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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE: ROUNDUP PRODUCTS LIABILITY LITIGATION THIS DOCUMENT RELATES TO: ALL ACTIONS	MDL No. 2741 **NOTICE OF MOTION AND MOTION TO CLARIFY RULINGS RELATED TO CONFIDENTIALITY OF DOCUMENTS**

NOTICE OF MOTION

TO DEFENDANT AND ITS ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on Thursday, September 21, 2017, at 10:00 a.m. in Courtroom 4 of the United States District Court, Northern District of California, located at 450 Golden Gate Avenue, San Francisco, CA 94102, or as ordered by the Court, Plaintiffs in the above captioned case will move for an order clarifying the scope of Pretrial Orders ("PTOs") Nos. 15 & 20. The Motion will be based on this Notice, the memorandum in support, as well as the pleadings, records, and files in this action, and such other further evidence and argument as may be presented at the time of the hearing.

DATED: August 1, 2017

Respectfully submitted,

BAUM, HEDLUND, ARISTEI, & GOLDMAN, P.C.

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INTRODUCTION

Throughout the confidentiality process, Monsanto has essentially refused to participate in any meaningful meet-and-confer regarding documents designated as confidential, telling Plaintiffs' counsel recently, literally, to "go away" and citing this Court's PTO Nos. 15 & 20 as a basis for refusing to cooperate. At the outset of this litigation, Plaintiffs attempted to follow the procedures outlined in the Court's Protective Order by identifying specific documents that should be de-designated and attempting to meet-and-confer with Monsanto. At almost every turn, Monsanto refused to go through each document and explain, as required by the Protective Order, why each document was entitled to protection under Rule 26(c). Instead, Monsanto forced Plaintiffs to file motions, limited to this Court's joint letter process, with no exhibits or extensive legal argument. This had the practical result of shifting the burden of going through these documents to determine whether they actually contain confidential information away from Monsanto, as required by the Protective Order, and onto this Court in the context of a motion to seal. In response, the Court erected new "requirements" concerning confidentiality—requirements designed to limit the ability of Plaintiffs to challenge documents. Specifically, according to Monsanto, PTO Nos. 15 & 20 modified the Protective Order by requiring Plaintiffs to show that any challenged document was (1) relevant and (2) served a litigation need. And, according to Monsanto, there is no need to justify confidentiality designations unless the document was both relevant and served a litigation need. Monsanto's subjective view of the challenged documents has revealed that no document is relevant or serves a litigation need.

Plaintiffs do not believe that the Court intended PTO Nos. 15 & 20 to give Monsanto *carte blanche* over the confidentiality of documents. Nor do Plaintiffs believe that the Court's orders were issued with the benefit of complete briefing. However, unless the Court provides clarification, Plaintiffs are hamstrung and Monsanto will continue to tell Plaintiffs to "go away."

Substantively, to the extent that PTO Nos. 15 & 20 did erect new barriers, as discussed below, those new requirements are legally invalid. Requiring Plaintiffs to demonstrate that a document unilaterally designated as confidential is "relevant" or serves "a litigation need" before being

challenged, violates Rule 26(c) by giving protection to discovery material without a showing (by Monsanto) and a finding (by the Court) of good cause. Ninth Circuit case law is clear—as soon as a document is challenged, regardless of whether that document is relevant or serves a litigation need, it can only be protected from public disclosure with a particularized showing *and* finding of good cause. Any order that allows for the protection of documents without good cause is *per se* invalid.

Moreover, if PTO Nos. 15 & 20 are interpreted the way Monsanto claims, then the orders are also unconstitutional. Plaintiffs and their counsel have a First Amendment right to share discovery material with anyone they see fit. Any order restricting that right must serve a substantial government interest and not be overly restrictive. If PTO Nos. 15 & 20 are construed the way Monsanto claims, the orders do not serve a substantial government interest and are not sufficiently tailored to avoid needless suppression of free speech. As interpreted by Monsanto, PTO Nos. 15 & 20 qualify as unconstitutional prior restraint and must be vacated.

Plaintiffs respectfully request that this Court clarify that (1) to the extent that PTO Nos. 15 & 20 modified the Protective Order, they are vacated; (2) Plaintiffs are permitted to challenge the confidentiality of documents under the Protective Order, regardless of whether the document is relevant or serves a litigation need; and (3) Monsanto must start acting in good faith and provide, document-by-document, justification for the confidentiality of documents when challenged by Plaintiffs under the terms of the Protective Order.

BACKGROUND

I. Procedure for Correcting Over-Designation of Documents

This Court entered the Protective Order governing this litigation on December 9, 2016 (Dkt. 64). Under the Protective Order, the parties stipulated "that this Order ***does not confer blanket protections on all disclosures or responses to discovery*** and that the protection it affords from public disclosure and use ***extends only*** to the information or items that are entitled to confidential treatment under the applicable legal principles." Protective and Confidentiality Order ("PO") ¶ 2 (Dec. 9, 2016, Dkt. 64) (emphasis added). Additionally, the parties stipulated that "[d]ue to the complexity of this action . . . and to facilitate the flow of discovery material . . . the producing party may designate

an entire document as 'Confidential' if it believes in good faith that any part of the document is confidential or if the document falls within a category of documents that the designating party believes is likely to contain a large volume of Confidential material." *Id.* ¶ 4. Recognizing the importance of expediting discovery, the parties agreed that "[i]f it comes to the designating party's attention that information or items that it designated for protection do not qualify for protection, that designating party ***must*** promptly notify all other Parties that it is withdrawing its mistaken designation." *Id.* ¶ 5 (emphasis added). Thus, by the express terms of the Protective Order, each side is charged with an affirmative duty to correct over-designations promptly.

Sections 16.2 and 16.3 of the Protective Order outline the process for challenging the confidentiality of documents. It starts with the challenging party issuing a letter specifying "each designation it is challenging and describing the basis for each challenge." *Id.* ¶ 16.2. Once that letter is issued, the parties "shall attempt to resolve each challenge in good faith . . . by conferring directly . . . within 14 days[.]" *Id.* During that meet-and-confer, "the Challenging Party must explain the basis for its belief that the confidentiality designation was not proper and must give the Designating Party an opportunity to review the designated material, to reconsider the circumstances, and, if no change in designation is offered, to explain the basis for the chosen designation." *Id.* If the parties reach an impasse, then it goes to the Court. Specifically, the designating party must file a motion to maintain confidentiality within 30 days of the initial notice or else "automatically waive the confidentiality designation for each challenged designation." *Id.* ¶ 16.3. Additionally, "the Challenging Party may file a motion challenging a confidentiality designation at any time if there is good cause[.]" *Id.* Importantly, "[t]he burden of persuasion in any such challenge proceeding shall be on the Designating Party[.]" *Id.*

On March 13, 2017, the Court entered Pretrial Order No. 15, which stated that "the Court will not entertain any challenge by the plaintiffs to a confidentiality designation unless they can explain why the document is likely to be relevant in the litigation." PTO No. 15 at 4 (Dkt. 21). As discussed below, Monsanto claims that this order supplanted the Protective Order by requiring Plaintiffs to demonstrate why a document is relevant before being challenged.

On May 1, 2017, the Court entered Pretrial Order No. 20. As part of the order, the Court was concerned that "the plaintiffs have adopted a practice of attempting to get documents publicly released by attaching them to motions unnecessarily, then hoping the Court will deny requests to seal documents that shouldn't have been filed in the first place." PTO No. 20 at 1-2 (Dkt. 266).[1] The Court instructed Plaintiffs that confidentiality challenges should be done through the procedure outline in Section 16.2, not by attaching unrelated documents to motions.[2] The Court stated:

> [T]he Court has erred on the side of requiring Monsanto to produce more rather than less information, and because it has required Monsanto to produce that information at a rapid pace,[3] Monsanto will be forgiven if it, in turn, errs on the side of caution in designating discovery material as confidential. In this phase of the MDL, the proper remedy for overdesignation is to correct the discrete instances of overdesignation that require correction given the needs of the litigation. The plaintiffs will not be permitted to use this lawsuit as a means of feeding the media documents that aren't actually relevant to the lawsuit.

Id. at 2. Monsanto has interpreted this language as modifying the confidentiality-challenging scheme, adding an additional requirement and burden on Plaintiffs to establish why any particular document's de-designation serves a "litigation need."

II. Shortly after PTO No. 20 and the Courts Admonishment of Plaintiffs, Monsanto Begins Selectively Giving Deposition Testimony to the Press

Shortly after this Court admonished Plaintiffs (but not Monsanto) for "litigating in the media[,]" Monsanto gave portions of the deposition of Aaron Blair, a member of the IARC working group, to

[1] Plaintiffs' counsel do not agree that they attached documents to motion for non-litigation purposes.

[2] Plaintiffs used the sealing process as a method of challenging document because Monsanto refused to go through each identified document, one by one, and work out a compromise. The only way to get Monsanto to take an actual position with regard to confidentiality was to force the issue through a motion to seal. Clearly this approach backfired, and consistent with this Court's comments, Plaintiffs will not attach unrelated documents to future Court filings.

[3] The factual basis of this assertion by Monsanto is unclear. The Court accepted Monsanto's excessive over-designation of documents (over 85% of all produced documents) because the Court believes it forced Monsanto to produce those documents at a rapid pace. The problem, however, is that the vast majority of documents produced in this litigation were produced by Monsanto in a different case, *Kennedy v. Monsanto Company*, 16CM-CC00001 (Mo. Cir. Ct.), *nine* months before this Court even entered a protective order in this MDL, Dkt. 64 (Dec. 9, 2016) or ordered Monsanto to produce significant discovery in the MDL. And, most of the documents that have been the subject of confidentiality challenge recently, were produced on August 1, 2016, four months before this Court entered the governing protective order.

numerous news organizations including Reuters.[4] *See* Kate Kelland, *Cancer agency left in the dark over glyphosate evidence*, Reuters (June 14, 2017) available at https://www.reuters.com/investigates/special-report/glyphosate-cancer-data/ ("Previously unreported court documents reviewed by Reuter . . . In a sworn deposition given in March this year in connection with the case . . ."); *but see* Carey Gilliam, *Monsanto Spin Doctors Target Cancer Scientist in Flawed Reuters Story*, Huffington Post (June 16, 2017) (discussing the blatant factual errors in the Reuters article) *available at* http://www.huffingtonpost.com/entry/monsanto-spin-doctors-target-cancer-scientist-in-flawed_us_594449eae4b0940f84fe2e57. What makes Monsanto's conduct unsettling, however, is that while Monsanto unilaterally gave the Blair deposition to Reuters and other news organizations, it failed to disclose the deposition of Dr. Mathew Ross, which had been designated as confidential by Monsanto at that time, another member of the IARC working group who offered contradicting and clarifying testimony.[5] Thus, by dictating which testimony sees the light of day, Monsanto "feeds" the media using litigation documents and testimony it chooses to de-designate. And yet, in the same breath, Monsanto accuses Plaintiffs of feeding the press and then uses this "fact" as grounds for preventing Plaintiffs from challenging designation of documents.

III. Consistent with the Court's Procedure for Challenging Confidentiality, Plaintiffs Identified 84 Documents Which Were Improperly Designated "Confidential" and Are Relevant to the General Causation Phase of this Litigation

[4] Monsanto also submitted the deposition of Dr. Blair, and nearly all of the accompanying exhibits, to the Office of Environmental Health Hazard Assessment (OEHHA), arguing that his testimony discredited IARC's glyphosate determination and that the state should reconsider listing glyphosate as a substance known to the state of California to cause cancer. *See* Exh. D, Letter from Phillip W. Miller, Vice President of Global Affairs, Monsanto Company to Carol Monahan-Cummings, Chief Counsel of OEHHA, at 1-4 (June 20, 2017) *available at* https://oehha.ca.gov/media/downloads/proposition65/crnr/comments/monsantopetition06202017.pdf. OEHHA rejected the bid. Exh. E, Letter from Allan Hirsch, Chief Deputy Director, OEHHA, to Dr. Phillip W. Miller, Vice President of Global Corporate Affairs, Monsanto at 1-2 (Jul. 26, 2017), *available at* https://oehha.ca.gov/media/downloads/proposition-65/crnr/comments/letterphilipmiller06262017.pdf.

[5] It should also be noted, that at the beginning of the Blair deposition, which was a third party, Monsanto designated the entire transcript and all exhibits as confidential. Monsanto does this because it needs 30 days to evaluate the transcript for confidentiality. However, mid-way through the deposition, and before it was even completed, Monsanto de-designated entire transcript and the exhibits (except for questions relating to one exhibit). The purpose was clear: they intended to give it to the media.

On June 30, 2017, Plaintiffs sent a letter, pursuant to Section 16.2 of the Protective Order, challenging Monsanto's confidentiality designations of 84 documents. Exh. A, Letter from R. Brent Wisner to Joe Hollingsworth et al at 1-2 (June 30, 2017). Attached to the letter was a 28-page chart, listing out each document, summarizing the relevant portions, and explaining why the specific document was relevant to the issue of general causation. *Id.* at 3-30. Additionally, Plaintiffs redacted all personal information from the documents and sent a hyperlink of the documents to Monsanto to facilitate review. *Id.* at 2. In the letter, Plaintiffs stressed:

> As you know, in the Court's Pre-Trial Order 20, the Court stated that "[i]n this phase of the MDL, the proper remedy for overdesignation is to correct the discrete instances of overdesignation that require correction given the needs of the litigation" and instructed the Parties to comply with the meet-and-confer process outlined in Section 16.2 of the Protective Order. . . . [T]his letter and the requested meet-and-confer is your chance to address a discrete set of documents, identified in the attached chart, and correct Monsanto's overdesignations. It is my sincere hope that through the meet-and-confer process we can avoid burdening the Court with having to review these documents and this confidentiality dispute can be resolved without Court intervention.
>
> . . . [Y]ou have fourteen (14) days to conduct a good-faith review of these documents and let us know whether you will be withdrawing these confidentiality designations, thus avoiding the need for any motion.

Id.

In response to the letter, Monsanto agreed to meet-and-confer on July 13, 2017, exactly fourteen days after Plaintiffs' served the letter. Concerned that Monsanto might not be fully prepared to discuss each document to determine whether the confidentiality designation should be retracted, Plaintiffs' counsel sent a follow-up email on July 10, 2017, stating:

> The date of our meet and confer (Thursday July 13) falls on the eve of the 14 day meet and confer deadline. Thus, we expect that you will have reviewed the 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 columns where you may indicate your position with respect to each challenge. If you agree that a specific document will be de-designated, simply check the "Agree" box, or if you disagree with the challenge, please provide an explanation in the "Disagree" box.

Exh. B, Email Exchanges at 1. Plaintiffs were ready to do exactly what this Court repeatedly instructed the parties to do—go through each document and see if, through compromise and common

sense, the parties could resolve the confidentiality issue without Court intervention.

