, p. 18.) Merck argues and cites unpublished federal cases for the proposition that even though evidence of dismissed claims is generally no later relevant and can be dismissed, it can be admitted for a limited purpose. However, Merck fails to identify any purpose at all why evidence of the dismissed claims (claims against Drs. Garza and Fuller and the medical battery cause of action) would have any relevance. The Court has weighed the probative value of such evidence of dismissed claims against the danger of undue prejudice and risk of necessitating undue consumption of time. The Court has determined that the probative value of such evidence is substantially outweighed by the probability that its admission will necessitate undue consumption of time and create substantial danger of undue prejudice, confusing the issues, and misleading the jury. (EV. CODE § 352.) Accordingly, Plaintiff's Motion in Limine No. 27 is **GRANTED**.

28) Plaintiff's Motion in Limine No. 28 to exclude the phrase "vaccine court" and any reference to the "vaccine court" and Vaccine Program generally, the potential for recovery under the Vaccine Program, and Plaintiff's Vaccine Program claim is overbroad. Pursuant to the Vaccine Act, Defendants may not introduce any orders from the Vaccine Court or the Vaccine Injury Table. (42 U.S.C. § 300aa-23(e).) **To the extent that Plaintiff's Motion in Limine No. 28 seeks to exclude evidence of any orders, findings, and conclusions from the Vaccine Court and to exclude evidence of the Vaccine Injury Table**, Plaintiff's Motion in Limine No. 28 is **GRANTED**. However, Plaintiff's Motion in Limine No. 28 goes far beyond this. For example, Plaintiff's Motion in Limine No. 28 would preclude any mention that the Vaccine Court proceedings occurred at all. However, Defendants must be permitted to impeach Plaintiff with any prior inconsistent statements that she made in the Vaccine Court proceedings, including the context in which Plaintiff made them, which will assist the jury in its evaluation of Plaintiff's credibility. Accordingly, Plaintiff's Motion in Limine No. 28 **to exclude "any reference to the Vaccine Court" is DENIED**. Notwithstanding the denial of this motion in limine, the moving party may renew the objection to the introduction of this evidence at trial, and the Court will rule on the evidentiary objection anew in the context of the other evidence that is presented at trial. In addition, the Court requests that if there is any doubt whether evidence may constitute an order, finding, or conclusion from the Vaccine Court – which is encompassed within that portion

of Plaintiff's Motion in Limine No. 28 which the Court has granted – Defendants first alert Plaintiff's Counsel and the Court outside the presence of the jury before seeking to introduce this evidence so that the Court may discuss with the parties whether this evidence will be permitted.

29) Plaintiff's Motion in Limine No. 29 to exclude any suggestion that state product liability laws or other tort laws undercut the goal to provide only scientifically valid warnings or otherwise frustrate society's protective regime for public health is **MOOT** in light of the parties' resolution of this motion in limine by way of stipulation. (11/27/24 Joint Status Report regarding Motions in Limine, p.3; Joint In Limine Evidentiary Stipulations.)

30) Plaintiff's Motion in Limine No. 30 to exclude any suggestion that an award to Plaintiff would be inconsistent with, or is preempted by, federal law, or that state law should be preempted for any reason (e.g., to avoid recklessly warning about unsubstantiated associations between drugs and health risks) is improper and unnecessary because it does not seek to exclude specific, identifiable evidence. As Plaintiff freely concedes in the 11/27/24 Joint Status Report (p. 24), there is no specific piece of evidence sought to be excluded. Instead, the motion seeks to preclude a certain line of argument. The Court cannot anticipate in advance every conceivable argument that may arise at trial or delineate the proper contours of every argument, and the Court declines to chill effective advocacy by prematurely and improvidently granting a motion in limine. Hence, this motion in limine is **DENIED** at this juncture. The parties may of course make appropriate objections to improper arguments at trial, and the Court will rule on such objections with the benefit of context.

