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7 **UNITED STATES DISTRICT COURT**
 8 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
 9 **SAN FRANCISCO DIVISION**

10 IN RE: ROUNDUP PRODUCTS LIABILITY
 LITIGATION

MDL No. 2741

11 THIS DOCUMENT RELATES TO:

**DECLARATION OF R. BRENT WISNER IN
 RESPONSE TO PRE TRIAL ORDER 28**

12 ALL ACTIONS

HON. VINCE CHHABRIA

HEARING: AUGUST 24, 2017

TIME: 10:00 A.M.

LOCATION: COURTROOM 4

16 I, R. Brent Wisner, do hereby declare and state:

17 1. I am an attorney licensed to practice in the State of California and admitted to practice
 18 before this Court. I am a shareholder with the law firm of Baum, Hedlund, Aristei & Goldman, P.C.
 19 (“Baum Hedlund”), and counsel of record for several Plaintiffs within this multidistrict litigation
 20 proceeding. I make this declaration based on my personal knowledge and, if called as a witness, I
 21 would testify competently to these matters.

22 2. I will be present at the hearing set for August 24, 2017 at 10:00 am and will be ready
 23 to answer any questions that the Court may have about the topics discussed in this declaration or any
 24 other inquiries the Court would like to make.

25 3. I did not act in bad faith in this matter, as shown *infra*, but I believe that all future
 26 meet-and-confers must be audio recorded.
 27

1 4. This declaration is divided into seven parts. Part I provides background information
2 about myself and Baum Hedlund. Part II discusses the events leading up to this document challenge
3 dispute, and earlier unsuccessful efforts to gain Monsanto's cooperation in reviewing documents.
4 Part III addresses my June 30, 2017 letter challenging the confidentiality designations of 86
5 documents. Part IV discusses the meet-and-confer between the parties on July 12, 2017. Part V
6 discusses my communication to Monsanto in the days prior to the document release. Part VI
7 discusses the document release on August 1, 2017. Part VII summarizes my final remarks.

8 **I. About Me and Baum Hedlund**

9 5. I have been practicing law since September 2012. That year, I joined Baum Hedlund
10 as an associate attorney. Prior to that I worked as a law clerk to the Honorable Helen Gillmor in the
11 United States District Court for the District of Hawaii for two years. Prior to that, I graduated from
12 Georgetown University with a Juris Doctor and Masters of Public Policy. Notably, I graduated as a
13 *pro bono* honoree, having volunteered well over 750 hours in *pro bono* legal work in various
14 capacities while at Georgetown.

15 6. During my practice, I have participated in numerous challenges regarding the
16 confidentiality of documents.

17 7. My law firm has a long history of challenging the confidentiality of documents and
18 making them publicly available to regulators, academics, and the media—particularly when those
19 documents relate to issues involving public health. *See, e.g., Forst v. SmithKline Beecham Corp.*,
20 602 F. Supp. 2d 960, 974 (E.D. Wis. 2009); *Cunningham v. Smithkline Beecham*, No. 2:07 CV 174,
21 2008 WL 2572076, at *1 (N.D. Ind. June 25, 2008); *McDonnell v. Sw. Airlines Co.*, 292 F. App'x
22 679, 680 (9th Cir. 2008). Due to the nature of our practice, we often come across documents during
23 the discovery process that have broad public health implications. These documents include scientific
24 research that has been concealed from regulators impeding their capacity to safeguard the public.
25 Baum Hedlund routinely publishes de-designated documents on our website and to the Drug Industry
26 Documents Archive, hosted by the University of California, San Francisco. *See, e.g.,*
27 <https://www.baumhedlundlaw.com/prescription-drugs/paxil-injuries/paxil-trial-exhibits/>; *see*

1 <https://www.industrydocumentslibrary.ucsf.edu/drug/>. We do this because we believe that
2 transparency in litigation, quite literally, saves lives.

3 **II. OEHHA's NSRL Comment Period and May 8, 2017 Document Challenge**

4 8. The Office of Environmental Health Hazard Assessment (OEHHA) has already listed
5 glyphosate as a substance known to the State of California to cause cancer. The current issue before
6 OEHHA is whether it will impose a no-significant risk level (NSRL) for glyphosate, which is
7 tantamount to a safe harbor that would alleviate any requirement to warn about cancer risks
8 associated with glyphosate when expected exposure is below the NSRL. Monsanto's position is that
9 the NSRL should be "infinite," thus obviating any carcinogenicity warning.

