

1 Ken Moll  
2 Rebecca Fredona  
3 Fatima Abuzerr  
4 **MOLL LAW GROUP**  
5 22 W Washington St  
6 15<sup>th</sup> Floor  
7 Chicago, IL 60602  
8 T: 312.462.1700  
9 F: 312.756.0045  
10 [rfredona@molllawgroup.com](mailto:rfredona@molllawgroup.com)

11 *Attorney for Plaintiffs*

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

14 IN RE: ROUNDUP PRODUCTS LIABILITY  
15 LITIGATION

MDL No. 2741

Case No. 16-md-02741-VC

16 This document relates to:  
17 *Cervantes v. Monsanto Co.*, 3:19-cv-03015-VC  
18 *Karman v. Monsanto Co.*, 3:19-cv-01183-VC  
19 *Pecorelli v. Monsanto Co.*, 3:19-cv-06936-VC  
20 *Peterson v. Monsanto Co.*, 3:19-cv-07271-VC  
21 *Rehak v. Monsanto Co.*, 3:19-cv-01719-VC  
22 *Schafer v. Monsanto Co.*, 3:19-cv-02169-VC

23 **PLAINTIFFS’ NOTICE OF**  
24 **MOTION AND OMNIBUS MOTION**  
25 **TO STRIKE AND EXCLUDE THE**  
26 **TESTIMONY OF DEFENDANT’S**  
27 **CASE SPECIFIC EXPERTS**

Hearing date: May 28, 2021

28 **PLAINTIFFS’ OMNIBUS MOTION TO STRIKE AND EXCLUDE THE**  
**TESTIMONY OF DEFENDANT’S CASE SPECIFIC EXPERTS**

Plaintiffs, Gerard Cervantes, James Peterson, Lorraine Rehak, Mark Pecorelli, Individually and as Representative of the Estate of Michael Pecorelli, Christine Karman, Individually and as Representative of the Robert Karman, and John Schafer (“Plaintiffs”), pursuant to Federal Rule of Civil Procedure 37, Fed. R. Civ. P. 30(d)(2), Federal Rule of Evidence 702, and *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993), hereby move to strike and exclude the expert testimony proffered by Monsanto’s 17 case-specific experts, and in support therein state as follows:

**BACKGROUND**

1 On December 9, 2020, this Court entered an Order setting the Wave 2 Schedule for this  
2 MDL; all of the Plaintiffs are in Wave 2 of this MDL. The Order set the following expert  
3 schedule: Plaintiff's expert reports due on January 22, 2021; Defendant's expert reports due  
4 February 12, 2021; and close of expert discovery on March 10, 2021. (ECF 12198)

5 On January 22, 2021, all Plaintiffs timely served their Rule 26 Designation and  
6 Disclosure on Defendant disclosing oncologists, pathologists, genotoxicologist, and forensic  
7 toxicologists as their experts.

8 On February 12, 2021, Defendant served its Rule 26 Designation and Disclosure on  
9 Plaintiff Gerard Cervantes naming Earl Creech, Ph.D., Matthey C. Call, MS, CIH, CSP, Jeffrey  
10 William Craig, M.D., Ph.D., Ran Reshef, M.D., MSc, D. as case-specific experts. Moll Aff., Ex.  
11 1 at p. 2.

12 On February 12, 2021, Defendant served its Rule 26 Designation and Disclosure on  
13 Plaintiff James Peterson naming Celeste Bello, M.D., Dr. Bruce A. Woda, Brian Daly, CIH, PE,  
14 and Dr. Bradley Hanson, Ph.D as case-specific experts. Moll Aff., Ex. 1 at p. 2.

15 On February 12, 2021, Defendant served its 26 Designation and Disclosure on Plaintiff  
16 John Schafer naming Bradley D. Hanson, Ph.D., Mark A. Katchen, CIH, FAIHA, Matthew J.  
17 Matasar, MS, MD, Graham W. Slack, M.D. as case specific experts. Moll Aff., Ex. 1 at p. 2.

18 On February 12, 2021, Defendant served its Rule 26 Designation and Disclosure on  
19 Plaintiff Lorraine Rehak naming Kassim Al-Khatib, Ph.D, Alex LeBeau, PhD, MPH, CIH, Ran  
20 Reshef, MD, MSc, Lawrence Weiss, MD as case-specific experts. Moll Aff., Ex. 1 at p. 2.

21 On February 12, 2021, Defendant served its Rule 26 Designation and Disclosures on  
22 Plaintiff Mark Pecorelli, naming Joseph M. DiTomaso, Ph.D., Timothy S. Fenske, M.D., Robert  
23 N. Phalen, Ph.D., CIH, Graham W. Slack, M.D. as case specific experts. Moll Aff., Ex. 1 at p. 2.

24  
25  
26  
27  
28

1 On February 12, 2021, Defendant served its Rule 26 Designation and Disclosures on  
2 Robert Karman, naming Celeste Bello, M.D. Bruce A. Woda, M.D., Alex Lance LeBeau, PhD,  
3 MPH, CIH, and Joseph M. DiTomaso, Ph.D. as case-specific experts. Moll Aff., Ex. 1 at p. 2.

4 On February 13, 2021 – **25 days** prior to the deadline to depose case-specific experts -  
5 Plaintiffs’ counsel reached out to Defendant’s counsel via email requesting several alternative  
6 dates for the 24 depositions of the 17 case-specific experts that Defendant disclosed to the  
7 Plaintiffs. Moll Aff., Ex. 1 at p. 2.