31) Plaintiff's Motion in Limine No. 31 to exclude any suggestion that warning defect or failure-to-warn laws pressure drug manufacturers to add unsubstantiated, false, or invalid warnings in order to avoid lawsuits, and/or that too many warnings will dilute the effectiveness of warnings generally is improper and unnecessary because it does not seek to exclude specific, identifiable evidence. As Plaintiff freely concedes in the 11/27/24 Joint Status Report (p. 26), there is no specific piece of evidence sought to be excluded. Instead, the motion seeks to preclude a certain line of argument. The Court cannot anticipate in advance every conceivable argument that may arise at trial or delineate the proper contours of every argument, and the Court declines to chill effective advocacy by prematurely and improvidently granting a motion in limine. Hence, this motion in limine is **DENIED** at this juncture. The parties may of course make appropriate objections to improper arguments at trial, and the Court will rule on such objections with the benefit of context.

32) Plaintiff's Motion in Limine No. 32 seeks to exclude any evidence or argument about the product labeling of drugs other than HPV Vaccines. Plaintiff fails to demonstrate that this evidence is inadmissible under all circumstances. First, Plaintiff's reference to the Learned Intermediary Doctrine is inapposite. The Vaccine Act provides that no "vaccine manufacturer shall be liable in a civil action for damages arising from a vaccine-related injury or death . . . *solely* due to the manufacturer's failure to provide direct warnings to the injured party (or the injured party's legal representative) of the potential dangers resulting from the administration of the vaccine manufactured by the manufacturer." (42 U.S.C. § 300aa-22 [italics added].) Similarly, under California's Learned Intermediary Doctrine, "[t]he patient cannot sue the

manufacturer for failing to warn him or her directly: As long as the manufacturer has adequately warned the patient's physician of the non-negligible risks of its prescription drug or medical device, the manufacturer has fulfilled its duty to warn." (*Himes v. Somatics, LLC* (2024) 16 Cal.5th 209, 221.) Contrary to Plaintiff's assertion, the Learned Intermediary Doctrine sets forth substantive requirements before a vaccine manufacturer may be held liable for a failure to warn; it is not an evidentiary rule that precludes admission of evidence concerning drug labeling. The Court finds that the labeling on package inserts for other medications prescribed for Plaintiff has probative value for the reasons stated in Defendants' opposition. For example, Defendants may properly probe into whether Plaintiff's experts considered alternative causes for the side effects and symptoms that Plaintiff and her experts have attributed to Gardasil, including other medications that Plaintiff has taken. Plaintiff's reaction to reading package inserts of other drugs – such as refusal to take medications based on disclosed side effects – is probative of her reliance on any labeling for Gardasil she might have seen prior to administration of the vaccine and also probative of causation. The Court has weighed the probative value of such evidence against the danger of undue prejudice and risk of necessitating undue consumption of time. The Court has determined that the probative value of such evidence is not substantially outweighed by the probability that its admission will necessitate undue consumption of time or create substantial danger of undue prejudice, confusing the issues, or misleading the jury. (EV. CODE § 352.) Notwithstanding the denial of this motion in limine, the moving party may renew the objection to the introduction of this evidence at trial, and the Court will rule on the evidentiary objection anew in the context of the other evidence that is presented at trial.

33) Plaintiff's Motion in Limine No. 33 seeks to exclude any hearsay statements of non-party medical associations. In the 11/27/24 Joint Status Report re Motions in Limine, Plaintiff generally describes the evidence that she seeks to exclude as " 'position statements' and clinical practice guidelines. For example, during Science Day, Defendants cited statements by organizations such as the American Academy of Family Physicians, the American College of Obstetricians and Gynecologists, the American College of Physicians, and the American Academy of Pediatrics." (11/27/24 Joint Status Report re Motions in Limine, Plaintiff - p. 29.) However, Plaintiff has failed to provide any specific examples of a particular position statement or clinical practice guideline. Plaintiff has thus failed to provide the Court with sufficient information to allow the Court to determine whether the "position statements" and "clinical practice guidelines" are hearsay statements and if so whether they fall within any hearsay exceptions. Accordingly, Plaintiff's Motion in Limine No. 33 is **DENIED WITHOUT PREJUDICE**. Within three days of notice of this ruling, Plaintiff may file and serve a new motion in limine that quotes the specific position statements and clinical practice guidelines that she seeks to exclude. Defendants must file and serve any opposition within three days of service of Plaintiff's new motion in limine.

