

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

IN RE: ROUNDUP PRODUCTS  
LIABILITY LITIGATION

MDL No. 2741  
Case No. 16-md-02741-VC

This document relates to:  
ALL ACTIONS

**PRETRIAL ORDER NO. 12:  
COMMON BENEFIT FUND ORDER**

Re: Dkt. No. 73, 74

The Court approves the plaintiffs' proposed order establishing a common benefit fund, with limited modifications. The Court may further modify this Order if the need arises.

1. Good cause exists to enter an order that provides for the fair and equitable sharing among plaintiffs in this Multi-District Litigation ("MDL 2741") and any other plaintiffs and claimants who are subject to this Order, and their counsel, of the costs and expenses incurred and services performed by attorneys acting at the direction of the Plaintiffs' Co-Lead Counsel or the Executive Committee for the common benefit of all such plaintiffs and claimants. Accordingly, the Court issues this Order to establish a monetary fund that will pay for and/or reimburse the common benefit expenses and fees for legal services that have been and/or will be incurred, as set forth in Exhibit 1, for the common benefit of such plaintiffs and claimants in the event of a judgment in their cases, settlement of their claims, or other monetary recovery. The Court hereby establishes the MDL 2741 Common Benefit Fund ("Fund") for these purposes and subject to the limitations of this Order.

2. **Governing Principles: The Common Benefit Doctrine.** This Court has authority under applicable law, the Common Fund doctrine and other principles of equity, and its inherent powers to manage this litigation in an efficient and equitable manner for the benefit of plaintiffs, to create a common fund from any and all judgments or settlements resulting from this litigation to reimburse the expenses and fees for legal services incurred in the creation of such Fund. The governing principles are derived from the United States Supreme Court's common benefit doctrine, as established in *Trustees v. Greenough*, 105 U.S. 527 (1881); refined in, inter alia, *Central Railroad & Banking Co. v. Pettus*, 113 U.S. 116 (1884); *Sprague v. Ticonic National Bank*, 307 U.S. 161 (1939); *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375 (1970); *Boeing Co. v. Van Gemert*, 444 U.S. 472 (1980); and approved and implemented in the MDL context, in inter alia, *In re MGM Grand Hotel Fire Litigation*, 660 F. Supp. 522, 525-29 (D. Nev. 1987); and *In re Air Crash Disaster at Florida Everglades on December 29, 1972*, 549 F.2d 1006, 1010-21 (5th Cir. 1977).

3. **Establishment of the Fund.** Co-Lead Counsel are hereby directed to establish the Fund, which shall be held through an appropriate depository or financial institution. For accounting purposes, the Fund shall hold both "Expense Funds" and "Legal Fees Funds" derived from contributions of all settlement or judgment proceeds as set forth in Paragraph 5. In establishing the Fund, the Co-Lead Counsel, subject to Court approval, shall appoint a neutral third party administrator ("Fund Administrator") of the Fund and will direct the Fund Administrator to establish an insured, interest-bearing account to receive and disburse funds as provided in this Order. The Fund Administrator shall not be a member of the MDL Leadership or otherwise counsel of record for any plaintiff in any pending, resolved or otherwise disposed Participating Case, *infra*. These funds will be held as funds subject to the discretion of the Court. No party or attorney has any individual right to any of these funds except to the extent of amounts directed to be disbursed to such person by order of the Court. These funds will not constitute the separate property of any party or attorney nor be subject to garnishment or attachment for the debts of any party or attorney except when and as directed to be disbursed as

provided by order of this Court to a specific person. These limitations do not preclude a party or attorney from transferring, assigning, or creating a security interest in potential disbursements from the Fund if permitted by applicable state laws and if subject to the conditions and contingencies of this Order, provided, however, that no notice of lien or security interest in said disbursement or of a transfer or assignment of a right of said disbursement shall be effective except upon a filing in this Court or upon notice to the Fund Administrator and the MDL Leadership made by certified mail, return receipt requested.

In connection with his or her duties, the Fund Administrator shall:

- a. Have all such power and authority over such funds as necessary or convenient to exercise the authority granted herein;
- b. Keep and report periodically to the Executive Committee and this Court an aggregate accounting of the funds received, maintained and disbursed;
- c. Have the authority to instruct the Escrow Agent with respect to permitted investments of said such funds;
- d. Make decisions and take action with respect to treatment of such funds for purposes of compliance with the Internal Revenue Code and any applicable local or federal tax codes, including creating, maintaining and reporting such funds and the income, if any, derived therefrom as in a Qualified Settlement Fund ("QSF") or such other entity as he or she deems appropriate;
- e. Have the authority, subject to Court approval, to procure, upon consultation with and direction of the Co-Lead Counsel, professional accounting, legal and other services for the purposes of carrying out the tasks described in this Order, and to be reimbursed for the expenses for such services; and to adopt and implement reasonable procedures consistent with this Order and in consultation with Co-Lead Counsel.

