

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF CALIFORNIA

3  
4 IN RE: ROUNDUP PRODUCTS  
LIABILITY LITIGATION

MDL No. 2741

Case No. 16-md-02741-VC

5  
6 This document relates to:  
7 ALL ACTIONS

8 **PLAINTIFFS' CASE MANAGEMENT STATEMENT**

9 Pursuant to the Court's February 1, 2017 order, Plaintiffs submit this joint case  
10 management statement.

11 **PLAINTIFFS' POSITION**

12 **I. Introduction**

13  
14 Plaintiffs request that the Court order the Defendants to produce the custodial files of  
15 Monsanto employees Mark Martens, Lisa Hodge-Bell, Lisa Flagg, and Gary Klopf. Plaintiffs  
16 further request that the Court order the Defendants to produce employees Richard Garnett and  
17 Eric Haupfear for deposition. These are narrowly tailored and modest requests and are  
18 proportional to the magnitude of this litigation.

19  
20 Under Rule 26(b)(1), Parties have a joint responsibility to determine whether discovery is  
21 proportional. The Advisory Committee Notes explain that "Restoring the proportionality  
22 calculation to Rule 26(b)(1)...does not place on the party seeking discovery the burden of  
23 addressing all proportionality considerations. Nor is the change intended to permit the opposing  
24 party to refuse discovery simply by making a boilerplate objection that it is not proportional."  
25 "[F]actors that must be considered in weighing proportionality include 'the importance of the  
26 issues at stake in the action, the amount in controversy, the parties' relative access to relevant  
27 information, the parties' resources, the importance of the discovery in resolving the issues, and  
28

1 whether the burden or expense of the proposed discovery outweighs its likely benefit.’ Id.

2 Discovery need not be admissible in evidence to be discoverable. *Salazar v. McDonald's Corp.*,  
3 No. 14-CV-02096-RS (MEJ), 2016 WL 736213, at \*2 (N.D. Cal. Feb. 25, 2016).

4 The Rule 26 factors weigh heavily in favor of granting Plaintiffs’ limited requests. The  
5 importance of the issue of whether Roundup® causes cancer is immense. Since 1974, over three  
6 billion pounds of glyphosate has been sprayed in the United States alone. Benbrook, *Trends in*  
7 *glyphosate herbicide use in the United States and globally*, Environmental Sciences Europe, 28:3  
8 (2016). Approximately 275 million pounds of glyphosate were sprayed in the United States in  
9 2014. *Id.* Glyphosate is now the most widely used agricultural in the history of the world.<sup>1</sup>  
10 There is a high public interest in thoroughly exploring whether this pesticide causes cancer. The  
11 amount-in-controversy is also great. There are currently hundreds of cases filed against  
12 Monsanto in state and federal courts alleging that Roundup® causes NHL. Several thousand  
13 more cases are likely to be filed. The damages suffered by these Plaintiffs would likely exceed  
14 several billion dollars. Unfortunately, Monsanto is not forthcoming with sharing their  
15 information on Roundup® with the public. Therefore, most of the information on the health  
16 effects of Roundup® are solely within Defendants’ hands which necessitates extensive  
17 discovery. The Defendants have extensive resources as Monsanto is currently valued at 66  
18 billion dollars.<sup>2</sup> Plaintiffs will highlight the importance of each request below which  
19 demonstrates that the benefit of the discovery easily outweighs the burden.  
20  
21  
22

## 23 **II. Requested Custodial Files**

### 24 **Mark Martens:**

25  
26 <sup>1</sup> <http://www.newsweek.com/glyphosate-now-most-used-agricultural-chemical-ever-422419>

27 <sup>2</sup> <http://www.news.bayer.com/baynews/baynews.nsf/id/ADSF8F-Bayer-and-Monsanto-to-Create-a-Global-Leader-in-Agriculture>

1  
2 Mark Martens is a vital witness to this litigation, he was Monsanto's Toxicology  
3 Director, Europe/Africa from 1994 to approximately 2004. Exhibit 1 (MONGLY01870235).  
4 His job duties included "gathering (i.e. literature search, Monsanto studies, and commissioning  
5 of toxicology studies in contract laboratories), selection and interpretation of health effects data  
6 within the European regulatory context.. positioning of cancer classification issues of herbicides  
7 ... and registration defence of Monsanto's pesticides in EU member states..." *Id.* In January  
8 2002, Martens was nominated to the Monsanto Fellow's Program. It was noted that Martens  
9 strengths and contributions included:  
10

- 11 - Broad toxicology expertise, ingenuity, persuasiveness and external recognition by  
12 scientific societies and regulators
- 13 - A "hands-on" scientist who develops the strong scientific basis for regulatory  
14 decisions and for maintaining key regulatory approvals
- 15 - Consistent delivery on key scientific issues which impact/protect Monsanto 's bottom  
16 line..

17 Exhibit 2 MONGLY00905589. Among Marten's most important contributions was that  
18 he "Developed the data to gain key EU scientific support that the reported genotoxicity of  
19 Roundup herbicide was due to secondary consequences unrelated to glyphosate, thereby  
20 preventing adverse effect on Roundup business." *Id.* Certainly, Plaintiffs are entitled to get the  
21 data developed by Martens regarding the genotoxicity of Roundup® and documents relating to  
22 how that data was developed. Scientific data and contacts with scientists developed in Europe  
23 were not always shared with Monsanto U.S. employees. Exhibit 3 (MONGLY00891769) ("One  
24 of the problems with email - everyone can start running around looking for solutions. Can we  
25 keep this to a limited number of people as we have the opinions and the solutions in Europe.")

26 There are several other examples of why Dr. Martens' file is important. Of particular  
27 importance to this litigation is Mark Martens' work on the genotoxicity of Roundup®. In 1999,  
28 he was assigned to work with Dr. James Parry, a highly respected expert in genotoxicity. Dr.

1 Parry, who passed away in 2010 “was at the forefront of studies in genetic toxicology and he was  
2 the founding father of much of this discipline within the UK.” Waters, et al. *James M. Parry*  
3 *(1940–2010)* *Mutagenesis* (2011) 26 (1): 1-2. Dr. Martens’ work with Dr. Parry in 1999 left  
4 Monsanto in what was called a “genotox hole.” Exhibit 4 (MONGLY00878595). After  
5 reviewing the published literature and Monsanto’s unpublished in-house genotoxicity studies,  
6 Dr. Parry concluded that “glyphosate is a potential clastogenic *in vitro*” and that the “clastogenic  
7 activity **may** be reproduced *in vivo* in somatic cells.” Exhibit 5, p. 12 (MONGLY01314233). A  
8 clastogen is as substance that causes “structural damage of genetic material.” Exhibit 6 (Farmer  
9 Dep. Trans. 178:11-20). Dr. Parry concluded that the literature “suggests that the genotoxicity  
10 observed may be derived from the generation of oxidative damage in the presence of  
11 glyphosate.” Exhibit 5, p. 12. Sixteen years later IARC came to the same conclusion that  
12 glyphosate is genotoxic because of its ability to induce oxidative stress. Exhibit 6 at 287:6-  
13 288:6. Dr. Parry’s report has never been made public nor submitted to the EPA.

