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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

COORDINATION PROCEEDING SPECIAL TITLE (Rule 3.550) ROUNDUP PRODUCTS CASES THIS DOCUMENT RELATES TO: *Alva Pilliod v. Monsanto Company, et al.*, Case No. RG17862702	JCCP NO. 4953 Case No.: RG17862702 **DEFENDANTS' OPPOSITION TO MOTION FOR LEAVE TO FILE A FIRST AMENDED COMPLAINT; DECLARATION OF MARTIN CALHOUN** Judge Ioana Petrou Hearing Date: October 9, 2018 Time: 9:00 a.m. Department: 17 Reservation No. R-1993571

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INTRODUCTION

In their Motion for Leave to File a First Amended Complaint ("Amendment Motion), plaintiff Alva Pilliod and his wife Alberta Pilliod seek to expand the scope of this case dramatically by adding an entirely new personal injury claim on behalf of Mrs. Pilliod and new loss of consortium claims for both Mr. and Mrs. Pilliod. This is not a mere amendment. The operative Complaint (filed in June 2017) alleged a personal injury claim solely on behalf of Mr. Pilliod. Although Mrs. Pilliod's name was in the caption, the body of the complaint did not make ***any*** allegations on her behalf. What the Amendment Motion seeks is the addition and joinder of a new substantive plaintiff making entirely new claims based upon newly alleged facts – that Mrs. Pilliod has non-Hodgkin's lymphoma ("NHL"), purportedly caused by her own exposures to Roundup®-branded herbicides.

The Court should deny the Amendment Motion for several reasons. First, the motion is based on two important, fundamentally flawed premises. The Pilliods contend that the proposed amendments are based on newly discovered facts and that Mrs. Pilliod seeks leave to amend to "clarify" causes of action that she previously asserted as a plaintiff in the June 2017 Complaint. But it is undisputed that the Pilliods knew, in June 2017, all of the facts now alleged in the proposed First Amended Complaint ("Proposed FAC") and failed to include any claims on behalf of Mrs. Pilliod in the June 2017 Complaint. Second, the Pilliods rely on a declaration from their counsel that fails to satisfy the burden imposed by CRC 3.1324(b) because the declaration does not disclose when the facts giving rise to the amended allegations were discovered by the Pilliods and does not establish that the proposed amendments are necessary and proper. Third, the Pilliods' "amendment" is but a thinly-veiled stratagem to avoid a serious statute of limitations problem for the belatedly asserted claims at issue in the Proposed FAC through an improper invocation of the relation-back doctrine. Finally, the Court should deny the Amendment Motion because the new causes of action would prejudice defendants, particularly in the context of the Pilliods' separate Motion for Trial Preference, and because there was unwarranted delay by the Pilliods in seeking leave to amend.

BACKGROUND AND PROCEDURAL HISTORY

On June 2, 2017, Mr. Pilliod and other plaintiffs filed the Complaint that commenced this lawsuit. Mr. Pilliod alleged that his exposure to Roundup®-branded herbicides caused him to develop NHL. Complaint ¶ 14. Although Mrs. Pilliod's name was included in the caption of the Complaint, Mrs. Pilliod was not included in the section of the Complaint that specifically discussed the plaintiffs who were asserting causes of action against defendants. *See id.* ¶¶ 14-19.[1] Nor was Mrs. Pilliod discussed anywhere else in the body of the Complaint.

The Complaint did not allege that Mrs. Pilliod was exposed to Roundup®-branded herbicides or that she developed NHL (or any other kind of illness).[2] It also did not assert any claims for loss of consortium by Mrs. Pilliod. Mr. Pilliod's alleged damages included "physical, economy, and emotional injuries," Complaint ¶ 14, but the Complaint did not assert a loss of consortium claim for Mr. Pilliod, or allege any facts that would even suggest such a claim.

