

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

IN RE: ROUNDUP PRODUCTS  
LIABILITY LITIGATION

MDL No. 2741

Case No. 16-md-02741-VC

**PLAINTIFFS' OPPOSITION TO SEALING  
DOCUMENTS**

This document relates to:

ALL ACTIONS

**PLAINTIFFS' OPPOSITION TO SEALING PORTIONS OF PLAINTIFF'S MOTION  
TO COMPEL DEPOSITION OF JESS ROWLAND**

**What happens in the halls of government is presumptively open to public scrutiny. Judges deliberate in private but issue public decisions after public arguments based on public records.**

*In re Krynicki*, 983 F.2d 74, 75 (7th Cir. 1992).

Plaintiffs have filed a Motion to Compel the Deposition of Jess Rowland, partially under seal in accordance with the parties' protective and confidentiality order<sup>1</sup>. However, public policy and the applicable law, taken with the content of the actual documents at issue, dictate that the

---

<sup>1</sup> Monsanto designated the four documents at issue as "Confidential," which designation requires Plaintiffs to file them under seal.

four documents are not deserving of the confidentiality designation and extraordinary measure of secrecy/sealing, which itself requires a finding of “good cause.”. The documents at issue are:

MONGLY 00987755  
MONGLY 01665907  
MONGLY 03351983  
MONGLY 00986901<sup>2</sup>

The EPA is currently considering the re-registration of glyphosate, one of the chemicals in Roundup®. This decision will have an enormous impact on the public health due to the excessive spraying of this chemical on our food, farms and public areas. The public interest in this decision is paramount and trumps any argument about the confidentiality about ex parte and secret communications between Monsanto and Monsanto’s friends at the EPA responsible for this decision. These secret communications from Monsanto lobbying the EPA cannot be held to be confidential because they 1) applicable law does not confer special status on them; 2) they are illegal; 3) are offensive to public policy; and 4) distort the scientific record.

**A. The Presumption of Non-Confidentiality is not Overcome by these Documents discussing EPA affairs.**

As a general proposition, “[i]t is well-established that the fruits of pretrial discovery are, in the absence of a court order to the contrary, presumptively public.” *San Jose Mercury News, Inc. v. U.S. Dist. Court--N. Dist. (San Jose)*, 187 F.3d 1096, 1103 (9th Cir. 1999). This presumption can only be overridden by a showing of good cause pursuant to Fed. R. Civ. P. 26(c). *Id.*; *In re Roman Catholic Archbishop of Portland in Oregon*, 661 F.3d 417, 426 (9th Cir. 2011) (“[T]his presumption can be rebutted only by a showing of good cause by the one seeking protection[.]”). To establish good cause, the party seeking protection must show that particular

---

<sup>2</sup> These documents’ purported confidentiality have also been challenged in the meet-and-confer process dictated by the Confidentiality Order, along with dozens of others. Plaintiffs await a response from Monsanto on these documents and will bring disputed items before the Court at a future date. See Exhibits 2 and 3.

harm will occur if no protective order is entered. *See also Phillips v. General Motors Corp.*, 307 F.3d 1206, 1211 (9th Cir.2002). Broad allegations of harm, unsubstantiated by specific examples or articulated reasoning, do not satisfy the Rule 26(c) test. *Id.* For each document, a party must show that specific harm or prejudice would result from disclosure of the trade secret or other information deserving protection. *See Beckman Indus. Inc. v. International Ins. Co.*, 966 F.2d 470, 476 (9th Cir.1992). Importantly, information or communication is not confidential merely because it would cause embarrassment upon release. *Welsh v. City & Cty. of San Francisco*, 887 F. Supp. 1293, 1297 (N.D. Cal. 1995).

Here, the Court entered a Protective Order allowing any Party to designate as “Confidential Material” any information regarded as confidential by the Party that is contained in any document, written discovery response, testimony, or other material produced or provided by that Party or its representative(s) to any other Party, whether provided voluntarily, pursuant to formal discovery procedures, or otherwise. Protective Order ¶ 2. Nonetheless, the Order further stated that “this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the information or items that are entitled to confidential treatment under the applicable legal principles.” Protective Order ¶ 2. Pursuant to the Protective Order, once Monsanto designates a document “Confidential,” Plaintiffs and their attorneys are prohibited from sharing the information with the public until that designation is removed, either voluntarily by Monsanto or by Court Order.