34) Plaintiff's Motion in Limine No. 34 seeks to exclude any reference to personal use of Gardasil by trial witnesses (excluding Plaintiff and her family), employees, experts, counsel, or any of their acquaintances. It is unclear whether Merck will actually seek to introduce this type of evidence and if so, which trial witnesses will testify that they also used Gardasil. Pursuant to Local Rule 3.57(d), "[t]he court may defer ruling upon a motion in limine, and may order that no

mention or display of the matter that is the subject of the motion be made in the presence of the jury unless and until the court orders otherwise." (CA R LOS ANGELES SUPER CT Rule 3.57(b).) As authorized under Local Rule 3.57(d), the Court will defer ruling on Plaintiff's motion in limine No. 34. Defendants are ordered not to mention or elicit testimony that is the subject of this motion in the presence of the jury without first raising this issue, providing an offer of proof, and asking the Court for a ruling on this motion in limine.

35) Plaintiff's Motion in Limine No. 35 to exclude reference to professional athletes and other public figures who have POTS, including their treatment, diagnosis, medical conditions, symptoms, state of health, and ability to perform activities is **MOOT** in light of the parties' resolution of this motion in limine by way of stipulation. (11/27/24 Joint Status Report regarding Motions in Limine, p.3; Joint In Limine Evidentiary Stipulations.)

36) Plaintiff's Motion in Limine No. 36 to prohibit experts from testifying about opinions that have not disclosed in the parties' disclosures, experts' reports, or experts' depositions is **MOOT** in light of the parties' resolution of this motion in limine by way of stipulation. (11/27/24 Joint Status Report regarding Motions in Limine, p.3; Joint In Limine Evidentiary Stipulations.)

37) Plaintiff's Motion in Limine No. 37 to prohibit lay witnesses from testifying as experts, including, but not limited to, medical causation and epidemiology testimony is **MOOT** in light of the parties' resolution of this motion in limine by way of stipulation. (11/27/24 Joint Status Report regarding Motions in Limine, pp. 3, 33 ["Plaintiffs withdraw this motion."]; Joint In Limine Evidentiary Stipulations.)

38) Plaintiff's Motion in Limine No. 38 to exclude testimony from Plaintiff's healthcare providers (including but not limited to the Kaiser Defendants and doctor-defendants) who are not autonomic experts or neurologist regarding causation of Plaintiff's neurological and autoimmune injuries is **MOOT** in light of the parties' resolution of this motion in limine by way of stipulation. (11/27/24 Joint Status Report regarding Motions in Limine, pp. 3, 33 ["Plaintiffs withdraw this motion"]; Joint In Limine Evidentiary Stipulations.)

39) Plaintiff's Motion in Limine No. 39 to exclude any reference to drugs other than Gardasil taken by Plaintiff (with the exception of drugs and treatments related to Plaintiff's POTS injury) is **DENIED**. Defendants must be permitted to introduce evidence of alternative causes of the side effects and symptoms that Plaintiff attributes to the Gardasil vaccine – including other medications and drugs that Plaintiff took during the relevant time periods. For example, Defendants may properly seek to impeach Plaintiff's experts with cross-examination as to whether Plaintiff's experts considered these alternative causes of the side effects and symptoms that Plaintiff attributes to the Gardasil vaccine. The Court has weighed the probative value of such evidence against the danger of undue prejudice and risk of necessitating undue consumption of time. The Court has determined that the probative value of such evidence is not substantially outweighed by the probability that its admission will necessitate undue consumption of time or create substantial danger of undue prejudice, confusing the issues, or misleading the jury. (EV. CODE § 352.) Notwithstanding the denial of this motion in limine, the moving party may renew the objection to the introduction of this evidence at trial, and the Court will rule on the

evidentiary objection anew in the context of the other evidence that is presented at trial. For example, if Defendants seek to introduce this evidence by showing Plaintiff labels of other drugs she has ingested in the past and cross-examining her as to the contents of those drug labels, this line of questioning could quite conceivably lead to a proper hearsay objection.

