UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

RANDALL KING, SCOTT BUTTERFIELD ROBERT KOEHLER, MICHAEL MERX, and BRUCE WALDMAN, on behalf of themselves and others similarly situated, *Plaintiffs*, v. MONSANTO COMPANY, *Defendant*.	Case No. 4:26-cv-00813-HEA

OBJECTION TO PROPOSED CLASS ACTION SETTLEMENT AND BRIEF IN SUPPORT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

CONSTITUTIONAL PROVISIONS

OTHER AUTHORITIES

This objection is brought on behalf of seventy-two putative members of Subclass 2 of the nationwide class settlement that the Circuit Court for the City of St. Louis preliminarily approved in this matter before the matter was removed to this Court. *See* Objector Notices (attached as Exhibit 3). For the reasons set out in the ensuing brief, these Objectors lodge a targeted objection to the propriety of Subclass 2 as a settlement class, and to the propriety of the Proposed Settlement as to that class, under the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution, under Federal Rule of Civil Procedure 23, under Missouri Supreme Court Rule 52.08 (as applicable), and under the related principles that the U.S. Supreme Court articulated in its landmark decisions in *Amchem Products, Inc. v. Windsor*, 521 U.S. 591 (1997), and *Ortiz v. Fibreboard Corp.*, 527 U.S. 815 (1999).

Absent removal to this Court, Objectors would have lodged this objection in state court today pursuant to that court's Preliminary Approval Order. As other objectors have explained, this deadline—and all other deadlines and procedures imposed by that Order—should be stayed now that the matter has been removed to federal court and is awaiting transfer to the Roundup MDL in the Northern District of California. *See* Objector Defs.' Mot. To Stay, Doc. 3 (May 22, 2026); Objector Defs.' Reply in Supp. of Mot. To Stay, Doc. 51 (May 29, 2026); Putative Class Members' Mot. To Intervene To Stay, Doc. 53 (June 2, 2026). Nevertheless, to protect their rights, Objectors hereby submit their objection to the Proposed Settlement as applied to Subclass 2, accompanied by the materials required under Section VI of the Preliminary Approval Order.[1]

[1] The Preliminary Approval Order, which this Court has not yet stayed and which Objectors are therefore seeking to follow, sets no page limit for objection briefs. But if necessary, Objectors request relief from this Court's default page limits similar to what other objectors have requested. *See* Objectors' Mot. for Leave To Exceed Page Limits, Doc. 57 (June 3, 2026).

INTRODUCTION

Anyone reading this brief could be a member of Subclass 2, the so-called "Futures Class," of the proposed Class Action Settlement Agreement for Roundup claims ("Proposed Settlement") that has preliminarily been approved by a state-level trial court for the City of St. Louis. It does not matter if you regularly use Roundup as part of your job, or in your garden, or if you have never used Roundup at all. The Futures Class is defined to include (among many millions of others) people who "saw" Roundup being sprayed and who might someday suffer from a form of Non-Hodgkin lymphoma ("NHL"). Proposed Stlmt. § 2.1(a) (attached as Exhibit 1). NHL can have a latency period of 20 years or more. Someone with relatively recent Roundup exposure, therefore, might not show NHL symptoms until a decade from now. That person might also have strong evidence that his Roundup exposure caused his NHL; indeed, that evidence grows stronger every year. If that person has not opted out of the Proposed Settlement by June 4 of this year, however, he will find himself purportedly bound by the Settlement's terms from now into the 2040s. That might not be a problem for some Future plaintiffs. But for many, it will be.

The Proposed Settlement is a capped fund that Monsanto would replenish with decreasing annual payments. Those amounts will decrease only further as Monsanto receives "credits" when putative class members opt out. And much of the fund will be claimed by Subclass 1 (those already diagnosed with NHL). Settlement funds could thus be dried up, if not gone, by the time a Future plaintiff has a claim to bring under the Settlement. Even if that plaintiff instead wants to bring the claim in court, the Settlement would require him first to undergo its lengthy claims process and reject any award that might be offered. And in no event could he seek punitive damages, which Roundup plaintiffs have already won in large amounts. Under the Proposed Settlement, Future plaintiffs waive that right by failing to opt out now, no matter that they might opt out later.

This settlement structure plainly violates Objectors' and other Future plaintiffs' rights under the Due Process Clause, U.S. CONST. amend. XIV, § 1. It does so in at least three ways, all of which the U.S. Supreme Court identified thirty years ago in *Amchem Products, Inc. v. Windsor*, 521 U.S. 591 (1997), and *Ortiz v. Fibreboard Corp.*, 527 U.S. 815 (1999).

First, putative class members' interests are "not aligned." *Amchem*, 521 U.S. at 626. For the "exposure-only plaintiffs" in Subclass 2, the goal is to "ensur[e] an ample, inflation-protected fund for the future." *Id*. An ample fund is necessary to ensure adequate compensation for the wide "diversity" of potential injuries among these potential plaintiffs. *Id*. Yet "for the currently injured" in Subclass 1, "the critical goal is generous immediate payments." *Id*. This Settlement, as currently structured, does not bridge this inherent gap. The named class representatives therefore cannot adequately represent all Future plaintiffs' interests.

Second, the Proposed Settlement does not offer Future plaintiffs the minimum protections that Due Process requires, including adequate notice. The first line of this brief arguably provides better notice than most Future plaintiffs have received, insofar as it actually alerts them to their class membership. None of the Objectors here—all of whom are Future plaintiffs—even received the class notice. All were alerted to the Settlement by counsel whom they had previously retained to investigate potential Roundup claims. And even if they did receive the real class notice, the vast majority of Future plaintiffs will not opt out precisely because they are potential *future* plaintiffs with no present reason to know or care about the Proposed Settlement. *See id*. at 628.

And *third*, even if they did receive "and fully appreciate the significance of [the] class notice," Future plaintiffs do "not have the information or foresight needed to decide, intelligently, whether to stay in or opt out." *Id*. Objectors and other Future plaintiffs cannot know today whether their interests are best served by staying in, and thereby sacrificing important litigation rights for

access to a potentially inadequate settlement award, or opting out and committing to litigation when a settlement award might be adequate. The answer will depend on when they develop NHL, how aggressive their symptoms are, and several other facts that do not yet exist.

Simply put, these Objectors are not equally situated with other class members, whether the current plaintiffs in Subclass 1, other Future plaintiffs in Subclass 2, or even amongst the Objectors themselves. Members of Subclass 1 might have the information they need to know the extent of their injuries, the resulting costs, and whether the Proposed Settlement is right for them. Objectors and other Future plaintiffs do not. Under the Due Process Clause, they cannot be forced to decide whether to stay in or opt out of the Settlement until they do. These are not "professional objectors." They have serious and legitimate constitutional concerns. Indeed, under *Amchem* and *Ortiz*, their objections largely write themselves. And for similar reasons, the putative class action that underlies the Proposed Settlement violates both Rule 23 and Missouri's virtually identical class-action rule, MO. SUP. CT. R. 52.08, under which the class was preliminarily certified. *See, e.g.*, *State ex rel. Byrd v. Chadwick*, 956 S.W.2d 369, 377–80 (Mo. Ct. App. 1997) (applying *Amchem*).

That leaves two options for the Futures Class (Subclass 2). The Court could decline to certify the Futures Class or approve the Proposed Settlement as to that class, releasing all Future plaintiffs from the Settlements' terms and fully preserving their Due Process rights. That option would serve judicial economy not only because it is simple, but also because the MDL court—which has been overseeing Roundup litigation for the last decade, which has already rejected a similar settlement, and which is where this case is presumptively headed under the JPML's recent transfer order—has indicated that it will not enforce the Settlement against the Futures Class. *See* Pretrial Order No. 235, *In re Roundup Prods. Liab. Litig.*, MDL No. 2741, Doc. 13115 (N.D. Cal.

May 26, 2021) ("MDL Rejection Order"); *see also* Apr. 30, 2026 H'rg Tr. at 16:4–17, *In re Roundup* ("MDL H'rg Tr.") (attached as Exhibit 2).

Alternatively and at minimum, the Court could impose one of two conditions on final class-settlement approval. Either the Futures Class must be converted to an "opt-in" class, meaning that Future plaintiffs will not be bound by the Settlement unless they choose to be. Or the Futures Class must be provided a true back-end opt-out option, meaning that, after receiving a qualifying NHL diagnosis, Future plaintiffs can elect not to participate in the Settlement through an appropriately simple form and with no loss of rights, including the right to seek punitive damages. The structure for either change is already in place in the Settlement itself. As it stands, Future plaintiffs have six years after diagnosis to submit a claim package, or longer if the applicable state's statute of limitations allows. The Court could simply hold that submitting a claim package within that time constitutes an opt-in and that no other Future plaintiffs are bound. Or the Court could hold that Future plaintiffs also have six years (or more) after diagnosis to opt out—with no added procedural hoops and no repercussions. Either remedy would at least preserve Objectors' Due Process rights and ameliorate the related class-certification issues. Otherwise, the Court must reject the Proposed Settlement as applied to Subclass 2.

BACKGROUND

I. The Proposed Settlement Puts Future Plaintiffs to a Costly Choice

Other objectors will likely take issue with other terms in the Proposed Settlement. The following are the most relevant to the objections herein.

Membership. The overall "Settlement Class" is defined to include anyone in the country who has "been Exposed to one or more Roundup Products" before the Settlement Date (February 17, 2026). *Id.* § 2.1(a). "Exposure" is in turn defined to "mean contact with, inhalation of, ingestion

of, or absorption of any Roundup Products in connection with the Application of any Roundup Product." *Id*. § 1.1(50). But the putative class member need not actually have applied any Roundup product to be included. "Application" is defined to "mean application, preparation, mixing, Handling or use, or any other steps associated with application, *whether or not* the Settlement Class Member performed" any such "steps . . . himself or herself." *Id*. § 1.1(12) (emphasis added). Thus, the Settlement Class includes anyone exposed to Roundup who "Applied any Roundup Products," or who merely "purchased or paid for any Roundup Products or for the Application of any Roundup Products," or who "participated in, directed, or saw the Application of any Roundup Products," or who "otherwise had reason to know of their Exposure." *Id*. § 2.1(a).