The burden of proof to maintain the confidentiality of any document is on the party seeking to maintain the confidentiality, here, Monsanto. *Karoun Dairies, Inc. v. Karoun Dairies, Inc.*, 2014 WL 5170800, at \*6 (S.D.Cal.,2014) (citing *In re Roman Catholic Archbishop of*

*Portland in Oregon*, 661 F.3d 417, 424 (9th Cir.2011) (“When the protective order ‘was a stipulated order and no party ha[s] made a ‘good cause’ showing,’ then ‘the burden of proof ... remain[s] with the party seeking protection.’ ”)).

Monsanto has over-designated tens (if not hundreds) of thousands of documents as “Confidential”, thus wrongfully keeping the information from the public. Indeed, according to a rough estimate from our document vendor, Monsanto has designated “Confidential” over 85% of the millions of pages produced in this litigation. The burden is on Monsanto to establish the confidential nature of these documents and any showing of good cause must be based on a factual demonstration of potential harm. *See* Fed. R. Civ. P. 26(c); Protective Order ¶ 16.3.

The four documents at issue all concern communications with and regulation by EPA; they do not constitute “trade secrets,” rather they illuminate that one of Monsanto’s chief business strategies is its secret and untoward influence on EPA.

**Exhibit E (MONGLY01665907-09):** This document consists entirely of discussion about regulatory agencies. In addition to setting forth a plan for interaction with EPA (and other agencies), it acknowledges important information that EPA has communicated to Monsanto. There is nothing contained that could be reasonably construed as a “trade secret,” nor used to significant deleterious effect against Monsanto in its primary business. Much of Monsanto’s opposition to public disclosure is due to the fact that the document also mentions Dicamba, which is “irrelevant.” But relevance is not part of the sealing/disclosure analysis. Additionally, the public interest in disclosure of communications between federal agencies and the large corporations they regulate is paramount.

**Exhibit D (MONGLY00987755-58):** This document is largely a memorialization of verbal conversations between Monsanto and Jess Rowland (an EPA employee). It discusses how

and when EPA's OPP reached the conclusions that were embodied in its later report. These are, essentially, "minutes" of meetings between Monsanto and EPA, and do not exist in another form.

**This communication is not a trade secret or otherwise confidential communication.**

**Exhibit F (MONGLY03351983):** This email chain is a discussion/summary of published scientific literature. In addition, it further illuminates communications between EPA/Jess Rowland and Monsanto. **This communication is not a trade secret or otherwise confidential communication.**

**Exhibit G (MONGLY00986901):** This email chain discusses what EPA employees will be attending IARC, which information clearly came from EPA, and appears to suggest a Monsanto plan/desire to change or influence that group of U.S. government personnel. **This communication is not a trade secret or otherwise confidential communication.**

**B. Secret Communications With EPA are Illegal:**

Glyphosate is currently under review for re-registration as an approved ingredient to be used in herbicides such as Roundup®.<sup>3</sup> EPA re-registration reviews are governed by 40 CFR Part 155.40, *et seq.* Section 155.52, Stakeholder engagement provides the rules for how the EPA may communicate with stakeholders such as Monsanto. It is not prohibited for Monsanto employees to talk to their friends at the EPA responsible for making a vital decision on public safety, however such communications must be made public. Section 155.52 provides:

(a) Minutes of meetings with persons outside of government. Subject to paragraph (c) of this section, if the Agency meets with one or more individuals that are not government employees to discuss matters relating to a registration review, the Agency will place in the docket a list of meeting attendees, minutes of the meeting, and any documents exchanged at the meeting, not later than the earlier of:

- (1) 45 days after the meeting; or
- (2) The date of issuance of the registration review decision.

---

<sup>3</sup><https://www.regulations.gov/document?D=EPA-HQ-OPP-2009-0361-0001>

(b) Exchange of documents or other written material. In the course of a meeting with a person outside of government, the Agency or that person may provide the other with a copy of a document or other written material that has not yet been released to the public. The Agency will place a copy of any such document or other written material in the docket along with the minutes of the meeting where the materials were exchanged.

(c) Confidential business information. The Agency will identify, but not include in the docket, any confidential business information whose disclosure is prohibited by FIFRA section.

The collusion between certain EPA employees and Monsanto to violate these very clear requirements is disturbing, and should not be hidden from the public record.

