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

IN RE: ROUNDUP PRODUCTS
LIABILITY LITIGATION

MDL No. 2741
Case No. 3:16-md-02741-VC

This document relates to:
ALL ACTIONS

JOINT CASE MANAGEMENT STATEMENT

1 Pursuant to the Court’s August 24, 2017 Minute Entry, ECF No. 470, the parties submit
2 this Joint Case Management Statement in anticipation of the October 27, 2017 Case Management
3 Conference (“CMC”).

4 **I. THE PARTIES AGREE THAT A COURT-APPOINTED EXPERT IS NOT**
5 **NECESSARY OR APPROPRIATE IN THIS CASE**

6 **Plaintiffs’ Position:**

7 In response to the Court’s inquiry, Minute Entry, ECF No. 470, the Plaintiffs do not
8 believe that a court-appointed expert is necessary or appropriate for several reasons. First,
9 Plaintiffs believe that their experts, all of whom are either currently professors or have extensive
10 teaching/lecturing experience, are in the best position to answer the Court’s questions at the
11 *Daubert* hearing. Second, Plaintiffs’ counsel believes that Plaintiffs should not bear the costs of
12 an additional expert, especially if the Court were to decide to appoint multiple experts. Finally,
13 given the extent of influence Monsanto has exerted on regulatory agencies, academia and
14 others, Plaintiffs believe it would be difficult to appoint an expert that the parties would
15 consider neutral.

16 **Monsanto’s Position:**

17 In response to the Court’s inquiry at the August 24, 2017 Show Cause Hearing and the
18 Court’s August 24, 2017 Minute Entry, ECF No. 470, Monsanto does not believe that court-
19 appointed experts are necessary or appropriate in this case. The expert evidence at issue here
20 covers a number of academic disciplines, and assembling a panel of independent court-appointed
21 experts covering the full range of this evidence in advance of the December *Daubert* hearings
22 would be exceedingly difficult. See Laural L. Hooper et al., *Neutral Science Panels: Two*
23 *Examples of Panels of Court-Appointed Experts in the Breast Implants Product Liability*
24 *Litigation* at 5, Federal Judicial Center (2001), [https://www.fjc.gov/sites/default/files/2012/](https://www.fjc.gov/sites/default/files/2012/NeuSciPa.pdf)
25 [NeuSciPa.pdf](https://www.fjc.gov/sites/default/files/2012/NeuSciPa.pdf) (“*Neutral Science Panels*”) (reviewing the use of court-appointed experts in breast
26 implant litigation, including conclusion that “[a]reas of expertise should be sought that will
27 match the evidentiary issues ... [which] may prove surprisingly difficult where expertise in a
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1 combination of subjects is required. Considerable effort may be required to find appropriate
2 candidates who are willing to serve.”).

3 As outlined in more detail in Monsanto’s October 20, 2016 Case Management Statement,
4 the Court already has access to extensive, independent expert analyses of the scientific evidence
5 at issue here through two evaluations of glyphosate’s carcinogenic potential conducted by EPA
6 scientists, as well as analyses by other regulatory and health agencies around the world. *See*
7 Monsanto Company’s Case Management Statement at 15-19, ECF No. 9 (citing conclusions of
8 independent regulatory agencies that glyphosate does not pose a risk for cancer in humans).
9 Most importantly for the question of employing court-appointed experts, the EPA analyses
10 discuss all of the different categories of scientific evidence that the court will consider in this
11 phase and provide specific guidance on the proper methodology for assessing this scientific
12 evidence. There also are now thirteen retained experts in a number of scientific disciplines who
13 have submitted reports and given deposition testimony and will be offering further testimony at
14 the *Daubert* hearing, in order to assist the Court in performing its gatekeeping function. The
15 independent expert guidance from EPA, along with the presentations and materials provided by
16 the parties at Science Day, will leave the Court well prepared to consider the expert testimony
17 here and to satisfy its gatekeeping responsibility of ensuring that plaintiffs’ general causation
18 expert witnesses meet the “exacting standards of reliability” set forth in *Daubert* and its progeny.
19 *Weisgram v. Marley Co.*, 528 U.S. 440, 455 (2000).