The Complaint contained detailed allegations about the decision in 2015 by the International Agency for Research on Cancer ("IARC") to classify glyphosate as a Group 2A probable carcinogen. *Id.* ¶¶ 52-68. The Complaint alleged that IARC announced this assessment in March 2015 and then issued its glyphosate monograph in July 2015. *Id.* ¶¶ 56-57. The Complaint was filed some 27 months after IARC announced its glyphosate classification but just within two years of IARC's publication of its glyphosate monograph.

On August 30, 2018, well over three years after IARC announced its assessment that glyphosate is probably carcinogenic to humans and well over one year after the Complaint was filed, Mr. and Mrs. Pilliod filed the Amendment Motion that seeks leave to file the Proposed FAC.[3] However, the Proposed FAC is materially different than the Complaint. The proposed pleading newly asserts that Mrs. Pilliod was exposed to Roundup®-branded herbicides and that

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[1] The Complaint included five other NHL plaintiffs who had no connection to Mr. Pilliod. *Compare* Complaint ¶ 14 *with* Complaint ¶¶ 15-19. Those other plaintiffs' claims have been severed and are no longer part of the *Pilliod* case.

[2] The Pilliods' attorneys do not claim that they intended to allege a personal injury claim by Mrs. Pilliod in the Complaint. *See generally* 8/30/18 Declaration of Curtis Hoke ("Hoke Declaration").

[3] Two versions of the Proposed FAC (one using strikethrough font and highlighting to show the proposed amendments) are attached as Exhibit 2 and Exhibit 3 to the Hoke Declaration.

those exposures caused her NHL. Proposed FAC ¶ 14. Based upon these newly pled facts, Mrs. Pilliod seeks to allege four new causes of action on her own behalf – strict liability (design defect), strict liability (failure to warn), negligence, and breach of implied warranty – as well as a punitive damages demand (pleaded as if it were a separate cause of action). Proposed FAC ¶¶ 77-162.[4] Mr. Pilliod in turn seeks to add a new cause of action based upon these same newly pled facts: a claim for loss of Mrs. Pilliod's consortium. *Id.* ¶¶ 163-66.[5]

ARGUMENT

I. The Amendment Motion Is Based On Two Fundamentally Flawed Premises – Namely, That The Proposed Amendments Are Based On Newly Discovered Facts And That Mrs. Pilliod Seeks Leave To Amend Merely To "Clarify" Causes Of Action That She Previously Asserted As A Plaintiff In The June 2017 Complaint.

The Amendment Motion is based on two important premises. The Pilliods contend that the amendments are based on newly discovered facts – *i.e.*, that Mrs. Pilliod herself was diagnosed with NHL – that only came to light recently (during the last week of July 2018). *See* Notice of Motion and Motion at 2 ("This Motion is based primarily on newly-uncovered information that Mrs. Pilliod – in addition to Mr. Pilliod – has also been diagnosed with [NHL]."); Amendment Motion Memorandum at 6 ("newly-learned information"); Hoke Decl. ¶ 2 (discussing alleged discovery by plaintiffs' counsel, on or about July 26, 2018, of Mrs. Pilliod's NHL diagnosis), ¶ 5 ("newly-discovered factual allegations"). And the Pilliods contend that Mrs. Pilliod seeks leave to amend to "clarify" causes of action that she previously asserted as a plaintiff in the Complaint. *See* Amendment Motion Memorandum at 6 (stating that Mrs. Pilliod was a "named plaintiff" in the Complaint and that "[p]laintiffs now seek to clarify Mrs. Pilliod's claims"), at 7 (stating that the Pilliods seek to "clarify" that Mrs. Pilliod was diagnosed with NHL; that she was exposed to Roundup®-branded herbicides; and that they caused her NHL). Both of these premises are false.

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[4] Mrs. Pilliod also seeks to add a new cause of action for loss of Mr. Pilliod's consortium. Proposed FAC ¶¶ 163-66.