**C. Secret Communications With The EPA Are Offensive To Public Policy:**

A hallmark of the integrity of the judicial branch and its dedication to ascertaining truth is the prohibition against *ex parte* contacts between litigants and judicial officers. These principles apply with equal force to administrative proceedings. Prohibitions against secret *ex parte* contacts “are to insure open decision-making and the appearance thereof, to preserve the opportunity for effective response, and to prevent improper influences upon agency decision-makers.” *Portland Audubon Soc. v. Endangered Species Comm.*, 984 F.2d 1534, 1544 (9th Cir. 1993). A bedrock principle of administrative law “is the inconsistency of secrecy with fundamental notions of fairness implicit in due process and with the ideal of reasoned decision making on the merits.” *Home Box Office, Inc. v. F.C.C.*, 567 F.2d 9, 55–56 (D.C. Cir. 1977). “Only through disclosure of *ex parte* communications may we protect the public's ‘right to participate meaningfully in the decision making process’ and ‘the critical role of adversarial comment in ensuring proper functioning of agency decision making and effective judicial review.’” *State of N.C. Env'tl. Policy Inst. v. E.P.A.*, 881 F.2d 1250, 1257–58 (4th Cir. 1989) (quoting *United States Lines, Inc. v. Federal Maritime Comm'n*, 584 F.2d 519, 540, 542 (D.C.Cir.1978)). Disclosure of communications are necessary to “protect against taint of the

proceeding by ex parte communications.” *State of N.C. Env’tl. Policy Inst. v. E.P.A.*, 881 F.2d 1250, 1258 (4th Cir. 1989).

In the present case, the health and safety of millions of U.S. citizens is at stake. Decisions affecting the public health should not be based on secret conversations between Monsanto and EPA officials. If Monsanto wants to advocate on behalf of glyphosate to EPA employees, they should have to do it publicly, so that concerned citizens have equal opportunity to advocate for their health and the health of their families. This issue is too important to allow Monsanto to improperly influence the EPA, and then hide such communication behind an improper “confidential” designation. Frankly, it is shocking that Monsanto would endeavor to violate federal regulations by secretly communicating with the EPA. Such actions only serve to taint decisions coming out of the EPA. Why is Monsanto afraid of having an open and honest debate about the safety of its products?

**D. Monsanto’s Actions Serve To Distort The Scientific Record**

In addition to protecting products, Monsanto’s secret communications with the EPA are part of an ongoing scheme and intense lobbying effort to undermine the credibility of IARC and improperly taint the scientific record of glyphosate. In an unprecedented action, IARC was compelled to release an issue paper documenting Monsanto’s attempts to intimidate and defame IARC and the scientists who donate their time to participate in the important public safety programs conducted by IARC. Included, among the numerous actions taken by Monsanto to attack IARC is “privately lobbying the EPA to reject IARC’s findings.” Exhibit 1. Additionally, Monsanto through its lobbying firm CropLifeAmerica has “misrepresented [IARC] in a letter to US EPA accusing [IARC] of only using partial data and falsely accusing of [IARC]’s scientists of having a biased view” and has “lobbied US EPA about the composition of the expert panel

that will consider glyphosate carcinogenicity.” *Id.* Since Monsanto’s communications with the EPA remain secret, these known lobbying efforts are only the tip of the iceberg of Monsanto’s collusion with the EPA.

**Conclusion:**

Monsanto’s bad acts in violating U.S. regulations through secret communications with the EPA should not be rewarded by allowing them to keep these communications secret by merely stamping them “Confidential.” These documents summarize communications with EPA which are not elsewhere memorialized; they are not trade secrets and the public has a compelling interest in disclosure.

DATED: January 16, 2017

Respectfully submitted,

/s Robin Greenwald, Michael Miller and

Aimee Wagstaff

Robin Greenwald

[rgreenwald@weitzlux.com](mailto:rgreenwald@weitzlux.com)

Weitz & Luxenberg

700 Broadway

New York NY 10003

Ph 212-558-5500

F 212-344-5461

Michael Miller

[mmiller@millerfirmllc.com](mailto:mmiller@millerfirmllc.com)

The Miller Firm LLC

108 Railroad Ave

Orange VA 22960

Ph 540 672 4224

F 540 672 3055

Aimee Wagstaff

[Aimee.wagstaff@andruswagstaff.com](mailto:Aimee.wagstaff@andruswagstaff.com)

Andrus Wagstaff, P.C.

