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Co-Lead Counsel for Plaintiffs

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

IN RE: ROUNDUP PRODUCTS LIABILITY LITIGATION	MDL No. 2741 Case No. 16-md-02741-VC
This document relates to: ALL ACTIONS	

PLAINTIFFS' RESPONSE TO PRETRIAL ORDER NO. 49

Plaintiffs respectfully provide the following and attached responses to this Court's Pretrial Order No. 49. The responses below respond to each of the five items in the order they appear in PTO 49. Objections to the Proposed Plaintiffs Fact Sheet

1. Objections to Proposed Plaintiff Fact Sheet (PFS).

Below are objections to the Proposed Plaintiff Fact Sheet that plaintiffs did not directly address at the September 13, 2018, status conference:

A. Section II, D: There is no need for driver's license information in this case; defendant uses this information to hire investigators to identify information about plaintiffs that have no relevance to the lawsuit and is intended to harass and/or embarrass the plaintiffs. In any instance, this is not needed to identify potential bellwether plaintiffs.

B. Section IV, A: The Personal Medical History section continues to be too broad and seeks information that is irrelevant to the claims in this case. For example, as currently written, a female plaintiff would have to identify the name of her gynecologist who she sees for birth control; a plaintiff would have to identify any doctor he or she saw during a 25 year period for antibiotics for a cold or flu, and other such irrelevant doctor visits to the underlying issues in this case. Thus, plaintiffs believe that the medical history should be limited to listing only those medical providers seen either for cancer or for one of the other conditions set forth in section IV, B, a list specifically provided by Monsanto; thus, it is not credible for Monsanto to suggest that medical history related to any other conditions are relevant to this case. Further, this information is not necessary to select potential bellwether plaintiffs.

C. Section IV, B: Monsanto has informed Plaintiffs that it is adding conditions to the current list. As a preliminary matter, Plaintiffs assert that they do not agree that the existing or the additional conditions they seek to be included are, in fact, risk factors. As to the additional risk factors Monsanto seeks to add, one of them we are informed is "ulcers." Plaintiffs contend that this condition is unclear and will cause confusion among the Plaintiffs.

D. Section V, I: Plaintiffs are aware of no genetic test for lymphomas; thus, this question seeks information that is not possible to produce and should be deleted.

E. Section VI, F: This section is overly broad. It asks for any and all claims, without any requirement that such a claim could, in any way, have relevance to this lawsuit. It also has no time frame. For example, if a plaintiff sued a prospective buyer of his or her home for pulling out of the contract before the sale became final, that would have no relevance to this lawsuit and would provide no relevant information to Monsanto for the claims asserted here. Similarly, if a plaintiff sued a driver for rear ending the plaintiff and damaging his vehicle ten years ago, that lawsuit would similarly be irrelevant to the claims in this case. There are, of course, countless other examples of irrelevant claims that have no relevance to this lawsuit. Thus, this section

should be limited in scope to require plaintiffs to identify only those lawsuits and/or claims they have brought that relate to personal injury, exposure to substances, personal bankruptcy if after the plaintiff's diagnosis with NHL, unemployment claims if after the plaintiff's diagnosis with NHL, or any other lawsuit that would relate to the claims asserted in this case. Even so, this information is not necessary to identify potential bellwether plaintiffs and should be reserved for discovery *after* a plaintiff has been selected as bellwether.

F. VIII, A: The second column should read "Average Hours Per Week", as many plaintiffs might not have regular weekly hours.

G. IX, A: Similar to No. 2 above, medical authorizations should be limited only to cancer treatment and treatments for the conditions set forth in section IV, B.

H. IX, B: An employment authorization for the past 25 years is overbroad and should be required only for trial plaintiffs. These records are highly unlikely to contain exposure evidence; they are burdensome and designed to obtain information about the plaintiffs to which Monsanto is not entitled. In any event, at the very least it should be clear that the **only** records an employer should have to provide are records related to direct or indirect on-the-job exposure to substances.

I. IX, D: It must be made clear that tax records and social security income authorizations are only necessary for plaintiffs who are asserting lost wages as an element of damages. Further, due to their invasiveness, they should be limited to trial plaintiffs who are asserting lost wages.