This overall class is divided into two subclasses. Subclass 1 includes those class members who were "diagnosed with NHL as of the Preliminary Approval Date" (March 4, 2026). *Id*. § 2.2(a). Subclass 2, the Futures Class, includes everyone else—*i.e.*, anyone exposed to Roundup, according to the minimal thresholds discussed above, who had "not been diagnosed with NHL" as of that date. *Id*. § 2.2(b). As explained further below, people in this class might not develop NHL symptoms for over 20 years. And depending on which of the many forms of NHL they develop, treatment could be extremely expensive.

Funding. The Proposed Settlement is capped at $7.25 billion. *See id*. § 4.1(a). Subject to its unilateral right to terminate the Settlement, Monsanto would fund the Settlement through its initial payments totaling $1 billion and then through annual payments, over sixteen years, which would decrease over time from $550 million to $250 million. *See id*. §§ 4.1(b)–(c), 12.5. These amounts are not adjusted for inflation, *see id*. § 4.3, which has risen by about 50% over the last sixteen years.[2] At the same rate, the year-sixteen payment would need to be more than $375 million

[2] *See* BUREAU OF LABOR STATS., *CPI Inflation Calculator*, https://www.bls.gov/data/

to retain its current ($250 million) value. The Settlement would pay out claims for seventeen to twenty-one years, depending on the plaintiff category, with some residual funds and set-asides that Future plaintiffs generally cannot expect to receive—and thus that would only further reduce the overall Settlement funds available to those plaintiffs. *See* Proposed Stlmt. §§ 1.1(67), 1.1(104), 4.2, 4.4(g), 6.1(g), 6.12–6.15.

Claims process. To seek a settlement award, a class member must submit a Claim Form, signed under penalty of perjury, with (among much else) "information regarding timing, frequency, duration and extent of [his or her] Exposure to one or more Roundup Products," *id*. § 6.2, as well as a substantial Claim Package with document proofs of exposure and diagnosis, again among much else, *see id*. § 6.3.[3] For Futures Class members, a claim is timely if submitted within six years of a qualifying NHL diagnosis or, if longer, within the applicable state's limitations period. *See id*. § 6.1(c). But anyone diagnosed before the "Sixteenth Annual Payment Date," i.e., the date of Monsanto's last payment to fund the Settlement, must submit a claim by then. *See id*.

Potential recovery. The Settlement Administrator and Allocation Special Master will decide settlement awards by placing eligible claimants into one of nine tiers. Tiers 1 through 4 are for occupational Roundup users, whose tier placement depends on whether they were diagnosed before age 60 or between ages 60–77 and whether they suffer an aggressive or an indolent form of NHL. *See id*. § 6.6(a). The "Tier Average"—i.e., the average of the awards that Monsanto will pay to claimants within these tiers, subject to some potential adjustments by the Allocation Special Master—ranges from $165,000 for Tier 1 to $60,000 for Tier 4. *See id*. §§ 1.1(137), 6.6(a), 6.8.

---

inflation_calculator.htm (providing measurement tool).

[3] The subclasses also differ in how their members can prove a "Qualifying Diagnosis." Members of Subclass 1 can do so through a pathology report, a blood test, or "another reliable medical record." Proposed Stlmt. § 1.1(97). Members of the Futures Class can do so only through a pathology report or blood test. *See id*.

Tiers 5 through 8 are for residential Roundup users whose tier placement depends on the same factors (diagnosis before 60 or between 60–77, aggressive or indolent NHL). Tier averages range from $40,000 for Tier 5 to $20,000 for Tier 8. *See id*. § 6.6(a). And Tier 9 is for anyone diagnosed with any form of NHL after age 77, which a tier average of $10,000. *See id*.

Tier placement also determines claim priority. Settlement awards will be paid in descending Tier order based on a claimant's eligibility date. *See id*. § 6.11(b). Members of Subclass 1—i.e., the already injured—will generally be paid before any Futures Class members. *See id*. §§ 1.1(67), 1.1(70), 6.10, 6.11(c). Any eligible claimant not paid in a given year (because settlement funds ran out) will be kicked to the next year, subject to the same priority rules. *See id*. § 6.11(f). Apparently recognizing the real risk of nonpayment, eligible claimants may exit the Settlement if not paid within five years, though they lose the same rights discussed below. *See id*. § 8.1(a)(i).[4]

Notice and initial opt-out. The Settlement's deficient class notice and "bizarre" opt-out procedures have already been roundly criticized. MDL H'rg Tr. at 7:9–10 (Court: "[T]his opt-out procedure is bizarre. I've never seen anything like it."); *see also* Mot. of MDL Co-Lead Counsel for Inj. Relief re: Proposed Nat'l Roundup Stlmt., *In re Roundup*, Doc. 21962, at 2–9, 16–22 (Apr. 8, 2026); Amicus Br. of Erwin Chemerinsky in Supp. of Co-Lead Mot. for Inj. Relief, *In re Roundup*, Doc. 21976, at 6–10 (Apr. 16, 2026).

Indeed, the Settlement *penalizes* opting out. Plaintiffs' counsel may not recommend that any clients opt out, at least not if counsel hopes to get paid. No class member's attorney can collect fees under the Settlement "unless he or she represents in writing that, having exercised his or her independent judgment, he or she believes the Settlement Agreement to be fair and will make or

[4] Some other claimants may also exit if not paid by certain other deadlines, in which case the Settlement would have mainly served to delay their litigation—and strip them of their right to seek punitive damages. *See* Proposed Stlmt. § 8.1(a)(ii)–(iii).

has made best efforts to recommend the Settlement Agreement to his or her clients," and "no fees or costs [will be] distributed to any attorney who has not submitted [such] a writing." Proposed Stlmt. § 15.6. Any opt-outs can also decrease the fund for everyone else. With 650 or more opt-outs, Monsanto receives Opt-Out Credits against its payment obligations equal to the Tier Average for the tier where that claimant would have been placed (i.e., $165,000 for Tier 1), or otherwise equal to the award average for that year. *See id*. § 5.1(b). Monsanto may receive up to $60 million in credits in the Settlement's first three payment years. *See id*. § 5.4. The excess credits roll over, and, after year three, 25% of the credit amount over $60 million will be applied "against each of the Fourth through Seventh" annual payments, for which there is otherwise no credit cap. *Id*. Nor is any credit cap mentioned for the remaining nine payment years, when Monsanto is likely also to be receiving substantial Award Rejection Credits, as discussed below.

Even more penalties accrue again remaining class members—including all Futures Class members who may be unwittingly bound by the Settlement—if an opt-out plaintiff exercises his or her trial rights. If a plaintiff's lawsuit reaches discovery, Monsanto receives "an additional Payment Credit of two times" the original credit, and, if the lawsuit comes within 90 days of trial, Monsanto receives "an additional Payment Credit of six times" the original credit (up to $400 million additional credits). *Id*. §§ 1.1(1), 1.1(81), 5.1(d).[5] Monsanto may also stop funding the Settlement "[i]f more than 1,000 Settlement Class Members are relieved from their obligations under this Settlement Agreement by way of collateral attack." *Id*. § 27.4.

[5] Whereas the Proposed Settlement makes clear that credits for Award Rejectors, discussed below, do not apply until the first rejector above the threshold, all 650 opt-outs that contribute to the threshold also count toward these credits. *See* Proposed Stlmt. §§ 5.1(a)–(b), 5.2(a)–(b).

"Back-end" opt-out. The Settlement's proponents will argue that the Settlement protects Future plaintiffs' Due Process rights through a back-end opt-out right. But plaintiffs who rely on that right do so at their own significant peril.

Future plaintiffs who failed to opt out by the initial opt-out deadline (June 4, 2026) cannot simply opt out once they receive a qualifying diagnosis and become an actual plaintiff. They will be parties to the Settlement and, as such, will first be required to undergo the lengthy and detailed Claims Process discussed briefly above and throughout Section 6 of the Proposed Settlement. Once a Future plaintiff finally receives a settlement offer through that Process, he cannot simply reject the award and opt out, either. More red tape awaits. A Future plaintiff who has received a settlement offer, or an adverse determination, "may elect to reject [the offer] *only if*" he "timely requests reconsideration" *and* requests an additional award from the Extraordinary Circumstances Fund, which requires its own paperwork and which is unlikely to meaningfully increase the offer. *Id*. § 6.17. Requests for reconsideration are timely if submitted within 45 days. *See id*. § 7.1(a). The Settlement Special Master has no deadline to resolve a reconsideration request. And reconsideration proceedings will open the door for Monsanto to dispute both the award and the attorney's fees—including because Monsanto has come to doubt the veracity of counsel's forced oath that, in the exercise of "independent judgment," he recommended that all clients take the Settlement. *See id*. §§ 7.2, 15.6, 15.10. Anyone who fails to properly comply with these steps "shall not be eligible to be an Award Rejector," and is thus stuck with the Settlement. *Id*. § 6.17.

Even after all that, there is one significant right that an Award Rejector can never get back: the right to seek punitive damages. The Settlement purports to "remain a complete bar to any Claim for Punitive Damages related to any Roundup Claim asserted at any time by an Exiting Class Member." *Id*. § 8.2(a). This is after the MDL Court has already rejected a similar settlement award

because (among other reasons) it "call[ed] upon class members to make" this same "major sacrific[e]." MDL Rejection Order at 3. Juries have so far awarded plaintiffs many billions of dollars in punitive damages in cases involving Roundup, a product that Monsanto still sells—with the carcinogenic agent (glyphosate) still present in professional-grade formulas. And though some of those verdicts have been reduced on appeal to the many-millions-of-dollars range, that is still more than a given class member could hope to obtain under the Proposed Settlement, especially after sacrificing any threat of punitive damages.