7171 West Alaska Drive

Lakewood CO 80226

Ph 303-376-6360



F 303-376-6361

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on January 16, 2017 I electronically filed this Opposition using the CM/ECF system which will send a notification of such filing to counsel of record.

/s/ Michael Miller

**DECLARATION PURSUANT TO CIVIL L.R. 7-11(a)**

I, Michael Miller, declare:

1. I am a member of the executive committee of MDL 2741. I make this declaration in relation to Plaintiffs' Administrative Motion to File Under Seal, related to the Motion to Compel Deposition of Jess Rowland. I have personal knowledge of the facts stated herein and, if called as a witness, I could and would competently testify thereto.
2. While the documents that are the subject of this Motion were unilaterally marked "confidential" by Monsanto, requiring Plaintiffs to preliminarily submit them under seal, Plaintiffs are opposed to the documents remaining sealed.

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

Executed this 16<sup>th</sup> day of January 2017

/s/ Michael J Miller

## International Agency for Research on Cancer

---



### **Originally prepared as a confidential briefing for Governing Council Members on IARC evaluation of glyphosate and requests for meetings from CropLife**

1. An IARC Working Group (WG) of 17 international experts evaluated glyphosate in March 2015 as Group 2A, "probably carcinogenic to humans"; IARC scientists are not part of the WG<sup>1</sup>. Monsanto and the European Crop Protection Association provided scientific Observers to the meeting<sup>1</sup>, who had access to the scientific deliberations and all meeting documents.
2. Monsanto rejected and attacked the IARC findings, calling it "junk science"<sup>2</sup>, and immediately requested that WHO retract the IARC evaluation<sup>3</sup> and privately lobbied the US EPA to reject IARC's findings<sup>4</sup>. Monsanto convened their own expert panel (including many past consultants to Monsanto) through Intertek Scientific & Regulatory Consultancy to review the IARC Monograph on glyphosate, finding no evidence of carcinogenicity, and published the results in a sponsored issue of a scientific journal<sup>5</sup>.
3. Coordinated criticisms of IARC by the industry and umbrella organizations such as CropLife and the American Chemistry Council have continued in two broad areas: a) scientific credibility of the programme in general and the evaluation of glyphosate in particular and b) on the continued funding to IARC from US Government sources<sup>6</sup>.
4. On the first point, IARC has been the subject of much misleading reporting. Examples include accusations of:
  - a. Cherry-picking data – for transparency, IARC's procedures<sup>7</sup> call for systematic evaluation of scientific data in the public domain, but not unpublished studies or industry reports. Of interest, the European Medicines Agency has recently implemented such a procedure and European Food Standards Agency has promised to do so in the future.
  - b. Activist scientists with political agenda – false and defamatory statements have been made concerning IARC scientists; for transparency and public scrutiny IARC disclosed conflicting interests of all participants, including the Secretariat, two months before the meeting; an additional and independent assessment of any potential conflicts of interest was conducted for The Lancet Oncology publication<sup>1</sup>.
  - c. Creating needless concerns – IARC's hazard identification has been portrayed as insufficient and the methodology as outdated, in many blogs, news media and articles, including from industry organisations and paid consultants of Monsanto<sup>5</sup>. IARC methodology is published<sup>7</sup> and constantly evolves to include the latest science; hazard identification is a key foundation for national authorities to make risk assessments; the IARC Monographs do not make any direct public health recommendations, such as limit values.
  - d. The data evaluated do not represent "real world" exposures – this ignores the fact that cancer epidemiology, based on real world exposures associated with cancer risks in humans, is one cornerstone of the IARC Monograph evaluations.