IV. Monsanto Tells Plaintiffs to, Literally, "Go Away" and Refuses to Engage in Any Document by Document Meet-and-Confer Regarding the Confidentiality of the Challenged Documents

The parties met by phone on July 13, 2017. And, consistent with its practice of dictating the terms of confidentiality challenges, Monsanto refused to discuss any document or explain why any document was properly designated confidential, i.e., contained trade secret information or any other propriety information. Instead, Monsanto stated it was not required to review these documents because there was no "litigation need" and that reviewing the 84 documents for confidentiality would be too burdensome. To bolster this argument, Monsanto stated that it reviewed the 84 documents to see if any of them were cited in Plaintiffs' expert reports (but not to see if they contain any confidential information). And, since none of them were cited in Plaintiffs' expert reports, Monsanto claimed that none of the documents could be challenged. Monsanto literally told Plaintiffs' counsel to "go away" and explained that the Court empowered Monsanto to take that position.[6] When pressed about what Monsanto thought qualified as a legitimate "litigation need" such that Monsanto would be willing to meet-and-confer about the confidentiality of documents, Monsanto refused to answer, only stating that these documents and Plaintiffs' challenge did not qualify.

Plaintiffs inquired whether Monsanto could put aside the issue of "litigation need," and at least discuss whether the original confidentiality designations for the 84 documents were appropriate. Monsanto refused.

V. Monsanto Waived Any Claim to Confidentiality to the Challenged Documents by Failing to File a Motion Pursuant to Paragraph 16.3 of the Protective Order

Pursuant to Paragraph 16.3 of the Protective Order, Monsanto was required to file a motion seeking continued protection of those documents challenged by the Plaintiffs' June 30, 2017 letter within 30 days. Failure to file such motion within 30 days, i.e., July 31, 2017, "automatically waive[s] the confidentiality designation for each challenged designation." *Id.* ¶ 16.3. Remarkably,

[6] Indeed, surprised by Monsanto's brazen refusal to discuss the challenged documents, Plaintiffs' counsel asked if Monsanto's counsel could be quoted as saying "go away;" counsel said yes.

Monsanto did not file any motion seeking continued protection of the documents and, thus, waived any confidentiality over the documents. That said, this motion is still needed because Plaintiffs should not have to rely on Monsanto waiving confidentiality before it can get documents de-designated. Moving forward, Plaintiffs need clarification of PTO Nos. 15 & 20, which are being used by Monsanto in state cases to seek modified version of this MDL's protective order.

ARGUMENT

I. To the Extent PTO No. 15 Imposes a Requirement that Plaintiffs Demonstrate that a Document Is "Relevant" before Being Subject to a Confidentiality Challenge, the Order Violates Rule 26(c) and Should Be Vacated

The public is permitted "access to litigation documents and information ***produced during discovery.***" *Phillips v. Gen. Motors Corp.*, 307 F.3d 1206, 1210 (9th Cir. 2002) (emphasis added). Indeed, "[i]t is well-established that the fruits of ***pretrial discovery*** are, in the absence of a court order to the contrary, presumptively public." *San Jose Mercury News, Inc. v. U.S. Dist. Court*, 187 F.3d 1096, 1103 (9th Cir. 1999) (emphasis added); *see In re Roman Catholic Archbishop of Portland in Oregon*, 661 F.3d 417, 433 (9th Cir. 2011) ("[T]he public's right of access to documents ***produced in litigation*** is long established and has been given great weight from the time of the equity courts in England." (emphasis added)). The only way a Court may limit pretrial discovery from public disclosure is pursuant to Rule 26, which permits the Court "for good cause, [to] issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense." *Roman Catholic*, 661 F.3d at 424 (quoting Fed. R. Civ. P. 26); *see In re Halkin*, 598 F.2d 176, 188 (D.C. Cir. 1979) ("The implication [of Rule 26] is clear that without a protective order materials obtained in discovery may be used by a party for any purpose, including dissemination to the public.").

However, a blanket protective order, permitting any party to unilaterally designate documents as confidential, does not meet the "good cause" requirements of Rule 26 once those documents are challenged. *See Beckman Indus., Inc. v. Int'l Ins. Co.*, 966 F.2d 470, 476 (9th Cir. 1992) ("[B]ecause the protective order was a stipulated blanket order, International never had to make a 'good cause' showing under Fed. R. Civ. P. 26(c) . . . in the first place. . . . Thus, International has never made the

showing necessary to justify continued protection of the transcripts."). As soon as a document designated as "confidential" is challenged, whether that document was filed in the context of a motion or not, the Court ***must*** require the designating party, i.e., Monsanto, to make an actual showing of good cause. *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1131 (9th Cir. 2003) ("Now that the Private Intervenors ***have challenged*** the contention that the ***unfiled discovery documents belong under seal***, the district court ***must require State Farm to make an actual showing of good cause for their continuing protection under Federal Rule of Civil Procedure 26(c)***." (emphasis added)); *e.g.*, *Medtronic Vascular, Inc. v. Abbott Cardiovascular Sys., Inc.*, No. C-06-1066 PHJ EMC, 2007 WL 4169628, at *1 (N.D. Cal. Nov. 20, 2007) (J. Chen) (***"Upon challenge, the designating party must justify each document by showing good cause and demonstrate that specific prejudice or harm will result if the . . . documents . . . are disclosed.***" (emphasis added)). Otherwise, the Court would effectively be protecting documents from public disclosure, in contravention of the "presumptively public" nature of discovery material, without a particularized, i.e., document by document, finding of good cause.[7] Not requiring Monsanto to make an actual showing of good cause for challenged documents' continued confidentiality is contrary to Ninth Circuit law. *See, e.g.*, *Foltz*, 331 F.3d at 1131; *Beckman*, 966 F.2d at 476. As one court explains:

> Rule 26(c) gives some precedence to one particular value: ***freedom to use discovered information in any lawful manner that the discovering party chooses.*** That precedence is reflected in the Rule's demand that trial courts not issue protective orders unless the proponent of the order first makes a showing of good cause. ***Without such a showing, no such order can issue.***

Humboldt Baykeeper v. Union Pac. R. Co., 244 F.R.D. 560, 562 (N.D. Cal. 2007) (emphasis added).

Requiring Plaintiffs to explain the relevancy of certain documents in advance of challenging confidentiality violates Rule 26. First, because Plaintiffs are not seeking to invoke Rule 26(c)'s

[7] *See Crossfit, Inc. v. Nat'l Strength & Conditioning Ass'n*, No. 14CV 1191-JLS(KSC), 2015 WL 12466532, at *4 (S.D. Cal. July 16, 2015) ("Once a party challenges whether documents produced during discovery are entitled to continuing protection under a stipulated protective order, the Court must require 'an actual showing of good cause' under Rule 26(c) and 'identify and discuss the factors it considered in its 'good cause' examination.'" (quoting *Foltz*, 331 F.3d at 1130-31)).

protection, they cannot be charged with any burden of persuasion or proof—Monsanto, not Plaintiffs, bears the burden of making a particularized showing of "good cause." Second, Rule 26(c) does not contemplate the subjective relevancy of challenged documents, i.e., it does not permit the entry of a protective order without a particularized showing of good cause simply because the document is irrelevant. Relevance is not grounds for protection under Rule 26(c). By forcing Plaintiffs to make a threshold showing of "relevance" before Monsanto is required to make a particularized showing of good cause, the Court effectively enters a protective order for all documents Monsanto believes is are not relevant without a particularized finding of good cause—even documents challenged under the terms of the Protective Order. Such a ruling is, under Ninth Circuit precedent, impermissible. *Foltz*, 331 F.3d at 1130 ("Any such order, however, requires that the court's determination 'identify and discuss the factors it considered in its 'good cause' examination[.]'" (quoting *Phillips*, 307 F.3d at 1212)). Before this Court can protect a challenged document, it must engage in a two part analysis: "First, it must determine whether 'particularized harm will result from disclosure of information to the public" and "Second, if the court concludes that such harm will result from disclosure of the discovery documents, then it must proceed to balance 'the public and private interests to decide whether [maintaining] a protective order is necessary.'" *Sampson v. City of El Centro*, No. 14CV1807-L (DHB), 2015 WL 11658713, at *4 (S.D. Cal. Aug. 31, 2015) (quoting *In re Roman Catholic*, 661 F.3d at 424). The scheme, as interpreted by Monsanto, does not provide for this and is, making clarification of the Court's orders necessary.

II. To the Extent PTO No. 20 Requires Plaintiffs to Demonstrate that a Document Serves a "Litigation Need" before Being Subject to a Confidentiality Challenge It Violates Rule 26(c) and Should be Vacated

As an initial matter, Plaintiffs do not believe that the Court's ruling in PTO No. 20 modified or affected the operative Protective Order in any way. The Court's criticisms of Plaintiffs' counsel were aimed at whether it was appropriate to attach certain documents to a motion that the Court found not particularly relevant and then force Monsanto to explain why those documents should be sealed, effectively circumventing Monsanto's refusal to participate in the meet-and-confer process outlined in the Protective Order. The Court felt that the parties should use the procedures in the Protective

Order, not the sealing process, to deal with confidential designations. And, that point was well met, as illustrated by Plaintiffs attempting to implement the challenge process outlined in the Protective Order with the challenged 84 documents discussed above.

Monsanto has taken a different view of PTO No. 20. According to Monsanto, it is not even required to participate in any meet-and-confer to address, document by document, those specific documents Plaintiffs believe were over-designated unless Monsanto believes the identified documents serve a "litigation need." During the July 13, 2017 meet-and-confer, Monsanto refused to explain what qualified as a "litigation need" but stated that the 84 challenged documents did not qualify. Thus, according to Monsanto, PTO No. 20 allows it to dictate when and if documents can be challenged based on whether Monsanto agrees that they serve a "litigation need."

For the same reasons a "relevance" restriction violates Rule 26(c), so does a "litigation need" restriction. Absent a particularized, document by document, showing of "good cause" by Monsanto and a particularized finding by this Court, Rule 26(c) does not permit the protection of documents. *See Foltz*, 331 F.3d at 1131; *Beckman*, 966 F.2d at 476. An order predetermining protection of documents because they are not related to a particular phase of the litigation is *per se* invalid because it fails to require Monsanto to demonstrate good cause and avoids this Court reviewing those particularized assertions and explaining the basis for them. *Ground Zero Ctr. for Non-Violent Action v. United States Dep't of Navy*, 860 F.3d 1244 , No. 14-35086, 2017 WL 2766091, at *13 (9th Cir. June 27, 2017) ("[T]he district court should have engaged in this two-step analysis[.]"); *Citizens First Nat. Bank of Princeton v. Cincinnati Ins. Co.*, 178 F.3d 943, 945 (7th Cir. 1999) ("The order is so loose that it amounts, as we suggested at the outset, to giving each party carte blanche to decide what portions of the record shall be kept secret. Such an order is invalid."). Thus, to the extent that PTO No. 20 implements this additional requirement, as argued by Monsanto, it is invalid and should be vacated.

III. To the Extent PTO Nos. 15 & 20 Impose Blanket Restrictions about Which Documents Will be Protected from Public Disclosure, such a Restriction Is an Unconstitutional Prior Restraint

"The inherent value of speech in terms of its capacity for informing the public does not turn on

how or where the information was acquired." *In re Halkin*, 598 F.2d at 187 (citing *First National Bank of Boston v. Bellotti*, 435 U.S. 765, 778-783 (1978)). "A party's right to disseminate information is far stronger for discovery materials than for information that has been stolen or obtained in breach of contract." *Id.* To be sure, "courts have significant discretion to constrain litigants from disseminating information obtained through litigation." *Ground Zero*, 2017 WL 2766091, at *11. Courts "have applied relaxed First Amendment scrutiny to district courts' restrictions of litigants' speech given 'the relationship between [them] and the court system.'" *Id.* (quoting *Levine v. U.S. Dist. Court*, 764 F.2d 590, 595-96 (9th Cir. 1985)). That said, "the Supreme Court has noted that parties have general [F]irst [A]mendment freedoms with regard to information gained through discovery and that, absent a valid court order to the contrary, they are entitled to disseminate the information as they see fit."[8] *Pub. Citizen v. Liggett Grp.*, Inc., 858 F.2d 775, 780 (1st Cir. 1988) (citing *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 31-36 (1984)); *see San Jose Mercury News*, 187 F.3d at 1101 (citing *Pub. Citizen* with approval); *Beckman*, 966 F.2d at 476 (same). And, the Supreme Court has held that "[i]t is, of course, clear that information obtained through civil discovery authorized . . . would rarely, if ever, fall within the classes of unprotected speech identified by decisions of this Court" even if that right can be restrained. *Seattle Times*, 467

[8] There is substantial public interest in the proceedings of this litigation—a fact made all too clear by the letter from members of the European parliament requesting access to discovery materials to help in its consideration of whether to renew the license for glyphosate in the European Union. Letter from Bart Staes, et al (July 4, 2017), Dkt. 385. There are, for example, ongoing investigations by EPA's Office of Inspector General's Office into potential illegal collusion between Monsanto and EPA officials. Exh. C, Letter from Authur Elkins to Hon. Ted Lieu (May 31, 2017), *available at* https://www.documentcloud.org/documents/3853786-EPA-OIG-Letter-to-Ted-Lieu.html. The Office of Environmental Heath Hazzard Assessment for the State of California recently listed glyphosate as a substance known to cause cancer and is presently considering whether to implement a safe harbor level for glyphosate exposure and is actively seeking guidance and information from Plaintiffs' counsel. *See* OEHHA, *Glyphosate Listed Effective July 7, 2017, as Known to the State of California to Cause Cancer* (Jul. 7, 2017), *available at* https://oehha.ca.gov/proposition-65/crnr/glyphosate-listed-effective-july-7-2017-known-state-california-cause-cancer; OEHHA, Notice of Public Hearing – Proposed Specific Regulatory Level Chemical Causing Cancer: Glyphosate (June 7, 2017), *available at* https://oehha.ca.gov/proposition-65/events/notice-public-hearing-proposed-specific-regulatory-level-chemical-causing. Plaintiffs' counsel have been contacted by all of these regulatory and government entities to provide documents—none of which contain trade secrets or other confidential information—and the only thing preventing disclosure is this Court's Protective Order and Monsanto's refusal to even discuss de-designation of documents.

U.S. at 31; *In re Halkin*, 598 F.2d at 190 ("A prohibition on what plaintiffs may say about information once they have obtained it, however, directly implicates the First Amendment."). After all, "attorneys and other trial participants do not lose their constitutional rights at the courthouse door." *Levine*, 764 F.2d at 595.

To the extent this Court limits disclosure of discovery material because those documents are not relevant to the litigation or do not serve a "litigation need," such limitations are overbroad and constitute unconstitutional prior restraint. "Even in the presence of sufficient justification for curtailing certain first amendment utterances, an order must be drawn narrowly so as not to prohibit speech which will not have an effect on the fair administration of justice along with speech which will have such an effect." *Chase v. Robson*, 435 F.2d 1059, 1061 (7th Cir. 1970). In determining whether a protective order limiting dissemination of pretrial discovery material violates the First Amendment, "(1) the prohibitions imposed by protective orders must further an important or substantial governmental interest that is unrelated to the suppression of expression, and (2) the limitations imposed by the orders on freedom of expression must be no greater than is necessary or essential to protect 'the particular governmental interest involved.'" *Humboldt Baykeeper*, 244 F.R.D. at 561 (quoting *Seattle Times*, 467 U.S. at 32).

