IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY

ALLAN SHELTON, et al.,	)	
	)	
Plaintiffs,	)	**Case No. 1816-CV17026**
	)	
vs.	)	
	)	
MONSANTO COMPANY,	)	
	)	
Defendant.	)	
	)	

NONPARTY HUGH GRANT'S MOTION FOR PROTECTIVE ORDER CONCERNING HIS TRIAL TESTIMONY AND ACCOMPANYING MEMORANDUM OF LAW

Plaintiffs served former Monsanto CEO and Chairman Mr. Hugh Grant—who is not a party to this case, is not employed by any party in this case, and has no current affiliation with any party in this case—with a trial subpoena. Mr. Grant's trial testimony is wholly unnecessary and serves only to harass and burden Mr. Grant, particularly given that Mr. Grant gave a comprehensive videotaped deposition in Roundup® litigation that can be used in this matter.

Moreover, even if Plaintiffs did not have the transcript and video of Mr. Grant's deposition (which they do) his testimony would be of little value. Mr. Grant is not a toxicologist, an epidemiologist, or a regulatory expert and Mr. Grant did not work in the areas of toxicology or epidemiology while employed by Monsanto. There are many people in the Monsanto organization who are much more qualified than he to testify on these topics. More than twenty-five people from the Monsanto organization have already been deposed in Roundup® litigation. Therefore, Mr. Grant's testimony would add nothing to the core issues involved in this case. Moreover, Mr. Grant has no personal knowledge of the particular Plaintiffs in this matter, including Plaintiff Allan

Shelton. Adding further burden to Mr. Grant, requiring Mr. Grant's presence and testimony at this trial could open the floodgates to similar trial subpoenas in dozens of cases.

The Missouri Supreme Court made very clear in *State ex rel. Ford Motor Co. v. Messina*, 71 S.W.3d 602 (Mo. banc 2002), that it is inappropriate to require a corporate party's top executive to submit to testimony in these circumstances. *Id.* at 608. It is even more inappropriate here, where Mr. Grant is a retired top executive at Monsanto and has already been deposed on this litigation topic. Accordingly, the Court should enter a protective order barring Plaintiffs from subpoenaing Hugh Grant's trial testimony in this matter.

BACKGROUND

Mr. Grant began serving as Chairman and Chief Executive Officer of Monsanto in 2003. *See* Grant Decl. ¶ 2 (Ex. A). He retired in June 2018, when Monsanto became an indirect subsidiary of Bayer AG through a merger. *See Id*. ¶ 2. Mr. Grant is not employed by Bayer and he has no financial ties to Monsanto or Bayer. *Id*. ¶ 3. Mr. Grant is not a toxicologist, an epidemiologist, or a regulatory expert and he did not work in the areas of toxicology or epidemiology while employed at Monsanto. *Id*. ¶ 4. Mr. Grant does not have any expertise in the studies and tests that have been done related to Roundup® generally, including those related to Roundup® safety. *Id*. ¶ 5. Defendant has not asked Mr. Grant to testify live in any scheduled Missouri Roundup trial. *Id*. ¶ 9. Additionally, Mr. Grant has no personal knowledge of the particular Plaintiffs in this matter, including Plaintiff Allan Shelton. *Id*. ¶ 6.

As the Court is aware, there are numerous Roundup® lawsuits pending in the United States. Some of these cases have been consolidated in the United States District Court, Northern District of California, before the Honorable Vince Chhabria in *In re: Roundup Products Liability Litigation*, MDL No. 2741. The parties in this case have agreed to use discovery and deposition

materials from the MDL and any other litigation in which plaintiff alleges that Roundup® caused non-Hodgkin's lymphoma "as if it were conducted in this action." *Shelton, et al. v. Monsanto Co.*, 1816-CV17026, ¶ 4 (Feb. 2, 2021) (Amended Case Management Order) (Ex. B). In addition to the depositions conducted by Plaintiffs' counsel of current and former Monsanto employees, Monsanto has previously produced to Plaintiffs' counsel all of the depositions of current and former Monsanto employees from the Roundup® cancer lawsuits that they have requested (even if taken by other plaintiffs' attorneys).

On February 4, 2019, Mr. Grant was deposed in the MDL for approximately five hours. *See* Ex. A ¶ 7. Counsel for Mr. Grant provided Plaintiffs' counsel with this deposition transcript on November 16, 2021 (ptx) and November 17, 2021 (pdf) and provided the unedited video of the deposition on December 20, 2021. Despite having over 250 pages of deposition testimony at their disposal, on January 1, 2022, Plaintiffs in this case served a trial subpoena[1] on Mr. Grant, commanding that he appear for the February 1, 2022 trial to testify on behalf of Plaintiff Allan Shelton. *Shelton, et al. v. Monsanto Co.*, 1816-CV17026 (Jan. 1, 2022) (Ex. C).

The parties conferred regarding Mr. Grant's trial subpoena. Plaintiffs' counsel refused to withdraw the subpoena.

ARGUMENT

Pursuant to Missouri Supreme Court Rule 56.01, a court may prohibit discovery to "protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense." Mo.

[1] Plaintiffs' trial subpoena is defective under RSMo. § 491.130 because it was not served with the required mileage and witness fees. Counsel for Mr. Grant alerted Plaintiffs' counsel to this deficiency on January 7, 2022. Plaintiffs' counsel has stated that they will provide the required fees. The fees are currently outstanding.

Sup. Ct. R. 56.01(c)(1).[2] The court should grant a motion for a protective order where the considerations outlined in Rule 56.01(c) "outweigh the need for discovery." *Messina*, 71 S.W.3d at 607. Here, this Court should preclude Plaintiffs from compelling Mr. Grant to appear at trial for three main reasons. ***First***, in response to a subpoena issued in the Roundup® MDL litigation—litigation that presents issues identical to those presented by this case—Mr. Grant appeared voluntarily for a five-hour deposition. Thus, to the extent Mr. Grant had any relevant testimony, that testimony is preserved and available for Plaintiffs' use in this case. ***Second***, although Mr. Grant is retired, the Missouri Supreme Court's holding in *Messina* remains applicable where, as here: (1) the information sought in the testimony deposition could be obtained through less intrusive means, (2) plaintiffs' need for the testimony is slight, and (3) there will be significant burden, expense, annoyance, and oppression to Mr. Grant if he is compelled to appear for trial. 71 S.W.3d at 607-08. ***Third***, setting the precedent that Mr. Grant must appear and testify at Roundup® trials would be beyond burdensome and oppressive.

A. Mr. Grant's Trial Testimony is Unnecessary and Burdensome Because He Was Deposed in the MDL and He Does Not Possess Unique Personal Knowledge About This Case.

During his five-hour MDL deposition, Mr. Grant was questioned extensively regarding Roundup®. The over 250 pages of deposition testimony exhausts Mr. Grant's knowledge regarding the Roundup® litigation. In light of his June 2018 retirement from Monsanto, Mr. Grant simply does not have and will not have anything to add to his February 2019 testimony.

As Mr. Grant's MDL deposition makes clear, he had only general and high-level knowledge of Roundup® related tests and studies and the scientists and organizations that were

[2] Rule 56.01(c) is modeled after Federal Rule of Civil Procedure 26(c), and thus "federal precedent concerning that rule and its predecessor … is a persuasive guide for the construction of Rule 56.01(c)." *Stortz v. Seier*, 835 S.W.2d 540, 541 (Mo. App. 1992).

involved in those tests and studies. Other people in the Monsanto organization are much more qualified and knowledgeable than he to testify on these topics. In fact, Mr. Grant's deposition consisted mostly of lengthy discussions about documents he had never seen or only saw while preparing for his depositions as well as questions about people who he did not know and events that he was not aware of. As Mr. Grant emphasized on numerous occasions during his deposition, there are other people who are much better suited to discuss the documents, people, and events that Plaintiffs' counsel are interested in. In fact, more than twenty-five people in the Monsanto organization, including scientists, and members of the marketing and government/regulatory affairs departments, have already given deposition testimony in the Roundup® litigation. Finally, Mr. Grant has no knowledge of the individual Plaintiffs in this litigation. Therefore, there is nothing unique about this case that was not covered at the MDL deposition.

During his MDL deposition, Mr. Grant testified, to the best of his limited knowledge, on countless topics, including—his own background, what Roundup® is and what it does, the regulatory environment, Monsanto's relationship with its customers, studies related to Roundup®, allegations that Roundup® causes cancer, how Monsanto addresses people and organizations that allege a link between Roundup® and cancer, Mr. Grant's own statements on the alleged link between Roundup® and cancer, Roundup® labeling, Bayer's acquisition of Monsanto, OEHHA, California's Proposition 65, IARC's classification of Roundup® as a probable human carcinogen, and contact with the EPA regarding Roundup®. Moreover, Mr. Grant's deposition took place only a few months before the MDL trial. Not only were segments of his deposition played at the MDL trial, but his deposition was also featured during plaintiffs' opening and closing statements. Plaintiffs cannot identify a logical reason why, despite being able to use Mr. Grant's

comprehensive MDL deposition at trial, Mr. Grant must now appear and testify at the February 1, 2022 trial. Counsel is not entitled to a second bite at the apple.

B. Mr. Grant's Trial Testimony is Unwarranted Under *Messina*.

When deciding whether to issue a protective order "[f]or top-level employee [testimony], the court should consider: whether other methods of discovery have been pursued; the proponent's need for discovery by top-level [testimony]; and the burden, expense, annoyance, and oppression to the organization and the proposed deponent." *Messina*, 71 S.W.3d at 607[3]; *see also Wilkins v. Office of Mo. Att'y Gen.*, 464 S.W.3d 271, 276-77 (Mo. App. 2015) (applying *Messina* to trial subpoenas and affirming trial court's finding of good cause to quash trial subpoena directed at the state attorney general because there was no evidence that he had any first-hand "involvement in or knowledge of [the] employment decisions" at issue in the suit and lower-level state employees were more appropriate witnesses); *Rosen v. Smith Barney, Inc.*, No. A-5268-02T2, 2004 WL 6400515, at *2-3 (N.J. Super. Ct. App. Div. Feb. 10, 2004) (reversing order compelling deposition of chairman of corporation who did not have "unique or superior personal knowledge of discoverable information" and whose testimony would be redundant of that provided by other

[3] While there are no Missouri cases that apply an "Apex" type rule to former high-level executives, there are several courts that have done so: *Harapeti v. CBS Television Stations Inc.*, 2021 WL 3932424, at *2 (S.D.N.Y. Sep. 2, 2021) ("As the overwhelming body of case law … reflects, the purpose of the policy, to prevent needless harassment on account of the deponent's executive status, applies to former executives, too."); *K.C.R. v. Cty. of L.A.*, 2014 WL 3434257, at *3 (C.D. Cal. July 11, 2014) ("Executives and high-ranking officials continue to be protected by the apex doctrine even after leaving office."); *Robertson v. McNeil-PPC Inc.,* 2014 WL 12576817, at *17 (C.D. Cal. Jan. 13, 2014) (finding that apex doctrine applies to retired executives in order to avoid "a tremendous potential for abuse and harassment"); *Moyle v. Liberty Mut. Retirement Benefit Plan*, 2012 WL 5373421, at *3 (S.D. Cal. Oct. 30, 2012) ("Former executives . . . are within the scope of the apex doctrine."); *Sargent v. City of Seattle*, 2013 WL 1898213, at *3 n.2 (W.D. Wash. May 7, 2013) (This application makes perfect sense because a "former high-ranking [executive], whose past official conduct may potentially implicate [him] in a significant number of related legal actions, ha[s] a legitimate interest in avoiding unnecessary entanglements in civil litigation.").

witnesses). Here, all three considerations weigh heavily in favor of granting Mr. Grant's motion for protective order.