25 November 2016

5. IARC Working Group (WG) members and their employers<sup>8</sup> based in the US have been subject to wide-reaching subpoenas by Monsanto lawyers asking for all draft documents, emails<sup>9</sup>, and other communications on IARC and glyphosate and the WG; these requests are made in the context of US court cases on lymphoma and glyphosate use; arguments from IARC on deliberative documents have been misrepresented as lack of transparency.<sup>10</sup>
6. Other members of the WG and IARC Secretariat are also now are being subject to intimidating<sup>11</sup> letters from Monsanto lawyers<sup>3</sup>; WHO and IARC considers the underlying principle of confidentiality of deliberative documents to be fundamental to an open and productive process of scientific deliberation, and that these would be protected from disclosure under UN privileges and immunities.
7. On the second point of IARC funding,
  - a. There has been lobbying of US House of Representatives Committees suggesting that the NIH funding for IARC should be stopped<sup>4</sup>. NIH/NCI USA have been called before the Committees to testify.
  - b. IARC anticipated that the next step for the industry would be to work through the governing body of the Agency: The Netherlands, Australia and Canada have already been approached by CropLife International.
8. CropLife have taken a number of specific actions in relation to the glyphosate evaluation:
  - a. lobbied WHO about the Volume 112 and Volume 113 IARC evaluations<sup>3</sup>;
  - b. misrepresented the Agency in letter to US EPA<sup>12</sup> accusing the Agency of only using partial data and falsely accusing one of our scientists of having a biased view;
  - c. lobbied US EPA about the composition of the expert panel that will consider glyphosate carcinogenicity in Dec 2016.<sup>13</sup>

<sup>1</sup> <http://www.thelancet.com/journals/lanonc/article/PIIS1470-2045%2815%2970134-8/fulltext;>  
<http://monographs.iarc.fr/ENG/Meetings/vol112-participants.pdf>

<sup>2</sup> <http://news.monsanto.com/press-release/research-and-development/monsanto-reinforces-decades-dataand-regulatory-review-clear/>; <http://www.wsj.com/articles/monsanto-bites-back-at-glyphosate-findings-1427147273>

<sup>3</sup> see <http://governance.iarc.fr/ENG/infocouncils.php>

<sup>4</sup> Multiple records were released through a FOIA request to the US EPA:  
<https://foiaonline.regulations.gov/foia/action/public/view/request?objectId=090004d280904eba> (see releasable Monsanto Summary Comments on IARC Lancet Oncology article as one example.)

<sup>5</sup> <http://www.tandfonline.com/toc/itxc20/46/sup1?nav=toCList>; see also <https://www.ncbi.nlm.nih.gov/pubmed/27780763>, <https://www.ncbi.nlm.nih.gov/pubmed/27552246>, <https://www.ncbi.nlm.nih.gov/pubmed/7552246>; note that interests are not always disclosed (in early critiques of the IARC evaluation Sir Colin Berry was a vocal critic (e.g. via Science Media Centre) but omitted to declare he had worked as a consultant for Monsanto, whereas <https://www.ncbi.nlm.nih.gov/pubmed/27677669> states "Gary Williams, Sir Colin Berry, João Lauro Viana de Camargo, and Helmut Greim have previously served as independent consultants for the Monsanto Company, some on the European Glyphosate Task Force.")

<sup>6</sup> The US. House Committee on Oversight and Government Reform Chairperson Jason Chaffetz in a Sept. 26 letter to NIH director Francis Collins, Oversight Committee Chairman <https://oversight.house.gov/wp-content/uploads/2016/09/2016-09-26-JEC-to-Collins-NIH-IARC-Funding-due-10-10.pdf> describes IARC as having "a record of controversy, retractions, and inconsistencies" and asks why the NIH, which has a \$33 billion annual budget, continues to fund it; IARC Director wrote to NIH Director correcting some of the misrepresentations of the Agency in the letter from Congressman Chaffetz

25 November 2016

---

(<http://monographs.iarc.fr/ENG/News/LetterFromDrWild-to-DrCollins.pdf>). The American Chemistry Council issued a statement following Chaffetz's letter accusing IARC of "a long history of passing judgment on substances through a fundamentally-flawed process that yields questionable results". The CEO wrote to Mr Chaffetz along the same lines <https://www.americanchemistry.com/ACC-Letter-to-House-Committee-on-IARC-Monographs.pdf>; Robert Aderholt, chairman of the U.S. congressional Appropriations Subcommittee on Agriculture, wrote in June to NIH director Collins questioning funding of IARC (<http://src.bna.com/fLL>)

<sup>7</sup> <http://monographs.iarc.fr/ENG/Preamble/currenta4data0706.php>

<sup>8</sup> search "IARC" at <https://www.nih.gov/sites/default/files/institutes/foia/foia-log-sep2016.pdf>;

<sup>9</sup> some emails released under subpoena to Monsanto are apparently given to journalists (e.g., <http://reut.rs/2eIowTw>; <https://morningconsult.com/wp-content/uploads/2016/10/MattRossEmail.pdf>) and US House of Representatives

