

Exhibit A

GERALD SINGLETON, SBN 208783
MARK F. FLEMING, SBN 165770
JOHN C. LEMON, SBN 175847
KRISTEN D. MILLER, SBN 273030
SINGLETON LAW FIRM, APC
450 A Street, 5th Floor
San Diego, CA 92101
Tel: (619) 771-3473
Fax: (619) 255-1515
Email: gerald@slffirm.com
mark@slffirm.com
john@slffirm.com
kristen@slffirm.com

TIMOTHY A. SCOTT, SBN 215074
NICOLAS O. JIMENEZ, SBN 295057
SCOTT TRIAL LAWYERS, APC
1350 Columbia Street, Suite 600
San Diego, California 92101
Telephone: (619) 794-0451
Facsimile: (619) 652-9964
Email: tas@scotttriallawyers.com
noj@scotttriallawyers.com

Attorneys for Plaintiffs and JCCP Petitioners

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA**


COORDINATION PROCEEDING SPECIAL	)	JCCP NO. 4953
TITLE [RULE 3.550])	
	)	ASSIGNED FOR ALL PURPOSES TO
ROUNDUP PRODUCTS CASES	)	JUDGE WINIFRED Y. SMITH
	)	DEPT. 21
)	
)	
	)	Notice and Motion for Trial Preference for
	)	Joseph Mignone
)	
	)	Date: February 3, 2021
	)	Time: 10:00 a.m.
	)	Dept.: 21
)	
	)	Reservation No.: R-2230195

To All Parties and Their Counsel of Record:

Please take notice that on February 3, 2021, at 10:00 a.m., Plaintiff Joseph Mignone will move this Court for an order granting an expedited trial setting. This motion is based on California Rule of Court 3.1335 and California Code of Civil Procedure §§ 36(a), (c), (e), and (f). Mr. Mignone respectfully requests that this Court set a preference trial for June 2021, because: 1) he is over 70 years old; 2) he has been diagnosed with non-Hodgkin's lymphoma and accordingly has a substantial interest in this action as a whole, and 3) his advanced age and cancer diagnosis warrant an expedited trial setting.

Dated: January 5, 2021

Respectfully Submitted,

By: 
 GERALD SINGLETON, SBN 208783
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 JOHN C. LEMON, SBN 175847
 KRISTEN D. MILLER, SBN 273030
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 San Diego, CA 92101

TIMOTHY A. SCOTT, SBN 215074
 NICOLAS O. JIMENEZ, SBN 295057
 SCOTT TRIAL LAWYERS, APC
 1350 Columbia Street, Suite 600
 San Diego, California 92101

Attorneys for Plaintiffs and Petitioners

Memorandum of Points & Authorities

I. Introduction

Joseph Mignone is a named Plaintiff in *Mignone v. Monsanto Company, et al.* He is 76 years old, has been recently diagnosed with non-Hodgkins lymphoma, and suffers from a variety of ailments “such that a preference is necessary to prevent prejudicing [his] interest in the litigation.”¹ Mr. Mignone accordingly requests an expedited trial setting under Cal. R. Ct. 3.1335 and Cal. Code Civ. Proc. § 36(a), (c), (e), and (f).

a. Because he is over 70 years old and seriously ill, Mr. Mignone is entitled to an expedited trial setting.

This Court is obviously familiar with the nature of this motion. The California Code of Civil Procedure provides for non-discretionary, expedited trial settings for elderly and infirm plaintiffs:

A party to a civil action who is over 70 years of age may petition the court for a preference, which the court shall grant if the court makes both the following findings:

- (1) The party has a substantial interest in the action as a whole.
- (2) The health of the party is such that a preference is necessary to prevent prejudicing the party’s interest in the litigation.²

Under § 36(a), a preference trial must be set no more than 120 days from the date that the motion for preference is granted.³

Although Mr. Mignone’s position is that his right to a preference trial is “mandatory and absolute,”⁴ this Court need not reach that issue because it has already held that “[t]here is no significant loss of JCCP efficiency if the [C]ourt grants or denies motions for trial preference just as it would if the cases had been filed and remained in the counties where the plaintiffs resided.”⁵ Accordingly, in

¹ Cal. Code Civ. Proc. § 36(a)(2).

