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MONSANTO COMPANY

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

12 IN RE: ROUNDUP PRODUCTS
13 LIABILITY LITIGATION

Case No. 16-md-02741-VC

MDL No. 2741

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16 This document relates to:
17 ALL ACTIONS

**MONSANTO COMPANY’S MOTION TO
STRIKE PLAINTIFFS’ REPLY EXHIBIT 1
AND UNREDACTED VERSION OF REPLY**

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19 Monsanto Company (“Monsanto”) requests that the Court strike from its docket the
20 irrelevant exhibit that plaintiffs filed with their Reply in Support of Motion to Strike
21 Confidentiality of Heydens Deposition (“Reply”) and the unredacted version of the Reply
22 discussing that exhibit, *see* ECF No. 246-2 and Ex. 1. The document is not relevant to plaintiffs’
23 arguments in favor of de-designating the transcript of Dr. Heydens’ deposition or exhibits thereto
24 because it has nothing to do with the alleged “ghostwriting” of the Williams (2000) article. It is
25 not relevant to general causation, the only inquiry at issue in this stage of the litigation, because
26 the document is about a 2016 media strategy. It is not even relevant to plaintiffs’ claims in this
27 litigation, because the media strategy discussed therein post-dates plaintiffs’ alleged exposure to
28

1 glyphosate and, therefore, could not possibly have contributed to the plaintiffs' alleged injuries.
2 The Court should therefore strike this irrelevant and extraneous document from the docket. *See,*
3 *e.g., Holloway v. Gilead Scis., Inc.*, No. 16-CV-02320-VC, 2016 WL 3526060, at *2 (N.D. Cal.
4 June 23, 2016) (Chhabria, J.) (striking exhibits after finding the associated brief moot); *Minebea*
5 *Co. Ltd. v. Papst*, 221 F.R.D. 11, 11-12 (D.D.C. 2004) (striking exhibits filed in support of non-
6 dispositive motion, and directing the parties in the future not to file exhibits to non-dispositive
7 motions without leave of court).

8 Argument

9 Plaintiffs' motion to strike the confidentiality designations of the transcript of Dr.
10 Heydens' deposition and its exhibits is premised on a single erroneous argument – that Monsanto
11 committed a subject matter waiver of confidentiality by posting online two sentences from that
12 transcript. *See generally* Pls.' Mot., ECF No. 226-3. Those statements show that plaintiffs'
13 allegations of "ghostwriting" of the Williams (2000) article based on a statement by Dr. Heydens
14 in an email written more than a decade later are disputed in this litigation including by Dr.
15 Heydens. And they were posted online in direct response to misleading and prejudicial reporting
16 resulting from release of records cherry-picked by plaintiffs and related media attacks by
17 plaintiffs' counsel. Plaintiffs' legal waiver argument about the drafting of Williams (2000)
18 required no exhibits. Further, this exhibit does not support plaintiffs' position because the 2016
19 media strategy memorandum does not even discuss the Williams (2000) article.

20 As explained in Monsanto's opposition to plaintiffs' motion, combined with a Motion to
21 Strike and for Protective Order, the "sword and shield" doctrine plaintiffs rely upon does not
22 apply in the confidentiality context where plaintiffs have full access to the documents at issue.
23 *See* Monsanto's Mot. to Strike and for Protective Order, and Opp. to "Pls.' Mot. to Strike
24 Confidentiality Designation of Dep. of William Heydens PhD." ("Monsanto's Mot."), ECF No.
25 238, at 4-6; *Century Aluminum Co. v. AGCS Marine Ins. Co.*, 285 F.R.D. 468, 472 (N.D. Cal.
26 2012). In addition, the Protective and Confidential Order ("Protective Order") expressly
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1 and characterizes it. Monsanto requests that this Motion be heard together with “Plaintiffs’
2 Motion to Strike Confidentiality Designation of Deposition of William Heydens PhD” (ECF No.
3 226-3) and Monsanto’s related Motion to Strike (ECF No. 238), with the parties presenting oral
4 argument at either the May 11 CMC or on another date convenient for the Court.

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7 DATED: April 28, 2017

Respectfully submitted,

8 /s/ Joe G. Hollingsworth
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