([https://science.house.gov/sites/republicans.science.house.gov/files/documents/201610251122a\\_Redacted%20n%281.5%29.pdf](https://science.house.gov/sites/republicans.science.house.gov/files/documents/201610251122a_Redacted%20n%281.5%29.pdf))

<sup>10</sup> [http://www.iarc.fr/en/media-centre/iarcnews/pdf/Reuters\\_Readmore\\_Oct2016.pdf](http://www.iarc.fr/en/media-centre/iarcnews/pdf/Reuters_Readmore_Oct2016.pdf);

[https://www.iarc.fr/en/media-centre/iarcnews/pdf/Reuters\\_questions\\_and\\_answers\\_Oct2016.pdf](https://www.iarc.fr/en/media-centre/iarcnews/pdf/Reuters_questions_and_answers_Oct2016.pdf)

<sup>11</sup> <http://thehill.com/blogs/pundits-blog/healthcare/303597-bully-monsanto-attacks-scientists-who-link-glyphosate-and>

<sup>12</sup> see <https://www.regulations.gov/document?D=EPA-HQ-OPP-2016-0385-0005>;

<https://www.regulations.gov/document?D=EPA-HQ-OPP-2016-0385-0356>;

<http://191hmt1pr08amfq62276etw2.wpengine.netdna-cdn.com/wp-content/uploads/2016/01/CLA-Comments-on-SAP-Disqualification-10-12-16.pdf>



**Aimee H. Wagstaff, Esq.**  
Licensed in Colorado and California  
Aimee.Wagstaff@AndrusWagstaff.com

7171 W. Alaska Drive  
Lakewood, CO 80226  
Office: (303) 376-6360  
Fax: (303) 376-63614  
Website: www.AndrusWagstaff.com

January 11, 2016

**VIA E-Mail**

Rosemary Stewart, Esq. - [rstewart@hollingsworthllp.com](mailto:rstewart@hollingsworthllp.com)

James Sullivan, Esq. - [jsullivan@hollingsworthllp.com](mailto:jsullivan@hollingsworthllp.com)

**RE: MDL 2741: In Re Roundup – Confidentiality Designations**

Dear Rosemary & Jim,

Plaintiffs hereby challenge Monsanto's confidential designations of the documents identified on the attached **Exhibit A** pursuant to Paragraph 16 of the December 9, 2016 Protective and Confidentiality Order ("Protective Order"). All challenges to the documents identified on the challenge list include, where applicable, the attachments. On January 9, 2017, Plaintiffs challenged the designation of the following four documents, such documents utilized as exhibits to Plaintiffs' Motion to Compel the Deposition of Jess Rowland:

1. MONGLY 00987755
2. MONGLY 01665907
3. MONGLY 03351983
4. MONGLY 00986901

As a general proposition, "[i]t is well-established that the fruits of pretrial discovery are, in the absence of a court order to the contrary, presumptively public." *San Jose Mercury News, Inc. v. U.S. Dist. Court--N. Dist. (San Jose)*, 187 F.3d 1096, 1103 (9th Cir. 1999). This presumption can only be overridden by a showing of good cause pursuant to Fed. R. Civ. P. 26(c). *Id.*; *In re Roman Catholic Archbishop of Portland in Oregon*, 661 F.3d 417, 426 (9th Cir. 2011) ("[T]his presumption can be rebutted only by a showing of good cause by the one seeking protection[.]"). To establish good cause, the party seeking protection must show that particular harm will occur if no protective order is entered. *See also Phillips v. General Motors Corp.*, 307 F.3d 1206, 1211 (9th Cir.2002). Broad allegations of harm, unsubstantiated by specific examples or articulated reasoning, do not satisfy the Rule 26(c) test. *Id.* For each document, a party must show that specific harm or prejudice would result from disclosure of the trade secret or other information deserving protection. *See Beckman Indus. Inc. v. International Ins. Co.*, 966 F.2d 470, 476 (9th Cir.1992). Importantly, information or communication is not confidential merely because it would cause embarrassment upon release. *Welsh v. City & Cty. of San Francisco*, 887 F. Supp. 1293, 1297 (N.D. Cal. 1995).

