

THE MILLER FIRM LLC

Michael. Miller
108 Railroad Avenue
Orange, Virginia 22960
Tel: (540) 672-4224
Fax: (540) 672-3055
mmiller@millerfirmllc.com

WEITZ & LUXENBERG, P.C.

Robin L. Greenwald
700 Broadway
New York, NY 10003
Tel: (212) 558-5802
Fax: (646) 293-4921
Email: rgreenwald@weitzlux.com

ANDRUS WAGSTAFF, PC

Aimee H. Wagstaff (SBN 278480)
7171 W. Alaska Drive
Lakewood, CO 80226
Tel: (303) 376-6360
Fax: (303) 376-6361
aimee.wagstaff@andruswagstaff.com

Co-Lead Counsel for Plaintiffs

HOLLINGSWORTH LLP

Joe G. Hollingsworth (*pro hac vice*)
Eric G. Lasker (*pro hac vice*)
1350 I Street, N.W.
Washington, DC 20005
Tel: 202-898-5800
Fax: 202-682-1639
Email: jhollingsworth@hollingsworthllp.com
elasker@hollingsworthllp.com

Attorneys for Defendant

MONSANTO COMPANY

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE: ROUNDUP PRODUCTS
LIABILITY LITIGATION

MDL No. 2741
Case No. 3:16-md-02741-VC

This document relates to:
ALL ACTIONS

JOINT CASE MANAGEMENT STATEMENT

1 Pursuant to the Court's November 22, 2016 Civil Minutes, ECF No. 49, and November
2 23, 2016 Pretrial Order No. 3, ECF No. 47, the parties jointly submit this Joint Case
3 Management Statement in anticipation of the December 21, 2016 Case Management Conference.

4 **I. DEPOSITIONS OF GROUP A CUSTODIANS**

5 The parties have agreed to the following schedule for the depositions of the Group A
6 custodians:

7 Donna Farmer – January 11, 2017

8 Dan Goldstein – January 18, 2017

9 William Heydens – January 23, 2017

10 Steve Adams – January 26, 2017

11 David Saltmiras – January 31, 2017

12 **II. DEPOSITIONS OF GROUP B CUSTODIANS**

13 The parties have agreed that plaintiffs will take the depositions of the following Group B
14 custodians: Dan Jenkins, David Heering, and Susan Martino-Catt. Plaintiffs reserve the right to
15 seek the depositions of the remaining Group B custodians in a later phase of this litigation, and
16 Monsanto reserves all rights to object if such later requests are made.

17 **III. GROUP D CUSTODIANS**

18 The parties have agreed that Group D will consist of five individuals, who are Richard
19 Garnett, Christophe Gustin, Michael Koch, Joel Kronenberg and Vincent Leopold. Monsanto is
20 now collecting and reviewing relevant and responsive materials from these individuals, as well
21 as from the Group C Custodians, who are John Acquavella and Eric Hauptfear.

22 **IV. DEPOSITION PROTOCOL**

23 As noted above, the first deposition in this MDL is set for January 11, 2017, with four
24 others to follow by the end of January. The parties hereby propose a deposition protocol to
25 facilitate the efficiency of the discovery. During the meet and confer process regarding this
26 protocol, the parties reached agreement in some areas, but not in others. The parties agreed to
27 submit competing protocols. Monsanto's proposed protocol is attached as **Exhibit A**. Plaintiffs'
28

1 proposed protocol is attached as **Exhibit B**. Plaintiffs' version reflects the differences that
2 remain between plaintiffs' proposal and Monsanto's proposal.

3 **PLAINTIFFS' POSITION**

4 The parties spent a lot of energy working on the deposition protocol, and only five
5 general disputes remain:

6 1. **State court coordination**. This deposition protocol relates to the federal Roundup
7 litigation only. Co-Lead counsel cannot enter into a stipulation that purports, or attempts to
8 purport, to bind state court litigation. Additionally, to date, every state court judge has denied
9 Monsanto's request to phase discovery. As such, the scope of litigation in state court is
10 substantively different from the litigation in the federal MDL. MDL Leadership has no intent to
11 conduct duplicate discovery in state court actions and will attempt to coordinate state court
12 discovery when possible, but cannot agree to bind state court discovery to the federal phased
13 discovery Order or to any other MDL discovery limitations.

14 2. **Number of deposition examiners and names**. Plaintiffs have agreed to utilize
15 just one examiner for expert depositions and are only requesting that they be allowed to have 2
16 examiners for corporate witnesses, if needed. When applied, the 2 examiners would switch half
17 way through the corporate deposition at a topical breaking point. The 2-examiner process is
18 common in MDL practice and rarely objected to by defense counsel. Here, it makes particular
19 sense because the Parties are operating under an aggressive discovery schedule with a small
20 leadership structure. Monsanto has produced millions of pages of documents, to include
21 custodial files and other corporate documents. Monsanto adamantly objected to the existence of
22 a PSC, so the work must be split by 6 law firms, and 2 liaison counsel. To keep up with the
23 aggressive discovery schedule, Plaintiffs may need to split the preparation and deposition
24 responsibility of a particular custodian between two persons or two law firms. Thus, it makes
25 sense to allow 2 examiners per corporate witness. Monsanto has voiced concern that allowing 2
26 examiners will be repetitive. However, Plaintiffs have no incentive to repeat questions as they
27 have agreed to a presumptive 7 hours for each direct examination of each deponent.

28

1 Often, determining who will conduct a particular corporate deposition is a strategic, work
2 product, decision. Requiring Plaintiffs to identify the deposition examiner three days prior to a
3 deposition infringes on work product, and so Plaintiffs object to that request. However,
4 Plaintiffs do recognize the value of having each side designate a “deposition coordinator” who
5 will work to set the depositions, be available for last minute logistical changes, and coordinate
6 specific issues on a deposition-by-deposition bases and Plaintiffs will designate a particular
7 person for that role should the Court so Order.

8 3. **Contacting Current and Former Employees.** Plaintiffs’ counsel are bound by
9 ethical rules when contacting current and former Monsanto employees and will comply with
10 such rules and obligations.

11 4. **Expert Discovery Priority.** Plaintiffs are aware of no rule or law that sets
12 deposition priority, and Monsanto has provided none. It is anticipated that the Parties will
13 designate corresponding experts within the same discipline. Plaintiffs propose that a fair way to
14 conduct expert discovery is that the parties alternate in expert deposition priority. By way of
15 example, if Monsanto deposes Plaintiffs’ epidemiologist expert before producing its own
16 epidemiologist expert, Plaintiffs will depose Monsanto’s toxicology expert before producing
17 their toxicology expert. After the completion of expert designations by all Parties, counsel shall
18 meet and confer in good faith to set a schedule that satisfies this provision.

19 **MONSANTO’S POSITION**

20 The purpose of this protocol is to provide the framework before the upcoming
21 depositions so that disputes at the depositions can be avoided wherever possible. In many
22 instances, Monsanto’s proposal includes both provisions in the federal rules and related
23 provisions that are not. Including both types of provisions in one protocol, easily accessible by
24 all counsel while at the deposition, will promote the efficient conduct of discovery. The parties’
25 remaining disputes fall mostly within the following categories:

26 **The ability of counsel in the MDL to “re-take” general causation depositions in state**
27 **court or in this MDL:** Monsanto’s proposed Deposition Protocol ensures that the general
28 causation depositions in this MDL will be conducted in an efficient, non-duplicative, and fair

1 manner. To this end, absent good cause shown or an agreement of the parties, no fact witness
2 should be deposed more than once in any court on general causation issues by counsel involved
3 in this MDL. Monsanto's Deposition Protocol, Ex. A, at 2; *see also* Pretrial Order No. 4:
4 Conduct of Discovery at 7, *In re Bextra & Celebrex Marketing, Sales Practices, and Prods.*
5 *Liab. Litig.*, No. 3:05-md-01699-CRB (N.D. Cal. Feb. 7, 2006), ECF No. 169 (including similar
6 provision); Order No. 12 (Deposition Protocol) at 5, *In re Mirena IUD Prods. Liab. Litig.*, No.
7 7:13-cv-08785-CS (S.D.N.Y. Dec. 11, 2013), ECF No. 8 (same).

