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9 *Attorneys for Plaintiff*
10 **DONNA MILLER**

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA

13 IN RE: ROUNDUP PRODUCTS)
14 LIABILITY LITIGATION) MDL No. 2741
15 _____)
16 This document relates to:)
17 *Donna Miller, et al. v. Monsanto Co.,*)
18 Case No. 3:19-cv-07399-VC)
19 _____)

20 **DONNA MILLER'S PETITION FOR APPROVAL**
21 **OF SURVIVAL AND WRONGFUL DEATH SETTLEMENT**

1 The Petitioner, Donna Miller, would show this Court as follows:

- 2 1. Petitioner is the personal representative of the Estate of Eric Miller.
- 3 2. The Estate of Eric Miller is presently open in the probate court of Wake County, North
4 Carolina.
- 5 3. Petitioner, by and through her attorney, commenced the present action against Monsanto
6 Company on October 1, 2019, in the United States District Court for the District of South
7 Carolina.
- 8 4. On November 7, 2019, this action was transferred to the Northern District of California
9 via order of the Judicial Panel on Multidistrict Litigation.
- 10 5. The Court's order of July 23, 2021 (PTO 240) required Petitioner to participate in the
11 Independent Roundup Settlement Program administered by Kenneth Feinberg.
- 12 6. The Petitioner informed Administrator Feinberg that she accepts the offer of settlement
13 produced by the settlement program.
- 14 7. This petitioner seeks court approval of the acceptance of the settlement offer.

15
16
17 **CONTROLLING LAW**

- 18 8. Eric Miller resided in North Carolina at the time of his death; however, Miller previously
19 resided in South Carolina, was exposed to Roundup in South Carolina, and contracted
20 Non-Hodgkin Lymphoma in South Carolina.
- 21 9. As a result, the substantive law of the State of South Carolina controls Petitioner's right
22 to seek compensation for the wrongful death of Eric Miller and the survival actions
23 possessed by the Estate of Eric Miller. See S.C. Code Ann. § 15-51-10, et seq.

1 10. South Carolina law provides “[o]nly a duly appointed personal representative, as defined
2 in Section 62-1-201(30), shall have the authority to settle wrongful death or survival
3 actions.” S.C. Code Ann. § 15-51-42(A).

4 11. As to the petition of the proposed settlement, South Carolina law further provides:

5 The petition must be verified by the personal representative and
6 shall set forth, in terms satisfactory to the court in which the petition
7 is filed, the basic facts surrounding the death of the decedent, the
8 pertinent facts surrounding the liability of the alleged wrongdoer,
9 the amount of insurance available to pay for damages, the terms of
10 the proposed settlement, the statutory beneficiaries of the wrongful
11 death or survival action, the heirs at law or appropriate devisees of
the estate, the appropriate creditors, the amount of their claims, and,
if the personal representative has retained legal counsel, the terms
and provisions of the agreement with respect to attorney's fees and
costs.

12 S.C. Code Ann. § 15-51-42(B).

13 **ANALYSIS OF PROPOSED SETTLEMENT**

14 **A. Basic Facts Surrounding Death of Decedent**

15 12. Decedent Eric Miller was born in the State of New York on January 22, 1958.

16 13. Decedent Eric Miller was first diagnosed with large B-cell lymphoma on August 15, 2019.

17 He underwent extensive treatment including 6 cycles of CHOP, recurrence treatment from
18 2019 – 2020, subsequently in 2020 decedent underwent several rounds of MATRix
19 treatment for metastasized lymphoma in early 2020, with additional chemotherapy
20 targeting metastatic cancer in his central nervous system and testicles.
21

22 14. Decedent Eric Miller died of Non-Hodgkin Lymphoma (“NHL”), specifically diffuse
23 large B-cell lymphoma on August 28, 2023.

24 15. On January 10, 2024, Donna Miller was appointed as the Personal Representative of the
25 Estate of Eric Miller. (**Exhibit A**— Letters Testamentary)
26

27 **B. Pertinent Facts Surrounding Liability of Monsanto Company**

1 16. At all times relevant to the Complaint, Monsanto Company manufactured, marketed, and
2 sold Roundup herbicide products.

3 17. Decedent Eric Miller used and was otherwise exposed to Roundup products from
4 approximately the 1970s until the 2010s.

5 18. Petitioner contends that the decedents use of and exposure to Roundup caused the
6 decedent's NHL and ultimate death.