The Fund Administrator, subject to Court approval, shall designate an escrow agent ("Escrow Agent"). The Escrow Agent shall be a commercial bank that: (1) has deposits insured by the Federal Deposit Insurance Corporation; (2) is organized under the laws of The

United States of America or any state thereof; and (3) has a total risk-based capital in excess of \$2 billion and meets the minimum risk-based ratios established under the Federal Deposit Insurance Corporation Improvement Act of 1991. The Escrow Agent pursuant to an escrow agreement with reasonable terms to be negotiated by the parties, may act as a paying agent, depository, custodian, or trustee with respect to the funds it holds. The Escrow Agent shall keep detailed records of all deposits and withdrawals and prepare tax returns and other tax filings in connection with the Fund.

The Fund Administrator shall consider, in designating an Escrow Agent and in procuring professional services, the charges the Escrow Agent or provider of professional services will impose for its actions and the ability of the Escrow Agent or provider of professional services to undertake the tasks called for with efficiency and responsiveness.

In connection with his or her services, the Fund Administrator shall be entitled to be paid reasonable fees and to be reimbursed for all reasonable expenses when and as approved by the Court, and he or she shall submit quarterly detailed statements to this Court with copies to Co-Lead Counsel. Such quarterly or other statements shall not include or disclose confidential information to any party.

4. **Applicability of Order.** This Order shall apply to the resolution of all cases pending, or later filed in, transferred to, or removed to, this Court and treated as part of this MDL 2741 for coordinated proceeding, and to their counsel, and to all plaintiffs' and claimants' cases maintained by such counsel. This Order further applies to all plaintiffs or other claimants from other non-MDL 2741 proceedings and their counsel who voluntarily submit to this Court's jurisdiction or agree to be bound by the terms of this Order in return for MDL work product. All such plaintiffs and claimants, and their counsel, as stated above and to whom this Order applies shall be referred to herein as a "Participating Case." "Participating Counsel" shall include any attorney with a Participating Case and shall also include all Co-Lead Counsel, Executive Committee Members, Plaintiff Steering Committee Members, and Plaintiffs' Liaison Counsel (collectively, "MDL Leadership") and any other plaintiffs' attorneys who have cases pending

now or in the future in MDL 2741. With respect to Participating Counsel, all of their Roundup cases resolved by Monsanto Company, or in which a judgment is entered against Monsanto Company, whether filed in state court, or not filed, shall be considered a Participating Case, thereby subjecting claimants and all counsel associated to each of those cases to this Order. The Court shall have jurisdiction to assess all Participating Cases, including all such other plaintiffs' and claimants' cases, whether filed or unfiled, that are maintained or held by a law firm or attorney with at least one Participating Case.

Every 30 days, the MDL Leadership shall provide a list of then-known Participating Cases, including the name of each plaintiff and his or her attorney, to the Fund Administrator, Monsanto's counsel, and the Court. MDL Leadership must also make this list available to Participating Counsel.

The Court recognizes the jurisdictional rights and obligations of the state courts to conduct their state court litigation as they so determine and that the state court litigations include counsel who are Participating Counsel. This Order shall not be cited by Participating Counsel in any other court in support of a position that adversely impacts the jurisdictional rights and obligations of the state courts and state court Participating Counsel.

5. **Assessment.** Each Participating Case in which a judgment is entered or in which a resolution is reached shall be assessed for common benefit work and costs on a percentage of the gross monetary recovery. The Common Benefit assessment percentage will be determined in a subsequent order of this Court, and will be based on the specific circumstances of this litigation, including but not limited to the level of expenses and the value of the work being done by the MDL Leadership.

The Fund Administrator shall keep a detailed accounting of the allocations. The cost hold back portion shall be allocated to pay and/or reimburse the common benefit expenses that have been and/or will be incurred pursuant to Exhibit 1 for the common benefit of Plaintiffs in MDL 2741 ("Expense Funds"). The common benefit work hold back shall be allocated to pay and/or reimburse fees for legal services that have been and/or will be provided by attorneys for

the common benefit of Plaintiffs in MDL 2741 ("Legal Fees Funds") pursuant to Exhibit 1. All expenses and legal services shall be at the direction of and written authorization by Co-Lead Counsel or the Executive Committee in order to be considered for reimbursement from these funds subject to Court approval. The MDL Leadership may apply to the Court for an additional hold back, against Participating Cases that have not been settled at the time of such an application, including if additional funds are needed for reimbursement of the expenses that have been and/or will be incurred at the direction of Co-Lead Counsel or the Executive Committee for the common benefit of Plaintiffs in MDL 2741, which shall be granted upon a showing of good cause.

