

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI

JOSHUA RAWA, ELISABETH MARTIN, ROBERT RAVENCAMP, AMY WARD, CYNTHIA DAVIES, CHRISTOPHER ABBOTT, OWEN OLSON, JEANNIE A. GILCHRIST, ZACHARY SHOLAR, MATTHEW MYERS, JOHN W. BEARD, JR., and MICHAEL OVERSTREET on behalf of themselves, all others similarly situated, and the general public,

Plaintiffs,

v.

MONSANTO COMPANY,

Defendant.

Case No. 4:17-cv-01252-AGF

**SECOND SUPPLEMENT TO MOTION FOR PRELIMINARY APPROVAL OF
NATIONWIDE CLASS ACTION SETTLEMENT BY CONSENT**

Pursuant to the November 9, 2017 telephonic conference with the Court, and the parties' submission on November 17, 2017 (Dkt. No. 36), plaintiffs Joshua Rawa, Elisabeth Martin, Robert Ravencamp, Amy Ward, Cynthia Davies, Christopher Abbott, Owen Olson, Jeannie A. Gilchrist, Zachary Sholar, Matthew Myers, John W. Bear, Jr., and Michael Overstreet, on behalf of themselves, all others similarly situated, and the general public ("Plaintiffs"), with the consent of Defendant Monsanto Company ("Monsanto"), supplement Plaintiffs' Motion for Preliminary Approval of Nationwide Class Action Settlement By Consent ("Motion"), to provide potential *cy pres* candidates in the event that monies remain in the Common Fund after all Settlement payments have been deducted (the "Remainder"). The parties propose to divide the Remainder among the following recipients, and hereby submit them to the Court for approval:¹

¹ The parties agree that, to the extent the Court does not approve any particular proposed recipient, the portion of the Remainder proposed to go to the unapproved recipient will be distributed among the approved recipient(s) proportionally.

1. National Consumer Law Center (NCLC) [30% of Remainder] – The NCLC advocates on behalf of consumers, providing legal services and aid, and representing them on matters of interest before Congress and state legislatures by filing amicus briefs in courts. In 2009, it published “Consumer Protection in the States: A 50-State Report on Unfair and Deceptive Acts and Practices Statutes,” which analyzed and summarized the unfair and deceptive acts and practices laws that protect consumers in each state and the District of Columbia. The report spotlighted limitations in these laws and in their enforcement, and made proposals for reform. NCLC also provides help to litigation counsel representing persons with incomes below 200% of the federal poverty line in matters involving consumer sales and services. It has been approved as a *cy pres* recipient in other consumer class actions. *See Miller*, 2015 WL 758094, at *8; *Palmer*, 2016 WL 2348704, at *2 *Jenkins*, 2015 WL 6738624, at *3; *Johnson v. Gen. Mills, Inc.*, 2013 WL 3213832, at *1 (C.D. Cal. June 17, 2013); *Custom LED, LLC v. eBay, Inc.*, 2014 WL 2916871, at *10 (N.D. Cal. June 24, 2014); *O’Connor*, 2012 WL 12743, at *2; *Garland v. Cohen & Krassner*, 2011 WL 6010211, at *3 n.2, *15 (E.D.N.Y. Nov. 29, 2011); *Durham*, 2011 WL 2173769, at *2.

2. Better Business Bureau (BBB)’s National Advertising Division [30% of Remainder] – The BBB is a 501(c)(6) non-profit organization, and consists of 106 independent local BBB organizations, which are coordinated under the Council of Better Business Bureaus. BBB’s mission is to be the leader in advancing marketplace trust and it does so by setting standards for marketplace trust; encouraging and supporting best practices by engaging with and educating consumers and businesses; and calling out and addressing substandard marketplace behavior, among other methods. In particular, the BBB’s National Advertising Division (NAD) reviews national advertising for truthfulness and accuracy through policy and procedures established by

the Advertising Self-Regulatory Council (ASRC).² These procedures allow entities to challenge competitors' advertising in a quick and informal process that benefits consumers through marketplace self-regulation. Designating the BBB's NAD as a *cy pres* recipient would help protect consumers by elevating suspect business behavior to a well-respected and knowledgeable organization with a national voice to highlight unscrupulous businesses. The BBB has been approved as an appropriate *cy pres* recipient. *Beck-Ellman v. Kaz USA, Inc.*, 2013 WL 1748729, at *2, 6 (S.D. Cal. Jan. 7, 2013) (approving the BBB as a *cy pres* recipient, as the BBB demonstrated "its dedication to protecting consumers from injuries caused by false advertising.").

