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

25 IN RE: ROUNDUP PRODUCTS
26 LIABILITY LITIGATION

27 MDL No. 2741

28 Case No. 3:16-md-02741-VC

29 *Cervantes v. Monsanto Co., 3:19-cv-03015-VC*
30 *Karman v. Monsanto Co., 3:19-cv-01183-VC*
31 *Pecorelli v. Monsanto Co., 3:16-cv-06936-VC*
32 *Peterson v. Monsanto Co., 3:18-cv-07271-VC*
33 *Rehak v. Monsanto Co., 3:19-cv-01719-VC*
34 *Schafer v. Monsanto Co., 3:19-cv-02169-VC*
35 *Seidl v. Monsanto Co., 3:17-cv-00519-VC*

36 **PLAINTIFFS' JOINT RESPONSE IN**
37 **OPPOSITION TO *THE GENERAL***
38 ***ISSUES RAISED IN MONSANTO***
39 **COMPANY'S MOTION TO EXCLUDE**
40 **TESTIMONY OF SPECIFIC**
41 **CAUSATION EXPERTS BARRY BOYD,**
42 **LAUREN PINTER-BROWN, WILLIAM**
43 **SAWYER, RON SCHIFF AND DENNIS**
44 **WEISENBURGER ON *DAUBERT***
45 **GROUND**

46 **INTRODUCTION**

47 Monsanto Company's Motion to Exclude Testimony of Specific Causation Experts

1 Barry Boyd, Lauren Pinter-Brown, William Sawyer, Ron Schiff, and Dennis Weisenburger on
2 *Daubert* Grounds (“Monsanto Motion”)¹ addresses the reports and deposition testimony of five
3 specific causation experts relating to seven Wave 2 Plaintiffs represented by two different law
4 firms. This opposition addresses only the general issues that Monsanto raises in its motions,
5 including the legal standard that applies to the motions. For their oppositions to Monsanto’s
6 Motion to exclude each expert, Plaintiffs have filed separate opposition briefs for each of the
7 five experts which incorporates by reference the below arguments.

9 ARGUMENT

10 **The Court Previously Considered and Rejected Monsanto’s Claim That Specific** 11 **Causation Experts Should Be Excluded If They Rely on General Causation Experts’** 12 **Opinions, Do Not Consider Every Possible Risk Factor, and/or Do Not Rule Out** 13 **“Idiopathy”**

14 In the instant motion, Monsanto essentially mimics the arguments it raised against the
15 Bellwether Plaintiffs’ and Wave 1 Plaintiffs’ specific causation experts. Monsanto does not
16 dispute that the Plaintiffs’ experts may use the differential etiology method upheld by the Ninth
17 Circuit and this Court as the basis for their opinions (PTO 85 at p. 2), or argue that the experts
18 misuse the studies. Instead, Monsanto argues that the experts’ opinions should be excluded
19 because: (1) they “rely on the same flawed studies the general causation experts rely on . . . ,”
20 (2) “[f]or the most part, these experts made no attempt at all to address idiopathy in their expert
21 reports,” and (3) they “fail to reliably consider and rule out other potential causes of NHL”
22 *See, e.g.*, Monsanto Motion at p. 1. This Court’s prior rulings quickly dispense with each of
23 these arguments.

24 **a. Reliance on General Causation Experts**

25 This Court, in PTO 85, rejected Monsanto’s claim that it is entitled to prevail on its
26 motion because the specific causation experts rely on the same studies as the general causation

27 ¹ This responds to the general issues raised in Documents 8012, 12784, 12789 and 12793.

1 experts, calling Monsanto's argument "off point" because "at trial, [Plaintiffs' specific
2 causation experts] basis for ruling in glyphosate will be the general causation opinions." PTO
3 85 at pp. 2-3. For the same reasons the Court denied Monsanto's motion regarding the
4 Bellwether Plaintiffs, Monsanto's instant motion should be denied. Monsanto's position
5 regarding the studies upon which the general causation experts rely is a rehash of a failed
6 argument already rejected by this Court.