6. **Payment to the Fund.** For any and all Participating Cases, after all conditions to the resolution of a case have been completed to Defendant's satisfaction, Defendant shall confidentially deposit directly into the Fund the percentage of the gross monetary recovery as set forth in Paragraph 5 of this Order applicable to a specific case. Simultaneous with distributing the remaining (non-assessed) monies to Participating Counsel, Defendants shall send a letter to Co-Lead Counsel via U.S. Mail and E-Mail confirming compliance with this Order. In the confirming correspondence, no disclosure shall be made as to the amount or terms of the settlement reached or the amount of the deposit. Rather, the letter shall just note compliance with this Order. Any and all information concerning the amount of any deposit into the Fund shall be kept strictly confidential by the neutral Fund Administrator and shall never be disclosed to any member of the MDL Leadership and/or any other attorney involved in the Multi-District Litigation (other than the attorneys involved directly in the settled action). No orders of dismissal for any Participating Case shall be filed unless accompanied by a certificate of compliance with this Order.

7. **Expense Fund.** The Co-Lead Counsel, in consultation with the Executive Committee, subject to prior Court approval, shall exercise reasonable discretion to distribute the Expense Funds in the Trust Account on an ongoing basis, when such funds are present in such account, to pay for and/or reimburse the expenses that have been and/or will be included at the

direction of Co-Lead Counsel or the Executive Committee for the common benefit of Plaintiffs in MDL 2741. If any of the Expense Funds remain in the Fund after all of the Participating Cases have been resolved and dismissed, such remaining funds shall be reimbursed on a pro rata basis to all plaintiffs and claimants that paid a common benefit assessment, minus any reasonable administrative fees paid. The Executive Committee will provide the Court with an accounting, under seal, of the Expense Funds in the Trust Account upon request of the Court.

8. **Legal Fees Fund.** The Legal Fees Funds shall not be distributed without a Court Order expressly permitting such a distribution. Participating Counsel are eligible for reimbursement for time and efforts expended for common benefit work, if said time and efforts are pursuant to Exhibit 1 of this Order, which exhibit is fully incorporated into this Order, and: (a) for the common benefit; (b) were at the direction of Co-Lead Counsel or the Executive Committee; and (c) ultimately approved by the Court. Participating Counsel shall maintain appropriate documentation and records of their time and expenses as set forth in the guidelines attached hereto as Exhibit 1. Co-Lead Counsel may develop and circulate to Participating Counsel additional guidelines and criteria for time and expenses that are eligible for compensation from the Fund.

9. **Accounting.** Co-Lead Counsel shall maintain in MDL 2741 a periodic accounting of the aggregate common benefit expenses that have been submitted for the common benefit of all Plaintiffs in this proceeding. The periodic accounting shall be maintained as part of the joint prosecution of the Participating Cases and constitute Plaintiffs' work product. Reasonable work required to maintain the MDL 2741 accounting will be compensable as common benefit work, so long as it meets the criteria set forth in this Order and Exhibit 1.

**IT IS SO ORDERED.**

Dated: February 22, 2017

  
\_\_\_\_\_  
VINCE CHHABRIA  
United States District Judge

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

IN RE: ROUNDUP PRODUCTS  
LIABILITY LITIGATION

MDL No. 2741  
Case No. 16-md-02741-VC

This document relates to:  
  
ALL ACTIONS

**PRETRIAL ORDER NO. 12, EXHIBIT 1**

**EXHIBIT 1 TO  
ORDER ESTABLISHING A COMMON BENEFIT FUND TO COMPENSATE AND  
REIMBURSE ATTORNEYS FOR COSTS AND EXPENSES INCURRED AND  
SERVICES PERFORMED FOR MDL ADMINISTRATION AND COMMON BENEFIT**

Below are guidelines regarding the submission and compensability of common benefit time and expenses. The recovery of common benefit attorneys' fees and cost reimbursements will be limited to "Participating Counsel" as defined in the Order Establishing a Common Benefit Fund to Compensate and Reimburse Attorneys for Costs and Expenses Incurred and Services Performed for MDL Administration and Common Benefit ("Order"). Eligible Counsel shall only be eligible to receive common benefit attorneys' fees and cost reimbursement if the time expended, costs incurred and activity in question were: (a) for the common benefit; (b) at the direction of and appropriately authorized by a Co-Lead or the Executive Committee in accordance with the Court's Order regarding common benefit; (c) timely submitted; and (d) approved by this Court.