7 19. Monsanto Company denies that exposure to Roundup causes NHL and also denies that
8 the decedent's use of and exposure to Roundup specifically caused the decedent's NHL
9 and death.
10

11 **C. Amount of Insurance Available**

12 20. The atypical nature of the funding of the Independent Roundup Settlement Program
13 renders this consideration inapplicable.
14

15 **D. Terms of Proposed Settlement**

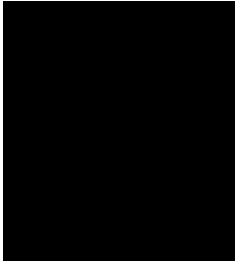
16 21. If the proposed settlement is approved, the Petitioner would dismiss all claims set forth
17 against Monsanto Company and release all other potential claims against Monsanto
18 Company stemming from the NHL and/or death suffered by the Decedent in exchange
19 for payment of [REDACTED]

20 22. Petitioner further proposes that 5% of the gross settlement proceeds [REDACTED] be
21 allocated as consideration for the release of the wrongful death claims of the statutory
22 beneficiaries while 95% of the gross settlement proceeds [REDACTED] be allocated as
23 consideration for the relief of the survival claims belonging to the Estate.
24

25 23. Monsanto takes no position as to the propriety of the settlement proceeds and has not
26 participated in the proposed division.

27 24. Details of the disbursement of settlement proceeds are as follows:

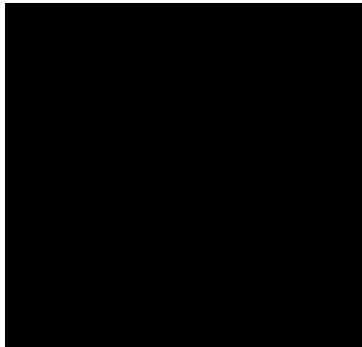
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Gross Settlement Amount
8% Common Benefit Hold-back
Litigation Expense Reimbursement
CMS Lien
Attorney's Fee
Net Settlement Proceeds

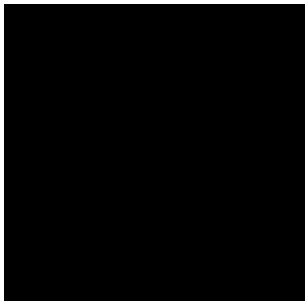
25. Attorney's fees will be allocated  to Chappell, Chappell & Newman, Attorneys and  Law Offices of David Hood.

26. Details of the disbursement of settlement proceeds of the survival allocation are as follows:



Allocated Settlement Amount
8% Common Benefit Hold-back
Litigation Expense Reimbursement
Attorney's Fee (95%)
to Chappell, Chappell & Newman, Attorneys
to Law Offices of David Hood
Medical Lien
Net Settlement Proceeds

27. Details of the disbursement of settlement proceeds of the wrongful death allocation are as follows:



Allocated Settlement Amount
8% Common Benefit Hold-back
Litigation Expense Reimbursement
Attorney's Fee (5%)
to Chappell, Chappell & Newman, Attorneys
to Law Offices of David Hood
Net Settlement Proceeds

E. Statutory Beneficiaries of the Action

28. South Carolina law establishes that “[e]very [wrongful death] action shall be for the benefit of the wife or husband and child or children of the person whose death shall have been so caused...”. S.C. Code Ann. § 15-51-20.

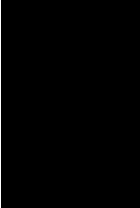
29. Eric Miller's statutory beneficiaries are as follows: Donna Miller (spouse); Justin Miller (son); Maureen Miller (daughter); Ashley Miller (daughter); Alyssa Miller (daughter).

1 30. South Carolina law further provides that any wrongful death settlement proceeds “shall
2 be divided among the before-mentioned parties in those shares as they would have been
3 entitled to if the deceased had died intestate and the amount recovered had been personal
4 assets of his or her estate.” S.C. Code Ann. § 15-51-40.

5 31. South Carolina laws of intestacy provide that the share of the surviving spouse is “if there
6 are surviving issue, one-half of the intestate estate.” S.C. Code Ann. § 62-2-102(2).

7 32. South Carolina laws of intestacy further provide that the shares of the surviving children
8 are “if they are all of the same degree of kinship to the decedent they take equally.” S.C.
9 Code Ann. § 62-2-103.

