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Attorneys for the People of the State of California

IN THE UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION

CITY OF LONG BEACH, a municipal corporation; COUNTY OF LOS ANGELES, a political subdivision; CITY OF CHULA VISTA, a municipal corporation; CITY OF SAN DIEGO, a municipal corporation; CITY OF SAN JOSE, a municipal corporation; CITY OF OAKLAND, a municipal corporation;
CITY OF BERKELEY, a municipal corporation; CITY OF SPOKANE, a municipal corporation; CITY OF TACOMA, a municipal corporation; CITY OF PORTLAND, a municipal corporation; PORT OF PORTLAND, a port district of the State of Oregon; BALTIMORE COUNTY, a political subdivision; MAYOR AND CITY COUNCIL OF BALTIMORE; all individually and on behalf of all others similarly situated,

CASE NO.: 2:16-cv-03493-FMO-AS

NOTICE OF POSSIBLE AMICUS BRIEF FROM STATE ATTORNEYS GENERAL

Judge: Hon. Fernando M. Olguin
Courtroom: 6D
Hearing Date: November 5, 2020

Plaintiffs,

v.

MONSANTO COMPANY; SOLUTIA INC., AND PHARMACIA LLC, AND DOES 1 THROUGH 100,

Defendants.

NOTICE TO THE COURT, AND ALL PARTIES BY AND THROUGH COUNSEL:

Please take notice that the Attorneys General for 21 sovereign states—Maryland; California; Alaska; Arizona; Connecticut; Delaware; Hawaii; Iowa; Maine; Massachusetts; Michigan; Minnesota; New Jersey; New Mexico; Oregon; Rhode Island; Texas; Tennessee; Utah; Vermont; and Wisconsin (hereinafter "State Attorneys General")—have concerns about the proposed class action settlement agreement in the above-captioned case. Accordingly, the State Attorneys General anticipate requesting permission to file an amicus brief before any final approval hearing.

The State Attorneys General hereby file this NOTICE OF POSSIBLE AMICUS BRIEF FROM STATE ATTORNEYS GENERAL and the letter attached hereto as Exhibit A in order to provide the court notice in advance of the November 5, 2020 preliminary approval hearing of their concerns.

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Nothing in this NOTICE or the attached Exhibit is intended to constitute an appearance by or subject to jurisdiction the People of the State of California, or any other state mentioned herein.

Dated: October 21, 2020

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
DAVID A. ZONANA
Supervising Deputy Attorney General

/s/ Roxanne J. Carter
ROXANNE J. CARTER
Deputy Attorney General
Attorneys for the People of the State of California

CERTIFICATE OF SERVICE

Case Name: **City of Long Beach v. Monsanto Company et al** No. **16-cv-03493**

I hereby certify that on October 21, 2020, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

NOTICE OF POSSIBLE AMICUS BRIEF FROM STATE ATTORNEYS GENERAL

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on October 21, 2020, at San Diego, California.

Charlette Sheppard	/s/ Charlette Sheppard
Declarant	Signature

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EXHIBIT A

BRIAN E. FROSH
Attorney General

ELIZABETH F. HARRIS
Chief Deputy Attorney General

CAROLYN QUATTROCKI
Deputy Attorney General

STATE OF MARYLAND
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October 21, 2020

The Honorable Fernando M. Olguin
United States District Court
Central District of California
Western Division

RE: ***City of Long Beach, et al. v. Monsanto Company, et al.***
Case No. 2:16-cv-03493-FMO-AS

Dear Judge Olguin:

The States of Maryland, Alaska, Arizona, California, Connecticut, Delaware, Hawaii, Iowa, Maine, Massachusetts, Michigan, Minnesota, New Jersey, New Mexico, Oregon, Rhode Island, Tennessee, Texas, Utah, Vermont, and Wisconsin (the "States") collectively, write to express their concerns about the Motion for Preliminary Approval of Class Action Settlement that was filed in the above-referenced matter on August 7, 2020. The States have contacted lead counsel for the parties to this matter to raise their concerns and to request that the problematic provisions be removed or modified, but to date there is no indication that this has happened. Although one or more of the States may offer a formal brief to the Court at a later stage if these issues are not addressed by the parties, the purpose of this letter is to alert the Court to the States' concerns prior to the Preliminary Approval Hearing scheduled for November 5.

