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12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**
14 **(SAN FRANCISCO DIVISION)**

15 IN RE: ROUNDUP PRODUCTS LIABILITY
16 LITIGATION

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

19 This document relates to:
20
21 ALL ACTIONS

22 **DECLARATION OF WILLIAM E.**
23 **LAWLER, III IN SUPPORT OF**
24 **GRANTING IN PART AND DENYING IN**
25 **PART PLAINTIFFS' MOTION TO FILE**
26 **UNDER SEAL**

27 **Date: May 25, 2017**

28 **Time: 2:00 p.m. (Pacific)**

Courtroom: 4, 17th Floor

Judge: Honorable Vince Chhabria

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1 I, William E. Lawler, III, hereby declare as follows based on my personal knowledge:

2 1. I am an active member in good standing of the bars of the District of Columbia
3 and the State of Maryland. I am admitted *pro hac vice* in this litigation pursuant to the Court's
4 Pretrial Order No. 1 (Oct. 6, 2016), ECF No. 2. I am an attorney with the law firm of Vinson &
5 Elkins LLP, counsel of record for non-party Jesudoss Rowland.

6 2. I submit this Declaration in support of redacting or sealing documents filed under
7 seal pursuant to Plaintiffs' Administrative Motion to File Under Seal, filed on April 28, 2017,
8 ECF No. 261 ("Motion to Seal").

9 3. I respectfully request this Court approve my proposed redactions to: 1) Plaintiffs'
10 Motion to Compel Responses from Deponent Jesudoss Rowland, ECF No. 261-1 (April 28,
11 2017) ("Motion to Compel"); and 2) the Rough Draft Testimony of Jesudoss Rowland, Taken on
12 April 24, 2017, ECF No. 261-3 (April 28, 2017) ("Rowland Rough Transcript"), that was filed
13 under seal as Exhibit 2 to the Motion to Compel. In addition, I respectfully request the Court
14 approve my request to seal in its entirety Exhibit 3 to the Motion to Compel, ECF No. 261-4
15 (April 28, 2017) ("Exhibit 3").
16

Document	Designating Party	Redactions Sought (page:line)	Rationale
Motion to Compel, ECF No. 261-1	Monsanto - Confidential	2:11-13; 2:16-22; 3:21-22; 4-9	These pages include citations to and quotations of testimony about Mr. Rowland's personal and professional life after he left the EPA.
Rowland Rough Transcript, ECF No. 261-3	Monsanto - Confidential	303:1-10; 304-12; 328:1-10; 329-42; 343:17-25 ¹	These pages include testimony about Mr. Rowland's personal and professional life after he left the EPA.
Exhibit 3, ECF No. 261-4	Unclear	Seal entirely	Plaintiffs did not provide non-party Jesudoss Rowland with an unsealed version of Exhibit 3.

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¹ The rough transcript has two sets of page numbers. PDF page numbers, that are centered at the bottom of the page, are cited. Line numbers, however, correspond to the transcript page numbers (right aligned).

1
2 4. Compelling reasons and good cause exist to redact portions the Motion to Compel
3 and the Rowland Rough Transcript. Those documents contain testimony of non-party Jesudoss
4 Rowland’s personal and professional life after he left the U.S. Environmental Protection Agency
5 (“EPA”) and are hardly relevant to this litigation, let alone appropriate for public consumption.

6 5. Civil Local Rule 79-5(e) states that “the Designating Party must file a declaration
7 . . . establishing that all of the designated material is sealable.” Based on my review of the
8 documents listed below, Plaintiffs’ attempt to protect non-party Jesudoss Rowland’s confidential
9 information is inadequate. My rationale for redacting or sealing the information is explained
10 below for each relevant document.

11 6. **Rowland Rough Transcript.** Attached as an exhibit to the Courtesy Chamber’s
12 Copy of this Declaration is a redacted copy of the Rowland Rough Transcript which is narrowly
13 tailored to prevent the release of non-party Jesudoss Rowland’s confidential information,
14 information potentially protected under a nondisclosure agreement with a third party, and the
15 third party’s identifying information. Based on my review of the Rowland Rough Transcript, the
16 proposed redactions are necessary to protect this information.

17 7. First, the Rowland Rough Transcript contains non-party Jesudoss Rowland’s
18 confidential information, including his personal and professional life after he left the EPA.
19 These details are hardly relevant for this case let alone appropriate for public disclosure. Neither
20 non-party Jesudoss Rowland nor his current employer are parties to this litigation.

21 8. Throughout the course of this litigation, the Court has attempted to balance the
22 burden of discovery placed on non-party Jesudoss Rowland and the need to protect him, a private
23 citizen, from the cost and public scrutiny associated with litigation to which is not a party. Even
24 during the deposition when the Court permitted plaintiffs to question non-party Jesudoss
25 Rowland regarding the consulting work he performed after leaving the EPA, the Court limited
26 that testimony to “a very general description of the projects he has worked on.” Pretrial Order

1 No. 19, ECF No. 260. Plaintiffs' specific questions about non-party Jesudoss Rowland's clients
2 exceeds the scope of the Court's order. Until Plaintiffs establish that non-party Jesudoss
3 Rowland's personal and professional life after he left the EPA is material to this case, that
4 information should be sealed.