10 33. As a result, if the proposed settlement is approved the statutory beneficiaries will take
11 from the settlement as follows:
12

13	Donna Miller		(50.00% of Net Settlement Proceeds)
14	Justin Miller		(12.50% of Net Settlement Proceeds)
15	Maureen Miller		(12.50% of Net Settlement Proceeds)
16	Ashley Miller		(12.50% of Net Settlement Proceeds)
16	Alyssa Miller		(12.50% of Net Settlement Proceeds)

17 34. All statutory beneficiaries are above twenty-one years of age.

18 **F. Heirs at Law or Appropriate Devisees of the Estate**

19 35. Eric Miller possessed a Last Will and Testament at the time of his death. This will be
20 being administered by the Probate Court of Wake County, North Carolina. Pursuant to
21 the terms of the will, all settlement assets of the estate will be distributed to Donna Miller.
22

23 **G. Appropriate Creditors and Amount of Claims**

24 36. No creditors have claimed entitlement to any proceeds of this settlement beyond the lien
25 claimed by the Center for Medicare/Medicaid Services listed in paragraph 23.

26 **H. Terms of Representation by Counsel**

1 37. Graham L. Newman, Esq. of Chappell, Chappell & Newman, Attorneys serves as the
2 attorney for the Petitioner and the Estate of Eric Miller. Chappell, Chappell & Newman,
3 Attorneys has agreed to represent the Petitioner and the Estate for forty percent of the
4 settlement proceeds and reimbursement of litigation costs incurred less the common
5 benefit hold-back (8%) ordered by the Court.

6 **CONCLUSION**

7
8 For the reasons stated herein, Petitioners request the Court approve the terms of the
9 proposed settlement.

10
11 Respectfully submitted,

12 /s/ Graham L. Newman

13 Graham L. Newman (*pro hac vice*)
14 (graham@chappell.law)
15 CHAPPELL, CHAPPELL & NEWMAN
16 4500 Fort Jackson Blvd, Ste. 250
17 Columbia, SC 29209
18 *Attorneys for Plaintiff*
19 (803) 233-7050
20 (803) 233-0570 (facsimile)

21
22 *Attorneys for Plaintiff*
23 *DONNA MILLER*

VERIFICATION OF PERSONAL REPRESENTATIVE

I, *DONNA MILLER*, am the duly-appointed personal representative of the Estate of Eric Miller. I hereby affirm, under the penalty of perjury, that the assertions contained within this petition are true to the best of my knowledge and that I approve of the terms of this proposed settlement.

(Signature Page Attached as **Exhibit B**)

Donna Miller
Personal Representative

SWORN to before me this ___ day of _____, 20__

Notary Public for South Carolina
My Commission Expires: _____

CERTIFICATION OF ATTORNEY

I, GRAHAM L. NEWMAN, am the attorney for Donna Miller as Personal Representative of the Estate of Eric Miller. I am of the opinion that the proposed settlement is fair and reasonable and is in the best interests of the statutory beneficiaries and the estate of the decedent.

/s/ Graham L. Newman

Graham L. Newman (*pro hac vice*)
(graham@chappell.law)
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4500 Fort Jackson Blvd, Ste. 250
Columbia, SC 29209
Attorneys for Plaintiff
(803) 233-7050
(803) 233-0570 (facsimile)

DONNA MILLER

EXHIBIT A

(Letters Testamentary)

STATE OF NORTH CAROLINA

File No.
23E005861-910

Wake County

In The General Court Of Justice
Superior Court Division
Before The Clerk

IN THE MATTER OF THE ESTATE OF:

Name
ERIC JOHN MILLER

LETTERS

Testamentary

G.S. 28A-6-1; 28A-6-3; 28A-11-1; 36C-2-209

The Court in the exercise of its jurisdiction of the probate of wills and the administration of estates, and upon application of the fiduciary, has adjudged legally sufficient the qualification of the fiduciary named below and orders that Letters be issued in the above estate.

The fiduciary is fully authorized by the laws of North Carolina to receive and administer all of the assets belonging to the estate, and these Letters are issued to attest to that authority and to certify that it is now in full force and effect.

Witness my hand and the Seal of the Superior Court.

Name, Address, And Title Of Fiduciary/Fiduciaries

DONNA MILLER
2600 HUNTERS MEADOW LN
Raleigh NC 27606
Executor

Date Of Qualification
1/10/2024

Clerk Of Superior Court
F BLAIR WILLIAMS

EX OFFICIO JUDGE OF PROBATE

Date Of Issuance
01/10/2024

Signature



1/10/2024 3:57:40 PM

Deputy CSC Assistant CSC Clerk Of Superior Court

CLERK OF SUPERIOR COURT
WAKE COUNTY



NOTE: This letter is not valid without the official seal of the Clerk of Superior Court.