8 Neither the issues relevant to general causation nor a witness's knowledge of those issues
9 differs based on whether the lawsuit is in federal or state court. The fact that some but not all
10 state courts have bifurcated discovery does not justify the inefficiencies that would result if the
11 same counsel take repeat general causation depositions of the same witnesses. If the provisions
12 in Monsanto's protocol are entered, all MDL counsel will be properly incentivized to consider
13 and address all relevant general causation issues in a single deposition, avoiding the need to re-
14 depose a witness on general causation issues. As noted in Monsanto's proposed protocol and by
15 other MDL courts facing similar issues, such orders by MDL courts do not obstruct the state
16 courts' authority to manage their cases. *See* Order No. 12 (Deposition Protocol) at 5, *In re*
17 *Mirena IUD Prods. Liab. Litig.*, No. 7:13-cv-08785-CS (S.D.N.Y. Dec. 11, 2013), ECF No. 8
18 ("Nothing in this provision shall be construed as an injunctive or equitable order affecting state
19 court proceedings. Rather, this provision is intended to reflect this Court's desire for voluntary
20 state-federal coordination. However, all counsel with cases in this MDL shall adhere to the
21 guidelines articulated in this Order in all depositions regardless of whether originally noticed in
22 one of the cases in the MDL proceeding or in a state court action."); *see also* Monsanto's
23 Deposition Protocol, Ex. A, at 3 (including similar provision).

24 **Identification of and limitations on the number of questioners for single party:**

25 According to Federal Rule of Civil Procedure 30(c)(1), "[t]he examination and cross-
26 examination of a deponent proceed as they would at trial under the Federal Rules of Evidence,
27 except Rules 103 and 615." This implicitly limits the deposition to one questioner per party per
28 witness. The reasons for such a rule are logical – witnesses should not be harassed by multiple

1 rounds of questioning by different counsel for the same party and any efforts to do so are
2 inevitably inefficient.

3 Monsanto's proposal includes a provision that only one attorney per side conduct the
4 examination in order to promote a streamlined examination. *See* Monsanto's Deposition
5 Protocol, Ex. A, at 6; *see also* Case Management Order at 23, *In re Aredia and Zometa Prods.*
6 *Liab. Litig.*, No. 3:06-md-01760 (M.D. Tenn. July 28, 2006), ECF No. 89 (limiting MDL
7 depositions to one examiner per side); Pretrial Order No. 6: Discovery and Other Proceedings
8 Relating to General Causation at 6, *In re Viagra (Sildenafil Citrate) Prods. Liab. Litig.*, No.
9 3:16-md-02691-RS (N.D. Cal. Sept. 26, 2016), ECF No. 102 (limiting MDL plaintiffs to single
10 examiner at depositions, providing for additional examiner only to extent other parties are
11 present). Plaintiffs' counsel should coordinate with each other so as to conduct a thorough and
12 non-duplicative examination. Monsanto's provision merely seeks to memorialize this common
13 sense practice.

14 Plaintiffs object, seeking this Court's permission to have multiple plaintiffs' counsel
15 question the same witness during the same deposition on the general causation issue. Plaintiffs
16 claim this is necessary because some of their counsel are more versed in certain areas of this case
17 than others. Counsel's lack of information about any aspect of a case is not an excuse for
18 deviating from established practice. All counsel should be proficient in the facts necessary to
19 take a deposition if they are slated to do so. Although some MDLs have allowed multiple
20 plaintiffs' counsel to ask questions, that procedure is unneeded and inefficient here. For
21 example, in MDL cases with two defendants represented by separate counsel and with
22 potentially divergent interests, courts have allowed plaintiffs two examining attorneys to match
23 the number of examining defense counsel. *See, e.g.*, Pretrial Order No. 4: Conduct of Discovery
24 at 10, *In re Bextra & Celebrex Marketing, Sales Practices, and Prods. Liab. Litig.*, No. 3:05-md-
25 01699-CRB (N.D. Cal. Feb. 7, 2006), ECF No. 169 (allowing defendants to select two
26 examining attorneys "one of whom shall be counsel for a physician or other health care provider
27 Defendant (unless no such counsel wishes to be so designated)," and allowing plaintiffs two
28 examining attorneys as well). Here, with a single defendant, a single examining attorney will be

1 able to fully represent the interest of his/her client(s) far more efficiently than would two
2 examining attorneys.

3 Monsanto also proposes that three days before a deposition, the parties exchange the
4 names of counsel who will be taking and defending that deposition. This will allow the attorneys
5 directly involved in the deposition to discuss any last-minute issues with each other directly and
6 efficiently. Other MDL courts have implemented similar provisions. Plaintiffs' proposal to
7 appoint "deposition coordinating counsel" to be the point of contact should any issues arise is
8 inefficient, unnecessary, and delays resolution of the issue.

9 **Limiting plaintiffs' counsel's ability to contact current and former employees of**
10 **Monsanto without prior notice to and permission of Monsanto:** Monsanto proposes that
11 plaintiffs be prohibited from contacting Monsanto's current or former employees without first
12 informing Monsanto's counsel about their intent to do so, and inquiring whether Monsanto has
13 or will be providing counsel to represent former employees. *See* Monsanto's Deposition
14 Protocol, Ex. A, at 2. This provision promotes efficiency and the conservation of resources with
15 respect to both groups of employees.

16 Monsanto's counsel presumptively represents all Monsanto current employees. Should
17 any of those employees become relevant witnesses in this litigation, it is almost certain that
18 Monsanto would provide representation so that those witnesses have the benefit of counsel in
19 any discussions with the plaintiffs' attorneys. For these reasons, other MDL courts have
20 implemented procedures similar to the one suggested by Monsanto here. *See, e.g.,* Scheduling
21 Order Relating to Phase I of Discovery at 4, *In re Viagra Prods. Liab. Litig.*, No. 0:06-md-1724-
22 PAM (D. Minn. June 30, 2006), ECF No. 38 ("Plaintiffs shall not contact present employees of
23 Defendant without permission of Defendant's counsel.").

24 Similarly, Monsanto is providing representation to several former employees in this
25 litigation. To the extent plaintiffs intend to contact former employees, requiring them to consult
26 with Monsanto first to learn if Monsanto will represent those employees as well would avoid
27 confusion and promote efficiency. Other MDL courts have implemented orders managing
28 contacts with former employees in a variety of ways, and one should be entered here as well.

1 *See, e.g.*, Order Regarding Contact With Former Pfizer Employees, *In re Viagra Prods. Liab.*
2 *Litig.*, No. 0:06-md-1724-PAM (D. Minn. July 7, 2006), ECF No. 43.

3 **Specific requirements for videotaping procedures:** Although Rule 30(b)(3) provides
4 some guidance on the requirements for videotaped depositions, much is left to be resolved by the
5 parties. Monsanto has suggested common-sense fairness provisions to fill in these gaps, such as
6 limiting the videotaping to show only the deponent, not the dual views of the deponent and the
7 examiner suggested in plaintiffs' proposed provisions. *See* Monsanto's Deposition Protocol, Ex.
8 A, at 4. Many of the provisions suggested by Monsanto have been implemented in other MDLs¹
9 and are efficient measures for reducing the potential disputes at deposition. *See generally id.* at
10 3-5.

11 **Provision of Bates numbers for previously produced documents:** Document requests
12 often accompany notices of deposition. The parties agree that deponents are not required to
13 reproduce responsive documents that are identical to those already produced by Monsanto or that
14 are publically available. However, plaintiffs seek to require the deponent to identify any
15 documents produced by Monsanto by Bates number. Creating this list of Bates numbers is
16 overly burdensome and time-consuming for deponents, as some of these requests could require
17 the identification of hundreds or potentially thousands of documents. Further, this procedure is
18 not proportional to the needs of the litigation at this time, particularly because discovery is
19 bifurcated.