Although the States are not class members or parties to this matter, Monsanto has provided our Attorneys General with notice of the Settlement Agreement as required by the Class Action Fairness Act, 28 U.S.C. § 1715(b). State Attorneys General have a role in the class action settlement approval process and seek to voice concerns when appropriate. *See* 28 U.S.C. § 1715; *see also* S. REP. 109-14, 2005 U.S.C.C.A.N. 3, 6 (requirement "that notice of class action settlements be sent to appropriate state and federal officials," exists "so that they may voice concerns if they believe that the class action settlement is not in the best interest of their citizens."); *id.* at 34 ("notifying appropriate state and federal officials ... will provide a check against inequitable settlements"; "Notice will also deter collusion between class counsel and defendants to craft settlements that do not benefit the injured parties.").

Paragraph 81 of the Settlement Agreement reduces payments to class members in a state whose Attorney General subsequently files a lawsuit against Monsanto related to PCBs. More

200 Saint Paul Place ❖ Baltimore, Maryland, 21202-2021
Main Office (410) 576-6300 ❖ Main Office Toll Free (888) 743-0023
Consumer Complaints and Inquiries (410) 528-8662 ❖ Health Advocacy Unit/Billing Complaints (410) 528-1840
Health Advocacy Unit Toll Free (877) 261-8807 ❖ Homebuilders Division Toll Free (877) 259-4525 ❖ Telephone for Deaf (410) 576-6372
www.marylandattorneygeneral.gov

specifically, the paragraph triggers an immediate twenty-percent reduction in the sum due class members upon the mere filing of suit by their state's Attorney General—without reference to the eventual outcome of that suit, and regardless of whether the class member could even have brought the claims raised by the state. Paragraph 81 thus has the dual effect of discouraging the state from suing in the first place and sowing internal discord if it does. This provision contravenes public policy because it arbitrarily serves to discourage law enforcement actions by state Attorneys General by driving a wedge between the states and their local jurisdictions. Indeed, if this paragraph remains, a state could not bring an action for the benefit of all its citizens without reducing benefits already allocated to some.

Paragraph 41 of the Settlement Agreement purports to release a universe of claims that is much broader than the claims asserted in the complaint, including claims that could not have been brought by class members in the first instance. PCB contamination typically spreads through the movement of stormwater into streams, rivers, lakes, and bays. The laws protecting these waters vary from state to state, but they are under the protection of federal, state, and local governments, and claims for injury to those waters should not and cannot be swept up by broad release language such as that found in the Settlement Agreement. To be clear, because states are not members of the proposed class, the Settlement Agreement cannot have any legal effect on their rights. Nonetheless, it offends public policy for the Settlement Agreement to even hint at compromise of claims that only states can bring.

Under Rule 23(e)(2), a Court may approve a proposed settlement only after finding that it is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). The States believe the Settlement Agreement fails this standard because it penalizes class members for state enforcement actions and thus impedes the States' fulfillment of their duty to protect their jurisdictions' waters in the public trust. Accordingly, the States respectfully request that the Court disapprove the proposed settlement agreement so long as it contains language that is intended to dissuade state Attorneys General from taking action for the benefit of all the citizens of their respective states.

The Attorneys General listed below have authorized me to say that they join in this letter.

Respectfully submitted,

BRIAN E. FROSH
Attorney General of Maryland

XAVIER BECERRA
Attorney General of California

CLYDE "ED" SNIFFEN, JR.
Acting Attorney General of Alaska

MARK BRNOVICH
Attorney General of Arizona

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KATHLEEN JENNINGS
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