10 9. I and others are aware that Monsanto had a private meeting with OEHHA on October
11 7, 2015, in which Monsanto presented "data" about where the NSRL should be set. In that
12 presentation, Monsanto cited and relied on published literature that had been ghost-authored by
13 Monsanto employees. Monsanto also failed to disclose other data suggesting that the absorption rate
14 of glyphosate was more perilous to human health than was publicly disclosed.

15 10. As a California citizen and an attorney representing nearly 100 Californians, I felt
16 obligated to inform OEHHA about Monsanto's manipulation of science. I, however, had a major
17 obstacle—many of the documents I wanted to present to OEHHA were designated "confidential" by
18 Monsanto, even though they did not contain any trade secrets or proprietary information. Before I
19 could send the documents to OEHHA, I would need to get Monsanto to withdraw its designations,
20 either through agreement or waiver, or have the Court de-designate them.

21 11. On May 8, 2017, Aimee Wagstaff sent Monsanto's counsel, Heather Pigman and
22 James Sullivan, a request to de-designate 42 documents with a chart listing each document. A true
23 and correct copy of that letter and its attachment are attached as **Exhibit A**. I personally drafted
24 much of this letter. This letter addressed nearly half of the documents that would be part of the 86
25 documents challenged later.

26 12. In that letter, we explained that the challenge was made pursuant to "the Court's
27 December 9, 2016 (Dkt. 64) and March 12, 2007 (Dkt. 186) Orders" and that "Plaintiffs formally

1 challenge the confidentiality designations of the forty-two documents listed[.]” Exhibit A at 1. The
2 letter, however, did not specifically state the challenge was made with respect to Paragraph 16.2 of
3 the Protective Order.

4 13. In the letter we explained the urgency of getting these getting these documents to
5 OEHHA:

6 Because the MDL counsel represent dozens if not hundreds of California residents
7 and citizens who have developed cancer as a result of Roundup and glyphosate
8 exposure, we have a specific interest in accurately expressing our clients’ views and
9 interests to OEHHA. Additionally, throughout this litigation, Monsanto has raised
10 issues about exposure levels and their relationship to general causation. While we
do not necessarily agree that exposure level relates to general causation, Monsanto
has claimed so and since OEHHA is expressing a regulatory view about that very
issue, OEHHA’s determination and comment period are potentially relevant to this
phase of the litigation.

11 *Id.* at 1.

12 14. The confidentiality challenge was time-sensitive because the OEHHA comment period
13 was set to expire on May 22, 2017. Therefore, we requested that Monsanto get back to us as soon as
14 possible.

15 15. First, we believed that Monsanto violated its good faith obligation under the Protective
16 Order by designating these documents as confidential when no portion of these documents contain
17 material entitling that designation. Second, Monsanto never responded to our May 8, 2017 letter,
18 even after Ms. Wagstaff emailed to follow up on the document challenges multiple times.

19 16. By June 8, 2017, since Monsanto had not filed a motion seeking continued protection
20 of the 42 documents. Monsanto therefore waived any claim of confidentiality over those documents.
21 *See* Protective Order ¶ 16.3 (“Failure by the Designating Party to make such a motion . . . within 30
22 days . . . shall automatically waive the confidentiality designation for each challenged designation.”).
23 However, the literal requirement of Paragraph 16.2, is that “[t]o avoid ambiguity as to whether a
24 challenge has been made, the written notice must recite that the challenge to confidentiality is being
25 made *in accordance with this specific paragraph of the Protective Order.*” Protective Order ¶ 16.2
26 (emphasis added). Since the May 8, 2017 letter did not specifically reference Paragraph 16.2,
27 although it stated it was a formal challenge under the Protective Order, I and others decided not to

1 release the documents despite the fact that Monsanto had not responded timely. We decided to
2 challenge the documents a second time using the specific language required by Paragraph 16.2.