Finally, the final order regarding the PFSs and associated authorizations should require that Monsanto must provide to Plaintiff's counsel any records that Monsanto obtains pursuant to the authorizations within 30 days of receipt of such records by Monsanto.

2. Online completion of PFSs.

The parties are exploring online completion of PFSs and are in agreement that Brown Greer would be the best situated to work with the parties to develop an online PFS. Both parties have spoken to Brown Greer independently and have agreed to set up a joint call with Brown Greer within days after the September 24th conference with the Court. The plaintiffs sent the Proposed PFS to Brown Greer, and Brown Greer informed the plaintiffs that they would need approximately two weeks to modify the PFS into an online format once it is in final form.

The plaintiffs also note that some of the plaintiffs do not have computer access, have difficulty using computers, or are not English speaking. Thus, as to these plaintiffs it is likely that online completion will not be possible. Any online PFS would need to be optional.

Plaintiffs believe that the deadlines set forth in PTO 49, Section 4, should not commence until the PFS is available for online completion, except for the three trial plaintiffs who will complete their PFSs in paper form.

3. Proposed pretrial and trial schedule for the three[1] Northern District of California.

The Court expressed its desire to commence MDL trials from the group of NDCA Plaintiffs identified at the September 13, 2018 status conference on February 25, 2019 and May 6, 2019. In either instance, given that liability discovery has yet to commence in the MDL and given representations by Monsanto in other Courts, general liability discovery will not be complete by either date. Even so, the NDCA Plaintiffs identified at the September 13, 2018 status conference are prepared to ready their particular case for trial to commence February 25, 2019 as requested by the Court. Attached to this Statement as Exhibit A are proposed pre-trial deadlines for February 25 and May 6, 2019 trial dates. An important deadline is Monsanto's next document production that is currently being negotiated by Brent Wisner in the JCCP. Plaintiffs will need time to review that production and identify deponents and additional discovery, if any. The close of discovery deadline identified in the proposed schedule should only be interpreted to apply to the particular NDCA plaintiffs. Plaintiffs will continue to pursue general liability discovery before, during and after these trial dates.

Given the Court's trial schedule as set forth in its Standing Order, Plaintiffs believe that each trial will take between five to six weeks.

4. Completion of PFSs and associated issues regarding non-compliance and deficiencies.

Plaintiffs believe there should be two separate procedures for addressing PFSs that are not timely completed and served. Those positions are set forth below.

A. Plaintiffs who originally filed their cases in the NDCA (see PTO No. 49, para 4 (a)).

Regarding the three plaintiffs who originally filed their cases in the Northern District of California, if a plaintiff is not able to complete his PFS within 28 days, counsel for that plaintiff should be required to seek leave of court setting forth the reasons why the PFS cannot be completed and the extra time needed to complete the PFS.

B. Other plaintiffs subject to either the 60 days or 120 days deadline or whose cases are later filed and subject to the 90 day deadline (see PTO No. 49, paras 4 (b)-(d)).

The plaintiffs in the MDL have had liability discovery stayed since November 2016. Many plaintiffs have, of course, wondered over this time when their case might be set for trial. Without waiving any privileged communication among plaintiffs' counsel and their attorneys, counsel has informed their clients for nearly two years that there is not, and cannot be any, plaintiff specific discovery in the federal cases. And even now, when counsel contacts the plaintiffs in the MDL who have no nexus to the Northern District of California, counsel will once again have to explain that, while they now have to fill out a PFS within a certain time

[1] Pursuant to Mr. Miller's email to Ms. Melon on September 18, 2018, the lawsuit brought by plaintiff Barton Penrod is likely to be dismissed in the next several weeks.

