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April 18, 2019

**VIA ECF**

Hon. Vince Chhabria  
San Francisco Courthouse, Courtroom 4  
450 Golden Gate Avenue  
San Francisco, CA 94102

**RE: *Hardeman v. Monsanto Company*, Case No. 3:16 – cv – 00525**

Dear Judge Chhabria,

Monsanto lodged two objections to Plaintiff’s proposed judgement, filed at ECF 3350. For the following reasons, both objections should be rejected and the Court should enter the judgement as proposed by Mr. Hardeman at ECF 3272.

1. Monsanto requests that the Court delete the phrase “and appealable” from the proposed judgement because Monsanto “intends” to file post-trial motions for post-trial relief. However, despite Monsanto’s “intention,” the law dictates that when judgment is entered, the judgment is at that moment, “appealable.” Fed. R. App. P. 4(a)(1)(A). Mr. Hardeman agrees that Fed. R. App. P. 4(a)(4)(A) could stay the appeal deadline, but that stay is not triggered unless and until Monsanto files a post-trial motion. Of course, that has not yet happened. Further, no confusion exists as Monsanto clearly understands the process. There is no reason to remove this language simply because Monsanto “intends” to file post-trial motions.
2. The Ninth Circuit approves an \$80,267,634.10 bond against Monsanto plus interest/costs, and it is Monsanto’s burden to show reasons to depart from that bond amount<sup>1</sup>. Because

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<sup>1</sup> *Rachel v. Banana Republic, Inc.*, 831 F.2d 1503, 1505 n.1 (9th Cir. 1987) (the Ninth Circuit has approved imposing a bond that represents the full amount of the judgment); *Antoninetti v. Chipotle Mexican Grill, Inc.*, 2009 U.S. Dist. LEXIS 41476 (S.D. Cal. 2009) (where a party wishes to post a bond in an amount less than the full judgment, the burden is on the moving party to show reasons for the departure from the normal practice) (internal citations omitted); *Livingston v. Toyota Motor Sales USA, Inc.*, 1997 U.S. Dist. LEXIS 24087 (N.D. Cal. 1997) (“The purpose of a supersedeas bond is to ensure that the appellee will be able to collect a judgment plus interest upon affirmance of the judgment.”). *Hardisty v. Moore*, 2018 U.S. Dist. LEXIS 12432 (S.D. Cal. Jan. 25, 2018) (“However the standard practice of district courts is to require that the supersedeas bond be a surety bond, and that it be for the full amount of the judgment plus interest, costs, and an estimate of any damages attributed to the delay.”) (internal citations omitted); *Power Integrations, Inc. v. Fairchild Semiconductor Int’l Inc.*, 2017 U.S. Dist.

Monsanto did not meet its burden, the Court should not enter a discretionary stay of enforcement pending appeal. Despite Monsanto's assurance that the collection process would be "straightforward and efficient," the facts suggest otherwise. Indeed, there have been two Roundup trials and both juries have found causation and returned verdicts of \$289,253,209.00 (Johnson trial) and \$80,267,634.10 (Hardeman trial). The Johnson verdict was later reduced to \$78,506,418.70. Several financial sources report that Bayer AG shares dropped tens of billions of dollars following the Johnson and Hardeman verdicts. Further, there are at least 5 more trial settings in 2019 and (approx.) 11,000 more cases on file nationwide, with thousands more not yet filed. Given this, Monsanto's ability to pay the judgment is not "plain." Moreover, in the *Johnson* matter, Monsanto's \$119,015,498.81 surety bond was satisfied through an insurance policy with Liberty Mutual Insurance Company – for which the premium was only a fraction of the bond, \$255,883.00, which is typical practice. See Ex. A. The Court should not waive or reduce Monsanto's security requirements.