Eligible Counsel who seek to recover Court-awarded common benefit attorneys' fees and expenses in connection with this litigation, should the litigation result in any monetary award from which common benefit fees and expenses can be awarded, shall keep a daily contemporaneous record of their time and expenses, noting with specificity the amount of time, location (if relevant), and particular activity along with confirmation that authority was obtained to have undertaken that common benefit effort. Such counsel shall, by the 15th day of each month, submit a report of their time and expense records as noted above for the preceding monthly period in the attached format (see Exhibit "A"). For example, February 15 of a particular year is the deadline to submit common benefit time and expenses for January of that year. The first submission deadline is March 15, 2017, and that submission shall include all common benefit time and expenses incurred prior to February 28, 2017. Following that initial submission, the deadline will remain the 15th day of each month. The submission shall be timely e-mailed each month to: [RoundupCBSubmission@AndrusWagstaff.com](mailto:RoundupCBSubmission@AndrusWagstaff.com).

At an appropriate time, the Executive Committee may decide to hire an independent third party neutral to assist in the auditing of the common benefit submissions, if necessary. Such expense, if incurred, to be paid by the MDL Leadership.

The failure to secure prior authority to incur common benefit time and expenses, or maintain and timely provide such records or to provide a sufficient description of the activity will be grounds for denying the recovery of attorneys' fees or expenses in whole or in part. It is the sole responsibility of the Eligible Counsel submitting time to comply with these guidelines.

### **EXPENSE LIMITATIONS**

#### **A. Travel Held Expense Limitations**

Only reasonable expenses will be reimbursed for travel related to common benefit

matters performed at the direction of and authorized by a Co-Lead or the Executive Committee. Except in extraordinary circumstances approved by a Co-Lead Counsel or the Executive Committee, all travel reimbursements are subject to the following limitations:

- i. Airfare. Ordinarily only the price of a coach seat for a reasonable itinerary will be reimbursed. Business/First Class Airfare will not be fully reimbursed, except for international flights or cross-country flights, which requires prior written approval by a Co-Lead Counsel or the Executive Committee. In the event non-coach air travel is utilized, the attorney shall be reimbursed only to the extent of the full coach fare if the full coach fare for that flight is contemporaneously documented. If non-coach, private or charter travel is elected, the applicant is required to submit what the full coach fare in effect at that time was, and that is all that can be reimbursed.
- ii. Hotel. Hotel room charges for the average available room rate of a business hotel, including the Hyatt, Hilton, Intercontinental Sheraton, Westin, and Marriot hotels, in the city in which the stay occurred will be reimbursed. Luxury hotels will not be fully reimbursed but will be reimbursed at the average available rate of a business hotel.
- iii. Meals. Meal expenses must be reasonable and receipts must identify the individual(s) for whom the meal reimbursement is requested.
- iv. Cash Expenses. Miscellaneous cash expenses for which receipts generally are not available (tips, luggage handling, etc.) will be reimbursed up to \$30.00 per trip, as long as the expenses are properly itemized.
- v. Rental Automobiles. Luxury automobile rentals will not be fully reimbursed, unless only luxury automobiles were available. If luxury automobiles are selected when non-luxury vehicles are available, then the difference between the luxury

and non-luxury vehicle rates must be shown on the travel reimbursement form, and only the non-luxury rate may be claimed, unless such larger sized vehicle is needed to accommodate several counsel.

- vi. Mileage. Mileage claims must be documented by stating origination point, destination, total actual miles for each trip, reason for the trip, and the rate will be the maximum rate allowed by the IRS.

**B. Non-Travel Held Expense Limitations**

- i. Shipping, Overnight, Courier, and Delivery Charges. All claimed common benefit shipping, overnight, courier or delivery expenses must be documented with bills showing the sender, origin of the package, recipient, and destination of the package. Such charges are to be reported at actual cost.
- ii. Postage Charges. A contemporaneous postage log or other supporting documentation along with reference to the common benefit purpose must be maintained and submitted for common benefit postage charges. Such charges are to be reported at actual cost.
- iii. Telefax Charges. Contemporaneous record should be maintained and submitted showing faxes sent and received for common benefit matters. The per-fax charge is shall not exceed 50¢ per page.
- iv. In-House Photocopy. A contemporaneous photocopy log or other supporting documentation must be maintained and submitted. The maximum copy charge is 15¢ per page.
- v. Computerized Research – Lexis/Westlaw. Claims for Lexis or Westlaw, and other

computerized legal research expenses should be in the exact amount charged the firm and appropriately allocated for these research services. It is preferred that each firm track contemporaneously its computerized research work and charges in a manner that will identify the common benefit work, project, brief, and/or assignment associated with that computerized research work to any independent reviewer. Such work and expenses must be at the direction of and authorized by Co-Lead Counsel.