3. *Gateway Greening [20% of Remainder]* – Gateway Greening is a 501(c)(3) non-profit that educates and empowers people to strengthen their communities through gardening and urban agriculture. The U.S. Department of Agriculture has found Gateway Greening to be a worthy recipient, designating it, in April of 2017, for a grant receipt for teen education in food, agriculture, and natural resources.³ A *cy pres* award would be used to build upon the organization's existing knowledge and outreach to be used, among other things, to educate consumers on how to read and understand herbicide and pesticide labels and instructions, as well as heed safety-related information found within the EPA-mandated pamphlets attached to herbicide labels. This kind of public education has routinely been viewed as a cause worthy of a *cy pres* award. *See e.g., Pappas v. Naked Juice Co of Glendora, Inc.*, 2013 WL 12124090, at *5 (C.D. Cal. Aug. 7, 2013) (designating, as *cy pres* recipients in a false advertising class action, several legal aid organizations and the Mayo Clinic, which "performs substantial work educating the public on nutrition, vitamins, and food and beverage labels" and would use funds to support those "education and research

² *See* <https://www.bbb.org/council/the-national-partner-program/national-advertising-review-services/national-advertising-division>

³ *See* <http://www.gatewaygreening.org/resources/grants-opportunities>

efforts”); *Erickson v. Credit Bureau Servs., Inc.*, 2013 WL 672313, at *3 (D. Neb. Feb. 22, 2013) (approving final settlement where any remaining funds will go towards a “*cy pres* distribution to the Legal Aid of Nebraska for use in consumer representation and/or consumer education”); *Reynolds v. ARL Credit Servs., Inc.*, 2016 WL 1257862, at *4 (D. Neb. Mar. 30, 2016) (same).

4. *Kids Gardening [20% of Remainder]* – Kids Gardening is a leading resource for garden-based educators across the country. The organization reaches more than 90,000 people monthly through grant funding, curriculum, lesson plans, and inspiration to advocate for children to learn more about gardening. In the last year, Kids Gardening partnered with educators nationwide to deliver the benefits of garden-based learning to more than 34,000 children nationwide. Over the course of its existence, since 1982, the organization has distributed 11,000 grants nationwide, awarding about \$4.4 million in funding and reaching about 1.8 million youth gardeners.⁴ Kids Gardening would foster the development and education of younger gardeners in America and teach them safe and effective gardening practices, enabling them to refine their passion, while becoming safer gardeners and better-educated future consumers.

* * *

Given the timing of this filing, the schedule proposed in the initial Supplement (Dkt. No. 36) may need to be adjusted. If the Court grants preliminary approval by Friday, December 1, the schedule can proceed as follows.

Event	Timing	Actual Date (Previously Proposed)	Actual Date (Revised)
Deadline to begin Notice	No later than 14 days after preliminary approval	Friday, December 8, 2017	Friday, December 15, 2017

⁴ <https://kidsgardening.org>

Event	Timing	Actual Date (Previously Proposed)	Actual Date (Revised)
Completion of Notice	60 days after Notice begins (no later than 74 days after preliminary approval)	Tuesday, February 6, 2018 (at the latest)	Tuesday, February 13, 2018 (at the latest) ⁵
Deadline for Class Members to submit claims or opt out	90 days after preliminary approval	Thursday, February 22, 2018 (at the latest)	Thursday, March 1, 2018 (at the latest) ⁶
Deadline to file motions for final approval and attorneys' fees, costs, and incentive awards	1 week after claims period ends (97 days after preliminary approval)	Thursday, March 1, 2018	Thursday, March 8, 2018 (at the latest) ⁸
Deadline to file objections	2 weeks after motions for final approval and attorneys' fees, costs, and incentive awards filed (111 days after preliminary approval)	Thursday, March 15, 2018	Thursday, March 22, 2018 (at the latest) ⁸
Deadline for parties to respond to objections	2 weeks after objections filed (125 days after preliminary approval)	Monday, March 26, 2018	Thursday, April 5, 2018 (at the latest) ⁸
Final Approval Hearing	11 days after responses to objections filed (39 days after motions for final approval and attorneys' fees, costs, and incentive awards filed, and 136 days after preliminary approval)	Thursday, April 5, 2018	Tuesday, April 17, 2018

⁵ This date will be earlier if the administrator starts notice sooner than two weeks after preliminary approval, or if the Court grants preliminary approval before Friday, December 1.

⁶ This date will be earlier if the Court grants preliminary approval before Friday, December 1.

Finally, attached hereto as Exhibit 1 please find a revised Long Form Notice addressing some minor typographical issues raised by the Court during a November 28, 2017 call to counsel.

Dated: November 29, 2017

Respectfully Submitted,

By: /s/ Kevin J. Dolley

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