Plaintiffs have already pursued and obtained extensive discovery related to Mr. Grant's knowledge in this litigation. He was deposed in the MDL, that deposition transcript and video can be used at trial[4], and any trial testimony would mirror his deposition testimony. Moreover, Plaintiffs have no need for Mr. Grant's trial testimony. Mr. Grant's MDL deposition testimony is comprehensive and he has no knowledge of facts that are unique to Plaintiff Allan Shelton, or any Plaintiff in this matter. To the extent that Counsel has questions that were not asked at Mr. Grant's MDL deposition, those questions can be asked to the company witness(es) who are presented at trial. *Messina*, 71 S.W.3d. at 606-8 (Granting a protective order where "[p]ersons lower in the organization [] have the same or better information" than a top-level executive targeted for a deposition and where there would be "significant burden, expense, annoyance and oppression to" the executive in allowing the deposition of the top-level executive to proceed.). Finally, as further explained below, setting the precedent that Mr. Grant must appear and testify at Roundup® trials would be beyond burdensome and oppressive. Thus, Mr. Grant's trial testimony is unwarranted under *Messina*.

C. Compelling Mr. Grant to Give Trial Testimony In This Case May Set a Precedent That Will Cause Extreme Burden to Mr. Grant.

Mr. Grant has already provided ample testimony in the Roundup® litigation and compelling him to testify live at trial in this litigation presents him with the risk of a substantial, ongoing burden. Requiring Mr. Grant's presence and testimony at this trial could open the floodgates to similar trial subpoenas in dozens of cases.

[4] All objections made during the MDL deposition are preserved and subject to final ruling by the Court.

This case is one of 14 similar cases that are currently set for trial in Jackson County, St. Louis County or St. Louis City (including five cases involving OnderLaw). Additionally, these counties have numerous similar cases that are awaiting trial settings. If Mr. Grant is compelled to attend and testify at this trial, it potentially subjects him to similar subpoenas in all these cases and any in any cases that are set for trial in the future. That is an unwarranted imposition on a non-party witness with little (if any) involvement in the issues that are the subject of these trials.

CONCLUSION

For all of these reasons, Hugh Grant respectfully requests that the Court enter a protective order barring Plaintiffs from subpoenaing Hugh Grant's trial testimony in this matter.

DATED: January 11, 2022

Respectfully submitted,

HEPLERBROOM LLC

By: */s/ Gerard T. Noce*

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Attorneys for Non-Party Hugh Grant

CERTIFICATE OF SERVICE

The undersigned certifies that on January 11, 2022, the foregoing was filed with the Clerk of the Court for Jackson County, Missouri using Missouri Courts' eFiling System which sent notification of such filing to all persons listed int eh Court's electronic notification system.

/s/ Gerard T. Noce

EXHIBIT A

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY

ALLAN SHELTON, et al.,	)	
	)	
Plaintiffs,	)	**Case No. 1816-CV17026**
	)	
vs.	)	
	)	
MONSANTO COMPANY,	)	
	)	
Defendant.	)	

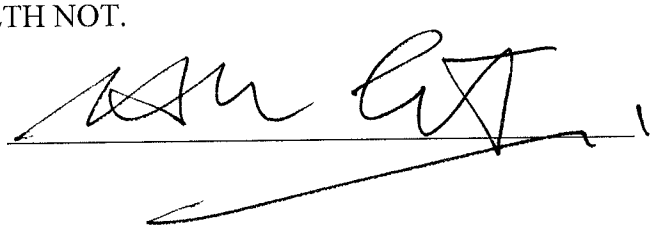
AFFIDAVIT OF HUGH GRANT

I, Hugh Grant, declare as follows:

1. My name is Hugh Grant. I am over the age of 18 and make this affidavit of sound mind and based on my personal knowledge. I submit this affidavit in support of my Motion for Protective Order Concerning the Trial Subpoena of Hugh Grant.
2. I served as Chairman and Chief Executive Officer of Monsanto Company from 2003 until my retirement in June 2018.
3. I am not employed by Bayer Corporation and I have no financial ties to Monsanto or Bayer.
4. I am not a toxicologist, an epidemiologist, or a regulatory expert and I did not work in the areas of toxicology or epidemiology while employed at Monsanto.
5. I do not have any expertise in the studies and tests that have been done related to Roundup® generally, or those related to Roundup® safety.
6. I have no personal knowledge of the particular Plaintiffs in this matter, including Plaintiff Allan Shelton.

7. On February 4, 2019, I gave a five-hour deposition in *In re: Roundup Products Liability Litigation*, MDL No. 2741. The testimony that I gave on February 4, 2019 was comprehensive and, as I have been retired since June 2018, I have no new information related to any Roundup litigation.
8. There are currently employees at Monsanto who are much better qualified than I to answer the questions posed to me at my February 4, 2019 deposition and any questions that would be asked at trial.
9. Defendant has not asked me to testify live in any scheduled Missouri Roundup trial.
10. The time required for me to attend and testify at this trial would be substantial, and it would be burdensome.

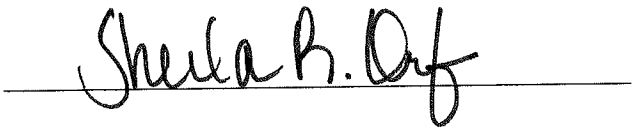
AFFIANT FURTHER SAYETH NOT.



STATE OF MISSOURI)
)
CITY OF St. Louis)

On this 11 day of January, 2022, before me personally appeared Hugh Grant to me known to be the person described in and who executed the foregoing and acknowledged that he executed the same as his free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed by official seal in the County and State aforesaid, the day and year first above written.



My Commission Expires:

SHEILA R. ORF
Notary Public - Notary Seal
STATE OF MISSOURI
St. Louis County
My Commission Expires: May 11, 2025
Commission #13404541

EXHIBIT B

IN THE CIRCUIT COURT OF JACKSON COUNTY
STATE OF MISSOURI, AT KANSAS CITY

ALLAN SHELTON, *et al.*,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 1816-CV17026
	)	
MONSANTO COMPANY,	)	Division 13
	)	
Defendants.	)	

AMENDED SCHEDULING ORDER

NOW on this 2nd day of February, 2021, the Court being fully advised enters the following Amended Scheduling Order:

Introduction

This Court, as well as the other judges of the 16th Judicial Circuit, are committed to the concept of case management. With that in mind, counsel is given great latitude in selecting their trial date. With the volume of cases pending in the 16th Judicial Circuit, rearranging trial dates can be very difficult. **Counsel should be aware that once this Scheduling Order is entered the trial date shall not be changed absent a showing of good cause based on exceptional circumstances. Failure to complete Discovery consistent with this Order shall not be a basis for continuance. Counsel should carefully read this Scheduling Order upon its receipt.**

1. The above cause is Specially Set for a three-week trial on January 31, 2022. This setting is considered a **NO CONTINUANCE** setting.

2. The parties should contact the Court prior to filing any written pleadings regarding discovery disputes. After hearing the arguments of all parties, the Court may request a motion, but it is hoped that the Court will be able to facilitate a resolution to any discovery dispute without further delay of motion and response times.

3. The Parties are to contact the Court thirty (30) days before the trial date to schedule a Pre Trial Conference. Parties shall file Motions in Limine, Deposition Designations and Proposed Jury Instructions seven (7) days prior to the Pre-Trial Conference. Responses to Motions in Limine, Counter Designations and Objections to Deposition Designations shall be filed on or before the date of the Pre-Trial conference.

4. The parties agree that discovery in In re: Roundup Prods. Liab. Litig., MDL No. 2741, the multidistrict litigation proceeding in the Northern District of California, California JCCP No. 4953, and any other litigation including Missouri wherein plaintiffs allege that they developed non-Hodgkin's lymphoma following exposure to Roundup® branded herbicide, may be used in this action as if it were conducted in this action, including all expert depositions and document production, but neither party waives its right to conduct any discovery permitted under the rules of this Court, except as otherwise specified by this Order or other Orders of the Court. The confidentiality of any such documents or depositions shall be controlled by the protective order entered in this action.

5. Parties must provide copies (or a list as provided below) of materials reviewed and relied upon by each retained expert witness in formulating their opinion at least ten (10) days prior to their respective scheduled depositions. For any publicly available documents or documents produced in this litigation, the party may identify the document either by name (if publicly available) or Bates number (if previously produced). Any non-publicly available documents that have not been previously produced shall be produced as part of the disclosure of materials reviewed and/or relied upon.

6. The Missouri Rules of Civil Procedure shall govern all expert witness depositions in this case, including any depositions scheduled outside the State of Missouri or in any foreign nation.

7. Parties may serve a Notice of Deposition (which shall be filed in the above-captioned lawsuit) in lieu of subpoenas to schedule testimony and request documents from any retained expert witness. The Notice of Deposition shall apply with equal force to expert witnesses located outside the State of Missouri or in any foreign nation.

8. The deadline for filing a motion to amend pleadings is February 5, 2021.

9. The deadline for filing a motion to add parties is February 5, 2021.

10. Plaintiff(s) shall designate all retained or non-retained expert witnesses on or before July 21, 2021.

11. Plaintiff(s) shall produce all retained or non-retained expert witnesses for deposition on or before August 25, 2021.

12. Defendant(s) shall designate all retained or non-retained expert witnesses on or before August 27, 2021.

13. Defendant(s) shall produce all retained or non-retained expert witnesses for deposition on or before September 29, 2021.

14. All discovery will be completed on or before September 29, 2021.

15. All dispositive motions, especially motions for summary judgment and expert challenges, will be filed on or before October 1, 2021. Summary judgment and expert challenges motions must be filed **no less** than a hundred and twenty (120) days prior to the trial date. The briefing schedule for summary judgment motions shall be governed by Supreme Court Rule 74.04. For all other dispositive motions, the same briefing schedule shall be followed. Any dispositive motions filed less than a hundred and twenty (120) days prior to the trial date will be taken with the case, unless the Court rules otherwise.

16. A hearing on dispositive motions (summary judgment and expert challenges) will be held the week of December 13, 2021.

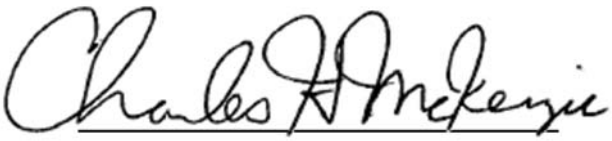
17. An agreed upon joint jury questionnaire shall be submitted by the parties to the Court on January 12, 2022. If the parties cannot agree upon a joint questionnaire, the Court shall revolve any issues in dispute by January 19, 2022. On January 26, 2022, a 120-person jury panel will be assembled. Those on the panel entitled to be excused based on the panel member not being a qualified juror or based on hardship shall be excused at the Court's discretion. The jury questionnaire will be provided to the remaining panel for their completion at the Court's direction. The completed jury questionnaires will then be given to the parties on January 28, 2022 by noon. Jury selection (voir dire) will be conducted with the remaining jurors on the panel on January 31, 2022.

18. Any of the above time deadlines, save the trial date, pretrial conference and filing of dispositive motions, may be changed by agreement of the parties without notice or a motion to the Court, as long as such changes do not affect the trial date. Any desire to make changes without the agreement of the parties will require leave of Court.

19. Should circumstances arise that substantially alter the feasibility of the dates set forth in the scheduling order the parties should immediately contact the Court. The failure of the parties to follow the dates set forth in the order without prompt notice to the Court shall not serve as a basis for a continuance.

20. Parties shall begin mediation by no later than July 30, 2021.

IT IS SO ORDERED.



CHARLES H. MCKENZIE, Judge

Certificate of Service

This is to certify that a copy of the foregoing was automatically forwarded to the attorneys of record through the Court's eFiling system.

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ADAM ROBERT ALB, Attorney for Plaintiff, 20 CENTER LINE DRIVE, TROY, MO 63379

-,

EXHIBIT C

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
☒ AT KANSAS CITY ☐ AT INDEPENDENCE

ALLAN SHELTON

vs

Case No. 1816-CV17026

MONSANTO COMPANY

SUBPOENA
ORDER TO APPEAR/PRODUCE DOCUMENTS

The State of Missouri to: Hugh Grant, 4 Hortense Place, St. Louis, Missouri 63108 (person subpoenaed).

You are commanded:

☒ To appear at the Jackson County Circuit Court, 415 East 12th Street, Division 13, Kansas City, Missouri 64106
on Tuesday, February 1, 2022, at 9:00 A.M.

☒ To testify on behalf of: Plaintiff Allan Shelton, who has requested your attendance.

☐ To contact _____
on _____ (date), at _____ (time).