[5] The Pilliods also seek to remove the allegations that were asserted in the June 2017 Complaint by five plaintiffs whose claims have been severed and are no longer at issue in the *Pilliod* case. *Compare* Complaint Caption & ¶¶ 14-19 *with* Proposed FAC Caption & ¶ 14. Defendants do not oppose amendments that remove allegations involving those five plaintiffs (though such amendments may be unnecessary in these circumstances).

First, the key factual allegations at issue here – that Mrs. Pilliod was diagnosed with NHL after exposure to Roundup®-branded herbicides – are ***not newly discovered***. If Mrs. Pilliod had been diagnosed with NHL sometime after the Complaint was filed in July 2017, that would present an entirely different leave-to-amend argument. *See, e.g.*, *Record v. Reason*, 73 Cal. App. 4th 472, 486-87 (1999) (distinguishing between scenario in which plaintiff had knowledge of facts at issue in proposed amended complaint when he filed initial complaint and scenario in which "the events giving rise to new causes of action transpired subsequently to the filing of the initial complaint").[6] However, that is not what happened here because Mrs. Pilliod was diagnosed with NHL in ***April 2015***, *see* Proposed FAC ¶ 14, more than two years before the Complaint was filed in June 2017. The Pilliods have been aware for years that Mrs. Pilliod was diagnosed with NHL after using Roundup®-branded herbicides. They do not state otherwise anywhere in the Amendment Motion papers. Instead, they contend that ***their attorneys*** learned those facts for the first time in July 2018. But the Pilliods do not cite any case to support the argument that amendment should be granted based upon a plaintiff's attorney's discovery of facts known to his client; defendants are not aware of any such case. What matters is not whether the key facts at issue here were "newly discovered" by the Pilliods' attorneys, but whether the facts were newly discovered by the Pilliods after the Complaint was filed. They were not.

Second, the Amendment Motion erroneously asserts that Mrs. Pilliod seeks leave to amend to "clarify" causes of action that she previously asserted as a plaintiff in the Complaint. In fact, Mrs. Pilliod did not assert ***any*** causes of action in that pleading, so she is not a proper plaintiff at this time. Plaintiffs may point to the fact that Mrs. Pilliod was named in the caption of the Complaint, but the "allegations in the body of the complaint, not the caption, constitute the cause of action against the defendant." *Davaloo v. State Farm Ins. Co.*, 135 Cal. App. 4th 409, 418 (2005); *see Falahati v. Kondo*, 127 Cal. App. 4th 823, 829 (2005) ("the caption of the complaint

[6] In affirming the trial court's denial of leave to amend, the appeals court pointed out that the plaintiff "had knowledge of the circumstances on which he based the amended complaint on the day he was injured, almost three years before he sought leave to amend." *Record*, 73 Cal. App. 4th at 486-87. The appeals court made this ruling even though plaintiff's counsel had stated, in a declaration submitted to the trial court, that the facts giving rise to the amended complaint were "'discovered through the process of discovery.'" *Id.* at 486.

constitutes no part of the statement of the cause of action" (quotation marks omitted)). "[N]o authority suggests merely identifying the names of the parties in the caption suffices as adequate information to apprise any defendant of the nature of the dispute against it." *Davaloo*, 135 Cal. App. 4th at 418-19. Thus, instead of merely clarifying previously pleaded causes of action, the Proposed FAC asserts entirely new causes of action based on entirely new factual allegations by a new substantive plaintiff.