frame, there is still no schedule in place to set their cases for trial and that there likely will not be until their cases are remanded to their home jurisdiction. Further, several of the Plaintiffs are very sick, some terminally sick. With this backdrop, it might be difficult for some plaintiffs to respond timely and gather all the information required within the proposed deadlines. While, of course, plaintiffs' counsel will make best efforts to ensure that all plaintiffs file timely PFSs and explain the requirement that they complete the PFSs timely, it is almost certain that some plaintiffs will not complete the PFS within the allotted time frames. Given these circumstances, it would be nothing short of punitive to dismiss plaintiffs from the case if they fail to meet the deadline, without any built in time to cure. Instead of a harsh and unjust dismissal sanction, plaintiffs propose that any plaintiff who fails to meet the deadline be provided an automatic 30 day extension. If that plaintiff still does not submit his or her PFS after the additional 30 days, the parties will provide the court with a list of plaintiffs who did not submit a PFS and, at that time, the court would issue an order to show cause why that plaintiff's case should not be dismissed for failure to complete their PFSs. This will allow counsel sufficient time and just and fair procedures to ensure that no plaintiff is dismissed who wishes to have his or her case continue. Monsanto will suffer no prejudice by this request.

Regarding PFS deficiencies, plaintiffs stress that only substantial deficiencies are contemplated. In St. Louis City cases, the deficiencies are often over minor, unimportant matters. What is more, Monsanto's alleged deficiencies are often wrong. With respect to the deficiency process, Plaintiffs and Monsanto are generally in agreement. The plaintiff proposes that Monsanto provide what it believes are deficiencies in a completed PFS and that the plaintiff respond to those deficiencies according to the below time frames:

(1) For Plaintiffs who are required to complete their PFSs within 60 days, Monsanto would have 45 days from receipt of a plaintiff's PFS to identify what it believes to be deficiencies and the plaintiff would have 30 days to respond.
(2) For Plaintiffs who are required to complete their PFSs within 120 days, Monsanto would have 45 days from receipt of a plaintiff's PFS to identify what it believes to be deficiencies and the plaintiff would have 45 days to respond.
(3) If a plaintiff needs more time to respond to a deficiency, the parties will meet and confer on an alternative schedule, and if they cannot reach agreement they will seek the Court's assistance.

5. <u>Defendant Fact Sheet (DFS)</u>.

Attached as Exhibit B is plaintiffs' proposed DFS. There are numerous reasons why plaintiffs are entitled to a DFS and the information contained in the proposed DFS, many of which dovetail with the very issues set forth in the PFSs that this Court is requiring of the plaintiffs. As set forth above, the 3 NDCA Plaintiffs will need to tailor its shortened liability discovery to just their cases set forth trial in February or May 2019. For the other plaintiffs, the information provided in the DFS will help the parties tailor the general liability discovery overall for the MDL plaintiffs, which will assist with eventual remand:

A. Roundup Product Formulations. Monsanto regularly makes adjustments to its formulations; over the years it has consistently made variations to a product's surfactant load and chemistry. Not all products use POEA, or the same percentage of POEA, and not all products have the same surfactant manufacturer. Plaintiffs need to know the type and source of the surfactant in the Roundup formulation they used because toxicity levels among the surfactants differ among the formulations. For example, certain formulations have higher levels of 1,4 dioxane and ethylene oxide as impurities (both are carcinogenic). Additionally, plaintiffs are entitled to determine which surfactant is used in order to determine what, if any, testing Monsanto conducted for the surfactant.

B. Roundup Sales Representative Material: Most plaintiffs will not have interacted directly with Monsanto to learn about the products' safety. Plaintiffs who use Roundup at work is in the same situation, although his or her employer might have interacted with a third-party regional distributor who provided safety information and material to the employer. The distributor may also have conducted training sessions. Plaintiffs are entitled to obtain discovery on the source of the distributor's information to determine what, if any, information Monsanto provided to employers and/or whether the distributor also developed product safety information. For example, in the *Johnson v. Monsanto* case, Mr. Johnson received training from the regional distributor and Monsanto provided the training materials to the regional distributor. If Plaintiffs purchased Roundup from a hardware store, those plaintiffs are entitled to learn the source and type of information provided in store displays and/or through store employees.

C. Plaintiffs generally will not remember advertisements in sufficient detail to precisely determine what advertisement they viewed and the date they viewed it. Plaintiffs are therefore entitled to learn from Monsanto exactly which advertisements the Plaintiff would have been exposed to and when they would have been exposed. This is particularly important with respect to Plaintiffs who may not have worn protective gear. Monsanto has repeatedly over the years run print and/or television advertisements with actors spraying Roundup® while wearing shorts, short-sleeve shirts and no protective gear. To the extent that Monsanto claims that such use is not in compliance with the label, these advertisements are directly relevant to Plaintiffs' case.

