

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

IN RE: ROUNDUP PRODUCTS
LIABILITY LITIGATION

MDL No. 2741

Case No. 16-md-02741-VC

**PLAINTIFFS' REPLY IN SUPPORT OF
MOTION TO STRIKE
CONFIDENTIALITY OF HEYDENS
DEPOSITION**

Date: April 24, 2017

Time: 2:00pm

Ctrm: 4, 17th floor

Hon. Vince Chhabria

This document relates to:

ALL ACTIONS

**PLAINTIFFS' REPLY IN SUPPORT OF MOTION TO STRIKE CONFIDENTIALITY
DESIGNATION OF WILLIAM HEYDENS PH.D DEPOSITION**

Monsanto's claimed concerns for this litigation leaving the bounds of this courtroom are belied by its own activities day in, day out. This Motion was prompted by Monsanto waiving its own confidentiality designations to place Dr. Heydens' litigation-deposition-transcript quotes on its own public-consumption website. A careful look at even the documents attached to motions practice thus far in this case so far elucidates the Monsanto tort defense strategy; work furiously outside the courtroom to produce carefully-timed "literature" and regulatory decisions that might aid in litigation defense. Monsanto even started the aptly-named "Let Nothing Go" program to leave nothing, not even facebook comments, unanswered; through a series of third parties, it employs individuals who appear to have no connection to the industry, who in turn post positive comments on news articles and Facebook posts, defending Monsanto, its chemicals, and GMOs. ¹

Monsanto quietly funnels money to "think tanks" such as the "Genetic Literacy Project" and the "American Council on Science and Health," organizations intended to shame scientists and highlight information helpful to Monsanto and other chemical producers. Recent headlines from the GLP include:

- "WHO's IARC cancer hazard agency: Can it be reformed or should it be abolished?" (April 18, 2017);

¹ This topic is covered at length in the David Heering deposition; Plaintiffs will not clog the Court's workload with collaterally-related transcripts – Monsanto also insists that almost that entire deposition is "confidential," but will gladly provide to the Court on request.

- “Is the US Unwittingly Funding Anti-Agriculture and anti-Monsanto Conspiracy Theories?” (April 13, 2017), and, richly, in the context of recent motions and controversy:
- “EPA Deserves Some Respect.” (March 27, 2017)

Recent articles from the ironically-named “American Council on Science and Health” include:

- “Glyphosate: NYT’s Danny Hakim is Lying to You.” (March 15, 2017)
- “IARC has Threatened us” (April 26, 2017)
- “IARC’s Ruling on Glyphosate Ignores the Science” (March 23, 2015)

The Court, and certainly the attorneys here, will recall similar “institutes” and “academies” funded by the tobacco industry in the past. Neither GLP nor ACSH list Monsanto as donors/supporters; but Monsanto cannot deny it funds them.

More to the point of the instant litigation, phased discovery, and experts in this case, Christopher Portier, disclosed consulting expert for the Plaintiffs in this litigation, “invited specialist” to the IARC working group on glyphosate, and featured speaker at this Court’s recent Science Day, is already the target of a Monsanto “hatchet job”, again run through several intermediaries. See Exhibit 1, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Monsanto’s first argument in its Opposition is that it would like to tell Plaintiffs to “go away.” Its second argument is that “Monsanto refused to engage in that time-

consuming endeavor [telling Plaintiffs or the Court what makes this deposition Confidential], which it believes would waste resources” (Doc 238 p.2). Its third argument is that confidentiality may not be waived by selectively trotting out portions of a document, only attorney client privilege can be waived that way. And lastly, Monsanto resurrects its efforts, denied many times, to have the Court direct that everything remain secret unless and until dispositive motions are brought.

“Williams 2000” has now been cited by 555 sources since its publication, and by the EPA many times, and is but one of many ghostwritten “science” pieces by Monsanto. Monsanto has publicly posted self-serving portions of Dr. Heydens’ deposition denying this ghostwriting, which Monsanto itself had designated as confidential. The Court should allow/require disclosure of the entire deposition based on that act, and in the name of public health, safety, and science.

DATED: April 20, 2017

Respectfully submitted,

/s Robin Greenwald, Michael Miller and
Aimee Wagstaff
Robin Greenwald
rgreenwald@weitzlux.com
Weitz & Luxenberg
700 Broadway
New York NY 10003
Ph 212-558-5500
F 212-344-5461

Michael Miller
mmiller@millerfirmllc.com
The Miller Firm LLC
108 Railroad Ave
Orange VA 22960
Ph 540 672 4224
F 540 672 3055

Aimee H. Wagstaff
Aimee.wagstaff@andruswagstaff.com
Andrus Wagstaff, P.C.
7171 West Alaska Drive
Lakewood CO 80226
Ph 720-255-7623

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 20, 2017 I electronically filed this Opposition using the CM/ECF system which will send a notification of such filing to counsel of record.

/s/ Michael Miller