The first prong of the *Seattle Times* test, i.e., a substantial government interest, is satisfied by showing good cause under Rule 26(c). *Id.* After all, "a showing of 'good cause' has real meaning—a real meaning that, among other things, ensures that a protective order will not issue unless the party asking the court to issue it demonstrates that the order would advance or protect some legitimate interest other than suppression of expression." *Id.* This is why "[t]he proponent of the order must demonstrate that the order would reduce a real risk of significant harm to an interest that is ***entitled to protection under the law*** and that is independent of the proponent's (or the court's) desire simply to keep the discovered information out of public view or inaccessible to the authorities." *Id.* at 562 (emphasis added). And, as discussed above, the imposition of a threshold showing of "relevance" or "litigation need" allows speech to be suppressed without recourse to any showing of good cause, i.e., without any showing of a substantial governmental interest in suppressing that speech. The original

Protective Order, before PTO Nos. 15 & 20 supposedly modified it, did require such a showing as soon as a document was challenged, thus making any restriction on speech serve a substantial governmental interest. However, PTO Nos. 15 & 20, to the extent they inhibit Plaintiffs' and their counsels' speech, go too far and allow for suppression of speech without a concurrent showing of a substantial governmental interest.

Under the second prong, "a protective order could be vulnerable to constitutional attack on the ground that the prohibitions it imposes reach appreciably farther than would be necessary to secure the important public ends that are proffered in support of issuance of the order." *Id.* And here, a restriction of confidentiality challenges to documents that are "relevant" or serve a "litigation need" broadly protects millions of pages of documents from being discussed—most of which have no basis for being designated confidential in the first place. The Court's suppression of the Plaintiffs' and their counsels' freedom of speech goes appreciably farther than would be necessary to secure the proper and orderly administration of justice, or any other valid interest. This is particularly true since the original Protective Order did not impose such overbroad restrictions but, instead, required Monsanto to make an affirmative demonstration of good cause, document by document, when challenged by the Plaintiffs. If PTO Nos. 15 & 20 modified the Protective Order as Monsanto claims, then it modified it in a way that violates the Constitution.

Thus, in light of these two prongs, to the extent the Court accepts Monsanto's interpretation of PTO Nos. 15 & 20, they constitute unconstitutional prior restraint on Plaintiffs' and their counsels' freedom of speech and must be vacated.

CONCLUSION

Plaintiffs respectfully request that the Court enter an order:

(1) Clarifying that, to the extent that PTO Nos. 15 & 20 modified the Protective Order, they are vacated;

(2) Clarifying that Plaintiffs are permitted to challenge the confidentiality of documents under the Protective Order, regardless of whether the document is subjectively "relevant" or serves a "litigation need"; and

(3) Directing Monsanto to act in good-faith by providing document-by-document justifications for the confidentiality of documents when challenged by Plaintiffs under the terms of the Protective Order.

DATED: August 1, 2017

Respectfully submitted,

By: /s/ R. Brent Wisner

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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I, R. Brent Wisner, hereby certify that, on August 1, 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

EXHIBIT A

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June 30, 2017

VIA EMAIL

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Re: *In Re: Roundup Products Liability Litigation*, 16-MD-2741 (N.D. Cal.)
Letter Initiating Meet-and-Confer

Counsel,

I write to initiate a meet-and-confer regarding the asserted "confidentiality" of specific documents produced by Monsanto in discovery. I have been appointed by the Plaintiffs' Leadership in the MDL to work on this issue with you.

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

In compliance with the Court's Pre-Trial Order 15 (PTO-15), clear reasons are set forth in the attached chart for why each challenged document is relevant to the general causation stage of this litigation. Plaintiffs are making a good-faith effort to "confer in advance of court filings about whether documents previously designated confidential truly need that designation." PTO-15 at 4; *see* Feb 27, 2017 Tr. of Proceedings at 55. All of the documents challenged in this letter are reasonably likely to be used in this litigation and relate to this phase of litigation.

As you know, in the Court's Pre-Trial Order 20, the Court stated that "[i]n this phase of the MDL, the proper remedy for overdesignation is to correct the discrete instances of overdesignation that require correction given the needs of the litigation" and instructed the Parties to comply with the meet-and-confer process outlined in Section 16.2 of the Protective Order. Recognizing that Monsanto's designation of nearly every document produced in this litigation as "Confidential" was not done in bad-faith, but simply because Monsanto erred on the "side of caution," this letter and the requested meet-and-confer is your chance to address a discrete set of documents, identified in the attached chart, and correct Monsanto's overdesignations. It is my sincere hope that through the meet-and-confer process we can avoid burdening the Court with having to review these documents and this confidentiality dispute can be resolved without Court intervention.

The substantive basis for challenging *each* document is provided in the attached chart. Pursuant to the December 9, 2016 Protective and Confidentiality Order, you have fourteen (14) days to conduct a good-faith review of these documents and let us know whether you will be withdrawing these confidentiality designations, thus avoiding the need for any motion. I am available to meet-and-confer and ask that you notify us by Thursday, July 6, 2017 of when you will be able to systematically go through each of these documents to see if there is some way we can come to an agreement outside of Court intervention.

To further facilitate your review, we have redacted the documents to remove irrelevant identifying information such as addresses, email addresses, phone, and fax numbers. The redacted documents are available at HYPERLINK for your review. Additionally, we have grouped the documents by subject-matter.

Best,
BAUM HEDLUND ARISTEI & GOLDMAN, P.C.

By: _____

R. Brent Wisner
Michael L. Baum
Pedram Esfandiary

CHALLENGED DOCUMENTS

No	Bates	Description	Relevance
Issue: Ghostwriting, Peer-Review & Retraction			
1.	MONGLY01000676, MONGLY01000680 2/8/2016 - 2/9/2016	This document contains correspondence between Dr. William Heydens (Monsanto) and Ashley Roberts (Intertek) regarding the Expert Panel Manuscript. Dr. Heydens went "through the entire document and "indicated what I think should stay, what can go, and in a couple spots I did a little editing. I took a crack at adding a little text: on page 10 to address John's comments about toxicologists' use of Hill's criteria ... see what you think; it made sense to me, but I'm not sure if it will to others - please feel free to further modify and/or run by Cary." at *1. The edited draft is also attached and challenged for confidentiality.	This document is relevant and reasonably likely to be used in this litigation as it demonstrates Monsanto's significant role in drafting and editing a manuscript drafted by supposedly independent expert consultants to refute IARC's carcinogenicity conclusions regarding glyphosate without disclosing Monsanto's contributions. This document is related to how the inherent conflict of interest may affect the credibility of the manuscript's refuting IARC's general causation conclusion. The reliability and consensus of scientific literature is directly relevant to general causation. This document also goes to witness credibility.
2.	MONGLY00999487 1/6/2016	This document contains email correspondence between Dr. Heydens and Ashley Roberts (Intertek) wherein Dr. Heydens admits to writing "a draft introduction chapter back in October/November…[a]nd then comes the question of who should be the ultimate author ... you or Gary? I was thinking you for the Introduction chapter and Gary for the Summary chapter, but I am totally open to your suggestions." at *2.	This document is relevant and reasonably likely to be used in this litigation as it again indicates that Monsanto was a significant contributor to the Expert Panel Manuscript without disclosing its substantive role in the final publication which refuted IARC's general causation conclusion. Dr. Heydens explicitly suggests that affiliated consultants appear as authors instead of himself. Indeed, Monsanto own experts rely on the "Expert Panel" analysis. The reliability and consensus of scientific literature is directly relevant to general causation. This document also goes to witness credibility.
3.	MONGLY00998682, MONGLY00998687 1/9/2016 - 1/13/2016	The documents contain email correspondence between Dr. William Heydens and Ashley Roberts (Intertek) wherein Dr. Heydens heavily edits ("here are my suggested edits to the Draft Combined Manuscript" at *1) the Expert Panel's manuscript drafted in opposition	The documents are relevant and reasonably likely to be used in this litigation as they demonstrate that the manuscript published under the authorship of the Expert Panel was composed with substantive contributions by Monsanto. Monsanto did not disclose its role in drafting the manuscript

No	Bates	Description	Relevance
		to IARC's classification of glyphosate. The edited draft is also attached and challenged for confidentiality.	which directly challenged the general causation "2A probable carcinogen" conclusion by IARC. Indeed, Monsanto own experts rely on the "Expert Panel" analysis. The reliability and consensus of scientific literature is directly relevant to general causation. These documents also go to witness credibility.
4.	MONGLY02085862 2/4/2016	This document contains an email from Dr. Heydens to Ashley Roberts regarding the introduction to the Expert Panel Manuscript. Among other features, Dr. Heydens' draft attempts to convey "that glyphosate is really expansively used." at *1.	It is relevant and reasonably likely to be used in this litigation for the same reasons as the above (MONGLY01000676) document. The reliability and consensus of scientific literature is directly relevant to general causation. This document also goes to witness credibility.
5.	MONGLY01023968 5/8/2015 - 5/11/2015	This document contains email correspondence between Michael Koch and Dr. William Heydens regarding "Post-IARC Activities to Support Glyphosate". Dr. Heydens explicitly identifies one of the goals as "Publication on Animal Data Cited by IARC…Manuscript to be initiated by Mon as ghost writers". at *1.	This document is relevant and reasonably likely to be used in this litigation as it demonstrates Monsanto's involvement in scientific publications without disclosing inherent conflicts of interest. Through ghost-writing, Monsanto is able to populate the scientific discourse with favorable studies on glyphosate without appearing to be involved in the dissemination of data. Regulators and consumers are thus not provided with an impartial and transparent assessment of Roundup and glyphosate; assessments which are then relied upon to evaluate the biological plausibility of Roundup and/or glyphosate as a carcinogen. This document is of similar nature to a document already de-designated by the Court in which Dr. Heydens advocates ghostwriting. *See* MONGLY00977267. The reliability and consensus of scientific literature is directly relevant to general causation. This document also goes to witness credibility.
6.	MONGLY01030787	This document contains email correspondence between various Monsanto personnel and consultants wherein	This document is relevant and reasonably likely to be used in this litigation as it confirms Monsanto's

No	Bates	Description	Relevance
	11/3/2015 - 11/6/2015	Dr. John Acquavella protests Monsanto's ghost-writing activities: "I can't be a part of deceptive authorship on a presentation or publication… We call that ghost writing and it is unethical." at *2, 3.	ghostwriting of scientific studies used by Monsanto to deny the biological plausibility of Roundup and/or glyphosate acting as a carcinogen. Regulators and scientists, relying upon ghostwritten studies, cannot weigh conflicts of interest when using the data to determine causation between glyphosate and carcinogenicity. The reliability and consensus of scientific literature is directly relevant to general causation. This document also goes to witness credibility.
7.	MONGLY02063095 9/26/2012	This document contains a series of email exchanges between various Monsanto personnel regarding letters to the editor of Food and Chemical Toxicology seeking retraction of a study by Professor G.E. Seralini. Mr. Eric Sachs writes about his efforts to galvanize scientists in a letter-writing campaign in order to retract the article: "I talked to Bruce Chassy and he will send his letter to Wally Hayes directly and notify other scientists that have sent letters to do the same. He understands the urgency…I remain adamant that Monsanto must: not be put: in the position of providing the critical analysis that leads the editors to retract the paper." at *3, 2; *see also* MONGLY01045298 (below).	This document is relevant and reasonably likely to be used in this litigation as it demonstrates the significant role played by Monsanto in achieving the successful retraction of a scientific study regarding glyphosate's carcinogenicity without appearing to be directly involved in such efforts. Monsanto's influence on the quality and quantity of scientific data on glyphosate is related to the conclusions that regulators and researchers are able to reach with respect to whether carcinogenicity is a biologically plausible feature of glyphosate. The reliability and consensus of scientific literature is directly relevant to general causation. This document also goes to witness credibility.
8.	MONGLY01045298 8/20/2013	This document identifies the "Business Goals" of Monsanto employee David Saltmiras for the fiscal year 2013. Dr. Saltmiras explicitly states under the "Employee Comments" section: "Throughout the late 2012 Seralini rat cancer publication and media campaign, I leveraged my relationship the Editor of Chief of the publishing journal, Food and Chemical Toxicology and was the single point of contact between Monsanto and the Journal." at 6. Moreover, Dr. Saltmiras acknowledges that he "[s]uccessfully facilitated numerous third party expert letters to the	This document is relevant and reasonably likely to be used in this litigation for similar reasons as the previous (MONGLY02063095) document. Dr. Saltmiras acknowledges Monsanto's intimate contact with the editor of FCT which, per document MONGLY02063095, led to the retraction of Professor Seralini's study from Food and Chemical Toxicology. The reliability and consensus of scientific literature is directly relevant to general causation. This document also goes to witness credibility.

No	Bates	Description	Relevance
		editor which were subsequently published, reflecting the numerous significant deficiencies, poor study design, biased reporting and selective statistics employed by Seralini." at 3.	
9.	MONGLY00900629 9/26/2012	This document contains email correspondence between Bruce Chassy and the Editor of Food and Chemical Toxicology, Wallace Hayes, wherein Dr. Chassy urges Mr. Hayes to retract the Seralini paper at Monsanto's request (discussed above): "My intent was to urge you to roll back the clock, retract the paper, and restart the review process." at *2.	This document is relevant and reasonably likely to be used in this litigation as it confirms Monsanto's campaign to eliminate a study which observed the adverse effects of glyphosate. It is relevant for the same reasons as documents MONGLY02063095 and MONGLY01045298. The reliability and consensus of scientific literature is directly relevant to general causation. This document also goes to witness credibility.
10.	MONGLY02185742 8/21/2012	This document is a 2012 consulting agreement between Monsanto and the editor of Food and Chemical Toxicology, Wallace Hayes for the period immediately preceding Mr. Hayes's involvement in the retraction of the Seralini paper from Food and Chemical Toxicology.	This document is relevant and reasonably likely to be used in this litigation as it demonstrates the conflict of interest between Mr. Hayes' role as a consultant for Monsanto and his vocation as editor for a research journal which retracted a study determining that glyphosate is capable of being a carcinogen. The document is further indication of Monsanto's pervasive influence within the scientific community which is related to the availability and quality of data on glyphosate used by researchers and regulators to assess the scientific literature in determining the potential carcinogenicity of glyphosate. The reliability and consensus of scientific literature is directly relevant to general causation. This document also goes to witness credibility.
11.	MONGLY00971543 8/12/2012 - 8/13/2012	This document is an email from Dr. David Saltmiras to Dr. Heydens wherein Dr. Saltmiras states "Contact Wallace Hayes to determine his availability and fees for attending the meeting."	The document does not contain trade secrets, sensitive commercial information or privileged material. This document is relevant and reasonably likely to be used in this litigation for the same reasons as the above (MONGLY02185742) document. Mr. Hayes' paid consultancy for

No	Bates	Description	Relevance
			Monsanto constitutes a conflict of interest with his role as editor of a journal publishing research on glyphosate--especially given his involvement in retracting a study pertaining to the biological plausibility of glyphosate as a human carcinogen. The reliability and consensus of scientific literature is directly relevant to general causation. This document also goes to witness credibility.
12.	MONGLY01096619 9/19/2012 - 9/20/2012	This document contains an email correspondence between various Monsanto personnel wherein Dr. Saltmiras expresses the following with respect to the recently published study in Food and Chemical Toxicology by Seralini: "Wally Hayes, now FCT Editor in Chief for Vision and Strategy, sent me a courtesy email early this morning. Hopefully the two of us will have a follow up discussion soon to touch on whether I C'I' Vision and Strategy were front and center for this one passing through the peer review process.... and what is that, Vision and Strategy? I also suspect this paper may be in our own best interests - the last rites for Seralini's few remaining shreds of scientific credibility." at *2.	This document is relevant and reasonably likely to be used in this litigation as it confirms Monsanto's intimate relationship with Wallace Hayes who was subsequently involved in retracting professor Seralini's study pertaining to the biological plausibility of glyphosate as a human carcinogen, a conclusion that was adverse to Monsanto's commercial agenda. The reliability and consensus of scientific literature is directly relevant to general causation. This document also goes to witness credibility.
13.	MONGLY00978886 10/9/2012 - 10/10/2012	This document contains email correspondence between various Monsanto personnel wherein Daniel Goldstein writes the following with respect to professor Seralini's study: "Retraction- Both Dan Jenkins (US Government affairs) and Harvey Glick made a strong case for withdrawal of the paper if at all possible, both on the same basis- that publication will elevate the status of the paper, bring other papers in the journal into question, and allow Seralini much more freedom to operate. All of us are aware that the ultimate decision is up to the editor and the journal management, and that we may not have an opportunity for withdrawal in any event, but I felt it was worth reinforcing this request." at *3.	The document does not contain trade secrets, sensitive commercial information or privileged material. This document is relevant and reasonably likely to be used in this litigation as it confirms Monsanto's attempt to seek retraction of a study pertaining to the biological plausibility of glyphosate as a human carcinogen; a conclusion adverse to Monsanto's commercial agenda. Mr. Goldstein makes it clear that a retraction would curtail professor Seralini's "freedom to operate." *Id*. The reliability and consensus of scientific literature is directly relevant to general causation. This document also goes to witness credibility.

