



September 26, 2017

Joe G. Hollingsworth  
dir 202 898 5842  
jhollingsworth@hollingsworthllp.com

**FILED VIA ECF**

Honorable Vince Chhabria  
United States District Court, Northern District of California

Re: *In re Roundup Prods. Liab. Litig.*, No. 3:16-md-02741-VC

To the Honorable Vince Chhabria,

The following discovery dispute is being submitted by the parties pursuant to paragraph 15 of the Standing Order for Civil Cases Before Judge Vince Chhabria, which requires that the Parties submit a discovery dispute letter stating the nature and status of their dispute. The parties jointly request a 2-page enlargement for this discovery dispute submission.

**MONSANTO'S POSITION**

On August 21, 2017, Monsanto issued a Notice of Deposition and Subpoena *Duces Tecum* for plaintiffs' expert witness, Dr. Dennis D. Weisenburger, setting September 1, 2017 as the date of production. Monsanto's Notice to Take Oral and Videotaped Deposition of Dr. Dennis D. Weisenburger, Ex. A. Plaintiffs' counsel served objections and responses on September 2, 2017, stating as to each item that they would produce "any other documents upon which [Dr. Weisenburger] relied or considered in connection with his expert report in MDL 2741 to the extent they are responsive, properly discoverable, non-privileged and are not publicly available." The day before the deposition, on September 10, 2017, plaintiffs' counsel sent Monsanto a list of additional materials considered by Dr. Weisenburger that contained 45 citations to scientific articles and other documents.

**A. Dr. Weisenburger testified at his deposition that he had drafts, emails, and other documents that he relied upon and did not produce or disclose in a timely manner.**

At his deposition, Dr. Weisenburger testified as to the following. First, when asked whether he had any North American Pooled Project ("NAPP") draft publication(s) on glyphosate and non-Hodgkin's lymphoma ("NHL") as Monsanto requested in its subpoena, Dr. Weisenburger testified that he had drafts from 2016 and 2017 as well as emails and other documents. Deposition of Dr. Weisenburger, M.D. at 143:10-11 (Sept. 11, 2017) (hereinafter "Weisenburger Dep.") (Q: "Do you have drafts from 2016 and 2017?" A: "I do."); *Id.* at 146:3-4 (Q: "You have drafts with these tables in them?" A: "I do."); *Id.* at 157:16-23 (Q: "Yes, sir. So you do have e-mails with some other people on our list that you're calling group e-mails that pertain to the exchanges about the draft of the NAPP; is that right?" A: "I do as well.").

Second, Dr. Weisenburger admitted *multiple times* that he relied upon the NAPP for the bases of his opinion that the epidemiological evidence on glyphosate shows an association between glyphosate and NHL. In fact, Dr. Weisenburger claimed that in his opinion, it was one of the two statistically significant epidemiology studies for glyphosate and superseded other



Honorable Vince Chhabria  
September 26, 2017  
Page 2

studies that it pooled that he had listed in his expert report. Weisenburger Dep. at 75:25-76:23 (“And although I don’t have it listed here, if you look at the NAPP study, that shows a statistically significant increase[d] risk for NHL and for diffuse large B-cell lymphoma that is adjusted for other pesticides”); *Id.* at 77:3-7 (Q: “The two that are significant in your view are De Roos, Item 3 on your chart, and the NAPP study that you didn’t actually list on your chart; is that right?” A: “Right.”); *Id.* at 122:18-123:2 (testifying that the NAPP superseded the two publications that it pooled “and used the data in [a] bigger, more powerful study”). When asked why he decided not to use the NAPP, Dr. Weisenburger claimed it was merely an “arbitrary decision.” *Id.* at 77:10-19. When questioned about a draft of the NAPP study produced by Aaron Blair at his deposition, Dr. Weisenburger (and plaintiffs’ counsel) repeatedly questioned its validity because more recent drafts in Dr. Weisenburger’s possession purportedly differ in important ways, such as the inclusion of data tables not in drafts available to Monsanto. *Id.* at 141:17-22 (A: “[A]pparently it’s an accurate description of the data from this early version of the manuscript”); *Id.* at 143:20-144:7 (A: “It may have changed in subsequent manuscripts”); *Id.* at 144:21-145:6 (A: “So that should actually be reflected in table 2 of the manuscript here which you don’t provide”); *Id.* at 146:1-2 (Ms. Forgie: “Objection, he’s already stated there’s tables missing from Exhibit 13.”).