II. The Pilliods Have Failed To Satisfy Their CRC 3.1324(b) Burden.

A motion for leave to amend a pleading must be supported by a declaration that satisfies certain requirements. *See* CRC 3.1324(b). The declaration must specify, *inter alia*, "[w]hy the amendment is necessary and proper" and "[w]hen the facts giving rise to the amended allegations were discovered." *Id.*

The Pilliods rely on the Hoke Declaration, but it fails to satisfy their CRC 3.1324(b) burden. As discussed above, the Hoke Declaration only addresses when the facts giving rise to the amended allegations – *i.e.*, that Mrs. Pilliod had been diagnosed with NHL after being exposed to Roundup®-branded herbicides – were discovered by the Pilliods' attorneys. However, that is not the correct showing. The Hoke Declaration fails to disclose when the ***Pilliods themselves*** "discovered" those facts. The reason for that omission is obvious. The Pilliods were aware of those facts well before the Complaint was filed, so there is no valid basis for them to contend now that "amendment is necessary and proper," CRC 3.1324(b).[7]

[7] In an analogous context, when a court is required to decide whether the "discovery rule" delays accrual of a personal injury claim for statute of limitations purposes, the analysis focuses on what the ***potential plaintiff*** knew (or should have known), when he had (or should have had) that knowledge, and whether he conducted a reasonable investigation into the potential causes of the injury. *See, e.g., Fox v. Ethicon Endo-Surgery, Inc.*, 35 Cal. 4th 797, 808-09 (2005) ("[I]n order to employ the discovery rule to delay accrual of a cause of action, a potential plaintiff who suspects that an injury has been wrongfully caused must conduct a reasonable investigation of all potential causes of that injury. . . . In order to adequately allege facts supporting a theory of delayed discovery, the plaintiff must plead that, despite diligent investigation of the circumstances of the injury, he or she could not have reasonably discovered facts supporting the cause of action within the applicable statute of limitations period."). Likewise, the Court's CRC 3.1324(b) inquiry in this case should focus on when the Pilliods had knowledge of the facts at issue in the Amendment Motion, not when their attorneys "discovered" those facts.

III. The Pilliods' Attempt to Amend The Complaint So As To Avoid The Statute Of Limitations Bar To The Newly Asserted Claims Is Without Merit.

Although the Pilliods rely heavily on the general rule that leave to amend should be liberally granted, there are exceptions to that rule "when there is a statute of limitations concern," *Solit v. Tokai Bank, Ltd.*, 68 Cal. App. 4th 1435, 1448 (1999), or when a plaintiff attempts "to state facts which give rise to a wholly distinct and different legal obligation against the defendant," *Herrera v. Superior Court*, 158 Cal. App. 3d 255, 259 (1984) (quotation marks omitted). Those exceptions apply here, so the Pilliods' arguments lack merit.

The Pilliods clearly are concerned about a statute of limitations problem, as shown by their argument that the causes of actions at issue in the Amendment Motion should relate back to the June 2017 filing date of the Complaint. That concern is well-founded and not surprising, given that: (a) the applicable limitations period for their claims is two years; and (b) they filed the Amendment Motion well over three years after IARC announced in 2015 that it had concluded that glyphosate is probably carcinogenic to humans.[8]

The Pilliods cannot rely on the relation-back doctrine because the new facts and new causes of action alleged in the Proposed FAC do not satisfy the requirements for relation back. The Pilliods contend that relation back applies so long as the recovery sought in the prior pleading

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[8] Under California law, personal injury causes of action (including loss of consortium claims) are governed by a two-year statute of limitations, regardless of the particular legal theory invoked. *See* CCP § 335.1; *Fox*, 35 Cal. 4th at 809 n.3; *Zamudio-Soto v. Bayer Healthcare Pharm., Inc.*, Case No. 15-CV-00209-LHK, 2017 WL 386375, at *5 (N.D. Cal. Jan. 27, 2017) (applying California law; citing cases). Although the discovery rule can delay accrual of a cause of action until a potential plaintiff has (or should have) inquiry notice of the cause of action, *Fox*, 35 Cal. 4th at 807, a plaintiff who relies on the discovery rule for delayed accrual "must specifically plead facts to show (1) the time and manner of discovery *and* (2) the inability to have made earlier discovery despite reasonable diligence," *id.* at 808 (emphasis in original; quotation marks omitted). Here, the Complaint and the Proposed FAC do not plead the discovery rule. Moreover, the Amendment Motion does not argue that the discovery rule applies, and the Hoke Declaration does not say anything about the Pilliods' state of knowledge, so that declaration also does not address the discovery rule. The statute of limitations concern exists regardless of whether one focuses on the March 2015 IARC announcement regarding glyphosate or the July 2015 release of the IARC glyphosate monograph because the Amendment Motion was not filed until August 30, 2018 – well over three years after either of those 2015 events occurred. Defendants reserve the right to argue (at a later date, in a different procedural context) that the March 2015 IARC announcement was the key triggering event for statute of limitations purposes. The Court does not need to reach that issue to rule on the Amendment Motion.