☐ To bring the following: _____

COURT ADMINISTRATOR'S OFFICE
CIRCUIT COURT OF JACKSON COUNTY, MISSOURI

December 16, 2021
DATE

BY _____
COURT ADMINISTRATOR

Plt/Pet Attorney: W. Wylie Blair
Address: OnderLaw, LLC, 110 E. Lockwood Ave
St. Louis, Missouri 63119
Phone: c/o Laura Freeborn 314-227-7639

Def/Res Attorney: Anthony R. Martinez
Address: Shook, Hardy & Bacon, LLP
2555 Grand Blvd, Kansas City, MO 64108
Phone: 816-559-2683

SUBPOENA RETURN
MUST BE SWORN BEFORE A NOTARY PUBLIC IF SUBPOENA IS NOT SERVED BY AN AUTHORIZED OFFICER

I certify that I have executed this writ in _____ County, MO on _____ (date), at _____ (time), by:

☐ Delivering a copy personally to the person subpoenaed at _____ (address).
☐ Making a diligent search for and failing to find the person to be subpoenaed.

FEE PAID $ _____

_____
PERSON SERVING SUBPOENA

STATE OF MISSOURI
COUNTY OF JACKSON

Subscribed and sworn to before me on _____

(SEAL)

_____
NOTARY PUBLIC

My Commission Expires: _____

EXHIBIT B

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	**PRETRIAL ORDER NO. 4: PLAINTIFFS' LEADERSHIP STRUCTURE**

The Court has considered the parties' submissions on the plaintiffs' leadership structure and orders as follows.

I. Co-lead counsel

The Court appoints as co-lead counsel Robin Greenwald of Weitz & Luxenberg, PC; Michael Miller of The Miller Firm, LLC; and Aimee Wagstaff of Andrus Wagstaff, PC. The court vests co-lead counsel with the responsibility for coordinating and overseeing MDL activities for the plaintiffs. Specifically, co-lead counsel have the authority and the duty to:

1. Propose agenda items for case management conferences and appear at case management conferences and hearings;

2. Chair the Plaintiffs' Executive Committee;

3. Schedule and set agendas for Executive Committee meetings, and keep minutes or transcripts of those meetings;

4. Draft case management orders for the orderly and efficient litigation of this case, including a case management order that provides for the duties and responsibilities of the MDL

leadership structure as set forth herein;

5. Enter into stipulations with the defendants;

6. Sign and file all pleadings relating to all actions in the MDL;

7. Determine the plaintiffs' position on matters arising during the pretrial proceedings, and present that position in pleadings, briefs, motions, oral argument, or as otherwise appropriate, personally or by a designee;

8. Coordinate and conduct discovery on behalf of the plaintiffs, consistent with the requirements of the Federal Rules of Civil Procedure and the Local Rules of the Northern District of California;

9. Liaise with defense counsel;

10. Schedule and engage in settlement negotiations with the defendants, and if there is a settlement, propose a claims protocol and/or plan of allocation;

11. Consult with and employ expert witnesses;

12. Enter into contracts and other agreements with expert witnesses or vendors – such as a document depository vendor or court-reporting services – as necessary to litigate this MDL;

13. Establish protocols for common benefit billing and disbursements, maintain records of such billing and disbursements advanced by Executive Committee members, and report periodically to the Executive Committee concerning disbursements and receipts;

14. Maintain and collect time and expense records for work performed, time billed, costs incurred, and other disbursements made by plaintiffs' counsel whose work has been specifically authorized, and submit at the Court's request in writing, ex parte, and in camera reports to the Court regarding time billed in the prosecution of this action;

15. Retain the services of any attorney not part of the Executive Committee to perform any common benefit work, provided the attorney so consents and is bound by the compensation structure established in this MDL;

16. Establish and maintain a depository for orders, pleadings, hearing transcripts, and all documents served on plaintiffs' counsel, and make such papers available to plaintiffs' counsel

upon reasonable request;

17. Otherwise coordinate the work of all plaintiffs' counsel, and perform such other duties as the co-lead counsel deem necessary, in order to advance the litigation or as authorized by further order of the Court; and

18. Perform any other necessary administrative or logistic functions of the Executive Committee, and carry out any other duty ordered by the Court.

Absent agreement of the parties in advance, all requests to and negotiations with Monsanto shall be made by plaintiffs' co-lead counsel unless the request or negotiation relates to a case-specific issue that doesn't impact other matters within the MDL.

II. Plaintiffs' Executive Committee

The Court appoints the co-lead counsel as members and chairs of the Executive Committee. The Court further appoints as members of the Executive Committee Michael Baum, Baum Hedlund Aristei and Goldman; Hunter Lundy, Lundy Lundy Soileau & South; and Yvonne Flaherty, Lockridge Grindal Nauen. The Executive Committee is responsible for assisting in all aspects of the MDL, as directed by the co-lead counsel.

III. Liaison counsel

The Court appoints as liaison counsel Lori Andrus, Andrus Anderson, LLP and Mark Burton, Audet and Partners. The role of co-liaison counsel includes administrative matters, such as:

1. Liaising with plaintiffs' attorneys who file cases in this MDL and who are not appointed to leadership in this MDL;

2. Preparing, maintaining, and transmitting copies of documents served in this MDL;

3. Maintaining the Court's orders and notices and the JMPL's orders and notices for all plaintiffs' counsel; and

4. Coordinating between the MDL and the various state court actions currently pending or later filed.

* * *

The Court may alter the leadership counsel or the allocation of responsibilities if circumstances warrant, either on a party's motion or sua sponte.

Co-lead counsel must submit a proposed Common Benefit and Expense Order by no later than December 16, 2016.

IT IS SO ORDERED.

Dated: December 7, 2016

VINCE CHHABRIA
United States District Judge

EXHIBIT C

IN THE CIRCUIT COURT OF JACKSON COUNTY
STATE OF MISSOURI
AT KANSAS CITY

ALLAN SHELTON,	)	
	)	
Plaintiff,	)	Case No. 1816-CV17026
	)	
v.	)	Division No. 13
	)	
MONSANTO COMPANY,	)	
	)	
	)	
Defendant.	)	
	)	

PLAINTIFF ALLAN SHELTON'S RESPONSE TO NON-PARTY HUGH GRANT'S MOTION FOR PROTECTIVE ORDER CONCERNING HIS TRIAL TESTIMONY

COMES NOW Plaintiff, by and through his undersigned counsel, and hereby responds to Non-party Hugh Grant's Motion for Protective Order Concerning his Trial Testimony as follows:

INTRODUCTION

Mr. Hugh Grant ("Mr. Grant") has worked for Defendant Monsanto for more than three decades. Beginning in 1981, Mr. Grant began selling Roundup to farmers and eventually led a sales team for Monsanto. Mr. Grant then moved on to lead Monsanto's Roundup business from Monsanto's headquarters in St. Louis, Missouri. From 2003 until Mr. Grant's retirement in June 2018, Mr. Grant served as Monsanto's CEO and Chairman of Board of Directors. During Mr. Grant's employment with Monsanto, Mr. Grant was personally and directly involved with the safety of Roundup, including lobbying efforts to convince customers and regulatory bodies that Roundup was safe. Mr. Grant made many public statements on Roundup use and safety. He was instrumental in the Company's response to the finding by the International Agency for Research on Cancer ("IARC") that Roundup's ingredient glyphosate was a probable human carcinogen, the

largest challenge in the Company's history. No longer a high-ranking executive at Monsanto, Mr. Grant is retired and currently resides in St. Louis, Missouri.

As a Missouri resident who has unique and personal knowledge related to issues that are at the heart of Plaintiff Shelton's claims and Monsanto's defenses, Plaintiff Shelton has a right to subpoena Mr. Grant to appear and testify at Plaintiff Shelton's trial. Mr. Grant's previous job title does not shield him from being called to testify about his personal knowledge and actions concerning Monsanto and the safety of Roundup – the paramount issues of this lawsuit. This is not the first time Mr. Grant has attempted to evade testifying in a Roundup trial. Mr. Grant made an identical request in another roundup case filed in Missouri, but the court was unpersuaded by the same arguments he makes here. The Court, in *James Adams, Jr., et al. v. Monsanto Company,* agreed that, "the trial judge has broad discretion in administering the rules of discovery" and therefore, the Special Master's recommendation to the Court was for Mr. Grant's motion be denied. See *Adams* Order dated Dec. 5, 2019 at p. 4, attached as **Exhibit 1**.

ARGUMENT

A litigant has the right to require the attendance at the trial of those witnesses, and the production of such documents, as in his judgement are required by him to meet the issues raised in the action. *State ex rel. R.W. Filkey, Inc. v. Scott*, 407 S.W.2d 79, 82 (Mo. Ct. App. 1966); *Halford v. Yandell*, 558 S.W.2d 400 (Mo. Ct. App. 1977). Missouri does not permit defendants to shield witnesses – even top-level executives – when the activities and decisions of that witness are at issue before the court. *See Cox v. Kan. City Chiefs Football Club, Inc.*, 473 S.W.3d 107 (Mo. 2015). Depositions and trial testimony of top-level executives are governed by the same rules of civil procedure that govern all depositions, trial testimony, and discovery in Missouri civil litigation. *See State ex rel, Ford Motor Co. v. Messina*, 71 S.W.3d 602, 608 (Mo. 2002); Mo. Sup.

Ct. R. 56.01. Although Missouri Rule 56.01(c) addresses discovery issues, Rule 56.01(c) has also been held applicable to trial testimony. *See e.g., Wilkins v. Office of the Missouri Attorney General*, 464 S.W.3d 271 (Mo. Ct. App. 2015).

Thus, even top-level executives must testify when they have personal knowledge and answers to questions that only that witness can answer. *Cox*, 473 S.W.3d at 127 (quoting *Messina*, 71 S.W.3d 602). Indeed, Mr. Grant points out "there are no Missouri cases that apply an 'Apex' type rule to former high-level executives[.]" *See* Nonparty Hugh Grant's Mot. for Protective Order Concerning His Trial Test. and Accompanying Mem. of Law, at 6. Contrary to Mr. Grant's cited nonbinding authority, this is because Missouri courts have expressly declined to adopt the "Apex" rule. *Messina*, 71 S.W.3d at 607; *see Cox*, 473 S.W.3d at 127 (same). Besides, even if this Court did decide to adopt the "Apex" rule, Mr. Grant would still be subject to the same trial testimony requirements as all other Missourians because Mr. Grant is ***retired*** and is no longer a top-level executive.

Described more fully below, Mr. Grant's Motion should be denied for three main reasons. **First,** Mr. Grant's trial testimony is required because Mr. Grant has unique personal knowledge and was personally involved in the issues that are critical to Plaintiff's claims and Defendants defenses. **Second,** the burden and expense of Mr. Grant's appearance at Plaintiff Shelton's trial is minimal, balanced against Plaintiff Shelton's need for Mr. Grant's testimony. **Third,** Mr. Grant has failed to provide any good cause for the need of a protective order concerning his trial testimony.

MR. GRANT'S PERSONAL KNOWLEDGE AND INVOLVEMENT

Missouri law supports compelling Mr. Grant to testify at Plaintiff Shelton's trial. In Missouri, top-level executives may be compelled to testify when activities and decisions of that

witness are at issue before the court. *Cox*, 473 S.W.3d 107. Mr. Grant was not merely a corporate figure for Monsanto who made public statements on behalf of Monsanto[1]; instead, Mr. Grant was an ***active*** participate in the internal discussions of the safety of Roundup, he was continually informed and updated on the studies and literature and acted personally and as a ***decision-maker*** to communicate Monsanto's false message that Roundup was safe to consumers and regulatory authorities. In fact, his own knowledge and conduct, along with others, are subject of Plaintiff Shelton's allegations, including:

> Monsanto has wrongfully concealed information concerning the dangerous nature of Roundup and its active ingredient glyphosate, and further made false and/or misleading statements concerning the safety of Roundup and glyphosate . . . The information that Monsanto did provide or communicate failed to contain relevant warnings, hazards, and precautions that would have enabled consumers such as Plaintiffs to utilize the products safely and with adequate protection. Instead, Monsanto disseminated information that was inaccurate, false, and misleading and which failed to communicate accurately or adequately the comparative severity, duration, and extent of the risk of injuries with use of and/or exposure to Roundup and glyphosate; continued to aggressively promote the efficacy of its products, even after it knew or should have known of the unreasonable risks from use or exposure; and concealed, downplayed, or otherwise suppressed, through aggressive marketing and promotion, any information or research about the risks and dangers of exposure to Roundup and glyphosate.