D. Adverse Event Reports. If a plaintiff called the Missouri Poison Control Center or Monsanto directly to make any inquiries regarding his/her injuries, Plaintiffs certainly are entitled to any records of those calls. Plaintiffs are also entitled to any records with respect to whether Monsanto complied with EPA regulations in reporting lawsuits brought against it to the EPA.

E. Healthcare Professionals: Monsanto maintains a network of paid consultants who are deployed to write op-eds supporting the safety of glyphosate. It is also common in mass torts such as this case for both parties to contact oncologists across the country for expert consultation in the litigation far in advance of trial. As there are a limited pool of oncologists who specialize in non-Hodgkin lymphoma, it is certainly plausible that a plaintiff's treating physicians might have been contacted, or even retained, by Monsanto

with respect to Roundup and NHL. Each Plaintiff is entitled to discover whether Monsanto has had prior contact with one of more of his or her diagnosing or treating physicians.

Dated: September 20, 2018

Respectfully submitted,

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EXHIBIT A

Activity	February 25, 2019 Trial Deadlines	May 6, 2019 Trial Deadlines		Final Date
Plaintiff Fact Sheet Due	October 26, 2018	October 26, 2018		
Defendant Fact Sheet Due	November 2, 2018	November 2, 2018		
Plaintiff expert disclosures	November 16, 2018	January 11, 2019		
Defendant expert disclosures	November 30, 2018	February 8, 2019		
Plaintiff rebuttal expert disclosure	December 7, 2018	February 22, 2019		
Close of discovery	December 28, 2018	March 8, 2019		
Document Production	December 1, 2018	January 1, 2019		
Dispositive and *Daubert* motion	January 7, 2019	March 18, 2019		
Responses to dispositive and *Daubert* motions	January 28, 2019	April 8, 2018		
Reply to dispositive and *Daubert* motions	February 4, 2019	April 15, 2019		
Serve deposition designations	December 28, 2018	March 8, 2019		
Serve objections to deposition designation and counter deposition designations	January 11, 2019	March 22, 2019		
Serve objections to counter depositions designations	January 25, 2019	April 5, 2019		
Jointly file deposition designations, counter designations, and objections	February 1, 2019	April 12, 2019	**Modification of Standing Order**	
Meet and confer regarding pretrial conference, serve motions *in limine*	January 14, 2019	March 25, 2019	**Standing Order**	
Serve oppositions to motions *in limine*	January 21, 2019	April 1, 2019	**Standing Order**	
File joint pretrial conference statement, file motions *in limine* and oppositions to motions in limine	January 28, 2019	April 8, 2019	**Standing Order**	
File proposed jury instructions, voir dire questions, verdict forms, statement of the case, exhibit list	February 4, 2019	April 15, 2019	**Standing Order**	
Final Pretrial Conference	**February 11, 2019**	**April 22, 2019**	**Standing Order**	
Individuals involved list	February 13, 2019	April 24, 2019	**Standing Order**	
Arrangement of daily transcript or real-time reporting	February 11, 2019	April 22, 2019	**Standing Order**	

Filing of proposed order for bringing exhibit presentation equipment and technology into the building	February 11, 2019	April 22, 2019	**Standing Order**	
Contact Kristen Melon regarding courtroom layout and technology	February 15, 2019	April 26, 2019	**Standing Order**	
Deliver original trial exhibit set and thumb drive of exhibits	February 20, 2019	May 1, 2019	**Standing Order**	
Trial	**February 25, 2019**	**May 6, 2019**		

EXHIBIT B

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

IN RE: ROUNDUP PRODUCTS LIABILITY LITIGATION

MDL No. 2741

Case No. 16-md-02741-VC

This document relates to:

ALL ACTIONS

DEFENDANTS' FACT SHEET

Instructions

Please provide the following information for plaintiff (or plaintiff's decedent) (hereinafter "Plaintiff") who was exposed to Roundup or any glyphosate formulation thereof (hereinafter "Roundup") that is the subject of Plaintiff's complaint. In the above referenced action. In filling out any section or sub-section of this form, please submit additional sheets as necessary to provide complete information.