and the proposed amended pleading "is based upon the same general set of facts," Amendment Motion Memorandum at 6, but Mrs. Pilliod's claims rest on entirely new alleged facts related to her claimed exposures to Roundup®-branded herbicides and her NHL diagnosis.

Moreover, the relation-back doctrine imposes a more detailed, more demanding burden on the Pilliods. "In order for the relation-back doctrine to apply, 'the amended complaint must (1) rest on the *same general set of facts*, (2) involve the *same injury*, and (3) refer to the *same instrumentality*, as the original one.'" *Quiroz v. Seventh Ave. Ctr.*, 140 Cal. App. 4th 1256, 1278 (2006) (emphasis in original; quoting *Norgart v. Upjohn Co.*, 21 Cal. 4th 383, 408-09 (1999)).

In light of this standard, courts repeatedly have rejected relation-back arguments even – unlike here – when a complaint and a proposed amended complaint involve the same general set of facts. In *Quiroz*, for example, the court held that a survivor cause of action was untimely and did not relate back to a timely filed wrongful death cause of action – even though both causes of action arose out of the same set of facts (the death of a resident of a skilled nursing facility) – because "the survivor cause of action pleaded a ***different injury*** than the wrongful death cause of action." *Id.* at 1262 (emphasis added). As the court explained: "This survivor claim, which plaintiff pursued as the decedent's successor in interest, pleaded injury to the decedent . . . . In contrast, the earlier-filed wrongful death claim pleaded only injury to plaintiff, acting for herself as decedent's heir. As a matter of law, these distinct claims are technically asserted by different plaintiffs and they seek compensation for different injuries." *Id.* at 1278 (citing, *inter alia*, *Bartalo v. Superior Court*, 51 Cal. App. 3d 526, 533 (1975); *Shelton v. Superior Court*, 56 Cal. App. 3d 66, 69-81 (1976)).

The *Bartalo* and *Shelton* rulings cited in *Quiroz* further support the conclusion that the new causes of action at issue in the Amendment Motion do not relate back to the June 2017 filing date of the Complaint. In *Bartalo*, a woman injured in a car accident filed a lawsuit, and then her husband tried to join the lawsuit later by seeking leave to amend the complaint to add a loss of consortium claim that would relate back to the filing date of the wife's initial complaint. Although the appeals court acknowledged that the husband's loss of consortium claim was "derivative" of the wife's personal injury cause of action, the court rejected the relation-back argument based on

the court's conclusion that the husband's "claim is not for [the wife's] personal injuries but for the ***separate and independent loss he sustained.***" *Bartalo*, 51 Cal. App. 3d at 533 (emphasis added). As the court stated: "Husband's claim to a loss of consortium is a ***wholly different legal liability or obligation.*** The elements of loss of society, affection and sexual companionship are personal to him and quite apart from a similar claim of the wife." *Id.* (emphasis added). The *Shelton* court reached a similar conclusion in a case where a husband and wife who were injured together in a car accident filed a joint complaint that sought damages for each plaintiff's personal injuries – and later sought leave to amend to each add a claim for loss of the other spouse's consortium. *Shelton*, 56 Cal. App. 3d at 69-70. Although the *Shelton* court acknowledged that the same tortious act gave rise to the personal injury claim and the loss of consortium claim, the court rejected the relation-back argument because the two claims involve separate, independent rights. After holding that *Bartalo* was "correctly decided," *Shelton*, 56 Cal. App. 3d at 74, the court stated:

> [A]lthough the facts giving rise to the duty owed by the defendants to petitioners were the same under the original complaint and the proposed amendment, ***each petitioner has two separate independent rights***, one to be free of injury caused by the tortious act of another, and secondly to be free of the loss of consortium resulting from injury to a spouse caused by the tortious act of another. In this case it is purely fortuitous that as to each of petitioners both primary rights were violated by the same tortious act. Nevertheless ***they are severable and independent*** and the assertion of one within the statutory [limitations] period does not excuse the failure to assert the other.

Id. at 80 (emphasis added); *see Brumley v. FDCC California, Inc.*, 156 Cal. App. 4th 312, 325 (2007) (holding that decedent's family members' "wrongful death and loss of consortium claims do not relate back to the original claims [asserted by decedent Brumley before his death]" because "these are the claims of different plaintiffs, and they seek different damages from the original claims"; stating that "[t]he original claims sought recovery for injuries to Brumley, while the new claims seek compensation for individualized injuries to each family member, growing out of Brumley's death"); *Diliberti v. Stage Call Corp.*, 4 Cal. App. 4th 1468, 1469-72 (1992) (two sisters were in a car accident but only one was injured; complaint erroneously named uninjured sister as the plaintiff; affirming denial of injured sister's motion for leave to amend and substitute herself as the plaintiff for uninjured sister after statute of limitations had run (citing *Bartalo*)).

The *Davaloo* ruling also establishes that the Pilliods' relation-back argument lacks merit. Plaintiffs in that case timely filed complaints that were "devoid of factual allegations"; then sought leave to file amended complaints "to correct obvious deficiencies in their original complaints"; and relied on the relation-back doctrine in an attempt to avoid a statute of limitations problem. *Davaloo*, 135 Cal. App. 4th at 411. In rejecting plaintiffs' argument, the appeals court explained that the "relation-back doctrine . . . requires courts to compare the factual allegations in the original and amended complaints." *Id.* at 415. The court went on to state:

> Just as a plaintiff who changes the essential facts upon which recovery is sought is not entitled to the benefits of the relation-back doctrine, so too a plaintiff who files a complaint containing no operative facts at all cannot subsequently amend the pleading to allege facts and a theory of recovery for the first time and claim the amended complaint should be deemed filed as of the date of the original, wholly defective complaint. ***Going from nothing to something is as much at odds with the rationale for allowing an amended pleading to relate back to the filing of the original documents as changing from one set of facts to a different set.***

Id. at 416 (emphasis added). Likewise, in this case, the Pilliods should not be allowed to go from "nothing" (no operative facts, or anything else, about Mrs. Pilliod pleaded in the June 2017 Complaint) to "something" (entirely new claims in the Proposed FAC based on key allegations – that Mrs. Pilliod developed NHL and that her NHL was caused by Roundup®-branded herbicides – not pleaded in the June 2017 Complaint).[9]

IV. The New Claims Would Prejudice Defendants, And There Was Unwarranted Delay In Seeking Leave To Amend.

The general rule in favor of granting leave to amend pleadings has additional exceptions, including when the amendment would cause prejudice to the party opposing amendment, *see, e.g.*, *Solit*, 68 Cal. App. 4th at 1448, or when there was "unwarranted delay" in presenting the amendment, which "may – of itself – be a valid reason for den[ying]" leave to amend, "even if a good amendment is proposed in proper form," *Record*, 73 Cal. App. 4th at 486 (quotation marks

[9] If the Pilliods contend that including Mrs. Pilliod's name in the caption was sufficient, that argument would miss the mark. *See Davaloo*, 135 Cal. App. 4th at 418 ("[T]he allegations in the body of the complaint, not the caption, constitute the cause of action against the defendant."); *Falahati*, 127 Cal. App. 4th at 829 ("the caption of the complaint constitutes no part of the statement of the cause of action" (quotation marks omitted)).

omitted); *see Huff v. Wilkins*, 138 Cal. App. 4th 732, 746 (2006) (quoting *Record*, 73 Cal. App. 4th at 486). Both of those exceptions apply here and further support the conclusion that the Amendment Motion lacks merit.