20 Moreover, a number of commentaries have noted that the use of court-appointed experts
21 is rare and has proven difficult to implement, particularly where, as here, the expert testimony at
22 issue covers a number of scientific disciplines. A review conducted on behalf of the Federal
23 Judicial Center concluded that such experts should be used “only in extraordinary cases,”
24 because “[t]he cost, time, and difficulty of finding appropriate candidates who are willing to
25 serve, and the problems of administering the work of the panel, limit the role of such panels to
26 only those cases with an exceptional need.” *Neutral Science Panels* at 5. This review further
27 concluded that courts should “develop the information necessary for thoughtful consideration of
28 complex evidence without taking the extraordinary step of appointing one or more experts,”

1 because “[e]ven in the best of circumstances, such appointments of expert panels are costly and
2 time consuming, present difficult issues of administration,¹ and raise concerns about the
3 independence of judicial consideration.” *Neutral Science Panels* at 93-94; *see also Manual for*
4 *Complex Lit.* at § 11.51 (“Truly neutral experts are difficult to find.”); Barbara J. Rothstein &
5 Catherine R. Borden, *Managing Multidistrict Litigation in Products Liability Cases: A Pocket*
6 *Guide for Transferee Judges* at 39-40, Federal Judicial Center, Judicial Panel on Multidistrict
7 Litigation (2011), <https://www.fjc.gov/sites/default/files/2012/MDLGdePL.pdf> (discussing use
8 of party-provided science tutorials as an alternative to court-appointed experts in product liability
9 MDLs). Indeed, none of the prior MDLs to which Monsanto referred in advocating for
10 bifurcation appear to have employed court-appointed experts in their resolution of the general
11 causation inquiry. *See* Monsanto Company’s Case Management Statement at 8-9, ECF No. 9
12 (referring to *In re Viagra Prod. Liab. Litig.*, MDL No. 1724 (D. Minn.); *In re Zoloft*
13 *(Sertralinehydrochloride) Prod. Liab. Litig.*, MDL No. 2342 (E.D. Pa.); *In re Bextra & Celebrex*
14 *Mktg. Sales Practices & Prod. Liab. Litig.*, MDL No. 1699 (N.D. Cal.); and *In re Human Tissue*
15 *Prod. Liab. Litig.*, MDL No. 1763 (D. N.J.)).

16 Under these circumstances, the use of court-appointed experts would be redundant, difficult
17 to implement, and unnecessary.

18 **II. SCHEDULING AND PROCEDURES FOR SCIENCE WEEK**

19 The parties’ positions regarding the schedule for Science Week are set forth in their joint
20 filing of October 13, 2017 regarding witness lists, objections to witness lists, and proposed
21 schedules, ECF No. 610, and the parties will be prepared to present further argument on this
22 issue at the CMC. The Parties will also be prepared to discuss the Court’s preferred procedures
23 regarding the exhibits and other materials to be used at Science Week.

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¹ For example, the use of court-appointed experts as technical advisors often involves ex parte communications between judge and expert on substantive matters, requiring procedural safeguards because such “[e]x parte communications are always suspect and should be allowed only in exceptional circumstances.” *See Manual for Complex Litigation, Fourth* at § 11.51, Federal Judicial Center (2004), <https://www.fjc.gov/sites/default/files/2012/mcl4.pdf> (“*Manual for Complex Lit.*”).

1 **III. INTENT TO BRING AND UTILIZE DEMONSTRATIVES AND AUDIO-VISUAL**
2 **EQUIPMENT FOR SCIENCE WEEK**

3 The parties anticipate bringing demonstratives and electronic equipment to Science Week
4 and will contact the Courtroom Deputy regarding the required order authorizing the parties to
5 bring this equipment into the courthouse at the appropriate time, consistent with paragraph 43 of
6 the Standing Order for Civil Trials Before Judge Chhabria. The Parties also anticipate that they
7 will utilize the courtroom's audio-visual equipment during Science Week and will contact the
8 Courtroom Deputy regarding the availability of this equipment at the appropriate time, consistent
9 with paragraphs 41 and 42 of the Standing Order for Civil Trials Before Judge Chhabria.
10

11 DATED: October 20, 2017

Respectfully submitted,

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DATED: October 20, 2017

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