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***Attorneys for Initial Settlement Class Member
City of Seattle***

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

CITY OF LONG BEACH a municipal corporation; COUNTY OF LOS ANGELES, a political subdivision; CITY OF CHULA VISTA, a municipal corporation; CITY OF SAN DIEGO, a municipal corporation; CITY OF SAN JOSE, a municipal corporation; CITY OF OAKLAND, a municipal corporation; CITY OF BERKELEY, a municipal corporation; CITY OF SPOKANE, a municipal corporation; CITY OF TACOMA, a municipal corporation; CITY OF PORTLAND, a municipal corporation; PORT OF PORTLAND, a port district of the State of Oregon; BALTIMORE COUNTY, a political subdivision; MAYOR AND CITY COUNCIL OF BALTIMORE; all individually and on behalf of all others similarly situated,

Plaintiffs,

v.

No. 2:16-cv-03493-FMO-AS

**RESPONSE, MOTION, AND/OR
OBJECTION OF INITIAL
SETTLEMENT CLASS MEMBER
CITY OF SEATTLE TO RE-NOTE
PRELIMINARY APPROVAL
HEARING DATE, OR FOR RELIEF
FROM DEADLINE TO OBJECT, AND
TO APPEAR AND PRESENT
ARGUMENT AT PRELIMINARY
APPROVAL HEARING**

Date: July 23, 2020
Time: 10:00 am
Judge: Fernando M. Olguin
Crtrm: 6D

Action Filed: May 19, 2016
Trial Date: May 11, 2021

1 MONSANTO COMPANY SOLUTIA
2 INC., and PHARMACIA LLC, and
3 DOES 1 through 100,

4 Defendants.

5
6 The City of Seattle (“Seattle”) submits this response to Plaintiffs’ June 24 Motion
7 and Memorandum in Support of Certification of Settlement Class, Preliminary Approval
8 of Class Action Settlement, Approval of Notice Plan, Appointment of Class Action
9 Settlement Administrator, and Appointment of Class Counsel (the “Motion”), Dkt. # 191-
10 1, to request: (1) that the Court re-note Plaintiffs’ July 23, 2020 hearing by two weeks,
11 until August 6, 2020, or alternatively, (2) that the Court extend the deadline for responses
12 and objections to Plaintiff’s Motion by two weeks, until July 16, 2020, to give Seattle
13 time to address with the parties two terms in the Class Action Settlement Agreement
14 (Dkt. # 191-2) that could affect Seattle’s litigation rights. If Seattle is unable to resolve
15 its concerns regarding the Settlement Agreement language with the parties prior to the
16 preliminary approval hearing, Seattle also requests permission to appear at that hearing
17 and be heard to request clarification of two Settlement terms, namely the extent of the
18 released claims and Paragraph 106.¹ *See id.*, Dkt. # 191-2 at ¶¶ 41, 46, 106.
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25 ¹ Notwithstanding the narrow issue described herein, Seattle reserves all of its rights with
26 respect to the Settlement Agreement, and does not waive any other argument it may
27 later discover or seek to raise.

1 Seattle has been litigating significant PCB-related nuisance and negligence claims
2 against the Monsanto Defendants in the United States District Court for the Western
3 District of Washington since 2016. Seattle now finds itself in the unusual position of
4 being forced to make a decision about whether and how to participate in a Settlement that
5 it did not negotiate and that would eliminate in one blow the hundreds of millions of
6 dollars it seeks from Monsanto in its own hard-fought litigation in the Western District of
7 Washington.
8
9

10 Although it has not formally received notice of the Settlement at issue here, Seattle
11 is an “Initial Settlement Class Member” in the action, *see* Ex. A to the Mot. (Dkt. # 191-
12 2). As a member of the proposed settlement class, Seattle has standing to object to,
13 exclude itself from, or otherwise inquire about the contemplated settlement and its
14 proposed effects. *See generally id.*, Dkt. # 191-2. Seattle seeks clarification of two
15 ambiguous Settlement terms before notice issues to class members, many of whom will
16 likely have the same concerns about the terms’ interpretation. Moreover, any clarification
17 regarding the Settlement terms will need to be in writing and filed in the Court docket,
18 prior to the issuance of notice, to be accessible to all class members.
19
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23 The requested extension would allow Seattle time to confer with the parties about
24 the meaning and import of the vague Settlement terms, and determine whether its
25 concerns may be resolved consensually, or will ultimately require the intervention of this
26

1 Court.² Seattle has already begun the process of conferring with counsel for Plaintiffs
2 about the vague Settlement terms, and has similarly reached out to Monsanto's counsel.
3
4 Based on its conversation with Plaintiffs' counsel, Seattle is hopeful that once it has a
5 chance to confer with Monsanto the issues can be resolved, eliminating Seattle's need to
6 engage in any further briefing before this Court. Accordingly, the brief extension Seattle
7 requests may be the only relief the Court needs to provide to fully address this issue.
8

9 Seattle is aware that the notice period contemplated by the Settlement allows for
10 objections or exclusions to be filed *after* preliminary approval, if this Court preliminarily
11 approves the Settlement. However, this sequencing is inadequate, as noted above,
12 because the vague terms will affect all class members, and any resolution will need to be
13 publicly documented. It will be most efficient to resolve the issue before class notice
14 issues. Seattle's concerns are ripe now.
15
16

17 For the foregoing reasons, Seattle respectfully requests that the Court grant a brief
18 set-over of the July 23 hearing, by moving it to August 6, 2020 (or a later date that is
19 convenient for the Court). Alternatively, Seattle requests that the Court extend the
20 deadline for any response to Plaintiffs' Motion from July 2 to July 16, 2020. Finally, if
21 Seattle is unable to resolve its concerns with the parties prior to the preliminary approval
22
23

24 _____
25 ² On July 1, 2020, counsel for Seattle conferred with counsel for Plaintiffs to see if
26 Plaintiffs would agree to Seattle's request to re-note the hearing for a later date. Counsel
27 for Plaintiffs would not agree, necessitating this filing.

1 hearing (on whatever date it is held), Seattle seeks permission to appear and be heard at
2 the preliminary approval hearing to request clarification of the above-noted Settlement
3 terms.
4

5 A proposed order is submitted herewith.

6 DATED this 2nd day of July, 2020.

7
8 KELLER ROHRBACK L.L.P.

9
10 By s/ Rachel E. Morowitz

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