With regard to the list of 45 scientific studies and other documents disclosed to Monsanto by plaintiffs’ counsel on Sunday, September 10, the day before Dr. Weisenburger’s deposition (and while counsel taking the deposition was already en route to Los Angeles for the deposition), Dr. Weisenburger testified that he had reviewed the materials therein long before the day they were disclosed to Monsanto, and that at least some of them were important enough that he would have referenced them in his expert report had he been aware of them at the time he created it. *Id.* at 170:3-171:1 (“So there was a list of manuscripts that I relied on that I would have referenced in my . . . report”); *Id.* at 173:25-174:18 (stating he spent 100 hours since April 19, 2017 reviewing the 45 scientific studies on his additional materials considered list).

The examining attorney, Kirby Griffis, adjourned the deposition with one hour and twenty minutes remaining, in order to provide some time to question Dr. Weisenburger about the undisclosed and late-disclosed materials upon reconvening of the deposition.

Following Dr. Weisenburger’s deposition, Monsanto wrote to plaintiffs’ counsel on September 12, 2017 demanding production of the documents that Dr. Weisenburger testified that he had in his possession and failed to timely disclose in violation of Pretrial Orders Nos. 7 and 16. Letter from Kirby T. Griffis to Kathryn Forgie (Sept. 12, 2017). Ms. Forgie responded that they would not produce the documents, claiming that they are “protected by academic privilege as well as the right of privacy” and that she would also not instruct Dr. Weisenburger to preserve the documents. Letter from Kathryn Forgie to Heather A. Pigman (Sept. 15, 2017). On September 19, 2017, Monsanto sent plaintiffs’ counsel a copy of the letter brief. Email from Heather A. Pigman to Kathryn Forgie (Sept. 19, 2017). On Monday, September 25, 2017 instead of sending their portion, plaintiffs’ counsel indicated instead that they were going to recommend



Honorable Vince Chhabria  
September 26, 2017  
Page 3

to Dr. Weisenburger “that he produce drafts of the NAPP.” Email from Aimee H. Wagstaff to Kirby T. Griffis (Sept. 25, 2017). The next day, plaintiffs’ counsel informed Monsanto that the “NAPP senior author” would not agree to release any drafts and therefore, Dr. Weisenburger would not be providing drafts to Monsanto, or agree to a litigation hold, absent a court order. Email from Robin Greenwald to Heather Pigman (Sept. 26, 2017).

**B. “Academic privilege” and assertions of confidentiality are not valid bases for an expert to withhold his reliance materials.**

The “academic privilege” invoked by plaintiffs’ counsel refers to a tradition that draft publications are not normally publicly disclosed. Weisenburger Dep. at 41:7-13 (A: “The draft of the manuscript or substantial data from the manuscript should not be made available for public review or use until the manuscript is actually accepted for publication”). Even if that tradition in fact creates a *privilege* – as opposed to a trade custom of *confidentiality* – that would be immaterial to its discoverability: courts routinely require expert witnesses to disclose data and other information upon which the expert’s opinion is based, including documents protected by privilege. *See, e.g., United States v. Sierra Pacific Inds.*, No. CIV S-09-2445 KJM EFB, 2011 WL 5508864, at \*3 (E.D. Cal. Nov. 8, 2011) (“Rule 26(a)(2)(B) ‘trumps’ any assertion of work product or privilege . . . [o]nce an expert is designated, the expert must disclose all information and data considered in forming the expert’s opinions”) (quoting *In re Commercial Money Ctr., Inc.*, 248 F.R.D. 532, 537 (N.D. Ohio 2008)); *Ass’n of Irrigated Residents v. Fred Schakel Dairy*, No. 1:05-cv-00707-AWI, SMS, 2008 WL 2509735, at \*1 (E.D. Cal. June 23, 2008) (“[T]he better view . . . is that all things communicated to the expert and considered by the expert in forming an opinion must be disclosed even if it constitutes opinion otherwise protected as work product”). In fact, even in cases involving witnesses unrelated to the litigation, courts have ordered the disclosure of underlying academic data to allow for effective cross-examination. For example in *Deitchman v. E.R. Squibb & Sons, Inc.*, 740 F.2d 556 (7th Cir. 1984), decided two years *after Dow Chemical Co. v. Allen*, 672 F.2d 1262, 1274-76 (7th Cir. 1982), the court granted defendant access to documents and data created and maintained by the University of Chicago to allow the defendant to prepare its defense. Similarly, in *Kennedy v. State of Connecticut Department of Public Safety*, 115 F.R.D. 497, 499, 501 (D. Conn. 1987), the court denied the third party’s motion to quash and allowed discovery of *confidential research information even though it was undergoing revision*. Dr. Weisenburger and his colleagues could, if they wish, demand that the documents be treated as confidential and thus invoke the protections of the MDL confidentiality agreement. But a mere claim of confidentiality, including by third parties, is not sufficient to withhold reliance material that Dr. Weisenburger has in his possession from Monsanto in this litigation.