14  
15  
16 In his report, Dr. Parry recommended that Monsanto conduct multiple additional tests  
17 including the COMET assay to determine genotoxicity. *Id.* at 34. Dr. Parry noted that if an  
18 “oxidative damage mechanism is proved then it may be necessary to consider the possibility of  
19 susceptible groups within the human population” and that “if such individuals can be identified  
20 then the extent of exposure should be determined and their lymphocytes analysed for the  
21 presence of chromosome aberrations.” *Id.* at 34-35. After reading the report, Monsanto  
22 employees questioned whether he had “ever worked with industry before” and “hoped that it  
23 didn’t cost too much.” *Id.* at 37. William Heydens from Monsanto upon reading the Parry  
24 report stated they needed to find another expert because “[w]e simply aren't going to do the  
25 studies Parry suggests.” Exhibit 7 MONGLY03734971. For example, Monsanto has to date  
26 never conducted the Comet Assay on glyphosate. Exhibit 6 at 188:20-24. Plaintiffs can also find  
27 no evidence that Monsanto has ever tested the lymphocytes of agricultural works for the  
28

1 presence of chromosome aberrations.

2 Mark Marten's custodial file is important because he was the point of contact for Dr.  
3 Parry and would have in his possession all communications and studies that were sent to Dr.  
4 Parry. *See e.g.* Exhibit 5, p. 38; *see also* Exhibit 8 (MONGLY00905534)(email from Dr. Parry  
5 exclusively to Mark Martens, which was then forwarded to other employees). Emails suggest  
6 that there was data sent to Dr. Parry after his report and that there were numerous  
7 communications between Dr. Parry and Mark Martens through 2002, but these communications  
8 do not show up in the database because Plaintiffs don't have Mark Martens' custodial file.  
9 Exhibit 3; Exhibit 6 at 151:3-194:16. Searching Dr. Parry's email address in documents received  
10 to date turns up in only a handful of emails from Dr. Parry and there is no mailed correspondence  
11 subsequent to 1999. It would seemingly be to Defendants' benefit to produce Marten's file to  
12 show that Dr. Parry changed his mind with respect to the genotoxic nature of Roundup® as  
13 claimed by Dr. Farmer at her deposition. Exhibit 6 194:10-16. Currently there is no  
14 correspondence from Dr. Parry to support Donna Farmer's claim.  
15

16 Mark Martens was also the author of a paper explaining how the surfactants in  
17 Roundup® formulations increase the absorption of glyphosate in the human skin. Specifically  
18 Dr. Martens wrote:  
19

20 Surfactants are able to increase glyphosate absorption through the skin by (1)  
21 removal of lipids (sebum) from the epidermal surface due to surfactant action, (2)  
22 increase of the hydration state of the skin (under closed exposure conditions), (3) increase  
23 of skin contact (spreading of water droplets by surfactant action), (4) increase of contact  
24 time with the skin due to decrease of evaporation of water from the droplets containing  
25 surfactant (surfactant monolayer at surface of droplets slows down passage to vapour  
26 phase,) increase of sub epidermal blood flow due to irritant action of surfactant, (6) intra-  
27 epidermal and sub epidermal intercellular water accumulation due to the irritant action of  
28 the surfactant.

29 Exhibit 9, p. 3 (MONGLY01839476).

30 Plaintiffs found several draft versions of this paper in Donna Farmer's custodial file. When  
31 asked whether it was true that surfactants increase the absorption of glyphosate in human skin,

1 Dr. Farmer responded “I have no data to support that statement.” Exhibit 6, 57:4-12. When  
2 asked about the paper by Dr. Martens, Defense Counsel continually objected to the document  
3 because it was a draft paper and Dr. Farmer claimed she was unable to answer any questions  
4 about the document because she said didn’t write it and because she said it was a draft. Exhibit 6,  
5 58:17-63:3. Obviously Dr. Martens has data to support these statements and these would be in  
6 his custodial file. Plaintiffs did receive a custodial file from Christophe Gustin, another author  
7 on the document, but there was no reference to this paper in his files. Where Defendants will  
8 continue to deny that surfactants increase absorption of glyphosate in the skin, Plaintiffs need the  
9 reports of Dr. Martens and the underlying data he used to conclude that surfactants increase  
10 human exposure to glyphosate.  
11

### 12 **Lisa Flagg**

13 Lisa Flagg is part of Monsanto’s Quality Assurance Unit which monitors levels of N-  
14 nitrosoglyphosate (“NNG”) in Roundup®. Exhibit 6, 200:1-15. She is also the communication  
15 point of contact for quality control issues involving Roundup®.  
16

17 <https://www.linkedin.com/in/lisa-flagg-6576507>. There are several carcinogens in Roundup®  
18 in addition to Glyphosate. NNG is a potential carcinogen in Roundup® formulations that is  
19 formed when glyphosate interacts with nitrites [REDACTED] in  
20 the human body. Exhibit 10, pp. 14-19 (MONGLY01377215); Exhibit 11

21 (MONGLY00925905). The public will not find any reference to NNG on the Roundup® label.  
22 NNG is part of a family of carcinogenic chemicals called nitroso compounds. Nitroso  
23 compounds that have been tested have consistently been shown to be carcinogenic. Loh, et al. *N-*  
24 *nitroso compounds and cancer incidence: the European Prospective Investigation into Cancer*  
25 *and Nutrition (EPIC)–Norfolk Study*, Am J Clin Nutr May 2011, vol. 93 no. 5 1053- 061  
26

27 The EPA initially required that Monsanto test for the carcinogenicity of NNG in the 1970s  
28 and early 1980s. The testing for NNG by Monsanto was mainly conducted by IBT laboratories

1 which was shut down in the 1970s due to fraud. The EPA determined that these NNG studies  
2 were not acceptable to show that NNG was not mutagenic. Exhibit 12 (MONGLY01298438).  
3 The EPA, however, did not require additional testing on NNG provided that Monsanto keep the  
4 levels of NNG below 1 ppm. *Id.* Before getting a pass from the EPA, Monsanto did conduct one  
5 long-term carcinogenicity test of NNG in mice outside of IBT laboratories. This study  
6 demonstrated a statistically significant increase in malignant lymphomas in male mice. Exhibit  
7 13 (MONGLY04272196). Plaintiffs can't find any evidence that this study was provided to the  
8 EPA. In order to avoid the debate, Monsanto has endeavored to keep NNG levels below 1 ppm  
9 "rather than to engage in scientific debate around its biological activity." Exhibit 14  
10 (MONGLY01185582)  
11

12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED] Within the  
18 last few years, there seems to be an uptick in NNG testing at Monsanto which is why the  
19 custodial file of a current Quality Assurance employee, such as Lisa Flagg is needed. In an  
20 email dated 5/19/2014, wherein Lisa Flagg was copied, it was noted that "[w]e are completing so  
21 Much work around NNG that there is a real backlog in the number of samples we can run  
22 through the analytical system." Exhibit 16 (MONGLY03771170). Lisa Flagg is currently  
23 involved with testing of how long-term storage of glyphosate increases NNG levels. Exhibit 17  
24 (MONGLY06758730) ("I would suggest we agree in writing that 'bad results' of NNG due to  
25 accelerated ageing can be caused by the heat level and is therefore not representative for "normal  
26 ageing'.") Monsanto itself acknowledges in internal emails that NNG is indeed toxic. Exhibit 18  
27 (MONGLY03549275) (" If you talk to Kerry [Liefer, an EPA employee], I wouldn't push the  
28

