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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. 13 TO EXCLUDE
EVIDENCE, TESTIMONY, AND
ARGUMENT REGARDING
ATTORNEY RETENTION AND
ATTORNEY ADVERTISING**

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

3 **PLEASE TAKE NOTICE THAT** beginning on February 13, 2019 in Courtroom 4 of the United
4 States District Court, Northern District of California, located at 450 Golden Gate Avenue, San
5 Francisco, CA 94102, or as ordered by the Court, Plaintiffs will present their Motion in *Limine* to
6 Exclude Evidence, Testimony, and Argument Regarding Attorney Retention and Attorney
7 Advertising. A supporting memorandum is filed herewith.
8

9 Dated: 1/30/2019

Respectfully submitted,

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Plaintiffs' Co-Lead Counsel

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 any mention of attorney retention and attorney advertising.

4 **I. INTRODUCTION**

5 This motion in *limine* is based upon FRE 401 and 403 and made upon the grounds that
6 attorney retention and attorney advertising are irrelevant in this case. This Court should exclude
7 any evidence or argument suggesting that this case was generated by attorneys, or any other
8 evidence or argument of attorney involvement or motivation. Such remarks are inflammatory, and
9 constitute an improper attempt to prejudice the jury through the suggestion that Plaintiffs are
10 pursuing their claims only because an attorney advised it.

11 It is anticipated that Defendant may attempt to introduce evidence or argument that this
12 case is driven solely by attorneys, by attorney advertising, and that Plaintiffs' counsel specializes
13 in litigating pharmaceutical and/or product liability cases, and/or that Plaintiffs' counsel represents
14 plaintiffs in a large volume of Roundup® or other pending lawsuits. Such evidence or argument
15 is irrelevant and highly prejudicial and should be excluded.

16 **II. ARGUMENT**

17 **A. Evidence of Attorney Advertising Is Irrelevant To The Issues In This Case And**
18 **Highly Prejudicial.**

19 Any statements or evidence regarding an attorney's involvement in a lawsuit necessarily
20 encroaches on the attorney-client privilege. It likewise has no relevance to the issues in this case
21 and results in unfair prejudice to Plaintiffs. Such evidence or argument has no bearing on whether
22 Defendant's product was defective and was the cause of Plaintiffs' NHL.

23 Courts are hesitant to allow even limited evidence of attorney advertisements, in order to
24 protect a fair trial for plaintiffs, as well as to protect attorney-client privilege. *See In re Norplant*
25 *Contraceptive Prods. Liab. Litig.*, MDL 1038, 1997 WL 81087, at *1 (E.D. Tex. Feb. 21, 1997)
26 (*granting* Plaintiffs' motion in *limine* to exclude defendants' experts' opinions regarding negative
27

1 media stories and attorney advertisements); *In re Prempro Prods. Liab. Litig.*, 4:04CV01169, 2007
2 WL 3125106, at *1 (E.D. Ark. Oct. 24, 2007). Similarly, whether Plaintiffs' counsel represents a
3 large volume of clients due to injuries caused by Roundup® or any other defective product cases,
4 is irrelevant to the issues in this case and could only prejudice the Plaintiffs if admitted.
5 Accordingly, this evidence is irrelevant and should be excluded.
6

7 **B. Evidence of Attorney Retention And Advertising Is Protected By Attorney-Client
8 Privilege.**

9 The attorney-client privilege is carefully safeguarded with only a few specific exceptions.
10 *Rosso, Johnson, Rosso & Ebersold v. Super. Ct.*, 237 Cal Rptr. 242, 244 (1987). The privilege
11 applies during preliminary discussions with counsel, even if employment is declined. *In re*
12 *Dupont's Est.*, 140 P.2d 866, 872 (1943). Any conversations that Plaintiffs had with their counsel,
13 regarding filing a lawsuit and the decision to pursue this case, fall squarely within the attorney-
14 client privilege. Any information Plaintiffs received from counsel likewise falls squarely within
15 the privilege. As such, any evidence concerning Plaintiffs' decision to proceed with this lawsuit
16 based on any discussions and communications with their attorneys are protected by attorney-client
17 privilege and are inadmissible. Accordingly, Defendant should not be permitted to imply that
18 counsel is driving the lawsuit or that counsel had any effect upon Plaintiffs' decision to pursue
19 this lawsuit.

20 **III. CONCLUSION**

21 Based on the foregoing, Plaintiffs respectfully request that the Court enter an Order
22 granting this motion *in limine* and excluding any evidence, testimony, and argument regarding
23 attorney retention and attorney advertising.
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26
27

1 Dated: 1/30/2019

Respectfully submitted,

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25 *Plaintiffs' Co-Lead Counsel*

26 **CERTIFICATE OF SERVICE**

27 I certify that on January 30, 2019, I electronically filed the foregoing document with the
28 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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13 UNITED STATES DISTRICT COURT
 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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