

1 Michael J. Miller  
2 The Miller Firm, LLC  
3 108 Railroad Avenue  
4 Orange, VA 22960  
5 (540) 672-4224  
6 Mmiller@millerfirmllc.com  
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8 **UNITED STATES DISTRICT COURT**  
9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
10 **SAN FRANCISCO DIVISION**

11 IN RE: ROUNDUP PRODUCTS LIABILITY  
12 LITIGATION

MDL No. 2741

13 THIS DOCUMENT RELATES TO:

**RESPONSE OF MICHAEL J. MILLER TO  
PTO-28**

14 ALL ACTIONS

Hearing Date: August 24, 2017

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18 1. In response to the Court’s Pretrial Order 28 requesting co-lead counsel to show cause  
19 why they should not be replaced as a result of Baum Hedlund's conduct, I, Michael J. Miller, submit  
20 and declare the following as to why I should not be removed as co-lead counsel of MDL No. 2741.

21 2. Monsanto has accused The Miller Firm, and me, of engaging in improper conduct  
22 surrounding the release of documents at issue in the Court’s Order to Show Cause. Monsanto had no  
23 good faith basis to make that accusation. In fact, the only evidence put forth by Defendant demonstrates  
24 that neither I nor my firm were involved in the meet-and-confer of July 17<sup>th</sup>. The evidence  
25 demonstrates that neither I nor my firm were involved in any discussions with Defendant between June  
26 30<sup>th</sup> and August 1<sup>st</sup> about de-designating documents. The Defendant’s evidence demonstrates that the  
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1 Miller Firm was not copied on the July 27<sup>th</sup> email, and was not involved with the release of documents  
2 or the events at subject of the Court's Order to Show Cause. The Miller Firm was not involved in the  
3 conduct for which Monsanto seeks sanctions.

4 3. Baum Hedlund approached the co-leads about filing a joint discover letter with the court  
5 to de-designate certain documents on or about May 10, 2017.

6 4. I unequivocally, and in writing, recommended against engaging in any further  
7 dedesignation efforts beginning in May 2017, and declined absolutely to participate in any such efforts  
8 thereafter.

9 5. One of my associates reiterated our position plainly on June 12, 2017; that I declined to  
10 participate in that process.

11 6. Concerning the July 13, 2017 meet and confer between Baum Hedlund and other PSC  
12 firms with the Hollingsworth firm: a. I was not notified of the meet and confer call (all knew my  
13 opposition to focusing on this issue). b. I was not on the meet and confer call nor involved in the follow  
14 up from the meet and confer on this issue. No member of my firm was involved.

15 7. On July 27, the Baum Firm sent an e-mail to the Hollingsworth firm regarding the de-  
16 designation meet and confer. I was not copied on the e-mail, nor was I aware of this e-mail until after  
17 the Baum firm made the documents public.

18 8. On Sunday, July 30, 2017 at 9:40 p.m., Mr. Wisner sent Ms. Wagstaff an e-mail advising  
19 that he planned to make these documents publicly available. Mr. Wisner copied eight people on this  
20 e-mail including me. I did not open this e-mail at any time before Mr. Wisner released the documents  
21 approximately 30 hours later. In the first instance I spent that time with my two youngest sons and  
22 only looked briefly at my inbox. Since the subject line of the e-mail was "Re: Motion Clarifying PTO  
23 15 and 20," it was an e-mail on a subject I had opposed spending our time on since May 12.<sup>1</sup> I first  
24 learned of the public release of the documents by Baum firm on Tuesday, August 1, 2017.

25  
26 <sup>1</sup> By quoting the subject line of the email, I do not waive any privileges attached to the remaining portions of  
27 the email.

1           9.       The Miller Firm has put in substantial time and resources representing clients in this  
2 litigation. The Miller Firm has intimate knowledge of the documents, facts and science of this case.  
3 Removing the Miller Firm or myself from the leadership would cause undue prejudice to the plaintiffs  
4 and would be unjust to The Miller Firm. The Miller Firm has worked up three experts; has been lead  
5 counsel in taking or defending nine fact depositions; The Miller Firm is currently scheduled to depose  
6 three of the Defense experts; and has reviewed hundreds of thousands of documents. The upcoming  
7 schedule will involve an increased intensity in defending and preparing for expert depositions,  
8 summary judgement motions, and *Daubert* hearings. Removing The Miller Firm without any showing  
9 of engaging in the conduct alleged to be in bad faith would irreparably harm plaintiffs at this critical  
10 juncture in the litigation.  
11

12           10.       I have worked with Michael Baum and Brent Wisner of the Baum Hedlund firm in past  
13 litigations and each have an excellent reputation. In my experience they are excellent attorneys who  
14 act with high integrity; and always acts professionally when dealing with other law firms, opposing  
15 counsel and the court.  
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17           11.       I will personally appear in Court at the August 24, 2017 to answer any further questions  
18 from the Court.  
19

Sworn and Attested to by:

22 Dated: August 14, 2017

/s/ Michael J. Miller

23 Michael J. Miller, Esq.  
24 The Miller Firm, LLC  
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27 (540) 672-4224  
Mmiller@millerfirmllc.com

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**PROOF OF SERVICE**

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent by email and first class mail, postage prepaid, to those indicated as non-registered participants on this date.

Dated: August 14, 2017

/s/ Michael J. Miller, Esq.

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