1 NNG issue too hard --- don't want to draw attention to the toxicity of our product...”)

2 At Donna Farmer’s deposition, Plaintiffs asked Dr. Farmer who they should talk to in  
3 order to learn more about NNG levels in Roundup®. Dr. Farmer told Plaintiffs counsel that the  
4 Quality Assurance Unit and Lisa Flagg would know about the levels of NNG in glyphosate.  
5 Exhibit 6, 200:1-15. Plaintiffs would need Monsanto’s most up-to-date knowledge about how  
6 NNG forms in Roundup® and therefore the custodial file of Lisa Flagg, a current Quality  
7 Assurance Unit employee would be important in resolving the issue of whether Roundup® is  
8 carcinogenic.  
9

### 10 **Gary Klopf**

11 According to Monsanto discovery responses, Gary Klopf is the Team Lead, Chemistry  
12 and and/or process Technology (2000-2010; and Team Lead, Chemistry, Formulations &  
13 Delivery Technology (2010-2016). In addition to being involved with manufacturing issues  
14 such as NNG, Klopf is in charge of Surfactant Science & Formulations. *See e.g.* Exhibit 16;  
15 Exhibit 19 (MONGLY03993451). Gary Klopf actually has patents for the detection of  
16 impurities in glyphosate formulates. <http://patents.justia.com/inventor/gary-klopf>. Of particular  
17 interest to this litigation is how the Surfactants in Roundup® interact with glyphosate to increase  
18 the cancer risk to humans. One of the ingredients in surfactants is 1, 4 dioxane, which is  
19 carcinogenic in animals and likely to be carcinogenic humans.  
20

21 <https://www.atsdr.cdc.gov/phs/phs.asp?id=953&tid=199> . Reference to 1, 4 Dioxane will not be  
22 found on the Roundup label. As noted in an internal email by Monsanto employees, 1, 4  
23 Dioxane “is an impurity in the ethoxylated surfactants and not in the glyphosate manufacturing  
24 process itself” and that :  
25

26 we have to be very careful before we go slinging mud about 1,4-dioxane in Chinese  
27 glyphosate in public, because whether it is 1 ppm or 10 ppm, we most likely have it on  
28 our products too, and the general public does not understand the difference between 1  
ppm and a bucket full...if there is a chemical that is considered to be a cancer-causing, it  
don't matter how much is in there, just that it is in there!



1  
2 Exhibit 20 (MONGLY01041300). However, the surfactant manufacturers believe that 1, 4  
3 Dioxane warrants a cancer warning. Exhibit 21 (MONGLY03829270) (“there is still 1,4-  
4 dioxane, and the Prop 65 reference on our product will remain on the SURFONIC AGM-550  
5 MSDS.”)

6 One of the deficiencies in the production to date are communications and safety studies  
7 conducted by the surfactant manufacturers. Gary Klopf’s custodial file would help fill in those  
8 gaps. We know that Gary Klopf was involved with communications with Huntsman and Azko  
9 Nobel, the two main manufacturers of surfactants, because of an email chain that was eventually  
10 forwarded to Steve Adams. Exhibit 22 (MONGLY04175012). The subject of this 2013 email  
11 chain is particularly concerning because it involves Monsanto pressuring a surfactant  
12 manufacturer, Azko Nobel, to take off a Prop 65 cancer warning from their surfactant material  
13 safety data sheets, so that Monsanto can avoid a Prop 65 warning on Roundup®. *Id.* It was  
14 noted in this email that Gary Klopf or Andy Dyszlewski would approach Huntsman, the other  
15 surfactant manufacturer, to have them remove the Prop 65 warning. These communications with  
16 third party surfactant manufacturers are much less likely to appear in the current custodial files,  
17 because the custodians to date are not points of contact with these manufacturers. The data  
18 provided by these manufacturers to Monsanto would be important to resolving the issues in this  
19 case because it would help clarify the carcinogenic nature of the surfactants which compelled the  
20 surfactant manufacturers to put cancer warnings on their Material Safety Data Sheets.  
21  
22  
23

24 **Kimberley Hodge-Bell**

25 Kimberly Hodge-Bell is a known participant and orchestrator in drafting waiver requests  
26 to regulatory agencies. Ex. 23 (MONGLY0211857 (email), MONGLY02111919 (attachment)).  
27 Waiver requests ask regulatory bodies to waive certain testing/study submission requirements.  
28 Although connected to regulatory bodies, this issue is more germane to Plaintiffs’ instant case

1 concerns and begs the questions: How and why does Monsanto determine the certain adjuvants  
2 (additives) need no additional toxicity testing, such that a waiver from the agency is consistent  
3 with the adjuvant's safety?

4 Kimberly Hodge-Bell is known to monitor laboratory studies related to exploratory  
5 surfactants for the purpose of potential use in Roundup®. Ex. 24 (MONGLY02155592 (Study  
6 Report)). Surfactants and other additives that make the eventual formulated Roundup® product  
7 are important to Plaintiffs' cases as the allegations include and concern overall toxicity of the  
8 marketed Monsanto product.

9 At least five (5) Toxicology Studies relating to Roundup® ingredients were authored by  
10 Kimberly Hodge-Bell: MIRD Nos.: 48117115-48117119. It is believed that these summaries  
11 relate to toxicity findings in surfactants and are part of Monsanto's catalog of studies related to  
12 inert submissions to regulatory bodies to support Roundup® safety. Ex. 25  
13 (MONGLY05190476 (email), MONGLY05190478 (attachment) at MONGLY05190481)

14 In addition to her work with surfactants and other additives, Ms. Hodge-Bell also appears  
15 to be Monsanto's point person for dermal absorption studies. In fact, she self describes her  
16 involvements as "the St. Louis point of contact" for dermal absorption studies where she  
17 considers and analyzes the protocols and studies related to same. Ex. 26 (MONGLY05359546 at  
18 0359550 (email chain)).

19 Topically, Ms. Hodge-Bell is not duplicative of other Monsanto toxicologists. Unlike  
20 Donna Farmer and David Saltmiras, her work relates to studies of dermal exposure to the  
21 formulated product as well as toxicology studies of the adjuvant/surfactant in Roundup®.  
22 Monsanto has represented that Ms. Hodge-Bell has the same/similar function of other  
23 toxicologists – this is simply not so. Plaintiffs do acknowledge that presently, Ms. Hodge-Bell  
24 appears to hold a similar position as her counterparts, though historically, most documents of  
25 interest highlight topics and issues not yet fully produced to Plaintiffs. Production of the  
26 custodial file of Ms. Hodge-Bell will clear up any transparency and/or completeness issues of the  
27 already produced custodial files of Monsanto identified custodians, Donna Farmer, Davis  
28 Saltmiras, et al., [REDACTED]

1 [REDACTED]

2 [REDACTED]

3 **III. Requested Depositions**

4 **Richard Garnett:**

5 Richard Garnett is a vital witness to this litigation and Plaintiffs request his deposition.  
6 His custodial file contains over 80,000 documents. In addition to being a Monsanto employee,  
7 Richard Garnett is the Chairman of the Glyphosate Task Force, which is “a consortium of  
8 companies joining resources and efforts in order to renew the European glyphosate registration  
9 with a joint submission.” <http://www.glyphosate.eu/legal-notice>. The Glyphosate Task Force  
10 funded such studies as Kier & Kirkland (2013) and Greim (2015) which are going to be recurring  
11 names in this litigation. Garnett is currently also Monsanto’s Global Crop Protection  
12 Regulatory Lead. <https://be.linkedin.com/in/richard-garnett-6b986a18>. Plaintiffs would like to  
13 ask Richard Garnett how the Glyphosate Task Force developed the scientific database necessary  
14 to support Glyphosate registration in Europe.