The Amendment Motion is part of a two-step process by which the Pilliods, through their separately pending Motion for Trial Preference, seek to displace the informed and equitable selection of bellwether trials in the JCCP and impose upon defendants the burdensome task of preparing for a highly non-representative joint trial involving two separate sets of NHL personal injury claims within a compressed time frame. The Pilliods' combined requests would significantly prejudice defendants in their defense of the JCCP and their ability to defend against the individual claims of Mr. and Mrs. Pilliod (which involve different sub-types of NHL and different medical and exposure histories, prognoses, and alternative causes), Declaration of Martin Calhoun ¶ 4 ("Calhoun Declaration") (attached hereto) – and would undoubtedly cause defendants to incur "added costs of preparation" in defending against the claims alleged in the Proposed FAC, *Solit*, 68 Cal. App. 4th at 1448 (noting prejudice caused by such added costs).[10]

The proposed addition of personal injury claims by Mrs. Pilliod (and the addition as well of each spouse's claim for loss of the other spouse's consortium) will essentially double the costs of defendants' plaintiff-specific defense. Calhoun Decl. ¶ 5.[11] Defendants will need to obtain and analyze medical records from two sets of health care providers; depose two separate sets of diagnosing and treating physicians (and possibly other fact witnesses); prepare two sets of defense experts to address plaintiff-specific oncology, exposure, and damages issues; depose two sets of plaintiff-specific oncology, exposure, and damages experts; prepare and argue two separate plaintiff-specific *Sargon* and other dispositive motions; and potentially defend against these two separate sets of claims at trial. *See* Calhoun Decl. ¶ 5.

In light of the substantial added costs of preparation discussed above, the Pilliods' cursory

[10] Defendants do not concede that the claims of Mr. and Mrs. Pilliod should be tried together and reserve the right to sever the two sets of claims if the Amendment Motion is granted.

[11] Defendants' separate costs of defending against claims regarding general causation or alleged corporate misconduct will be incurred in connection with the JCCP as a whole and cannot be attributed to any individual plaintiff.

argument regarding preparation costs, *see* Amendment Motion Memorandum at 8, lacks merit. Defendants' added preparation costs would not be "obviat[ed]," *id.*, by deeming the Proposed FAC filed if the Court grants the Amendment Motion. That argument misses the point. Adding claims by a second person alleging NHL would set off the cascade of extensive work summarized above – work that will be more time-consuming and therefore more costly than if this lawsuit remains limited to the claims of one NHL plaintiff. Calhoun Decl. ¶ 6.

Finally, regardless of whether the proposed amendments would prejudice defendants, the Court should deny leave to amend due to the Pilliods' unwarranted delay in filing the Amendment Motion. Unwarranted delay can be, by itself, a valid reason for denying leave to amend. *See supra* pages 9-10 (citing cases). As discussed above, the keys facts at issue in the Amendment Motion and the Proposed FAC clearly were known to the Pilliods before the Complaint was filed on June 2, 2017. Those events did not occur after the Complaint was filed, so there is no valid basis to use those events to expand the scope of this lawsuit dramatically more than 14 months after the Complaint was filed. This is a perfect example of lengthy, unwarranted delay. The efforts of the Pilliods' attorneys to explain away this lengthy delay by asserting that the facts giving rise to the Proposed FAC were newly discovered lack merit because the Pilliods themselves were fully aware of those facts before the Complaint was filed in June 2017.

CONCLUSION

For the reasons set forth above, the Court should deny the Amendment Motion.

