



**NIGH GOLDENBERG
RASO & VAUGHN**

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

**In re: PARAQUAT PRODUCTS
LIABILITY LITIGATION**

Case No. 3:21-md-3004-NJR

MDL No. 3004

This Document Relates to All Cases

MEMORANDUM AND ORDER

ROSENSTENGEL, Chief Judge:

Pursuant to Case Management Order No. 8, Defendants Syngenta Crop Protection, LLC, Syngenta AG, and Chevron U.S.A., Inc., were ordered, by September 13, 2021, to “raise any defenses and objections under [Federal Rule of Civil Procedure 12\(b\)\(6\)](#) by motion, which shall collectively address the Current Actions.” ([Doc. 347](#)). Defendants timely filed motions to dismiss, arguing that many cases in this MDL are partially or fully time-barred by statutes of limitation and repose, that the public nuisance claims filed by some Plaintiffs fail to state a claim, and that Plaintiffs’ warranty and consumer protection claims must be dismissed for a variety of reasons specific to state law. (Docs. 350, 352).

Plaintiffs were ordered to respond to Defendants’ motions to dismiss by October 13, 2021. ([Doc. 347](#)). Their response, however, does not address the substance of Defendants’ arguments. ([Doc. 417](#)). Instead, they claim Defendants’ motions violate the fundamental purpose of an MDL to ensure pretrial proceedings lead to the efficient, just, and expeditious resolution of all actions. They also assert that evaluating Defendants’ arguments will require a fact-intensive review of every allegation in every complaint, which defeats a streamlined approach to the litigation. Plaintiffs submit that consideration of these arguments is more

appropriate during the bellwether stage. Thus, they ask the Court to summarily deny Defendants' motions without prejudice. Alternatively, Plaintiffs request an additional 30 days to respond to any arguments not denied as premature.

"The purpose of an MDL is multifold and includes avoidance of repetitive discovery compliance, elimination of inconsistent pretrial rulings, and conservation of resources of both the judiciary and the litigants." *Casey v. Denton*, No. 3:17-CV-00521, [2018 WL 4205153](#), at *1 (S.D. Ill. Sept. 4, 2018). In accomplishing these goals, however, an MDL court must adhere to the Federal Rules of Civil Procedure. As noted by the Sixth Circuit Court of Appeals, which the undersigned finds persuasive, "Rule 12(b) states that 'a party may assert' the defenses enumerated therein 'by motion,' which means that the district court may not refuse to adjudicate motions properly filed under that Rule." *In re Nat'l Prescription Opiate Litig.*, [956 F.3d 838, 846](#) (6th Cir. 2020). In *In re National Prescription Opiate Litigation*, the court held that the district court erred in thinking "it had authority to disregard the Rules' requirements . . . in favor of enhancing the efficiency of the MDL as a whole." *Id.* at 844. "MDLs are not some kind of judicial border country, where the rules are few and the law rarely makes an appearance." *Id.* And, as the Ninth Circuit has explained:

There is much, of course, that an MDL court can do in its sound discretion in order to manage multidistrict litigation effectively. It can designate a lead counsel. It can hold some cases in abeyance while proceeding with others. In discretionary matters going to the phasing, timing, and coordination of the cases, the power of the MDL court is at its peak. But when it comes to motions that can spell the life or death of a case, such as motions for summary judgment, motions to dismiss claims, or, as here, a motion to amend pleadings, it is important for the district court to articulate and apply the traditional standards governing such motions.

In re Korean Air Lines Co., [642 F.3d 685, 700](#) (9th Cir. 2011).

With these principles in mind, the Court declines to summarily deny Defendants'

motions to dismiss. Contrary to Plaintiffs' contention, eliminating cases strictly barred by the applicable statutes of repose, if appropriate, will conserve the resources of the parties and the Court. Further, while resolution of Defendants' warranty and public nuisance arguments may not dispose of any case in its entirety, the Court finds that narrowing the claims at issue still advances the litigation and ensures consistent pretrial rulings.

For these reasons, the Court **GRANTS** Plaintiffs' alternative motion for additional time to respond to Defendants' motions to dismiss regarding the applicable statutes of repose, Plaintiffs' public nuisance claims, Plaintiffs' warranty claims, and Plaintiffs' consumer protection claims. Specifically, Plaintiffs shall respond to the arguments made under section I.A and section II of Chevron's motion to dismiss ([Doc. 351](#)) and sections I, II, and III of Syngenta's motion to dismiss ([Doc. 352-1](#)). Plaintiffs shall file their response on or before **December 13, 2021**. Defendants may file a reply brief on or before **January 3, 2022**.

Defendants' arguments regarding the statute of limitations are **DENIED without prejudice** pending further factual development on the accrual of Plaintiffs' claims and the state discovery rules particular to those claims. *See Foss v. Bear, Stearns & Co.*, [394 F.3d 540, 542](#) (7th Cir. 2005) ("Unless the complaint alleges facts that create an ironclad defense, a limitations argument must await factual development."). Defendants may refile their motion regarding the statute of limitations at a later date.

IT IS SO ORDERED.

DATED: November 10, 2021

The image shows a handwritten signature in black ink that reads "Nancy J. Rosenstengel". The signature is written in a cursive style and is positioned above a horizontal line. To the right of the signature, there is a circular seal of the United States District Court for the District of Columbia, which is partially obscured by the signature.

NANCY J. ROSENSTENGEL
Chief U.S. District Judge