15 Garnett has a long history of dealing with issues involving Roundup®. For example, in  
16 2002, Garnett was assigned the task of “coordinator and filter for glyphosate issues in Europe...”  
17 Exhibit 28 (MONGLY06414231). Part of his duty would be to create a team to “kill” issues  
18 related to glyphosate that popped up in the scientific literature. *Id.* This job was created in  
19 response to the Sea Urchin study which showed that the Roundup® ingredients acted  
20 synergistically to affect cell cycle regulation. Marc, et al. *Pesticide Roundup provokes cell*  
21 *division dysfunction at the level of CDK1/cyclin B activation*, Chem Res Toxicol. 2002  
22 Mar;15(3):326-31. This email was not forwarded to any U.S. employees who have been  
23 deposed. Richard Garnett was also key to managing issues with the toxicity of surfactants that  
24 have regularly arisen in Europe, but not the United States. In 2008, Garnett was in charge of  
25 protecting “tallow amine formulations” in Europe and to counter allegations of “synergistic  
26 effects of tallow amine with glyphosate.” Exhibit 29 (MONGLY06449761). Monsanto uses  
27 tallow amine as a surfactant in both Europe and the U.S., but Europe has been more vigilant in  
28 regulating this toxic chemical which is being banned later this year. Exhibit 6 at 79:13-80:19.

1 Plaintiffs would like to ask how Monsanto went about killing safety issues about glyphosate that  
2 were raised by European scientists and how they went about protecting tallow amine in Europe.  
3 Plaintiffs would further like to examine Richard Garnett on what scientific data caused Europe to  
4 ban Tallow Amine.

5 Richard Garnett was also involved with issues of the absorption of glyphosate into human  
6 skin. Plaintiffs' counsel attempted to ask David Saltmiras at deposition about the dermal  
7 absorption and excretion of Roundup, but Dr. Saltmiras did not seem to have all of the data.

8  
9 Plaintiffs Counsel: [Y]ou're aware that it's more appropriate to measure -- the excretion  
10 [of glyphosate] is significantly more in the feces than in the urine for dermal absorption  
of Roundup, right?

11 Saltmiras: There is no scientific basis for saying that glyphosate absorbed through the  
12 skin is found in the feces. That's utter nonsense. I don't know where you're coming up  
with this.

13 Exhibit 30, 250:11-251:12. Plaintiffs' question, however, was not utter nonsense and Plaintiff  
14 came up with the question from an email of Richard Garnett. Richard Garnett, in a 2008 email,  
15 states that:

16  
17 The movement of glyphosate in the blood flow from dermal contact, is different to that  
18 through oral or intravenous exposure. The little data we have suggests that the excretion  
is significantly more through the faeces than the urine.

19 Dermal exposure is the greatest risk of exposure for operators. Therefore, we need to be  
20 secure on the ADME of such exposure.

21 Exhibit 31 (MONGLY02155826). Unfortunately, despite Garnett's recommendation, Monsanto  
22 declined to do additional testing on dermal absorption because the potential of finding a new  
23 glyphosate metabolite was "too risky." *Id.*

24 The issue of whether glyphosate is excreted through the urine rather than feces is  
25 important because Monsanto only considers urine levels of glyphosate in an effort to  
26 underestimate glyphosate exposure and does not measure levels in feces. For that reason Dr.  
27 Farmer and Dr. Saltmiras both deny that dermally absorbed glyphosate is excreted through the  
28

1 feces. Exhibit 4 at 56:5-8, Exhibit 30 at 250:11-22. Since the Monsanto U.S. employees  
2 contradict statements by Richard Garnett, it is necessary to take Richard Garnett's deposition.

3 **Eric Haupfear:**

4 Eric Haupfear has been the director for process technology at Monsanto for twenty years.  
5 <https://www.linkedin.com/in/eric-haupfear-bba48210> . As part of his job, Haupfear is an expert  
6 on impurities in glyphosate manufacturing. Exhibit 32 (MONGLY02478386). Earlier in his  
7 career, Haupfear was involved in monitoring NNG levels of glyphosate. For example in 2000,  
8 Haupfear found that the levels of NNG exceeded the limit of 1 ppm due to a manufacturing  
9 defect. Exhibit 33 (MONGLY04683604); see [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]

18 Haupfear is not duplicative of Lisa Flagg, because there are no substantive documents from his  
19 file on NNG after 2014. Lisa Flagg, however, starts working on NNG in 2014 until present  
20 where there is increased testing on NNG levels. Plaintiffs would like to examine Haupfear on  
21 the reasons that NNG exceeded safe levels and on the frequency that such excessive levels  
22 occurred. Plaintiffs would like to examine Haupfear on the frequency of testing of glyphosate  
23 samples and on the likelihood that glyphosate with excessive amounts of NNG is being sold to  
24 the public.  
25

26 **IV. Conclusion**

27 For the aforementioned reasons, Plaintiffs request the custodial files of Monsanto  
28

1 employees Mark Martens, Lisa Hodge-Bell, Lisa Flagg, and Gary Klopf. Plaintiffs further  
2 request that the Court order the Defendants to produce employees Richard Garnett and Eric  
3 Haupfear for deposition.

## 4 MONSANTO'S POSITION

### 5 I. Introduction

6 Plaintiffs have requested depositions of Group C custodians Dr. Eric Haupfear, Director,  
7 Trait Delivery, Biotechnology at Monsanto, Dr. John Acquavella, formerly an epidemiologist at  
8 Monsanto, and Group D custodian Dr. Richard Garnett, Global Chemistry Regulatory Strategy  
9 Lead at Monsanto's European subsidiary. Monsanto has agreed to facilitate the deposition of Dr.  
10 Acquavella. The other two Group C and D deponents are in dispute. At the time that the  
11 telephone conference on this submission occurs, plaintiffs will have taken six depositions: three  
12 U.S.-based regulatory toxicologists for Monsanto (Dr. Donna Farmer, Dr. William Heydens, and  
13 Dr. David Saltmiras), one U.S.-based medical toxicologist (Dr. Daniel Goldstein), one U.S.  
14 regulatory affairs professional (Steve Adams), and the U.S.-based Director, Global Glyphosate  
15 Sustainability (Dr. David Heering). The parties have jointly agreed to defer two additional  
16 depositions of U.S. regulatory professionals (Daniel Jenkins – a former Monsanto employee –  
17 and Susan Martino-Catt) until the resolution of the pending briefing regarding the lack of  
18 relevance of regulatory affairs to *Daubert* pursuant to Pretrial Order No. 8 ("PTO8") (Dkt.  
19 #120). On December 23, 2016, this Court entered Pretrial Order No. 5 ("PTO5") (Dkt. #78)  
20 governing the taking of depositions from individuals in Groups C and D. PTO5 provides that, if  
21 there is a disagreement as to any Group C and D deponents, "the plaintiffs must include in the  
22 case management statement a detailed and particularized explanation for their position on each  
23 disputed individual, including citations as to any documents or deposition testimony they rely on  
24 for support." *Id.* at 2.