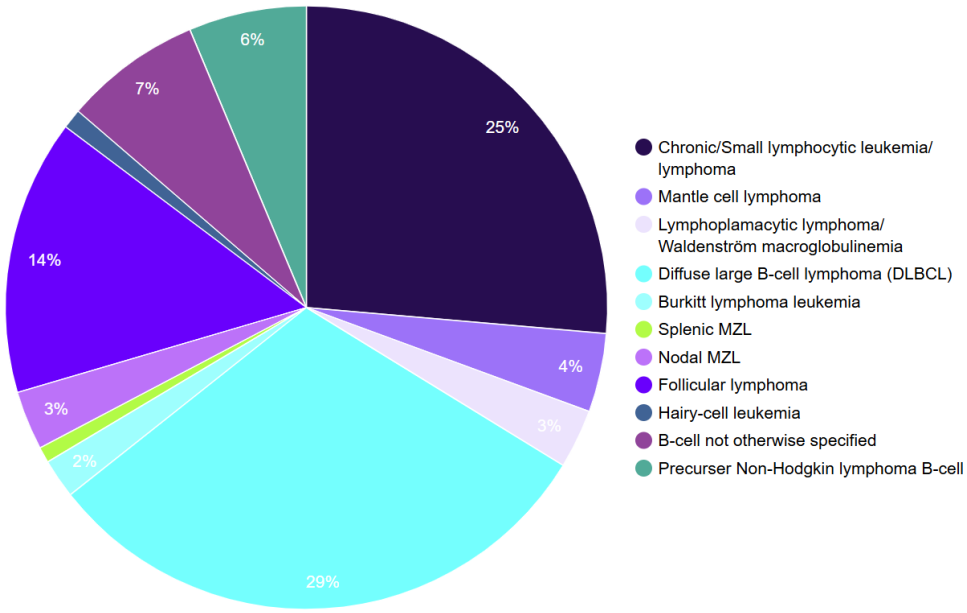
Award Rejectors can also mean more payment credits for Monsanto. If enough (over 500) Future plaintiffs reject their settlement offers—which, based on the number of initial opt-outs, over 500 certainly will—Monsanto will receive an Award Rejection Credit of 1.25 times the rejected award(s), applied against Monsanto's overall funding obligations as described above, whenever an Award Rejector seeks recovery in court. *See id*. § 5.2(b). If the suit comes within 90 days of trial, Monsanto receives "an additional Payment Credit of 3.75 times the total amount" rejected. *Id*. § 5.2(c). A rejection at even the lowest Tier Average ($10,000) could thus result in an outsized reduction in the amount Monsanto must pay for everyone else ($50,000). A rejection of just the Tier 1 *average* could result in a payment credit to Monsanto of up to $825,000, per case.

II. Future Plaintiffs Cannot Make the Choice that the Proposed Settlement Requires

NHL is not one disease, but many. No less than in Subclass 1, then, the compensable cases in the Futures Class will differ from each other in several ways, a few of which are discussed here. Yet no one in the Futures Class can know *ex ante* what kind of case theirs will be, and thus whether the Settlement might make sense for them—for example, whether they will develop manageable symptoms relatively soon, in which case the Settlement might provide acceptable compensation,

or whether they will develop more severe symptoms, and need more costly treatment, at a point when Settlement funds might be more scarce.

Most fundamentally, Future plaintiffs will differ in the *types of NHL* they eventually develop. This chart[6] shows a distribution of some (not all) NHL subtypes, with none more common than 30%:



A plaintiff's exact NHL subtype cannot be known until diagnosis and a biopsy, which, for a Future plaintiff, obviously lies in the future.[7] Different subtypes have "differing patterns of behavior and responses to treatment,"[8] which can vary by individual patient. Even those within the same subtype will experience differences. Two patients with the same broad diagnosis can face

---

[6] *See* LYMPHOMA RESEARCH FOUND., *Non-Hodgkin Lymphoma (Lymphoid Neoplasms)*, fig. 1 (May 2024), https://lymphoma.org/publication/non-hodgkin-lymphoma-lymphoid-neoplasms/#types-and-subtypes-of-nhl-34bff0 (hereinafter "LYMPHOMA RESEARCH, *Non-Hodgkin Lymphoma*").

[7] *See id*. (discussing "Diagnosis and Staging").

[8] NAT'L CANCER INST., *Indolent B-Cell Non-Hodgkin Lymphoma Treatment (PDQ®)–Health Professional Version* (May 15, 2025), https://www.cancer.gov/types/lymphoma/hp/indolent-b-cell-lymphoma-treatment-pdq ("General Information About B-Cell Non-Hodgkin Lymphoma") (hereinafter "N.C.I., *Health Professional PDQ*").

different outcomes based on several markers (e.g., stage, LDH levels, hemoglobin).[9] Molecular subtype can affect further responsiveness to therapy and chances of survival.[10]

Future plaintiffs will therefore differ in *how and when* their NHL subtype manifests. Some subtypes, generally called "indolent," grow and spread slowly, often showing few if any noticeable symptoms for many years, while "aggressive" subtypes can start showing severe symptoms soon.[11] There is thus no way to predict when a member of the Futures Class might develop NHL, which could take more than twenty years, and there currently is no widely recommended screening test.[12] Indolent subtypes can also transform into aggressive subtypes at some later point.[13] Even for many diagnosed patients, "watchful waiting" remains the standard of care.[14]

Given NHL's heterogeneity, Future plaintiffs will further differ as to *treatment*. An NHL patient might need anything from radiation therapy to chemotherapy, immunotherapy, targeted therapies, plasmapheresis, surgery, and/or stem-cell transplants.[15] It depends on the given subtype, on the disease's stage of development, and on the patient's age and overall health, among several

---

[9] *See* AM. CANCER SOC'Y, *Survival Rates and Factors That Affect Prognosis (Outlook) for Non-Hodgkin Lymphoma* (June 27, 2025), https://www.cancer.org/cancer/types/non-hodgkin-lymphoma/detection-diagnosis-staging/factors-prognosis.html ("Prognostic factors for non-Hodgkin lymphoma") (hereinafter "A.C.S., *Survival Rates*").

[10] *See* NAT'L CANCER INST., *Genetics and Pathogenesis of Diffuse Large B Cell Lymphoma* (Apr. 12, 2018), https://gdc.cancer.gov/about-data/publications/DLBCL-2018 (hereinafter "N.C.I., *Genetics and Pathogensis*").

[11] NAT'L CANCER INST., *Non-Hodgkin Lymphoma Treatment (PDQ®)–Patient Version* (Aug. 22, 2024), https://www.cancer.gov/types/lymphoma/patient/adult-nhl-treatment-pdq ("Non-Hodgkin lymphoma can be indolent or aggressive") (hereinafter "N.C.I., *Patient PDQ*").

[12] AM. CANCER SOC'Y, *Can Non-Hodgkin Lymphoma Be Found Early?* (Feb. 15, 2024), https://www.cancer.org/cancer/types/non-hodgkin-lymphoma/detection-diagnosis-staging/detection.html.

[13] One study found a 30% risk of such transformation within ten years of diagnosis. *See* N.C.I., *Health Professional PDQ* ("Treatment of Indolent, Recurrent B-Cell Non-Hodgkin Lymphoma").

[14] *See, e.g.*, *id*. ("Therapeutic approaches" for Indolent B-Cell Non-Hodgkin Lymphoma).

[15] *See* N.C.I., *Patient PDQ* ("Treatment Option Overview").

other things.[16] Some patients will need intensive therapy immediately after diagnosis while others will need little. For Future plaintiffs with recurrent aggressive B-cell NHL, treatment can escalate to CAR T-cell therapy, which is costly, highly intensive, and carries its own risks.[17] Future plaintiffs thus will have drastically different treatment burdens. And a significant percentage of NHL patients relapse, sometimes many years after treatment.[18]

These treatments can have many serious side effects, creating still more variety among the Future plaintiffs and their potential medical bills. Side effects include heart problems, infertility, loss of bone density, neuropathy, and various second cancers, such as lung cancer, brain cancer, kidney cancer, bladder cancer, melanoma, and acute myeloid leukemia.[19] Patients can remain at significantly higher risk of developing one of these second cancers for as long as three decades after an NHL diagnosis.[20] And for those who will need it, longer-term treatments can, among other things, impair immunity and increase the risk of other diseases (e.g., pneumonia or meningitis).[21] Further questions will arise over whether Medicare, Medicaid, or another insurer will cover some of these treatments, which then affects the recovery liens that different plaintiffs will later face.

Future plaintiffs will also differ in their ultimate *prognosis*. The differences among NHL subtypes affect disease phenotype, response to therapies, and, thus, survival.[22] Indeed, outlooks

---

[16] *See* LYMPHOMA RESEARCH, *Non-Hodgkin Lymphoma* ("Treatment Options").

[17] *See* NAT'L CANCER INST., *Aggressive B-Cell Non-Hodgkin Lymphoma Treatment (PDQ®)–Health Professional Version* (May 12, 2025), https://www.cancer.gov/types/lymphoma/hp/aggressive-b-cell-lymphoma-treatment-pdq ("Treatment of Aggressive, Recurrent B-Cell Non-Hodgkin Lymphoma").

[18] *See* N.C.I., *Health Professional PDQ* ("General Information About B-Cell Non-Hodgkin Lymphoma: Prognosis and Survival").

[19] *See* N.C.I., *Patient PDQ* ("Treatment Option Overview: Treatment for non-Hodgkin lymphoma may cause side effects").

[20] *See* N.C.I., *Health Professional PDQ* ("General Information About B-Cell Non-Hodgkin Lymphoma: Late Effects of Treatment of NHL").

[21] *See id*.

[22] *See* N.C.I., *Genetics and Pathogenesis*.

can differ widely between even the two most common NHL types: follicular lymphoma has a 5-year relative survival rate of 89% overall; for diffuse large B-cell lymphoma, the rate drops to 65%.[23] Prognosis also varies *within* subtype based on several factors (e.g., disease stage).[24]

In short, "Futures Class" is actually a misnomer. Future plaintiffs are not a unitary group. The simple fact that they have been exposed to Roundup says nothing about the nature of their potential injuries or the scope of necessary treatment. That depends on a cascade of future facts that do not yet exist, including NHL subtype, stage, molecular characteristics, patient risk profile, treatment response, and others.[25] The thing that unites Futures Class members at this point is, in fact, their lack of any of this critical information.