20 **Depositions of plaintiffs' experts should go first:** Monsanto's proposed protocol
21 includes a provision that Monsanto be entitled to examine plaintiffs' expert in a given area
22 before plaintiffs examine Monsanto's expert in that same area. Monsanto' Deposition Protocol,
23 Ex. A, at 8-9. This provision is consistent with the applicable burden of proof under *Daubert*,
24 and has been implemented in other MDLs as well. *See, e.g.*, Pretrial Order No. 21: General

25 _____
26 ¹ *See, e.g.*, Pretrial Order No. 6: Discovery and Other Proceedings Relating to General Causation
27 at 8-9, *In re Viagra (Sildenafil Citrate) Prods. Liab. Litig.*, No. 3:16-md-02691-RS (N.D. Cal.
28 Sept. 26, 2016), ECF No. 102 (ordering similar provisions); Pretrial Order No. 4: Conduct of
Discovery at 12-13, *In re Bextra & Celebrex Marketing, Sales Practices, and Prods. Liab. Litig.*,
No. 3:05-md-01699-CRB (N.D. Cal. Feb. 7, 2006), ECF No. 169 (same).

1 Causation Expert Discovery and Related Motion Practice Regarding Celebrex at 3, *In re Bextra*
2 & *Celebrex Prods. Liab. Litig.*, No. 3:05-md-01699-CRB (N.D. Cal. Mar. 16, 2007) (entering
3 same provision).

4 **V. SCIENCE DAY SCHEDULE AND PROTOCOL**

5 The parties jointly suggest that Science Day be held on February 8, 2017 if that date is
6 available on the Court's calendar. The parties have discussed the protocol for Science Day.
7 Although they agree on several aspects of that protocol, they are unable to agree on whether
8 materials should be exchanged between the parties in advance and whether the courtroom should
9 be closed during Science Day. The parties' competing proposals are attached hereto as
10 **Exhibit C** (Monsanto's proposal) and **Exhibit D** (Plaintiffs' proposal).

11 **Plaintiffs' Position:**

12 Two disputes remain with respect to the Science Day Protocol: (1) the exchange of
13 information prior to Science Day; and (2) whether the Court should be closed for the proceeding.
14 Plaintiffs will address each one in turn.

15 Science Day is a non-adversarial proceeding designed to educate the Court. As such, a
16 fair exchange of information between the court and the parties should occur. The exchange of
17 presentations among the parties in advance of Science Day promotes the non-adversarial intent
18 of this tutorial, and ensures that neither party gains a tactical advantage. Additionally, although
19 the scope of science day was ultimately agreed upon, negotiation and compromise in scope was
20 plenty. Therefore, exchanging power points prior to science day helps ensure that both sides stay
21 within the agreed upon scope and ensures no side will be blindsided. Next, nothing about the
22 Science Day process warrants the drastic measure of closing the courtroom. Plaintiffs feel
23 strongly that the general information exchange to occur during Science Day shall be held in open
24 court, instead of secretly behind closed doors.

25 **Monsanto's Position:**

26 **Prior exchange of Science Day presentations:** Monsanto proposes that the parties
27 provide the Court with the as-shown presentations after they are given at Science Day, but not
28 exchanged between the parties prior to Science Day. This is consistent with a proposal

1 Monsanto made – and the Court expressed agreement with – during the last Case Management
2 Conference. *See* Nov. 16 Tr. at 138. Other MDLs have implemented procedures similar to the
3 one proposed by Monsanto. *See, e.g.,* Order Following Second Status Conference and Staying
4 Submission of Plaintiff Fact Sheets at 2-3, *In re Incretin Mimetics Prod. Liab. Litig.*, No. 13-md-
5 2452 AJB (MDD) (S.D. Cal, Nov. 25, 2013), ECF No. 200 (ordering that parties submit
6 presentation materials to the Court at Science Day, without ordering an exchange or opportunity
7 for objections).² This is the best approach here as well.

8 In contrast, plaintiffs’ proposal would require the parties to exchange presentations with
9 each other well in advance of Science Day. Such a procedure is unnecessary and inappropriate
10 for a non-adversarial proceeding. If the Court feels either party is exceeding the scope of the
11 information it seeks during Science Day, the Court can limit that discussion. Leaving this
12 responsibility in the hands of the Court rather than a pre-Science Day exchange that could
13 stimulate last minute objections to proposed presentations makes sense – as discussed above, the
14 point of Science Day is to provide the Court with a foundation to better understand the expert
15 testimony that will be at issue in this MDL, not to create a forum for scientific debate between
16 the parties.

17 **Who may attend Science Day:** Monsanto proposes that Science Day be open only to
18 the parties, counsel of record, and the presenting witnesses, whereas plaintiffs’ proposal includes
19 no such provision. Monsanto’s proposal is consistent with Science Day procedures in other
20 product liability MDLs that have involved off-the-record science days at which attendance is
21 limited to the parties and presenters only. *See, e.g.,* Entry Regarding Science Day, *In re Cook*
22 *Medical, Inc., IVC Filters Marketing, Sales Practices, and Prods. Liab. Litig.*, No. 1:14-ml-

23
24
25
26 ² *See also* Stipulated Order Granting Defendants’ Motion for a Nuvaring “Science Day” at 2, *In*
27 *re Nuvaring Prods. Liab. Litig.*, No. 4:08-md-01964-RWS (E.D. Mo. July 22, 2009), ECF No.
28 226 (parties provide video of presentation at Science Day, without ordering an exchange or
opportunity for objections).

1 02570-RLY-TAB (S.D. Ind. March 21, 2016), ECF No. 1251 (Science Day “will be conducted
2 as a private and informal pretrial conference” and is “closed to members of the public.”).³

3 A closed presentation is more consistent with the informational, non-adversarial nature of
4 Science Day. This Court has repeatedly expressed the view that Science Day be “off the record.”
5 *See* Nov. 16 Tr. at 136; Order re Bifurcation and Agenda for First Case Management Conference
6 at 1-2, ECF No. 25 (“The purpose of the tutorial will be to familiarize the Court with the science
7 and to identify which scientific issues are relevant and in dispute. The tutorial will be held off the
8 record, and the parties will not be permitted to use statements made by experts at the tutorial in
9 later depositions or examinations.”). A truly “off-the-record” Science Day will encourage the
10 full presentation of the science at issue without advocacy, something that cannot be achieved if
11 non-parties are in attendance with the opportunity to record or report on the proceedings.

12 **V. DIRECT FILING.**

13 In Parties have exchanged their written positions on direct filing with each other and are
14 continuing to meet and confer. The issue is not yet ripe for judicial assistance.

15
16
17
18
19
20
21 ³ *See also* Stipulated Order Granting Defendants’ Motion for a Nuvaring “Science Day” at 2, *In*
22 *re Nuvaring Prods. Liab. Litig.*, No. 4:08-md-01964-RWS (E.D. Mo. July 22, 2009), ECF No.
23 226 (“individuals who are not parties to this litigation shall not be present” at Science Day, and
24 “[t]he presentations are deemed confidential and subject to the Agreed Protective Order in place
25 in this MDL”); Case Management Order No. 19, *In re Ortho Evra Prods. Liab. Litig.*, No. 1:06-
26 cv-40000-DAK (N.D. Ohio June 12, 2007), ECF No. 124 (Science Day “will be a closed
27 proceeding open only to the counsel of record in this litigation as well as those attorneys who
28 have similar cases pending in federal or state courts and . . . have agreed to the conditions of a
protective order approved by this Court.”); Order Following Second Status Conference and
Staying Submission of Plaintiff Fact Sheets at 2-3, *In re Incretin Mimetics Prod. Liab. Litig.*, No.
13-md-2452 AJB (MDD) (S.D. Cal, Nov. 25, 2013), ECF No. 200 (“[A]ll information presented
at Science Day will be deemed ‘off the record’ for all purposes. Science Day will not be
transcribed by a Court Reporter, nor will video cameras be permitted in the courtroom to record
the proceedings.”).