If plaintiffs continue to want to rely upon Dr. Weisenburger’s opinions in this case, they must disclose the documents and communications at issue and allow Monsanto to re-open Dr. Weisenburger’s deposition to question him on the previously undisclosed material and the additional materials considered list provided just one day before the deposition while Monsanto’s



Honorable Vince Chhabria  
September 26, 2017  
Page 4

counsel traveled across the country. Otherwise, they should be precluded from using Dr. Weisenburger's opinions against Monsanto for failure to timely disclose the bases of his expert opinions. *See* PTO 7 at 9 (requiring that "[a]t least ten days prior to the deposition, the expert shall produce all files, documents, and reliance materials subject to discovery under the Federal Rules that are not publicly or otherwise available to the noticing party"); PTO 16 (stating that neither party "will be permitted to rely in these proceedings on documents they have withheld from the other side"); *see also Mitchell v. Ford Motor Co.*, 318 F. App'x 821, 825 (11th Cir. 2009) (granting defendant's motion to strike on the grounds that the expert did not timely disclose the bases for his opinions leaving the defendant unable to fully depose plaintiff's expert); *United States v. Batchelor-Robjohns*, No. 03-20164-CIV, 2005 WL 1761429, at \*4 (S.D. Fla. June 3, 2005) (excluding opinions of plaintiff's valuation expert because he refused to produce documents and information upon which his opinions were based).

For the foregoing reasons, the Court should order production and preservation of the documents and allow Monsanto to re-open Dr. Weisenburger's deposition. Monsanto asks that the documents be produced within five days of an Order by the Court and that dates be promptly provided for the completion of Dr. Weisenburger's deposition. Alternatively, the Court should strike Dr. Weisenburger as an expert witness and not allow plaintiffs to rely upon his opinions.

### **PLAINTIFFS' POSITION**

Dr. Dennis Weisenburger, a Los Angeles physician and chair at City of Hope's Department of Pathology, specializing in the study of diseases of the hematopoietic and immune systems with a specialty in non-Hodgkin lymphoma, is an expert witness in MDL 2741. Dr. Weisenburger is a co-participant in the North American Pooled Project ("NAPP"); however, as explained in his deposition, he did not rely or cite to the NAPP study. The NAPP study is a pooled study that uses individual case control studies that are otherwise relied upon, cited, and evaluated by Dr. Weisenburger. The data compiled by NAPP seeks to pool data from these case control studies; though this project is not yet complete. Monsanto demanded production of various communications and drafts related to the NAPP study through its Notice of Deposition and Subpoena *Duces Tecum*. Plaintiffs' counsel served objections and partial productions on September 2, 2017, in response to the Notice of Deposition and Subpoena *Duces Tecum*. Monsanto did not respond or otherwise voice concern over Dr. Weisenburger's objections or productions. However, Monsanto now attempts to use Dr. Weisenburger's expert deposition to access unpublished, draft versions of the NAPP study – which Dr. Weisenburger and his co-authors deem highly confidential and inappropriate for distribution – and to re-open Dr. Weisenburger's deposition. Put simply, Dr. Weisenburger is not a fact witness and his deposition and deposition testimony should not be treated as a fact-finding mission. Monsanto has had adequate opportunity to depose Dr. Weisenburger on these issues and, in fact, did so on September 11, 2017. Dr. Weisenburger complied with the Notice of Deposition and Subpoena *Duces Tecum* and there is no legitimate basis to re-open this deposition. The Court should not disrupt the expert discovery schedule to placate Monsanto's meritless request.