1st. Am. Pet. at ¶¶ 111, 117-, *Shelton v. Monsanto Co.*, No. 1816-CV17026 (Mo. 16th Cir. filed July 8, 2019). As a result of Mr. Grant's actions and knowledge, trial testimony concerning Mr. Grant's own statements and actions will corroborate how Monsanto vigorously promoted Roundup

[1] At any rate, Mr. Grant repeatedly made public statements regarding the safety of Roundup and glyphosate. *See e.g.,* Christopher Doering, *EPA pulls report calling herbicide glyphosate safe*, Des Moines Register (May 4, 2016) (emphasis added) ("***No pesticide regulator in the world considers glyphosate to be a carcinogen*** . . . glyphosate has a 40-year history of safe and effective use."); Lisa Brown, *Activists' proposals rejected by Monsanto shareholders*, St. Louis Post (Jan. 30, 2016) (Proposals calling for an independent board chairman, a report on Roundup's safety and lobbying disclosures were each rejected by Monsanto shareholders, where Monsanto executives, including Mr. Grant recommended shareholders to vote against the proposal. After the proposal was rejected and calling the creation of the report unwarranted, Mr. Grant stated "Glyphosate has been very effective and safe tool for farmers and others around the world for 40 years.").

and proclaimed Roundup's safety when Monsanto knew or should have known that the truth was to the contrary.

Based on discovery in this case, Mr. Grant's personal knowledge and involvement includes[2]:

- In an email where Mr. Grant congratulated Monsanto employees for their work on the ghostwritten review titled Williams et al., *Safety Evaluation and Risk Assessment of the Herbicide Roundup and Its Active Ingredient, Glyphosate, for Humans*, REGULATORY TOXICOLOGY AND PHARMACOLOGY 31, 117-165 (2000), it is apparent from at least May of 2000, that it was Mr. Grant's personal directive to Monsanto employees to "keep [him] in the loop as you build the PR info" to defend Roundup. *See* Email from Hugh Grant to Lisa Drake, et al., MONGLY02624347, attached as **Exhibit 2**.

- In 2011, when a Reuters article reported a link between Roundup and cancer, documents show that Hugh Grant personally directed and orchestrated a rebuttal campaign, recommending that farmers be deployed as a strategy to "push back." *See* Email from Hugh Grant to Lee Quarles, et al., MONGLY03443291-6., attached as **Exhibit 3**.

- Mr. Grant served as the face of Monsanto's publicity efforts, personally appearing and representing to the public, in interviews on public radio for example, that "Roundup is not a carcinogen." *See Here & Now – Monsanto CEO: 'Roundup Is Not A Carcinogen'*, wbur (March 31, 2016), available at https://www.wbur.org/hereandnow/2016/03/31/monsanto-roundup-pesticides, attached as **Exhibit 4**.

- As Monsanto became aware that the International Agency for Research on Cancer ("IARC ") was expected to classify glyphosate as a probable carcinogen, Mr. Grant was advised of the information available in the report and Monsanto's preparations to discredit the report. *See* Emails from Melissa Duncan to Hugh Grant, et al., MONGLY09330907-9, attached as **Exhibit 5**.

- In earnings calls for investors, it was Mr. Grant who personally responded to inquiries about the safety of Roundup by describing the IARC's classification of glyphosate as a probable carcinogen as "junk science" and criticizing the methodology of that report as "cherrypicking." *See* Monsanto's CEO, Hugh Grant On Q2 2015 Results - Earnings Call Transcript, available at https://seekingalpha.com/article/3045726-monsantos-mon-ceo-hugh-grant-on-q2-

[2] For the purposes of this Response, this represents only a fraction of Mr. Grant's personal knowledge and involvement with Roundup and the facts alleged in Mr. Shelton's Petition.

2015-results-earnings-call-transcript, attached as **Exhibit 6.**

- Mr. Grant was involved in the "outreach to appropriate scientists, regulators, industry stakeholders and media on potential issues" including specifically "human health allegations" as part of Monsanto's stated, "Business Goal" of "science issue management." *See* Daniel Goldstein's notes regarding Business Goals, MONGLY00940258-9, attached as **Exhibit 7**.

- In 2015, regarding IARC's glyphosate classification decision, Mr. Grant discussed with Monsanto executive Brett Begemann stating "We will need to take a hard line on this and try to expose the mischief. Paraquat as a more benign product is just bizarre!" Begemann replies to Mr. Grant "I still think we need to aggressively expose the WHO on this junk science in their own shop and with damage control of their own brand maybe they will push this [IARC decision] back." *See* Email from Hugh Grant to Brett Begemann, MONGLY03442449, attached as **Exhibit 8**.

- In 2015, Monsanto employees including Mr. Grant worked to discredit and underscore IARC's credibility. Specifically, "We also understand that IARC's findings from its review of red meat and processed meat could publish in the Lancet . . . which will likely generate significant coverage/attention, and may *further underscore IARC's credibility*. Communications with the beef and pork industry and underway." In doing this, Monsanto made sure to be careful not to "overly insert Monsanto into the discussion as that could be polarizing[,]" especially when communicating with U.S. Senators. *See* Emails from Mellissa Duncan to Hugh Grant, et al., MONGLY03270274-5, attached as **Exhibit 9**.

- In 2015, when the American Academy of Pediatrics refused to accept Monsanto's $500,000 donation based on health concerns about continued use of the glyphosate in Roundup, it did so by writing directly to Hugh Grant.[3] Accordingly, it was Mr. Grant who crafted Monsanto's response to the American Academy of Pediatrics. *See* Grant Dep. 78-85, Feb. 4, 2019, *In Re: Roundup Prods. Liab. Litig.*, Case No. 16-md-02741-VC, MDL No. 02741 (N.D. Cal. 2016); Email chain regarding response to American Academy of Pediatrics, MONGLY03103015, attached as **Exhibit 10**.

- In 2016, Hugh Grant personally lobbied EPA Administrator Gina McCarthy, former U.S. Senator and Agriculture Committee Chair Blanche Lincoln, former EPA Assistant Administrator for the Office of Chemical Safety & Pollution Prevention, Jack Housenger former EPA Director of Office of Pesticide Programs, and others from the EPA on the topic of glyphosate. *See* Email from Michael Parrish to Jeremy stump, MONGLY0807698, attached as **Exhibit 11**.

[3] This was not the first time concerned citizens wrote directly to Mr. Grant. *See e.g., Monsanto Emails: 'Let's Beat the S*** Out of' Moms Worried About Cancer-Linked Weedkiller*, Environmental Working Group (Aug. 28, 2019), available at https://www.ewg.org/news-insights/news-release/monsanto-emails-lets-beat-s-out-moms-worried-about-cancer-linked, attached as **Exhibit 12** *JOIN THE OPEN LETTER TO MONSANTO CEO HUGH GRANT*, AVAAZ, available at https://secure.avaaz.org/campaign/en/monsanto_open_letter_21/, attached as **Exhibit 13.**

- When the European Union considered whether to renew approval for the sale of glyphosate in Europe in 2016, it was Hugh Grant who personally signed off on his team's recommendation not to have an ET member "out in front" for media interviews and to instead "use farmers." *See* Email chain between Hugh Grant and Samuel Murphey, MONGLY10187333-40, attached as **Exhibit 14**.

As illustrated above, Mr. Grant is uniquely positioned to testify regarding his own personal knowledge, activities, and involvement in directing Monsanto's decision-making in the face of scientific information that Roundup was causing cancer.

Finally, Mr. Grant's assertion that he "is not a toxicologist, epidemiologist, or a regulatory expert" or that he "has no personal knowledge of the particular Plaintiffs in this matter" are trivial, irrelevant, and inconsequential. *See* Nonparty Hugh Grant's Mot. for Protective Order Concerning His Trial Test. and Accompanying Mem. of Law, at 1-4. Simply put, Plaintiff Shelton does not wish to question Mr. Grant on toxicology or epidemiology, nor does he wish to question Mr. Grant about his personal relationship to Plaintiff Shelton. Instead, Plaintiff Shelton solely wishes to question Mr. Grant on his own unique personal knowledge, conduct, and involvement in Monsanto's efforts to discredit and conceal the safety concerns about Roundup when he was responsible for the day-to-day operations and long-term business goals of Monsanto.

I. Mr. Grant's Trial Testimony is Required because Mr. Grant has Personal Knowledge and was Personally Involved in the Issues that are Paramount to this Lawsuit.

Missouri law supports compelling Mr. Grant to testify. In *Cox*, plaintiff filed a discrimination lawsuit against the Kansas City Chiefs and argued that discriminatory policies originated with the Kansas City Chief's CEO himself such that there were specific questions that only the CEO could answer. *Cox*, 473 S.W.3d at 127. Specifically, it was alleged that the CEO made a statement that the company "wanted to go in a more youthful direction." *Id*. This was the extent of the evidence of the CEO's personal knowledge and involvement. The Missouri Supreme

Court held that it was an abuse of discretion to excuse the CEO from testifying becauseof the CEO's personal knowledge and involvement. *Id.* The Court's rationale was straightforward; because the CEO was alleged to have made a statement that was "clearly relevant and discoverable," plaintiff had the right to question him about it. *Id*. As set forth above, Mr. Grant was similarly an originator of policies and positions at Monsanto regarding the safety of Roundup, and, in addition, a primary facilitator and communicator of Monsanto's false safety information regarding Roundup. A generic Monsanto "corporate witness" cannot testify about what *Mr. Grant knew* before making the false statements to the public, investors, and to regulators about the safety of Roundup, or what *Mr. Grant knew and what Mr. Grant said duringmeetings with the EPA* about the safety of Roundup, or *Mr. Grant's response* to inquiries about the safety of Roundup, or *Mr. Grant's role as a decision maker, and what those decisions were based on,* regarding Monsanto's continued promotion of Roundup as safe in the face of concerns from the scientific community.

In *Messina*, upon which Mr. Grant primarily relies, the court refused to compel certain Ford executives to be questioned, but the case is readily distinguishable and stands for the same proposition as *Cox*. In *Messina*, the plaintiff alleged a defect in Ford's 1987 Bronco tires. *Messina*, 71 S.W.3d at 605. The plaintiff sought to depose Ford's executives and conceded that it was for the purpose of punitive damages. *Id*. Specifically, the plaintiff wanted to ask the executives about a 2001 recall of Firestone tires to support its argument that Ford should have recalled the 1987 Bronco tires. *Id*. Ford proffered evidence that the executives were not involved in the Bronco tires back in 1987, but offered to produce the engineers that were involved, which plaintiff refused. *Id*. Plaintiff offered no evidence to show the executives wereinvolved in the 1987 Bronco tires.

Without question, the witness and underlying facts in *Messina* are manifestly different than those here. First, there was no evidence in *Messina* that the executives had personal knowledge or

any involvement whatsoever of the 1987 Bronco tires. The engineers that were tendered and who were involved could answer the questions. Second, plaintiff's insistence on taking the executive's deposition admittedly for punitive damage purposes was viewed as harassing. Third, and of particular importance, there was no ***need*** for the executives' testimony because the evidence plaintiff was seeking was inadmissible. As the *Messina* Court explained, for punitive damages, evidence of current conduct is admissible only if it is connected to the liability-creating act and shows defendant's disposition toward the product at issue. *Id* at 608. Thus, evidence of Ford's conduct in recalling the 2001 Firestone tires would not be admissible to illuminate Ford's disposition toward the 1987 Bronco tires. Therefore, a protective order was proper because the executives had no personal knowledge or connection to the product at issue, the same evidence could be obtained from the engineers who were involved, and there was no need for inadmissible evidence. These factual deficiencies were readily identified and distinguished by the Missouri Supreme Court in *Cox*, which recognized *Messina* was decided "based on the facts at issue in that case." *Cox*, 473 S.W.2d at 127.