25 Plaintiffs have requested that Monsanto produce documents from seven additional document  
26  
27  
28

1 custodians as Group E custodians. Monsanto has agreed to produce documents for three of these  
2 custodians: U.S. regulatory affairs professional Eric Sachs and former Monsanto regulatory  
3 toxicologists Richard Dirks and Timothy Long. Plaintiffs' withdrew their request for an eighth  
4 custodian, U.S. regulatory affairs professional Tracey Reynolds, in exchange for Monsanto's  
5 agreement to provide documents from Mr. Sachs. Four additional document custodians are in  
6 dispute: Lisa Flagg, Crop Protection Global Quality Lead, Dr. Mark Martens, formerly a  
7 regulatory toxicologist for Monsanto's European subsidiary, Dr. Kimberly Hodge-Bell,  
8 Monsanto's current regulatory toxicologist for glyphosate, and Gary Klopff, Chemistry,  
9 Formulations & Delivery Technology – Team Lead, Surfactant Science and Formulation.  
10 Plaintiffs have received 700,000 documents from nineteen document custodians as of the date  
11 that the telephone conference on this submission will occur.<sup>5</sup> PTO5 provides that if the parties  
12 are unable to reach agreement on Group E document custodians, "the plaintiffs should include a  
13 detailed and particularized explanation of why production from each disputed custodian would  
14 yield relevant, non-duplicative information." *Id.*

15  
16 PTO5 clearly places the burden on plaintiffs to justify the additional burdens that these  
17 depositions and document productions will impose on Monsanto pursuant to Federal Rule of  
18 Civil Procedure 26(b)(1). As shown below, plaintiffs' justifications above are inadequate to  
19 satisfy the burden established by this Court in PTO5. Instead the disputed requests for additional  
20 discovery are needlessly cumulative and duplicative, and not proportional to the needs of this  
21 phase of the litigation.<sup>6</sup> Plaintiffs' requests for depositions from two Group C and D custodians  
22  
23

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24  
25 <sup>5</sup> This document count does not include documents produced for Dr. John Acquavella or the productions  
26 from other third parties.

27 <sup>6</sup> Plaintiffs misconstrue the proportionality analysis of Rule 26. The 10 million pages of documents  
28 produced by Monsanto to date from voluminous productions of non-custodian-based categories and nearly 20  
custodians, and additional custodians Monsanto has agreed to produce here more than account for the amount in  
controversy and other considerations that plaintiffs ask the Court to consider. But plaintiffs' continued requests are

1 and for the production of documents from four of the seven Group E custodians they have  
2 identified should be denied.

### 3 **A. Group C and D Deponents**

4 Two of the depositions plaintiffs have requested from the Group C and D document  
5 custodians are in dispute: Group C custodian Eric Haupfear, a U.S.-based employee engaged in  
6 the manufacturing process, and Group D custodian Richard Garnett, a European regulatory  
7 professional. For the reasons discussed below, plaintiffs cannot meet their burden of  
8 demonstrating that deposition testimony from these two individuals would be relevant, non-  
9 cumulative, and non-duplicative of deposition testimony that plaintiffs have already obtained on  
10 general causation issues. Accordingly, Monsanto requests that the Court preclude plaintiffs from  
11 taking the depositions of these individuals during the current discovery phase on general  
12 causation.  
13

#### 14 **1. Eric Haupfear**

15 Dr. Haupfear is a Group C document custodian.<sup>7</sup> He is currently Director, Trait Delivery,  
16 Biotechnology at Monsanto. His current role, which he assumed in 2014, is unrelated to  
17 glyphosate-based herbicides (“GBHs”). Between 1997 and 2014, he held a variety of roles  
18 involved in the manufacturing process that creates “technical glyphosate” and the process by  
19

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20  
21 the type of “over-discovery” that the federal rule amendments seek to avoid. *See, e.g., In re Bard IVC Filters Prods.*  
22 *Liab. Litig.*, 317 F.R.D. 562, 566 (D. Ariz. 2016) (denying requested discovery in products MDL as not proportional  
23 where “substantial discovery” was already permitted and additional requests were “marginally relevant”). Monsanto  
24 has provided substantial information regarding the burdens associated with collecting, processing, and producing its  
25 files, and those same considerations apply here. Monsanto has provided substantial information regarding the  
26 burdens associated with collecting, processing, and producing its files, and those same considerations apply here.  
27 *See Hardeman v. Monsanto Co.*, No. 3:16-cv-00525, ECF No. 63-4 (RAND, Where the Money Goes, Understanding Litigation Expenditures for Producing Electronic Discovery,  
28 [http://www.rand.org/content/dam/rand/pubs/monographs/2012/RAND\\_MG1208.pdf](http://www.rand.org/content/dam/rand/pubs/monographs/2012/RAND_MG1208.pdf)); ECF No. 88-1 (declaration regarding discovery burdens associated with producing custodial files of Mr. Garnett and Mr. Gustin).

<sup>7</sup> Monsanto offered to put up Dr. Haupfear for deposition voluntarily if plaintiffs would withdraw their request for documents from Lisa Flagg. Plaintiffs refused that compromise.



1 which technical glyphosate is mixed with surfactants to create formulated Roundup<sup>®</sup> products.  
2 His most recent title in that role was Production Technology Lead. Plaintiffs wish to depose Dr.  
3 Hauptfear in support of their arguments that certain impurities in technical glyphosate  
4 (formaldehyde and non-nitrosoglyphosate (NNG)) and impurities in certain surfactants (1,4  
5 dioxaine) could be cancer-causing components of Roundup<sup>®</sup> products.