EXHIBIT B
(Verification)

VERIFICATION OF PERSONAL REPRESENTATIVE

I, *DONNA MILLER*, am the duly-appointed personal representative of the Estate of Eric Miller. I hereby affirm, under the penalty of perjury, that the assertions contained within this petition are true to the best of my knowledge and that I approve of the terms of this proposed settlement.

Donna M. Miller

Donna Miller
Personal Representative

nc, Wake County

SWORN to before me this 30th day of

October, 2024

Natvarlal C. Prajapati

Notary Public for ~~South Carolina~~ North Carolina

My Commission Expires: Oct. 29, 2025



CERTIFICATION OF ATTORNEY

I, GRAHAM L. NEWMAN, am the attorney for Donna Miller as Personal Representative of the Estate of Eric Miller. I am of the opinion that the proposed settlement is fair and reasonable and is in the best interests of the statutory beneficiaries and the estate of the decedent.

/s/ Graham L. Newman

Graham L. Newman (*pro hac vice*)

(graham@chappell.law)

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Columbia, SC 29209

Attorneys for Plaintiff

(803) 233-7050

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DONNA MILLER

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE: ROUNDUP PRODUCTS) MDL No. 2741
LIABILITY LITIGATION)
)
)

This document relates to:)
)

Donna Miller, et al. v. Monsanto)
Co.,)
Case No. 3:19-cv-07399-VC)

ORDER APPROVING
DONNA MILLER'S PETITION FOR APPROVAL OF
SURVIVAL AND WRONGFUL DEATH SETTLEMENT

1 This matter is before the Court on the petition of Donna Miller, as personal representative of the
2 estate of Eric Miller, for the approval of a proposed wrongful death settlement. Having heard the
3 evidence, the Court makes the following findings.

4 1. Petitioner is the personal representative of the Estate of Eric Miller.

5 2. The Estate of Eric Miller is presently open in the probate court of Wake County,
6 North Carolina.

7 3. Petitioner commenced this action in the District of South Carolina on October 1, 2019.

8 4. On November 7, 2019, this action was transferred to the Northern District of California
9 via order of the Judicial Panel on Multidistrict Litigation.

10 5. Petitioner has presented to the court all information pertinent to the proposed settlement
11 required by S.C. Code Ann. § 15-51-42(B).

12 6. Having reviewed this information, I find the proposed settlement to be fair and reasonable
13 and in the best interest of the statutory beneficiaries and the estate of the decedent.

14 7. The court approves the disbursement of the settlement proceeds in the following manner.


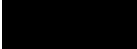
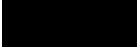
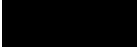

	Gross Settlement Amount
	8% Common Benefit Hold-back
	Litigation Expense Reimbursement
	CMS Lien
	<u>Attorney's Fee</u>
	Net Settlement Proceeds to Beneficiaries

15 8. Petitioner further proposed that 5% of the gross settlement proceeds [REDACTED] be
16 allocated as consideration for the release of the wrongful death claims of the statutory
17 beneficiaries, while 95% of the gross settlement proceeds [REDACTED] be allocated as
18 consideration for the relief of the survival claims belonging to the Estate.

19 9. The Court finds that Eric Miller's statutory beneficiaries are as follows:

1 Donna Miller (spouse); Justin Miller (son); Maureen Miller (daughter); Ashley Miller
2 (daughter); Alyssa Miller (daughter).

3 10. Pursuant to S.C. Code Ann. § 15-51-40, S.C. Code Ann. § 62-2-102(2), and S.C. Code
4 Ann§ 62-2-103, the net settlement wrongful death proceeds shall be distributed among the
5 statutory beneficiaries as follows:

6 Donna Miller		(50.00% of Net Settlement Proceeds)
7 Justin Miller		(12.50% of Net Settlement Proceeds)
8 Maureen Miller		(12.50% of Net Settlement Proceeds)
Ashley Miller		(12.50% of Net Settlement Proceeds)
Alyssa Miller		(12.50% of Net Settlement Proceeds)

9 11. The net settlement survival proceeds shall be distributed pursuant to the probate laws of
10 the State of South Carolina.

11 CONCLUSION

12 For the reasons stated herein, the Court approves the terms of the proposed settlement.

13
14
15 _____
16 Vince Chhabria
17 United States District Judge
18 Northern District of California
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