

**FILED**  
SUPERIOR COURT  
COUNTY OF LAKE

JUN 17 2019

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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
14 **FOR THE COUNTY OF LAKEPORT**

15 Bellah, *et al.*

16 Plaintiffs

17 v.

18 Monsanto Company, *et al.*,

19 Defendants

Case No. CV-419766

Hon. Michael Lunas

**PLAINTIFF'S NOTICE OF MOTION AND  
MOTION FOR TRIAL PREFERENCE**

[Filed concurrently with the Declaration of  
Pedram Esfandiary; Exhibits; and Proposed  
Order]

Hearing Date: July 15, 2019

Time: 9:00 a.m.

Department: 2

20 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

21 **PLEASE TAKE NOTICE** that on July 15, 2019 at 9:00 a.m., or soon thereafter as the matter  
22 can be heard in Department 2 of this Court, The Honorable Michael Lunas presiding, located at 255  
23 N. Forbes Street, 4<sup>th</sup> Floor, Lakeport, CA 95453, Plaintiff will move and hereby does respectfully  
24 move this Court for an Order granting a trial preference pursuant to Cal. Code. Civ. Proc. § 36(b) and  
25 Cal. R. Ct. 3.1335

26 Plaintiff's Motion for Trial Preference is based on Cal. Code. Civ. Proc. § 36(b) and Cal. R.  
27 Ct. 3.1335 and Plaintiff respectfully requests that this Honorable Court grant Plaintiff J.B. a  
28 preference trial because 1) Plaintiff was diagnosed with the blood cancer Non-Hodgkin's Lymphoma  
as a direct result of exposure to Monsanto's Roundup herbicide; 2) Plaintiff is below the age of 14;

1 and 3) Plaintiff has a substantial interest in the case as a whole.

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Respectfully submitted,

Dated: June 17, 2019

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1 **INTRODUCTION**

2 J.B. (“Plaintiff”), a minor who is represented by his mother and guardian *ad litem*, Traci G.  
3 Bellah, commenced this action on June 5, 2019.<sup>1</sup> Plaintiff was diagnosed with Non-Hodgkin’s  
4 Lymphoma (“NHL”) following exposure to Monsanto’s Roundup herbicide and is a minor below the  
5 age of 14. Therefore, Plaintiff respectfully requests a preferential trial setting pursuant to Cal. Code  
6 Civ. Proc. § 36(b) and Cal. R. Ct. 3.1335 to occur in the venue alleged in the Complaint, namely  
7 where Plaintiff’s injury arose. *See* Code Civ. Proc. § 395(a) (“If the action is for injury to  
8 person...the superior court...where the injury occurs...is a proper court for the trial of the action.”).  
9 As explained in more detail below, Cal. Code Civ. Proc. § 36(b) compels a preferential trial setting in  
10 Plaintiff’s case because Plaintiff is under the age of 14 and has a substantial interest in the case,  
11 having developed cancer as a result of exposure to Monsanto’s carcinogenic herbicide, Roundup.

12 **BACKGROUND**

13 Plaintiff is not the first individual alleging that exposure to Monsanto’s Roundup herbicide  
14 caused him to develop the rare blood cancer NHL. Thousands of individuals across the U.S. have  
15 suits pending against Monsanto for similar harm caused to them and their families. Over 500 of such  
16 Roundup cases are currently subject to a Rule 3.550 proceeding in Alameda County Superior Court  
17 before the Honorable Winifred Smith. *See Roundup Products Cases*, JCCP No. 4953 (Super. Ct.  
18 County of Alameda).<sup>2</sup> And, on May 13, 2019, the first trial in the JCCP—itself a preference trial—  
19 resulted in a \$2.5 billion jury verdict in favor of two plaintiffs alleging that exposure to Roundup  
20 caused their respective NHLs. *See Pilliod, et al. v. Monsanto Company* (Super. Ct. County of  
21 Alameda, No. RG17862702). Less than a year earlier, during the infancy of the JCCP, a  
22 groundskeeper at a Bay Area high school, Dewayne Lee Johnson, obtained a \$289 million unanimous  
23 jury verdict against Monsanto for his cancer injuries following exposure to Roundup. *See Johnson v.*  
24 *Monsanto Company* (Super. Ct. County of San Francisco, No. CGC-16-550128).<sup>3</sup> And, just on the  
25 eve of the *Pilliod* JCCP trial, yet another unanimous jury awarded plaintiff Edwin Hardeman \$80

26 \_\_\_\_\_  
27 <sup>1</sup> Plaintiff Bellah’s parents—Traci and Troy Bellah—are also named Plaintiffs in the Complaint.

28 <sup>2</sup> The instant action is not part of the consolidated proceedings.

<sup>3</sup> *Johnson* was also not part of the JCCP proceedings due to Mr. Johnson’s terminal health and need for an expedited trial.