Messina does not support Mr. Grant's position for two additional reasons related to Mr. Grant's retirement. While the *Messina* court protected some executives at issue from testimony, the court ruled the ***former*** CEO who was no longer an executive could be called to testify: "Nasser's tenure as CEO and President ended while this writ was pending. Since he is no longer a top-level Ford employee, Ford's arguments against his deposition are moot." *Messina*, 71 S.W.3d at 607. This finding is lethal to Mr. Grant's Motion for Protective Order for multiple reasons. First, it shows that the protections against deposition of high-level executives belongs to the defendant corporation rather than the executive himself. Second, it no longer applies when Mr. Grant retired. This is because the underlying rationale of *Messina* is to prevent "***disadvantage to an organization***

if its top-level employees are deposed frequently and unnecessarily." *Id.* at 606 (emphasis added). On that basis, as a retiree, the right to protect high-level executives is not Mr. Grant's to assert, and to the extent it might have applied during his time as CEO of Monsanto, the protection is no longer available to him.

In addition to the Missouri Supreme Court decision in *Cox*, at least two Missouri trial judges have compelled the testimony of CEO's in products liability litigation in recent years. For example, in *Orrick v. Smithkline Beecham Corporation, d/b/a GlaxoSmithKline*, the Honorable Judge David L. Dowd faced the same arguments made here by Mr. Grant by a corporate defendant in the Paxil litigation. *Orrick v. Smithkline Beecham Corporation, d/b/a GlaxoSmithKline*, Case No. 1322-CC00079-01, Div. 2 (Mo. Cir. Ct., 22nd Circuit, St. Louis City, Aug. 27, 2015). The *Orrick* Plaintiffs sought to depose Jean-Pierre Garnier, Ph.D., who was the CEO of the defendant, during the relevant time period, based on his personal involvement in the promotion, sale and marketing of the drug Paxil. *Orrick*, Case No. 1322-CC00079-01. The CEO's knowledge included information obtained as the recipient of FDA correspondence, communications had with other departments of the defendant concerning the status of Paxil's marketing and research, and the transmission of personal emails to other of defendant's executives about the research, studies, and FDA communications relating to Paxil. *Id*. Based on those facts, Judge Dowd agreed with plaintiffs' position, ordering that the plaintiffs were entitled to question the CEO as to his personal knowledge of those areas. *Id.*

Another example can be seen in *Young et al. v. Johnson & Johnson, et al.*, where the Honorable Judge Rex M. Burlison faced an argument by a corporate defendant to oppose the deposition of a top-level executive in the talcum litigation. Opp'n to Mot. at 1-19, *Young et al. v. Johnson & Johnson, et al.*, No. 1522-CC09728-02, Div. 10 (Mo. Cir. Ct. Sep. 11, 2018).

Specifically, the *Young* plaintiffs sought to depose Alex Gorsky, who was the CEO of the defendant, during the relevant time period, based on his personal involvement in the promotion, sale and marketing of the defendant's talcum products. Mot. to Compel at 6-9, *Id*. The CEO's knowledge included information procured as a personal recipient of adverse event reports submitted by consumers reporting that they, or a family member, had been diagnosed with ovarian cancer and were heavy talc users. *Id*. at 7. Additionally, the CEO was the recipient of emails discussing media reports detailing the science of talc safety. *Id*. Even after the asbestos-in-talc verdict on July 12, 2018, the CEO chose to go on various news networks and make public, material statements to investors in an attempt to reassure the public at large and investors that talc is safe, does not contain asbestos, and that consumers should continue to purchase defendant's talc products without concern. Under these circumstances, Judge Burlison agreed with plaintiffs' argument, ordering that the plaintiffs were entitled to take the deposition of the CEO as to his personal knowledge of those areas, under certain limitations prescribed by the Court. Order at 3-5, *Young*, No. 1522-CC09728-02. Judge Burlison justified his decision as the defendant's CEO held relevant information that could not be discovered by less intrusive means, including his awareness of the decision-making process regarding the products to convey the defendant's corporate viewpoint, and that the depositions of other employees could not address the issues of the CEO's personal knowledge.

In another Missouri 22nd Circuit case, the Honorable Mark H. Neill permitted a plaintiff to depose the defendant's CEO under certain limitations determined by the Court. *See generally Ennis Brian Anders, et al. v. Medtronic, Inc., et al.*, No. 1311-CC10210-02, Div. 5 (Mo. Cir. Ct. Dec. 26, 2013). In *Anders, et al. v. Medtronic, Inc., et al.*, Judge Neill ordered the deposition of

the sitting CEO of Medtronic Inc., Omar Ishrak, regarding Medtronic's defective Infuse product. *Anders*, No. 1311-CC10210-02. In the Courts ruling, Judge Neill stated:

> Plaintiffs have shown a need to depose Dr. Omar Ishrak [defendant's CEO]. Plaintiffs have shown that Dr. Omar Ishrak was uniquely involved in the subject of the lawsuit, that ***he was the public spokesperson*** regarding the Infuse controversy and was involved in the promotion of Infuse medical devices and the commissioning of the Yale Open Data Access project. ***This unique involvement goes to the heart of Plaintiffs' claims and affects the liability of Defendants***.

Order at 5, *Anders*, No. 1311-CC10210-0 (emphasis added). In effect, under Missouri law, top-level executives like Mr. Grant must testify when they have personal knowledge and were actively involved in conduct squarely relevant to the issues of this lawsuit such that there are "specific questions that only [Mr. Grant] can answer." *Cox,* 473 S.W.3d at 107, 127. In short, Mr. Grant's former Monsanto job title does not supersede Missouri law.

II. The Burden and Expense of Mr. Grant's Appearance at Plaintiff Shelton's Trial is Minimal, Balanced Against Plaintiff Shelton's Need for Mr. Grant's Testimony.

A protective order should be issued only if annoyance, oppression, and undue burden and expense outweigh the need for discovery. *See* Mo. Sup. Ct. R. 56.01. Furthermore, the party or person opposing discovery [or trial testimony] has the burden of showing "good cause" to limit discovery [or trial testimony]. *Messina*, 71 S.W.3d at 607; *Wilkins*, 464 S.W.3d at 276. A trial court has the discretion to determine whether good cause exists as "a court must have evidence presented before it can exercise discretion. Without evidence, it is impossible to ascertain whether good cause exists." *State v. Rushing*, 232 S.W.3d 656, 661 (Mo. Ct. App. 2007).

Here, the need for Mr. Grant's live trial testimony outweighs any burden or inconvenience to Mr. Grant. As a resident of St. Louis, Missouri, Mr. Grant can drive to and from Kansas City. Therefore, any travel expenses would be minimal, especially for a person who banked over $60 million on Bayer's purchase of his company. Although Mr. Grant has been previously deposed,

Plaintiff Shelton and his undersigned counsel were not represented in his prior deposition, and that deposition occurred in a different litigation, under a different set of laws, and involved different parties. Hence, Mr. Grant's statement: "[Plaintiff's] Counsel is not entitled to a second bite at the apple" is blatantly misconstrued as Plaintiff's counsel and Plaintiff Shelton have not even had a chance at a single bite at the apple. *See* Nonparty Hugh Grant's Mot. for Protective Order Concerning His Trial Test. and Accompanying Mem. of Law, at 6. The Missouri Supreme Court has recognized what this Court and trial lawyers everywhere recognize to be true:

> former testimony often is only a weaker substitute for live testimony. Itseldom has independent evidentiary significance of its own, but is intended to replace live testimony. If the declarant is available and the same information can be presented to the trier of fact in the form of livetestimony, with full cross-examination and the opportunity to view the demeanor of the declarant, there is little justification for relying on the weaker version.

See State v. Sanchez, 752 S.W.2d 319 (Mo. 1988). Mr. Grant's speculative concerns about opening the floodgates to subsequent subpoenas, may or may not be relevant in the future, but regardless, that is not the case here and is not grounds for avoiding Plaintiff Shelton's right under Missouri law to call Mr. Grant to testify about his unique and personal knowledge and involvement regarding the safety of Roundup. Shielding a witness from testifying at trial even one time based on some unknown and speculative fear of being subpoenaed in other cases in the future is not grounded in Missouri law.

In sum, Mr. Grant has failed to provide any good cause for the need of a protective order concerning his trial testimony. Specifically, Mr. Grant is now retired, so his appearance would not conflict with any duties owed to defendant as its CEO. Furthermore, Mr. Grant is a resident of St. Louis, Missouri (roughly a 3.5-hour drive from Kansas City), so his appearance would not create a burden, expense, annoyance, or oppression.

CONCLUSION

There is ample evidence showing that Mr. Grant has unique personal knowledge regarding the safety of Roundup as he was in direct contact with regulatory agencies regarding the safety of Roundup, he was the decision-maker, and was a key figure in the promotion of Roundup as safe to ensure that government agencies permitted its sale. Mr. Grant, not some generic corporate witness. He is the appropriate and only person to able testify about his knowledge and actions with respect to Roundup. Although Mr. Grant was once a high-ranking executive for Monsanto, that is no longer the case. As such, he is not even entitled to the protections that Monsanto might have asserted if he were still CEO. Finally, Plaintiff should not be forced to play a videotaped deposition from a different case where counsel for Plaintiff had no opportunity to participate. For all of the foregoing reasons, Plaintiff respectfully requests this Court **DENY** Mr. Grant's Motion for Protective Order.

DATED: January 21, 2022

Respectfully submitted,

/s/W. Wylie Blair

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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been served by means of electronic filing and served upon all counsel of record on this 21st day of January, 2022.

/s/W. Wylie Blair

Exhibit 1

IN THE CIRCUIT COURT OF ST. LOUIS COUNTY, MISSOURI

TWENTY-FIRST JUDICIAL CURCUIT

JAMES ADAMS, JR, et al.,	)	
	)	
Plaintiffs,	)	Cause No. 17SL-CC02721
	)	
vs.	)	Division 1
	)	
MONSANTO COMPANY,	)	
	)	
Defendant.	)	

REPORT OF THE SPECIAL MASTER DATED DECEMBER 3, 2019 REGARDING THE MOTION OF NONPARTY HUGH GRANT'S MOTION FOR PROTECTIVE ORDER REGARDING HIS TRIAL TESTIMONY

Comes now Thomas J. Prebil, court appointed Special Master, and pursuant to Rule 68.01(g) makes the following report to the Court:

The Special Master met with counsel for the plaintiff and nonparty Hugh Grant regarding Mr. Grant's Motion for Protective Order concerning his trial testimony. The Special Master was provided with pleadings and a copy of Mr. Grant's deposition taken on January 18, 2017 in the U.S. District Court, Northern District of California in the Matter of Roundup Products Liability Litigation. Copies of exhibits to that deposition were also provided.

Hugh Grant was the Monsanto CEO and Board Chairman from 2003 until the time of the sale of Monsanto to German Company Bayer in 2018. He retired in June 2018. Mr. Grant testified at deposition that he is not a toxicologist, nor epidemiologist, nor a regulatory expert. However, as CEO he was responsible for the day-to-day operations of Monsanto and also for the long range business of Monsanto as well. In addition Mr. Grant relies on an agreement the parties entered into providing in part to use discovery and deposition materials from the MDL "as if it were conducted in this action." *Adams et al. v. Monsanto Co.*, 17SL-CC02721 (Sep. 5,

2018) (Case Management Order). Finally, on a personal note, Mr. Grant has advised that he is scheduled to be out of the country beginning February 9, 2020. The actual trial date is January 27, 2020. The case of *Sharlean Gordon v. Monsanto Co.*, will be the first Roundup case tried in St. Louis County.

Plaintiff argues Mr. Grant participated in the internal discussions regarding the safety of Roundup and was informed and updated on the studies conducted on Roundup. Plaintiff identifies numerous instances in of Mr. Grant's involvement, for example: Mr. Grant appeared for interviews on public radio representing that Roundup is not a carcinogen; in earnings calls for investors Mr. Grant personally responded that the classification of glyphosate as a probable carcinogen was "junk science"; in 2016 Mr. Grant personally lobbied the EPA Administrator snd the Agricultural Committee Chair of the topic of glyphosate. (Plaintiff's Response in Opposition to Protective Order, pp. 3-4).

Plaintiff and Mr. Grant both submitted memorandums and cited authority.