III. The MDL Court Has Already Indicated that It Will Not Enforce the Proposed Settlement's Impossible Choice

For the last ten years, federal Roundup litigation has been coordinated through an MDL before Judge Chhabria in the Northern District of California. And after the JPML's recent order conditionally transferring this case to the MDL, that is presumptively the court that will ultimately assess the Proposed Settlement. But wherever the Settlement ends up now, it will find its way to the MDL eventually, because some Future plaintiff will file a federal case that will be transferred there. At that point, it will likely turn out that the Settlement's restrictions were all for naught, because on at least two occasions the MDL court has indicated that it will not hold Future plaintiffs to the impossible choice that the Settlement forces them to make.

In 2021, the MDL parties proposed a settlement that would have purported to bind future plaintiffs much like the Proposed Settlement would here. Although the overall value of that other

---

[23] *See* A.C.S., *Survival Rates* ("5-year relative survival rates for NHL").

[24] *See id*. ("Prognostic factors for non-Hodgkin lymphoma").

[25] *See, e.g.*, LYMPHOMA RESEARCH, *Non-Hodgkin Lymphoma* ("Diagnosis and Staging"; "Risk Factors"; "Types and Subtypes of NHL"; "Treatment Options").

proposed settlement was lower, the class definition was not based on such a broad definition of "exposure." *See In re Roundup*, Doc. 12531-2, § 1.1(a) (Feb. 4, 2021) (proposed MDL settlement). And the other settlement would have better preserved the rights of all those who failed to learn about and opt out of the settlement in time, who would have regained their rights to pursue compensatory damages after an "Initial Settlement Period" of only four years. *See id*. § 4.4. The other settlement also offered diagnostic and other benefits that the new Proposed Settlement does not. *See id*. §§ 8.1, 10.1, 11.1.

Nevertheless, the MDL court rejected the settlement, finding that it "would accomplish a lot for Monsanto" but was "clearly unreasonable" for future plaintiffs. MDL Rejection Order at 1, 5. Among "some of the most glaring flaws with the proposed settlement," the court identified several that the new Proposed Settlement shares:

- Future plaintiffs' potential recovery was "vastly overstated," since settlement funds could "be exhausted earlier by claims from people already diagnosed with NHL." *Id*. at 2–3.

- In exchange for its "tenuous benefits," the settlement would have required "class members to make . . . major sacrifices," including to forfeit the right ever to seek punitive damages. As the MDL court noted, "punitive damages would presumably still be available because Monsanto continues to sell Roundup, and it insists on doing so without any real warning label," yet "class members—who may continue to be exposed to Roundup—would be relinquishing their punitive damages claims without knowing how egregious Monsanto's conduct will be with respect to Roundup in the future." *Id*. at 3–4 & n.3. "[B]y waiving punitive damages," class members would thus "be greatly diminishing the future *settlement value* of their claims." *Id*. at 4. That was "a lot of money to be giving up." *Id*.

- Though "bad enough on their own," these deficiencies were "exacerbated by the difficulties with effectively notifying people of the right to opt out of the class at the front end." *Id*. at 5. "If notice in this situation could ever be adequate," the MDL court said, the notice "would need to communicate the settlement's message very clearly and offer something sufficiently valuable and tangible to make it worth the potential class members' attention." *Id*. The class notice there (like the notice here) would have failed "to grab the attention of someone who has *not* been diagnosed with NHL," and thus would "potentially mislea[d] them into disregarding a message about a settlement that could substantially diminish their rights if they eventually get sick." *Id*. at 5–6; *see In re Roundup*, Docs. 12531-8 and -9 (Feb. 4, 2021) (Publication Notice and Detailed Notice); Proposed Stlmt. Exs. E & F (Proposed Settlement Class Notice and criteria for Short-Form Annual Notice).

Then as now, "[t]his is not a situation where the defendant is at risk of going bankrupt, such that only the first set of plaintiffs will be able to recover." MDL Rejection Order at 4. Monsanto's parent, Bayer, "is a massive, wealthy company, and it continues to make money specifically from Roundup sales." *Id*. And though the court recognized that "the alternative to settling—continuing to lose trials left and right—[was] not attractive" to Monsanto, that was certainly no basis to *limit* future plaintiffs' recoveries, even to the extent that this prior proposed settlement did.

As seen, the new Proposed Settlement would limit those rights even more. And the MDL court has noticed. Soon after the Settlement was preliminarily approved, the MDL plaintiffs asked the MDL court to enjoin the Settlement as to certain federal litigants. At a hearing, the court noted some of the many problems with the Proposed Settlement, including that it "all of a sudden imposes all these significant obligations on people all over the country, including people who don't even have NHL and may never have heard of Roundup," i.e., Future plaintiffs. MDL H'rg Tr. at 32:4–8 (Apr. 30, 2026). Those burdens would be grounds for a collateral attack on the Settlement once a Future plaintiff's case is filed in the MDL. And the MDL court previewed that it would agree with such a plaintiff:

> Let's just say, hypothetically, that we have somebody who, today, doesn't have NHL; right? And, you know, next year, they get NHL. And they believe that it's because they were exposed to glyphosate. And they file a lawsuit. And that lawsuit ends up in this MDL. And then Monsanto files a motion to dismiss the lawsuit on the ground that this person is covered by the Missouri settlement agreement. I mean, *the person who filed the lawsuit can articulate all the reasons why it would violate their due process rights to be bound by the Missouri settlement. And I can consider those arguments at that time. And as I sit here today, you know, I cannot imagine ruling that that person would be bound by the settlement agreement*; right? Because the settlement agreement seems to be so legally problematic.

Id. at 16:4–17 (emphasis added). Since no such challenge has arisen in the MDL to date, however, that court appropriately declined to intervene. That court simply did not have jurisdiction to review

the Settlement—yet. *See* Order, *In re Roundup*, Doc. 22031 (May 6, 2026) ("[T]he settlement agreement in Missouri state court raises many substantive and procedural concerns. . . . [E]ven if it were to receive final approval from the state trial court and then somehow survive appellate review, [the Settlement] would not prevent this Court from exercising its authority over the cases in this federal MDL. At that point, current or future plaintiffs in this MDL will be free to contend that the settlement does not bind them.").

ARGUMENT

Objectors are all Future plaintiffs. Their problem with this Settlement is straightforward. The Settlement attempts to resolve a mass tort involving complex arrays of exposures and injuries by purporting to bind so-called "future" or "exposure-only" plaintiffs, i.e., people who did not yet know whether they would be injured or, if so, how badly. The U.S. Supreme Court has confronted such settlements before. And that Court has already explained why settlements, as so structured, violate the Due Process Clause. They likewise violate the federal class-action rule, FED. R. CIV. P. 23, and Missouri's "essentially identical" class-action rule, Missouri Rule 52.08, which Missouri courts construe similarly. *Hope v. Nissan N. Am., Inc.*, 353 S.W.3d 68, 75 (Mo. Ct. App. 2011); *see Chadwick*, 956 S.W.2d at 377 & n.5 (discussing *Amchem* and noting that, though construing Missouri Rule 52.08, "we will rely heavily on cases interpreting" Federal Rule 23).

Objectors' own situations and experiences illustrate the results. Objectors know that they have been "exposed" to Roundup according to the Settlement's minimal definition of "exposure." But none of them can know what type of NHL they might develop, or when. And since they do not yet have claims, their interests are naturally not the primary drivers of the Settlement, which will largely go toward compensating the already injured. But by the same token, Objectors and other Future plaintiffs lack assurance that the Settlement will be adequate for them down the road.

And they necessarily lack the information they would need to make that assessment today. Indeed, Objectors were fortunate even to be in a position to become aware of the Settlement.

Any marginal improvements to this Settlement from those at issue in *Amchem* and *Ortiz* have not solved these problems. Future plaintiffs must be given the opportunity to opt into (rather than out of) the Settlement upon a qualifying diagnosis. Or they must have a realistic opportunity to opt out at that time, which the Settlement does not currently provide. Otherwise, the Proposed Settlement must be rejected as to the Futures Class.

I. The Proposed Settlement Violates Future Plaintiffs' Due Process Rights

If a "State wishes to bind an absent plaintiff concerning a claim for money damages or similar relief at law," such as Future plaintiffs' claims for compensatory and punitive damages, the State must at least offer "minimal procedural due process protection." *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811–12 (1985). At minimum, these protections include notice, representation, and an opportunity to opt out. *See id*. But these protections must in fact be *adequate* to preserve such plaintiffs' rights. Thus, "[t]he notice must be the best practicable, 'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" *Id*. at 812 (quoting *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314–15 (1950)). Of course, notice is only good enough if it provides the plaintiff a realistic "opportunity to remove himself from the class." *Id*. And "at all times," the "named plaintiff," i.e., class representative(s), must "adequately represent the interests of the absent class members." *Id*. Wherever that has not been the case—for example, where absent plaintiffs "had not a sufficient common interest with" the parties purporting to represent them—the Supreme Court has long held that the former cannot be bound with the latter. *See id*. at 808 n.1 (discussing *Hansberry v. Lee*, 311 U.S. 32 (1940)); *see also, e.g.*, *Juris v. Inamed Corp.*, 685 F.3d

1294, 1312 (11th Cir. 2012) (discussing the ways that putatively bound class members later can collaterally attack settlements that violate Due Process).

The Court's landmark pair of decisions in *Amchem* and *Ortiz* are built on these principles. Both decisions involved "class action[s] prompted by the elephantine mass of asbestos cases." *Ortiz*, 527 U.S. at 821. Just like here, a group of purportedly representative plaintiffs—including some who were already injured and some who were "exposure-only" (i.e., "future" plaintiffs)—worked with defendants to cage that "elephantine mass" through proposed settlements that would have bound both present and future claimants. In both cases, as in this one, "the parties agreed upon a class definition and a settlement before formally initiating litigation, and then presented the district court with the complaint, proposed class, and proposed settlement," leaving the court no "opportunity, present when a case is litigated, to adjust the class, informed by the proceedings as they unfold." *Pro. Firefighters Ass'n of Omaha v. Zalewski*, 678 F.3d 640, 647 (8th Cir. 2012) (quoting *Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1145–46 (8th Cir. 1999)) (cleaned up).