6 Plaintiffs' relevancy argument is based upon a false predicate - that the scientific studies  
7 on the safety of glyphosate or surfactants were conducted with "pure" glyphosate or "pure"  
8 surfactants that did not contain the trace levels of impurities (NNG, formaldehyde, 1,4 dioxaine)  
9 and that the presence of these impurities in the glyphosate based herbicides ("GBHs") used by  
10 plaintiffs thus adds some separate, unmeasured cancer risk. Plaintiffs provide no basis for this  
11 predicate. The trace impurities at issue are introduced in the ordinary course of the  
12 manufacturing process and they were thus present in the glyphosate, surfactants and GBHs  
13 analyzed in all of the scientific carcinogenicity, epidemiology, and genotoxicity studies that will  
14 be addressed by the general causation experts in the Phase I proceedings. In other words, if the  
15 presence of these impurities created any cancer risk, that risk already would be reflected in the  
16 scientific studies at issue. For example, fourteen animal cancer bioassays of glyphosate at issue  
17 in this litigation *each* studied glyphosate with measured levels of impurities ranging as high as  
18 5.4%. *See* Helmut Greim et al., *Evaluation of carcinogenic potential of the herbicide*  
19 *glyphosate, drawing on tumor incidence data from fourteen chronic/ carcinogenicity rodent*  
20 *studies*, 45 *Critical Revs. In Toxicology* 185, 189-90, 192-93, 195-96, 199-202 (2015) (purity  
21 levels in studies highlighted) (Ex. 36). And, of course, all of the epidemiological studies at issue  
22 in this litigation studied exposures to formulated GBHs, which likewise would have included  
23 these same levels of impurities. The presence of these impurities thus does not provide any  
24 separate scientific basis for an expert causation opinion regarding the carcinogenicity of  
25 glyphosate and GBHs, and it has no impact on the general causation issue before the court.  
26  
27  
28

1 Plaintiffs are already aware of this fact through the testimony of Donna Farmer and  
2 through a Monsanto scientific analysis produced in discovery and explained by Dr. Farmer that  
3 establishes this very point. Plaintiffs also have questioned a number of the regulatory  
4 toxicologists on the levels of impurities in glyphosate and how those levels compare to EPA  
5 guidances (the levels are well within EPA safety standards).

6 Accordingly, because the allegations have been thoroughly discussed in prior depositions  
7 and plaintiffs can identify nothing in Dr. Hauptfear's documents that contradicts this prior  
8 testimony, deposing Dr. Hauptfear on NNG would be unduly burdensome, irrelevant, cumulative,  
9 and duplicative of prior deposition testimony.  
10

## 11 **2. Richard Garnett**

12 Dr. Garnett is a Group D document custodian. He is a weed scientist by training. Weed  
13 scientists have expertise in herbicide efficacy and the movement of herbicides in soil and water,  
14 but they do not have expertise on issues of toxicology regarding the safety of herbicides to  
15 humans. During his employment by Monsanto's European subsidiary, his job has been to  
16 support the registration of glyphosate and Roundup<sup>®</sup> products in European countries. His current  
17 title is Global Chemistry Regulatory Strategy Lead and he has held that position in Europe since  
18 2013. He is also currently the Chair of the European Glyphosate Task Force, a group formed by  
19 multiple companies that manufacture GBHs to provide joint submissions related to the renewal  
20 of regulatory approval of glyphosate in Europe. Between 1998 and 2013, Dr. Garnett served as  
21 the European, Middle East, and Africa ("EMEA") Regulatory Affairs Manager for Glyphosate  
22 and then the EMEA Chemistry Regulatory Affairs Lead for Monsanto. He has not been involved  
23 directly in Monsanto's regulatory interactions with the United States Environmental Protection  
24 Agency.  
25

26  
27 In providing guidance to the parties at the November 16, 2016 Case Management  
28 Conference ("November CMC"), the Court noted that document collection from European

1 custodians would be allowed “to the extent a European agency’s conclusion about Roundup is  
2 relevant to these proceedings ... why can’t we, sort of, examine what went into the agency’s  
3 decision and what information the agency was receiving from Monsanto compared to the  
4 information that Monsanto had.” November CMC Tr. at 103. The Court also premised its  
5 guidance regarding allowing discovery of European regulatory issues at all on its “reluctan[ce] to  
6 say that, you know, there can be no discovery on the people from Europe and the  
7 communications they – you know, the sort of, pitch that Monsanto was making to European  
8 regulatory agencies in light of the fact that it is going to be, on some level, part of the case.”  
9 November CMC at 106.

11 As Monsanto argued recently in its briefing responding to this Court’s Pretrial Order No.  
12 8, although the regulatory agencies in Europe, the United States, and elsewhere have consistently  
13 found that GBHs are unlikely to present any cancer risk, those decisions have all been made  
14 under regulatory standards that are different from those this Court must apply under *Daubert*.  
15 See Monsanto Company’s Brief Regarding the Relevance of IARC and EPA to General  
16 Causation, ECF No. 134, at 1-2 (“PTO8 Brief”). *Daubert* requires an evaluation of the science  
17 itself, and is not focused on regulatory or other conversations regarding it. Therefore, any  
18 deposition testimony by Dr. Garnett regarding these regulatory matters is irrelevant at this stage  
19 of the litigation.  
20

21 Plaintiffs point to Dr. Garnett’s involvement in European regulatory authorities’  
22 evaluation of tallow amine surfactants as grounds for his deposition. Again, Dr. Garnett’s  
23 communications with European regulators are not relevant to this Court’s upcoming evaluation  
24 of the scientific evidence under the different *Daubert* standard. Moreover, plaintiffs have  
25 already obtained deposition testimony from Dr. Donna Farmer regarding European efforts to ban  
26 such surfactants, the lack of scientific evidence underpinning those efforts, and whether such  
27 efforts demonstrate “vigilance” or an unscientific approach by the regulators to account for  
28

1 political pressures. Dr. Garnett’s testimony on this issue would be duplicative of Dr. Farmer’s  
2 testimony.

3 Furthermore, even if testimony regarding regulatory affairs is relevant (which it is not), to  
4 the extent that Dr. Garnett would offer any testimony relevant to the regulation of GBHs in the  
5 United States, his testimony would be cumulative and duplicative of Steve Adams, the U.S.-  
6 based Chemical Regulatory Affairs Manager for Glyphosate, whom plaintiffs have already  
7 deposited in this litigation. Plaintiffs claim that Dr. Garnett worked to respond to isolated papers  
8 challenging the robust data set demonstrating the safety of GBHs. Plaintiffs have already  
9 collected documents and obtained deposition testimony on those issues. During the first five  
10 depositions, Monsanto’s response to efforts to challenge the safety of GBHs in the United States  
11 has been explored in great detail. Any testimony by Dr. Garnett on similar efforts in Europe is  
12 cumulative and duplicative. In any event, the general causation issue before the Court turns on  
13 the substance of the scientific studies at issue, not on allegations regarding how Monsanto  
14 responded to those studies.  
15

16  
17 As for Dr. Garnett’s purported involvement in dermal absorption studies, Monsanto has  
18 already produced voluminous dermal absorption studies through its non-custodian-based  
19 productions of its scientific and regulatory files. Such studies are not likely to be available  
20 uniquely in the files of document custodians. *See, e.g.*, 5/23/16 Decl. of Donna Farmer, 3:16-cv-  
21 00525-VC, ECF No. 62-2 (“Email and other custodian-based-records collections would not be  
22 expected to contain unique copies of studies or other scientific research relevant to the safety of  
23 glyphosate-containing herbicides to people or animals.”). Plaintiffs do not explain how Dr.  
24 Garnett’s testimony regarding these studies would not be duplicative of testimony they did or  
25 could have obtained from the four Monsanto toxicologists that they have already deposited.  
26