8 On February 16, 2021, Defendant suggested that all 24 depositions (8, seven-hour  
9 depositions and 16, three-hour depositions) be taken over the course of seven days (including  
10 Sunday) of the final eight days of the deadline:  
11

12 March 3, 2021:

13 Slack for Pecorelli, 7 hours  
14

15 March 4, 2021:

16 Call for Cervates, 7 hours at 11am ET  
17 Creech for Cervantes, 7 hours (or March 5, 2021)  
18 Slack for Schafer, 3 hours, 12:30pm PT

19 March 5, 2021:

20 Creech for Cervantes, 7 hours (or March 4, 2021)  
21 Fenske for Pecorelli, 7\* hours  
22 Hanson for Schafer, 3 hours  
23 Hanson for Peterson, 3 hours  
24 Matasar for Schafer, 3 hours, 11:00-3pm ET (or March 8 10am-2pm)  
25 Phalen for Pecorelli, 3 hours, 10am ET

26 March 7, 2021:

27 Woda for Peterson, 3 hours  
28 Woda for Karman, 3 hours

March 8, 2021:

Al-Khatib for Rehak, 3 hours (or March 10, 2021)

1 Bello for Karman, 3 hours  
2 Bello for Peterson, 3 hours  
3 Matasar for Schafer, 3 hours, 11:00-3pm ET (or March 5 11am-3pm)  
4 Reshef for Cervantes, 3 hours  
5 Reshef for Rehak, 3 hours  
6 Weiss for Rehak, 7\* hours

7 March 9, 2021:

8 Craig for Cervantes, 7 hours (or March 10, 2021)  
9 Daly for Peterson, 7 hours, 12:pm ET  
10 DiTomaso for Pecorelli, 3 hours  
11 DiTomaso for Karmen, 3 hours  
12 Katchen for Schafer, 7 hours  
13 LeBeau for Karman, 3 hours, 9:00 a.m.  
14 LeBeau for Rehak, 3 hours

15 March 10, 2021:

16 Al-Khatib for Rehak, 3 hours (or March 8, 2021)  
17 Craig for Cervantes, 7 hours (or March 9, 2021)

18 \*initially only offered for 3 hours. Moll Aff., Ex. 1 at p. 3-4.

19 The aforementioned schedule the Defendant proffered to Plaintiffs' counsel was  
20 untenable. The Defendant offered up to seven depositions on March 8, 2021 and March 9, 2021  
21 alone; four of those depositions lasting up to seven hours each. The defendant only offered one  
22 date and time for 20 depositions and offered only two dates and times for 4 depositions.

23 On February 16, 2021, Plaintiffs' counsel attempted to confer with Defendant in good  
24 faith. Plaintiff's counsel informed Defendant's counsel via email that the schedule provided was  
25 untenable and pointed out that the schedule provided as many as five or six depositions on the  
26 same day. Plaintiffs' counsel requested several alternative dates and times, and to spread the  
27 expert witness depositions out over more than six days. Moll Aff., Ex. 1 at p. 4.

28 On February 16, 2021, Defendant's counsel responded via email that the proffered  
schedule was due to the "tight deadline of March 10 for expert depositions" and that "our experts  
will be responding to your experts and thus have only been given a short window to provide

1 deposition dates in advance of the deadline . . . .” Further, Defendant further asserted that “you  
2 have left us with only about one week window or less to provide dates for the 24 depositions you  
3 have requested of our experts, many of whom are practicing clinicians with availability that is  
4 limited by their responsibilities to their patients.” Finally, defendant asserted that “under the  
5 current situation, this is all we can offer.” The Defendant never offered any alternative dates for  
6 their case-specific expert depositions. Moll Aff., Ex. 1 at p. 4.

7  
8 On February 16, 2021, Plaintiffs’ counsel suggested that there were “many available  
9 dates between tomorrow and March 10 . . . .” Moll Aff., Ex. 1 at p. 4. In fact, there were 23 days  
10 left before the deadline to take the depositions.

11 On March 2, 2021, Plaintiffs’ counsel again reached out to defense counsel and reiterated  
12 that “we still have not been provided with alternative deposition dates that would work for us as  
13 we requested. With only eight days left, I highly doubt this can get done.” Moll Aff., Ex. 1 at p.  
14 4. Plaintiffs’ counsel never received a response nor were they provided any alternative dates, as  
15 requested.  
16

17 The Defendant did not confer with Plaintiffs’ counsel in good faith; the proffered  
18 schedule was clearly a strategic move to prevent having to submit Monsanto’s case-specific  
19 experts for examination by overburdening Plaintiffs’ counsel.  
20

21 For example, in each of the Defendant’s Rule 26 Designation and Disclosures served on  
22 Plaintiffs, Defendant named a “weed scientist” expert. Those experts being: Earl Creech Ph.D,  
23 Bradley Hanson, Ph.D, Kassim Al-Khatib, Ph.D, and Joseph M. DiTomaso, Ph.D. Plaintiffs did  
24 not disclose a “weed scientist” in any of their reports. Therefore, Defendant’s weed scientists did  
25 not need to respond to any of Plaintiffs’ expert reports. Defendant’s counsel could have offered  
26 any date after February 13, 2021, the date Plaintiffs’ counsel first requested dates; however, they  
27 chose not to.  
28

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.