40) Plaintiff's Motion in Limine No. 40 seeks to exclude any references in Plaintiff's medical record that were never confirmed as diagnoses. In the 11/27/24 Joint Status Report re Motions in Limine, Plaintiff clarifies that Plaintiff seeks to exclude evidence indicating whether Jennifer Robi suffered a concussion after a car accident. Plaintiff contends that such evidence is improper because there is no evidence in the medical records that she was diagnosed with a concussion by a medical doctor. (11/27/24 Joint Status Report re Motions in Limine, Plaintiff - p. 36.) However, Plaintiff cites no authority why a formal diagnosis is a necessary prerequisite for admission of such evidence. Evidence concerning whether there are alternative sources and causes for Plaintiff's claimed injuries, such as physical trauma associated with her 2007 motor vehicle accident, including a concussion, and Plaintiff's history of Epstein-Barr virus ("EBV") is highly probative of causation. The Court has weighed the probative value of such evidence against the danger of undue prejudice and risk of necessitating undue consumption of time. The Court has determined that the probative value of such evidence is not substantially outweighed by the probability that its admission will necessitate undue consumption of time or create substantial danger of undue prejudice, confusing the issues, or misleading the jury. (EV. CODE § 352.) Plaintiff's Motion in Limine No. 40 is thus **DENIED**. Notwithstanding the denial of this motion in limine, the moving party may renew the objection to the introduction of this evidence at trial, and the Court will rule on the evidentiary objection anew in the context of the other evidence that is presented at trial.

41) Plaintiff's Motion in Limine No. 41 seeks to exclude "any reference to any medical condition(s) of Plaintiff or her family that is unrelated to the injuries at issue." The Court ordered the parties to identify in the Joint Status Report re Motions in limine the specific evidence that each motion in limine seeks to exclude. In the 11/27/24 Joint Status Report re Motions in Limine, the only specific evidence that Plaintiff identifies is evidence that Plaintiff Jennifer Robi's mother has asthma. (11/27/24 Joint Status Report re Motions in Limine, Plaintiff - p. 37.)

Thus, the Court will construe this to be the only evidence at issue for Plaintiff's Motion in Limine No. 41. Merck has represented that it does not intend to introduce evidence that Plaintiff's mother suffers from asthma. (11/27/24 Joint Status Report re Motions in Limine, Plaintiff - p. 37.) Accordingly, Plaintiff's Motion in Limine No. 41 is **MOOT**.

42) Plaintiff's Motion in Limine No. 42 seeks to exclude "any reference to unflattering, irrelevant statements concerning Plaintiff or her family that are unrelated to the injuries at issue." The Court ordered the parties to identify in the Joint Status Report re Motions in limine the specific evidence that each motion in limine seeks to exclude. In the 11/27/24 Joint Status Report re Motions in Limine, Plaintiff identified the evidence at issue for Plaintiff's Motion in

Limine No. 42 as evidence "that Jennifer Robi's parents are retired police officers, her father was a member of the police force for over 30 years, he was on the bomb squad and domestic anti-terrorism unit and, during his deposition, defendants inquired about a lawsuit that had been filed against the police department for excessive force. In addition, Jennifer's parents both have had workers compensation cases arising out of injuries sustained while on duty; her mother, who had been with the police force for approximately 20 years, took an early retirement due to injuries while on the job. None of these issues (lawsuits, workers compensation, and injuries) are relevant or have any probative value, and they are unduly prejudicial, would confuse the jury, and waste time. Also, Plaintiff seeks to exclude Robi's mother's prior divorce and custody proceedings, which did not involve Jennifer Robi. Lastly, statements from Jennifer Robi's childhood diary that have nothing to do with her POTs or experience with Gardasil." (11/27/24 Joint Status Report re Motions in Limine, Plaintiff - p. 38.) Thus, the Court will construe these specifically identified categories of evidence to be the only evidence at issue for Plaintiff's Motion in Limine No. 42.

As to Plaintiff's parents' former occupation as police officers, the lawsuit filed against the police department for excessive force, Plaintiff's parents' workers compensation cases, Plaintiff's mother's early retirement, and Plaintiff's mother's divorce and custody proceedings, the Court has weighed the probative value of such evidence against the danger of undue prejudice and risk of necessitating undue consumption of time. The Court has determined that the probative value of such evidence is substantially outweighed by the probability that its admission will necessitate undue consumption of time and create substantial danger of undue prejudice, confusing the issues, and misleading the jury. (EV. CODE § 352.) Thus, Plaintiff's Motion in Limine No. 42 is **GRANTED with respect to evidence of Plaintiff's parents' former occupation as police officers, the lawsuit filed against the police department for excessive force, Plaintiff's parents' workers compensation cases, Plaintiff's mother's early retirement, and Plaintiff's mother's divorce and custody proceedings**.