1 million in San Francisco federal court for Mr. Hardeman’s NHL following exposure to Roundup. *See*  
2 *Hardeman v. Monsanto* (N.D. Cal., 16-cv-00525-VC).<sup>4</sup> In all three trials, juries have not only  
3 unanimously concluded that Roundup causes NHL, but held Monsanto liable for punitive damages in  
4 finding that the company acted with malice and reckless disregard for human life.

5 **ARGUMENT**

6 **I. Applicable Law, Interpretation, and Purpose of Section 36(b)**

7 California Code of Civil Procedure Section 36 states in pertinent part:

8 (b) A civil action to recover damages for wrongful death or personal injury *shall* be  
9 entitled to preference upon the motion of any party to the action who is under 14  
10 years of age unless the court finds that the party does not have a substantial interest in  
the case as a whole. A civil action subject to subdivision (a) shall be given preference  
over a case subject to this subdivision.

11 [...]

12 (c) Unless the court otherwise orders:

13 A party may file and serve a motion for preference supported by a declaration of the  
14 moving party that all essential parties have been served with process or have appeared.

15 [...]

16 (e) Notwithstanding any other provision of law, the court may in its discretion grant a  
17 motion for preference that is supported by a showing that satisfies the court that the  
18 interests of justice will be served by granting this preference.

19 (f) Upon the granting of such a motion for preference, the court shall set the matter for  
20 trial not more than 120 days from that date and there shall be no continuance beyond  
120 days from the granting of the motion for preference except for physical disability of  
21 a party or a party’s attorney, or upon a showing of good cause stated in the  
record. Any continuance shall be for no more than 15 days and no more than one  
continuance for physical disability may be granted to any party.

22 Cal. Civ. Proc. Code § 36(b), (c), (e), and (f) (emphasis added).

23 California courts are in broad agreement that the language of § 36(b) “compels the conclusion  
24 that the Legislature intended it to be mandatory.” *Rice v. Superior Court* (1982) 136 Cal.App.3d 81,  
25 86–87. Indeed, subsection (a)—“structurally identical” to subsection (b)—had long been construed as  
26 mandatory prior to the addition of subsection (b) to § 36 in 1988, and “[i]t is a well-established  
27

28 <sup>4</sup> The *Hardeman* trial was held in the pending federal Roundup multi-district litigation before the  
Honorable Vince Chhabria. *See In Re Roundup Products Liability Litigation*, MDL-2741 (N.D. Cal,  
San Francisco Division).

1 principle of statutory construction that when the Legislature amends a statute without altering portions  
2 of the provision that have previously been judicially construed, the Legislature is presumed to have  
3 been aware of and to have acquiesced in the previous judicial construction.” *Peters v. Superior*  
4 *Court* (1989) 212 Cal.App.3d 218, 224. Importantly, “to construe subdivision (b) as directory or  
5 discretionary would, in light of the all-encompassing discretion conferred by subdivision (e)...deprive  
6 it of meaning and function.” *Id*; *Landry v. Berryessa Union School Dist.* (1995) 39 Cal.App.4th 691,  
7 696 (“the trial court does not have discretion to deny trial preference to a party under 14 who has a  
8 substantial interest in the litigation.”); *Koch-Ash v. Superior Court* (1986) 180 Cal.App.3d 689, 694  
9 (“[A]s to section 36 matters, no discretion is left to trial courts.”).

10 Moreover, the First and Second Districts have emphasized that the substantive rights of those  
11 qualifying for trial preference pursuant to § 36 “should not be frustrated or rendered meaningless by the  
12 general interest of the trial court in administering its trial calendar.” *Rice*, 136 Cal.App.3d at 91; *Miller*  
13 *v. Superior Court* (1990) 221 Cal.App.3d 1200, 1204 (although discussing subsection (a), the First  
14 District’s reasoning is equally applicable to subsection (b) due to the command “shall” used in both  
15 subsections, accordingly holding that the trial court “has no discretion to avoid the command...in the  
16 interest of efficient management of the court’s docket as a whole.”).<sup>5</sup>

17 **II. Plaintiff Satisfies the Requirements of Section 36(b) Because Plaintiff is Under the Age of**  
18 **14 and Has a Substantial Interest in the Litigation as a Whole**

19 As of the date of the filing of the Complaint, and the instant Motion, Plaintiff is 12 years old,  
20 which satisfies the requirement of § 36(b) that an individual under the age of 14 shall be entitled to a  
21 preferential trial setting. *See* Exh. 1 to Decl., Birth Certificate. And, there is no dispute that Plaintiff  
22 has a substantial interest in the case as a whole given that Plaintiff was diagnosed with NHL as a direct  
23 result of exposure to Monsanto’s Roundup herbicide, and any verdict would affect Plaintiff’s interest.  
24 *See Peters*, 212 Cal.App.3d at 223, 222, fn. 2 (holding that a minor, who was a plaintiff in a personal  
25 injury case wherein his parents were also named plaintiffs, had a “substantial interest in the case a

26 \_\_\_\_\_  
27 <sup>5</sup> Here, there is no concern that this case can be ready for trial within 120 days. Counsel for both  
28 parties have previously brought two Roundup NHL cases to trial in an expedited manner. *See*  
*Johnson*, Super. Ct. County of San Francisco (CGC-16-550128); *Pilliod*, Super. Ct. County of  
Alameda (RG17862702).