**C. Common Shared Expenses**

Common shared expenses including expenses paid to third party vendors, experts and consultants and other such expenses may not be reimbursed unless they have been incurred at the direction of, and authorized by Co-Lead Counsel or the Executive Committee. The Executive Committee, at their discretion, may maintain a separate cost assessment fund for payment and reimbursement of such expenses, and may prepare separate guidelines and processes for incurring and paying costs from such fund at their discretion.

**D. Verification**

The forms detailing time and expenses shall be certified by a Partner of each Eligible Counsel's law firm attesting to the accuracy of the submissions. Attorneys shall keep receipts for all expenses. Credit card receipts are an appropriate form of verification so long as accompanied by an appropriate description and a declaration under oath from counsel that work was performed and paid for the common benefit. Monthly credit card statements are appropriate if they provide sufficient itemized detail to comply with these guidelines and the Court's Order. Hotel costs must be proven with the full hotel invoice. The description of unclaimed expenses on the invoice may be redacted.

**COMMON BENEFIT WORK**

**A. Authorization for Compensable Common Benefit Work**

Authorized Common Benefit Work must be at the direction of and authorized by a Co-Lead counsel or the Executive Committee. Unless specifically and explicitly authorized in writing, no time spent on developing or processing individual issues in any case for an individual client (plaintiff or claimant) will be considered or should be submitted, nor will time spent on any unauthorized work.

Examples of authorized work that generally would be authorized by a Co-Lead Counsel or the Executive Committee and examples of what would be considered unauthorized work include but are not limited to:

- i. Depositions. If not designated as one of the authorized questioners or otherwise authorized to attend the deposition by a Co-Lead Counsel or the Executive Committee, your time and expenses shall not be considered common benefit work.
- ii. Periodic General MDL Leadership Conference Calls. These calls may be held from time to time so that individual attorneys are kept up-to-date on the status of the litigation, and participation by merely listening to such calls is not common benefit work. Each attorney has an obligation to keep themselves informed about the litigation so that they can best represent their clients, and that is a reason to listen in on those calls. On the other hand, if you lead, or participate in the call by designation of a Co-Lead Counsel or the Executive Committee, then you are working for the common benefit consistent with your leadership responsibilities by keeping other lawyers and pro se plaintiffs informed and educated about the litigation, and therefore your time will be considered for common benefit.

- iii. Periodic Status Conferences. Regular status conferences are held so that the litigation continues to move forward and legal issues are resolved with the Court.  
  
Individual attorneys are free to attend any status conference held in open court in order to keep up-to-date on the status of the litigation and participation, but attending and listening to such conferences is not common benefit work in and of itself. Each attorney has an obligation to keep themselves informed about the litigation so that they can best represent their clients. Mere attendance at a status conference will not be considered a common benefit expense or common benefit time. The attorneys designated by Co-Lead Counsel or the Executive Committee to address issues that will be raised at a given status conference or requested by Co-lead Counsel or the Executive Committee to be present at a status conference are working for the common benefit and their time will be considered for common benefit. Similarly, any attorney whose attendance at a status conference is specifically requested by the Judge for a matter of common benefit, in that case, may submit their time for evaluation as to whether such time shall be considered common benefit time.
- iv. Committee Meetings or Calls. During committee phone calls or other meetings there is a presumption that no more than two participants per firm will qualify for common benefit time, unless otherwise authorized by Co-Lead Counsel or the Executive Committee.
- v. Identification and Work Up of Experts. Eligible Counsel are encouraged to identify experts in consultation with Expert Committee as determined by the Executive Committee. If Eligible Counsel travels to and retains an expert without the knowledge and approval of the Expert Committee, they understand that their

time and expenses may not be eligible for common benefit expenses/work.