Honorable Vince Chhabria  
September 26, 2017  
Page 5

### **Production of Draft Manuscripts and Materials Not Relied Upon or Considered**

Defendant served a Subpoena *Duces Tecum* in which Defendant sought, *inter alia*, “all documents provided to you, or that you have, related to the Roundup®/glyphosate litigation that are not publicly or otherwise available.” Plaintiffs timely objected to the scope of this and other requests and noted that Dr. Weisenburger would produce documents that he relied upon or considered in connection with his expert report . . . to the extent they are responsive, properly discoverable, non-privileged and are not publicly or otherwise available.” Monsanto now seeks drafts and materials outside the scope of Rule 26.

As a threshold matter, Dr. Weisenburger and his colleagues recognize the importance of the scholar’s privilege.<sup>1</sup> *See e.g., Dow Chemical Co. v. Allen*, 672 F.2d 1262, 1274-76 (7th Cir. 1982)(recognizing a researcher’s privilege to not have the results of his or her research disclosed prematurely). In *Dow*, the Court found that the risks associated with premature release of the data were significant and the probative value of the data, if any, was minimal. Specifically, the Court found that premature disclosure could interfere with the publication and peer review of the data. *Id.* The Ninth Circuit has not yet considered the issue of a scholar’s privilege. However, the analysis in *Dow* is equally compelling here where the manuscript and analysis are not yet complete and it is unknown whether additional drafts will take form prior to the peer review and publication. Indeed, Dr. Weisenburger’s colleagues, and specifically the senior author of the study, do not consent to disclosure of the draft manuscript and will not provide this information, even to Plaintiffs’ counsel, absent a Court Order.<sup>2</sup> Plaintiffs maintain that the draft manuscript falls outside the scope of Rule 26, particularly since Dr. Weisenburger did not consider or rely upon it. However, to the extent that the Court deems the draft appropriate for production,

---

<sup>1</sup> Weisenburger at 77:10-19. (Q: “Could you tell us briefly why you chose not to include that in your expert report?” A: “Yeah. It was an arbitrary decision. I felt like I would be sort of using it twice because the NAPP study is based on the McDuffie study and De Roos study. It’s a pooling of that data. So it’s really the same data. So I decided – and the fact that it – it has not been published, I decided not to use it.”). Weisenburger Dep. at 227:11-16 (“Q: Sir, you don’t have any problem philosophically with unpublished as opposed to published data, do you? A: “I personally think that all data that’s considered should be published and peer reviewed.”). Weisenburger Dep. at 259:7-17. (Q: “Did you provide me any draft manuscripts of the NAPP study?” A: “No.” Q: “Why is that?” A: “Because it wouldn’t have been ethical or correct or academically correct... [I]t’s not academic practice to make preliminary publications available for public use.”).

<sup>2</sup> *See* email from Dr. Harris to Dr. Weisenburger, attached as Exhibit B. Dr. Weisenburger believes the decision whether to produce the draft rests with the senior author, not himself.





Honorable Vince Chhabria  
September 26, 2017  
Page 6

Plaintiffs request an Order that provides additional protections and safeguards to protect the academic and proprietary interest of the study authors.<sup>3</sup>

With respect to the e-mails referenced in Defendant's Letter Brief, Dr. Weisenburger's testimony speaks for itself. He did not recall communications with the individuals identified in Defendant's Request No. 11, other than limited correspondence with Dr. Portier and certain group emails regarding the draft NAPP materials. Weisenburger Dep. at 33:25-34:10; 156:6-158:24. Dr. Weisenburger further testified that he was uncertain as to whether the communications existed and/or were in his possession because his practice necessitates routine purging of his email. Weisenburger Dep. at 36:4-18. Notwithstanding, Monsanto had in its possession and marked as deposition exhibits various email between Dr. Weisenburger, Aaron Blair and Dr. Portier.<sup>4</sup> Monsanto had ample opportunity to, and did, fully examine Dr. Weisenburger on these emails, despite the fact that they are beyond the scope of his expert opinion. Plaintiffs object to Monsanto's litigation hold request (i.e., all email containing the word "glyphosate") as this request is overbroad, unduly burdensome, and disrupts Dr. Weisenburger's usual business practices. Plaintiffs further object to the extent this request seeks information concerning draft NAPP manuscripts and/or information upon which Dr. Weisenburger did not rely for his opinions and expert report – and which his colleagues deem highly confidential based on the scholar's privilege discussed above. However, to the extent that the Court determines that a litigation hold on experts' email accounts is appropriate, Plaintiffs respectfully request that any preservation protocol be mutually applicable to experts for both Plaintiffs and Monsanto.

