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December 1, 2016

Richard C. Miadich
Olson Hagel & Fishburn LLP
555 Capitol Mall, Suite 1425
Sacramento, CA 95814

Re: *Gary Ruskin v. The Regents of the University of California*
Case No. PT16-1304

Dear Mr. Miadich:

Thank you for your correspondence dated November 14, 2016. Below please find information responsive to your various inquiries.

1. Our practice for email addresses generally is to leave visible the names and email addresses for any UC employees, any government employees, and any employees of the agency to whom the request applies. For example, in a faculty member's email messages to and from Monsanto, in addition to the Monsanto email address of the sender of the message, and any UC employees on the email, if there are others with Monsanto email addresses we will not redact them. Where others (non-UC and outside of the agency that is the subject of the request) are on the messages, Ms. McCuen's practice was to perform searches online for each individual identified on the message to determine, if possible, if the email address was personal or business and generally available or not (redacting only if she could determine it was personal or not generally available). In an effort to speed the process, we have ceased this practice.

2. I have not yet been able to speak with Dr. Van Eenennaam concerning the pages referenced at page 10 of her records of communications with the Biotechnology Industry Organization, but I will let you know as soon as I have the information necessary to respond to your inquiry. I will contact her next week and provide you with a status update if possible.

3. The Monsanto records that are part of Attachment 3 to your letter were responsive to Request #1. Request #1 is for communications between a number of UC Davis faculty and multiple outside agencies; it does not seek communications to or from Dr. Evanega. We usually redact the names of non-UC employees and other individuals who did not send or receive the message, or have any knowledge that their information would become part of a Public Records Act response. I note that on the first page of Attachment 3, the communication was addressed to Dr. Evanega. Accordingly, her name has not been redacted (although her email address has been).

The second page of Attachment 3 is a different message that was not sent to Dr. Evanega. Accordingly, her name and information has been redacted.

4. Page 88 of Dr. Van Eenennaam's Monsanto production is a second message from Mr. Quarles to Dr. Van Eenennaam and does not have an attachment.

5. Mr. Hartnell's substantive comments on Dr. Van Eenennaam's paper were redacted pursuant to the balancing test set forth in Ca. Gov. Code section 6255, as confirmed by *Humane Society of the U.S. v. Superior Court of Yolo County* (2013) 214 Ca. Ap. 4th 1233, 155 Ca. Rptr. 3d 93. Academics must have access to the peer review process to ensure that scientific works are properly and adequately tested and considered before publication. Public disclosure of all such communications would inevitably stifle the free exchange of ideas among scientists working together. Scientists must be able to give and receive frank and direct critiques without the inhibitions that would result from public scrutiny of their developing thought processes. The public interest in maintaining the confidentiality of this material outweighs the public interest in disclosure. Accordingly, this information and other similar pages and information have been withheld.

6. As you are aware, we have had a number of individuals performing the review necessary to provide the records to Mr. Ruskin. Although we make every effort to be consistent in our review, inevitably there are times when we are unable to do so. Indeed, the second page of Attachment 6, and, based on my review, many other pages from batch two, contain various information that should not have been disclosed.

7. The substantive comments on the draft report were redacted for the same reasons set forth above in paragraph 5.

8. Once again, substantive comments on the work being performed by Dr. Sumner and Dr. Alston has been removed to protect the free exchange of scientific ideas, as described in paragraph 5.

9. The same explanation set forth in paragraph 5 also applies to the material redacted from the email message included as Attachment 9 to your letter.

More significantly, based on the messages you have identified as Attachments 7, 8, and 9 and a brief review of batches one and two, it appears that a variety of information was produced that would have been properly withheld. Specifically, I am referring to cell phone numbers, names and email addresses of individuals copied on messages who neither work for the University or the agency that was the subject of the request, and communications not part of University business. This information should have been withheld for a variety of reasons, including, but not limited to, the privacy protections contained in the Ca. Public Records Act and other state law, and the Section 6255 balancing test. Additionally, as we have previously discussed, the UC Electronic Communications Policy ("ECP") permits incidental personal use of UC email by faculty and staff. UC also maintains strict privacy protections for employees' email communications, as set forth in the ECP. Accordingly, there is neither a restriction on any individual employee's amount of

personal (non-public) email usage, nor is there periodic or regular monitoring of business or personal email usage.

Two types of permissible, non-public, usage of UC email that are commonly found when reviewing faculty emails to produce in response to a CPRA request are personal communications and messages with third parties concerning outside professional activities. Whereas any communications involving University business are subject to the CPRA, communications of a strictly personal nature and those constituting outside professional activities are not conduct of the public's business and therefore are not subject to the CPRA. University business includes activities within the scope of the individual's faculty appointment. Generally speaking, University business includes email communications regarding faculty teaching and research, speaking engagements within the faculty member's University discipline, and other activities within the scope of the faculty member's University responsibilities.

As for the status of responding to the various requests, please share with Mr. Ruskin that for Request #1 no responsive records exist for Julian Alston relating to BCF or for Daniel Sumner relating to Ketchum or BCF. We are continuing to work on Kent Bradford's records relating to Monsanto and Syngenta (responsive to Request #1), and anticipate being able to complete our production for Request #1 no later than December 8, 2016.

For Request #2, our efforts to gather the documents and prepare them for production are in progress.

Request #s 3, 5, 7, and 8 have been completed.

Dr. Denneal Jamison is continuing to search for and gather records responsive to Request #4 on a regular basis, spending 4-10 hours per week on this project. At this time, it does not appear that her collection will be completed by the end of the calendar year. Our updated completion date for this request is March 31, 2017.

For Request #6, our original delivery date was September 1, 2016, but since we have been focusing on completing Requests #1 and #2, and attempting to produce the records requested in the priority order expressed by Mr. Ruskin, and given the number of custodians involved, our current estimated date for completion of this request is April 30, 2017. The completion dates for Mr. Ruskin's recent requests (Request #9 dated September 23, 2016, Request #10 dated October 10, 2016, and Request #11 dated November 18, 2016) are January 31, 2017, March 31, 2017, and March 31, 2017, respectively.

If and when other questions arise concerning the records, please do not hesitate to call.

Sincerely,



Kirsten C. Stevenson
Associate Campus Counsel

cc: Jacob Appelsmith, Chief Campus Counsel