Mr. Grant relies primarily on *State ex rel. Ford Motor Company v. Messina*, 71 S.W.3d 602 (Mo banc. 2002). In *Messina*, the defendant filed a motion for protective order regarding the depositions of four of its top executives. The writ was denied by the trial judge which the Supreme Court found to be an abuse of discretion. The Court cites Rule 56.01(c) that on motion by a person from whom discovery is sought a protective order may be granted "for good cause shown … to protect a person from annoyance, embarrassment, oppression, or undue burden or expense …" Although this rule addresses discovery issues, it has also been held applicable to trial testimony. See, for example, *Wilkins v. Office of the Missouri Attorney General*, 464 S.W.3d 271 (Mo.App. E.D. 2015). In *Wilkins*, plaintiff sought to subpoena Attorney General Koster for trial. The Court noted that a protective order could issue if the deposition may cause

unnecessary annoyance, burden, and expense where persons lower in the organization may have the same or better information. *Id.* at 276, citing *Messina*. Defendant also argued that requiring Koster to appear would substantially impede his ability to perform his duties as Attorney General.

Applying the guidance from the cases relied on, it should be noted that Mr. Grant has now retired, so his appearance would not conflict with any duties owed to Defendant as its CEO. Further, he is a resident of St. Louis County so his appearance would not create a burden, expense, annoyance or oppression. Counsel for Plaintiff has stated Mr. Grant would be called to testify early in his case, so Mr. Grant's appearance would not interfere with his travel plans.

Although Mr. Grant does not have scientific knowledge that doubtless will be a significant component to this lawsuit, he was CEO of Monsanto for 15 years and took part in presentations, discussions, interviews and other appearances for Monsanto as CEO in which the topics of Roundup and glyphosate were explained, discussed and defended. It may be necessary to revisit Mr. Grant's appearance at subsequent trials, but giving careful consideration to these circumstances, it seems entirely appropriate to require his personal appearance at the first of these trials. The trial judge has broad discretion in administering the rules of discovery. *Messina, supra*. at 607, citing Rule 56.01(d).

Having considered the arguments of counsel and the authorities cited, it is the opinion of the Special Master that nonparty Hugh Grant is not entitled to a Protective Order barring Plaintiff from subpoenaing Mr. Grant's trial testimony in this matter and it is therefore the Special Master's recommendation to the Court that this Motion be denied.

Respectfully submitted,

Thomas J. Prebil MBE 22220
Court Appointed Special Master

So Ordered:

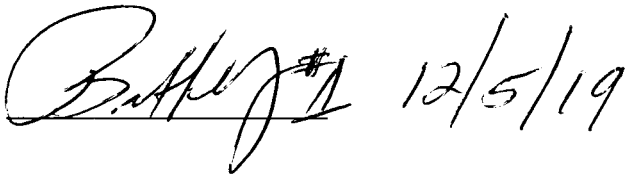

Exhibit 2
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Exhibit 3
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Exhibit 4

Monsanto CEO: 'Roundup Is Not A Carcinogen'

10:41

March 31, 2016

Hugh Grant, Monsanto chairman and chief executive officer, addresses Monsanto employees at the Monsanto Chesterfield Village Research Center groundbreaking on Tuesday, Oct. 22, 2013 in Chesterfield, Mo. (Whitney Curtis / AP Images for Monsanto Co.)

This article is more than 5 years old.

In the second part of *Here & Now*'s interview with Monsanto CEO **Hugh Grant**, host Jeremy Hobson asks the head of the agrochemical and biotech

giant about its production of pesticides, which some activists believe cause cancer, the aftereffects of PCBs, which Monsanto stopped making in the 1970s, and organic farming.

- Part one our interview with Monsanto CEO Hugh Grant
- See more in our View From The Top conversation series

Interview Highlights: Hugh Grant

People think your Roundup pesticide could be linked with cancer and other health problems. How do you respond to that?

"Roundup is not a carcinogen. It's 40 years old, it's been studied; virtually every year of its life it's been under a review somewhere in the world by regulatory authorities. So Canada and Europe just finished. Europe finished their review last year and came back with glowing colors. The Canadians were the same and now we are going through a similar process in the U.S., so I've absolutely no concerns about the safety of the product."

Do you ever envision a pesticide-free Monsanto?

"A pesticide-free Monsanto, or a pesticide-free world, if you look at the last 20 years - and this is probably myth number two that's been exploded - pesticide use has been reduced, and as we have seen the increase in GMOs, the use of pesticides has decreased significantly. The reason for that is mainly an insecticide, the chemicals that kill bugs. Bug control is now done by the plant more than it's done by the sprays on the top. If I think about the next 30 or 40 years, I think through the use of data we'll be applying these chemistries much more accurately and we'll be applying them earlier, so applying them before diseases really take a hold in these crops or bugs are tearing these crops apart, so I think we'll be more prophylactic, we'll be more accurate and our selection of these chemistries will be a lot more discriminating. That's kind of my vision of the future as through the use of

data and bringing biology and science together, we'll get much smarter about how we use these things, a bit like how the vision works for personalized medicine."

Is there a place for organic farms in your vision of the world 30 years down the road?

"Yeah there is, absolutely. You know, it's funny, you say 30 years, its 30 harvests from now. If you think about a grower who inherits the farm when he's in his 30s, he retires in his 60s, it's the career of a farmer: 30 springs, 30 harvests. I think organic farming is going to have a place. When you look at the demands – I was in China last week. Beijing was building, they've actually completed their sixth ring road, so there's six beltways around Beijing. They're eating up arable land, as the cities push out and as urbanization increases, we're going to need all kinds of agriculture. I think the sad thing today is that this is so polarized. It's framed somehow as big verses little, or organic verses conventional, or local verses production agriculture. I don't think there's one solution in this. We're going to need everybody at the table, and the faster we can move to a conversation that says, you know, organic and production verses organic or, there's a lot of energy and friction wasted in that conversation I think."

On consolidation of companies in the chemicals industry

"I think consolidation is inevitable. The moves don't worry me. I think that the cards that we hold, the portfolio that we have, the R&D pipeline that we have is really unique in the industry so I kinda like the position that we have. The reality today is research continues to cost more and more at the moment. The last couple of years, and I see it continuing through this spring, growers are under tremendous pressure not just here in the U.S., but worldwide. Commodity prices are down."

Do you feel that on your bottom line when commodity process drop?

"Yes we do. I mean we win or lose with the growers, so we absolutely feel it and we're trimming our costs accordingly. So I think consolidation, a piece of that, is the efficiency plea that growers and our customers are experiencing. We kind of rise or fall with them through this. The long-term reality, and growers always say 'I'm not in farming for one year,' it's a generational business. If you take the long view, the demand curves are alive and well, the planet continues to look for sources of protein and I'm still very bullish in agriculture despite the slowdown at the moment."

What's the next step for Monsanto? What will you be building next?

"We were a chemical business that became a biotech and biology business that morphed into a seed business. I think the main transition as you look forward is the application of data. It takes about 40 decisions, from right around now until harvest in August or September, the grower takes about 40 decisions to produce a crop. Some of those decisions are highly technified, and others it's because of what his mom and dad did or what he hears in the coffee shop or what he read in a magazine. So we've been populating those 40 decisions with data and I think by improving the quality of decisions, you increase the yield. I think the transition for Monsanto is increasingly in the next 10 years becoming a solutions-driven company, and coalescing the biology, the more accurate application of chemistry and the much smarter use of data. You know, these big green John Deere combines are streaming data off the field, one yard at a time, and it's how you use that biological data and apply it back to the field to help growers with better insights, I think that's going to be the next piece."

On the West Coast cities planning on suing Monsanto over damages from products containing PCBs, which have since been banned

"When we formed the new company, we retained the name, but it was really the former Monsanto, and it was back in the 1960s and '70s, so 40 or 50 years ago. We did produce PCBs at that time, PCBs are still in the environment. We

would contest the claims on the health effects of these, but frankly I think the argument with much of this is how the products that contain those PCBs, how they were disposed of and a lot of them were manufactured by other companies and then disposed of inappropriately. We've been working with these cities for decades now in part of that cleanup, but we are not wholly responsible for that. There's other people in that chain that are responsible."

But you admit partial responsibility?

"We manufactured these products, but we're not responsible for how they were subsequently disposed of."

Guest

- Hugh Grant, CEO of the Monsanto Corporation.

This segment aired on March 31, 2016.

View From The Top

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Exhibit 6

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Monsanto's (MON) CEO, Hugh Grant On Q2 2015 Results - Earnings Call Transcript

Apr. 01, 2015 2:20 PM ET | **Monsanto Company (MON-OLD)**

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Monsanto Company (NYSE:MON-OLD) Q2 2015 Earnings Conference Call April 1, 2015 9:30 AM ET

Executives

Hugh Grant - Chairman, Chief Executive Officer

Brett Begemann - President, Chief Operating Officer

Pierre Courduroux - Senior Vice President, Chief Financial Officer

Laura Meyer - Investor Relations

Analysts

Don Carson - Susquehanna International

Vincent Andrews - Morgan Stanley

Jeff Zekauskas - JP Morgan

Kevin McCarthy - Bank of America

Bob Koort - Goldman Sachs

Chris Parkinson - Credit Suisse

PJ Juvekar - Citi

David Begleiter - Deutsche Bank

Mark Connelly - CLSA

Michael Piken - Cleveland Research

Joel Jackson - BMO Capital Markets

Operator

Greetings and welcome to Monsanto's Second Quarter Fiscal Year 2015 Earnings call. At this time, all participants are in a listen-only mode. A brief question and answer session will follow the formal presentation. If anyone should require operator assistance during the conference, please press star, zero on your telephone keypad. As a reminder, this conference is being recorded.

I would now like to turn the conference over to your host, Laura Meyer, Investor Relations Lead for Monsanto. Thank you, Ms. Meyer. You may begin.

Laura Meyer

Thank you, Rob, and good morning to everyone. I'm joined this morning by Hugh Grant, our Chairman and CEO; Brett Begemann, our President and Chief Operating Officer; and Pierre Courduroux, our CFO. Also joining me from the IR team and Tim Boeker and Priyal Patel.

Our second quarter call provides our first view into how the northern hemisphere season is shaping up, and today we will be sharing a business and strategic overview as well as a summary of our second quarter results and a full-year outlook. This call is being webcast and you can access the webcast, supporting slides and the replay at Monsanto.com.

We have provided you today with EPS measures on both a GAAP and ongoing business basis. Where we refer to non-GAAP financial measures, we reconcile to GAAP in the slides and in the press release, both of which are on the website. This call will include statements concerning future events and financial results. Because these statements are based on assumptions and factors that involve risks and uncertainty, the company's actual performance and results may vary in a material way from those expressed or implied in any forward-looking statements. A description of the factors that may cause such a variance is included in the Safe Harbor language in our most recent 10-K and in today's press release.

First and foremost, let me review our second quarter results on shown on Slide 4. Our second quarter ongoing earnings per share is $2.90, which is within the range we outlined at our first quarter call. Our free cash flow year-to-date is $986 million as compared to $290 million year-to-date in the prior year, reflecting the absence of the Climate acquisition and the Novozymes transaction in the current fiscal year. These results, combined with our revised outlook for the year, still give us confidence that we are within the guidance ranges outlined at the beginning of the fiscal year, namely $5.75 to $6 of ongoing earnings per share, and $2 billion to $2.2 billion of free cash flow, although now trending to the low end of each of the respective ranges as shown on Slide 5.

With that brief summary, let me hand it to Hugh to add context to the strategic outlook.

Hugh Grant

Thank you, Laura, and good morning to everybody on the line. As we look across the current landscape, we clearly acknowledge the reality facing the global players in the ag industry, namely declining corn acres and rapidly weakening foreign currencies. These industry-wide economic challenges have led us to point to the lower end of our earnings per share and cash flow guidance, and yet even at the low end of our original guidance range, we still expect double-digit ongoing earnings per share growth, reaching a new record level for annual earnings per share for our business.

Two years of spectacular growing conditions have translated into the current oversupply situation for corn, and in response acres continue to decline while demand from feed accelerates to rebalance supply. In tandem, farmers have sharpened their pencils across their input costs as they in turn balance risk with returns.

Even so, our grower customers continue to ask us to innovate in agriculture. They are seeking yield and productivity tools like newer hybrids, technology traits, and digital agriculture tools, clearly reflecting that yield and productivity will differentiate them in times of compressed margins. Further, while we continue to monitor these headwinds and mitigate where feasible through the management of our expenses and a balanced product portfolio, we won’t let this distract us from the business execution that’s critical to our longer term growth, and it’s that execution combined with our innovation which truly differentiates us.