No	Bates	Description	Relevance
14.	MONGLY00936725 9/28/2012	This document contains email correspondence between Dr. Goldstein and Eric Sachs regarding the Monsanto campaign to retract professor Seralini's paper. Dr. Goldstein states: "I was uncomfortable even letting shareholders know we are aware of this LTE.... It implies we had something to do with it- otherwise how do we have knowledge of it? I could add 'Aware of multiple letters to editor including one signed by 25 scientists from 14 countries' if you both think this is OK." at *1. Mr. Sachs responds: "We are 'connected' but did not write the letter or encourage anyone to sign it." *Id.*	This document is relevant and reasonably likely to be used in this litigation as confirms Monsanto's undisclosed involvement in the successful retraction of a paper pertaining to the biological plausibility of glyphosate as a human carcinogen; a conclusion adverse to Monsanto's commercial agenda. Moreover, the document demonstrates that Monsanto personnel were aware of the imperative need to covertly instigate the retraction campaign and the inappropriateness of such action. The reliability and consensus of scientific literature is directly relevant to general causation. This document also goes to witness credibility.
15.	MONGLY01238768 9/12/2008	This document is a peer review by Monsanto employee Dr. Charles Healy of a study titled "Cytotoxicity of herbicide Roundup and its active ingredient, glyphosate in rats". The document contains recommendations for rejecting the study which found substantial adverse cytotoxic effects associated with Roundup and glyphosate.	This document is relevant and reasonably likely to be used in this litigation as it demonstrates Monsanto's covert manipulation of the science on glyphosate cytotoxicity given Dr. Healy's vested interests in Monsanto which conflict with the impartiality of the peer review process. Access to comprehensive, impartial peer-reviewed data on glyphosate, which is relied upon by both regulators and scientists to determine the associations between glyphosate and cancer, is thus limited given that Monsanto is able to circumvent the impartiality of the peer-review process. The reliability and consensus of scientific literature is directly relevant to general causation. This document also goes to witness credibility.
16.	MONGLY02286842 8/19/2008	This document is an email from Dr. Charles Healy to Drs. Farmer and Saltmiras wherein Dr. Healy requests that Drs. Farmer and Saltmiras review the article that Dr. Healy has been asked to review: "you two would be the reviewers in fact and I would then collate your comments and be the reviewer of record." at *1.	This document is relevant and reasonably likely to be used in this litigation for the same reasons as the above (MONGLY01238768) document. Dr. Healy is violating the standards of the peer-review process by asking his Monsanto colleagues to review a study which observed the cytotoxic effects of glyphosate. Drs. Healy, Farmer, and Saltmiras all have vested interests in the study not

No	Bates	Description	Relevance
			being accepted for publication. The reliability and consensus of scientific literature is directly relevant to general causation. This document also goes to witness credibility.
17.	MONGLY01189468 9/9/2008	This document is an email from Dr. Charles Healy to Drs. Donna Farmer and David Saltmiras wherein Dr. Healy informs Drs. Farmer and Saltmiras that their decision regarding the study sent to Dr. Healy for peer-review will determine whether the study will be published.	This document is relevant and reasonably likely to be used in this litigation as it confirms Monsanto's efforts in ensuring that studies which reach conclusions of adverse health effects associated with glyphosate are covertly barred from publication and do not contribute to the carcinogenic assessment of glyphosate. The reliability and consensus of scientific literature is directly relevant to general causation. This document also goes to witness credibility.
18.	MONGLY01723742 8/4/2015	This document is from the custodial file of Dr. David Saltmiras and is titled "Glyphosate Activities". Dr. Saltmiras' activities for 2015 included: "IARC prep: AHS Sorahan reanalysis for multiple myeloma presented at EUROTOX 2012, Kier & Kirkland (2013), ghost wrote cancer review paper Greim et al. (2015), coord Kier (2015) update to K&K, pushed for Sorahan (2015)."	This document is relevant and reasonably likely to be used in this litigation as it demonstrates Monsanto's involvement in ghostwriting studies discussing the carcinogenic potential of glyphosate which is subsequently relied upon by the scientific community in determining general causation issues such as the biological plausibility of glyphosate as a carcinogen. The reliability and consensus of scientific literature is directly relevant to general causation. This document also goes to witness credibility.
19.	MONGLY02356274, MONGLY02356209 6/19/2016 - 7/7/2016	This document contains email correspondence between Roger McClellan (editor of the journal which published the Expert Panel Manuscript) and Ashley Roberts regarding the Expert Panel Manuscript. Mr. McClellan notes several issues with the initial daft of the Manuscript and states: "These reports are essentially a rebuttal of IARCs process and conclusions. There appears to be a reluctance to be absolutely clear in presenting exactly what IARC	This document is relevant and reasonably likely to be used in this litigation as it contains an opinion by the editor of the journal that published the Expert Panel Manuscript that the Manuscript, which Monsanto edited and revised, essentially sought to discredit IARC and IARC's methodology which offered a general causation conclusion regarding glyphosate carcinogenicity that was adverse to Monsanto's commercial

No	Bates	Description	Relevance
		concluded, the Panels conclusions and how they differ." at *4. The attached initial draft of the manuscript is also challenged for confidentiality.	agenda. The reliability and consensus of scientific literature is directly relevant to general causation. These documents also go to witness credibility.
20.	MONGLY00919381, MONGLY00919400 11/18/2010	This document is an email and from Dr. Donna Farmer wherein she informs John DeSesso that she "added a section in genotox from the Gasnier study ...see a attached a critique we did that I took that from. Am working on a section for gasiner in the mechanistic section. Also we cut and pasted in summaries of the POEA surfactant studies." at *1. The attachment is a draft of the Williams et. al. study with significant edits by Dr. Farmer which is also challenged for confidentiality	Both documents are relevant and reasonably likely to be used in this litigation as they demonstrate Monsanto's covert manipulation of the available scientific data on glyphosate. Scientists reading this published and peer-reviewed article would be unaware that the data was furnished by a biased contributor and the document is related to whether the inherent conflict of interest affects the merits of the data when determining the biological plausibility of glyphosate as a carcinogen. The reliability and consensus of scientific literature is directly relevant to general causation. These documents also go to witness credibility.
21.	MONGLY01005425 2/23/2015 - 2/24/2015	This document contains email correspondence between Eric Sachs (Monsanto) and Henry Miller, a Forbes contributor and fellow of the Stanford Hoover institute. Mr. Sachs asks Mr. Miller: "Are you interested in writing a column on this topic? Ideally, your article would precede the IARC decision. Why not set the table with the weight of scientific evidence before IARC convenes? Then, regardless of what they do, your article will set the stage for a science-based response." at *2. Moreover, Mr. Sachs informs his Monsanto colleagues: "Henry agreed to author an article on Forbes.com. John will work with a team internally to provide a draft and Henry will edit/add to make it his own." at *1.	This document is relevant and reasonably likely to be used in this litigation as it demonstrates Monsanto's effort to foster criticism of IARC in an article in anticipation of IARC's general causation classification of glyphosate as a probable carcinogen. Monsanto is a significant contributor to the article without disclosing its interest and involvement. The reliability and consensus of scientific literature is directly relevant to general causation. This document also goes to witness credibility.
22.	MONGLY02063611, MONGLY02063572 3/12/2015 - 3/18/2015	This document contains email correspondence between various Monsanto personnel and Henry Miller. Mr. Miller is asked by Monsanto to write about the IARC decision and Mr. Miller responds with a request for a "high quality draft." at *6. Mr. Eric Sachs (Monsanto)	This document is relevant and reasonably likely to be used in this litigation as it demonstrates Monsanto ghostwriting an article criticizing and discrediting IARC following the latter's general causation opinion that was adverse to Monsanto's

No	Bates	Description	Relevance
		informs Mr. Miller that "We have a draft nearly done and will send to you by tomorrow." at *5.	commercial agenda. The attachment (MONGLY02063572) is a publicly available article and is thus inappropriately labeled confidential by Monsanto. The reliability and consensus of scientific literature is directly relevant to general causation. These documents also go to witness credibility.
23.	MONGLY01680756 8/17/2015	This document is a consulting agreement between Monsanto and Larry D. Kier, one of the individuals on the Intertek Expert Panel. Although the Expert Panel was supposed to be composed of scientists independent of Monsanto, the consulting agreement demonstrates that Dr. Kier worked directly for Monsanto and this relationship was not disclosed in the published manuscript.	This document is relevant and reasonably likely to be used in this litigation as it indicates the inherent conflict of interest between Dr. Kier as a consultant for Monsanto and his participation on the expert panel, which was concerned with addressing the general causation carcinogenicity conclusion by IARC. The reliability and consensus of scientific literature is directly relevant to general causation. This document also goes to witness credibility.
24.	MONGLY02816607 8/6/2015 - 8/14/2015	This document contains email correspondence between various Monsanto employees wherein Dr. Donna Farmer comments with respect to the Expert Panel: "We have another consulting doing the same thing that John Acquavella is doing for the epidemiology area... Larry Kier is facilitating the gentox area of the expert, panel. We have had a contract with Larry Kier before. How do we get this set up for Larry so that he too can be paid - 12K in 2015? at *2.	This document is relevant and reasonably likely to be used in this litigation as it demonstrates that Drs. Acquavella and Kier were hired Monsanto consultants prior to and during the expert panel-this inherent conflict of interest was not disclosed by the published manuscript which offered a rebuttal of IARC's general causation carcinogenicity opinion. The reliability and consensus of scientific literature is directly relevant to general causation. This document also goes to witness credibility.
25.	MONGLY03934897 8/31/2015	This document is an invoice dated August 31, 2015 from Monsanto to Dr. John Acquavella in the sum of $20,700 for "consulting hours in August 2015 related to the glyphosate expert epidemiology panel." at *1.	This document is relevant and reasonably likely to be used in this litigation as it speaks to the inherent conflict of interest between Dr. Acquavella as a paid consultant for Monsanto and his participation on the expert panel, which was concerned with addressing the general causation carcinogenicity conclusion by IARC. The

No	Bates	Description	Relevance
			reliability and consensus of scientific literature is directly relevant to general causation.
26.	ACQUAVELLAPROD 00014559 1/7/2016	This document contains email correspondence from 2016 between Drs. Acquavella and Heydens discussing Dr. Acquavella's consulting for Monsanto "on glyphosate litigation." at *2.	This document is relevant and reasonably likely to be used in this litigation as it demonstrates Dr. Acquavella's long-term consultancy for Monsanto on glyphosate-related issues, specifically with respect to the general carcinogenicity of glyphosate. The reliability and consensus of scientific literature is directly relevant to general causation.
Surfactants, Carcinogenicity & Testing			
27.	MONGLY00922458 11/21/2003-11/24/2003	This document contains email correspondence between Donna Farmer and Sekhar Natarajan, in which Dr. Farmer discusses the potential adverse effects of the formulated Roundup product, conceding that "you cannot say that Roundup is not a carcinogen…we have not done the necessary testing on the formulation to make that statement." at *1-2.	This document is relevant and reasonably likely to be used in this litigation as it evinces knowledge by a Monsanto toxicologist regarding the biological plausibility of the Roundup formulation, as opposed to glyphosate by itself, to act as a human carcinogen. This is also relevant to Dr. Farmer's credibility, who is one of Monsanto's primary expert witnesses at the company.
28.	MONGLY01155974 12/10/2010-12/14/2010	This document contains email correspondence between various Monsanto personnel wherein Stephen Adams addresses the issue of testing Roundup formulations: "With regards to the carcinogenicity of our formulations we don't have such testing on them directly…" at *1.	This document is relevant and reasonably likely to be used in this litigation as it contains admissions by a Monsanto employee which strongly undermine Monsanto's contentions that it is not biologically plausible for the Roundup formulation to be carcinogenic. It militates against Monsanto's claim that it has carried out sufficient testing to rule out the biological plausibility of Roundup to act as a human carcinogen.
29.	MONGLY00923065 2/12/2001 - 2/13/2001	This document contains email correspondence between various Monsanto personnel wherein Dr. Mark Martens states: "I don't know for sure how suppliers would react - but if somebody came to me and said they wanted to test Roundup I know how I would react - with serious concern. We have to really think about doing formulations even if they are not on the market .	This document is relevant and reasonably likely to be used in this litigation as it contains explicit concerns by Monsanto regarding the biological plausibility of the formulated product to cause cancer.

No	Bates	Description	Relevance
		. . glyphosate is still in there and could get caught up in some false positive finding. at *1.	
30.	MONGLY00877683 7/29/1999 - 8/3/1999	This document, from 1999, contains email correspondence between various Monsanto personnel wherein Dr. Donna Farmer writes: "I will not support doing any studies on glyphosate, formulations or other surfactant ingredients at this time with the limited information we have on the situation." at *2.	This document is relevant and reasonably likely to be used in this litigation as it demonstrates reluctance by a key Monsanto toxicologist to conduct studies on either glyphosate, Roundup formulations, or surfactant ingredients, suggesting Monsanto was concerned with the results it would find. This is relevant to the issue of biological plausibility of Roundup and/or glyphosate as a carcinogen. Indeed, Monsanto maintains that it is not biologically plausible for Roundup or glyphosate to be carcinogenic, a central contention of the general causation litigation, but then expresses fear of conducting studies since it will show a cancer risk. This is also relevant to Dr. Farmer's credibility, who is one of Monsanto's primary expert witnesses at the company.
31.	MONGLY01159775 3/4/2013 - 3/5/2013	This document contains email correspondence between various Monsanto personnel wherein Xavier Belvaux confirms that: "We do not conduct sub-chronic, chronic or terotogenicity studies with our formulations." at *2.	This document is relevant and reasonably likely to be used in this litigation as it contains express admissions by Monsanto that it has not tested Roundup for chronic or sub-chronic toxicity. Such lack of thorough toxicological analysis undermines Monsanto's firm denial of the biological plausibility of Roundup's carcinogenicity based on sufficient testing.
32.	MONGLY07080361 7/5/2000	This document is a study "site visit" from July 7, 2000 of the "Farm Family Exposure" study. Dr. John Acquavella (Monsanto employee at the time) and John Cowell conduct the site visit. The report indicates numerous deficiencies with the study, including: "Protocol amendments had not yet been forwarded to the study team from Exponent; Many of the urines were very spotty and we found one day's urine that was obviously doctored. As at the Minnesota field site, the	This document is relevant and reasonably likely to be used in this litigation as it outlines significant deficiencies—including use of potentially doctored or "coached" data—with a study evaluating glyphosate exposure and the biological plausibility of glyphosate as a carcinogen. This goes to the credibility and reliability of the study, which is relied upon extensively by Monsanto to mount its general causation defense.