Sincerely,

/s/ Aimee H. Wagstaff

Aimee H. Wagstaff

/s/ Jennifer A. Moore

Jennifer A. Moore

*Counsel for Mr. Hardeman*

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LEXIS 81468 (N.D. Cal. 2017) (*holding* that without commitment to satisfy the judgment, "and given the absence of information as to Fairchild's own financial status, waiver of the supersedeas bond would not be appropriate."); *Carson Indus. v. Am. Tech. Network, Corp.*, 2016 U.S. Dist. LEXIS 68119 (N.D. Cal. 2016) (*explaining* the purpose of a bond is "to secure the appellees from a loss resulting from the stay of execution and a full supersedeas bond should therefore be required."); *Trs. of the Bricklayers Local No. 3 Pension Trust v. Huddleston*, 2013 U.S. Dist. LEXIS 71346 (N.D. Cal. 2013) ("The purpose of the surety bond is to guarantee payment of contributions and liquidated damages going forward."); *Cotton v. City of Eureka*, 860 F. Supp.2d 999 (N.D. Cal. 2012) (the purpose of a supersedeas bond is to secure an appellee from a loss that may result from the stay. The posting of a bond protects the prevailing plaintiff from the risk of a later uncollectible judgment and compensates him for delay in the entry of the final judgment.).

# EXHIBIT A

1 Address of surety for service under § 995.320  
Liberty Mutual Surety  
2 Home Office: 2200 Renaissance Blvd.,  
Suite 400, King of Prussia, PA 19406-2755  
3 Local Office: 255 California Street, 950  
San Francisco, CA 94111

4 Address of principal for service under § 995.320  
5 Monsanto Company c/o Attorneys listed below.

6 Sandra A. Edwards (State Bar No. 154578)  
7 Joshua W. Malone (State Bar No. 301836)  
Farella Braun + Martel LLP  
8 235 Montgomery Street, 17th Floor  
San Francisco, CA 94104  
9 Telephone: (415) 954-4400  
Fax: (415) 954-4480  
10 sedwards@fbm.com  
jmalone@fbm.com

11 *Attorneys for Defendant*  
12 MONSANTO COMPANY

Bond # 285059413  
ENDORSED  
FILED  
San Francisco County Superior Court  
DEC 03 2018  
CLERK OF THE COURT  
K. Lee Marshall (State Bar No. 277092)  
Bryan Cave Leighton Paisner LLP  
Three Embarcadero Center, 7th Floor  
San Francisco, California 94111-4070  
Telephone: 415-675-3400  
Fax: 415-675-3434  
klmarshall@bclplaw.com

George C. Lombardi (appearance *pro hac vice*)  
James M. Hilmert (appearance *pro hac vice*)  
Winston & Strawn LLP  
35 West Wacker Drive  
Chicago, IL 60601  
Telephone: (312) 558-5969  
Fax: (312) 558-5700  
glombard@winston.com  
jhilmert@winston.com

*Attorneys for Defendant*  
MONSANTO COMPANY

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16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
17 **COUNTY OF SAN FRANCISCO**

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19 DEWAYNE JOHNSON,

20 Plaintiff,

21 vs.

22 MONSANTO COMPANY,

23 Defendant.

Case No. CGC-16-550128

**UNDERTAKING ON APPEAL**

[Code Civ. Proc., § 917.1]

Hon. Judge Suzanne R. Bolanos

Department: 504

Trial Date: June 18, 2018

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25  
26 **UNDERTAKING ON APPEAL**

27 WHEREAS, Defendant Monsanto Company desires to give an undertaking for appeal  
28 pursuant to Section 917.1 of the Code of Civil Procedure.

NOW, THEREFORE, the undersigned surety, a corporation authorized to transact a surety insurance business in the State of California, hereby obligates itself to Plaintiff Dewayne Johnson under the aforesaid statutory obligations in the amount of One Hundred Nineteen Million Fifteen Thousand Four Hundred Ninety Eight and 81/100 Dollars (\$119,015,498.81).

IN TESTIMONY WHEREOF, the said surety has caused its corporate name and seal to be hereunto affixed by it duly authorized officer at San Francisco, California on this 29th day of November, 2018.


This undertaking is executed under penalty of perjury under California law on this 29th day of November, 2018 at San Francisco, California by the undersigned, who declares that he/she is a duly authorized Attorney-in-Fact for said surety acting under the attached unrevoked power of attorney.