- vi. Attendance at Seminars. Attendance at seminars (i.e. AAJ Section Meetings, Mass Tort Made Perfect, Harris Martin and similar seminars and CLE) does not qualify as common benefit work or a common benefit expense unless making presentations authorized by Co-Lead Counsel or the Executive Committee. Although time spent attending PSC meetings at such seminars may be compensable, travel time and costs to and from seminars are not compensable unless separately approved by Co-Lead Counsel or the Executive Committee.
- vii. Document Review. Only document review specifically authorized by Co-Lead Counsel or the Executive Committee or a representative thereof and assigned to an attorney will be considered common benefit work. If an attorney elects to review documents that have not been assigned to that attorney by Co-Lead Counsel or the Executive Committee, that review is not considered common benefit. Contract employees may not be utilized for common benefit document review without prior written consent of Co-Lead Counsel or the Executive Committee. Descriptions associated with "document review" must contain sufficient detail to allow those reviewing the time entry to generally ascertain what was reviewed. For example, indicating the custodian, search query subject matters or number of document folders reviewed is the kind of description needed. If the document vendor retained for the case provides any report to Eligible Counsel about the time and/or substance of the document review work done, Eligible Counsel should bring any discrepancy to the attention of the

Executive Committee or its designee within thirty days of receipt of such report. Failure to timely bring any claimed discrepancy to the attention will result in the compensable document review time being presumptively deemed that which was provided by the vendor.

- viii. Review of Pleadings and Orders. Each attorney has an obligation to keep themselves informed about the litigation so that they can best represent their clients, and review of pleadings and orders is part of that obligation. Only those attorneys designated by Co-Lead Counsel or the Executive Committee to review or summarize those pleadings or orders for the MDL are working for the common benefit and their time will be considered for common benefit. All other counsel are reviewing those pleadings and orders for their own benefit and the benefit of their own clients, and the review is not considered common benefit.
- ix. Emails. Time recorded for reviewing emails, and providing non-substantive responses, generally is not compensable unless germane to a specific task being performed by the receiving or sending attorney or party that is directly related to that email. Thus, for example, review of an email sent to dozens of attorneys to keep them informed on a matter on which they are not specifically working would not be compensable. Each attorney has an obligation to keep themselves informed about the litigation so that they can best represent their clients and that is a reason to review emails to a larger group which involves a matter on which the recipient is not directly and immediately working.
- x. Review of Discovery Responses. Each attorney has an obligation to keep themselves informed about the litigation so that they can best represent their



clients and that is a reason to review discovery responses served in this litigation. Only those attorneys designated by Co-Lead Counsel or the Executive Committee to review and summarize those discovery responses for the MDL are working for the common benefit and their time will be considered for common benefit. All other counsel are reviewing those discovery responses for their own benefit and the benefit of their own clients, and the review is not considered common benefit.

- xi. Other Jurisdictions. Time spent on litigating Roundup<sup>®</sup> cases and coordination in other jurisdictions other than MDL 2741 will not be compensated unless specifically authorized in writing by Co-Lead Counsel or the Executive Committee.
- xii. Bellwether Trials. While the work-up of individual cases is not considered common benefit, in the event that a case is selected as part of bellwether trial process in the MDL or participating state court proceedings, the time and expenses in trying the case (including work authorized by Co-Lead Counsel or the Executive Committee as part of the approved bellwether process) may be considered for common benefit to the extent it complies with the other provisions of this Order and these guidelines. In the event Plaintiffs' Counsel are unsure if the action they are about to undertake is considered a common benefit action, counsel shall ask Co-Lead Counsel or the Executive Committee in writing in advance as to whether such time may be compensable.

**B. Time Keeping and Submission of Time Records**

All time must be authorized and accurately and contemporaneously maintained. Time shall be kept according to these guidelines as noted herein using the forms attached as

**Exhibit A.** Time submission is limited to attorneys and paralegals who are employees of the law firm submitting time; no submission of time or costs for independent contractors or outside clerical or technical support without prior written approval by Co-Lead Counsel or the Executive Committee. Eligible Counsel shall keep a daily record of their time spent in connection with common benefit work on this litigation, indicating with specificity the hours, location (if relevant) and particular activity (such as "conducted deposition of John Doe"). Time entries that are not sufficiently detailed may not be considered for common benefit payments. All common benefit work time for each firm shall be maintained in a tenth-of-an-hour increment.