7 **b. There is no Legal Requirement to Consider Every Potential Risk Factor**

8 Plaintiffs' experts are not required to scour the world and investigate every conceivable
9 alternative potential cause of a Plaintiffs' NHL in order for their opinions to be admissible
10 under *Daubert*. The Ninth Circuit in *Wendell v. GlaxoSmithKline, LLC*, 858 F.3d 1227, 1237
11 (2017), made that clear:

12 We do not require experts to eliminate all other possible causes of a condition for the
13 expert's testimony to be reliable. It is enough that the proposed cause "be a substantial
14 causative factor." This is true in patients with multiple risk factors, and analogously, in
15 cases where there is a high rate of idiopathy.

16 Likewise, in *Cooper v. Takeda Pharmaceuticals America, Inc.*, 239 Cal. App. 4th 555,
17 580 (2014), the California Court of Appeals ruled that a plaintiff need not rule out every
18 potential risk factor that could conceivably have also contributed to her disease:

19 Thus, because California has rejected the notion that a plaintiff must definitively
20 "exclude all possibilities other than the defendant's conduct or product as the cause of
21 the plaintiff's harm, clearly an expert, in reaching a specific causation opinion, need not
22 exclude all other possibilities before he or she can express an opinion that the
23 defendant's conduct or product caused the plaintiff's harm.

24 **c. Plaintiffs' Experts Need Not Exclude Idiopathy**

25 Monsanto's "idiopathy" argument is similarly a rehash of the argument this Court also
26 rejected in PTO 85. The Court wrote:

27 Recognizing that "[m]edicine partakes of art as well as science," the Ninth Circuit's
28 recent decisions reflect a view that district courts should typically admit specific
causation opinions that lean strongly toward the "art" side of the spectrum. *Messick*, 747
F.3d at 1198; *see also Wendell*, 858 F.3d at 1237 ("The first several victims of a new
toxic tort should not be barred from having their day in court simply because the
medical literature, which will eventually show the connection between the victims'

1 condition and the toxic substance, has not yet been completed.” (quoting *Clausen*, 339
2 F.3d at 1060)).

3 * * *

4 Under Ninth Circuit caselaw, doctors enjoy wide latitude in how they practice their art
5 when offering causation opinions. See *Wendell*, 858 F.3d at 1237 (“Where, as here, two
6 doctors who stand at or near the top of their field and have extensive clinical experience
7 with the rare disease or class of disease at issue, are prepared to give expert opinions
8 supporting causation, we conclude that *Daubert* poses no bar based on their principles
9 and methodology.”). It is sufficient for a qualified expert, in reliance on his clinical
10 experience, review of a plaintiffs’ medical records, and evaluation of the general
11 causation evidence, to conclude that an “obvious and known risk factor[.]” is the cause of
12 that plaintiff’s disease. See *Wendell*, 858 F.3d at 1235. Here, the specific causation
13 experts did that. Relying on the plaintiffs’ admissible general causation opinions –
14 which assert a robust connection between glyphosate and NHL – the experts concluded
15 that glyphosate was a substantial factor in causing the plaintiffs’ NHL.

16 Moreover, the experts relied heavily on the plaintiffs’ exposure levels in drawing their
17 conclusions. All three experts noted the plaintiffs’ extensive Roundup usage, and further
18 explained – as did the plaintiffs’ general causation opinions – that both the McDuffie
19 (2001) and Eriksson (2008) studies showed a dose-response relationship between
20 glyphosate and NHL. See generally *In re Roundup Products Liability Litigation*, 2018
21 WL 3368534, at *9-10. Thus, consistent with Ninth Circuit caselaw, the experts
22 provided a basis for their conclusion that these plaintiffs fall into the category of
23 Roundup users who developed NHL. The Court may be skeptical of their conclusions,
24 and in particular of the assumption built into their opinions from the general causation
25 phase about the strength of the epidemiological evidence. But their core opinions – that
26 the plaintiffs had no other significant risk factors and were exposed to enough
27 glyphosate to conclude that it was a substantial factor in causing their NHL – are
28 admissible.

PTO 85 at pp. 5-6 (footnotes omitted).

Thus, because the experts here followed the same methodology as those previously
addressed by the Plaintiffs’ Bellwether experts, Monsanto’s Motion should be denied.

Dated: April 2, 2021

By: /s/ Fatima Abuzerr
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