As to statements from Jennifer Robi's childhood diary, Plaintiff has failed to identify any particulate statement from her diary that she seeks to exclude. Thus, the Court is not in a position to assess whether the Court agrees with Plaintiff that these statements have nothing to do with her POTs or Plaintiff's experience with Gardasil. Accordingly, Plaintiff's Motion in Limine No. 42 is **DENIED WITHOUT PREJUDICE AS TO statements from Plaintiff's childhood diary**. Notwithstanding this denial of Plaintiff's Motion in Limine No. 42 with respect to statements from Plaintiff's diary, Plaintiff may object at trial prior to the introduction of her diary. Prior to Defendant's attempt to introduce any portions of Plaintiff's diary, the parties should meet and confer regarding the excerpts that Defendant will seek to introduce, and the parties may raise with the Court – outside the jury's presence – any remaining disputes concerning the diary.

43) Plaintiff's Motion in Limine No. 43 seeks to exclude any reference to unrelated personal matters of a party's expert or the expert's family, such as divorce proceedings, and unrelated employment and legal disputes. The Court ordered the parties to identify in the Joint Status Report re Motions in limine the specific evidence that each motion in limine seeks to exclude. In

the 11/27/24 Joint Status Report re Motions in Limine, Plaintiff identifies the evidence at issue for Plaintiff's Motion in Limine No. 43 as: "Dr. Bondy's divorce; Dr. Kulldorff's divorce and custody battle; Dr. Lee being fired from University, suing University, settling lawsuit for past lost wages, and getting his job back; Dr. Kulldorff being fired from University (along with over 100 others) for declining COVID vaccine." (11/27/24 Joint Status Report re Motions in Limine, Plaintiff - p. 40.) Thus, the Court will construe these specifically identified categories of evidence to be the only evidence at issue for Plaintiff's Motion in Limine No. 43.

As to Dr. Bondy's divorce and Dr. Kulldorff's divorce and custody battle, Merck appears to agree that these personal divorce proceedings are not an appropriate area of inquiry at trial. (11/27/24 Joint Status Report re Motions in Limine, Plaintiff - p. 40.) The Court has weighed the probative value of such evidence of Dr. Bondy's divorce and Dr. Kulldorff's divorce and custody battle against the danger of undue prejudice and risk of necessitating undue consumption of time. The Court has determined that the probative value of such evidence is substantially outweighed by the probability that its admission will necessitate undue consumption of time and create substantial danger of undue prejudice, confusing the issues, and misleading the jury. (EV. CODE § 352.) Accordingly, Plaintiff's Motion in Limine No. 43 is **GRANTED with respect to Dr. Bondy's divorce and Dr. Kulldorff's divorce and custody battle.**

As to Dr. Kulldorff and Dr. Lee being fired from the respective Universities where they worked and the circumstances leading to their firing, the parties have failed to provide a sufficient offer of proof so as to allow whether this evidence may properly be used for impeachment purposes. As authorized under Local Rule 3.57(d), the Court will defer ruling on Plaintiff's Motion in Limine No. 43 with respect to Dr. Kulldorff and Dr. Lee being fired from the respective Universities where they worked and the circumstances leading to their firing. Defendants are ordered not to mention or inquire about Dr. Kulldorff and Dr. Lee being fired from the respective Universities where they worked and the circumstances leading to their firing in the presence of the jury without first raising this issue, providing a more extensive offer of proof, and asking the Court for a ruling on this motion in limine.

44) Plaintiff's Motion in Limine No. 44 to exclude prior judicial opinions concerning experts is MOOT in light of the parties' resolution of this motion in limine by way of stipulation. (11/27/24 Joint Status Report regarding Motions in Limine, p.3; Joint In Limine Evidentiary Stipulations.)

45) Plaintiff's Motion in Limine No. 45 seeks to exclude "expert opinions on vaccines other than HPV Vaccines." However, neither in Plaintiff's moving papers nor in the Joint Status Report re Motions in Limine has Plaintiff identified the substance of those expert opinions. Without evidence of what the expert opinions are that Plaintiff seeks to exclude, the Court is not in a proper position to assess their relevance or the risk of prejudice that they present. Plaintiff fails to demonstrate that there are no circumstances which would permit admission of this evidence. The Court declines to rule on this motion in limine in a vacuum. Accordingly, the Plaintiff's motion in limine No. 45 is **DENIED**. The moving party may at trial assert an objection to the introduction of specific evidence if and when this issue arises.