² Cal. Code Civ. Proc. § 36(a).

³ Cal. Code Civ. Proc. § 36(f).

⁴ *Miller v. Superior Court*, 221 Cal. App. 3d 1200, 1204 (1990).

⁵ Order on CCP 36 Preference Motions of Dublino, Stephens, Witcher, and Shamirzadi at 7.

1 the interest of brevity, this motion will focus on Mr. Mignone's health concerns under Section
2 36(a)(2), rather than whether the right to a preference trial is a "substantive right."

3 A motion under Section 36(a) may be supported by an attorney's declaration "based upon
4 information and belief as to the medical diagnosis and prognosis of any party."⁶ Neither a declaration
5 from a treating physician nor a detailed prognosis is required.⁷

6 As set forth in the attached declaration of counsel, Mr. Mignone is over 70 years old and has a
7 substantial interest in this case as a plaintiff who has been diagnosed with non-Hodgkin's lymphoma.
8 Specifically, he was diagnosed with Diffuse Large B Cell NHL in August 2019. He completed his
9 chemotherapy on January 27, 2020. Because of a large "basketball-sized" tumor on his neck, he then
10 underwent a series of radiation treatments, which he completed on May 22, 2020. Because of his high
11 risk of recurrence, he still has a port (or intravenous line) in his chest. He is anemic and has a low
12 white-blood-cell count, which could indicate a recurrence of the disease. He also recently had a PET
13 scan, which showed a reactive lymph node in his pelvis, which could also indicate a recurrence of the
14 lymphoma. Because that node is not readily accessible and his doctors are concerned that he might not
15 survive another surgery, they have decided to do another CT scan in February 2021 before conducting
16 a biopsy.
17

18 Mr. Mignone is also undergoing treatment for a low-grade carcinoid tumor on his lung, which
19 is not related to his lymphoma. He suffers from significant neuropathy as a result of his chemotherapy
20 as well as a "dropped" left foot, which he is unable to flex upward.⁸ He has previously had bouts of
21 pancreatitis and also suffers from atrial fibrillation, which places him at a high risk of stroke.
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26 ⁶ *Fox v. Superior Court*, 21 Cal. App. 5th 529, 534 (2018).

27 ⁷ *Id.*

28 ⁸ According to his treating oncologist, the dropped left foot could also be consistent with a recurrence of the lymphoma because it is on the same side as the tumor in Mr. Mignone's pelvis.

1 In short, Mr. Mignone is in very poor health and is at a high risk of recurrence. Indeed, his
 2 cancer may already be back. His health is accordingly “such that a preference is necessary to prevent
 3 prejudicing the party’s interest in the litigation.”⁹

4 **II. Conclusion**

5 Mr. Mignone respectfully requests that this Court grant his motion for trial preference.
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 7

8 Dated: January 5, 2021

Respectfully Submitted,

9
 10 By: 

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 28 ⁹ *Id.* at 533 (quoting Cal. Civ. Proc. Code § 36(a)); *see also id.* at 536.

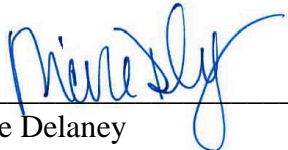
Re: Roundup Products Cases, JCCP 4953

PROOF OF SERVICE

I am employed in the County of San Diego; I am over the age of eighteen years and not a party to the within entitled action; my business address is 450 A Street, 5th Floor, San Diego, CA 92101. Today, I caused to be served the within document(s) described as: **NOTICE AND MOTION FOR TRIAL PREFERENCE FOR JOSEPH MIGNONE** on the interested parties in this action pursuant to the most recent Omnibus Service List by submitting an electronic version of the document(s) to Case Anywhere through the upload feature at www.caseanywhere.com.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 5, 2021, at San Diego, California.



Nicole Delaney