**There is no legitimate basis to disrupt the *Daubert* schedule and re-open  
Dr. Weisenburger's deposition.**

Even if the items currently in dispute justified re-opening of the deposition, which they do not, Monsanto has already inquired about these topics and fully explored the significance, if any, on Dr. Weisenburger's opinions and report.<sup>5</sup> Thus, the additional testimony would not only

---

<sup>3</sup> Dr. Weisenburger has testified that he is only one of the co-authors of the study and it is unknown when the study will be final. Weisenburger Dep. 26:24-28:19; 39:23-41:24. Dr. Weisenburger also testified that he was unsure whether he possessed any of the subsequent study drafts (other than what is already in Monsanto's possession). Weisenburger Dep. 158:4-6.

<sup>4</sup> Weisenburger Dep. 151:23-153:1, Exh. 16-14 (August 26, 2015 email from Aaron Blair to Dr. Weisenburger and others regarding IARC); 153:2-154:20, Exh. 16-15 (August 27, 2015 email from Aaron Blair to Dr. Weisenburger and others regarding IARC); 154:21-156:10, Exh. 16-16 (November 2014 email regarding draft NAPP manuscript); 161:15-161:21, Exh. 16-17 (August 2016 email with Dr. Portier regarding EU).

<sup>5</sup> Dr. Weisenburger testified about NAPP and provided abstracts and slides from NAPP presentations prior to his deposition which afforded Monsanto ample opportunity to review and



Honorable Vince Chhabria  
September 26, 2017  
Page 7

be unreasonably cumulative and duplicative - but unduly burdensome on Dr. Weisenburger and Plaintiffs. *See* Rule 30(a)(2)(A)(ii) and Rule 26(b)(2). For the foregoing reasons, Plaintiffs respectfully request that the Court deny Defendant's request in its entirety.

DATED: September 26, 2017

Respectfully submitted,

/s/ Joe G. Hollingsworth  
Joe G. Hollingsworth (*pro hac vice*)  
(jhollingsworth@hollingsworthllp.com)  
Eric G. Lasker (*pro hac vice*)  
(elasker@hollingsworthllp.com)  
HOLLINGSWORTH LLP  
1350 I Street, N.W.  
Washington, DC 20005  
Telephone: (202) 898-5800  
Facsimile: (202) 682-1639

Attorneys for Defendant  
MONSANTO COMPANY

DATED: September 26, 2017

Respectfully submitted,

/s/ Michael Miller  
Michael Miller  
mmiller@millerfirmllc.com  
The Miller Firm LLC  
108 Railroad Ave  
Orange VA 22960  
Ph 540 672 4224  
F 540 672 3055

/s/ Aimee Wagstaff  
Aimee Wagstaff  
aimee.wagstaff@andruswagstaff.com

---

address the NAPP data during the course of this deposition. Weisenburger Dep. 31:24-32:7; 77:21. Monsanto also inquired extensively about Dr. Weisenburger's views on the draft manuscripts, a meta-analysis of NAPP, his views regarding other experts' opinions on the unpublished NAPP data, and the anticipated timing for publication. *See, e.g.*, Weisenburger Dep. 138:3-14; 216:12-218:25. Dr. Weisenburger also testified that the publicly available literature did not impact his expert opinions. Weisenburger Dep. at 172:6-11; 259:18 – 260:8.



Honorable Vince Chhabria  
September 26, 2017  
Page 8

Andrus Wagstaff, P.C.  
7171 West Alaska Drive  
Lakewood CO 80226  
Ph 303-376-6360  
F 303-376-6361

/s/ Robin Greenwald  
Robin Greenwald  
rgreenwald@weitzlux.com  
Weitz & Luxenberg  
700 Broadway  
New York NY 10003  
Ph 212-558-5500  
F 212-344-5461

Co-Lead Counsel for Plaintiffs



# **Exhibit A**

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF CALIFORNIA

3 IN RE: ROUNDUP PRODUCTS  
4 LIABILITY LITIGATION

MDL No. 2741  
Case No. 16-md-02741-VC

5 This document relates to:

6 ALL ACTIONS  
7

**MONSANTO COMPANY'S NOTICE TO  
TAKE ORAL AND VIDEOTAPED  
DEPOSITION OF DR. DENNIS D.  
WEISENBURGER**

8 To: All MDL plaintiffs, by and through, the Court's appointed co-lead counsel, Robin  
9 Greenwald of Weitz & Luxenberg, PC, Michael Miller of The Miller Firm, LLC, and  
Aimee Wagstaff of Andrus Wagstaff, PC