No	Bates	Description	Relevance
		field team is not reviewing the urines carefully and there is little, if any, coaching of the farm families; There were some obvious errors or missing entries in the questionnaires." at *7-8.	
33.	MONGLY00978170 9/16/2015 - 11/2/2015	This document contains email correspondence between Ashley Roberts (Intertek), Dr. Tom Sorahan (Monsanto consultant), and Dr. John Acquavella (former Monsanto employee and consultant). Dr. Sorahan reckons it is not accurate to claim that there is no evidence for Roundup's carcinogenicity. at *2. Dr. Acquavella concurs: "I agree as well that you can't say that there is no evidence." at *1.	This document is relevant and reasonably likely to be used in this litigation because it supports Plaintiffs' claim that there is evidence that Roundup causes cancer. This document is also relevant to Daubert, since it shows independent Monsanto's consultants and scientists agreeing about the possibility that Roundup causes cancer.
34.	MONGLY01182770 7/15/2008	This document is a PowerPoint presentation concerning the "EU Expert Advisory Panel". Page 6 of the presentation is titled: "Monsanto's Roundup ® acts on one of the key stages of cellular division, which can potentially lead to cancer in the long term." at *6. The page references a French in-vitro study which observed adverse effects associated with Roundup. The final page contains "questions" regarding how to "position" in-vitro hazards using "urine concentrations from applicator exposure into plasma concentrations." at *7. Monsanto also considers the risks in "running a new study". *Id*.	This document is relevant and reasonably likely to be used in this litigation to demonstrate that Monsanto was aware of the biological plausibility of Roundup as a carcinogen and realized the risks in conducting new studies that would confirm this suspicion already prevalent in the existing scientific literature.
35.	MONGLY00989918 10/15/2014	This document is an email from Dr. William Heydens to Richard Garnett regarding the "IARC evaluation of Glyphosate" wherein Dr. Heydens concedes that "while we have vulnerability in the area of epidemiology, we also have potential vulnerabilities in the other areas that IARC will consider, namely, exposure, genetox, and mode of action…" at *1.	This document is relevant and reasonably likely to be used in this litigation as it contains an admission from 2014 (more than six months before IARC classified glyphosate) by a leading Monsanto toxicologist that glyphosate faces issues in the areas of epidemiology, exposure, genotoxicity, and mode of action in the general causation evaluation by IARC, which indeed found that it is probable for glyphosate to act as a human carcinogen based upon the areas identified by Dr. Heydens. It suggests reliability of IARC's

No	Bates	Description	Relevance
			assessment, which goes to the heart of general causation. This is also relevant to Dr. Heyden's credibility, who is one of Monsanto's primary expert witnesses at the company.
36.	MONGLY00990361 3/13/2015 - 3/17/2015	This document contains an email from Dr. William Heydens to Mr. Josh Monken (Monsanto) wherein Dr. Heydens admits to the "Low level presence of formaldehyde" (carcinogen by inhalation) in Roundup; and "Low level presence of NNG (N-nitroso-glyphosate) in Roundup - many N-Nitroso compounds are carcinogenic."	This document is relevant and reasonably likely to be used in this litigation as a Monsanto toxicologist contradicts Monsanto's claim that it is not biologically plausible for glyphosate nor the Roundup formulation to be carcinogenic. This document suggests the opposite. It is also relevant to credibility of Dr. Heydens.
37.	MONGLY00885526 4/19/2002 - 4/25/2002	This document is an email correspondence between Drs. William Heydens and Donna Farmer, wherein the two discuss various studies which observed adverse effects by the formulated Roundup product. Specifically, Dr. Farmer acknowledges: "[t]he interest point is glyphosate all basicially [sic] had no effect the formulated product did - does this point us to the coformulants - sufactants? [sic]" at *2. Dr. Heydens also admits, after discussing with Monsanto consultant John Desesso, that "we are in pretty good shape with glyphosate but vulnerable with surfactants. . . What I've been hearing from you is that this continues to be the case with these studies - Glyphosate is OK but the formulated product (and thus the surfactant) does the damage." at *1.	This document is relevant and reasonably likely to be used in this litigation as it is an indication that Monsanto was cognizant of the adverse effects of surfactants or was otherwise uncertain of the effects of surfactants in the formulated Roundup product with cancer. It is further directly relevant to general causation as Monsanto's toxicologists (deposed during general causation discovery) discuss Monsanto's position that it is not biologically plausible for Roundup to pose adverse health effects, a central feature of this litigation which is challenged by Plaintiffs. This is also relevant to Drs. Farmer's and Heyden's credibility, who are some of Monsanto's primary expert witnesses at the company.
38.	MONGLY06486905 4/17/1999 - 4/19/1999	This document contains email exchanges between various Monsanto personnel wherein Dr. Donna Farmer summarizes the findings of Monsanto's expert, Dr. James Parry: "Dr. Parry concluded on his evaluation of the four articles that glyphosate is capable of producing genotoxicity both in vivo and in vitro by a mechanism based upon the production of oxidative damage." at *3.	The document is relevant and reasonably likely to be used in this litigation as it contains conclusions by a former Monsanto expert in support of the biological plausibility of glyphosate to cause cancer—namely through glyphosate's genotoxic potential and its capacity to precipitate oxidative stress. This is also relevant to Dr. Farmer's credibility, who is one of Monsanto's primary expert witnesses at the company.

No	Bates	Description	Relevance
39.	MONGLY01183933 8/6/2015 - 8/7/2015	This document contains email correspondence between various Monsanto personnel regarding the Roundup formulation and the respective effects of glyphosate and surfactants, wherein Dr. William Heydens states that "surfactant in the formulation will come up in the tumor promotion skin study because we think it played a role there." At *3.	This document is relevant and reasonably likely to be used in this litigation as it once again demonstrates conclusions by Monsanto that it is biologically plausible for the formulated product to promote tumors. This is also relevant to Dr. Heyden's credibility, who is one of Monsanto's primary expert witnesses at the company.
40.	MONGLY01208470 9/18/2014	This document contains an email from Dr. Donna Farmer to Dr. John Acquavella. Dr. Farmer notes: "Just wanted to let you that what we have long been concerned about has happened. Glyphosate is on for an IARC review in March of 2015." at *1.	This document is relevant and reasonably likely to be used in this litigation as it demonstrates Monsanto's long-term concerns about glyphosate being tested by an independent research agency which rendered a general causation conclusion regarding the potential for glyphosate to cause cancer. It also suggests reliability, an element under *Daubert*. This is also relevant to Dr. Farmer's credibility, who is one of Monsanto's primary expert witnesses at the company.
41.	MONGLY01179185 10/14/2008	This document contains email correspondence wherein Dean Nasser (Monsanto) sends a "Beyond Pesticides" publication to Dr. Donna Farmer. The publication references a study which found positive association between glyphosate and Non-Hodgkin's Lymphoma. Dr. Farmer responds: "We have been aware of this paper for awhile and knew it would only be a matter of time before the activists pick it up… how do we combat this?" at *1.	This document is relevant and reasonably likely to be used in this litigation as it indicates Monsanto has been aware of the links between glyphosate and NHL for a considerable amount of time. Furthermore, as Dr. Farmer indicates, Monsanto aim to "combat" the biological plausibility of glyphosate as a carcinogen only when the information gains significant public attention. This is relevant since it lends support to Plaintiffs' assertion that Monsanto has taken deliberate actions to influence scientific literature by attacking any study showing a link between Roundup and cancer. This is also relevant to Dr. Farmer's credibility, who is one of Monsanto's primary expert witnesses at the company.
42.	MONGLY00878828 3/8/2000 - 3/12/2000	This document contains email correspondence between various Monsanto personnel wherein it is stated with respect to Roundup surfactants: "While the tallow	This document is relevant and reasonably likely to be used in this litigation as it indicates that Monsanto was aware of the toxic effects of the

No	Bates	Description	Relevance
		amine was considered toxic at 62.5 and 15.6 ug/ml, the C12 alkyl sulfate didn't exhibit toxicity at any of the test doses. While both of these compounds produced a marginal response which didn't meet the test criteria for a robust positive, they did elicit an effect which was judged to be an equivocal, but test article-related effect." at *5.	tallow amine surfactant in the formulated Roundup product. This admission expressly contradicts Monsanto's position that there is no biologically plausible basis for Roundup to be considered a carcinogen.
43.	MONGLY02721133 9/1/2005	This document is a PowerPoint presentation which details Monsanto's regulatory goals for 2010. The strategy in Germany was to "Defend POEAs" and "push back on data requests." at *10.	This document is relevant and reasonably likely to be used in this litigation as it demonstrates Monsanto's unwillingness to cooperate with national regulatory agencies in providing comprehensive data for the registration of Roundup. This is particularly relevant since Monsanto routinely relies on the evaluations of foreign regulatory agencies to support its claim that Roundup does not cause cancer. The lack of data regarding the safety of the formulated product (in this instance the surfactant POEA) is related to the issue of regulatory agencies reaching an informed consensus on the carcinogenicity of Roundup. An important feature of general causation discovery has entailed the extent to which Monsanto circumvented proper regulatory safe guards.
44.	MONGLY01051709 9/30/2013- 10/22/2013	This document contains email correspondence between various Monsanto personnel regarding glyphosate registration and the presence of formaldehyde: "…our renewal has been rejected by technical expert due to the content of formaldehyde in our glyphosate." at *5.	This document is relevant and reasonably likely to be used in this litigation given that it pertains to a central general causation issue—the denial of glyphosate registration by a regulatory agency due to the presence of a carcinogenic chemical in glyphosate (formaldehyde). This is also relevant to biological plausibility issues.
45.	ACQUAVELLAPROD 00008909 1/23/2015	This document contains email correspondence between Drs. Donna Farmer and John Acquavella, wherein Dr. Acquavella discusses the response from DeRoos, who carried out an epidemiological study on glyphosate, to	This document is relevant and reasonably likely to be used in this litigation as Monsanto's former employee and consultant recognizes the potential relevance of other ingredients in Roundup

No	Bates	Description	Relevance
		Monsanto's comments regarding the dose thresholds cited by Monsanto as relevant for carcinogenicity. Dr. Acquavella reflects with respect to DeRoos' comments: "the issue of the human findings representing relevant routes of exposure (whatever that means) and being interpretable in and of themselves. Perhaps Tom should be prepared regarding the other ingredients in Roundup formulations being relevant for judging glyphosate." at *1.	formulations in assessing the biological plausibility of glyphosate as a carcinogen. It also lends support to the DeRoos study, which is relied upon by experts on both sides. The document is also relevant to credibility of one of Monsanto's primary witnesses, Dr. Acquavella.
Absorption, Distribution, Metabolism & Excretion			
46.	MONGLY03738295, MONGLY00888353 3/29/2002 - 4/2/2002	These documents contains email correspondence (MONGLY03738295) between various Monsanto personnel regarding a Monsanto (MONGLY00888353) study on the dermal absorption of the formulated Roundup product as precipitated by the surfactant ("TNO Study"). Dr. Heydens expressed concerns with continuing such studies: "My primary concern is with the glyphosate in terms of the potential for this work to blow Roundup risk evaluations (getting a much higher dermal penetration than we've ever seen before." at *1.	These documents are relevant and reasonably likely to be used in this litigation as they pertain to (and contradict) Monsanto's causation defense that Roundup has a low absorption rate. The results of the TNO study show "in vitro dermal penetration of glyphosate [with surfactant] through rat skin [to be] between 5 and 10%," but lower than 1.5% "in the absence of surfactants[.]" This scientific data is particularly relevant since it relates to the effects of the formulated product, i.e. Roundup, versus the effects of glyphosate alone. Since the EPA only examined glyphosate, and expressly excluded studies that used the formulation—the substance Plaintiffs actually used—this provides evidence from which a Trier of Fact could conclude the EPA's analysis was limited. Importantly, this study was never turned over to the EPA or European regulatory officials.
47.	MONGLY03737014 4/4/2002 - 4/5/2002	This document contains email correspondence between various Monsanto personnel wherein it is discussed that the Monsanto programs, including the TNO study (MONGLY00888353, challenged above), evaluating the absorption of glyphosate and formulations (including surfactants) will be ceased "because a further study was not likely to help us meet the project	This document is relevant and reasonably likely to be used in this litigation as it is directly related to the absorption, distribution, metabolism and excretion ("ADME") issue and biological plausibility, coupled with Monsanto's refusal to conduct further studies when results from the TNO study demonstrated higher absorption of

No	Bates	Description	Relevance
		objective." at *2. Abandoning this scientific inquiry, however, "[w]e are left behind with too many questions after all this." at *1.	glyphosate based on the presence of the formulated product. It also goes to the heart of this Court's *Daubert* inquiry, showing that the lack of any scientific consensus is, in part, the product of Monsanto's avoiding testing of risks, not honest scientific investigation.
48.	MONGLY06722561 8/8/2003 - 8/11/2003	This document contains email correspondence between various Monsanto personnel wherein Dr. William Heydens observes with respect to two Monsanto rat studies: "Regarding acute toxicity, Terry, Donna and I reviewed mortality data from the inhalation database for IPA, NH4-, MEAand K-glyphoste formalations. Based on the mortality data seen in those studies, it is not outside the realm of possibilities that the 3 deaths were treatment – related." at *2.	This document is relevant and reasonably likely to be used in litigation as it contains an acknowledgment by Monsanto that glyphosate ADME—exposed through inhalation—has resulted in acute toxicity and caused the death of the test animals. Such "treatment-related deaths" via inhalation are directly relevant to the issue of whether it is biologically plausible for glyphosate to act as a human carcinogen.
49.	MONGLY02335782, MONGLY02335784 8/13/2008 - 8/20/2008	These documents contain email correspondence between various Monsanto personnel wherein Richard Garnett discusses the issue of acute toxicity via inhalation. Mr. Garnett states that glyphosate would be classified in the EU as "T Toxic; R23 Toxic by inhalation" based on a study he cites. at *1. The attachment is Monsanto Study "An Acute Nose-Only Inhalation Toxicity Study in Rats with Mon 78623". This study is one of the studies referenced by Dr. Heydens in the previous (MONGLY06722561) document to conclude that "it is not outside the realm of possibilities that the 3 deaths were treatment-related." MONGLY0672256 at *2.	These documents are relevant and reasonably likely to be used in this litigation as they are directly related to the issue of whether it is biologically plausible for glyphosate to act as a human carcinogen by virtue of respirational toxicity.
50.	MONGLY06424476 6/1/2004 - 7/9/2004 MONGLY06409924 3/5/2002 - 3/8/2002	The first document (MONGLY06424476) contains email correspondence between various Monsanto personnel regarding a 2002 Monsanto study which observed absorption of the surfactant (without glyphosate) in the GI Tract. Dr. Charles Healy (Monsanto) reports that the results showed "Absorption was at least 56% of dose at dosages of 1 and 10 mg/kg.	These documents are relevant and reasonably likely to be used in this litigation as they pertain to the ADME issue and biological plausibility—indeed Dr. Healy concedes that given the higher rate of absorption, Monsanto cannot justify avoiding "toxicity testing with similar inert ingredients." Given that the rate of absorption is