46) Plaintiff's Motion in Limine No. 46 seeks to exclude references to Plaintiff, her counsel, and her experts as "anti-vaxxers." In the parties' Joint Status Report re Motions in Limine, Plaintiff confirms that this is the subject of Plaintiff's Motion in Limine No.46. Thus, the Court will construe the use of the term "anti-vaxxers" to reference Plaintiff, her counsel, and her experts to be the only request at issue for Plaintiff's Motion in Limine No. 46. Merck states that it will not explicitly use the term "anti-vaxxers" to describe Plaintiff, her counsel, or her attorneys during in-court proceedings in front of jurors. Accordingly, Plaintiff's Motion in Limine No. 46 is **MOOT**.

47) Plaintiff's Motion in Limine No. 47 seeks to exclude any suggestion that an award of punitive damages in this case is unconstitutional, illegal, or unsupported by the current state of the law. To the extent that Plaintiff's Motion in Limine No. 47 seeks to exclude evidence that an award of punitive damages in this case is unconstitutional or illegal, Merck states that it does not intend to argue the constitutionality and legality of a punitive damages award, as that is a question of law for the judge (not jury) to decide. Thus, Plaintiff's Motion in Limine No. 47 is **MOOT** with respect to evidence that an award of punitive damages in this case would be unconstitutional or illegal.

As to the balance of Plaintiff's motion in limine No. 47, the Court will instruct the jury on the current state of the law, i.e., elements that Plaintiff must prove for her claim for punitive damages; Merck must be permitted to introduce evidence that Plaintiff's request for such an award of punitive damages is unsupported by the evidence and does not satisfy the elements. The Court has weighed the probative value of such evidence against the danger of undue prejudice and risk of necessitating undue consumption of time. The Court has determined that the probative value of such evidence is not substantially outweighed by the probability that its admission will necessitate undue consumption of time or create substantial danger of undue prejudice, confusing the issues, or misleading the jury. (EV. CODE § 352.) Thus, Plaintiff's motion in limine No. 47 is **DENIED with respect to evidence that Plaintiff's claim for punitive damages is unsupported**. Notwithstanding the denial of this motion in limine, the moving party may renew the objection to the introduction of this evidence at trial, and the Court will rule on the evidentiary objection anew in the context of the other evidence that is presented at trial.

48) Plaintiff's Motion in Limine No. 48 to Preclude Defendants from limiting evidence of punitive damages to sales within the State is not a motion to exclude evidence at all. Instead, Plaintiff's Motion in Limine No. 48 is in essence a motion for a court order allowing Plaintiff to admit evidence of sales outside California, i.e., a motion to admit evidence of out of state sales. This is not a proper motion in limine insofar as it seeks a pretrial ruling that certain evidence is admissible under all circumstances. Plaintiff's Motion in Limine No. 48 is **DENIED**. Plaintiff may seek to admit this evidence at trial, and Defendants may object if they wish. If Defendants object, the Court will rule on such objections at trial.

49) Plaintiff's Motion in Limine No. 49 to exclude any reference that any recovery Plaintiff may receive in this case may be increased or enhanced by operation of law, including through post-judgment interest is **MOOT** in light of the parties' resolution of this motion in limine by way of stipulation. (11/27/24 Joint Status Report regarding Motions in Limine, p.3; Joint In Limine Evidentiary Stipulations.)

For all motions in limine that have been denied, the moving party may renew its objection to the introduction of the evidence at trial, and the Court will rule on the evidentiary objection anew with the benefit of the context of the other evidence that has been presented at trial.

For all motions in limine that have been granted, the moving party must proceed with caution because if the moving party opens the door, then the Court may well reconsider its ruling and allow the evidence to be admitted. The Court suggests that before probing into any area that might arguably open the door, the moving party discuss the issue with opposing counsel and the court.

PLAINTIFF TO DOWNLOAD THE **SIGNED** FINAL RULING AND TO GIVE NOTICE TO ALL PARTIES.

IT IS SO ORDERED.

DATED: January 8, 2025

Elaine Lu
Judge of the Superior Court

Elaine Lu / Judge