1 DATED: December 16, 2016

Respectfully submitted,

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

/s/ Mike 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
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

DATED: December 16, 2016

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

EXHIBIT A

**MONSANTO'S PROPOSED
DEPOSITION PROTOCOL**

I. GENERAL

- A. **General Causation Discovery.** On November 14, 2016, this Court entered Pretrial Order No. 2, which bifurcated discovery in this MDL to prioritize general causation discovery. This deposition protocol relates to the general causation discovery phase.
- B. **Applicability of Order.** This Order shall apply to all cases currently a part of MDL No. 2741, as well as all cases subsequently filed in, removed to, or transferred to this Court as part of MDL No. 2741. In cases subsequently filed in this district, the Clerk shall provide a copy of the Order to each plaintiff at the time of filing of the complaint. In cases subsequently removed or transferred to this Court, the Clerk shall provide a copy of this Order to each new party upon removal or transfer. This Order vacates any prior order governing these same subjects issued by a federal court prior to the transfer of a case to MDL No. 2741. This Order shall be binding on all parties with cases docketed in MDL No. 2741. To the extent that this Order differs with any local rule or standing order, this Order will control in MDL No. 2741.
- C. **Coordination to Extent Practicable.** Plaintiffs and Defendant Monsanto Company ("Monsanto") shall work to coordinate to the extent practicable the conduct of this litigation with other personal injury product liability actions involving similar allegations pending in any state court. Such coordination is intended to conserve judicial resources, eliminate duplicative discovery on the issue of general causation, serve the convenience of the parties and witnesses, and promote the just and efficient conduct of this litigation. It is contemplated by the Court and the parties that all discovery conducted in these proceedings may be utilized in any related state court action, in accordance with that state's law and rules of evidence, and vice versa, subject to any agreements between the parties, and to all orders regarding the confines of discovery within this MDL and the issuance of similar protective orders and discovery protocols in the state court proceedings. All discovery obtained in these proceedings which is used in any state court litigation is subject to this Order and any protective order(s) entered by this Court.
- D. **Counsel Authorized to Take Discovery.** All general causation discovery depositions, regardless of form, shall be taken by one of the Plaintiffs' Co-Lead Counsel, Executive Committee Members, Liaison Counsel, or their designee on behalf of all plaintiffs in the MDL. An individual plaintiff's counsel may suggest discovery to the Plaintiffs' Co-Lead Counsel who will take the discovery, but may not conduct general causation discovery independently or in his or her own name.

II. DEPOSITIONS

- A. **Scope of Section.** This section shall apply to the notices of depositions of any witnesses currently or formerly affiliated with Monsanto and/or represented (in part or in whole) by Monsanto's litigation counsel. Plaintiffs shall in good faith take only those depositions reasonably necessary to address the issue of general causation. Nothing in this order shall be construed as waiving any objections a party may make to the propriety of the deposition generally.
- B. **Use of Prior Depositions.** Depositions of employees and former employees of Monsanto taken in this MDL proceeding may be used, subject to the applicable rules of procedure and evidence, by or against any party regardless of when the party was added to the MDL docket, including parties later added and parties in cases subsequently filed in, removed to or transferred to this Court as part of this MDL. A party may request relief from the provisions of this paragraph by filing a motion with the MDL Court related to a specific case within 60 calendar days of notice that the case is remand-ready and having the MDL Court find good cause for relief.
- C. **Avoidance of Duplicative Depositions for Fact Witnesses.** As a general rule, absent good cause or the agreement of the parties, no fact witness should be deposed on the same subject more than once. Plaintiffs' counsel in this MDL proceeding shall not, without good cause, re-notice the depositions of fact witnesses for discovery on general causation issues who have already been deposed regarding their knowledge of general causation issues.
- D. **Deposition Protocol**
1. **Parties to Meet and Confer on Scheduling.** Counsel shall consult in good faith in advance with opposing counsel and proposed deponents in an effort to schedule depositions at mutually convenient times and places. A good faith effort shall be made by counsel to schedule depositions by agreement of the parties based upon the availability of documents relevant to the specific witness and the availability of the witness and counsel.
 2. **Contact with Current or Former Monsanto Employees.** Plaintiffs shall not contact present or former employees of Monsanto without the express permission of Monsanto's counsel.
 3. **Location.** Unless otherwise agreed, the depositions of current and former Monsanto employees represented by Monsanto's litigation counsel shall take place in the Metro St. Louis, Missouri area, Metro Washington D.C. area, or within 100 miles of the deponent's primary residence. This location limitation does not apply to expert witness depositions.
 4. **Deposition Notices.** A single deposition notice shall apply in all cases now a part of or in the future added to MDL No. 2741.

5. **Cross-Noticing.** Any deposition in this MDL may be cross-noticed by any party in any Roundup[®]-related action pending in state court, and any deposition in any Roundup[®]-related action pending in state court may be cross-noticed in this MDL so long as it is related to the question of general causation.
6. **Applicability to State Court Proceedings.** Nothing in this provision shall be construed as directing a state court on how to conduct its proceedings or rule on a given issue. Rather, this provision is intended to reflect this Court's desire for voluntary state-federal coordination. However, all counsel with cases in this MDL shall adhere to the guidelines articulated in this Order in all depositions regardless of whether originally noticed in one of the cases in the MDL proceeding or in a state court action.
7. **Cost of Deposition.** The noticing party shall bear the expense of stenographic recording and any applicable witness fees. Motions to recover these costs and expenses may be made at the conclusion of the litigation in accordance with applicable law.
8. **Stenographic Recording.** All depositions, including video depositions, will be stenographically recorded by a certified court reporter that possesses "real-time feed" transcription capabilities. The court reporter shall administer the oath or affirmation to the deponent on the record. The written transcript by the court reporter shall constitute the official record of the deposition for purposes of Federal Rule of Civil Procedure 30(e) (submission to the witness) and 30(f) (filing; exhibits). The party noticing the deposition must ensure the court reporter's availability for the full extent of the deposition until completion.
9. **Videotaping.** Any party may videotape any deposition provided that the intention to do so is set forth in the deposition notice or cross-notice and subject to the following conditions.
 - a) **Videotape Operator.** The video camera shall be operated by a video camera operator ("videotape operator") qualified under the applicable laws. The videotape operator shall be subject to the provisions of Federal Rule of Civil Procedure 28(c). At the commencement of the deposition, the operator(s) shall swear or affirm to record the proceedings fairly and accurately. The party noticing the deposition must ensure the videotape operator's availability for the full extent of the deposition until completion. Prior to the commencement of any videotaped deposition, all parties shall have an opportunity to observe the video image of the deponent to alleviate any concerns that the video image is not an accurate reflection of the deponent. The videographer shall take

necessary steps to ensure that the sound levels are consistent among the counsel and deponent.