Reviewing the proposed *Amchem* settlement, the Court held that such a "sprawling" settlement class, where "[u]ntold numbers of individuals may fall within" the exposure-only group, could not be certified. 521 U.S. at 602, 622. Although the Court reached that holding under Federal Rule 23, the holding rests on considerations that the Court had long applied under the Due Process Clause: namely, issues arising from the significant "disparities among class members," which preclude the predominance and adequate representation that Federal Rules 23(a)(4) and 23(b)(3) require. *Id*. at 625. Three years later, the Court explicitly relied both on *Amchem* and on related Due Process tenets, which it summarized as the "day-in-court ideal," when rejecting the settlement proposed in *Ortiz*, 521 U.S. at 846; *see also, e.g.*, *In re Johns-Manville Corp.*, 600 F.3d 135, 156 (2d Cir. 2010) (applying "the due process concerns raised by the Supreme Court in *Amchem* and

Ortiz"). The *Ortiz* settlement would have bound future plaintiffs to its terms on a "limited fund" theory, i.e., because the total potential claims were greater than the defendant's assets, which was not the case in *Amchem* (and is not the case here). *See Ortiz*, 521 U.S. at 821; *Amchem*, 521 U.S. at 623 n.19. Yet even in that circumstance, "the inclusiveness of the class and the fairness," or unfairness, "of distributions to those within it" precluded certification. *Ortiz*, 527 U.S. at 854.

Across both decisions, the Supreme Court set out exactly why such settlements can have problems for future plaintiffs—and how to prevent them. As to the why, future plaintiffs can have "stark conflicts of interest" with those (the currently injured) who stand to benefit from the settlement immediately. *Petrovic*, 200 F.3d at 1146 (discussing *Amchem*, 521 U.S. at 626; *Ortiz*, 527 U.S. at 854–58). And when class counsel is "confined to settlement negotiations," because settlement is the putative class's sole purpose, counsel cannot "use the threat of litigation to press for a better offer," thereby increasing the risk that a court will "face a bargain proffered for its approval without benefit of adversarial investigation" or even that the parties will "put one over on the court, in a staged performance." *Amchem*, 521 U.S. at 621 (quotation marks omitted); *see Ortiz*, 527 U.S. at 848 (similarly warning against "uncritical adoption" of class definitions and settlement terms "agreed upon by the parties" in advance of filing).

When courts confront "a request for settlement-only class certification," therefore, the class requirements "designed to protect absentees"—e.g., adequate representation, fair notice, and a realistic opt-out opportunity—"demand undiluted, even heightened, attention." *Amchem*, 521 U.S. at 620. Although settlement classes can be appropriate "depending on the circumstances," *Amchem* demands "caution when individual stakes are high and disparities among class members are great." *Id*. at 625. Without heightened adherence to core class protections, the proposed class could not be certified, and the proposed settlement would violate Due Process.

None of those three core protections—representation, notice, and opt-out—are adequately available here. The absence of each is independently fatal to the Settlement as currently structured. *See Shutts*, 472 U.S. at 811–12.

First, the named class plaintiffs cannot adequately represent all Future plaintiffs because all Future plaintiffs are differently situated, even though they cannot yet know exactly how. Those differences are meaningful. As in *Amchem*, there is not only "disparity between the currently injured and exposure-only categories of plaintiffs," but also "diversity within each category." 521 U.S. at 626. Thus, at least for Subclass 2 (Future plaintiffs), there are potential conflicts both between and among settlement classes, i.e., between Subclasses 1 and 2 and within Subclass 2.

Between the subclasses, the currently injured generally have a different interest than the to-be-injured. "[F]or the currently injured, the critical goal is generous immediate payments," which "tugs against the interest of exposure-only plaintiffs in ensuring an ample, inflation-protected fund for the future." *Amchem*, 521 U.S. at 626. Being more immediate, the interests of the currently injured tend to drive the settlement. Accordingly, "the terms of the settlement" can, and the terms of this Settlement do, "reflect essential allocation decisions designed to confine compensation and to limit defendants' liability" even where, as here, the defendant has the assets to pay all claims. *Id*. at 627. The *Amchem* Court highlighted three such decisions in the settlement proposed there, which are substantially reflected in the Proposed Settlement here. The *Amchem* settlement "include[d] no adjustment for inflation." *Id*. Neither does this Settlement. "[O]nly a few claimants per year [could] opt out at the back end," a term that is somewhat improved here, though, as discussed herein, such opt-outs still face all the limitations attendant to the back-end process. And "loss-of-consortium claims [were] extinguished," a term that, if anything, has gotten worse here. *Id*. Loss-of-consortium claims would not necessarily result in high damages awards for many

plaintiffs. This Proposed Settlement extinguishes any claims for punitive damages, which have proven to be potentially significant in all cases. If the *Amchem* settlement was "extremely ambitious," so is this Settlement, to the point of fault. 20 WRIGHT & MILLER, FED. PRAC. & PROC. DESKBOOK § 77.2 (2d ed.) ("WRIGHT & MILLER").

Within the Futures Class, as *Amchem* elsewhere noted, "[m]any persons" who have only been exposed to Roundup "may not even know of their exposure, or realize the extent of the harm they may incur." 521 U.S. at 628. For all the reasons surveyed above, this problem is particularly acute when it comes to NHL. Future plaintiffs cannot know what type of NHL they will develop, how and when the disease will manifest, what type of treatments they will need, for how long, and what types of second cancers and other side effects they might develop.

To take just one example, CAR T-cell therapy can cost over $1 million, which, even with insurance, can result in substantial out-of-pocket costs—higher than any Tier Average settlement payment.[26] Over one thousand NHL patients (and possibly several thousand more) are eligible for this treatment every year.[27] Even if current trends do not increase, therefore, some not-insignificant percentage of Future plaintiffs will require CAR T-cell therapy. But, again, any given Future plaintiff cannot know whether that will be him. And thus, a Future plaintiff cannot predict whether a potential settlement payment might be reasonably sufficient. A Future plaintiff could not make an informed choice to stay in or opt out even if he hypothetically could know today that he will

---

[26] *See* AM. CANCER SOC'Y, *CAR T-Cell Therapy and Its Side Effects* (July 7, 2025), https://www.cancer.org/cancer/managing-cancer/treatment-types/immunotherapy/car-t-cell.html ("How is CAR T-cell therapy paid for?").

[27] *See, e.g.*, AM. CANCER SOC'Y, *Key Statistics for Non-Hodgkin Lymphoma* (Jan. 13, 2026), https://www.cancer.org/cancer/types/non-hodgkin-lymphoma/about/key-statistics.html (noting that roughly 80,000 people will be diagnosed with NHL in 2026); A. Haslam et al., *Estimation of Eligibility for and Response to CAR-T Therapy in the United States*, 8 BLOOD ADV. 1032 (Feb. 27, 2024), https://doi.org/10.1182/bloodadvances.2023011184 (noting that "CAR-T eligibility has grown at an approximate average of 0.6% patients per year").

not require CAR T-cell therapy in the future. Others will. And, at current trends and costs (even just 1,000 cases multiplied by up-to-$1,000,000), it is at least conceivable that resulting claims could dwarf the Settlement's annual allocations by virtue of this treatment alone, thereby delaying if not severely reducing settlement payments for everyone else.

The "exceedingly divergent interests of present and future claim holders" in this case create serious problems for the Settlement under both the Due Process Clause. *Pro. Firefighters Ass'n of Omaha*, 678 F.3d at 646. The named Future plaintiffs chosen to represent Subclass 2 presumably think the Settlement is in their individual best interests. But that is not true of *all* Future plaintiffs. Many Future plaintiffs thus lose out on the "the constitutional requirement . . . that 'the named plaintiff at all times adequately represent the interests of the absent class members.'" *Ortiz*, 527 U.S. at 848 n.24 (quoting *Shutts*, 472 U.S. at 812). That loss has manifested in all the Settlement's above-discussed shortcomings (e.g., capped and ever-dwindling funds) for Futures plaintiffs with latent but valuable claims. *See id*. at 853 (describing the "incentive to favor the known plaintiffs" in that case as "an egregious example of the conflict noted in *Amchem* resulting from divergent interests of the presently injured and future claimants").

For the same reasons, the putative class underlying this Proposed Settlement lacks the representativeness that Rule 23 and Missouri Rule 52.08 likewise require. The class also lacks ascertainability and commonality, as required under Rule 23(a) and Missouri Rule 52.08(a), let alone *predominance*, as required under Rule 23(b)(3) and Missouri Rule 52.08(b)(3)—the only provision through which the class could be certified.[28]

[28] *See, e.g.*, *Amchem*, 521 U.S. at 624 ("Given the greater number of questions peculiar to the several categories of class members, and to individuals within each category, and the significance of those uncommon questions, any overarching dispute about the health consequences of asbestos exposure cannot satisfy the Rule 23(b)(3) predominance standard."); 20 WRIGHT & MILLER § 77.2 ("[T]he common issues concerning the health consequences of asbestos exposure

It is no answer that, unlike in *Amchem* and *Ortiz*, Subclasses 1 and 2 have been divided and assigned their own counsel here. The Futures Class remains too internally divergent. All the named representatives for Subclass 2 might develop relatively mild forms of NHL, which might well give them different settlement interests than those Future plaintiffs who will develop more aggressive forms. *See Petrovic*, 200 F.3d at 1147 (noting that one problem with the settlement *In re General Motors Corp. Pick-Up Truck Fuel Tank Products Liability Litigation*, 55 F.3d 768 (3d Cir. 1995), was that none of the class representatives were "fleet owners," whose "needs . . . were much different from the needs of the individual owners"). This is not like one of those few "relatively straightforward" cases where the Eighth Circuit has found subclassing sufficient even while noting the potential "stark conflicts of interest" that *Amchem* and *Ortiz* identified. *Pro. Firefighters Ass'n of Omaha*, 678 F.3d at 647. In such cases, the causation story generally "is the same," and the relief if, if not precisely the same, at least reasonably discernable ex ante. *In re Nat'l Football League Players Concussion Inj. Litig.*, 821 F.3d 410, 428 (3d Cir. 2016).[29] In some such cases, subclasses might be coherent enough that subclassing suffices to preserve Due Process. But in this case, with such varying exposures and such divergent outcomes, the Futures Class is too broad to justify the

---

were outweighed [in *Amchem*] by the individual questions concerning class members with varying levels of exposure, from different products, over different time periods. The fact that different state laws applied to various class members further exacerbated the problem for plaintiffs."); *Smith v. Missouri Highways & Transp. Comm'n*, 372 S.W.3d 90, 94–95 (Mo. Ct. App. 2012) ("Because of the fact-specific nature of causation, personal injury cases, even those involving large numbers of plaintiffs, are rarely amenable to class action treatment." (citing *Amchem*)).