1 whole” for purposes of § 36(b)); Exh. 2, 05/2/17 Pathology Rept at 1. (demonstrating Plaintiff’s NHL  
2 diagnosis). Accordingly, Plaintiff satisfies both prongs of § 36(b) and is entitled to a preferential trial  
3 setting. And, as discussed above, this preference setting is not discretionary—it must be given.

4 **III. Proposed Preferential Trial Timeline**

5 To assist the Court with expediting this case to trial, Plaintiff proposes the below timeline for  
6 pretrial discovery and case work-up. This proposed schedule is similar to what the JCCP court  
7 previously implemented leading up to the preference trial in the *Pilliod* matter. Additionally, the  
8 Court has the benefit of two prior California courts’ rulings on the admission of general causation  
9 expert testimony, one of which was issued by the JCCP Court, thereby obviating the need for the  
10 Court to re-litigate motions that Monsanto has repeatedly lost. In *Johnson*, the first Roundup NHL  
11 case to proceed to trial, the Honorable Curtis E. Karnow denied Monsanto’s omnibus  
12 *Sargon*/summary adjudication motion and admitted the opinions of Johnson’s general causation  
13 experts. See Exh. 3, *Johnson Sargon* Order. And, just recently, the JCCP Court, the Honorable  
14 Winifred Smith, denied Monsanto’s *Sargon*/summary adjudication motion in the *Pilliod* matter—  
15 itself a preference trial involving two plaintiffs—and admitted the testimony of the Pilliods’ experts,  
16 the same general causation experts that survived muster in *Johnson* and which Plaintiff will proffer in  
17 the matter at bar. See Exh. 4, *Pilliod Sargon* Order at 20 (“The court finds that the admissible  
18 evidence creates a triable issue of fact both on general causation and on whether any given plaintiff  
19 might be able to prove specific causation.”).<sup>6</sup> Indeed, one of the primary purposes of a JCCP is to  
20 resolve common issues of law that apply to a large number of similarly-situated cases. As such, the  
21 below timeline includes a briefing schedule for case-specific *Sargon*/summary adjudication motions  
22 only.

Time	Event
90 days from trial date	Close of fact discovery
90 days from trial date	Case-specific expert disclosures (no reports) and start of expert discovery

27 <sup>6</sup> The MDL court likewise denied Monsanto’s summary judgment motion and admitted the majority of  
28 the general causation opinions of the MDL plaintiffs’ experts in the *Daubert* context. See *In re Roundup Products Liability Litigation* (N.D. Cal., July 10, 2018, No. 16-MD-02741-VC) 2018 WL 3368534.

1	59 days from trial date	Close of case-specific expert discovery <sup>7</sup>
2		
3	59 days from trial date	Last day for hearings on fact discovery motions
4		
5	58 days from trial date	Case-specific <i>Sargon</i> /summary adjudication motion(s)
6		
7		
8	55 days from trial date	Exchange of affirmative deposition designations <sup>8</sup>
9		
10	48 days from trial date	Case-specific <i>Sargon</i> /summary adjudication opposition(s)
11		
12	43 days from trial date	Case-specific <i>Sargon</i> /summary adjudication replies
13		
14	43 days from trial date	Deadline to file motions <i>in limine</i>
15		
16	36 days from trial date	Exchange of witness and exhibit lists
17		
18	36 days from trial date	Responsive deposition designations & objections
19		
20	33 days from trial date	Proposed jury selection questionnaires
21		
22	29 days from trial date	Rebuttal designations & objections
23		
24	29 days from trial date	Oppositions to motions <i>in limine</i>
25		

<sup>7</sup> This does not preclude either party from attempting to use discovery, i.e. deposition testimony, completed after this date in related Roundup litigation, subject to its admissibility. The Parties agree, to the extent practicable and subject to expert schedules, to have Plaintiffs' experts deposed prior to Monsanto's experts.

<sup>8</sup> The Parties reserve the right to designate additional deposition testimony in the event any anticipated trial witnesses, i.e. treating physicians, subsequently become unavailable to testify at trial.

26 days from trial date	Submit deposition designations to Court
26 days from trial date	Rebuttal designation objections
23 days from trial date	Trial briefs
24 days from trial date	File exhibit lists, witness lists, proposed jury instructions, proposed verdict forms
20 days from trial date	Replies in support of motions <i>in limine</i>
120 days from order granting preference motion	Jury selection

**CONCLUSION**

For the foregoing reasons, Plaintiff respectfully requests that the Court grant Plaintiff’s Motion for preferential trial date and enter a pre-trial schedule similar to Plaintiff’s above proposal.

Respectfully submitted,

Dated: June 17, 2019

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