- b) **Standards.** Unless physically incapacitated, the deponent shall be seated at a table except when reviewing or presenting demonstrative materials for which a change in position is needed. To the extent practicable, the deposition will be conducted in a neutral setting, against a solid background with only such lighting as is required for accurate video recording. Lighting, camera angle, lens setting and field of view will be set to record accurately the natural body movements of the deponent. Only the deponent and any exhibits or demonstrative aids used in the examination will be video recorded.
- c) The witness shall appear in ordinary business attire (as opposed to, for instance, a lab coat) and without objects such as a bible or other props.
- d) **Interruptions.** The video camera operation will be suspended during the deposition at the request of any counsel examining or defending the deposition, and “off the record” discussions shall not be recorded. The videotape operator shall record on camera the time of suspension and any subsequent reconvening of the deposition.
- e) **Index.** The videotape operator shall use a counter on the recording equipment and after completion of the deposition shall prepare a log, cross-referenced to the counter numbers, that identifies the positions on the tape at which examination by different counsel begins and ends, at which objections are made and examination resumes, at which exhibits are identified, and at which any interruption of continuous tape recording occurs, whether for recesses, “off the record” discussion, mechanical failure, or otherwise.
- f) **Certification.** After the deposition is completed, the video operator shall certify on camera the correctness, completeness, and accuracy of the videotape recording in the same manner as a stenographic court reporter.
- g) **Technical Data.** Technical data, such as recording speeds and other information needed to replay or copy the tape, shall be included with copies of the videotapes. When played, the videotapes shall not show a time and/or date stamp.
- h) **Exhibits.** If examining counsel uses an Elmo or other device to capture document images during a videotaped deposition and

incorporate the image into the videotape, such counsel may highlight or underline portions of the document but may not otherwise manipulate the document, such as by writing on or otherwise altering the document.

10. **Deposition Transcripts.**

- a) **Services of Deposition Officer.** Services and products offered or provided by a deposition officer (i.e., a court reporter or videotape operator) or the entity providing the services of a deposition officer to any party or to any party's attorney or non-party who is financing all or part of the deposition shall be offered or provided to all parties or their attorneys attending the deposition.
- b) **Real-Time Transcription.** Any party may arrange for "real-time" transcription of a deposition at its own cost.
- c) **Correction and Signing of Deposition.** The deponent shall sign the deposition transcript, to include any corrections, within sixty (60) days after the court reporter provides the transcript to the deponent or deponent's counsel. The deposition may be signed by the deponent before any notary or pursuant to 28 U.S.C. § 1746. If no corrections are made within sixty (60) days after receipt of the transcript from the court reporter, and if good cause is not shown for an extension of the sixty (60) days limitation, the transcript will be deemed accurate and the parties shall have the right to use a copy of the transcript in any further proceedings as though the copy were the original transcript. In the event the original transcript is unsigned, lost, stolen, or inadvertently destroyed, a certified copy reflecting any changes made to the original transcript may be used in place of the original.
- d) **Costs.** Each side shall bear its own costs in securing copies of the deposition transcript and exhibits, videotape, or DVD from the court reporter.

11. **Who May Attend and Participate.** Unless otherwise agreed to by the parties, depositions may be attended only by the parties, the parties' counsel, the deponent, the deponent's attorney, in-house counsel for the parties, representatives of the parties' insurers, court reporters, videographers, and members and/or employees from the law firms of counsel of record. Upon application, and for good cause shown, the Court may permit attendance by a person who does not fall within any of the categories set forth in the previous sentence. Unnecessary attendance by numerous counsel is discouraged and may not be compensated in any fee application to the Court. Counsel must comply with Paragraph 5 of this Court's October 10, 2016 Order regarding *pro hac vice* and filing an

appearance prior in MDL No. 2741 prior to asking questions in a deposition.

12. **Notice of Intent to Attend a Deposition.** In order for counsel to make arrangements for adequate deposition space, plaintiffs' counsel who intend to attend a deposition noticed in this MDL should advise Plaintiffs' Co-Liaison Counsel of that intent. If the deposition location is selected by someone other than plaintiffs' counsel in this MDL, Plaintiffs' Co-Liaison Counsel must provide a good faith estimate of the number of plaintiffs' counsel expected to attend to counsel responsible for obtaining the deposition location at least seven business days prior to the deposition. If the deposition location is to be selected by plaintiffs' counsel in this MDL, Monsanto will provide Plaintiffs' Co-Liaison Counsel with the same numerical information using the same time frame.
13. **Objections.** Objections shall be made pursuant to the Federal Rules of Civil Procedure. An objection made by one plaintiff is preserved for all plaintiffs. The same rules apply to counsel for Monsanto.
14. **Treatment of Confidential Documents or Testimony.** While a deponent is being examined about any document that is confidential or otherwise subject to designation under the terms of the Protective Order entered in this litigation because (a) the parties have so agreed, (b) a party has designated the document to be confidential pursuant to the protective order associated with this litigation, or (c) the Court has so ordered, attendance at that portion of the deposition by persons to whom disclosure is not authorized by agreement of the parties or by order of the Court shall either sign the confidentiality order prior to the deposition or be prohibited. Any portion of the deposition transcript containing confidential information shall be handled in the manner set forth in the Protective Order. Confidential portions of deposition transcripts may be opened, read and utilized for all purposes as permitted by the terms of the protective order entered in this litigation or in any applicable protective order entered in any State Court action.
15. **Number of Examiners.**
 - a) The party noticing a general causation fact deposition shall designate one attorney to conduct the examination of the deponent.
 - b) Three days before a deposition requested or noticed by Plaintiffs or Monsanto, counsel for the noticing party shall give the opposing party's counsel notice of the identity of the attorney who will examine the deponent.
16. **Sequence of Examination.** Questioning at the depositions will be conducted in the following sequence: (1) the attorney designated by the

party noticing the deposition; (2) the attorney designated by the opposing party; (3) individual counsel for deponent (if any) and (4) any re-cross and/or re-redirect by counsel, in the same order.

17. **Public or Previously Produced Documents.** Parties often request documents in a Notice of Deposition. The Parties agree that documents responsive to that request that are identical to documents already produced by Monsanto or that are publically available do not have to be re-produced by a deponent.

18. **Length of Depositions.**

- a) Fed. R. Civ. P. 30(d)(1) provides a presumptive limit on a deposition to 1 day of 7 hours.
- b) All depositions shall be limited to seven hours of examination by the noticing side, absent agreement of the parties or an order by the Court based on a showing of good cause. Examination by the non-noticing side shall not count against the seven-hour limit for the noticing party.
- c) Except as otherwise agreed by examining counsel, depositions shall begin at 9:00 am and end at 5:30 pm, regardless of time taken off the record, and will continue the following day as necessary.
- d) If the parties cannot agree on whether additional time is needed, the Court will decide on a deposition-by-deposition basis. The party seeking additional time must arrange for the dispute to be brought before the Court in sufficient time to be resolved before the commencement of the deposition, or immediately after the 7-hour deposition if the examiner has not completed the deposition.

19. **Exhibits at Deposition**

- a) **Provision of Hard Copies.** Deposing counsel should provide extra copies of deposition exhibits to other counsel at the deposition for whom timely notice of attendance was provided. Deponents and their counsel should be provided with a copy of a document at the deposition immediately before being examined about it.
- b) **Use of Bates Numbers.** The first time a document that has been previously produced is marked as a deposition exhibit, it shall be referred to by the Bates number appearing on the document and shall also be given an exhibit number. Documents that have not been previously produced shall be assigned an exhibit number at the deposition.

- c) **Marking of Deposition Exhibits.** All documents marked as exhibits shall be attached to the original transcript and retained with the original transcript. Copies of exhibits may be attached to copies of the transcript where the party ordering the transcript pays for the costs of copying those exhibits.