In completing this Defendants' Fact Sheet, the following definitions apply to all discovery requests and interrogatories:

"Communication" means any oral, written, spoken, or electronic transmission of information, including but not limited to, meetings, discussions, conversations, telephone calls, memoranda, letters, emails, text messages, postings, instructions, conferences, or seminars, or any other exchange of information between Defendants or between Defendants and any other person or entity.

"Defendants," "You," or "Your" mean Monsanto Company, and their successors and assigns.

"Distributor" means the distributor of the Roundup or any components thereof at the time Plaintiff was exposed and/or at the time Plaintiff purchased the Roundup.

"Documents" is coextensive with the meaning of the terms "documents," "electronically stored information," and "tangible things" as used in Federal Rule of Civil Procedure 34, and shall have the broadest possible meaning and interpretation ascribed to those terms under Rule 34 and the applicable Local Rules for the Northern District of California.

"General Production" refers to Monsanto Company's document production in this MDL.

"Health Care Provider" means all physicians, identified in Plaintiff's Fact Sheet submitted by Plaintiff.

"Plaintiff" refers to the named individual or individuals in the Complaint and who bring suit upon Monsanto. The term includes any entities such as an employer or association that was involved in the purchase or use of Roundup.

"Produce" means to identify where in the General Production the documents requested may be located, either by Bates Number or by some other identifier (e.g., Complaint file number or keywords which may yield the documents).

"Roundup" means all GLYPHOSATE or GLYPHOSATE containing products, meaning any product containing N-(phosphonomethyl) glycine and/or C3H8NO5P. Such term includes but is not limited to Roundup®-branded products.

"Sales Representative" means the sales representative for the Roundup purchased by Plaintiff. The term includes all representatives that Plaintiff could have potentially contacted relating to the product including but not limited to agents/employees of the Monsanto national poison control center, the Missouri Regional Poison Control Center, and or any other customer service centers for Roundup products.

In completing this Defendants' Fact Sheet, You are under oath and must provide information that is true and correct to the best of Your knowledge, information, and belief. If the response to any question is that You do not know the information requested, that response should be entered in the appropriate location(s).

In completing this Defendants' Fact Sheet, please respond on the basis of information and/or documents that are reasonably available to each of the Defendants; the Distributor; the Sales Representative; and the Sales Representative's employer or company.

In completing this Defendants' Fact Sheet, the following rules of construction apply to all discovery requests and interrogatories: (1) The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope; and (2) the use of the singular form of any word includes the plural and vice versa.

Defendant's Responses

Defendant Monsanto Company hereby submits the following Defendant's Fact Sheet responses and related Documents.

A. ROUNDUP PRODUCT INFORMATION

1. For the Roundup formulations alleged in Plaintiff's Fact Sheet produce all labeling that was in place during the timeframe of Plaintiff's alleged use.

2. For the Roundup formulations alleged in Plaintiff's Fact Sheet, identify the surfactants used in the formulations. Please describe the source of the surfactant and its percentage of concentration.

3. For the Roundup formulations alleged in Plaintiff's Fact Sheet,

a. Produce all records relating to reports by Monsanto in relation to the Plaintiff's complaint filed in this case, including medical records, if any, that were obtained or received as part of the complaint process in the ordinary course of business.

b. Please provide the complaint file number(s) relating to (a) above.

4. For the Roundup formulations purchased and used as alleged in Plaintiff's Fact Sheet, identify all marketing material including but not limited to television commercials, print advertisements, store displays and other forms of advertisement/marketing/promotion. If such materials were included in the General Production, provide the specific bates numbers identifying such documents. Also, please identify which marketing material for Roundup formulations was available for viewing by the public in Plaintiff's area of residence during the timeframe of purchase and usage.

B. PRODUCT/MARKETING/SALES REPRESENTATIVE AND DISTRIBUTOR INFORMATION

1. Provide the name and business address of any regional Sales Representative and his or her employer or company (if they differ) that was responsible for the sale or distribution of Roundup for the locations where plaintiff purchased and used Roundup.

