

WILKINSON STEKLOFF LLP

Brian L. Stekloff (*pro hac vice*)
(bstekloff@wilkinsonstekloff.com)
Rakesh Kilaru (*pro hac vice*)
(rkilaru@wilkinsonstekloff.com)
2001 M St. NW
10th Floor
Washington, DC 20036
Tel: 202-847-4030
Fax: 202-847-4005

COVINGTON & BURLING LLP

Michael X. Imbroscio (*pro hac vice*)
(mimbrosio@cov.com)
One City Center
850 10th St. NW
Washington, DC 20001
Tel: 202-662-6000

HOLLINGSWORTH LLP

Eric G. Lasker (*pro hac vice*)
(elasker@hollingsworthllp.com)
1350 I St. NW
Washington, DC 20005
Tel: 202-898-5843
Fax: 202-682-1639

BRYAN CAVE LEIGHTON PAISNER LLP

K. Lee Marshall (CA Bar No. 277092)
(klmarshall@bclplaw.com)
Three Embarcadero Center, 7th Floor
San Francisco, CA 94111
Tel: 415-675-3400
Fax: 415-675-3434

Attorneys for Defendant
MONSANTO COMPANY

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

IN RE: ROUNDUP PRODUCTS
LIABILITY LITIGATION

)
) MDL No. 2741
)
) Case No. 3:16-md-02741-VC
)

This document relates to:

Karman v. Monsanto Co., 3:19-cv-01183-VC

) **MONSANTO COMPANY'S NOTICE OF**
) **MOTION AND MOTION FOR**
) **SUMMARY JUDGMENT ON STATUTE**
) **OF LIMITATIONS AND PROXIMATE**
) **CAUSATION GROUNDS**
)

Hearing Date: May 28, 2021

1 **TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE THAT** beginning on May 28, 2021, in Courtroom 4 of the United
3 States District Court, Northern District of California, located at 450 Golden Gate Avenue, San
4 Francisco, CA 94102, or as ordered by the Court, Defendant Monsanto Company (“Monsanto”) will
5 present its Motion for Summary Judgment on Statute of Limitations and Proximate Causation
6 Grounds. Monsanto seeks an order entering summary judgment in its favor on all claims brought by
7 Christine Karman (“Plaintiff”), individually as the representative of the Estate of her husband Robert
8 Karman (“Decedent”) (collectively “Plaintiffs”) as timed barred.

9
10 DATED: March 18, 2021

11 Respectfully submitted,

12 /s/ K. Lee Marshall

13 K. Lee Marshall
14 BRYAN CAVE LEIGHTON PAISNER LLP
15 Three Embarcadero Center, 7th Floor
16 San Francisco, California 94111
17 Tel: 415-675-3400
18 Fax: 415-675-3434
19 klmars@bclplaw.com
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MEMORANDUM OF POINTS AND AUTHORITIES

1
2 Based on Plaintiff's own words, the limitations period for her personal injury, product
3 liability, and wrongful death claims ran nearly two years before she filed suit. Plaintiff Christine
4 Karman ("Plaintiff") testified that she and her husband, Robert Karman ("Decedent"), knew in 2015
5 that Decedent had developed Non-Hodgkin's Lymphoma ("NHL") and that they both believed at that
6 time that Decedent's NHL was caused by his use of Roundup®-branded products ("Roundup") based
7 on an advertisement they saw. Despite this knowledge, Plaintiff did not bring this action until nearly
8 four years later 2019. As a result, all of Plaintiff's claims are time-barred and Monsanto is entitled to
9 summary judgment.

I. BACKGROUND

10
11 Plaintiff filed her Complaint, individually and as the representative of the Estate of Decedent
12 against Monsanto Company, on February 12, 2019. She claims that Decedent's use of Roundup
13 caused him to develop NHL and seeks damages for this injury. *See* Complaint (ECF #1) ¶ 1, 126.
14 Decedent was diagnosed with NHL on or around July 31, 2015. *Id.* at ¶ 125. Decedent died from
15 complications of NHL on December 15, 2015. *Id.* at ¶ 126.

16 Plaintiff claims that Decedent used Roundup for thirty years for personal use around their
17 home. Compl. ¶ 123. Decedent last used Roundup in approximately 2013. Declaration of K. Lee
18 Marshall ("Marshall Decl.") Exhibit 1, Deposition of Christine Karman at 93:21-94:3 ("Pl.'s Dep.").
19 Shortly before Decedent's death in 2015, Plaintiff and Decedent saw an attorney advertisement that
20 warned about Roundup and NHL. *Id.* at 29:9-30:13. Plaintiff testified that the advertisement
21 specifically connected NHL and Roundup in both of their minds:

22 Q: Do you remember anything specific about that advertisement other than it talked about
23 lymphoma?

24 A: It talked about lymphoma. It talked about death from lymphoma. Yes, that's what I
remember.

25 Q: Did it talk about Roundup or any other product?

26 A: It was for Roundup.
27
28

1 *Id.* at 216:10-18. After seeing the advertisement, Plaintiff and Decedent instructed their children to
2 not use Roundup. *Id.* at 29:14-22, 215:23-216:9.