Law Clerk	190 Other Case Assessment, Development and Administration
Paralegal	195 Travel
Investigator	210 Pleadings
Assistant	220 Preliminary Injunctions/Provisional Remedies
	230 Court Mandated Conferences
	240 Dispositive Motions
	250 Other Written Motions/Submissions
	260 Class Action Certification and Notice
	310 Written Discovery
	320 Document Production
	330 Depositions
	340 Expert Discovery
	350 Discovery Motions
	360 Document Review
	390 Other Discovery
	405 Bellwether
	410 Fact Witnesses
	420 Expert Witnesses
	430 Written Motions/Submissions
	440 Other Trial Preparation and Support
	445 Trial Communications with Opposing Counsel
	450 Trial and Hearing Attendance
	460 Post-Trial Motions and Submissions
	470 Enforcement
	475 Appeal
	485 Appellate Motions and Submissions
	495 Appellate Briefs
	498 Oral Argument at Litigation Proceedings and Trials
	510 Analysis/Strategy
	520 Communicating with Opposing Counsel
	610 Settlement/Non-Binding ADR





## Exhibit A

## Case Cost Management System Task Codes

Category	Code	Description
<b>1. Case Administration and Monitoring:</b> Administration tasks of the case, as well as monitoring emails and motions filed.	110	Fact Investigation/Development All actions to investigate and understand the facts of a matter. Covers interviews of potential common benefit witnesses, potential class representatives, or potential "bellwether" or "test case" plaintiffs, review of documents to learn the facts of the case (but not for document production, Task Code 320), work with an investigator, and all related communications and correspondence.
	130	Experts/Consultants Identifying and interviewing common benefit experts and consultants (testifying or non-testifying), working with them, and developing expert reports. Does not include preparing for expert depositions (Task Code 340) or trial (Task Code 420).
	140	Document/File Management A narrowly defined task that comprises only the processes of creating and populating document and other databases or filing systems. Includes the planning, design, and overall management of this process. Work of outside vendors in building common benefit litigation support databases should be a Shared Expense.
	150	Accounting Covers analyzing, reviewing, and corresponding regarding accounting maintained by Skorheim & Associates, AAC and related issues.
	190	Other Case Assessment, Development and Administration Presentation of common issues to other JCCP counsel at the direction of Co-Lead and Co-Liaison Counsel. Includes time not attributable to any other overall task. Specific use in a given matter often may be pre-determined jointly by Co-Liaison or Lead Counsel or the Court.
	195	Travel Travel time for attendance at depositions, hearings, status conferences or other proceedings where such attendance is approved by Co-Liaison or Co-Lead Counsel for presentation of issues related to common benefit. Travel to seminars is non-compensable unless approved by PLCL. Travel not approved by the PLCL does not constitute common benefit. If other work in this litigation is being completed during travel time, then the time spent on the other work should be classified appropriately for that work.
<b>2. Pre-Trial Pleadings and Motions:</b> Covers all pleadings and all pretrial motions and procedures other than discovery.	210	Pleadings Developing (researching, drafting, editing, filing) and reviewing complaints, answers, counter-claims and third party complaints. Also embraces orders, and motions directed at pleadings such as motions to dismiss, motions to strike, and jurisdictional motions.
	220	Preliminary Injunctions/Provisional Remedies Developing and discussing strategy for these remedies, preparing motions, affidavits and briefs, reviewing opponent's papers, preparing for and attending court hearing, preparing witnesses for the hearing, and effectuating the remedy.
	230	Court Mandated Conferences Preparing for and attending hearings and conferences required by court order or procedural rules (including Rule 16 sessions) other than settlement conferences.
	240	Dispositive Motions Developing and discussing strategy for or opposing motions for judgment on the pleadings and motions for complete or partial summary judgment, preparing papers, reviewing opponent's papers, defensive motions (e.g., motion to strike affidavit testimony, Rule 56(f) motion), and preparing for and attending the hearing.
	250	Other Written Motions/Submissions Developing, responding to, and arguing all motions other than dispositive (Task Code 240), pleadings (Task Code 210), and discovery (Task Code 350), such as motions to consolidate, to bifurcate, to remand, to stay, to compel arbitration, for MDL treatment and for change of venue.
	260	Class Action Certification and Notice Proceedings unique to class action litigation and derivative suits such as class certification and notice.