The accomplishments in the first half of the year are a testament to that commitment to seamless execution on the variables that we control, as seen on Slide 5. INTACTA acreage now stands at 15 million acres for fiscal year 2015, and with seed production in place for targeted penetration of 30 million acres for fiscal year 2016, we're well down the path of this 100 million acre opportunity. The excitement for the expense platform is building both with growers and internally as we continue to make strong progress. Bollgard II XtendFlex cotton is now sold out from our limited commercial introduction, and plans for more than a 3 million acre launch in Roundup Ready 2 Xtend soybeans in 2016 are on pace for this nearly 200 million acre opportunity.

Our footprint continues to expand in corn even with a smaller acreage base, and growers continue to embrace the latest technologies and hybrids. Our investment in climate and biologicals has ramped, and with the focus on penetration and engagement, the next generation of Climate Pro is now reaching the hands of growers as we speak. Our organization has managed spend to allow for accelerated funding of these platforms like Climate, and we now expect full-year operating expenses to be down slightly.

Finally, we continue to deploy our capital effectively and return value to our shareowners with our $6 billion accelerated share repurchase that we expect to fully close in April, a significant step in our commitment toward the net debt to EBITDA ratio of 1.5.

So the fundamentals of our business are unchanged, and these accomplishments are the cornerstones for our long-term growth drivers. The annual dynamics of agriculture may cause our rate of gain to be uneven at times, but it doesn't change the trajectory for growth, particularly given the backdrop of long-term demand for both corn and soybeans.

As shown on Slide 6, we continue to see annual demand for corn increasing by more than 500 million bushels per year, while soybean demand grows by more than 200 million bushels per year. Recent WASDE estimates now indicate that the global demand requirements for corn have grown by nearly 900 million bushels as compared to the prior season, and on the supply side we now estimate that at least 11 to 12 million acres of corn will have come out of production in the primary markets since 2013. The efficiency of the global corn market is undisputed, as is a growing population's demand for more protein and more grain. As always, we divert much more than the usual annual ebbs and flows of agriculture. Our focus is on the innovation that improves and protects the yield for the grower through a multitude of conditions and in an increasingly balanced portfolio. This foresight in the development and investment in soybeans has paid off, and we expect it will continue as the decade of the soybean marches forward.

Roundup Ready 2 Yield, Intacta, and Xtend remain very much on track for their expected long-term growth trends. While the former two products provide current year earnings growth, as acres rotate from corn to soybeans and beyond the fast-growing soybean growth drivers, we're anticipating the next generation of solutions across six broad technology platforms, expanding from the core seed and traits platform as shown on Slide 7. Today, we're adding to that foundation with complementary chemistries and seed treatments, biological solutions, and finally digital agriculture where the application of data science through our climate offerings can enhance each and every decision in a grower's operation.

As we look across this pipeline of new products, as well as our existing portfolio and brand franchises, we continue to attract and pursue significant licensing opportunities, and some of that could come as soon as this year. We remain strategically aligned to the long-term horizon as demonstrated by our disciplined near-term execution. Agriculture remains an excellent space for investment given the continuing long-term demand projections and our consistent delivery of innovation that so effectively aligns to those trends. Near-term conditions require measured adjustments to spending and risk management, but as shown on Slide 8, we're continuing the investments in the platforms required to delivery our long-term commitment to more than double our ongoing earnings by share by 2019.

So with that, let me hand over to Brett for the operational update that underpins these first half accomplishments and our long-term strategic outlook.

Brett Begemann

Thanks Hugh, and good morning to everyone on the line. Despite the industry cross-current of lower global corn acres, I remain extremely confident in the foundation of our global corn business and the long-term mechanisms for growth. As I've said before, our corn yield performance has never been better. Our multi-pronged go-to-market strategy continues to serve us and our customers well, and the proof points are in the results we see in this quarter and in the outlook for the rest of the year.

Let's take a look at the specifics, as shown on Slide 9. At the halfway point in our fiscal year, we have now wrapped up our first season in Brazil and capped it with more than two share points of growth in our branded market share in the summer season that we now believe contracted closer to 13%. We also had a small but meaningful launch of our first triple-stack product in corn, continued upgrades to our second and third generation traits, and nice price mix lift in our germplasm, excluding currency effects. Looking forward, the Brazil safrinha season is underway and we expect flat corn acres and similar trends in our performance from the first season in Brazil. In Argentina, triples continued to be the product of choice, and we held our strong share position on an acreage base that was 16% smaller than last year.

Within the U.S. corn seed business, as we've been indicating, our results year-to-date reflect the timing shift of our channel brand businesses from second quarter to third quarter. We are encouraged by the change we've made in this business, and we still expect roughly $275 million of gross profit, mostly in corn, to move between quarters based on our view into our order books. Beyond this timing shift, the reduced refuge family of products is maintaining its percentage of the portfolio from the prior year. We continue to see conversion to our dual mode of action products like SmartStax and Double PRO, as well as improved uptake of our DroughtGard hybrids, although on a corn acreage base we now see trending closer to 87 to 88 million acres. Demand for the combination of one year and Year 2 DeKalb hybrids is expected to be approximately 40% of the total portfolio, with particularly strong interest in the more familiar high performing Year 2 products.

In the spirit of dollar cost averaging and due to the consistent exceptional performance in some of our proven hybrids, as depicted on Slide 10, we did see some higher than normal demand for this generation at the expense of the midpoint of the portfolio. While this is expected to migrate the germplasm price mix lift to the low single digits this year, the general portfolio mix curve is intact and demonstrates that even in this environment, growers are demanding the newest hybrids, giving us confidence in the long-term outlook for this business.

Across Europe and South Africa, we expect to hold or grow share in a region of declining corn acres, and when setting aside the punishing currency effects and despite the challenging competitive dynamics, it appears that our germplasm price mix lift will be positive across the region for the year.

In Asia, we continue to see adoption in traits in the Philippines, and we recently received approvals for our first biotech traits in corn in Vietnam, allowing us to move forward with pre-commercial trials. Like much of the rest of the world, we expect to grow share and have positive lift in our germplasm price mix, exclusive of parity, as we look across all of Asia.

Overall, we remain on track to hold or grow our branded share footprint in every major market in the face of declining corn acres, and exclusive of currency headwinds we expect to deliver positive germplasm price mix lift for the full year. This is an outstanding achievement in the time of compressed margins for our grower customers, reflecting their continued demand for high performing seed technology.

Even more compelling is the outstanding performance we continue to see in our soybean business, which is proving critical in this challenging environment. The power of a balanced portfolio is evident as our soybean business continues the momentum that has carried from a record fiscal year ’14 and excellent first quarter. Across South America, as seen on Slide 11, our value proposition to Intacta delivered and we reached a record 15 million acres in our second year of launch, a five-fold increase over the first year. As we review the seed production plans across the multipliers and the licensees for the next season, we now believe we will have Intacta available in 150 varieties for Brazil alone. This addition of 50 new varieties in Brazil will be enough to fully serve all maturity zones for the third year of commercialization. Overall, we now expect to penetrate an estimated 30 million acres with Intacta in South America in fiscal year ’16, a meaningful tipping point in the 100 million acre opportunity for Intacta.

Backing up these plans is yet another year of strong product performance. As shown on Slide 12, our early yield results reveal that we once again delivered more than a four bushel average yield advantage with Intacta soybeans over comparisons of Roundup Ready soybeans managed by insecticides. In addition, we continued to see a reduction in insecticide sprays and insect damage with the use of Intacta soybeans, clearly visible in the photo from this year’s production.

As we continue to plan for the expansion of our Intacta business in South America, we have also advanced our negotiations with the grain traders and elevators and have now secured more than 90% of the origination points across Brazil to allow for a very robust point of delivery payment system. Approximately 95% of the Intacta soybeans planet were paid for up front this season in Brazil, and we expect a similar pattern of certified seed sales for next year. Nonetheless, securing options to pay at the end of the season with the delivery at the elevator provides our growers with the choices they value.

In Argentina, not only are we seeing Intacta penetration for the first time, but the point of delivery system implementation is off to a good start in its inaugural season. We have now secured agreements with more than 95% of the origination points in the north and more than 70% of the growers paid for their seed purchases in advance, again providing growers with choice in how they secure this game-changing technology.

In the U.S., the combination of shipments and our order book leads us to conclude that soybean acres and our share are both growing, with farmers continuing to choose Roundup Ready 2 Yield as the product of choice across both our branded and our licensed footprint. Preparations for a record trade launch of Roundup Ready 2 Xtend soybeans continued as we await final regulatory approvals and secure seed production acres for what we expect to be a greater than 3 million acre launch in 2016 and available in more than 60 varieties, as shown on Slide 13. We see strong alignment from our licensees in the plans for launch and our remaining regulatory approvals are proceeding. We have submitted all the required data to the China Ministry of Ag, and they have all necessary information required to grant an approval. Again, we are maintaining our focus on execution for this next wave of growth in our soybean business, one whose acre opportunity is almost double that of Intacta as the need for flexible, exceptional weed control reaches across the Americas.

Cotton is also notable this quarter because we are sold out for the limited commercial introduction of Bollgard II XtendFlex on more than 500,000 acres, as shown on Slide 14. We announced our pricing of $6 an acre for the added value from flexible, improved weed control along with a full XtendFlex chemistry rebate to reflect that growers are unable to use dicamba over the top as we await final regulatory approvals. Interest in the technology has been tremendous, as demonstrated by the sold out position. Altogether, more than 1,600 growers and stakeholders have attended grower education sessions across the south since 1 January. This limited introduction is allowing our grower customers to experience the improved performance of new Bollgard II XtendFlex cotton varieties, as well as the benefits of two of the three herbicide tolerances that are currently available for use with this product, namely glyphosate and glufosinate tolerance. Based on a look into our order books, we expect these new varieties to drive back-to-back share growth in the delta pine brand in the U.S.

We have also rolled out our Climate Pro offering for this season, featuring the newly improved nitrogen and field health advisors, and we recently enhanced our introductory pricing of $3 per acre through marketing programs that are driving penetration and engagement with the technology. At a time when a grower's attention to every line of their P&L is heightened, the meter by meter optimization our precision tools have to offer becomes even more beneficial. The application of data science to our extensive field trial and genetics data through the development and application of software has the potential to create unprecedented value for growers.

To facilitate this roll-out, we have already trained more than 1,000 selling agents across our broad retail partnership, touching virtually every corn and soybean acre in the U.S. While it is too early to estimate the acres for Climate Basic or Climate Pro for this season, we remain committed to our targets to increase our active Basic users by 50% from our fiscal year '14 base of 30 million acres, and to more than double our 1 million premium acres from fiscal year '14, as shown on Slide 15.

In our ag productivity business, we are in the midst of the largest quarter in the year in the northern hemisphere as we provide customers with our branded products for their critical over-the-top sprays in their Roundup Ready crops. As we guided, our volumes continued to shift through the second half of the year, closer to these key application windows as a greater portion of our business is sold as branded volume this year. This shift in volumes to the latter half of the year also explains the majority of the decline in the business year to date. In addition, we're seeing some of the anticipated softening in price at the retail level and have followed suit with low to mid-single digit price adjustments to maintain a small premium over the generics, consistent with our strategy.

I remain very optimistic about the business and our outlook. Our accomplishments year-to-date are impressive with 15 million acres of Intacta penetration, Climate product introductions, Xtend launch plans, and early share growth and price mix lift in corn, despite substantial currency and core acreage headwinds. Further, we will continue to leverage the benefit to the balanced portfolio as the decade of the soybean continues with expected Roundup Ready 2 Yield acreage expansion, expected branded seed share growth and production plans to potentially supply 30 million acres of Intacta in South America and a greater than 3 million acre launch of Roundup Ready 2 Xtend soybeans in '16.

With that, I'll pass it to Pierre for the financial update.

Pierre Courduroux

Thanks Brett, and good morning to everyone. As we sit at the midpoint of our fiscal year, we can now reflect upon the accomplishments of the first half while refining our strategy and outlook for the rest of the year. Intacta has been a tremendous success in its second year of commercialization. Our core share footprint has grown in the southern hemisphere this season, and Roundup Ready 2 Xtend soybeans continue to meet the milestones necessary to propel it forward for what is now expected to be a more than 3 million acre launch in 2016. We have responded to the weakening of foreign currencies and declining corn acres, and we have reduced operating spend while still funding our newest platforms, namely Climate and biologicals, at a pace far ahead of last year. Finally, we remain committed to our capital allocation strategy with the expected full closure of our $6 billion accelerated share repurchase in April.