III. EXPERT DISCOVERY

- A. **Applicability of Federal Rule of Civil Procedure 26.** Other than as provided in this Order, Federal Rule of Civil Procedure 26 shall govern general causation expert discovery.
- B. **Expert Reports and Depositions.** The designation of General Causation Experts must be accompanied by a report that complies with Federal Rule of Civil Procedure 26(a)(2)(B). The experts shall be subject to deposition as directed in Federal Rule of Civil Procedure 26(b)(4)(A). This Order shall not preclude the parties from designating additional experts who may offer opinions relating to general or specific causation if this MDL proceeds beyond the general causation phase. The parties may challenge the admissibility of such later-designated expert testimony.
 - 1. **Production and Discoverability of Expert Materials.** The limitations on expert discovery set forth in Rule 26, including the provisions regarding discovery with respect to draft reports and communications with experts, shall apply to all cases. No party will seek discovery of any experts' notes, drafts of expert reports, or communications with counsel; provided, however, that counsel may inquire at deposition about any facts provided to the expert by counsel and upon which such expert is relying in expressing the expert's opinions.
 - 2. **Production Prior to Deposition.** At least ten (10) 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 publically or otherwise available to the noticing party, subject to the provisions of the above section addressing public and previously produced documents.
- C. **Expert Depositions.**
 - 1. **Incorporation of General Deposition Procedures.** The provisions in Section II, *supra*, concerning depositions generally, except those provisions limited to fact witnesses, apply to depositions of expert witnesses unless otherwise stated herein.
 - 2. **Order of Depositions.** Monsanto shall be entitled to examine plaintiffs' experts in each area before plaintiffs examine Monsanto's expert(s) in that same area. Consistent with these principles, the parties shall agree upon a schedule for the depositions of all experts, with plaintiffs' expert(s) in a

particular area being deposed first, Monsanto's corresponding expert(s) in that area being deposed second, until the depositions are completed.

3. **Location and Limitations.** The party offering the expert shall designate a reasonable location for the deposition. The Parties agree that each side shall designate one examiner on behalf of their respective sides to conduct the expert deposition.

EXHIBIT B

DRAFT

**PLAINTIFFS' MONSANTO'S PROPOSED
DEPOSITION PROTOCOL**

I. GENERAL

- A. **General Causation Discovery.** On November 14, 2016, this Court entered Pretrial Order No. 2, which bifurcated discovery in this MDL to prioritize general causation discovery. This deposition protocol relates to the general causation discovery phase.
- B. **Applicability of Order.** This Order shall apply to all cases currently a part of MDL No. 2741, as well as all cases subsequently filed in, removed to, or transferred to this Court as part of MDL No. 2741. In cases subsequently filed in this district, the Clerk shall provide a copy of the Order to each plaintiff at the time of filing of the complaint. In cases subsequently removed or transferred to this Court, the Clerk shall provide a copy of this Order to each new party upon removal or transfer. This Order vacates any prior order governing these same subjects issued by a federal court prior to the transfer of a case to MDL No. 2741. This Order shall be binding on all parties with cases docketed in MDL No. 2741. To the extent that this Order differs with any local rule or standing order, this Order will control in MDL No. 2741.
- C. **Coordination to Extent Practicable.** Plaintiffs and Defendant Monsanto Company ("Monsanto") shall work to coordinate to the extent practicable the conduct of this litigation with other personal injury product liability actions involving similar allegations pending in any state court. Such coordination is intended to conserve judicial resources, eliminate duplicative discovery on the issue of general causation, serve the convenience of the parties and witnesses, and promote the just and efficient conduct of this litigation. However, nothing in this agreement shall constitute a waiver by either party to re-notice a witness in a state-court action upon a showing of necessity. It is contemplated by the Court and the parties that all discovery conducted in these proceedings may be utilized in any related state court action, in accordance with that state's law and rules of evidence, and vice versa, subject to any agreements between the parties, and to all orders regarding the confines of discovery within this MDL and the issuance of similar protective orders and discovery protocols in the state court proceedings. All discovery obtained in these proceedings which is used in any state court litigation is subject to this Order and any protective order(s) entered by this Court.
- D. **Counsel Authorized to Take Discovery.** All general causation discovery depositions, regardless of form, shall be taken by one of the Plaintiffs' Co-Lead Counsel, Executive Committee Members, Liaison Counsel, or their designee on behalf of all plaintiffs in the MDL. An individual plaintiff's counsel may suggest discovery to the Plaintiffs' Co-Lead Counsel who will take the discovery, but may not conduct general causation discovery independently or in his or her own name.

DRAFT

II. DEPOSITIONS

- A. **Scope of Section.** This section shall apply to the notices of depositions of any witnesses currently or formerly affiliated with Monsanto and/or represented (in part or in whole) by Monsanto's litigation counsel. Plaintiffs shall in good faith take only those depositions reasonably necessary to address the issue of general causation. Nothing in this order shall be construed as waiving any objections a party may make to the propriety of the deposition generally.
- B. **Use of Prior Depositions.** Depositions of employees and former employees of Monsanto taken in this MDL proceeding may be used, subject to the applicable rules of procedure and evidence, by or against any party regardless of when the party was added to the MDL docket, including parties later added and parties in cases subsequently filed in, removed to or transferred to this Court as part of this MDL. A party may request relief from the provisions of this paragraph by filing a motion with the MDL Court related to a specific case within 60 calendar days of notice that the case is remand-ready and having the MDL Court find good cause for relief.

~~C. **Avoidance of Duplicative Depositions for Fact Witnesses.** As a general rule, absent good cause or the agreement of the parties, no fact witness should be deposed on the same subject more than once. Plaintiffs' counsel in this MDL proceeding shall not, without good cause, re-notice the depositions of fact witnesses for discovery on general causation issues who have already been deposed regarding their knowledge of general causation issues.~~

~~D.C.~~ **Deposition Protocol**

1. **Parties to Meet and Confer on Scheduling.** Counsel shall consult in good faith in advance with opposing counsel and proposed deponents in an effort to schedule depositions at mutually convenient times and places. A good faith effort shall be made by counsel to schedule depositions by agreement of the parties based upon the availability of documents relevant to the specific witness and the availability of the witness and counsel.
- ~~2. **Contact with Current or Former Monsanto Employees.** Plaintiffs shall not contact present or former employees of Monsanto without the express permission of Monsanto's counsel.~~
- ~~3.~~ **2. Location.** Unless otherwise agreed, the depositions of current and former Monsanto employees represented by Monsanto's litigation counsel shall take place in the Metro St. Louis, Missouri area, Metro Washington D.C. area, or within 100 miles of the deponent's primary residence. This location limitation does not apply to expert witness depositions.
- ~~4.~~ **3. Deposition Notices.** A single deposition notice shall apply in all cases now a part of or in the future added to MDL No. 2741.

DRAFT

~~5.4.~~ **Cross-Noticing.** Any deposition in this MDL may be cross-noticed by any party in any Roundup[®]-related action pending in state court, and any deposition in any Roundup[®]-related action pending in state court may be cross-noticed in this MDL so long as it is related to the question of general causation. However, the parties agree that cross noticing a federal deposition in a state court proceeding does not preclude additional, necessary discovery of that deponent in the state court proceeding.

~~6.5.~~ **Applicability to State Court Proceedings.** Nothing in this provision shall be construed as directing a state court on how to conduct its proceedings or rule on a given issue. Rather, this provision is intended to reflect this Court's desire for voluntary state-federal coordination, to the extent applicable given the phased discovery in this MDL. However, all counsel with cases in this MDL shall adhere to the guidelines articulated in this Order in all depositions regardless of whether originally noticed in one of the cases in the MDL proceeding or in a state court action.

~~7.6.~~ **Cost of Deposition.** The noticing party shall bear the expense of stenographic recording and any applicable witness fees. Motions to recover these costs and expenses may be made at the conclusion of the litigation in accordance with applicable law.

~~8.7.~~ **Stenographic Recording.** All depositions, including video depositions, will be stenographically recorded by a certified court reporter that possesses "real-time feed" transcription capabilities. The court reporter shall administer the oath or affirmation to the deponent on the record. The written transcript by the court reporter shall constitute the official record of the deposition for purposes of Federal Rule of Civil Procedure 30(e) (submission to the witness) and 30(f) (filing; exhibits). The party noticing the deposition must ensure the court reporter's availability for the full extent of the deposition until completion.

~~9.8.~~ **Videotaping.** Any party may videotape any deposition provided that the intention to do so is set forth in the deposition notice or cross-notice and subject to the following conditions.