No	Bates	Description	Relevance
		Approximately 17-27% of the dose was eliminated in the urine and approximately 31-36% of the dose was found in the bile." at *2. The second document (MONGLY06409924) contains further discussion of this issue, stating that Monsanto's purpose for conducting the study, which was "to see results which show no GI tract absorption of a surfactant in the tallow/ether amine groups." MONGLY06409924 at *1. Indeed, Dr. Healy states in MONGLY06424476 that: "Basically what we demonstrated was that the material is absorbed through the GI tract as shown. Nothing I am aware of that needs to be reported. We were hoping that we could demonstrate that the material was not absorbed as a means to obviate the need to perform toxicity testing with similar inert ingredients. Obviously that hope was not realized." at *2.	one of the features Monsanto relies upon to argue that there is no biological plausibility for glyphosate and/or Roundup to be carcinogenic, these documents go to the heart of such defense and are related to issues in general causation.
51.	MONGLY06385823 9/23/2009	This document contains email correspondence between Monsanto personnel wherein Richard Garnett acknowledges that: "The ADME has always been the weak link in our argument and the Spanish response highlights that we have not got rid of the problem." at *1.	This document is relevant and reasonably likely to be used in this litigation as it is a recognition by Monsanto that there are fundamental flaws in Monsanto's argument for absorption and excretion of glyphosate—a fact observed by regulators in Spain in their assessment of glyphosate—which is related to the issue of whether it is biologically plausible for glyphosate to act as a human carcinogen. This document relates specifically to Monsanto's contention that glyphosate does not cause cancer because of low absorption rates.
52.	MONGLY06653096 5/20/2003 - 5/22/2003 MONGLY01832749 10/19/1999 - 10/21/1999	The first document (MONGLY06653096) contains email correspondence between various Monsanto personnel regarding "dermal penetration studies" wherein Dr. William Heydens notes the presence of "certain co-formulants like humectants that will make it highly likely we will get large amounts penetrating the skin." at *1. The second document (MONGLY01832749) contains acknowledgments by Dr. Daniel Goldstein that a humectant such as ethylene	These documents are relevant and reasonably likely to be used in this litigation as they are related to the issue of ADME absorption and that the formulated product is both absorbed at a higher rate and is more toxic—significant questions for the biological plausibility of glyphosate and Roundup as a carcinogen. Such information is likely to be considered vital by

No	Bates	Description	Relevance
	MONGLY01745304	glycol (which is present in most Roundup formulations) is toxic to children at 70 cc of Roundup with 5% of ethylene glycol. at *1. The Third document (MONGLY01745304) is a fact sheet about ethylene glycol which indicates its presence in Roundup formulations ("less than 2%") and that "EG is a significant human toxin". at *1.	regulators and researchers when assessing the carcinogenicity of Roundup and glyphosate.
53.	MONGLY04107778 8/16/2011 - 8/23/2011	This document contains email correspondence between Maurice De Billot (Monsanto) and Christophe Gustin, wherein Mr. De Billot discusses the difficulties of dermal absorption using the UK POEM (The UK Predictive Operator Exposure Model) metric: "In Europe we are getting prepared to submit MON 79991 (720g/kg) for approval under the new Reg 1107/2009. We ran the UKPOEM model using a dermal penetration value of 3% and do not pass when applying 3.6kg/ha for the tractor mounted sprayer. I am aware of the set of studies that you ran on dermal absorption using pure K-salt and IPA-salt and also MON 52276 and MON 79351 which showed dermal absorption values of 1%. Putting 1% in the model we get a good result, so will need to show that the 1% dermal absorption numbers are equally valid for the MON 79991 formulation." at *2.	This document is relevant and reasonably likely to be used in litigation as it demonstrates that a difference of a couple of percentage points on dermal absorption using the UK POEM can change the regulatory risk assessment of glyphosate from safe to unsafe. A key element of Monsanto's defense on causation is that even if glyphosate could conceivably cause cancer it would require extremely high doses which do not occur in a realistic environment. This document refutes that contention.
54.	MONGLY06509236 10/21/2002	This document is an internal Monsanto summary of the "operator exposure when spraying Roundup under UK conditions." at *1. It provides an explanation of measuring the rate of Roundup absorption using the UK POEM (discussed in the above MONGLY04107778 document).	This document is relevant and reasonably likely to be used in this litigation as it pertains to the absorption of glyphosate and Monsanto's basis for measuring the rate of absorption to be in compliance with regulatory standards—a feature of general causation as Monsanto contests that Roundup and glyphosate can have adverse effects based upon negligible rates of absorption.
Regulatory & Government			
55.	MONGLY03293245	This document contains text-message correspondence between Mr. Daniel Jenkins, various Monsanto	This document is relevant and reasonably likely to be used in this litigation as it relates to Monsanto's

No	Bates	Description	Relevance
	2/11/2013 - 3/10/2016	employees, and various EPA officials regarding regulatory aspects of glyphosate. In reference to the United States Department of Agriculture, Mr. Jenkins comments: "might want to tell them we're going to need their support for glyphosate...We're in for a tough ride[.]" at *2. Mr. Jenkins also comments: "Jess is doing a nice job at EPA[.]" at *1. Jennifer Listello asks: "Is there anyone we can get to in EPA?" at *3. With regard to IARC, Mr. Jenkins comments: "Got john to agree to talk about how we might work together on changing IARC communication[.]" at *4-5. Mr. Jenkins asks Ms. Mary Manibusan (formerly EPA and co-chair with Jess Rowland on CARC publication): "do you know folks at ATSDR in HHS?" Ms. Manibusan responds: "Yes. Where specifically…on Tox profiles?" After Mr. Jenkins confirms, Ms. Manibusan responds: "I know lots of people. You can count o[n] me." Mr. Jenkins informs her that: "we're trying to do everything we can to keep from having a domestic IARC occur w this group. may need your help... I'll share some info, you tell me what you think we might be able to do, who you may know, etc ok?" to which Ms. Manibusan agrees. at *5. Mr. Jenkins also contacts Mr. Ty Vaughn: "I think we need to talk about a political level EPA strategy and then try to build a consensus plan w Michael on several fronts: glyphosate…we're not in good shape and we need to make a plan[.]" at *6. Following text messaging with Mr. Jack Housenger (EPA), Mr. Jenkins comments: "Spoke to EPA: is going to conclude that IARC is wrong. So is EFSA….pushed them to make sure atsdr is aligned, said they would…they're looking into getting a contact for me at cdc re bio monitoring" at *6-7.	collusion with EPA officials (subject of extensive general causation discovery), the attempt to preclude glyphosate review by ATSDR through EPA contacts, and strategies for addressing the general causation conclusion by IARC. It is also relevant to *Daubert*, since it undermines the reliability and purported "independence" of the EPA's evaluation of glyphosate. The document is also relevant to the credibility of Mr. Jenkins and other Monsanto personnel.
56.	MONGLY02060344	This document contains email correspondence between Jack Housenger, Director of the Office of Pesticide	The document is relevant and reasonably likely to be used in this litigation as it demonstrates

No	Bates	Description	Relevance
	6/24/2015	Programs (EPA), Daniel Jenkins (Monsanto), and Dr. William Heydens (Monsanto). Mr. Housenger reports to Mr. Jenkins that he has spoken to individuals at the Agency for Toxic Substances and Disease Registry (ATSDR), one of whom, the branch chief, Henry Abadin, "ended up saying that they would put glyphosate on hold holding the OPP risk assessment." at *2. Dr. Heydens acknowledges with respect to the ATSDR decision to not review glyphosate: "hopefully that keeps them from doing anything too stupid." at *1.	communications between Monsanto and regulatory agencies in furtherance of efforts to preclude evaluation of Roundup and glyphosate—a feature of general causation discovery in light of Mr. Jess Rowland's (also from the OPP) collusive relationship with Monsanto. Further, the document is relevant to *Daubert*, since it undermines the reliability and purported "independence" of the EPA's evaluation of glyphosate. The document is also relevant to credibility of Mr. Jenkins and Dr. Heydens.
57.	MONGLY03064695 6/5/2015 – 6/24/2015	This document contains email correspondence between various Monsanto personnel wherein Daniel Jenkins expresses concerns over the ATSDR glyphosate review and the information garnered from Mr. Housenger at the EPA's Office of Pesticide Programs regarding delaying the ATSDR review: "ATSDR Director and Branch Chief have promised Jack Housenger (Director of the US Office of Pesticide Programs) to put their report "on hold" until after EPA releases its preliminary risk assessment (PRA) for glyphosate… She describes ATSDR as being VERY conservative and IARC like in this regard as well as the fact that they are hazard based. Makes me very nervous, but I asked Jack whether or not he was worried about ATSDR coming out with something different and he said he wasn't and I think he was being genuine." at *1, 2.	This document is relevant and reasonably likely to be used in litigation as it indicates Monsanto's contacts with another EPA official, Jack Housenger (a key feature of general causation discovery in light of Mr. Rowland's collusive relationship with Monsanto) in furtherance of precluding glyphosate review by ATSDR which, according to Mr. Jenkins, utilizes a process similar to IARC and is thus likely to render a general causation evaluation adverse to Monsanto's commercial agenda. The document is also relevant to *Daubert*, since it undermines the reliability and purported "independence" of the EPA's evaluation of glyphosate and lends reliability to IARC's assessment. The documents are also relevant to credibility of Mr. Jenkins and Dr. Heydens.
58.	MONGLY02358772 4/1/2016 – 4/4/2016	This document contains an email correspondence between various Monsanto personnel wherein James M. Nyangulu writes to Dr. William Heydens about meeting with Jesudoss Rowland, formerly of the EPA's Office of Pesticide Programs (OPP): "I reached out to Jess Rowland this morning. He is willing to talk tomorrow, however he has back to back meetings from 9:30till 1.1.30 am. He has given me his cell phone	This document is relevant and reasonably likely to be used in this litigation as it reaffirms Monsanto's intimate relationship with Mr. Rowland. This issue has been the subject of extensive general causation discovery thus far and is one of the central features of this litigation as Monsanto's collusive relationship with Mr. Rowland encouraged a finding by the EPA that glyphosate is not a

No	Bates	Description	Relevance
		number for us to text him once we know what time we would like to meet him. He wanted to check with the Product Manager (PM) for MON102100 (not a good thing.... PM likely to deny the meeting). I discouraged him and hopefully he won't check with the PM." at *1.	carcinogen. Indeed, the document demonstrates that Monsanto leveraged its relationship with Mr. Rowland to circumvent the Product Manager's likely denial of such meeting. The document is also relevant to *Daubert*, since it undermines the reliability and purported "independence" of the EPA's evaluation of glyphosate. The documents are also relevant to the credibility of Dr. Heydens.
59.	MONGLY03859549 2/12/2016	This document contains email correspondence between various Monsanto personnel wherein Jeremy Stump discloses details of a meeting he and Mr. Jenkins had with EPA officials "Jim Jones and Jack Housenger earlier this afternoon." at *1. With respect to glyphosate, "They wouldn't give a clear answer on when they might announce SAB/P…We argued that they should wait on making any announcements given upcoming JMPR and possibly other gov't determinations." at *2. Mr. Heering responds: "Did they comment on the suggestion to wait on announcing the SAP/B until after JMPR and other country announcements?" at *1.	This document is relevant and reasonably likely to be used in this litigation as it demonstrates Monsanto's efforts through its relationships at the EPA to delay the Scientific Advisory Panel review of EPA's 2016 glyphosate Issue Paper. Monsanto's influence at the EPA in furtherance of regulatory approval of glyphosate through dissuading review has featured extensively in general causation discovery. The document is also relevant to *Daubert*, since it undermines the reliability and purported "independence" of the EPA's evaluation of glyphosate. The documents are also relevant to credibility of Mr. Stump, Mr. Jenkins, and Mr. Heering.
60.	MONGLY03878138 10/23/2015-10/26/2015	This document contains email correspondence between Daniel Jenkins (Monsanto) and Jack Housenger (EPA OPP) regarding "atsdr". Mr. Housenger informs Mr. Jenkins: "We met with cdc about a month ago. We talked about that. They are waiting for our glyphosate RA. And they agreed to share what they do." at *2. Mr. Jenkins forwards the communication to Mr. David Heering (Monsanto), who responds: "Thanks for the update. Let us know if there is anything we can do to help." at *1.	This document is relevant and reasonably likely to be used in this litigation as it demonstrates Monsanto's interactions with a key EPA official regarding ATSDR review of glyphosate. Mr. Housenger has acted as buffer between Monsanto and other regulatory agencies to delay/preclude glyphosate reviews and this document is further indication of such efforts given Mr. Housenger's meeting with the Center for Disease Control (CDC) regarding ATSDR and CDC glyphosate review. Monsanto's relationships with EPA officials has featured extensively in general causation discovery and this document is directly related to the collusion issue. The document is

No	Bates	Description	Relevance
			also relevant to *Daubert*, since it undermines the reliability and purported "independence" of the EPA's evaluation of glyphosate. The documents are also relevant to credibility of Mr. Jenkins, and Mr. Heering.
61.	MONGLY03550799, MONGLY03550800 8/9/2016	These documents contain a set of "talking points" in anticipation of Monsanto's meeting with EPA director Gina McCarthy. The talking points include: "There is already enough for EPA to act without a SAP"; "If she pushes back on reviews by other agencies Hugh needs to question her as to why they then considered IARC's flawed classification and again, why are you convening an SAP when your own internal scientists have confirmed the safety of glyphosate"; "Why is this being politicized?" at *2.	This document is relevant and reasonably likely to be used in this litigation as it demonstrates Monsanto's attempt to preclude a review by the Scientific Advisory Panel of the 2016 EPA glyphosate Issue Paper which offered a general causation carcinogenicity opinion regarding glyphosate. It also shows Monsanto's effort to discredit IARC to the EPA, so it goes to reliability issues.
62.	MONGLY02162507 1/15/2010 – 1/16/2010	This document is an email correspondence between Dr. Donna Farmer and Steven Levine discussing the EPA Endocrine Disruption Program. Mr. Levine remarks that "They have made Gary Timm from OSCP [Office of Science Coordination and Policy] the head of the program at EPA NOT Jess Roland from OPP. This is not a good development and dramatically cuts our chance our chance for success." at *1.	This document is relevant and reasonably likely to be used in this litigation as it confirms Monsanto's intimate relationship with Mr. Rowland from the EPA who assisted Monsanto in circumventing the regulatory process, a central feature of Plaintiffs' general causation discovery concerned with proving that that the safety of Roundup has not been assessed by an impartial Office of Pesticide Program at the EPA. The document is also relevant to *Daubert*, since it undermines the reliability and purported "independence" of the EPA's evaluation of glyphosate. The document is relevant to the credibility of Dr. Farmer and Mr. Levine.
63.	MONGLY03320237 10/7/2015	This document is a PowerPoint presented by Monsanto to the California Office of Environmental Health Hazard Assessment on October 7, 2015 regarding the imposition of a No Significant Risk Level (NSRL) for glyphosate as an exemption to the requirement under Proposition 65 that Roundup be labeled as known to	This document is relevant and reasonably likely to be used in this litigation as it demonstrates efforts by Monsanto to limit OEHHA's consideration of data in determining the appropriate NSRL to animal bioassays with high exposure doses, thus leading to the calculation of a high NSRL. An