3 17. Ultimately OEHHA extended the time period for submitting comments until June 21,
4 2017. And, despite Monsanto never responding to our May 8, 2017 letter or subsequent emails, my
5 office did submit a formal 14-page comment to OEHHA addressing some the serious scientific issues
6 we believed impacted every Californian's health. A true and correct copy of that comment is attached
7 as **Exhibit B**. In filing that comment, we took care to not use or rely upon confidential material. The
8 comment, however, did use a handful of documents this Court previously de-designated earlier in the
9 litigation.

10 18. This 14-page letter, sent to OEHHA, took considerable time and effort. It was done,
11 however, because we at Baum Hedlund believed it was our responsibility, as officers of the Court and
12 California citizens, to make sure that regulators were fully informed in making decisions that could
13 affect individuals' health and the health of their families. We also appeared at the open comment
14 period with several of our concerned California clients and provided testimony to OEHHA.

15 **III. The June 30, 2017 Challenge**

16 19. In June of 2017, I approached the MDL Leadership about engaging in a renewed
17 challenge process that involved many of the same documents to which we received no response in
18 May and early June. My decision to pursue this new challenge stemmed from Pre-Trial Order No.
19 20. There, the Court clarified that:

20 In this phase of the MDL, the proper remedy for overdesignating is to correct the
21 discrete instances of overdesignating that require correction given the needs of the
litigation.

22 PTO 20 at 2 (Dkt. 266).

23 20. Based on this order, I understood the Court only wanted the parties to focus on
24 *discrete* instances of overdesignating, not wholesale blanket challenges, as had been done in Pre-Trial
25 Order 15.

26 21. Thus, in June 2017, I requested and received authorization from the MDL Leadership
27 to spearhead a new document challenge focused on very specific instances of overdesignating

1 consistent with the Protective Order and PTOs 15 and 20.

2 22. My colleague, Pedram Esfandiary, and I, prepared the letter initiating the document
3 challenges under Paragraph 16.2 of the protective order. I have attached a true and correct copy of
4 that letter and accompanying chart as **Exhibit C**.

5 23. In the letter, I specifically addressed the concerns raised by the Court and explained
6 how this challenge was being made under the terms of the Protective Order *as well as* PTOs 15 & 20:

7 This challenge is made pursuant to Paragraph 16.2 of the December 9, 2016
8 Protective and Confidentiality Order. We seek to meet-and-confer about documents
9 we believe have been over-designated as “Confidential” by Monsanto. We have
10 reviewed each document individually and selected only documents, listed out in
11 detail on the attached chart, that do not contain trade secrets, sensitive commercial
12 information, privileged material, or that are otherwise entitled to “confidential”
13 protection under the law.

14 In compliance with the Court’s Pre-Trial Order 15 (PTO-15), clear reasons are set
15 forth in the attached chart for why each challenged document is relevant to the
16 general causation stage of this litigation. . . . All of the documents challenged in
17 this letter are reasonably likely to be used in this litigation and relate to this phase of
18 litigation.

19 As you know, in the Court’s Pre-Trial Order 20, the Court stated that “[i]n this
20 phase of the MDL, the proper remedy for overdesignation is to correct the discrete
21 instances of overdesignation that require correction given the needs of the
22 litigation” and instructed the Parties to comply with the meet-and-confer process
23 outlined in Section 16.2 of the Protective Order. Recognizing that Monsanto’s
24 designation of nearly every document produced in this litigation as “Confidential”
25 was not done in bad-faith, but simply because Monsanto erred on the “side of
26 caution,” this letter and the requested meet-and-confer is your chance to address a
27 discrete set of documents, identified in the attached chart, and correct Monsanto’s
overdesignations.

28 Exhibit C at 1-2 (emphasis added).

29 24. I further explained:

30 The substantive basis for challenging *each* document is provided in the attached
31 chart. Pursuant to the December 9, 2016 Protective and Confidentiality Order, you
32 have fourteen (14) days to conduct a good-faith review of these documents and let
33 us know whether you will be withdrawing these confidentiality designations, thus
34 avoiding the need for any motion.

35 *Id.* at 2.

36 25. I attached to the letter a 28 page, single-spaced chart, containing descriptions and
37 quotes from each challenged document and an explanation as to why *each* document contained

1 information relevant to this phase of the litigation.