- a) **Videotape Operator.** The video camera shall be operated by a video camera operator ("videotape operator") qualified under the applicable laws. The videotape operator shall be subject to the provisions of Federal Rule of Civil Procedure 28(c). At the commencement of the deposition, the operator(s) shall swear or affirm to record the proceedings fairly and accurately. The party noticing the deposition must ensure the videotape operator's availability for the full extent of the deposition until completion. Prior to the commencement of any videotaped deposition, all parties shall have an opportunity to observe the video image of the deponent to alleviate any concerns that the video image is not an

DRAFT

accurate reflection of the deponent. The videographer shall take necessary steps to ensure that the sound levels are consistent among the counsel and deponent.

- b) **Standards.** Unless physically incapacitated, the deponent shall be seated at a table except when reviewing or presenting demonstrative materials for which a change in position is needed. To the extent practicable, the deposition will be conducted in a neutral setting, against a solid background with only such lighting as is required for accurate video recording. Lighting, camera angle, lens setting and field of view will be set to record accurately the natural body movements of the deponent. ~~Only the deponent and any exhibits or demonstrative aids used in the examination will be video recorded.~~
- b)c) The witness shall appear in ordinary business attire (as opposed to, for instance, a lab coat) and without objects such as a bible or other props.
- e)d) **Interruptions.** The video camera operation will be suspended during the deposition at the request of any counsel examining or defending the deposition, and “off the record” discussions shall not be recorded. The videotape operator shall record on camera the time of suspension and any subsequent reconvening of the deposition.
- d)e) **Index.** The videotape operator shall use a counter on the recording equipment and after completion of the deposition shall prepare a log, cross-referenced to the counter numbers, that identifies the positions on the tape at which examination by different counsel begins and ends, at which objections are made and examination resumes, at which exhibits are identified, and at which any interruption of continuous tape recording occurs, whether for recesses, “off the record” discussion, mechanical failure, or otherwise.
- e)f) **Certification.** After the deposition is completed, the video operator shall certify on camera the correctness, completeness, and accuracy of the videotape recording in the same manner as a stenographic court reporter.
- d)g) **Technical Data.** Technical data, such as recording speeds and other information needed to replay or copy the tape, shall be included with copies of the videotapes. When played, the videotapes shall not show a time and/or date stamp.

DRAFT

~~g~~h) **Exhibits.** If examining counsel uses an Elmo or other device to capture document images during a videotaped deposition and incorporate the image into the videotape, such counsel may highlight or underline portions of the document but may not otherwise manipulate the document, such as by writing on or otherwise altering the document.

~~10.9.~~ **Deposition Transcripts.**

- a) **Services of Deposition Officer.** Services and products offered or provided by a deposition officer (i.e., a court reporter or videotape operator) or the entity providing the services of a deposition officer to any party or to any party's attorney or non-party who is financing all or part of the deposition shall be offered or provided to all parties or their attorneys attending the deposition.
- b) **Real-Time Transcription.** Any party may arrange for "real-time" transcription of a deposition at its own cost.
- c) **Correction and Signing of Deposition.** The deponent shall sign the deposition transcript, to include any corrections, within sixty (60) days after the court reporter provides the transcript to the deponent or deponent's counsel. The deposition may be signed by the deponent before any notary or pursuant to 28 U.S.C. § 1746. If no corrections are made within sixty (60) days after receipt of the transcript from the court reporter, and if good cause is not shown for an extension of the sixty (60) days limitation, the transcript will be deemed accurate and the parties shall have the right to use a copy of the transcript in any further proceedings as though the copy were the original transcript. In the event the original transcript is unsigned, lost, stolen, or inadvertently destroyed, a certified copy reflecting any changes made to the original transcript may be used in place of the original.
- d) **Costs.** Each side shall bear its own costs in securing copies of the deposition transcript and exhibits, videotape, or DVD from the court reporter.

~~11.10.~~ **Who May Attend and Participate.** Unless otherwise agreed to by the parties, depositions may be attended only by the parties, the parties' counsel, the deponent, the deponent's attorney, in-house counsel for the parties, representatives of the parties' insurers, court reporters, videographers, and members and/or employees from the law firms of counsel of record. Upon application, and for good cause shown, the Court may permit attendance by a person who does not fall within any of the categories set forth in the previous sentence. ~~Unnecessary attendance by numerous counsel is discouraged and may not be compensated in any fee~~

DRAFT

~~application to the Court.~~ Counsel must comply with Paragraph 5 of this Court's October 10, 2016 Order regarding *pro hac vice* and filing an appearance prior in MDL No. 2741 prior to asking questions in a deposition.

~~12.~~11. **Notice of Intent to Attend a Deposition.** In order for counsel to make arrangements for adequate deposition space, plaintiffs' counsel who intend to attend a deposition noticed in this MDL should advise Plaintiffs' Co-Liaison Counsel of that intent. If the deposition location is selected by someone other than plaintiffs' counsel in this MDL, Plaintiffs' Co-Liaison Counsel must provide a good faith estimate of the number of plaintiffs' counsel expected to attend to counsel responsible for obtaining the deposition location at least seven business days prior to the deposition. If the deposition location is to be selected by plaintiffs' counsel in this MDL, Monsanto will provide Plaintiffs' Co-Liaison Counsel with the same numerical information using the same time frame.

~~13.~~12. **Objections.** Objections shall be made pursuant to the Federal Rules of Civil Procedure. An objection made by one plaintiff is preserved for all plaintiffs. The same rules apply to counsel for Monsanto.

~~14.~~13. **Treatment of Confidential Documents or Testimony.** While a deponent is being examined about any document that is confidential or otherwise subject to designation under the terms of the Protective Order entered in this litigation because (a) the parties have so agreed, (b) a party has designated the document to be confidential pursuant to the protective order associated with this litigation, or (c) the Court has so ordered, attendance at that portion of the deposition by persons to whom disclosure is not authorized by agreement of the parties or by order of the Court shall either sign the confidentiality order prior to the deposition or be prohibited. Any portion of the deposition transcript containing confidential information shall be handled in the manner set forth in the Protective Order. Confidential portions of deposition transcripts may be opened, read and utilized for all purposes as permitted by the terms of the protective order entered in this litigation or in any applicable protective order entered in any State Court action.

14. **Number of Examiners.** The party noticing a general causation fact deposition shall designate one or two attorneys to conduct the examination of the deponent. If two attorneys are designated by the noticing party, the designees will follow one after the other.

Formatted: Not Expanded by / Condensed by

15. **Deposition Coordinating Counsel.** Each party shall designate an attorney responsible for deposition coordination to include

Formatted: Font: Bold

a) ~~Three days before a deposition requested or noticed by Plaintiffs or Monsanto, counsel for the noticing party shall give the opposing~~

DRAFT

~~party's counsel notice of the identity of the attorney who will examine the deponent.~~

~~15.16.~~ **Sequence of Examination.** Questioning at the depositions will be conducted in the following sequence: (1) the attorney(s) designated by the party noticing the deposition; (2) the attorney(s) designated by the opposing party; (3) individual counsel for deponent (if any) and (4) any re-cross and/or re-redirect by counsel, in the same order.

~~16.17.~~ **Public or Previously Produced Documents.** Parties often request documents in a Notice of Deposition. The Parties agree that documents responsive to that request that are identical to documents already produced by Monsanto or that are publically available do not have to be re-produced by a deponent, but any such documents shall be identified by Bates number

~~17.18.~~ **Length of Depositions.**

- a) Fed. R. Civ. P. 30(d)(1) provides a presumptive limit on a deposition to 1 day of 7 hours.
- b) All depositions shall be limited to seven hours of examination by the noticing side, absent agreement of the parties or an order by the Court based on a showing of good cause. Examination by the non-noticing side shall not count against the seven-hour limit for the noticing party.
- c) Except as otherwise agreed by examining counsel, depositions shall begin at 9:00 am and end at 5:30 pm, regardless of time taken off the record, and will continue the following day as necessary.
- d) If the parties cannot agree on whether additional time is needed, the Court will decide on a deposition-by-deposition basis. The party seeking additional time must arrange for the dispute to be brought before the Court in sufficient time to be resolved before the commencement of the deposition, or immediately after the 7-hour deposition if the examiner has not completed the deposition.