3 Further, Plaintiff could not recall Decedent ever reading the label on the Roundup bottle:

4 Q: Do you recall seeing your husband specifically reading the label that was on
5 the Roundup bottle?

6 A: No.

7 Q: Did he ever tell you he read the label?

8 A: I don't remember.

9 *Id.* at 209:19-24.

10 **II. LEGAL STANDARD**

11 Summary judgment is required when “there is no genuine dispute as to any material fact and
12 the movant is entitled to judgment as a matter of law.” FED. R. CIV. P. 56(a). A defendant can show
13 its entitlement to summary judgment by particularly citing “materials in the record, including
14 depositions,” that “establish the absence” of a genuine, material factual dispute. FED. R. CIV. P.
15 56(c)(1). Further, “[s]ummary judgment must be entered ‘against a party who fails to make a showing
16 sufficient to establish the existence of an element essential to that party’s case, and on which that
17 party will bear the burden of proof at trial.’” *Abuan v. Gen. Elec. Co.*, 3 F.3d 329, 332 (9th Cir. 1993)
18 (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986)).

19 **III. ARGUMENT**

20 Plaintiff, on behalf of Decedent, asserts four survival causes of action against Monsanto:
21 Negligence (Count I), Strict Products Liability – Design Defect (Count II), Strict Products Liability
22 – Failure to Warn (Count III), and Breach of Implied Warranties (Count IV). *See generally* Compl.
23 All four of these survival claims fail because the limitations periods have run. Additionally, Plaintiff’s
24 wrongful death claim, seeking damages on her personal behalf, fails on similar grounds because the
25 two year statute of limitations for that claim has run.¹ Finally, Plaintiff’s failure to warn claim
26

27 ¹ The four survival claims follow the limitations period on the underlying claim, while the wrongful
28 death action claims is subject to a separate two-year limitation period from the date of death. 735
ILCS 5/13-209(a)(1), 740 ILCS 180/2(d), (e).

1 separately fails because Decedent did not read the label on the product so proximate cause cannot be
2 proven.

3 **A. The Negligence, Strict Product Liability, and Wrongful Death Claims are Barred**
4 **by the Statute of Limitations.**

5 Under Illinois law, “the statutes of limitation for personal injury and product liability claims
6 require that such lawsuits generally be commenced within two years of the date on which the cause
7 of action accrued.” *Lowe v. Ford Motor Co.*, 313 Ill. App. 3d 418, 420, 730 N.E.2d 58, 60 (Ill. 2000)
8 (citing 735 ILCS 5/13–202). The limitations period begins to run when “the plaintiff knows or
9 reasonably should know that he has been injured and that his injury was wrongfully caused.” *Jackson*
10 *Jordan, Inc. v. Leydig, Voit & Mayer*, 633 N.E.2d 627, 630–31 (Ill. 1994); see also *Steidinger v.*
11 *Stryker Corp.*, No. 8:11-CV-01842 R(SSX), 2012 WL 13020148, at *4 (C.D. Cal. Apr. 19, 2012)
12 (applying Illinois law).

13 Both elements are met here, because Plaintiff knew of Decedent’s injury (NHL) in 2015 and
14 reasonably should have made the alleged connection between his use of Roundup and his NHL.

15 *1. Plaintiff knew of Decedent’s injury in 2015, when he was diagnosed with NHL.*

16 A plaintiff is aware of an injury when formally diagnosed with the disease. See *Solis v. BASF*
17 *Corp.*, 979 N.E.2d 419, 431 (Ill. Ct. App. 2012). Here, Decedent’s doctors informed him of his NHL
18 diagnosis in the summer of 2015. Compl. ¶ 125.

19 *2. Plaintiff developed a reasonable belief that Decedent’s NHL was wrongfully*
20 *caused by exposure to Roundup in 2015.*

21 Under the discovery rule, “the limitations period begins to run from the date a person knows
22 or reasonably should know of the injury and that it was wrongfully caused.” *Edwards v. Regis Corp.*,
23 No. 10-1011, 2011 WL 777271, at *4 (C.D. Ill. Feb. 25, 2011). “The critical inquiry when applying
24 the discovery rule is whether and when the plaintiff develops ‘a reasonable belief that the injury was
25 caused by wrongful conduct, thereby creating an obligation to inquire further on that issue.’” *Shrock*
26 *v. Ungaretti & Harris Ltd.*, 143 N.E.3d 904, 911 (Ill. Ct. App. 2019), appeal denied, 140 N.E.3d 242
27 (Ill. 2020) (quoting *Dancor Intern., Ltd. v. Friedman, Goldberg & Mintz*, 681 N.E.2d 617, 622 (Ill.
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