

NAPOLI SHKOLNIK, PLLC

Christopher L. Schnieders, MO # 57725
6731 W. 121st Street, Suite 201
Overland Park, KS 66209
Telephone: 913-246-3860
Fax: 913-312-5841
cschnieders@napolilaw.com

BEN CRUMP LAW

Benjamin L. Crump
FL Bar #72583
TN Bar #038054
Washington D.C. Bar #1552623
122 S. Calhoun St.
Tallahassee, FL 32301
Telephone: 850-888-4140
Court@bencrump.com

GOLDSTEIN & RUSSELL, P.C.

Thomas C. Goldstein, 458365(DC)
Eric F. Citron, 1001069(DC)
7475 Wisconsin Avenue, Suite 850
Bethesda, MD 20814
Telephone: 202-362-0636
Fax: 866-574-2033
tgoldstein@goldsteinrussell.com
ecitron@goldsteinrussell.com

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NATIONAL BLACK FARMERS ASSOCIATION,)	MDL No. 2741
)	
Plaintiffs,)	Case No.: 3:21-cv-00966-VC
)	
vs.)	PLAINTIFFS MOTION TO ENTER
)	SCHEDULING ORDER
MONSANTO COMPANY)	
)	
Defendant.)	
)	

INTRODUCTION

1
2 Plaintiff National Black Farmers Association (“NBFA”) is a nationwide, non-profit
3 organization that supports the interests of Black and minority farmers. NBFA does so by bringing
4 litigation against the government and private entities to combat discriminatory practices against
5 minority farmers, and by lobbying Congress to protect Black farmers from the effects of decades
6 of systemic racism in farming. NBFA now has over 100,000 members, including full-time and
7 part-time farmers, landowners, timber owners, and concerned citizens in forty-two states.
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9 A substantial proportion of NBFA’s members have been exposed to and potentially injured
10 by Roundup®, and its active ingredient, glyphosate. Indeed, many have already developed non-
11 Hodgkin’s lymphoma from their Roundup® use, and an even larger proportion fear that they will
12 soon develop symptoms. The exposure is ongoing and will therefore get worse both for members
13 who have already been exposed and for those likely to be exposed in the future. Accordingly, if
14 Defendant Monsanto (“Monsanto”) continues to market its product in its current form—particular
15 in the absence of any warning about its dangers or changes designed to minimize risks and
16 exposure—NBFA’s members who have not yet become sick or have not yet been exposed will be
17 more likely to develop haematopoietic cancers in the future.
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20 NBFA’s action is based upon its standing as an ideal associational representative for its
21 members for the purposes of prosecuting a suit that seeks only prospective, injunctive relief. And
22 indeed, while Defendant Monsanto’s liability related to haematopoietic cancers in this action is
23 being asserted on the same theory as the personal injury claims in the MDL, the relief requested by
24 NBFA is exclusively injunctive in nature and includes a request to bar Monsanto from its current
25 approach to marketing its glyphosate-containing products in a manner that unreasonably endangers
26 NBFA’s members, or to ensure in the alternative that those products are accompanied by adequate
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1 warnings. Because the relief requested is only equitable, this would be a case tried to the bench.
2 The case was transferred into this MDL by Order of the JPML on February 4, 2021.

3 Monsanto fought hard to prevent the inclusion of this action in the MDL, but the JPML
4 rejected its arguments. As the Panel stated,

5 At its core, ... *NBFA* involves the same allegations that exposure to Roundup causes
6 non-Hodgkin's lymphoma. *NBFA* merely seeks different relief. This is not a significant
7 obstacle to centralization where the action otherwise shares a common factual core
8 with the actions in the MDL. We are persuaded that inclusion of *NBFA* in MDL No.
9 2741 is appropriate and will not undermine the efficiencies of the MDL. The transferee
judge has the discretion to employ separate tracks or other appropriate pretrial
management techniques to address the unique issues presented by *NBFA*.

10 See Transfer Order, *In Re: Roundup Prods. Liab. Litig.*, MDL No. 2741, at 2 (J.P.M.L.
11 February 4, 2021), ECF No. 2189.

12 Taking the Panel's suggestion to heart, counsel for NBFA has approached counsel for
13 Monsanto seeking to negotiate a joint proposal for this motion and the accompanying proposed
14 schedule, so that this case can proceed forward in discovery on its own track to the extent this
15 Court concludes that such dual-tracking is appropriate. Monsanto has declined that offer and has
16 instead taken the highly unusual step of asking the JPML to reconsider its Order transferring this
17 matter to this Court. There are pending motions for this Court's consideration, however, and there
18 is progress ready to be made in this matter. Accordingly, this Court should enter the scheduling
19 order plaintiff NBFA requests, consistent with the arguments below.
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22 ARGUMENT