[29] *Accord, e.g.*, *Pro. Firefighters Ass'n of Omaha*, 678 F.3d at 647 (plaintiffs sought a "declaratory judgment action seeking injunctive relief"); *In re Target Corp. Customer Data Security Breach Litig.*, 892 F.3d 968, 975–76 (8th Cir. 2018) (in contrast to cases with various exposures and diseases, finding no *Amchem* problem where members of "a discrete and identified class" had all "suffered the same injury," a data breach, and "the extent of [the harm] ha[d] largely been ascertained" already) (quotation marks omitted); *Petrovic*, 200 F.3d at 1146 (similar).

serious and long-term recovery limitations that the Settlement seeks to impose. Future plaintiffs' unique interests cannot be, and have not been, adequately represented.[30]

Second, even if all Futures plaintiffs were theoretically represented in negotiations over the Settlement, they still will not receive adequate notice of the Settlement. Most Future plaintiffs will not know or have reason to know about the Settlement; after all, no Future plaintiff has a claim, at least not yet. Thus, no Future plaintiffs can be bound by the Settlement no matter how good their representation in absentia might have been.

Given its other holdings, *Amchem* did not need to go on to decide "definitively . . . whether class action notice sufficient under the Constitution and Rule 23 could ever be given to legions so unselfconscious and amorphous." *Id*. at 628. But the lower court had explained why it was not, and the Supreme Court clearly agreed, highlighting the lower court's observation that the "[i]mpediments to the provision of adequate notice . . . rendered highly problematic any endeavor to tie to a settlement class persons with no perceptible asbestos-related disease at the time of the settlement." *Id*. (citations omitted). Although the lower court also did not need to rule on the question given the other class-certification issues, the court did note its "serious concerns as to the constitutional adequacy of class notice" given that

> (1) such plaintiffs may not know that they have been exposed to asbestos within the terms of this class action; (2) even if aware of their exposure, these plaintiffs, who suffer no physical injuries, have little reason to pay attention to class action announcements; and (3) even if class members find out about the class action and realize they fall within the class definition, they lack adequate information to properly evaluate whether to opt out of the settlement.

[30] By contrast, the Bankruptcy Code' process for asbestos claims provides detailed steps and various safeguards designed to "ensur[e] that future claimants are treated identically to the present claimants." *Truck Ins. Exch. v. Kaiser Gypsum Co., Inc.*, 602 U.S. 268, 274 (2024) (discussing 11 U.S.C. § 524(g)).

Georgine v. Amchem Prods., Inc., 83 F.3d 610, 622 (3d Cir. 1996). And when rejecting the prior proposed Roundup settlement, the MDL court similarly cast serious doubt that

> an opt-out class notice could ever be adequate in a situation like this—that is, class notice that is mostly by advertisement for a massive, diffuse, and largely transient population of people who have not gotten sick and may not even know of their exposure, and therefore have no immediate interest in putting considerable effort into educating themselves on an exceedingly complex settlement agreement.

MDL Rejection Order at 5. This new Proposed Settlement does not fix any of the problems that the *Amchem* or MDL courts identified.

Since Due Process requires that class members have the opportunity to opt out and pursue their own days in court, it is critical that absent class members *actually know* of that opportunity. *See* 7AA WRIGHT & MILLER, FED. PRAC. & PROC. CIV. § 1787 (3d ed.) ("[E]ffective notice of this option is particularly important."). But advertising that option to any futures class is inherently difficult. As the MDL court observed, the uninjured have no reason to read a class notice. And even if the class notice does happen to catch their attention, it still must provide them sufficient information to determine whether to stay in or opt out—which is another hurdle in this case, since the Settlement drafters also cannot predict what form of NHL any Future plaintiffs might develop, what level of treatment they might need, and what Settlement funds will remain when they do.

To whatever extent these problems have been solved in other cases, they have not been solved here. The top of the class notice says "Attention: Farmers, Landscapers, Groundskeepers, Gardeners, and Others Exposed to Weed Killers." *See* Proposed Stlmt. Ex. 1.E at 1 (Class Notice). The mine run of residential users—a significant part of the Future class—will not think this notice has to do with them. They might be included under the terms "Gardeners" and "Others Exposed to Weed Killers," but, as familiar linguistic rules teach, these more general terms will be interpreted in line with the more occupational titles that begin the list ("Farmers, Landscapers,

Groundskeepers"). *See, e.g.*, *Cir. City Stores, Inc. v. Dir. of Revenue*, 438 S.W.3d 397, 401 (Mo. 2014) (en banc) (applying the *ejusdem generis* canon of interpretation). In any event, the rest of the 20+ pages of fine print do not provide even the level of detail briefly provided in this brief about all the aspects of disease and treatment that could affect claim value.

Granted, the class notice does inform Future plaintiffs—those who see it—about the proposed compensation tiers and other aspects of the Settlement. Yet informing plaintiffs of these tiers is not like informing class members of, for example, the possibility that their awards might be reduced by medical liens. Although lien amounts will vary by plaintiff, it is an amount that can be known and advertised to potential class members in relative detail, since plaintiffs generally can know whether Medicare, Medicaid, or another insurer covered their treatment. *See In re Nat'l Football League*, 821 F.3d at 435–36 (notice was "sufficient because [it] alerts class members to the possibility of lien reduction and refers them to the settlement where this topic is discussed in detail"). Such detail is unavailable to a Future plaintiff seeking to ballpark what settlement award he could eventually expect. Again, there are just too many variables. And of course, the notice does not mention the damages that Roundup plaintiffs have already won, including punitive damages, which could at least serve as a comparison. *See* 7AA WRIGHT & MILLER § 1787 & n.3 (adequate notice can sometimes require "[i]nformation on the projected recovery and possible costs," such as where recovery by settlement could be "drastically" lower than in litigation).

Third, and finally, the Settlement does not allow Future plaintiffs to make a fully informed decision whether to stay in or opt out—or to fully preserve their litigation rights if they choose to opt out once they do have sufficient information.

Due Process requires that any putative member of a class settlement have an opportunity to opt out of the settlement in total. And that right must be reasonably exercisable. Just as a class

notice is only as good as the information is actually conveys about opting out, an opt-out option is effective only insofar as a putative class member is "fully capable of exercising his right to 'opt out'" and thereby retain his pre-existing litigation rights. *Shutts*, 472 U.S. at 813. Indeed, when the Supreme Court declined to impose a blanket opt-*in* requirement in *Shutts*, it did so assuming that those who might wish to litigate their claims could simply be "provided with" and "execute an 'opt out' form" that "can be returned within a reasonable time to the court." *Id*. at 814–15.

Members of Subclass 1 (the currently injured) might have enough information to assess whether their claim is "important" enough—i.e., whether they might obtain substantially more in litigation than the Settlement offers—and thus to make an educated judgment about whether to stay in the Settlement. *Id*. Members of the Futures Class do not. As the Settlement is structured, they lack a right, let alone an equal right, to fully opt out. This problem exists both at the front end (when Future plaintiffs must decide whether to opt out by the initial June 4, 2026 deadline) and at the back end (when they must decide whether to opt out after a qualifying diagnosis).

At the front end, "[e]ven if they fully appreciate the significance of class notice, those without current afflictions [i.e., Future plaintiffs] may not have the information or foresight needed to decide, intelligently, whether to stay in or opt out." *Amchem*, 521 U.S. at 628. In this case, the issue is not one of "foresight" or "intelligence." It is purely one of information. Future plaintiffs cannot know, for example, whether they will develop aggressive NHL in 14 years, at which point they would be bound by the Settlement—which might be largely exhausted by then, or at least backlogged with claims still unpaid from prior years' allocations. And that is a real possibility. The $1 billion that Monsanto will pay to fund the Settlement in the first year would suffice to resolve approximately 13,000 cases at $77,500, the median of the Settlement's nine payment tiers. For the next two years, the Settlement will be funded with payments of $550 million, which would resolve

approximately 7,000 cases at the tier median. And then the annual payments start to decrease even further. *See* Proposed Stlmt. § 4.1(c). By popular count, there are about 60,000 current Roundup cases to be resolved. At these funding rates, it could reasonably be expected to take ten years, out of the sixteen years for which Monsanto has committed to fund the Settlement, just to compensate Subclass 1, who must generally be paid before the Futures Class. And all the while, Futures claims will begin to pile up, further depressing the settlement values that Future plaintiffs might expect if they develop NHL later on.

Of course, the Settlement's proponents will say, Future plaintiffs could simply opt out now. But the Settlement itself structurally disincentives them from doing so. For one thing, as the MDL court observed, the opt-out procedure is unusually onerous, posing a serious barrier to exit. *See* MDL H'rg Tr. at 7:6–25; *see also* 7AA WRIGHT & MILLER § 1787 ("It certainly would be an undue burden on class members to require them to retain counsel and prepare a formal legal document [to opt out] . . . . [C]onsiderable flexibility is desirable in determining what constitutes an effective expression of a class member's desire to be excluded and *any* written evidence of that desire should suffice.") (emphasis added; citation omitted). The Settlement also pressures Future plaintiffs' own lawyers *not* to recommend opting out. Even if opting out is in a given plaintiff's best interest, attorneys must recommend the Settlement if they hope to share any counsel fees. *See* Proposed Stlmt. § 15.6. Even so, the Settlement might in fact be a good deal for some Future plaintiffs, such as those who will develop relatively indolent forms of NHL relatively soon and who would therefore have less reason to buck inertia and undertake the opt-out process. The danger, however, is that their cancer will be aggressive, treatment will be extensive, and the Settlement will not be enough. Any given Future plaintiff simply has no way to know.