Here, the Court entered a Protective Order allowing any Party to designate as "Confidential Material" any information regarded as confidential by the Party that is contained in any document, written discovery response, testimony, or other material produced or provided by that Party or its representative(s) to any other Party, whether provided voluntarily, pursuant to formal discovery procedures, or otherwise. Protective Order ¶ 2. Nonetheless, the Order further

stated that “this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the information or items that are entitled to confidential treatment under the applicable legal principles.” Protective Order ¶ 2. Pursuant to the Protective Order, once Monsanto designates a document “Confidential,” Plaintiffs and their attorneys are prohibited from sharing the information with the public until that designation is removed, either voluntarily by Monsanto or by Court Order.

The burden of proof to maintain the confidentiality of any document is on the party seeking to maintain the confidentiality, here, Monsanto. *Karoun Dairies, Inc. v. Karoun Dairies, Inc.*, 2014 WL 5170800, at \*6 (S.D.Cal.,2014) (citing *In re Roman Catholic Archbishop of Portland in Oregon*, 661 F.3d 417, 424 (9th Cir.2011) (“When the protective order ‘was a stipulated order and no party ha[s] made a ‘good cause’ showing,’ then ‘the burden of proof ... remain[s] with the party seeking protection.’ ”)).

Monsanto has over-designated tens (if not hundreds) of thousands of documents as “Confidential”, thus wrongfully keeping the information from the public. Indeed, according to a rough estimate from our document vendor, Monsanto has designated “Confidential” over 85% of the millions of pages produced in this litigation. We have reviewed each document on Exhibit A and the documents do not contain information worthy of confidential protection pursuant to the applicable law. The burden is on Monsanto to establish the confidential nature of these documents and any showing of good cause must be based on a factual demonstration of potential harm. *See* Fed. R. Civ. P. 26(c); Protective Order ¶ 16.3.

Pursuant to the Protective Order, you have 14 days from the challenge date to initiate a verbal meet-and-confer regarding the confidential status of these documents and 30 days to file a motion to retain confidential status, or else these documents will no longer retain confidentiality. Protective Order ¶ 16.2-16.3. Please let me know your availability to discuss these confidentiality challenges.

Sincerely,

ANDRUS WAGSTAFF, PC

/s/ Aimee H. Wagstaff

WEITZ & LUXENBURG, PC

/s/ Robin L. Greenwald

THE MILLER FIRM, LLC

/s/ Michael Miller

*MDL 2714, Plaintiffs’ Co-Lead Counsel*

**CC via E-mail:** Robin Greenwald, Esq, Michael Miller, Esq.  
Eric Lasker, Esq., Joe Hollingsworth, Esq., Heather Pigman, Esq.

## Exhibit A - 1.11.17 Confidentiality Challenge No. 1

	Bates Label		Bates Label		Bates Label		Bates Label
Challenged 1/09/17	<b>MONGLY 00987755</b>	24	MONGLY 00977035	51	MONGLY 00895519	78	MONGLY 01020708
Challenged 1/09/17	<b>MONGLY 01665907</b>	25	MONGLY 01031800	52	MONGLY 00877463	79	MONGLY 01020891
Challenged 1/09/17	<b>MONGLY 03351983</b>	26	MONGLY 01249822	53	MONGLY 00878075	80	MONGLY 01021436
Challenged 1/09/17	<b>MONGLY 00986901</b>	27	MONGLY 02062629	54	MONGLY 00878285	81	MONGLY 01021541
1	MONGLY 01199776	28	MONGLY 02285682	55	MONGLY 00885167	82	MONGLY 01021835
2	MONGLY 01210309	29	MONGLY 02285685	56	MONGLY 00889992	83	MONGLY 01021836
3	MONGLY 01213912	30	MONGLY 02285725	57	MONGLY 00891509	84	MONGLY 01021840
4	MONGLY 01322037	31	MONGLY 02308279	58	MONGLY 00892451	85	MONGLY 01021845
5	MONGLY 01192115	32	MONGLY 02359075	59	MONGLY 01049171	86	MONGLY 01021848
6	MONGLY 02155826	33	MONGLY 02530945	60	MONGLY 01115737	87	MONGLY 01021860
7	MONGLY 01825671	34	MONGLY 02626553	61	MONGLY 01202774	88	MONGLY 01023319
8	MONGLY 00885551	35	MONGLY 02913526	62	MONGLY 01205368	89	MONGLY 01030037
9	MONGLY 00877683	36	MONGLY 03328971	63	MONGLY 01221410	90	MONGLY 01666030
10	MONGLY 01183933	37	MONGLY 04025957	64	MONGLY 01239583	91	MONGLY 01666059
11	MONGLY 00919381	38	MONGLY 04168713	65	MONGLY 01316037	92	MONGLY 01666061
12	MONGLY 01030787	39	MONGLY 04272196	66	MONGLY 01700591	93	MONGLY 01666669
13	MONGLY 01021648	40	MONGLY 00922458	67	MONGLY 01856408	94	MONGLY 01680778
14	MONGLY 01312107	41	MONGLY 00984228	68	MONGLY 02042998	95	MONGLY 01864744
15	MONGLY 01312093	42	MONGLY 00923065	69	MONGLY 02054088	96	MONGLY 01864745
16	MONGLY 01598004	43	MONGLY 01155974	70	MONGLY 04272266	97	MONGLY 01864788
17	MONGLY 01825649	44	MONGLY 01159775	71	MONGLY 00982099	98	MONGLY 01973699
18	MONGLY 00878876	45	MONGLY 00874417	72	MONGLY 01031794	99	MONGLY 01981660
19	MONGLY 03734971	46	MONGLY 01041300	73	MONGLY 00897786	100	MONGLY 01061857
20	MONGLY 02626553	47	MONGLY 00990361	74	MONGLY 00904697	101	MONGLY 01251889
21	MONGLY 00878595	48	MONGLY 01995675	75	MONGLY 00901400	102	MONGLY 01179185
22	MONGLY 01314233	49	MONGLY 00977267	76	MONGLY 00921329	103	MONGLY 00970556
23	MONGLY 00891769	50	MONGLY 01023968	77	MONGLY 00923882	104	MONGLY 00970558