23 The NBFA believes that a dual discovery track for this action is warranted due to the
24 specific nature of the relief requested. In particular, NBFA is the only plaintiff whose case is
25 limited to prospective, non-damages relief that seeks to fundamentally change Monsanto's
26 business practices and that would be tried directly to the bench rather than to a jury. Right now,
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1 Monsanto is attempting to settle a class action with a set of attorneys who purport to be
2 representing the future interests of all the farmers who have been exposed to Roundup but are yet
3 to develop the cancers it causes. And whether that deal is any good will be substantially informed
4 by the strength of NBFA's case for future-looking, injunctive relief. The public and future interests
5 this case will represent—and its importance vis-à-vis Monsanto's ongoing efforts to resolve its
6 future liabilities through the class-action mechanism—thus present a strong case for placing this
7 case on a discovery track that will move efficiently towards a potential resolution.
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9 NBFA is uniquely situated to fulfill this role. As explained below, Black and minority
10 farmers have faced long-documented systemic racism and discrimination in farming. That
11 discrimination has resulted in the devastation of the Black farming community and enormously
12 disparate income for those Black farmers still left. NBFA was founded to fight against those
13 effects, and the organization continues that important work today. Largely due to stubborn
14 systemic inequalities, poor, rural, and minority farmers are going to be particularly dependent on
15 real changes being made to Monsanto's business practices: If Roundup stays on shelves in its
16 cancer-causing form—and even more so if that unchanged product does not have point-of-sale
17 labelling or other communications designed to succinctly communicate the cancer risk—then
18 underequipped poor and minority farmers will be either left in the dark or forced to evaluate the
19 meaning of scientific studies on glyphosate and then take the steps necessary to protect themselves
20 (somehow) on their own. And they will have to find the information they need and come to the
21 right conclusions in the face of the much-better-funded efforts of companies like Monsanto to push
22 out a contrary narrative. That is why NBFA believes that it is absolutely essential that injunctive
23 relief make real changes in Monsanto's going-forward business—up to and including the removal
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1 of Roundup from the stream of commerce if it cannot be produced or sold in a way that renders it
2 safe for NBFA's members.

3 1. *Background on NBFA.* NBFA was founded in 1995 by John W. Boyd, Jr., a fourth-
4 generation Black farmer from Baskerville, Virginia, in the wake of repeated instances of
5 discrimination. *About Us*, Nat'l Black Farmers Assoc., <https://bit.ly/3d33VZY> (last visited Feb.
6 11, 2021). Ever since, NBFA has been at the forefront of challenging discriminatory conduct by
7 the U.S. Department of Agriculture and pursuing legislation for its members. For example, the
8 organization's claims of discriminatory loan and subsidy distribution have since been
9 acknowledged by the USDA. *Id.* Black farmers were routinely denied government assistance at
10 the same level as white farmers, leading to bankruptcies and foreclosures. *See* Congressional
11 testimony of John W. Boyd, Jr., Founder and President, NBFA, *available at*
12 <https://bit.ly/2ZawuwG>.

15 In the 1990s, NBFA pursued a class action civil rights strategy in the courts, resulting in
16 the "largest-ever civil rights class action settlement in American history." *About Us*, Nat'l Black
17 Farmers Assoc., <https://bit.ly/3d33VZY> (last visited Feb. 11, 2021). In *Pigford v. Glickman*, a
18 U.S. District Court recognized that "[f]or decades . . . the Department of Agriculture and the
19 county commissioners discriminated against African American farmers when they denied, delayed
20 or otherwise frustrated the application of those farmers for farm loans and other credit and benefit
21 programs." 185 F.R.D. 82, 85 (D.D.C. 1999), *aff'd*, 206 F.3d 1212 (D.C. Cir. 2000), *and*
22 *enforcement denied sub nom. Pigford v. Schafer*, 536 F. Supp. 2d 1 (D.D.C. 2008). The court
23 continued: "These events were the culmination of a string of broken promises that had been made
24 to African American farmers for well over a century." *Id.* To get a sense of the "devastating
25 impact on African American farmers According to the Census of Agriculture, the number of
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1 African American farmers ha[d] declined from 925,000 in 1920 to approximately 18,000 in 1992.”
2 *Id.* at 87.

3 It is hardly surprising, then, that the structural consequences of this targeted racial
4 discrimination continue today. For example, “of the country’s 3.4 million total farmers, only
5 1.3%,” are Black, and Black farmers “own a mere 0.52% of America’s farmland. By comparison,
6 95% of US farmers are white.” Summer Sewell, *There were nearly a million black farmers in*
7 *1920. Why have they disappeared?*, *The Guardian* (Apr. 29, 2019), <https://bit.ly/3rKAIHv>.
8 Further, Black farmers on average “make less than \$40,000 annually, compared with over
9 \$190,000 by white farmers.” *Id.* And “Black farmers obtained only about \$11 million in
10 microloans designed for small farmers in 2015, or less than 0.2 percent of the roughly \$5.7 billion
11 in loans administered or guaranteed by the Agriculture Department that year.” Hiroko Tabuchi &
12 Nadja Popovich, *Two Biden Priorities, Climate and Inequality, Meet on Black-Owned Farms*,
13 *N.Y. Times* (Jan. 31, 2021), <https://nyti.ms/377GE5r>.