10 Please take notice that, pursuant to Rule 30 and Rule 45 of the Federal Rules of Civil  
11 Procedure, defendant Monsanto Company shall take the videotaped deposition upon oral  
12 examination of **Dr. Dennis D. Weisenburger on September 11, 2017** before a person duly  
13 authorized to administer oaths. The deposition shall commence at **9:00 a.m. PDT at Courtyard**  
14 **by Marriott, 700 Huntington Drive, Monrovia, CA.** The conduct of the deposition, including  
15 its continuation if necessary, shall be governed by Pretrial Order No. 7: Deposition Protocol  
16 (ECF No. 103) and Rule 30 of the Federal Rules of Civil Procedure. Dr. Weisenburger shall  
17 produce any documents identified in Schedule A attached to his Document Subpoena, at least 10  
18 days prior to the deposition. *See* August 21, 2017 Document Subpoena for Dr. Dennis D.  
19 Weisenburger.  
20  
21  
22  
23  
24  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

DATED: August 21, 2017

Respectfully submitted,

/s/ Heather A. Pigman  
Heather A. Pigman (*pro hac vice*)  
hpigman@hollingsworthllp.com  
Joe G. Hollingsworth (*pro hac vice*)  
(jhollingsworth@hollingsworthllp.com)  
HOLLINGSWORTH LLP  
1350 I Street, N.W.  
Washington, DC 20005  
Telephone: (202) 898-5800  
Facsimile: (202) 682-1639  
  
Attorneys for Defendant  
MONSANTO COMPANY

**UNITED STATES DISTRICT COURT**

for the

Northern District of California

IN RE: ROUNDUP PRODS. LIABILITY LITIG.

\_\_\_\_\_  
*Plaintiff*

v.

\_\_\_\_\_  
*Defendant*

)  
)  
)  
)  
)  
)  
)

Civil Action No. 16-md-2741-CV

**SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS  
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION**

To: Dr. Dennis D. Weisenburger

\_\_\_\_\_  
*(Name of person to whom this subpoena is directed)*

**Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material:

SEE ATTACHED SCHEDULE A

Place: Hollingsworth LLP, 1350 I Street, N.W., Washington D.C. 20005	Date and Time:  09/01/2017 5:00 pm
---	--

**Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:
--------	----------------

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 08/21/2017

CLERK OF COURT

OR

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*

\_\_\_\_\_  
*Attorney's signature*

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* \_\_\_\_\_, who issues or requests this subpoena, are:

**Notice to the person who issues or requests this subpoena**

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 16-md-2741-CV

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

I received this subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_ .

I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the subpoena unexecuted because: \_\_\_\_\_  
\_\_\_\_\_ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of  
\$ \_\_\_\_\_ .

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_  
\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc.:

**Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)****(c) Place of Compliance.**

**(1) For a Trial, Hearing, or Deposition.** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
  - (ii) is commanded to attend a trial and would not incur substantial expense.

**(2) For Other Discovery.** A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

**(d) Protecting a Person Subject to a Subpoena; Enforcement.**

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

**(e) Duties in Responding to a Subpoena.**

**(1) Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2) Claiming Privilege or Protection.**

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(g) Contempt.**

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.



**SCHEDULE A**  
**DEFINITIONS**

1  
2  
3           1.       The term “Communication,” as used in these Requests, is intended to have the  
4 broadest possible meaning and shall include any contact or act by which information or  
5 knowledge is transmitted or conveyed between two or more persons and includes, without  
6 limitation: (1) written contact, including but not limited to letters, memoranda, PowerPoint  
7 presentations, email, text message, telegram, telex, internet-based meetings, or other written or  
8 electronic documents or files; (2) oral contact, whether by face-to-face meetings, internet-based  
9 meetings, video conferences, telephonic conversations, or otherwise; and (3) nonverbal acts  
10 intended to communicate or convey any meaning, understanding or other message.

11           2.       “Concerns,” “concerning,” “relates,” or “relating” shall mean and include contain  
12 or containing, constitute or constituting, describe or describing, discuss or discussing, refer or  
13 referring, state or stating, assess or assessing, and record or recording.