No	Bates	Description	Relevance
		the State of California to cause cancer following adoption by California of IARC's classification.	exemption from the Proposition 65 labeling requirement would mean that Monsanto are able to avoid the practical effects (having to label Roundup as known to the state to cause cancer) of IARC's general causation conclusion as adopted by OEHHA under proposition 65. The document also contains admissions by Monsanto about whether glyphosate can cause cancer.
64.	MONGLY01061857 2/18/2009 – 2/22/2009	This document contains email correspondence between various Monsanto personnel wherein Richard Garnett states the following with respect to gaining favorable regulatory assessment using in-vitro data: "Cannot win the battle on science alone (40% science : 60% politics) - need an experimental front, supported by a critical review of the literature, and a communication campaign to promote the message. Goal: 'the regulatory authority must have no doubts'". at *1.	This document is relevant and reasonably likely to be used in this litigation as it evinces the strategy adopted by Monsanto to overcome regulatory hurdles using the effective deployment of political influence to ensure that regulatory authorities "have no doubts" regarding the safety of glyphosate. Indeed, the extent to which Monsanto leveraged its intimate relations with regulatory officials to support the position that glyphosate is not carcinogenic has been an important feature of general causation discovery. The document is also relevant to *Daubert*, since it undermines the reliability and purported "independence" of the EPA's evaluation of glyphosate.
65.	MONGLY01179968 3/30/2015 – 7/1/2015	This document contains email correspondence between Monsanto and former EPA Office of Pesticide Programs employee, Mary Manibusan (now Exponent employee). Ms. Manibusan discusses her role as "co-chair with Jess Rowland" on the EPA CARC report; "lead toxicologist on a global pesticide review"; and service "on multiple internal review committees" in an attempt to "offer any assistance to support Monsanto product registrations and registration reviews" at *3.	This document is relevant and reasonably likely to be used in this litigation as it relates to Monsanto's relationships with former EPA officials that were involved in producing the CARC report partially authored by Mr. Jess Rowland—a report which concluded that it is biologically improbable for glyphosate to act as a human carcinogen. Indeed, Mr. Rowland, the circumstances of the CARC assessment, and the role of EPA officials following their tenure at the agency has featured extensively in general causation discovery. This document lends support to the allegation that EPA officials, after aiding Monsanto at the agency,

No	Bates	Description	Relevance
			would then leave EPA and start working for Monsanto or its allies.
66.	MONGLY03316369 3/24/2015	This document is titled: "IARC Follow Up Demonstrating Safety of Glyphosate" and details a number of goals including "invalidate relevance of IARC"; "prevent future bad IARC decisions on pesticides/GMOs"; and "Make sure determination doesn't get more widely adopted within WHO". at *1.	This document is relevant and reasonably likely to be used in this litigation as it confirms Monsanto's intention to discredit an international research agency which rendered a general causation carcinogenicity opinion that was adverse to Monsanto's commercial agenda.
67.	MONGLY03327609 3/25/2015 – 4/27/2015	This document contains email correspondence between various Monsanto employees regarding the organization of a panel in collaboration with the International Consortium on Applied Bioeconomy Research (ICABR). Mr. Eric Sachs (Monsanto) proposes to "call Jess Rowland tomorrow" in order to enquire about Mr. Rowland's availability as a panelist addressing "regulators more robust risk assessment process". at *1. The panel was initiated in light of the "recent publicity about Round-up and cancer…" at *10.	This document is relevant and reasonably likely to be used in this litigation as it pertains to Monsanto's relationship with Mr. Rowland (subject of extensive discovery during general causation stage) and efforts by Monsanto to address the general causation conclusion by IARC. The document is also relevant to *Daubert*, since it undermines the reliability and purported "independence" of the EPA's evaluation of glyphosate.
68.	MONGLY03379079 2/2/2016	This document contains email correspondence between Monsanto regulatory affairs employee Mr. Daniel Jenkins and members of Croplife America wherein Mr. Jenkins informs Ms. Janet Collings (Croplife) that Monsanto has been urging the EPA to not convene the Scientific Advisory Panel to review the EPA's 2016 glyphosate issue paper: "Find it troubling that he's saying it publicly, as we are urging them not to. It's a very bad move to be so equivocal, especially when EFSA is so definitive and hopefully JMPR will be soon too." at *2.	This document is relevant and reasonably likely to be used in this litigation as it shows Monsanto pressuring the EPA to preclude review of the issue paper which found it biologically improbable that glyphosate is a human carcinogen. Monsanto's role with respect to the EPA and influence at the agency has been subject of extensive discovery during the general causation stage and this document is a further reflection of Monsanto's motives for leveraging its relationship with the EPA to dissuade repeated examination of glyphosate. The document is also relevant to *Daubert*, since it undermines the reliability and purported "independence" of the EPA's evaluation of glyphosate. The document also goes to the credibility of Mr. Jenkins.

No	Bates	Description	Relevance
69.	MONGLY02953363 6/5/2015	This document contains a forwarded email which outlines Monsanto's regulatory strategy with respect to "addressing widespread confusion in the wake of the IARC classification…" at *1. "Recent Actions" include "significant outreach within the U.S. government to secure its engagement with the WHO in an effort to obtain that clarification. We have briefed key staff at EPA, USTR, USDA and the State Department as well as members of Congress." at *2.	This document is relevant and reasonably likely to be used in this litigation as it demonstrates Monsanto's lobbying activities through the U.S. government in order to pressure the WHO to "clarify" the IARC classification. Monsanto's governmental influence has featured extensively in general causation discovery and motions practice and this particular effort is directed at influencing the organization which offered a general causation carcinogenicity conclusion with respect to glyphosate carcinogenicity. The document is also relevant to *Daubert*, since it undermines the reliability and purported "independence" of the EPA's evaluation of glyphosate.
70.	MONGLY02056568 3/10/2016 – 4/22/2016	This document contains email correspondence between various Monsanto personnel wherein Dr. Goldstein entertains the prospect of a "glyphosate symposium", which is "acceptable but direct Monsanto support would likely be a bad idea." at *1. The full proposal from Allister Vale begins on the second page and it is explicitly stated that "[f]unding via the Glyphosate Consortium would be a way of taking this kind of meeting forward. Given the hands off arrangement you mention I am confident it would be possible to put together a team of clinical / medical toxicologists to be primarily responsible for the organization. However, to make this work, neither I nor they could be in receipt of direct funding from Monsanto or the Glyphosate Consortium." at *2.	This document is relevant and reasonably likely to be used in this litigation as it demonstrates Monsanto's involvement and financial support of glyphosate research initiatives without disclosing Monsanto's interest. Such research initiatives propagate scientific discourse about glyphosate which is relied upon by researchers when formulating causation opinions. Such evaluations will thus not be able to weigh the conflicts of interest inherent in the data—an issue related to determining whether it is biologically plausible for glyphosate to act as a human carcinogen. The reliability of scientific literature and consensus, especially consensus built on manipulation, is highly relevant to the issue of general causation.
71.	MONGLY03401522 3/29/2016 – 4/6/2016	This document contains email correspondence between various Monsanto personnel wherein David Carpintero discusses the French ban of Roundup tallowamine surfactant: "We are expecting the letter of intention from French regulator ANSES very soon, and it might point to 'imminent health risk' regarding the use of tallowamine. We do not agree with the withdrawal but	This document is relevant and reasonably likely to be used in this litigation as it relates to a regulatory agency concluding that it is biologically plausible for Roundup to pose a health risk. This document relates directly to general causation.

No	Bates	Description	Relevance
		we will abide. We simple would need the argumentation for the ban/withdrawal to not be based on 'human health' but other on considerations like precautionary principle. The consequences of this ban if referring to human health risks have the potential to go beyond France and would potentially have global and trade impact. It is therefore of essence that any intention to ban does not refer to imminent human health risk." at *2.	
72.	MONGLY02913526 2/23/2015	This document details a number of goals to be pursued by Monsanto prior to and following the anticipated IARC decision. Under "Post-IARC", the following objective is identified: "Orchestrate Outcry with IARC Decision [around] March 10, 2015". at *5.	This document is relevant and likely to be used in this litigation as it demonstrates Monsanto's intention to discredit IARC prior to the 2A classification. Following the classification, Monsanto galvanized a campaign to discredit and defund an international research agency which rendered a general causation carcinogenicity opinion and found that it is biologically probable for glyphosate to act as a human carcinogen.
73.	MONGLY03558820 4/28/2016 – 7/6/2016	This document contains email correspondence between various Monsanto employees wherein John Lynch states: "To date I have eight industry associations, plus CropLife Canada, who have expressed interest in engaging in further discussions on how to collaborate as a more substantial critical mass, representing a significant chunk of Canada's GDP and innovation investments, to capture the attention of the federal government and encourage an approach to motivate IARC to make adjustments to their current inappropriate practices." at *2.	This document is relevant and reasonably likely to be used in this litigation as it demonstrates efforts by Monsanto to leverage political influence in an attempt to impact the procedures of a research agency (IARC) which arrived at a general causation opinion adverse to Monsanto's commercial agenda.
74.	MONGLY03315608 10/5/2015	This document contains email correspondence between various Monsanto personnel wherein it is stated: "As discussed on the weekly glyphosate call, the first two post-IARC glyphosate personal injury lawsuits in the U.S. were filed in late September. One case was filed	This document is relevant and reasonably likely to be used in this litigation as it indicates that Monsanto has long expected litigation over glyphosate causing cancer, suggesting an understanding that information Monsanto had

No	Bates	Description	Relevance
		in New York and another in California. We had anticipated such litigation for some time." at *2.	internally assessed indicated a glyphosate or Roundup carcinogenicity risk.
75.	MONGLY00947788 2/25/2015	This document contains a list of studies/articles/reports relied upon by both IARC and Monsanto in supporting and challenging the "2A Probable Human Carcinogen" classification respectively.	This document is relevant and reasonably likely to be used in this litigation as it indicates the scientific literature assessed by IARC and relied upon by Monsanto in discrediting the IARC general causation conclusion.

EXHIBIT B

From:	Esfandiary, Pedram
To:	Rubin, Gary I.
Cc:	Hollingsworth, Joe G.; Johnston, Robert E.; Lasker, Eric; Baum, Michael; Wisner, R. Brent; "Aimee H. Wagstaff"
Subject:	RE: Your June 30, 2017, Letter: Dial-in Information
Date:	Monday, July 10, 2017 4:40:44 PM
Attachments:	image004.png Challenged Documents Chart_Response Columns.docx

Mr. Rubin,

The date of our meet and confer (Thursday July 13) falls on the eve of the 14 day meet and confer deadline. Thus, we expect that you will have reviewed the 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 columns where you may indicate your position with respect to each challenge. If you agree that a specific document will be de-designated, simply check the "Agree" box, or if you disagree with the challenge, please provide an explanation in the "Disagree" box. Please fill out the chart so that we can have an informal discussion about each document and decide how to proceed before expiration of the two week meet and confer period.

Best,

Pedram Esfandiary, Esq.
Associate Attorney
Baum, Hedlund, Aristei & Goldman, P.C.
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Los Angeles, CA 90025
Tel: (310) 207-3233
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Fax: (310) 820-7444
PEsfandiary@BaumHedlundLaw.com
www.baumhedlundlaw.com

From: Rubin, Gary I. [mailto:GRubin@Hollingsworthllp.com]

Sent: Monday, July 10, 2017 11:34 AM
To: Wisner, R. Brent <rbwisner@baumhedlundlaw.com>
Cc: Hollingsworth, Joe G. <jhollingsworth@hollingsworthllp.com>; Johnston, Robert E. <RJohnston@Hollingsworthllp.com>; Lasker, Eric <ELasker@Hollingsworthllp.com>; Esfandiary, Pedram <pesfandiary@baumhedlundlaw.com>; Baum, Michael <MBaum@BaumHedlundLaw.com>
Subject: RE: Your June 30, 2017, Letter: Dial-in Information

Here is the dial-in information:

Phone Number: (202) 370-2600
Conference ID: 925966
Security Pin: 699689

Hollingsworth LLP
Litigation Matters.®

Gary I. Rubin
Partner

D 202.898.5830 | GRubin@Hollingsworthllp.com
1350 I Street NW | Washington, DC 20005
www.hollingsworthllp.com

From: Rubin, Gary I.
Sent: Friday, July 07, 2017 2:39 PM
To: 'Wisner, R. Brent'
Cc: Hollingsworth, Joe G.; Johnston, Robert E.; Lasker, Eric; Esfandiary, Pedram; Baum, Michael
Subject: RE: Your June 30, 2017, Letter

Yes. 1:00 p.m. PT on July 13th will work. I will send a dial-in number early next week. Thank you.

From: Wisner, R. Brent [mailto:rbwisner@baumhedlundlaw.com]
Sent: Friday, July 07, 2017 1:47 PM
To: Rubin, Gary I.
Cc: Hollingsworth, Joe G.; Johnston, Robert E.; Lasker, Eric; Esfandiary, Pedram; Baum, Michael
Subject: RE: Your June 30, 2017, Letter

Gary,

I appreciate your willingness to meet-and-confer. That date works for me, however I am scheduled for a telephonic conference call with a Court at noon. Are you available to speak at 1 pm PT?

Best,

R. Brent Wisner, Esq.
BAUM, HEDLUND, ARISTEI & GOLDMAN, P.C.

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****

From: Rubin, Gary I. [mailto:GRubin@Hollingsworthllp.com]
Sent: Thursday, July 6, 2017 6:12 PM
To: Wisner, R. Brent <rbwisner@baumhedlundlaw.com>
Cc: Hollingsworth, Joe G. <jhollingsworth@hollingsworthllp.com>; Johnston, Robert E. <RJohnston@Hollingsworthllp.com>; Lasker, Eric <ELasker@Hollingsworthllp.com>
Subject: Your June 30, 2017, Letter

Mr. Wisner:

I am writing to respond to your June 30, 2017, letter addressed to Joe Hollingsworth concerning the confidentiality of certain documents. We are available to discuss your letter on the afternoon of Thursday, July 13th. We propose noon your time. If this day and time works for you, I can send a dial in number. Thank you.

Gary Rubin

EXHIBIT C

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

THE INSPECTOR GENERAL

MAY 31 2017

The Honorable Ted W. Lieu
U.S. House of Representatives
Washington, D.C. 20515

Dear Representative Lieu:

Thank you for your May 19, 2017, letter to the U.S. Environmental Protection Agency (EPA's) Office of Inspector General (OIG) requesting an investigation into reports that an EPA employee may have colluded with Monsanto to conduct a biased review of glyphosate.

As you are aware, there is considerable public interest regarding allegations of such collusion. As a result, I have asked the EPA OIG Office of Investigations to conduct an inquiry into several agency glyphosate review-related matters. Your letter has been forwarded to the EPA OIG Office of Investigations for inclusion and consideration.

Following the completion of the review, we will notify your staff and prepare the appropriate response to your concerns.

We appreciate your interest in the work of the EPA OIG. If you have any questions regarding this or any other matter, please contact Alan Larsen, Counsel to the Inspector General, at (202) 566-2391.