2 26. I personally reviewed each document, and I believed that none of the documents
3 contained even arguably confidential information.

4 27. To further facilitate Monsanto's review of the documents, I also had all personal
5 information from each document redacted, i.e., phone numbers, email addresses, etc., and sent
6 Monsanto's counsel a hyperlink to a repository of the redacted challenged documents. This was not
7 required by the Protective Order or PTOs 15 & 20. I did it as a courtesy to Monsanto's counsel,
8 understanding that having to redact and pull up documents using bates numbers can extremely time
9 consuming, a burden we undertook ourselves.

10 28. On June 30, 2017, after receiving authority from the MDL leadership to send the
11 letter, my secretary emailed the letter to Monsanto's counsel.

12 29. In the letter we asked that Monsanto counsel notify us which date they would be
13 willing to participate in a meet-and-confer prior to July 6, 2017 at the latest.

14 **IV. The July 13, 2017 Meet-and-Confer**

15 30. On July 6, 2017, I received an email from Monsanto's counsel, Gary Rubin, stating
16 that he would be willing to participate in a meet-and-confer on July 13, 2017—the last possible day
17 to meet-and-confer under the protective order (fourteen days after June 30). A true and correct copy
18 of that email and several subsequent emails are attached as **Exhibit D**.

19 31. Mr. Rubin's email stated "We are available to discuss your letter" and did not state
20 that Monsanto would be refusing to discuss the documents at issue.

21 32. As the meet and confer date approached, I became concerned that Mr. Rubin might
22 not be prepared to discuss the challenged documents in detail, as required by the Protective Order.
23 So because I was taking a deposition at the time, on July 10, 2017, I directed my associate to send an
24 email to Mr. Rubin clarifying our expectations:

25 The date of our meet and confer (Thursday July 13) falls on the eve of the 14 day
26 meet and confer deadline. Thus, we expect that you will have reviewed the
27 challenges and determined which documents have been inappropriately designated
confidential and which you still contend are confidential and why. To facilitate your
review, please find attached the challenged documents chart with two additional

1 columns where you may indicate your position with respect to each challenge. If
2 you agree that a specific document will be de-designated, simply check the “Agree”
3 box, or if you disagree with the challenge, please provide an explanation in the
4 “Disagree” box. Please fill out the chart so that we can have an informal discussion
5 about each document and decide how to proceed before expiration of the two week
6 meet and confer period.

7 Exhibit D at 1. Attached to the email was a Microsoft Word document, containing the substance of
8 each of Plaintiffs’ challenges to the documents with two additional columns. A true and correct copy
9 of that new chart is attached as **Exhibit E**.

10 33. Our purpose, once again, in providing this chart was to facilitate Monsanto’s review of
11 the documents. We provided a specific place for Monsanto to explain why any particular document
12 warranted confidential protection. In instances where Monsanto had no objection, we provided a
13 column where Monsanto could check off, thereby waiving confidentiality. This process of using
14 charts to deal with documents is the same process my firm has used in other confidentiality
15 challenges in various litigations.

16 34. In response to this email, Mr. Rubin stated: “Thank you for your e-mail. We plan to
17 speak with you on Thursday, 1:00 p.m. your time.” Exhibit D at 1. He did not state that Monsanto
18 would not be prepared to discuss each document or would claim that it was not obligated to review
19 these challenged documents at all. It was my understanding, in light of Mr. Rubin’s emails, that
20 Monsanto planned to substantively discuss each document during the meet-and-confer. Any other
21 assumption would mean that Monsanto’s communications with us during the prolonged lead up to
22 this meeting were a delay tactic.

23 35. On July 13, 2017, we met by phone. Present on the call from Plaintiffs side were
24 myself, Pedram Esfandiary (of Baum Hedlund), Aimee Wagstaff (of Andrus Wagstaff), and Pearl
25 Robertson (of Weitz & Luxenberg). For Monsanto, James Sullivan and Gary Rubin (both of
26 Hollingsworth) noted their presence and indicated that no one else was participating on their end. To
27 the best of my knowledge the phone call was not recorded and no party expressed consent to a
recording. In Mr. Rubin’s August 2, 2017 declaration, he “quotes” me from the phone call,
suggesting such a transcript exists. *See* Dkt. 3 ¶ 12. If it does, that recording should be made
available to the Court, as it will confirm the accuracy of my declaration.