<b>3. Discovery:</b> Includes all work pertaining to discovery according to court or agency rules.	310	Written Discovery	Developing, responding to, objecting to, and negotiating interrogatories and requests to admit. Includes mandatory meet-and-confer sessions. Also covers mandatory written disclosures as under Rule 26(a) and negotiation and compilation of fact sheets.
	320	Document Production	Developing, responding to, objecting to, and negotiating document requests, including the mandatory meet-and-confer sessions to resolve objections. Includes identifying documents for production, reviewing documents for privilege, effecting production, and preparing requested privilege lists. (While a general review of documents produced by other parties falls under this task, coding and entering produced documents into a database is Task Code 140 and reviewing documents primarily to understand the facts is Task Code 110.)
	330	Depositions	All work concerning depositions, including determining the deponents and the timing and sequence of depositions, preparing deposition notices and subpoenas, communicating with opposing or other party's counsel on scheduling and logistics, planning for and preparing to take the depositions, discussing deposition strategy, preparing witnesses, reviewing documents for deposition preparation, attending depositions, and drafting any deposition summaries.
	340	Expert Discovery	Same as Task Code 330, but for expert witnesses.
	350	Discovery Motions	Developing, responding to, and arguing all motions that arise out of the discovery process. Includes the protective order process.
	360	Document Review	Reviewing, analyzing and properly coding documents from review "batches" assigned by Co-Lead and Co-Liaison firms.
	390	Other Discovery	Less frequently used forms of discovery, such as medical examinations and on-site inspections.
<b>4. Trials and Hearings:</b> Commences when Co-Liaison or Co-Lead Counsel select and determine case(s) should be put forward as a potential bellwether trial. It does not apply to any cases set for trial without the approval of Co-Liaison and Co-Lead Counsel such as a case advanced for medical or other reasons under California Code of Civil Procedure section 36, et seq. through motion for priority. Once trial begins, lawyers who appear in court presumptively should bill their court time to Task Code 450 Trial and Hearing Attendance. Litigation work outside the courtroom during this phase (e.g., evenings, weekends and the time of	405	Bellwether	PLCL approved identification, review, analysis and development of potential bellwether cases.
	410	Fact Witnesses	Preparing for examination and cross-examination of non-expert witnesses.
	420	Expert Witnesses	Preparing for examination and cross-examination of expert witnesses.
	430	Written Motions/Submissions	Developing, responding to and arguing written motions during preparation for trial and trial, such as motions in limine and motions to strike proposed evidence. Also includes developing other written pre-trial and trial filings, such as jury instructions, witness lists, proposed findings of fact and conclusions of law, and trial briefs.
	440	Other Trial Preparation and Support	All other time spent in preparing for and supporting a trial, including developing overall trial strategy, preparing opening and closing arguments, establishing an off-site support office, identifying documents for use at trial, preparing demonstrative materials, etc.
	445	Trial Communications with Opposing Counsel	Communication with opposing counsel in preparation of trial.
	450	Trial and Hearing Attendance	Appearing at trial, at hearings and at court-mandated conferences, including the pre-trial conferences to prepare for trial. For scheduling conferences that are denominated as "Pre-Trial Conferences", but not directed toward conduct of the trial, use Task Code 230.



other attorneys and support personnel), should continue to be classified using other 400 Task Codes.	460	Post-Trial Motions and Submissions	Developing, responding to and arguing all post-verdict matters in the trial court, such as motions for new trial or j.n.o.v., for stay pending appeal, bills of costs, and requests for attorney's fees.
	470	Enforcement	All work performed in enforcing and collecting judgments and asserting or addressing defenses thereto.
	475	Appeal	Covers all work on appeal or before a reviewing body.
	485	Appellate Motions and Submissions	Developing, responding to and arguing motions and other filings before a reviewing body, such as motions and other filings for stay pending appeal.
	495	Appellate Briefs	Preparing and reviewing appellate briefs.
	498	Oral Argument at Litigation Proceedings and Trials	Preparing for and arguing issues at trials, hearings and other proceedings reserved for Co-Lead and Co-Liaison Counsel; and committee chairs and committee members asked to speak or address issues by Co-Lead Counsel. Preparing for and arguing an appeal before a reviewing body.
<b>5. Analysis and Strategizing</b>	510	Analysis/Strategy	Targeted for Co-Liaison and/or Co-Lead Counsel, committee chairs and committee members that are doing common benefit work at the highest level. The thinking, strategizing, and planning for a case, including discussions, writing, and meetings on case strategy. Also includes initial legal research for case assessment purposes and legal research for developing a basic case strategy. Most legal research will be under the primary task for which the research is conducted, such as research for a summary judgment motion (Task Code 240). Once concrete trial preparation begins, use Task Code 440 for trial strategy and planning.
	520	Communicating with Opposing Counsel	Targeted for Co-Liaison and/or Co-Lead Counsel, committee chairs and committee members that are doing common benefit work at the highest level. Once concrete trial preparation begins, use Task Code 445 for communicating with opposing counsel re trial strategy and planning.
<b>6. Settlement/Non-Binding ADR</b>	601	Settlement/Non-Binding ADR	All activities directed specifically to settlement. Encompasses planning for and participating in settlement discussions, conferences, and hearings and implementing a settlement. Covers pursuing and participating in mediation and other non-binding Alternative Dispute Resolution (ADR) procedures. Also includes pre-litigation demand letters and ensuing discussions.