Dated: September 25, 2018

Respectfully submitted,

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DECLARATION

DECLARATION OF MARTIN CALHOUN

Martin Calhoun hereby declares as follows:

1. I am of the attorneys representing the defendants in *Pilliod v. Monsanto Company, et al.* and have represented defendants in other Roundup® lawsuits pending in Judicial Council Coordinated Proceeding ("JCCP") No. 4953 and in other jurisdictions. I submit this declaration in the *Pilliod* case in support of Defendants' Opposition to Motion for Leave to File a First Amended Complaint.

2. I am over the age of 18. I make the statements set forth herein based on my personal knowledge and my review of Mr. and Mrs. Pilliod's medical records. If I were called to testify, I could and would competently testify to the statements in this declaration.

3. I am a partner in the law firm Hollingsworth LLP. I have been a practicing defense attorney since 1991 and have extensive experience conducting discovery in complex products liability cases and preparing to defend such lawsuits before and at trial.

4. Preparing for a single-plaintiff Roundup® trial is a massive undertaking. Trial preparation becomes even more complicated and time-consuming if the trial involves two plaintiffs with different medical histories who each allege different non-Hodgkin's lymphoma ("NHL") sub-types caused by different individual exposures to Roundup®-branded herbicides. The Pilliods' combined requests (for leave to add new claims by filing an amended complaint and for a preferential trial setting in December 2018) would significantly prejudice defendants in their defense of the JCCP and their ability to defend against the individual claims of Mr. and Mrs. Pilliod (which involve different sub-types of NHL and different medical and exposure histories, prognoses, and alternative causes).

5. The proposed addition of personal injury claims by Mrs. Pilliod (and the addition as well of each spouse's claim for loss of the other spouse's consortium) will cause defendants to incur added costs of preparation by essentially doubling the costs of defendants' plaintiff-specific defense. For example, if the Pilliods' Motion for Leave to File a First Amended Complaint is granted, defendants will incur added costs of preparation in many ways, including:

(a) obtaining and analyzing medical records from two sets of health care providers (instead of only from Mr. Pilliod's health care providers);

(b) preparing for and taking depositions of two sets of diagnosing and treating physicians (and possibly other fact witnesses with knowledge specific to each plaintiff);

(c) having defendants' oncology, exposure, and damages experts analyze two exposure histories, two sets of medical records, and/or two sets of other discovery materials specific to each plaintiff – and then preparing for their depositions;

(d) preparing for and taking depositions of two sets of plaintiff-specific experts regarding oncology, exposure, and damages;

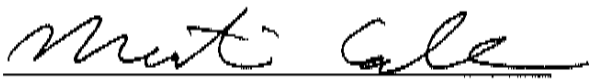
(e) preparing and arguing two separate plaintiff-specific *Sargon* motions and other dispositive motions; and

(f) potentially defending against two separate sets of claims at trial.

6. Adding claims by a second person alleging NHL would set off the cascade of extensive work summarized above – work that will be more time-consuming and therefore more costly than if this lawsuit remains limited to the claims of one NHL plaintiff.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct.

Executed this 25th day of September, 2018 in Washington, D.C.



Martin Calhoun

PROOF OF SERVICE

Coordination Proceeding Special Title (Rule 3.550)
Roundup Products Cases
Alameda County Superior Court
Case No. JCCP 4953

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 555 South Flower Street, 30th Floor, Los Angeles, California 90071.

On September 25, 2018, I served a true and correct copy of the document described as **DEFENDANTS' OPPOSITION TO MOTION FOR LEAVE TO FILE A FIRST AMENDED COMPLAINT; DECLARATION OF MARTIN CALHOUN** on the interested parties by electronic transfer to Case Anywhere via the Internet, pursuant to the Court's Case Management Order No. 2 Authorizing Electronic Service dated March 23, 2018.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this Proof of Service was executed on September 25, 2018 at Los Angeles, California.

Marianne Hendrix