### 27 **B. Group E Document Custodians**

28 On February 11, 2017, plaintiffs named eight additional document custodians from whom

1 they sought the production of documents in Group E. Monsanto has agreed to provide  
2 documents for three of these eight custodians: U.S.-based regulatory professional Eric Sachs and  
3 former U.S.-based regulatory toxicologists Richard Dirks and Timothy Long. Plaintiffs agreed  
4 to withdraw their duplicative request for documents from U.S.-based regulatory professional  
5 Tracey Reynolds in exchange for Monsanto's agreement to produce documents from Mr. Sachs.<sup>8</sup>  
6 Plaintiffs cannot satisfy their burden of demonstrating that the remaining four Group E  
7 custodians possess relevant, non-cumulative, and non-duplicative documents for the general  
8 causation phase of this litigation. Further, discovery also would not be proportional to the needs  
9 of this general causation phase, given the nearly 900,000 documents (estimated to total around  
10 10 million pages) already produced by Monsanto, as well as the other information that plaintiffs  
11 and their experts have access to through public sources. Monsanto requests that the Court deny  
12 plaintiffs' excessive and unduly burdensome requests for yet more documents on irrelevant  
13 issues from the four remaining Group E custodians.  
14

### 15 **1. Lisa Flagg**

16 Ms. Flagg is currently Crop Protection Global Quality Lead at Monsanto. She is  
17 responsible for global quality assurance for the manufacturing of GBHs. She has been in that  
18 role for only three years. Her prior positions at Monsanto did not involve glyphosate-based  
19 products. Like Mr. Hauptfear, plaintiffs seem to be interested in Ms. Flagg's documents based on  
20 their theory that NNG in technical glyphosate or GBHs render those products carcinogenic.<sup>9</sup>  
21 Any potential carcinogenic effect of trace impurities in glyphosate or GBHs is already addressed  
22 in the epidemiology, animal toxicology, and genotoxicology studies of glyphosate and GBHs.  
23  
24

25  
26 <sup>8</sup> Mr. Sachs had previously been named as a Group D custodian, but plaintiffs elected to forgo production  
of his documents as part of a compromise on the scope of the Group D custodians.

27 <sup>9</sup> Plaintiffs use the word "toxic" in their section, which is not the same as carcinogenic. Plaintiffs also  
28 misrepresent the contents of Ex. 16 when they portray it as a concession that NNG is toxic.

1 Documentation regarding NNG levels in GBHs accordingly does not provide any additional  
2 information that could impact the general causation issue before the Court.<sup>10</sup>

3 Plaintiffs have already received thousands of documents that mention formaldehyde,  
4 NNG and 1,4 dioxaine in technical glyphosate and formulated Roundup® products via the  
5 document collection of Group C custodian Dr. Eric Haupfear (more than 4000 documents on  
6 formaldehyde, more than 1500 documents on NNG and several hundred on 1,4 dioxaine).  
7 Accordingly, any relevant documents in Ms. Flagg’s possession are likely cumulative and  
8 duplicative of the information contained in Mr. Haupfear’s document collection.  
9

10 Plaintiffs cite to documents that they contend show an “uptick” in NNG testing since  
11 2014, when Ms. Flagg assumed her current role. They point to no documents, however, that  
12 demonstrate that NNG tolerance levels have been exceeded during that time period and no  
13 evidence that Ms. Flagg was involved in evaluating the safety of NNG in GBHs – because she  
14 was not. As noted above, the presence of NNG in GBHs is not relevant to the question before  
15 the court of whether glyphosate or GBHs can cause the blood cancer non-Hodgkin’s lymphoma  
16 because any purported risk already would be reflected in the scientific studies at issue.  
17 Accordingly, evidence regarding what sort of testing is done for NNG and whether tolerances  
18 have been exceeded is not relevant to the issues currently before the Court.  
19

## 20 **2. Mark Martens**

21 Dr. Martens is a regulatory toxicologist formerly employed by Monsanto’s European  
22 subsidiary. He is presently located in Europe. Thus, production of his documents would present  
23 additional challenges due to foreign privacy law concerns, as did the prior production of  
24 documents from European custodians Richard Garnett and Christophe Gustin. As a result of  
25

26 \_\_\_\_\_  
27 <sup>10</sup> Plaintiffs’ citation to a 2011 paper from the American Journal of Clinical Nutrition is misleading, as  
28 NNG was not considered in that paper. Plaintiffs have pointed to no evidence that NNG, as opposed to other non-  
nitroso compounds, is carcinogenic.

1 those concerns the Court was required to enter a discovery order with special safeguards and  
2 findings (Dkt. #66). Such an order would be required here before Monsanto could produce any  
3 documents from Dr. Martens.<sup>11</sup>

4 There is no reason to go to such an effort here. Plaintiffs have obtained documents from  
5 and deposed three U.S.-based regulatory toxicologists and a U.S.-based medical toxicologist in  
6 this litigation. Monsanto has agreed to produce documents from two additional regulatory  
7 toxicologists (Dirks and Long). Plaintiffs also have received documents from two European  
8 regulatory affairs professionals (Garnett and Gustin). There is no basis for this court to conclude  
9 that Dr. Martens' documents are non-cumulative and non-duplicative of information that  
10 plaintiffs have already received in discovery from these custodians on the issue of general  
11 causation.  
12

13 Dr. Martens was a regulatory toxicologist in Europe responsible for the registration of  
14 GBHs in European countries and associated regulatory testing. As noted above with respect to  
15 Dr. Garnett, if the Court agrees with Monsanto's argument in its PTO8 Brief that regulatory  
16 consideration of glyphosate science is not relevant to the Court's *Daubert* inquiry, then  
17 Monsanto's interactions with regulatory authorities are not relevant to this general causation  
18 phase of the litigation.  
19

20 Plaintiffs point to interactions between Dr. Martens and a Dr. James Parry addressing  
21 various published genotoxicity studies and possible additional research suggested by Dr. Parry.  
22

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23 <sup>11</sup> The additional burdens and foreign privacy law concerns associated with producing foreign  
24 custodians provide further grounds for denying plaintiffs' request with respect to Dr. Martens. *See, e.g.,*  
25 *In re: Bard*, 2016 WL 4943393, at \*5 (D. Ariz. Sep. 16, 2016) (holding defendant Bard "need not search  
26 the ESI of foreign Bard entities" because "the burden and expense" of the search "outweighs the benefit  
27 of the proposed discovery"); *see also Benicar*, 2016 WL 5817262, at \*7 (refusing to direct defendants to  
28 produce documents from Daiichi Europe unless "plaintiffs satisfy the Court that requests are well-  
grounded, materially relevant and non-cumulative"). Monsanto has briefed discovery from European  
custodians more extensively at ECF No. 28 (discovery letter) and ECF No. 61 (consent motion).