Signed and dated at San Francisco, California on this 29th day of November, 2018.

Amount of Premium \$255,883.00



Liberty Mutual Insurance Company

By 

James Ross, Attorney-in-Fact

State of California

County of \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_ personally appeared who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct. Witness my hand and official seal.

\_\_\_\_\_

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of San Francisco )

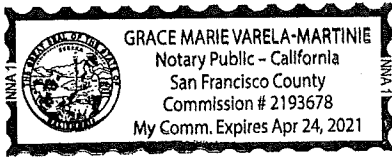
On 11/29/2018 before me, Grace Marie Varela-Martinez, Notary Public  
Date Here Insert Name and Title of the Officer

personally appeared James Ross  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Grace Marie Varela-Martinez  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

Corporate Officer — Title(s): \_\_\_\_\_

Partner —  Limited  General

Individual  Attorney in Fact

Trustee  Guardian or Conservator

Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

Corporate Officer — Title(s): \_\_\_\_\_

Partner —  Limited  General

Individual  Attorney in Fact

Trustee  Guardian or Conservator

Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_



THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS PRINTED ON RED BACKGROUND.

This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Certificate No. 8186612

Liberty Mutual Insurance Company  
The Ohio Casualty Insurance Company West American Insurance Company

POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That The Ohio Casualty Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Victoria Dolan; Janet E. Fitzgerald; Danielle Lacombe; Ian McCormick; Lisa M. Merlin; Peggy Miles; Atsushi Miyamoto; Michael T. Oliver, Jr.; Stacy Ross; James Ross; Peter Scheinman; Melinda Thomas; Grace Varela-Martinez; Raymond Wu

all of the city of San Francisco, state of CA each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 23rd day of August, 2018.



The Ohio Casualty Insurance Company  
Liberty Mutual Insurance Company  
West American Insurance Company

By: David M. Carey  
David M. Carey, Assistant Secretary

STATE OF PENNSYLVANIA ss  
COUNTY OF MONTGOMERY

On this 23rd day of August, 2018, before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at King of Prussia, Pennsylvania, on the day and year first above written.



COMMONWEALTH OF PENNSYLVANIA  
Notarial Seal  
Teresa Pastella, Notary Public  
Upper Merion Twp., Montgomery County  
My Commission Expires March 28, 2021  
Member, Pennsylvania Association of Notaries

By: Teresa Pastella  
Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

ARTICLE IV - OFFICERS - Section 12. Power of Attorney. Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

ARTICLE XIII - Execution of Contracts - SECTION 5. Surety Bonds and Undertakings. Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

Certificate of Designation - The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

Authorization - By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Renee C. Llewellyn, the undersigned, Assistant Secretary, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 29th day of November, 2018.



By: Renee C. Llewellyn  
Renee C. Llewellyn, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, currency rate, interest rate or residual value guarantees.

To confirm the validity of this Power of Attorney call 1-610-832-8240 between 9:00 am and 4:30 pm EST on any business day.

**PROOF OF SERVICE**

I am employed in the City and County of San Francisco, California. I am over the age of 18 and not a party to the within action. My business address is: Three Embarcadero Center, 7<sup>th</sup> Floor, San Francisco, CA 94111, and my email address is: janette.palaganas@bclplaw.com

On December 3, 2018, I served on the interested parties in said action the within:

**UNDERTAKING ON APPEAL**

on each interested party in this action, as follows:

***SEE ATTACHED SERVICE LIST***

**(BY MAIL)** - I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. Postal Service on that same day with postage thereon fully prepaid at San Francisco, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

**(BY E-MAIL)** - I caused a true copy of the foregoing document(s) to be served by electronic email transmission at the time shown on each transmission, to each interested party at the email address shown above. Each transmission was reported as complete and without error.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 3, 2018, at San Francisco, California.

  
\_\_\_\_\_  
Janette Palaganas

BRYAN CAVE LEIGHTON PAISNER LLP  
THREE EMBARCADERO CENTER, 7<sup>TH</sup> FLOOR  
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San Francisco Superior Court, Case No. CGC-16-550128  
Dewayne Johnson v. Monsanto Company - Service list

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