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Co-Lead Counsel for Plaintiffs

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

IN RE: ROUNDUP PRODUCTS
LIABILITY LITIGATION

MDL No. 2741

Case No. 16-md-02741-VC

This document relates to:

Hardeman v. Monsanto Co., et al.,
3:16-cv-0525-VC;
Stevick v. Monsanto Co., et al.,
3:16-cv-02341-VC;
Gebeyehou v. Monsanto Co., et al.,
3:16-cv-5813-VC

**PLAINTIFFS’ NOTICE OF
MOTION AND MOTION IN
LIMINE NO. 7 TO EXCLUDE
EVIDENCE AND ARGUMENT
REGARDING UNRELATED
MEDICAL HISTORY**

1 **TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE THAT** beginning on February 13, 2019 in Courtroom 4 of the United
3 States District Court, Northern District of California, located at 450 Golden Gate Avenue, San
4 Francisco, CA 94102, or as ordered by the Court, Plaintiffs will present their Motion in *Limine* to
5 Exclude Evidence and Argument Regarding Unrelated Medical History. A supporting
6 memorandum is filed herewith.

7 Dated: 1/30/2019

8 Respectfully submitted,

9 /s/ Aimee Wagstaff

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Plaintiffs hereby submit the following memorandum of points and authorities in support of
3 their motion in *limine* to preclude evidence and argument of Plaintiffs’ unrelated medical history.

4 **I. INTRODUCTION**

5 Defendant has subpoenaed Plaintiff Hardeman’s medical records and has deposed Plaintiff
6 with respect to his *lifetime* medical history. Plaintiff anticipates that Defendant will seek to
7 introduce evidence of Plaintiff’s unrelated medical history from any point in his entire life
8 including:
9

10 Occurrence of basal cell carcinoma in 2001;

11 Glaucoma in 2004;

12 Atopic eczema diagnosed in 2006; and

13 Sciatica and corresponding treatment in 2014.

14 These areas of inquiry are unrelated to the NHL and inquiry would result into fishing
15 expeditions, wasting the Court’s time, and result in prejudice to Mr. Hardeman.

16 **II. ARGUMENT**

17 Article I, section 1 of the California Constitution guarantees all individuals a right to
18 privacy. A party’s medical information is also within the zone of privacy. *See, e.g., Cutter v.*
19 *Brownbridge*, 183 Cal.App. 3d 836, 842 (1986); *Board of Medical Quality Assurance v.*
20 *Gherardini*, 93 Cal. App. 3d 669, 678 (1979). This includes the privilege to refuse to disclose, and
21 to prevent another from disclosing confidential communications between patients and their
22 physicians.

23 The physician-patient privilege rests on a two-pronged public policy: fundamentally, to
24 preclude the “humiliation” patients might suffer following disclosure of their ailments; and,
25 secondarily, to encourage the patient’s complete and uninhibited disclosure of information
26 necessary for effective diagnosis and treatment of the patient’s illness, injuries or medical condition.
27 *City & County of San Francisco v. Sup. Ct.*, 37 Cal.2d 227, 231 P.2d 26, 28 (1951); *see also*

1 *Rudnick v. Sup. Ct. (Atlas Chem. Industries, Inc.)*, 11 Cal.3d 924, 933, fn. 13 (1974); *Division of*
2 *Med. Quality, Bd. of Med. Quality Assur. v. Gherardini*, 93 Cal.App.3d 669, 678-679 (1979)
3 (“patient should be able to rest assured with the knowledge that ‘the law recognizes the
4 communications as confidential and guards against the possibility of his feelings being shocked or
5 his reputation tarnished by their subsequent disclosure’”).

6
7 While the privilege may be waived when the particular medical condition is placed at issue
8 by the privilege holder, the exception applies *only* to communications and information relevant to
9 the very injury or impairment tendered by the patient in the lawsuit. *Slagle v. Sup.Ct.*, (Maryon)
10 211 Cal.App.3d 1309, 1313 (1989). The privilege may still be asserted to prevent disclosure of the
11 patient's medical history that is not directly relevant to the action. *Britt v. Sup.Ct.* (San Diego
12 Unified Port Dist.) 20 Cal.3d 844, 863-864 (1978). Thus, a plaintiff's personal injury lawsuit does
13 not place in issue the plaintiff's *lifetime* medical history. Likewise, Defendant, in turn, is not
14 automatically entitled to disclosure of the names of all physicians the patient has consulted for
15 examination or treatment of conditions existing prior to the subject incident. *Hallendorf v. Sup.*
16 *Ct.*, (Pflibsen) (1978) 85 Cal.App.3d 553, 557. Inquiry into information subject to the
17 constitutional right of privacy is improper unless the inquirer can establish a *compelling* need for
18 the information and that it is directly relevant. *Davis v. Sup. Ct.*, 7 Cal.App.4th 1008, 1014 (1992)
19 (emphasis added); *Lantz v. Superior Court*, 28 Cal.App. 4th 1839, 1853 (1994); *Britt, supra*, 20
20 Cal.3d at 859; *Tylo v. Sup. Ct.*, 55 Cal.App.4th 179, 1387 (1997). Further, even though Plaintiff is
21 seeking emotional stress damages, Defendant is not permitted to engage in a “fishing expedition”
22 seeking all other potential stressors in Plaintiff's life. *Id.* at 1388.

23 In addition to violating his privacy rights under California law, which controls all claims
24 of privilege under federal law (*See* FRE 501), Plaintiff's medical history that is unrelated to his
25 NHL diagnosis is irrelevant. FRE 401 (Evidence is relevant if (a) it has any tendency to make a
26 fact more or less probable than it would be without the evidence; and (b) the fact is of consequence
27 in determining the action.) There is no probative value in the introduction of unrelated physical
28

1 conditions. *Downing v. Barrett Mobile Home Transport, Inc.*, 38 Cal. App. 3d 519, 525 (1974).
2 The policy basis of this prohibitory rule rests on the fact that the probative force of this kind of
3 evidence is too slight to overbear the dangers of prejudice, distraction by side issues, and unfair
4 surprise. *Id.* Accordingly, because his past medical history that is unrelated to Mr. Hardeman's
5 NHL diagnosis is irrelevant and thus inadmissible, and inquiry therein would constitute a breach
6 of his constitutional right to privacy, it should be excluded.

7
8 **III. CONCLUSION**

9 For the foregoing reasons, Plaintiff respectfully requests that this Court exclude the
10 evidence as requested.

11 Dated: 1/30/2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on January 30, 2019, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the CM/ECF participants registered to receive service in this MDL.

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12 *Attorneys for Plaintiffs*

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 14 NORTHERN DISTRICT OF CALIFORNIA
 15 SAN FRANCISCO DIVISION
 16

17 IN RE: ROUNDUP PRODUCTS
 18 LIABILITY LITIGATION

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

19 This document relates to:

ECF ATTESTATION

20 *Hardeman v. Monsanto Co., et al.,*
 21 3:16-cv-0525-VC

22 *Stevick v. Monsanto Co., et al.,*
 23 3:16-cv-2341-VC

24 *Gebeyehou v. Monsanto Co., et al.,*
 25 3:16-cv-5813-VC
 26

1 Pursuant to Civil L.R. 5-1(i)(3), the filing attorney attests he has obtained concurrence regarding
2 the documents submitted in this filing from the signatories therein.

3
4 Date: January 30, 2019

By: /s/ Leland H. Belew
Leland H. Belew

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