The Settlement's proponents will also point to the Settlement's "back-end" opt-out option. Such an option might work if it actually puts Future plaintiffs on the same footing that they would have in Subclass 1, e.g., with the same, full right to opt out in total that the currently injured could exercise on the front end. For example, in *Diet Drugs*, a back-end opt-out right was sufficient—despite being coupled, as here, with the loss of punitive damages—because there actually was no "'futures' problem." Even those plaintiffs who had not manifested symptoms were "aware of their exposures" and were able to detect latent injuries with available tests. *In re Diet Drugs Prods. Liab. Litig.*, 431 F.3d 141, 147 (3d Cir. 2005). Indeed, "the medical evidence overwhelmingly show[ed] that the heart conditions caused by these diet drugs are detectable *shortly after* use of the drugs ceases and that there is *no evidence* that the conditions caused by these drugs are latent." *Id*. (emphases added). Accordingly, the to-be-injured were as able to assess the value of the settlement for themselves as the already injured were. On those facts, future plaintiffs received "the due process protections necessary for the Settlement Agreement to bind them." *Id*. at 148. In fact, those plaintiffs enjoyed a sufficient front-end opt-out right *and* a back-end opt-out right.

Once again, the facts here are different. NHL has a long latency period, and there are no widely used screening tests. To give the Future plaintiffs in this case the same Due Process as the future plaintiffs in that case enjoyed, the Settlement must ensure that Future plaintiffs have at least one unencumbered opportunity to decide, with the benefit of full information, whether to opt out. Given the nature of NHL, Future plaintiffs can make that choice only at the back end (after a qualifying diagnosis), and they can enjoy Due Process only if they lose no rights should they decide to exercise their back-end opt-out option.

But that is not the case under this Settlement. To opt out at the back end, Future plaintiffs would first need to go through the Settlement's claims process, no matter how long it might take,

and no matter what hope there is of actual recovery. Even as a purely procedural matter, then, those Future plaintiffs will not be on the same footing as they would have been if they currently had the information necessary to choose whether to pursue their day in court. The requirement to undergo such additional procedures before suit is one reason why a back-end opt-out option similarly did not save the settlement in *Ortiz*, 527 U.S. at 847 n.23. Notwithstanding some improvements here, the requirement to first make a claim against an ever-dwindling fund, which might well result in an artificially depressed settlement offer, still means that plaintiffs who might later pursue litigation will not be on an equal footing with the hypothetical plaintiff who could make that choice now.

And in any event, whoever does not opt out now will never regain their full rights. Most glaringly, they lose the right ever to pursue punitive damages, even if they opt out at the back end. Punitive damages exist to deter egregious misconduct. *See, e.g.*, *Lewellen v. Franklin*, 441 S.W.3d 136, 147 (Mo. 2014) (en banc). Multiple juries have already found Monsanto guilty of egregious misconduct, and therefore subject to punitive damages, in Roundup cases. If this Settlement is approved, Monsanto will be free to continue such misconduct going forward. Whatever Monsanto might do, it will not need to fear any punitive liability from any of the thousands of Future plaintiffs who will not have opted out of the Settlement by the initial opt-out deadline, which they will not have done because the Settlement does not afford them Due Process.

In sum, and as in *Amchem*, the "settling parties" have "achieved a global compromise with no structural *assurance* of fair and adequate representation for the diverse groups and individuals affected." 521 U.S. at 627 (emphasis added). Although the "class representatives may well have thought that the Settlement serves the aggregate interests of the entire class," the Settlement's terms reveal that they did not—because they could not. *Id*. (citation omitted). The "subgroups" here are simply too various, and the "adversity among" them is simply too great. *Id*. This Settlement thus

retreads concerns that courts and scholars identified even before *Amchem*, including in scholarship that essentially foretold that decision. *See* John C. Coffee, Jr., *Class Wars: The Dilemma of the Mass Tort Class Action*, 95 COLUM. L. REV. 1343 (1995); *see also Reynolds v. Beneficial Nat. Bank*, 288 F.3d 277, 282 (7th Cir. 2002). For confirmation, the Court need look no further than the statements of the MDL court, which is more familiar with this litigation than any other and which will need to deal with the Settlement eventually. Granted, any Future plaintiffs who can establish federal jurisdiction can collaterally attack and thereby avoid the Settlement in that Court, as it has essentially invited them to do. But that is certainly no basis to *approve* the Settlement now.

II. Objectors Embody the Proposed Settlement's Problems for Future Plaintiffs

Admittedly, the Due Process principles articulated in *Amchem* and *Ortiz* might at times seem abstract. This case brings them to life.

The undersigned Objectors are seventy-two Future plaintiffs. They represent seventy-two unique fact patterns. Some Objectors sprayed premixed (i.e., "Ready-to-Use") Roundup products at their homes or places of work. Others used concentrated Roundup, a much more potent form that required them to dilute it themselves. Some Objectors used Roundup seasonally, some used it monthly, and some used it multiple times per week at various locations. Some Objectors sprayed Roundup for 30 minutes per use, others for more than two hours. Many of them used no protective equipment. Some used Roundup for five to ten years, others for more than forty.

None of these Objectors have developed NHL. And hopefully none will. But some might, and there is no way to know when, what type, or how severe it will be. Some Roundup plaintiffs who have previously won major verdicts have been heavy occupational users. *See, e.g.*, *Johnson v. Monsanto Co.*, 52 Cal. App. 5th 434, 437–40 (2020). Others have been frequent residential users. *See, e.g.*, *Hardeman v. Monsanto Co.*, 997 F.3d 941, 952 (9th Cir. 2021). Still others have been

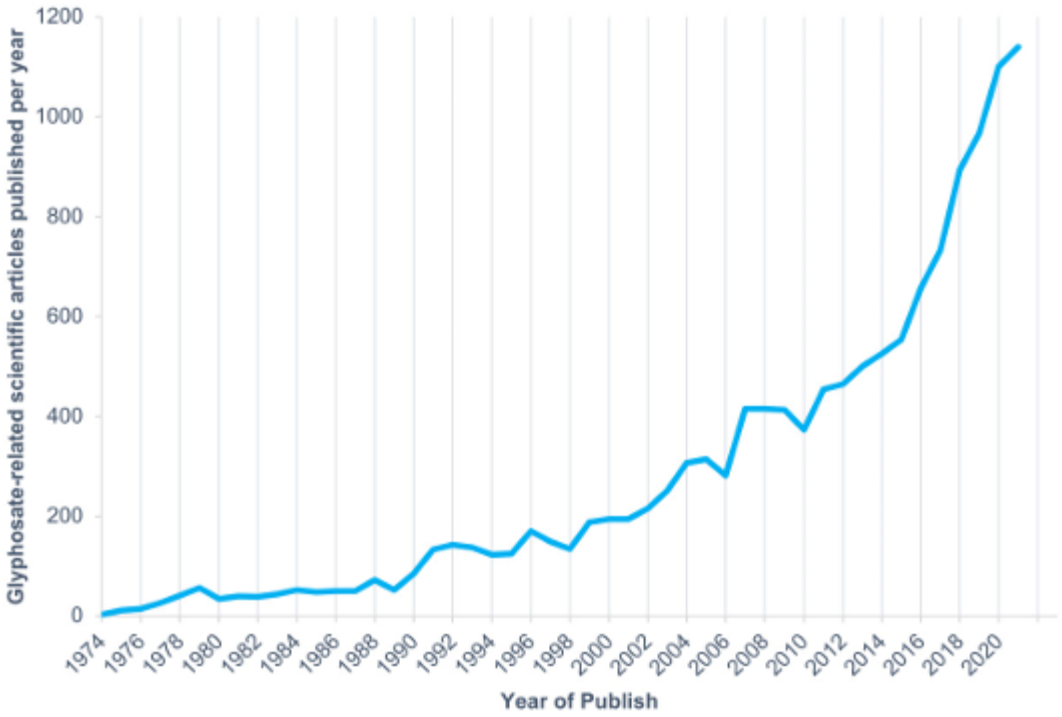
long-term but less frequent users.[31] The diversity among the undersigned Objectors matches the diversity among these plaintiffs. One Objector, for example, sprayed premixed and concentrated Roundup at home on a monthly basis, for one to two hours per application, from 1975 to 2018. Another Objector sprayed premixed and concentrated Roundup as part of a weekend landscaping job for at least eight hours per application over half a year. Other Objectors have sprayed Roundup on weekly bases at both work and home.

To be sure, some Objectors have had relatively lower levels of Roundup exposure. One was exposed to Roundup when visiting her grandparents' house throughout childhood; others used Roundup heavily for only a few years. And that is precisely the problem. Not all Future plaintiffs will warrant the giant verdicts that other Roundup plaintiffs have won. For some Future plaintiffs, and even some Objectors, the Proposed Settlement might be a fair deal and opting out might be a mistake. But perhaps one of these Objectors would be the next to win another multimillion-dollar verdict against Monsanto. Without a reliable way to predict the strengths of their claims, if any, based on their various exposures, no Objector can know which sort of case theirs will be—and, thus, whether to stay in or opt out. These Objectors cannot even know what the state of the science will be when their claims accrue. As this graph shows,[32] the sheer number of studies published per year on glyphosate (Roundup's carcinogenic agent) has risen sharply over just the last decade:

---

[31] *See, e.g.*, P.J. D'Annunzio, *Monsanto Hit with $2.25B Verdict in Philly Roundup Trial*, LAW360 (Jan. 26, 2024), *available at* https://www.klinespecter.com/wp-content/uploads/2024/05/McKivison-law360-.pdf (plaintiff "estimated that he used Roundup at least 30 times" over a period of several years "before developing cancer").

[32] *See* R. Lacroix & D. Kurrasch, *Glyphosate Toxicity:* In Vivo, In Vitro, *and Epidemiological Evidence*, 192 TOXICOLOGICAL SCI. 131, fig. 3 (Apr. 17, 2023), https://pubmed.ncbi.nlm.nih.gov/36857578/.



