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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

Cervantes v. Monsanto Co., 3:19-cv-03015-VC
Karman v. Monsanto Co., 3:19-cv-01183-VC
Pecorelli v. Monsanto Co., 3:16-cv-06936-VC
Peterson v. Monsanto Co., 3:18-cv-07271-VC
Rehak v. Monsanto Co., 3:19-cv-01719-VC
Schafer v. Monsanto Co., 3:19-cv-02169
Seidl v. Monsanto Co., 3:17-cv-00519-VC

**DEFENDANT MONSANTO
COMPANY'S NOTICE OF
MOTION AND MOTION FOR
SUMMARY JUDGMENT ON
NON-CAUSATION GROUNDS**

Hearing date: May 28, 2021
Time:

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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”)
5 will present its Motion for Summary Judgment. Monsanto seeks an order granting summary
6 judgment for Monsanto.

7
8 DATED: March 19, 2021

9 Respectfully submitted,

10 */s/ Michael X. Imbroscio*

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1 Monsanto hereby moves for summary judgment on non-causation grounds in the above-
2 captioned cases. Consistent with the Court's repeated instructions not to re-litigate issues
3 previously ruled upon by the Court, but in order to fully preserve the appellate record, Monsanto
4 hereby incorporates the following pleadings that were filed on the MDL docket:

- 5 • Monsanto's Motion for Summary Judgment on Non-Causation Grounds (ECF
6 #2419)
- 7 • Monsanto's Reply in Support of Motion for Summary Judgment on Non-Causation
8 Grounds (ECF #2634)

9 Monsanto moves for summary judgment on the following grounds and incorporates the
10 full record raised in those pleadings:

- 11 • Plaintiffs' warning-based claims are expressly preempted
- 12 • Plaintiffs' claims are preempted under impossibility preemption
- 13 • Plaintiffs' warning claims should be dismissed because the alleged cancer risks were
14 not known or knowable by the scientific community at the time of distribution
- 15 • Plaintiffs have not demonstrated a right to seek punitive damages in this case.¹

16 With respect to Monsanto's motion on the grounds that Plaintiffs' claims are both
17 expressly preempted and preempted under impossibility preemption, Monsanto supplements the
18 record to include further evidence in support of its motion that took place subsequent to the
19 Court's ruling. **First**, in April 2019, the Environmental Protection Agency ("EPA") issued its
20 proposed interim decision on the re-registration of glyphosate. *See* Declaration of Michael
21 Imbroscio (March 18, 2021) ("Imbroscio Decl."), Ex. 1, EPA, Glyphosate: Proposed Interim
22 Registration Review Decision. **Second**, in August 2019, EPA issued the attached letter and
23

24 ¹ Like California law, North Carolina law requires a showing of aggravating factors such as malice
25 or oppression before a plaintiff can recover punitive damages. *See, e.g., Bartlett Milling Co., L.P.*
26 *v. Walnut Grove Auction and Realty Co., Inc.*, 665 S.E.2d 478, 487, 192 N.C.App. 74, 84
27 (N.C.App.,2008). Plaintiff Randall Seidl cannot meet this burden in this case for the reasons
28 Monsanto has identified in prior briefing. *See, e.g.,* ECF No. 2419 at 17-21. Illinois law regarding
punitive damages is separately addressed in Monsanto's Motion for Summary Judgment on
Illinois Law Grounds.

1 associated materials. *See* Imbroscio Decl., Ex. 2, Letter from Michael Goodis to Registrant,
2 Aug. 7, 2019; Imbroscio Decl., Ex. 3, EPA, News Release from Headquarters, “EPA Takes
3 Action to Provide Accurate Risk Information to Consumers, Stop False Labeling on Products,”
4 Aug. 8, 2019. **Third**, in December 2019, the United States government filed an amicus brief
5 urging that claims presented by a different plaintiff in this multidistrict litigation be rejected as
6 preempted by federal law. *See* Ex. 4, Brief for United States as Amicus Curiae Supporting
7 Appellant, *Monsanto Co. v. Hardeman*, No. 19-16636 (9th Cir. Dec. 20, 2019). **Fourth**, in
8 January 2020, the Environmental Protection Agency (“EPA”) released its interim registration
9 review decision for glyphosate, which is final in terms of human health risk assessment. *See*
10 Imbroscio Decl., Ex. 5, EPA, Glyphosate: Interim Registration Review Decision Case No. 0178
11 (Jan. 2020). In the decision, EPA reaffirmed that “there are no risks to human health from the
12 current registered uses of glyphosate and that glyphosate is not likely to be carcinogenic to
13 humans.” Along with its decision for glyphosate, EPA released responses from EPA’s Pesticide
14 Re-evaluation Division (PRD) to public comments on the decision. *See* Imbroscio Decl., Ex. 6,
15 EPA, Response from PRD to Comments on the Glyphosate Proposed Interim Decision (Jan. 16,
16 2020).

17 By incorporating by reference its prior filings, Monsanto is in no way waiving any of the
18 arguments raised therein.

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Dated: March 19, 2021

By: /s/ Michael X. Imbroscio

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