105	MONGLY 03498538	129	MONGLY 01723742	153	MONGLY 00976696	177	MONGLY 00970561
106	MONGLY 00922461	130	MONGLY 00888235	154	MONGLY 00977253	178	MONGLY 00978721
107	MONGLY 01309977	131	MONGLY 00904905	155	MONGLY 01006341	179	MONGLY 00978722
108	MONGLY 01202786	132	MONGLY 00904009	156	MONGLY 01021559	180	MONGLY 00986904
109	MONGLY 00889988	133	MONGLY 01045298	157	MONGLY 00948099	181	MONGLY 00986917
110	MONGLY 00902069	134	MONGLY 00936725	158	MONGLY 00948101	182	MONGLY 00989806
111	MONGLY 00946539	135	MONGLY 00971543	159	MONGLY 00948103	183	MONGLY 01669082
112	MONGLY 00946539	136	MONGLY 01096619	160	MONGLY 00948224	184	MONGLY 01680696
113	MONGLY 00946543	137	MONGLY 00978886	161	MONGLY 00948225	185	MONGLY 01005057
114	MONGLY00946857	138	MONGLY 00987424	162	MONGLY 00948264	186	MONGLY 02435340
115	MONGLY 00948116	139	MONGLY 01179968	163	MONGLY 00948279	187	MONGLY 01005282
116	MONGLY 00948125	140	MONGLY 02060344	164	MONGLY 00948268	188	MONGLY 01020707
117	MONGLY 00946863	141	MONGLY 00925905	165	MONGLY 00948317	189	MONGLY 00953047
118	MONGLY 00947657	142	MONGLY 01051709	166	MONGLY 00948342	190	MONGLY 00954084
119	MONGLY 00946881	143	MONGLY 01012203	167	MONGLY 00952293	191	MONGLY 00954103
120	MONGLY 01970972	144	MONGLY 00878828	168	MONGLY 00952294	192	MONGLY 00954104
121	MONGLY 00946869	145	MONGLY 01207339	169	MONGLY 00953046	193	MONGLY 00954194
122	MONGLY 00947735	146	MONGLY 00989918	170	MONGLY 02019993	194	MONGLY 00954604
123	MONGLY 00947575	147	MONGLY 02117377	171	MONGLY 02063714	195	MONGLY 02699750
124	MONGLY 00947764	148	MONGLY 02603540	172	MONGLY 02064187	196	MONGLY 00956960
125	MONGLY 00947973	149	MONGLY 02603573	173	MONGLY 02116475	197	MONGLY 01971186
126	MONGLY 02650427	150	MONGLY 02649459	174	MONGLY 02117234	198	MONGLY 01972010
127	MONGLY 02872497	151	MONGLY 02649485	175	MONGLY 00957909	199	MONGLY 00989918
128	MONGLY 03928326	152	MONGLY 00968090	176	MONGLY 00957910		