Sincerely,

Arthur A. Elkins Jr.

EXHIBIT D

MONSANTO

MONSANTO COMPANY
800 N. LINDBERGH BLVD.
ST. LOUIS, MISSOURI 63167
PHONE: (314) 694-1000
http://www.monsanto.com

June 20, 2017

Via E-Mail and Federal Express

Carol Monahan-Cummings
Chief Counsel
California Office of Environmental
Health Hazard Assessment
1001 I Street
Sacramento, CA 95812

Re: Petition for Reconsideration of the Proposition 65 Listing of Glyphosate Pursuant to the Labor Code Mechanism

Dear Ms. Monahan-Cummings:

Monsanto Company ("Monsanto") submits this petition pursuant to 27 Cal. Code Regs. § 25904(e) and Government Code § 11340.7 to request that the California Office of Environmental Health Hazard Assessment ("OEHHA") refrain from adding glyphosate to the list of chemicals "known to the state to cause cancer" for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"). As described herein, OEHHA originally proposed to list glyphosate based on a determination by the International Agency for Research on Cancer ("IARC") that glyphosate is a "probable carcinogen." It recently was revealed, however, that key scientific data were not disclosed to the IARC working group that considered glyphosate and that these data would have affected IARC's analysis. This new information calls into question the validity of the IARC determination and, consequently, OEHHA's reliance on that determination to list glyphosate under Proposition 65. Accordingly, Monsanto respectfully requests that OEHHA reconsider its decision to list glyphosate.

I. OEHHA's Listing of Glyphosate Pursuant to the Labor Code Mechanism.

OEHHA's decision to list glyphosate is based on the so-called Labor Code mechanism, which provides that the Proposition 65 "list shall include at a minimum those substances identified by reference in Labor Code Section 6382(b)(1) and those substances identified additionally by reference in Labor Code Section 6382(d)." Health & Safety Code § 25249.8(a). Section 6382(b)(1) of the Labor Code, in turn, identifies by reference "[s]ubstances listed as human or animal carcinogens by the International Agency for Research on Cancer (IARC)." OEHHA's implementing regulations further provide that "[a] chemical or substance shall be included on the [Proposition 65] list if it is classified by [IARC] in its IARC Monographs series on the Evaluation of Carcinogenic Risks to Humans . . . as: . . . (2) Probably carcinogenic to humans (Group 2A) with sufficient evidence of carcinogenicity in experimental animals. . . ." 27 Cal. Code Regs. § 25904(b).

On September 4, 2015, OEHHA provided notice of its intent to list glyphosate pursuant to the Labor Code mechanism.[1] OEHHA explained that glyphosate meets the criteria for listing because IARC classified glyphosate as Group 2A ("probably carcinogenic to humans") and concluded that there was sufficient evidence of carcinogenicity in experimental animals. On March 28, 2017, OEHHA announced that it had determined that glyphosate would be added to the list of chemicals known to the state to cause cancer for purposes of Proposition 65 pursuant to the Labor Code mechanism.[2] OEHHA's announcement stated that the effective date of the proposed listing "will be determined following a decision from the Court of Appeal regarding a request for a stay in the pending case *Monsanto v OEHHA*." On June 15, 2017, the Court of Appeal denied the request for a stay, but the next day Monsanto filed a request for a stay with the California Supreme Court, which request is pending.

II. Recently Discovered Information Renders the IARC Determination Invalid.

New information has come to light that calls into question the validity of IARC's determination that glyphosate is a "probable carcinogen." In particular, Dr. Aaron Blair, Chair of the IARC working group that considered glyphosate, recently revealed in sworn deposition testimony that he failed to disclose to other working group members unpublished scientific data that showed no evidence of a link between glyphosate and cancer. *See* Blair Depo. Tr. (Exhibit A) at pp. 172-183. Dr. Blair admitted that the undisclosed data would have altered IARC's analysis. *Id* ; *see also* Reuters, *Cancer Agency Left in the Dark Over Glyphosate Evidence* (June 14, 2017) (attached as Exhibit B); Mother Jones, *A Scientist Didn't Disclose Important Data — and Let Everyone Believe a Popular Weedkiller Causes Cancer* (June 15, 2017) (attached as Exhibit C). The data in question were developed as part of the Agricultural Health Study ("AHS"), one of the largest epidemiological studies to examine the effects of pesticide use on agricultural workers, farmers, and their families. A March 2013 draft of the study is attached as Exhibit D.

Specifically, in March 2017, Dr. Blair was deposed in connection with personal injury claims asserted against Monsanto related to allegations that Monsanto's glyphosate-based products cause cancer. During the deposition, Dr. Blair testified under oath that:

1. The new AHS data found "no evidence of association between exposure to glyphosate and non-Hodgkin lymphoma," Blair Depo. Tr. (Exhibit A) at 172:11-15;

---

[1] OEHHA, *Notice of Intent to List Chemicals By the Labor Code Mechanism Tetrachlorvinphos, Parathion, Malathion, Glyphosate* (Sept. 4, 2015), *available at* https://oehha.ca.gov/proposition-65/crnr/notice-intent-list-tetrachlorvinphos-parathion-malathion-glyphosate.

[2] OEHHA, *Notice to Interested Parties, Chemical to Be Listed as Known to the State of California to Cause Cancer Glyphosate* (posted March 28, 2017), *available at* https://oehha.ca.gov/proposition-65/crnr/glyphosate-be-listed-under-proposition-65-known-state-cause-cancer.

2. At the time he was Chair of the IARC working group that considered glyphosate and a member of the epidemiology subgroup, Dr. Blair was aware of the AHS data from the 2013 study, which included four times as much data as a prior AHS study published in 2005, *id.* at 177:13-25;

3. He did not disclose the existence of the larger AHS dataset to other members of the glyphosate working group or epidemiology subgroup, *id* at 178:1-7; and

4. If IARC had used the larger AHS dataset from 2013, it would have impacted IARC's analysis. In particular, Dr. Blair testified that "[t]he relative risk for the AHS study would have been lower," and the meta-analysis that the IARC working group found to be just barely statistically significant in March 2015 probably would not have shown an increased risk of cancer with exposure to glyphosate. *Id* at 182:16-183:17.[3]

Separately, on May 3, 2017, the Chair of the IARC working group subgroup on animal toxicology, Dr. Charles Jameson, testified under oath that:

1. The initial assessment of his subgroup of experts in animal toxicology was that the animal data was "limited," Jameson Depo. Tr. (Exhibit E) at 206:1-20;

2. The IARC staff failed to make available to his subgroup a published paper containing tumor data from 14 glyphosate cancer bioassays, *id.* at 179:10-180:10; and

3. The full working group did not consider that data at the IARC meeting even when it was finally presented because "the amount of data in the tables was overwhelming," *id.* at 191:12-192:8.

This new information undermines the IARC working group's prior determination in March 2015 that glyphosate is a probable carcinogen. That finding was based on review of incomplete and inadequate epidemiological and animal data given the information (both published and unpublished) that was and/or should have been available to the working group at the time of its review. Accordingly, IARC's determination that glyphosate is a "probable carcinogen" is invalid and should not be relied upon by OEHHA to list glyphosate under Proposition 65.

III. At a Minimum, the Uncertainty Surrounding IARC's Classification of Glyphosate Should Cause OEHHA to Delay the Listing in Order to Avoid Unwarranted Consequences.

It has been reported that a draft paper analyzing the results of the larger AHS dataset should be submitted to an appropriate scientific publication later this year, with publication following that time. Furthermore, in response to these revelations, IARC has stated that "IARC

[3] Four pages of Dr. Blair's deposition are deemed confidential pursuant to a protective order in the personal injury litigation and hence are removed from Exhibit A.

can re-evaluate substances when a significant body of new scientific data is published in the openly available scientific literature." *See* IARC, *IARC Responds to Reuters Article of 14 June 2017*, available at http://governance.iarc.fr/ENG/Docs/IARC_responds_to_Reuters_15_June_2017.pdf (last visited June 20, 2017).

OEHHA is well aware of the significance of glyphosate and the adverse consequences that will ensue if glyphosate is listed incorrectly. Many of those consequences will persist even if glyphosate is removed from the list at a later date, whether by action of a court or OEHHA (including by OEHHA in response to an action by IARC). The Declarations of Drs. David Heering and David Stewart, attached hereto as Exhibits F and G, respectively, detail these potential consequences for Californians.

OEHHA need not agree that the IARC determination is invalid in order to reconsider its listing of glyphosate. There is significant uncertainty surrounding both the propriety of IARC's classification and the scientific basis for it, as well as whether that classification will withstand scrutiny once the larger AHS study is published. To avoid the adverse consequences of listing glyphosate, OEHHA should at the very least delay its listing pending IARC's reconsideration of this substance in light of the strong scientific evidence that was not made available to the IARC working group that improperly classified glyphosate as a probable human carcinogen.

IV. Conclusion

For these reasons, OEHHA should reconsider its decision to list glyphosate pursuant to the Labor Code mechanism and should not add glyphosate to the Proposition 65 list.

Respectfully,

Monsanto Company

By: _____
Dr. Philip W. Miller
Vice President, Global Corporate Affairs

Enclosures

EXHIBIT E

Office of Environmental Health Hazard Assessment

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Matthew Rodriquez
Secretary for
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Edmund G. Brown Jr.
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June 26, 2017

Sent via E-mail and U.S Mail

Dr. Philip W. Miller
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800 N. Lindbergh Blvd.
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RE: Petition for Reconsideration of the Proposition 65 Listing of Glyphosate Pursuant to the Labor Code Mechanism

Dear Dr. Miller:

Thank you for your letter of June 20, 2017, requesting that the Office of Environmental Health Hazard Assessment (OEHHA) reconsider the listing of the chemical glyphosate as known to the state to cause cancer. Proposition 65[1] requires the listing of certain chemicals and substances identified by reference to the California Labor Code.[2] On March 28, 2017, OEHHA announced that glyphosate would be listed as known to cause cancer for purposes of Proposition 65, based on its identification by the International Agency for Research on Cancer (IARC) as causing cancer.[3] IARC indicated that the identification was based on "sufficient evidence" in animal studies and "limited evidence" in human (epidemiological) studies.[4] Under the statute, case law and regulations, chemicals identified by IARC as carcinogens with sufficient evidence of carcinogenicity in humans or animals must be listed under Proposition 65. Specifically, Health and Safety Code section 25249.8(a) provides as follows:

> "(a) On or before March 1, 1987, the Governor shall cause to be published a list of those chemicals known to the state to cause cancer or reproductive toxicity within the meaning of this chapter, and he shall cause such list to be revised and republished in light of additional knowledge at least once per year thereafter. *Such list shall include at a minimum those substances identified by reference in Labor*

[1] The Safe Drinking Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code section 25249.5 et seq., commonly referred to as Proposition 65.
[2] See Health and Safety Code section 25249.8(a) and Title 27, Cal. Code of Regs., section 25904.
[3] See https://oehha.ca.gov/proposition-65/crnr/glyphosate-be-listed-under-proposition-65-known-state-cause-cancer. The chemical has not been added to the list due to Monsanto's request for a stay in the Court of Appeal, which was summarily denied on June 16, 2017, and the Supreme Court, which summarily denied it on June 22, 2017.
[4] See: http://monographs.iarc.fr/ENG/Monographs/vol112/mono112-10.pdf.

Code Section 6382(b)(1) and those substances identified additionally by reference in Labor Code Section 6382(d)." (Emphasis added.)

Labor Code section 6382(b)(1) identifies the following chemicals and substances:

"(1) Substances listed as human or animal carcinogens by the International Agency for Research on Cancer (IARC)."

OEHHA's obligations under the Labor Code listing mechanism of Health and Safety Code section 25249.8, subdivision (a), which incorporates section 6382, subdivision (b)(1) of the Labor Code, was litigated in several cases, all of which found that OEHHA is required to list carcinogens identified by reference to the Labor Code.[5] OEHHA has also adopted regulations setting out the criteria for listing chemicals via this mechanism and the required showing for a request for delisting or reconsideration. As stated in the regulations:[6]

"(a) Pursuant to Section 25249.8(a) of the Act, a chemical or substance shall be included on the list of chemicals known to the state to cause cancer if it is a chemical or substance identified by reference in Labor Code Section 6382(b)(1) as causing cancer.

(b) A chemical or substance shall be included on the list if it is classified by the International Agency for Research on Cancer (IARC) in its IARC Monographs series on the Evaluation of Carcinogenic Risks to Humans (most recent edition), or in its list of Agents Classified by the IARC Monographs, as:

(1) Carcinogenic to humans (Group 1), or

(2) Probably carcinogenic to humans (Group 2A) with sufficient evidence of carcinogenicity in experimental animals, or

(3) Possibly carcinogenic to humans (Group 2B) with sufficient evidence of carcinogenicity in experimental animals. A chemical or substance for which there is less than sufficient evidence of carcinogenicity in experimental animals and classified by IARC in Group 2B shall not be included on the list…

... (e) Any person may petition the lead agency to consider removing a chemical or substance from the list pursuant to this section. The petition shall identify the chemical or substance in question *and the reasons why the provisions of subsections (a) and (b) are not met*." (Emphasis added)

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[5] *California Chamber of Commerce v. Brown, et al.* (2011) 196 Cal. App. 4th, 233; *Styrene Information and Research Center v. Office of Environmental Health Hazard Assessment* (2012) 210 Cal. App. 4th 1082 ; *Sierra Club v Brown* (2013) Alameda County Superior Court case #RG0735881.

[6] Title 27, Cal. Code of Regs, section 25904.

Pursuant to Section 25904, subdivision (e) of the regulations, the only legal basis for a request for reconsideration of a chemical's placement on the Proposition 65 list would be that the provisions of subsections (a) and/or (b) are not met. Monsanto has not made such a showing, having provided no evidence that IARC has changed its classification of glyphosate as a carcinogen, or its finding that animal studies provided sufficient evidence of carcinogenicity. Instead, Monsanto complains that IARC, pursuant to its own rules, only considered published, peer-reviewed studies when making the glyphosate determination in 2015, and contends that the IARC finding was erroneous because it did not consider certain unpublished data. It appears that Monsanto has already brought the issue to IARC's attention and they have provided a reasonable response stating that they can re-evaluate a substance when a significant body of new scientific data is published in the openly available scientific literature.[7]

In the event IARC were to change its classification of glyphosate, resulting in subdivisions (a) and/or (b) of Title 27, California Code of Regulations section 25904 no longer being met, Monsanto would at that time be able to petition OEHHA to reconsider the listing. If OEHHA were to determine at that time that glyphosate no longer meets the listing criteria in the regulation, OEHHA would then determine whether the chemical met the criteria for listing via another listing mechanism, and if not, refer the chemical to the Carcinogen Identification Committee for consideration for potential delisting as provided in the regulation.[8] Unless and until IARC changes its classification of glyphosate, this request for OEHHA to reconsider its listing decision is premature. Monsanto's request is denied. However, Monsanto may re-submit the request in the event IARC changes its determinations regarding this chemical.

If you have questions regarding this letter, please feel free to contact me at (916) 322-6325.

Best Regards,

Allan Hirsch
Chief Deputy Director

Enclosure

[7] See attached statement from IARC, available on its website at http://governance.iarc.fr/ENG/Docs/IARC_responds_to_Reuters_15_June_2017.pdf
[8] Title 27, Cal. Code of Regs., section 25904(f)