14           3.       “Documents” shall be construed in the broadest sense and includes, but is not  
15 limited to, the original and any non-conforming copies of any and all written, printed, typed,  
16 graphic, photographic, visual or otherwise recorded matter of any kind or nature, and all  
17 microfilm, or electronic sound recording or transcripts thereof however produced or reproduced,  
18 including non-identical copies, whether different from the original by reason of any notation  
19 made on such copies or otherwise, writings, drawings, records and recordings of every kind and  
20 description, whether inscribed by hand or by mechanical, electronic, microfilm, photographic or  
21 other means, as well as audio or visual reproduction of all statements, conversations or events  
22 including, but not limited to, agreements, bids, bonds, bulletins, calendars and appointment  
23 books, checks, circulars, communications, contracts, correspondence, statements, telegrams,  
24 receipts, returns, summaries, data books, accounting records, including ledgers, vouchers and  
25 books of account, computer printouts, information storage, media diaries and diary entries,  
26 drawings and charts, including additions and revisions, estimates, evaluations, financial  
27 statements and records, instructions, inter- and intra-office communications, invoices, job site  
28 reports, investigative reports, audits, logs, memoranda of any type, minutes of all meetings, notes

1 of all types, orders, including change, proceed and purchase orders, questionnaires and surveys,  
2 photographs, price sheets, records, results of investigations, schedules including additions and  
3 revisions, statistical records, reports, analyses and studies of any kind, tape recordings, including  
4 any form of any recording of any telephone or other conversation, interview, conference, or  
5 meeting, and all contract and working papers as well as drawings, papers and files. A reference  
6 herein to any one or more of these types of documents shall be construed to include all other  
7 types of documents without limitations.

8 4. Words used in the singular shall, where the context permits, include the plural,  
9 and words used in the plural shall, where the context permits, include the singular.

10 5. “You” and “your” refers to the person served with and responding to these  
11 Requests.

12 6. “Roundup<sup>®</sup>/ glyphosate litigation” refers to any lawsuit, litigation, or other matter,  
13 including, but is not limited to, the multidistrict litigation captioned, *In re Roundup Products*  
14 *Liability Litigation*, Case No. 3:16-md-02741-CV (N.D. Cal.), in which an individual has  
15 asserted or will assert, a claim against Monsanto Company (“Monsanto”) asserting that the use  
16 of Monsanto’s Roundup<sup>®</sup>-branded products has caused their hematopoietic malignancies,  
17 including non-Hodgkin’s lymphoma (“NHL”) or other cancers that have been or will be alleged.

18 **REQUESTS FOR PRODUCTION**

19 As stated in the foregoing Subpoena, you are required to produce the following  
20 documents:

21 1. All documents provided to you, or that you have, related to the Roundup<sup>®</sup>/  
22 glyphosate litigation that are not publicly or otherwise available.

23 2. All studies, literature, materials, research files, or any other documents that  
24 are not publicly or otherwise available that you have reviewed and upon which you rely and/or  
25 intend to rely upon as a basis for the opinions that you intend to offer in the Roundup<sup>®</sup>/  
26 glyphosate litigation.

1           3.       All publications, literature, treatises, or other documents reviewed by you in  
2 working on, or rendering opinions in, the Roundup<sup>®</sup>/ glyphosate litigation that are not  
3 publicly or otherwise available. This request includes all documents not cited in your expert  
4 reports that contain data or other information considered by you in the course of formulating  
5 your opinions.

6           4.       Your most recent curriculum vitae.

7           5.       All billing records, invoices, or other documents reflecting time spent and/or fees  
8 charged by you (either directly or through your employer or other entity) in connection with  
9 the Roundup<sup>®</sup>/ glyphosate litigation.

10          6.       Any retainer letter, contract, agreement, or other document setting forth the  
11 retention of you to work in the Roundup<sup>®</sup>/ glyphosate litigation.

12          7.       A copy of all abstracts, articles, books or book excerpts of which you are an author,  
13 co-author or editor, and any correspondence you have written to or exchanged with members of  
14 any regulatory or legislative body, which has as all or part of its subject matter any  
15 hematopoietic malignancies, glyphosate, and/ or Roundup<sup>®</sup>, that are not publicly or otherwise  
16 available.

17          8.       A copy of all handouts, power points or other documents used by you at any lecture  
18 you have given in the past five (5) years relating to hematopoietic malignancies, including NHL, that  
19 are not publicly or otherwise available.

20          9.       A copy of all handouts, power points or other documents used by you at any lecture  
21 you have given on pesticides, including glyphosate and/ or Roundup<sup>®</sup>, that are not publicly or  
22 otherwise available.