1 36. To the best of my memory, recollection, and notes, here is what I remember transpired
2 on the call:

3 A. Mr. Sullivan and Mr. Rubin refused to discuss any document or explain why
4 any document was properly designated confidential, i.e., contained trade secret information or
5 any other propriety information.

6 B. Mr. Sullivan stated Monsanto was not required to review these documents
7 because there was no “litigation need” and that reviewing the documents for confidentiality
8 would be too burdensome.

9 C. Mr. Sullivan explained that if this case was defeated at summary judgment,
10 any confidentiality challenges would be mooted, so there was no need to review documents
11 for confidentiality at this time. I explained that I had personally challenged documents, even
12 after losing at summary judgment, in other litigation, and that such argument was deeply
13 disingenuous since many of these documents would likely be used at summary judgment.

14 D. Mr. Sullivan stated that he had reviewed the documents to see if any of them
15 were cited in Plaintiffs’ expert reports (but not to see if they contain any confidential
16 information). He represented that none of them were cited in Plaintiffs’ expert reports. I have
17 not verified whether that is true.

18 E. I stated that we *had* explained why each of the documents were relevant to this
19 phase of the litigation in the document chart, but Mr. Sullivan and Mr. Rubin disagreed.
20 Neither of them however, would explain how any specific document was not relevant to the
21 litigation.

22 F. Mr. Sullivan told me that I needed to “go away” and explained that the Court
23 empowered him to take that position in PTOs 15 and 20. I asked if I could quote him on that,
24 and Mr. Sullivan said I could.

25 G. I pressed Mr. Sullivan and Mr. Rubin about what they thought qualified as a
26 legitimate “litigation need” such that they would be willing to meet-and-confer about the
27 confidentiality of any specific document. Monsanto’s lawyers refused to answer, only stating

1 that these documents and Plaintiffs' challenge did not qualify.

2 H. I accused *Mr. Rubin and Mr. Sullivan* of acting in bad-faith on the call because
3 they were not even willing to explain the definition of "litigation need" they were applying.
4 Mr. Rubin, again, said he did not have to explain anything.

5 I. Mr. Sullivan confirmed that the original designation of the documents
6 produced by Monsanto as confidential in this litigation were done in good faith and were
7 made by an actual attorney.

8 J. Mr. Rubin, at one point, argued that because Monsanto's counsel did not
9 receive the challenge letter until after midnight East Coast time, i.e., after 9:00 pm PT, the
10 letter was not technically served until July 1, 2017. I disagreed with this argument, but it
11 nonetheless indicated to me that Mr. Rubin was fully apprised of the timing deadlines in the
12 Protective Order.

13 K. I inquired whether Mr. Rubin agreed that we had reached an impasse. He
14 agreed.

15 L. Mr. Rubin then asked whether I would consider filing a joint discovery letter,
16 as opposed to a full-fledged motion. I stated that *I seriously doubted we would take that*
17 *approach*, but that I would consult with Plaintiffs' counsel and let him know.

18 M. At no time did I ever state that I "would either file a joint letter or motion with
19 the Court or elect to drop their confidentiality challenge" as Monsanto stated in its
20 Application for Emergency relief. *See* Dtk. 416 at 1. This statement to the Court was false.

21 N. At no time did I state to Monsanto's Counsel that Monsanto was no longer
22 required to abide by the terms of procedures set out in the Protective Order.

23 37. I have personally engaged in numerous meet-and-confers regarding the confidentiality
24 of documents and I have never been told, literally, to "go away." It is unclear how Monsanto's
25 counsel's conduct complied with the Court's requirement that "[t]he parties shall attempt to resolve
26 each challenge in good faith." Protective Order ¶ 16.2.