~~18.19.~~ **Exhibits at Deposition**

- a) **Provision of Hard Copies.** Deposing counsel should provide extra copies of deposition exhibits to other counsel at the deposition for whom timely notice of attendance was provided. Deponents and their counsel should be provided with a copy of a document at the deposition immediately before being examined about it.

DRAFT

- b) **Use of Bates Numbers.** The first time a document that has been previously produced is marked as a deposition exhibit, it shall be referred to by the Bates number appearing on the document and shall also be given an exhibit number. Documents that have not been previously produced shall be assigned an exhibit number at the deposition.
- c) **Marking of Deposition Exhibits.** All documents marked as exhibits shall be attached to the original transcript and retained with the original transcript. Copies of exhibits may be attached to copies of the transcript where the party ordering the transcript pays for the costs of copying those exhibits.

III. EXPERT DISCOVERY

- A. **Applicability of Federal Rule of Civil Procedure 26.** Other than as provided in this Order, Federal Rule of Civil Procedure 26 shall govern general causation expert discovery.
- B. **Expert Reports and Depositions.** The designation of General Causation Experts must be accompanied by a report that complies with Federal Rule of Civil Procedure 26(a)(2)(B). The experts shall be subject to deposition as directed in Federal Rule of Civil Procedure 26(b)(4)(A). This Order shall not preclude the parties from designating additional experts who may offer opinions relating to general or specific causation if this MDL proceeds beyond the general causation phase. The parties may challenge the admissibility of such later-designated expert testimony.
 - 1. **Production and Discoverability of Expert Materials.** The limitations on expert discovery set forth in Rule 26, including the provisions regarding discovery with respect to draft reports and communications with experts, shall apply to all cases. No party will seek discovery of any experts' notes, drafts of expert reports, or communications with counsel; provided, however, that counsel may inquire at deposition about any facts provided to the expert by counsel and upon which such expert is relying in expressing the expert's opinions.
 - 2. **Production Prior to Deposition.** At least ten (10) 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 publically or otherwise available to the noticing party, subject to the provisions of the above section addressing public and previously produced documents, [II C17](#).
- C. **Expert Depositions.**
 - 1. **Incorporation of General Deposition Procedures.** The provisions in Section II, *supra*, concerning depositions generally, except those

DRAFT

provisions limited to fact witnesses, apply to depositions of expert witnesses unless otherwise stated herein.

2. **Order of Depositions.** It is anticipated that the Parties will designate corresponding experts within the same discipline. The Parties shall alternate deposition priority on a discipline by discipline basis. By way of example, if Monsanto deposes Plaintiffs' epidemiologist expert before producing its own epidemiologist expert, Plaintiffs will depose Monsanto's toxicology expert before producing their toxicology expert. After the completion of expert designations by all Parties, counsel shall meet and confer in good faith to set a schedule that satisfies this provision. Monsanto shall be entitled to examine plaintiffs' experts in each area before plaintiffs examine Monsanto's expert(s) in that same area. Consistent with these principles, the parties shall agree upon a schedule for the depositions of all experts, with plaintiffs' expert(s) in a particular area being deposed first, Monsanto's corresponding expert(s) in that area being deposed second, until the depositions are completed.
3. **Location and Limitations.** The party offering the expert shall designate a reasonable location for the deposition. The Parties agree that each side shall designate one examiner on behalf of their respective sides to conduct the expert deposition.

EXHIBIT C

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE: ROUNDUP PRODUCTS
LIABILITY LITIGATION

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

This document relates to:
ALL ACTIONS

**[MONSANTO'S PROPOSED]
SCIENCE DAY PROTOCOL**

The Court intends to hold "Science Day" to provide the Court with an overview of the scientific issues associated with glyphosate and/or Roundup®-branded herbicides in an objective format without advocacy. Given the early stage of the litigation, bifurcated status of discovery and to avoid duplication, the parties have agreed to the following ground rules to educate the Court in a nonadversarial manner during Science Day:

1. The topics to be discussed at Science Day may include general background information regarding glyphosate and/or Roundup®-branded herbicides, non-Hodgkin's lymphoma, human health epidemiology, genotoxicology, animal toxicology, and other relevant scientific topics in connection with the general causation question before this Court.
2. The Science Day presentations will be "off the record" without a court reporter and shall not be used or admissible for any purpose in the litigation other than for the Court's benefit to gather informal knowledge at Science Day. Science Day shall be open only to the parties, their counsel of record, and the witnesses presenting at Science Day. The Court may video the presentations for its own use, but those videos, if any, shall not become part of the public record nor be made available to the parties.

3. The presentations shall be made by physicians and/or scientists. The presenters will not be questioned by each other or opposing counsel. The Court will have the opportunity to ask questions of the experts as the Court deems appropriate.
4. The format will be lecture-style presentations that may incorporate the use of PowerPoint presentations or other demonstrative visuals. The Parties will be allowed to lead the experts through a modified direct format to focus the lecture presentation.
5. The Parties shall provide the Court with Copies of any PowerPoint or other demonstratives shown at Science Day no later than seven business days after Science Day, but will not share the presentations with eachother.
6. The total length of time that will be allotted to Science Day shall be approximately four hours, plus a one hour break for lunch, as follows:
 - a. Science Day will commence at 10:00 am;
 - b. Plaintiffs will proceed on all topics from 10:00 am to 12:00 pm;
 - c. Defendant will proceed on all topics from 1:00 pm to 3:00 pm;
 - d. Final questions from the Court from 3:00 pm to end.

IT IS SO ORDERED.

Dated: _____

VINCE CHHABRIA
United States District Judge

EXHIBIT D

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE: ROUNDUP PRODUCTS
LIABILITY LITIGATION

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

This document relates to:
ALL ACTIONS

[PLAINTIFFS' PROPOSED]
SCIENCE DAY PROTOCOL

The Court intends to hold “Science Day” to provide the Court with an overview of the scientific issues associated with glyphosate and/or Roundup®-branded herbicides in an objective format without advocacy. Given the early stage of the litigation, bifurcated status of discovery and to avoid duplication, the parties have agreed to the following ground rules to educate the Court in a nonadversarial manner during Science Day:

1. The topics to be discussed at Science Day may include general background information regarding glyphosate and/or Roundup®-branded herbicides, non-Hodgkin’s lymphoma, human health epidemiology, genotoxicology, animal toxicology, and other relevant scientific topics in connection with the general causation question before this Court.
2. The Science Day presentations will be “off the record” without a court reporter and shall not be used or admissible for any purpose in the litigation other than for the Court’s benefit to gather informal knowledge at Science Day. ~~Science Day shall be open only to the parties, their counsel of record, and the witnesses presenting at Science Day.~~ The Court may video the presentations for its own use, but those videos, if any, shall not become part of the public record nor be made available to the parties.

3. The presentations shall be made by physicians and/or scientists. The presenters will not be questioned by each other or opposing counsel. The Court will have the opportunity to ask questions of the experts as the Court deems appropriate.
4. The format will be lecture-style presentations that may incorporate the use of PowerPoint presentations or other demonstrative visuals. The Parties will be allowed to lead the experts through a modified direct format to focus the lecture presentation.
5. The Parties shall exchange with each other and the court- their Science Day PowerPoint presentations and/or other demonstrative visuals seven (7) days prior to Science Day.
6. The total length of time that will be allotted to Science Day shall be approximately four hours, plus a one hour break for lunch, as follows:
 - a. Science Day will commence at 10:00 am;
 - b. Plaintiffs will proceed on all topics from 10:00 am to 12:00 pm;
 - c. Defendant will proceed on all topics from 1:00 pm to 3:00 pm;
 - d. Final questions from the Court from 3:00 pm to end.

IT IS SO ORDERED.

Dated: _____

VINCE CHHABRIA
United States District Judge