23          10.       A copy of all handouts, power points or other documents used by you at any lecture  
24 you have given relating to the United States Environmental Protection Agency (EPA), the International  
25 Agency for Research on Cancer (IARC), The European Food Safety Authority (EFSA), or other risk-  
26 assessment bodies that include discussion on policies and practices surrounding risk assessment. This  
27 request is limited to documents that are not publicly or otherwise available.

28

1           11. Any communications and documents relating to communications between you  
2 and any or all of the following individuals regarding glyphosate and/ or Roundup<sup>®</sup>, which are  
3 not publicly or otherwise available: Beate Ritz; Christopher Portier; Alfred Neugut; Charles  
4 Jameson; Chadi Nabhan; Aaron Blair; Matthew Ross.

5           12. A copy of all handouts, power points or other documents used by you at any lecture  
6 you have given in the past five (5) years relating to case control studies, cohort studies, pooled studies,  
7 meta-analysis, or Bradford Hill analysis that are not publicly or otherwise available.

8           13. All communications and documents relating to the North American Pooled  
9 Project (“NAPP”), including, but not limited to, all communications and documents with Shelley  
10 A. Harris, Laura Beane-Freeman, John Spinelli, Aaron Blair, Manisha Pahwa, Linda Kachuri,  
11 Paul Demers, Stella Koutros, Lidija Latifovic, Shelia Hoar Zahm, Kenneth P. Cantor, John  
12 McLaughlin, Punam Pahwa, and James A. Dosman regarding glyphosate and/or Roundup<sup>®</sup>,  
13 which are not publicly or otherwise available.

14           14. All communications and documents with individual plaintiffs in the Roundup<sup>®</sup>/  
15 glyphosate litigation at City of Hope regarding recruitment of plaintiffs for the Roundup<sup>®</sup>/  
16 glyphosate litigation, which are not publicly or otherwise available.

17           15. All communications and documents with plaintiffs’ counsel relating to any drafts  
18 of publications concerning glyphosate and/or Roundup<sup>®</sup> that you have authored or co-authored  
19 after being retained by plaintiffs’ counsel for the Roundup<sup>®</sup>/ glyphosate litigation, which are not  
20 publicly or otherwise available.

21           16. All communications and documents you have with Aaron Blair, Laura Beane-  
22 Freeman, Jonathan Hofmann, Jane Hoppin, Dale Sandler, Michael Alavanja, Stella Koutros,  
23 Charles F. Lynch, Kathryn Hughes Barry, Cynthia J. Hines, Kent Thomas, Joe Barker, Gabriella  
24 Andreotti, and Anneclaire J. DeRoos regarding the Agricultural Health Study and glyphosate  
25 from the last five (5) years, which are not publicly or otherwise available.

26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

DATED: August 21, 2017

Respectfully submitted,

/s/ Heather A. Pigman  
Heather A. Pigman (*pro hac vice*)  
Joe G. Hollingsworth (*pro hac vice*)  
**HOLLINGSWORTH LLP**  
1350 I Street, N.W.  
Washington, DC 20005  
Tel: 202-898-5800  
Fax: 202-682-1639  
Email: [jhollingsworth@hollingsworthllp.com](mailto:jhollingsworth@hollingsworthllp.com)  
[hpigman@hollingsworthllp.com](mailto:hpigman@hollingsworthllp.com)

*Attorneys for Defendant*  
*MONSANTO COMPANY*

EXHIBIT B

-----Original Message-----

From: Harris, Shelley

[<mailto:Shelley.Harris@cancercares.on.ca>]

Sent: Monday, September 25, 2017 12:23 PM

To: Weisenburger, Dennis <dweisenburger@coh.org>

Cc: Beane-Freeman, Laura (NIH/NCI) [E]  
<freemala@mail.nih.gov>

Subject: RE: Roundup litigation - time sensitive request

Importance: High

Hi Dennis,

Thanks for letting me know. I was not aware that Aaron had given them a draft. It's our position that all drafts of the manuscript should be treated as confidential and not distributed outside of the authorship group. Both Laura and I were asked on a number of occasions to share the draft with the USEPA for the glyphosate SAP meeting in 2016 - the position of NCI and CCO is that the manuscript is confidential until published and cannot be released.

Having said that, it is currently under review at the NCI and once approved (hopefully very soon), we are ready to submit it for publication ASAP.

I'm copying Laura to see if she can confirm this, get her input. She may be in Australia for the ISEE meeting.

Shelley