27 38. I knew that even though Monsanto's counsel refused to engage in a meet-and-confer

1 with me, they would have to explain it to the Court. The Protective Order explicitly contemplates
2 this problem. Under Paragraph 16.3, it states “[i]f the parties cannot resolve a challenge without
3 court intervention” – a fact that even Monsanto concedes – “the Designating Party *shall* file and serve
4 a motion to retain confidentiality under Civil Local Rule 7 . . . within 30 days[.]” *Id.* ¶ 16.2
5 (emphasis added). Further, such motion must contain “a competent declaration affirming” that the
6 parties’ good faith attempts to resolve the dispute. Finally, “[f]ailure by the Designating Party to
7 make such a motion including the required declaration within 30 days . . . *shall automatically waive*
8 the confidentiality for each challenged designation.”

9 39. Following the July 13, 2017 meet and confer, I believed that Monsanto was obligated
10 to take action or else waive its assertions of confidentiality. I fully expected Monsanto, who has thus
11 far been represented by competent counsel, to take such action.

12 **V. Follow-Up Email on July 27, 2017**

13 40. Following the meet-and-confer, I started preparing our opposition brief to the
14 anticipated motion by Monsanto. Indeed, all of the research for the motion I filed on August 1, 2017
15 (Dkt. 415) was prepared in anticipation of Monsanto’s motion. My research revealed a host of legal
16 issues related to Rule 26(c) and the First Amendment. This is why, even after Monsanto failed to file
17 its motion to preserve confidentiality, I filed the motion seeking clarification of PTO 15 and 20—
18 even after Monsanto’s deadline of thirty days to respond had passed. It is not true, as Monsanto has
19 claimed, that the filing of the August 1, 2017 motion was some post-hoc effort to justify the public
20 disclosure of the 86 documents. That assertion is patently untrue, as explained in the motion itself.

21 41. After two weeks following the July 13 meet and confer, however, I began to wonder
22 whether Monsanto would file the necessary motion. I grew concerned that Monsanto might repeat
23 its position of May by simply ignoring us, or might have taken the fact I had not completely excluded
24 the possibility of a joint letter pending discussions with co-counsel to mean that we might so act.

25 42. To address my concerns and alleviate any doubt about whether we would agree to a
26 joint letter, on July 27, 2017, I sent an email to Mr. Rubin stating that we would not participate in a
27 joint letter. A true and correct copy of that email is attached as **Exhibit F**.

1 43. I contemplated, at that time, whether I should advise Mr. Rubin about his impending
2 deadline to file a motion. But after considering the ethical implications of giving such advice, I
3 decided against it, because that would be acting against the interests of my own clients, and thus
4 acting unethically. Getting these documents into regulatory hands is something that would benefit
5 my clients since this Court will consider regulatory action in deciding the merits of the case.
6 Advising Monsanto's lawyers about its potential waiver of confidentiality would have violated my
7 duties of loyalty, competence, and diligence owed my clients. I knew that as I was responsible for
8 my own competent lawyering, Monsanto's counsel was responsible for their competence, including
9 knowing the deadlines they faced.

10 44. Prior to sending this email to Mr. Rubin, I ran the contents of the email by Ms.
11 Wagstaff to solicit her comments. I explained to her that the email was designed to put Monsanto on
12 notice that we would not be filing anything specific to these documents and that Monsanto was under
13 the clock, without also divulging information in violation of our duty of loyalty to our clients. Ms.
14 Wagstaff agreed.

15 45. At no time did I intend to trick or deceive Monsanto's lawyers about anything, nor did
16 this even occur to me. From the beginning, I made significant efforts to make this confidentiality easy
17 for Monsanto's counsel by providing revised list of documents, redacting, and so on.

18 **VI. I Made the Documents Public and Sent them to Regulators**

19 46. By July 30, 2017, 30 days after I sent the original letter to Monsanto's counsel
20 challenging the 86 documents, Monsanto had not filed any motion to preserve confidentiality, thus
21 "automatically waiv[ing]" confidentiality pursuant to paragraph 16.3 of the Protective Order.

22 47. Notwithstanding that, in an abundance of caution, I waited an extra two days before
23 disclosing the documents to anyone. On Tuesday, August 1, 2017, after checking the docket to
24 ensure that nothing had been filed, I authorized my webmaster to post the documents on our website.
25 <https://www.baumhedlundlaw.com/toxic-tort-law/monsanto-roundup-lawsuit/monsanto-secret->
26 [documents/](https://www.baumhedlundlaw.com/toxic-tort-law/monsanto-roundup-lawsuit/monsanto-secret-) In listing the documents, I specifically used the language from the June 30, 2017 letter
27 that described each document and explained its relevance.