5 9. Second, the Rowland Rough Transcript contains information potentially subject to
6 non-disclosure agreements to which non-party Jesudoss Rowland is a party. On a rare occasion
7 when non-party Jesudoss Rowland would be required to share a client's business information
8 with third parties, he would only allow third parties to view this information under very
9 restrictive non-disclosure agreements or protective orders. Non-party Jesudoss Rowland takes
10 his non-disclosure obligations seriously and this Declaration seeks to redact portions of Rowland
11 Rough Transcript potentially subject to a non-disclosure agreement. *See Aevoe Corp. v. AE*
12 *Tech. Co.*, No. 2:12-CV-00053-GMN, 2014 WL 551563, at *2 (D. Nev. Feb. 7, 2014) (granting
13 motion to seal portions of a deposition subject to a non-disclosure agreement).

14 10. As a consultant, non-party Jesudoss Rowland's reputation is important for his
15 business. "One factor that weighs in favor of sealing documents is when the release of the
16 documents will cause competitive harm to a business." *Apple Inc. v. Samsung Electronics Co.*,
17 727 F.3d 1214, 1221 (Fed. Cir. 2013); *see Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 598
18 (1978) (Courts have refused "to permit their files to serve . . . as sources of business information
19 that might harm a litigant's competitive standing."); *In re McClatchy Newspapers, Inc.*, 288 F.3d
20 369, 374 (9th Cir. 2002) (quoting *Nixon*, 435 U.S. at 374) (same). Revealing client information
21 potentially subject to a non-disclosure agreement will place him at a competitive disadvantage
22 relative to other consultants in the same field. At a minimum, non-party Jesudoss Rowland may
23 face the risk of civil litigation related to the non-disclosure agreement even if a fact finder later
24 determines it was not in fact breached.

25 11. Third, non-party Jesudoss Rowland seeks to prevent the public release of client
26 identifying information—related to third parties not present in this litigation—by redacting their
27

1 names and other information that may identify them in the Rowland Rough Transcript. *See PNY*
2 *Techs., Inc. v. Sandisk Corp.*, No. 11-CV-04689-WHO, 2014 WL 661620, at *2 (N.D. Cal. Feb.
3 20, 2014) (“The only information that may be redacted [is] . . . the names and other discrete
4 identifying information of third parties . . .”).

5 12. **Motion to Compel.**² Attached as an exhibit to the Courtesy Chamber’s Copy of
6 this Declaration is a redacted copy of the Motion to Compel which is narrowly tailored to
7 prevent the release of non-party Jesudoss Rowland’s confidential information, information
8 potentially protected under a non-disclosure agreement with a third party, and the third party’s
9 identifying information. Based on my review of the Motion to Compel, the proposed redactions
10 are necessary to protect this information.

11 13. The Motion to Compel quotes and provides citations to testimony in the Rowland
12 Rough Transcript that, for the reasons described above, I believe should also be redacted. I have
13 approved the redactions to the Motion to Compel as the minimum amount of redactions
14 necessary to avoid unnecessary harm to non-party Jesudoss Rowland and third parties.

15 14. **Exhibit 3.** Plaintiffs did not provide non-party Jesudoss Rowland with an
16 unsealed copy of this document. Non-party Jesudoss Rowland asks the Court to not unseal this
17 document until Plaintiffs either: 1) provide non-party Jesudoss Rowland with an unsealed coy of
18 this document or, 2) explain that the document does not contain any information relevant to non-
19 party Jesudoss Rowland. Given that Exhibit 3 was attached to a Motion to Compel related to
20 non-party Jesudoss Rowland, it is highly likely that it contains information relevant to non-party
21 Jesudoss Rowland.

22 15. I have approved the proposed redactions in the Rowland Rough Transcript and the
23 Motion to Compel as the minimum amount of redactions necessary to avoid unnecessary harm to
24 non-party Jesudoss Rowland and other third parties. The redactions cover only events that

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26 ² Plaintiffs failed to file all information designated “confidential” in the Motion to Compel under seal as required by
the Protective and Confidentiality Order at 9-10 (ECF No. 64).

1 occurred after non-party Jesudoss Rowland left the EPA. Client identifying information was also
2 redacted to protect third parties who are not parties to this litigation. In addition, Exhibit 3 must
3 remain under seal for those same reasons until non-party Jesudoss Rowland is given an
4 opportunity to review and respond to an unsealed copy.

5 16. In this case, the public's interest in understanding the judicial process is greatly
6 outweighed by the need to protect a private citizen—not a party to this case—from the
7 unnecessary expense, public attention, and detriment to his business that may result from the
8 disclosure of the above-discussed information. While the public may have an interest in
9 understanding the inner-workings of the EPA, it does not have an interest in the personal and
10 professional life of a former government employee who, again, is not a party to this litigation.

11 17. To avoid unnecessary harm to non-party Jesudoss Rowland and third parties, I
12 respectfully request that the Court Grant in Part and Deny in Part Plaintiffs' Motion to File
13 Under Seal. This ruling would require Plaintiffs to file a complying copy of the Motion to
14 Compel, Rowland Rough Transcript, and Exhibit 3 that adequately protect non-party Jesudoss
15 Rowland and third parties. Civil L.R. 79-5(f)(3). I view the redacted versions of the Motion to
16 Compel and the Rowland Rough Transcript, attached to the Courtesy Chambers Copy of this
17 Declaration, and the sealing of Exhibit 3 in its entirety, as necessary and sufficient to protect
18 those interests.

19 I declare under penalty of perjury under the laws of the State of California and the United
20 States of America that the foregoing is true and correct.

21 Executed on May 2, 2017.

22 Washington, D.C.

23
24 /s/ William E. Lawler, III

25 William E. Lawler, III