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16 2. *NBFA’s position.* NBFA’s members acutely feel the harms caused by Roundup and
17 Monsanto, including the lack of appropriate warnings in the marketing of its product. Many of
18 NBFA’s members are rural Black farmers. Due to long-documented disparities in literacy and
19 education rates, rural Black farmers have been and continuously are harmed by Monsanto’s
20 Roundup products. Moreover, many NBFA members have no reliable connection to the Internet
21 or ready sources for the complex yet critical information farmers need to protect themselves.
22 Monsanto is clearly uninterested in dealing with the concerns of communities like those
23 represented by NBFA. But such situations are *precisely* why it is important that the NBFA be
24 allowed to proceed on a dual discovery track.
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1 NBFA is seeking injunctive relief—up to and including an injunction that will require
2 removing Roundup in its current formulation from shelves—because it firmly believes that unless
3 and until Monsanto has a legally backstopped incentive to make its product safe for those who buy
4 and use it, rural Black and minority farmers will be the frontline casualties of its unsafe practices.
5 Better-informed constituencies with better access to information and high-end safety gear are far
6 more likely to know about the steps necessary to use Roundup safely (if it can be safely used at
7 all), and far more likely to avoid using Roundup if it cannot be safely used. Each day, however,
8 more and more Roundup is being applied and more and more Black farmers are risking their long-
9 term health without even knowing the risks that they are running. That alone provides a strong
10 reason to place this unique effort to secure injunctive relief on its own discovery track.
11

12 So too, however, does Monsanto’s ongoing efforts to settle away its future liability with
13 nothing more than cosmetic changes to its business. NBFA firmly believes that there is no basis
14 on which those who will develop injuries in the future can intelligently compromise with Monsanto
15 without insisting that Monsanto clean up its act—either in terms of the safety of its products, or in
16 the information it supplies to *all* users of its products (or, ideally, both). And yet, right now,
17 Monsanto is proposing just such a compromise. The evidence likely to be discovered in this matter
18 could well bear upon both the quality of the bargain being negotiated and the propriety of a non-
19 litigation class compromising these future claims at all. And this too suggests that this case should
20 be placed on a speedy and efficient path towards resolution.
21

22 Accordingly, plaintiff respectfully requests that the Court enter the Proposed Scheduling
23 Order attached as Exhibit A, in accordance with Rule 26(f) of the Federal Rules of Civil
24 Procedure, Rule 16 of the Local Civil Rules and Standing Rule 14 of Judge Chhabria’s
25 Chambers.
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CONCLUSION

The Plaintiffs respectfully request that the Court enter the attached Proposed Scheduling Order.

Dated: February 24, 2021

Respectfully submitted,

NAPOLI SHKOLNIK, PLLC

/s/ Christopher L. Schnieders
Christopher L. Schnieders, MO # 57725
6731 W. 121st Street, Suite 201
Overland Park, KS 66209
Telephone: 913-246-3860
Fax: 913-312-5841
cschnieders@napolilaw.com

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Benjamin L. Crump
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Washington D.C. Bar #1552623
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Tallahassee, FL 32301
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Court@bencrump.com

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Eric F. Citron, 1001069(DC)
7475 Wisconsin Avenue, Suite 850
Bethesda, MD 20814
Telephone: 202-362-0636
Fax: 866-574-2033
tgoldstein@goldsteinrussell.com
ecitron@goldsteinrussell.com

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of February 2021, a copy of the forgoing was filed with the Clerk of the Court through the CM/ECF system which sent notice of the filing to all appearing parties of record.

/s/ Christopher L. Schnieders

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NATIONAL BLACK FARMERS ASSOCIATION,)	MDL No. 2741
)	
Plaintiffs,)	Case No.: 3:21-cv-00966-VC
)	
vs.)	[PROPOSED] ORDER GRANTING
)	SCHEDULE OF ACTIONS
MONSANTO COMPANY)	
)	
Defendant.)	
)	

THIS MATTER came before the Court based on Plaintiff National Black Farmers Association’s Motion for Entry of Scheduling Order. Having reviewed the proposed schedule and finding good cause shown, the Court GRANTS the schedule as detailed below.

Schedule:

Event	Date
Close of fact discovery.	<u>June 15, 2021</u>
Plaintiff’s expert reports due.	<u>June 29, 2021</u>
Monsanto’s expert reports due.	<u>July 6, 2021</u>
Close of expert discovery.	<u>September 8, 2021</u>
Monsanto’s <i>Daubert</i> and summary judgment briefs due	<u>September 22, 2021</u>
Plaintiff’s opposition and cross-motions re: <i>Daubert</i> and summary judgment due	<u>October 6, 2021</u>
Monsanto’s oppositions and replies re: <i>Daubert</i> and summary judgment due	<u>October 20, 2021</u>
Plaintiff’s replies re: <i>Daubert</i> and summary judgment due	<u>November 3, 2021</u>
<i>Daubert</i> hearing (if necessary)	<u>December 13, 2021</u>
Bench Trial	<u>January 2022</u>

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Case Transferred to the MDL from Missouri District Courts:

Plaintiffs	MDL Case No.	Transferor Court
National Black Farmers Association	3:21-cv-00966-VC	USDC Eastern District MO

Date: _____

HONORABLE VINCE CHHABRIA
UNITED STATES DISTRICT COURT