At that rate, the science supporting Roundup claims will almost certainly change—and very likely improve—by the time any Objector might be assessing the strength of his or her claim. Objectors simply seek to preserve their Due Process right to make that assessment with the information available at the time and without the encumbrances that the Proposed Settlement would place on them for failing to opt out before they could know they had a claim. In other words, they seek to be treated similarly to the members of Subclass 1. Those putative class members might not have full and perfect information, either. But their claims have generally accrued and must be filed at some point. So theirs is a tradeoff Due Process generally allows. Notwithstanding other objections they might lodge, the already injured can at least assess the Settlement's tier estimates in light of their existing injuries, and with informed attorney assistance, before agreeing to remain bound by the Settlement. The same is not true of Objectors or other Future plaintiffs. If an Objector opts out now but later develops NHL symptoms that can be fairly compensated with the funds available under the Settlement at that time, he will have lost out on the offer available to Subclass

1 just because he made the wrong guess about future circumstances. If an Objector does not opt out but later decides under the circumstances that litigation would be worthwhile, he will first need to undergo the Settlement's claims process, as described above, and he could never pursue punitive damages, no matter what might have happened in the meantime.

As both a formal and practical matter, then, Objectors and other Future plaintiffs do not have the same minimum rights under the Proposed Settlement as those in Subclass 1. The only reason Objectors even know about the Settlement, and find themselves amongst the relative few who were able to object under the Settlement's short deadlines, is that they used Roundup at least enough to pay attention whenever they heard about the Roundup litigation and to contact counsel to help them investigate potential Roundup claims before the Settlement existed. Their counsel then was obligated to inform Objectors about the Settlement; Objectors did not otherwise receive notice that they were members of a settlement class. The same will be true for many if not most members of the Futures Class, who could find themselves unfairly bound if the Settlement is approved as currently structured.

III. The Proposed Settlement Must Be Rejected as to Future Plaintiffs Unless They Have the Opportunity To Opt In or a Real Opportunity To Opt Out

Settlements that violate Due Process on behalf of classes that do not meet class-certification requirements cannot be approved under either the Due Process Clause or Rule 23 (or Missouri Rule 52.08). For all the reasons above, therefore, it would be improper to approve the Proposed Settlement as to Subclass 2, a.k.a. the Futures Class.

If the Court is nevertheless inclined to consider how to save the Settlement, the Court must, at a minimum, approve the Settlement only on one of two conditions. The Court should hold that the Settlement can bind Future plaintiffs only if they affirmatively opt into the Settlement after a qualifying diagnosis. Alternatively, the Court should require that Future plaintiffs receive a true

opportunity, no less than the members of Subclass 1, to opt out of the Settlement. That means that, if a Future plaintiff wishes to opt out after transforming from a Future claimant to an actual claimant (i.e., after a qualifying diagnosis), the plaintiff may do so without any loss of rights. Thus, Future plaintiffs cannot be required to participate in the Settlement's claims process before opting out; such plaintiffs cannot lose the right to seek punitive damages; and they cannot be subject to any other limitation the Settlement might currently purport place on those who opt out at the back end. Where a proposed settlement and accompanying settlement-only class violate the Constitution and applicable class-action rules, such changes are the only possible option aside from rejection. And here, one of these changes is the only way to ensure that Subclass 2 has the same opportunity not to participate in the Settlement as Subclass 1—that is, the same ability to assess whether to accept the Settlement and its sacrifices, or not, with full information.[33]

The Court is permitted to make either change. Even if classes certified under Missouri Rule 52.08(b)(3) are generally opt-out classes (as under Federal Rule 23), courts have approximated an opt-in process by requiring additional forms where necessary to protect class members in some cases, particularly "extremely large plaintiff classes seeking a damage recovery." 7AA WRIGHT & MILLER § 1787. Some courts have "require[ed] the [class] member to file a proof-of-claim form with the court, stating that the member intends to try to prove damages." *Id*.; *see also id*. n.30

[33] *See* Brian T. Fitzpatrick, *The End of Objector Blackmail?*, 62 VANDERBILT L. REV. 1623, 1664 n.151 (2009) ("I am skeptical that very many of these objectors seek to scuttle settlements altogether. For example, in the *Amchem* litigation, although the objectors complained that the prerequisites to certification had not been satisfied, the gravamen of their complaint was that some class members (those with present injuries) were getting more than others (those with future injuries). Many such complaints can be fixed by revising the settlement or at least renegotiating it under a different structure of class representation; to the extent that such problems cannot be solved in light of Rule 23, then, again, it would seem that the proper course would be to rework Rule 23 rather than allow class counsel to circumvent it."). Here the issue is more fundamental than "getting more [or less] than others." *Id*. The issue is that a Future plaintiff has no way to know how much he might get.

(discussing *Iowa v. Union Asphalt & Roadoils, Inc.*, 281 F. Supp. 391 (D. Iowa 1968), *aff'd*, 409 F.2d 1239 (8th Cir. 1969), among several other cases). Given that such a procedure "may serve an important function, the best approach is to consider the desirability of its use on the basis of the facts in each case." *Id.*; *see also* Scott Dodson, *An Opt-In Option for Class Actions*, 115 MICH. L. REV. 171 (2016) (discussing benefits of opt-in models).

On the facts of this case, a similar procedure is not only necessary, but relatively easy to implement within the Settlement's existing structure. It is necessary because Future plaintiffs do not otherwise have an adequate opportunity to opt *out*, for all the reasons discussed above. Indeed, many Future plaintiffs will find themselves bound by the Settlement by simple inertia. That has long been the acknowledged effect of default opt-out rules; many people are likely to do nothing (i.e., opt in or out), so opt-out requirements can bind people who might otherwise not have chosen to participate in a given settlement. *See* BRIAN T. FITZPATRICK, THE CONSERVATIVE CASE FOR CLASS ACTIONS at 8–12 (2019). Here, that default is exacerbated by the structural barriers to exit that this Settlement imposes. And it comes at real cost, including serious reduction in the value of claims that Future plaintiffs might assert, without the benefit of potential punitive damages, if they opt out at the back end. *See* MDL Rejection Order at 4.

This procedure would be relatively easy to implement, meanwhile, because the Proposed Settlement already requires a version of it. The Settlement currently requires Future plaintiffs to undergo its claims process even if they intend to opt out and reject any settlement award that might be offered. *See* Proposed Stlmt. § 6.17. The Court can simply hold that those who submit a claim package have sufficiently indicated their desire, on an informed basis, to pursue a Settlement

award, while those who do not submit a claim package cannot receive a Settlement award but are also not bound by any of the Settlement's terms.[34]

Alternatively and at the absolute minimum, the Court must ensure a real back-end opt-out option for all Future plaintiffs. That again would be simple: it just means attaching no additional procedure and no loss of rights to the decision to opt out at the back end rather than at the front end. Future plaintiffs must be able to exercise this opt-out option by submitting a simple opt-out form, not by subjecting themselves to the very Settlement processes they are seeking to avoid. *See Shutts*, 472 U.S. at 812; *accord, e.g.*, *Perrigo Institutional Inv. Grp. v. Papa*, 150 F.4th 206, 215 (3d Cir. 2025) ("The opt-out procedure should be simple and should afford class members a reasonable time in which to exercise their option.") (quoting MANUAL FOR COMPLEX LITIGATION (FOURTH) § 21.321 (2004)) (cleaned up). Since Future plaintiffs do not have an adequate opportunity to opt out "intelligently" at the front end, this would be the only opt-out option that would give Future plaintiffs that requisite opportunity at all. *Amchem*, 521 U.S. at 628.

CONCLUSION

The Court must reject the Proposed Settlement as to Subclass 2. Alternatively and at a minimum, the Court must order that Subclass 2 be converted to an opt-in class or that members of

[34] This remedy would at least restore Future plaintiffs' basic autonomy of choice. On the facts of this case, however, this remedy should not replace these plaintiffs' back-end opt-out right, which fairness requires be preserved, particularly if these plaintiffs are still going to be required (which they should not be) to seek reconsideration of a settlement offer before opting out later. The proof-of-claim process, where used, must supplement rather than replace adequate opt-out rights. Otherwise that process itself might unduly exclude too many claims just because plaintiffs fail to submit a timely and sufficient proof form, which Future plaintiffs lack the information needed to submit or even decide whether to submit. *See* 7AA WRIGHT & MILLER § 1787 & nn. 35–38. Such a process must provide "a reasonable period" to indicate intent, *id*. (citation omitted), which here is the time already provided by the Settlement's back-end claims process.

Subclass 2 be permitted to opt out, through a reasonably simple procedure and with no loss of any substantive rights, upon a qualifying NHL diagnosis.

Filed: June 4, 2026

By: */s/ Michael J. Gras*

Michael J. Gras #64302(MO)
Andrew F. Kirkendall* #24050882(TX)
KIRKENDALL DWYER LLP
4343 Sigma Road, Suite 150
Dallas, TX 75244
Tel: (214) 271-4027
Fax: (214) 253-0629
mgras@kirkendalldwyer.com
akirkendall@kirkendalldwyer.com

Joseph O. Masterman* #1630652(DC)
COOPER MASTERMAN PLLC
1717 Pennsylvania Avenue, N.W., Ste 1025
Washington, D.C. 20006
Tel: (202) 866-0173
Fax: (202) 888-3490
joe@coopermasterman.com

* *Pro hac vice* application forthcoming

Counsel for Objectors

CERTIFICATE OF REPRESENTATION

Pursuant to Paragraph 36 of the Preliminary Approval Order, the undersigned counsel hereby certify and declare under penalty of perjury that we represent the Subclass 2 Objectors on whose behalf this Objection is filed.

Dated: June 4, 2026

By: */s/ Michael J. Gras*
/s/ Andrew F. Kirkendall
Michael J. Gras #64302(MO)
Andrew F. Kirkendall* #24050882(TX)
KIRKENDALL DWYER LLP
4343 Sigma Road, Suite 150
Dallas, TX 75244
Tel: (214) 271-4027
Fax: (214) 253-0629
mgras@kirkendalldwyer.com
akirkendall@kirkendalldwyer.com

/s/ Joseph O. Masterman
Joseph O. Masterman* #1630652(DC)
COOPER MASTERMAN PLLC
1717 Pennsylvania Avenue, N.W., Ste 1025
Washington, D.C. 20006
Tel: (202) 866-0173
Fax: (202) 888-3490
joe@coopermasterman.com

* *Pro hac vice* application forthcoming

Counsel for Objectors

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on June 4, 2026, the foregoing was filed electronically with the Clerk of the Court and served via CM/ECF on all counsel of record.

/s/Michael J. Gras