1 48. I sent hard copies of the documents, with a detailed cover letter, to the Office of
2 Inspector General for the Environmental Protection Agency, which is apparently investigating illegal
3 collusion between Monsanto and the EPA; OEHHA, which is still considering the NSRL issue for
4 glyphosate; and the members of the European Parliament, which had previously written the Court
5 requesting documents to assist their decision making process regarding glyphosate formulations' use
6 in Europe (Dkt. 385). A true and correct copy of the letters I sent are attached as **Exhibits G, H, and**
7 **I**.

8 49. I specifically copied Joe Hollingsworth on these letters and posted them to my law
9 firm's website. I also posted copies of this Court's Protective Order, my letter challenging the
10 confidentiality of the documents, and an explanation of how the documents came to be declassified.
11 I made these disclosures to be transparent.

12 50. Prior to publicly releasing these documents, I researched whether I could make such
13 disclosures under Ninth Circuit law governing discovery material. And, based on my research, I
14 concluded I was fully within my rights to post these documents once they were no long confidential.

15 51. I did not release these documents believing, for one moment, that doing so would
16 violate the Protective Order or any order of this Court.

17 52. Monsanto's failure to file a motion made sense to me the more I thought about it.
18 None of these documents contained confidential information in them. I am not sure how Monsanto
19 could have even filed a motion seeking continued confidentiality without also violating Rule 11,
20 especially when this Court threatened Monsanto with sanctions for asserting frivolous claims of
21 confidentiality in the past.

22 **VII. Concluding Remarks**

23 53. I do not believe I acted in bad faith in my dealings with Monsanto. I repeatedly
24 attempted to engage Monsanto's counsel in discussing these documents, but I was rebuked at every
25 turn.

26 54. I never attempted to deceive or trick Monsanto in any way. I was surprised when
27 Monsanto failed to file a motion to preserve confidentiality, but could see the legal rationale for their

1 not doing so given the Court's prior admonishment regarding sanctioning Monsanto for maintaining
2 frivolous confidentiality assertions.

3 55. My decision to make these 86 documents public after Monsanto waived
4 confidentiality over them was not done to retaliate against Monsanto or litigate this case in the media.
5 I made these documents public because I felt they needed to be available to regulators, academics,
6 researchers, and other attorneys to help make the world a safer place. I also believe that getting these
7 documents into the hands of decision makers was in my clients' best interests.

8 56. The vitriol that Monsanto has spewed about myself, my law firm, and my fellow
9 counsel to this Court and the media, speaks volumes about what is really going on. For example, the
10 day after this Court entered its order to show cause, Monsanto's Scott Partridge told Law 360:

11 "They obviously made a calculated decision to violate two federal court orders," he
12 said. "They decided that whatever sanctions they got were worth it."

13 Partridge also questioned whether Baum Hedlund was the only firm involved in the
14 suit who was involved in the decision to leak the documents, suggesting the
15 plaintiffs' attorneys engaged in a "conspiracy" in which they could "sacrifice"
16 Baum Hedlund to reveal "cherry picked" documents to the public.

17 **Exhibit J**, Emma Cueto, *Firm In Hot Water Over Releasing Monsanto Weedkiller Docs*, at 2-3
18 Law360 (Aug. 10, 2017). The Monsanto spin machine is working overtime, spreading speculative
19 and false claims about Plaintiffs' counsel motives and, literally, espousing conspiracy theories.
20 These are the words of someone trying to rationalize their own mistake.

21 I declare under penalty of perjury that the foregoing is true and correct.

22 Executed on the 14th of August, 2017 at Los Angeles, California.

23 By: /s/ R.Brent Wisner
24 R. Brent Wisner, Esq. (SBN: 276023)
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27 12100 Wilshire Blvd., Suite 950
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CERTIFICATE OF SERVICE

I, R. Brent Wisner, hereby certify that, on August 14, 2017, I electronically filed the foregoing with the Clerk for the United States District Court for the Northern District of California using the CM/ECF system, which shall send electronic notification to counsel of record.

/s/ R. Brent Wisner
R. Brent Wisner

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