2. Provide the name and address of the Distributor that was responsible for the sale and/or distribution of Roundup for the locations Roundup was purchased by Plaintiff.

3. Produce documents that relate the Sales Representative and/or his or her employer or company identified in question B.1., above.

The Sales Representative Documents should include:

a. Scheduling documents including schedules, scheduling calendars, date books, and/or other documents that record the Sales Representative's schedule as it relates to the Roundup

b. Any notes relating to a communication with Plaintiff, field reports, notes of the Roundup product's health risks (or lack thereof) and recommended manner of application and other documents provided to the Sales Representative, prepared by the Sales Representative, and/or prepared at the request of the Sales Representative identified in B.1.;

c. Communications from the Distributor and/or Defendants to the Sales Representative identified in B.1. concerning the Roundup products, including but not limited to health risks (or lack thereof) and recommended manner of application, marketing materials, incident reports, sales data, budgetary and sales information.

d. Training materials provided to the Sales Representative identified in B.1. concerning his or her position, job requirements, standards (whether Monsanto internal or external) and/or regulations and data concerning Roundup's health risks (or lack thereof) and

recommended manner of application), promotion, distribution, product sales, including reporting requirements and preservation requirements including incident event reporting.

4. Produce documents by and between the Distributor identified in question B.2., above ("Distributor Documents"), limited in time to five years before the plaintiff's use to and through the end of plaintiff's use.

The Distributor Documents should include:

a. Any notes relating to a communication with Plaintiff, field reports, notes of the Roundup product's health risks (or lack thereof) and recommended manner of application and any and all other Documents prepared by the Distributor or at the request of the Distributor identified in B.2.;

b. Communications from the Sales Representative and/or Defendants to the Distributor identified in B.2. concerning the Roundup products, including but not limited to health risks (or lack thereof) and recommended manner of application (or lack thereof), marketing materials, incident reports, sales data, budgetary information.

c. Training materials provided to the Distributor identified in B.2. concerning their position, job requirements, standards (whether Monsanto Company internal or external), and/or regulations and data concerning Roundup product's the health risks (or lack thereof) and recommended manner of application promotion, distribution, device sale, including reporting requirements and preservation requirements including incident event reporting.

d. Files pertaining to the Distributor identified in B.2. including but not limited to any sales data, complaint data, training data, data concerning the Roundup product's health risks (or lack thereof) and recommended manner of application, and contract and related documentation between and among Monsanto and the Distributor.

C. COMMUNICATIONS AND RELATIONSHIPS WITH PLAINTIFF AND PLAINTIFF'S HEALTHCARE PROVIDERS

1. Produce Communications between the Defendants, the Sales Representative, the Sales Representative's employer or company, and/or the Distributor identified in section B above, and Plaintiff about Roundup, including but not limited to letters, telephone or email contacts, or meetings. Also produce any communication that references or mentions Plaintiff.

2. Produce documents that relate in a reasonably direct manner to relationships, if any, between Defendants and any of Plaintiff's Health Care Providers (as identified in the Plaintiff Fact Sheet) to conduct any pre-clinical, clinical, post-marketing surveillance, or other study or trial concerning the safety of pesticides, including but not limited to Roundup.

3. Produce documents that reflect financial compensation, things of value and promotional items provided by Defendants, the Sales Representative, the Sales Representative's employer or company, and/or the Distributor identified in section B above to Plaintiff's Health Care Providers

(as identified in the Plaintiff Fact Sheet). Please include all fees, expenses, honoraria, royalties, grants, gifts, travel (i.e., airfare, hotel etc.), and any other payments or things of value given.

VERIFICATION

I am employed by Monsanto Company, one of the Defendants in this action. I am authorized by Defendants to make this verification on each corporation's behalf. The foregoing answers were prepared with the assistance of a number of individuals, including counsel for Defendants, upon whose advice and information I relied. I declare under penalty of perjury that all of the information as to the foregoing Defendants provided in this Defendants' Fact Sheet is true and correct to the best of my knowledge upon information and belief.

Date: _____

Signature _____

Printed Name:_____