1 Plaintiffs have in their possession documents regarding those interactions and have obtained  
2 many pages of deposition testimony from Monsanto toxicologist Donna Farmer regarding them.  
3 Plaintiffs also cite an email regarding Dr. William Heydens' position on Dr. Parry's involvement  
4 as justification for his deposition, but fail to inform the Court that they elected not to elicit any  
5 testimony from Dr. Heydens on that document. There is no basis to conclude that Dr. Martens'  
6 documents on that issue are not cumulative and not duplicative of the information and testimony  
7 that plaintiffs have already obtained. In fact, plaintiffs admit that the examples of  
8 communications between Dr. Martens and Dr. Parry they have seen were forwarded on to other  
9 Monsanto employees whose files have been produced and some of whom have been deposed.  
10 There is no basis to conclude that Dr. Martens' files contain unique information on interactions  
11 with Dr. Parry.  
12

13 Plaintiffs' also point to a memorandum purportedly prepared by Dr. Martens which  
14 suggested hypothetical reasons why surfactants might increase the absorption of glyphosate  
15 through the skin. Plaintiffs do not explain the relevance of dermal absorption studies or this  
16 memorandum to their general causation arguments. Any such relevance would turn on the data  
17 from actual studies, not hypotheses. Moreover, plaintiffs have already obtained deposition  
18 testimony and documents addressing that draft study and testimony regarding its meaning from  
19 Dr. Donna Farmer and failed to ask the other three Monsanto toxicologists who have been  
20 deposed any questions about that draft study.  
21

22 In addition, any documents Dr. Martens may have in his own possession are not in the  
23 custody or control of Monsanto and documents in his personal possession created after he left the  
24 company would need to be sought by independent subpoena directed to Dr. Martens himself.  
25 Monsanto requests that the Court not require the production of any documents from Dr. Martens.  
26

### 27 **3. Kimberly Hodge-Bell**

28 Dr. Hodge-Bell is the current regulatory toxicologist for glyphosate products. She has



1 been in that role since January 2015, less than a year and a half. Between 2010 and 2015, she  
2 was a senior toxicologist on glyphosate supervised by Dr. David Saltmiras, who has already been  
3 deposed in this litigation. Two other regulatory toxicologists for glyphosate (Donna Farmer and  
4 William Heydens) and the medical toxicologist for glyphosate (Daniel Goldstein) also have been  
5 deposed. Documents from these four Monsanto toxicologists have already been produced in this  
6 litigation and Monsanto has agreed to produce documents from two additional regulatory  
7 toxicologists who worked at Monsanto during the period in which many of the carcinogenicity  
8 studies at issue in this litigation were conducted (Richard Dirks and Timothy Long). The  
9 information contained in Dr. Hodge-Bell's documents is cumulative and duplicative of  
10 documents previously produced to plaintiffs or that will be produced and deposition testimony  
11 already obtained.  
12

13 Plaintiffs' contend that they are interested in Dr. Hodge-Bell's documents because she  
14 has been involved in dermal-absorption studies and studies on surfactant toxicity. As to the  
15 dermal-absorption studies, the studies at issue did not evaluate carcinogenicity, systemic  
16 exposure, or the metabolism of glyphosate. As noted above, Monsanto has already produced  
17 voluminous dermal absorption studies through its non-custodian-based productions of its  
18 scientific and regulatory files. At most, the files of Dr. Hodge-Bell are expected to contain  
19 duplicative copies. *See, e.g.,* 5/23/16 Decl. of Donna Farmer, 3:16-cv-00525-VC, ECF No. 62-2  
20 ("Email and other custodian-based-records collections would not be expected to contain unique  
21 copies of studies or other scientific research relevant to the safety of glyphosate-containing  
22 herbicides to people or animals."). Accordingly, these studies do not provide a basis for the  
23 production of her documents in this litigation, which alleges that GBHs pose a risk of the blood  
24 cancer non-Hodgkin's lymphoma in humans. Plaintiffs point to five exploratory surfactant  
25 studies connected with Dr. Hodge-Bell. Multiple witnesses have already testified about the  
26 testing Monsanto conducts on any surfactant and the need for regulatory approval before that  
27  
28

1 surfactant is available for use in a formulated Roundup® product. Plaintiffs provide no basis to  
2 assume testimony on these five studies is anything other than duplicative of the larger set of  
3 genotoxicity tests they received from the production of Monsanto's scientific files and through  
4 other toxicologists' testimony.

5 The suggestion that the work of Dr. Hodge-Bell is somehow unique or segregated from  
6 the work of the other four toxicologists who have been deposed and who have produced  
7 documents in this matter is untrue and unfounded. Dr. Hodge-Bell was doing the normal work  
8 of toxicologists at Monsanto and was supervised by Dr. David Saltmiras and worked closely  
9 with Dr. Donna Farmer, Dr. William Heydens and Dr. Daniel Goldstein for her entire career at  
10 Monsanto. There is no basis other than speculation to conclude that Dr. Hodge-Bells files  
11 contain unique information regarding the regulatory toxicology studies.  
12

#### 13 **4. Gary Klopf**

14 Gary Klopf's current title at Monsanto is Chemistry, Formulations & Delivery  
15 Technology – Team Lead, Surfactant Science & Formulation. In that role and prior roles held  
16 since 1995, he has been responsible for evaluating the viability of using various different  
17 surfactants in formulated Roundup® products. His work has focused on whether the surfactant is  
18 compatible with technical glyphosate to create stable formulated product and evaluating whether  
19 particular surfactants have any impact on the efficacy of Roundup® formulated products. Mr.  
20 Klopf has never had any responsibility for studying the safety of surfactants or resulting  
21 formulated product. That work is the responsibility of the regulatory toxicology department and,  
22 as previously noted, three regulatory toxicologists and one medical toxicologist have already  
23 been deposed and served as document custodians in this case. The documents for two more  
24 toxicologists will also be produced as a part of Group E. Their testimony and documents  
25 included information regarding the evaluation of the safety of surfactants used in formulated  
26 Roundup®. Accordingly, any relevant documents in Mr. Klopf's files related to surfactants are  
27  
28

1 duplicative of the information already obtained from other custodians and through depositions  
2 already taken in this litigation.

3 The fact that some of the information that Mr. Klopff received from the manufacturers of  
4 surfactants include safety information does not mean that Mr. Klopff was involved in evaluating  
5 the safety of those surfactants or resulting formulated product. There is no basis to conclude that  
6 production of Mr. Klopff's documents would contain studies on surfactant safety from product  
7 manufacturers and every reason to believe that, if he had received such studies, he would have  
8 passed them on to the regulatory toxicologists responsible for human safety of GBHs. Those  
9 regulatory toxicologists have produced documents and been deposed. The absence of such  
10 documents in the production to date does not demonstrate that Mr. Klopff has them. It is just as  
11 likely that they don't exist because no such documents were provided to Monsanto. Mr. Klopff's  
12 work is not relevant to the claims and defenses in this litigation and, to the extent he possesses  
13 documents regarding the safety of surfactants, information contained in his documents is  
14 cumulative and duplicative of information obtained from other custodians and through  
15 deposition testimony. Accordingly, Monsanto requests that the Court not require production of  
16 Mr. Klopff's documents during this general causation discovery period.  
17  
18

### 19 **C. Conclusion**

20 Monsanto requests that, for the foregoing reasons, the Court deny plaintiffs' request to  
21 depose Dr. Richard Garnett and Dr. Eric Hauptfear, two of the three Group C and D custodians  
22 plaintiffs have requested, and deny plaintiffs' request for documents from four of the seven  
23 Group E designees: Lisa Flagg, Dr. Mark Martens, Dr. Kimberly Hodge-Bell and Dr. Gary  
24 Klopff.  
25  
26  
27  
28

1 DATED: February 20, 2017

Respectfully submitted,

2  
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