Altogether, we continue to deliver on the key drivers of our long-term growth plans, remaining acutely focused on the variables we control and true to our strategy of innovation through a balanced portfolio. There is no doubt, however, that the further weakening of foreign currencies has led to what now appears to be a $0.35 to $0.40 headwind for this fiscal year, primarily concentrated in corn gross profit and to a lesser degree in our ag productivity gross profit, and driven by the deterioration of several key currencies versus a dollar very close to today's rate.

These currency headwinds, coupled with a more certain decline in corn acres and some moderation of corn germplasm mix lift, now means that we are trending to the low end of our original guidance range of $5.75 to $6 of earnings per share, as well as to the lower end of our free cash flow guidance of $2 billion to $2.2 billion, as shown on Slide 16 and 17. Within that guidance, we now expect that our seeds and genomics gross profit growth will migrate to low to mid-single digits, with the expected growth in soybean gross profit more than offsetting the anticipated slight decline in corn gross profit resulting from the currency and acreage headwinds. Ag productivity gross profit is expected to decline approximately 10% versus prior year due to anticipated [indiscernible] price softening and an incremental 2 to 3% due to deteriorating currencies.

Total operating expenses, including our new platforms, are now expected to be down in the range of 3 to 5% versus the prior year as we further tighten our spending in light of the current trend, and as we benefit from the expected weaker foreign currencies in our operating expenses. Interest expenses remain consistent with prior expectations, reflecting the additional debt and our progress toward our stated goal of a net debt to EBITDA ratio of 1.5. Other expenses are expected to be roughly a third of the prior year as we are anticipating less of a devaluation of the Argentine peso in fiscal '15. Meanwhile, the tax rate has migrated to the low end of our original guidance of 28 to 30% through continued expected discrete tax benefits.

When converting this full-year guidance into a quarterly look, we expect around 80 to 85% of the remaining earnings per share to fall into the third quarter, with the residual in the fourth quarter. In Q3, we expect a shift of roughly $275 million of gross profit in the [indiscernible] business to benefit our results, and in the fourth quarter we expect a strong start to our South American business, more normalized corn returns in the U.S., continued momentum in soybeans, and a very disciplined management of our operating expenses to drive growth.

If we take a deeper dive into the margins and the outlook for the year, the success of our Intacta franchise and continued demand for Roundup Ready 2 Yield is clearly reflected in the nearly four point improvement in soybean margins year-to-date, and while we expect that to moderate some, we do expect positive margin lift in soybeans for the full year. For corn, the margins are down roughly two points year-to-date as a result of the shift in the higher margin channel business to Q3, with continued year-over-year decline in the trait pricing for Brazil and the higher than expected cost of goods sold in South America. We continue to convert the Brazil corn seed business to higher cost, single-cross trait hybrids, and while this has widened our performance advantage and enables share growth, it does increase our cost of goods. This combined with the flooding in Argentina during the last production season has elevated our COGS in corn year-to-date. By the end of the year, we do expect corn gross profit margins to be relatively flat to the prior year as South America becomes a smaller component of the total mix of our corn business for the full year. Altogether when looking at the seed and genomics segment as a whole, we expect roughly 1% margin improvement for the full year, reflecting the benefits of a broadening soybean portfolio.

The last thing I would like to share with you today is our outlook on free cash flow. We are now tracking to the lower end of our original free cash guidance of $2 billion to $2.2 billion as we now estimate that cash flows from operations will be $3 billion to $3.3 billion with cash flows from investing activities to be a use of cash of $1 billion to $1.1 billion. The decline in our operating cash flow projections is twofold. Our projected net income is tracking lower for the reasons we mentioned earlier, primarily currency and acreage related; and our inventories have increased as corn acres have retreated more than we originally planned, and corn seed production yields were higher than expected.

Looking ahead to fiscal year ’16, this continued decline in corn acres and strong production yields from last season, as seen across the industry, is translating to a reduced corn seed production plan which we are just finalizing for the [indiscernible] this year. Our current inventories are in excellent condition and will carry to the next season, topped off by the smaller production plan from this summer. While this is the optimal choice from a cash and inventory management perspective, this will result in higher cost of goods for fiscal year ’16, after which we expect to see some normalization in the size of our production plan and the benefit of lower hedged commodity prices. In response to this expected reduction in cash flows from operations, we are being more diligent in the management of our investing cash flows, allowing us to deliver an expected free cash flow of at least $2 billion.

With this continued excellent conversion of our earnings into cash, we remain committed to returning value to our owners through our capital allocation strategy. I'm pleased to announce that half of our $6 billion accelerated share repurchase plan has officially closed, resulting in the delivery of an additional 6.6 million shares. We expect the remaining $3 billion of the ASR to close in April will similar results.

Following the close of our third quarter, we plan to evaluate our next steps in advancing to a net debt to EBITDA ratio of 1.5 after the full closure of our $6 billion accelerated share repurchase and after we have a clear line of sight on our short and midterm cash needs at the end of our two most significant quarters.

Similar to the industry, we are seeing significant currency and acreage headwinds in fiscal year '15, but we also see the confirmation of the long-term growth drivers that support our gross profit expansion through a global balanced portfolio, while still delivering on the new record for earnings per share this year. When combined with our disciplined balanced approach to funding our growth platforms and our continued commitment to effective capital allocation, I am confident we are on track in the first year of our five-year plan to more than double ongoing earnings per share.

Thanks, and I will turn it back to Laura for the Q&A.

Laura Meyer

Thanks Pierre. With that, we'd now like to open the call for questions. As we typically do, I'll ask that you please hold your questions to one per person so that we can take questions from as many people as possible. You are always welcome to rejoin the queue for a follow-up.

Rob, I think we're ready to take questions from the line.

Question-and-Answer Session

Operator

[Operator instructions]

The first question today is coming from the line of Don Carson with Susquehanna International. Please proceed with your question.

Don Carson

Yes, thank you. A question, Pierre, on the foreign currency impact. Are you saying that without the incremental $0.15, $0.20 of foreign currency pressure, that basically your guidance would be unchanged? And then a specific impact on corn, is the slight reduction in corn gross profit due primarily to foreign exchange, or what are the other drivers in terms of price, volume, and cost of goods sold?

Pierre Courduroux

So Don, to your first question, the way you look at it is definitely a way to think about it actually, because we point now to the low end of our guidance and the guidance range was about $0.25; so yes, I would agree with you on this one.

Regarding the second question regarding corn gross profit, so the way we think about it actually is when you look at the first half, more than $200 million of the difference we see versus last year is related to the shift of our channel business from Q2 to Q3, and the rest of the difference is basically split, two-thirds related to currency and acreage headwinds, so about two-thirds of the remaining difference, and one-third is related to the trait pricing and COGS in South America that we referred to in the prepared remarks. Looking into the full year, we expect the impact of acres and currency to be more than $300 million - this is how we think about it right now; however, we expect also to see the combined benefits of germplasm price lift and the share gains we are anticipating, resulting in more than $200 million of benefit. So that is the way we are thinking about the corn gross profit going forward.

The difference we may see at the end of the day will be the balance between the soybeans, which today we anticipate to be more than offsetting this decline in corn, and it’s going to be the difference in between the soybeans and the corn that’s going to make the final number.

Don Carson

Okay, thank you.

Operator

Our next question comes from the line of Vincent Andrews with Morgan Stanley. Please proceed with your question.

Vincent Andrews

Thanks, and good morning everyone. Question on--you know, obviously Intacta is going to be big in the fourth quarter. The Brazilian real has had a big move, and who knows whether it's done or not; but could you talk a little bit about what your opportunity is to address the pricing of that product, both in the near, medium and long term as it relates to the real?

Hugh Grant

Yes Vincent, thanks for your question. We are delighted with performance in the ramp, and yield is now--references to a slight yield is now coming in an early lead with 12, 13% of harvesters were beating that four bushel goal. So still rolling up price, Brett, but what was the early read on price?

Brett Begemann

Yes, good morning, Vincent. The way we're looking at it now is let's keep in mind strategically what our intent has been with Intacta from the get-go, and that's been to introduce it into the marketplace in a very aggressive fashion, going from 15 million acres headed to 30 million acres for next year, which means that we're expecting a very aggressive ramp-up. As we look at pricing, as Hugh mentioned, we've had another spectacular performance year with Intacta. We're highly confident in the performance going forward, and as we look to the future, we will be taking that into consideration with pricing. I would say at this point in time, we're leaning in to looking upwards on the price curve.

The thing that I would remind you is soybeans. We keep talking about the decade of the soybeans, and we've got an incredible next-generation Intacta already coming, so as we think about this over the longer term, Vincent, we're thinking about moving Intacta very aggressively into the marketplace, building out that position, and as we bring up the price on Intacta, we'll be thinking about the next generation to move that market as well.

Hugh Grant

Vincent, I'd just add one thing. We see phenomenal growth opportunities. We're on the ground floor of that growth. As we think about price and that, I don't know if we'll fully offset the real devaluation, but we will be very, very careful not to stall the growth opportunity by reaching for that incremental real. This is much more about velocity and really growing that platform as fast as we possibly can.

Vincent Andrews

Understood, appreciate it. Thanks very much.

Operator

Our next question is coming from the line of Jeff Zekauskas with JP Morgan. Please proceed with your question.

Jeff Zekauskas

Thanks very much. I think your corn revenues were down 14% in the first half. Can you analyze that for us?

Pierre Courduroux

So as I mentioned, and I was referring to the gross profit impact in the first half of the year, a big part of that is just the pure timing related to the move of our channel business, so for $200 million of gross profit, if you give and take 60%-plus margin, you can get the impact on sales; I don't have the number in front of me. The rest of the difference, similarly - and upgraded for the guidance for the margin - two-thirds of the difference related to currency, and this one definitely hitting us pretty hard, and the acreage headwinds, so two-thirds of the remaining difference, and the last third is the trait pricing, which definitely on the sales line also has an impact when you look at Brazil specifically. And this one, as you know, we talked about that during the first quarter was related to the price adjustment in the market related to some of our competitors' issues with resistance there in Brazil.

Jeff Zekauskas

Okay, thank you very much.

Hugh Grant

Thank you, Jeff.

Operator

Our next question is from the line of Kevin McCarthy with Bank of America. Please proceed with your question.

Kevin McCarthy

Yes, good morning. Question related to U.S. corn seed. I think you had mentioned a slight mix shift from Year 1 to Year 2 hybrids. I was wondering if you've observed that sort of a shift in years past throughout your experience, and whether you could comment on what is driving it. In other words, it would seem economically rational if the yield is there and the value is being shared with the customer. Thanks.

Hugh Grant

Yes Kevin, we've probably seen more of it this year than we've seen in a long time, and I think it's a function of the euphemism of growers sharpening their pencils, number one; and number two, we have some really great products in that category and growers had fantastic experience with them last year and reached back for them. So it's the curse of having really great performing hybrids.

I don't know if you'd add anything to that, Brett?

Brett Begemann

No, I think you've covered it very well. I think, Kevin, if you look at our Year 1 and 2 products, we're at about 40%, and plus-minus that's a reasonable number to think of. Essentially every year, that's been our experience, is around that 40%. This year we got a little bit more of Year 2 than we have in Year 1, and here's my take-away from it, is farmers are clearly voting for our newest hybrids, and that's why I'm so confident in the strategy for pricing our germplasm, is they are voting for the best. What they're doing with their sharp pencil is saying, well, maybe 2 versus 1, but they're not going backwards down the portfolio and that's why the pricing curve is still intact.

Kevin McCarthy

Thank you very much.

Hugh Grant

I think just to add to Kevin's question, I think this year, if you can climb above the headwinds and get above the noise and look at the business, I think this last question really illustrates that even in tough times, we see growers reaching for innovation and reaching for the really great performing hybrids. So in a tough ag environment, we feel really good that the model is still alive and well, and that growers are selecting the best possible hybrids out there.

Operator

Our next question comes from the line of Bob Koort with Goldman Sachs. Please proceed with your question.

Bob Koort

Thanks, good morning. I was wondering if you could talk on Xtend a bit. I think maybe your competitor in that arena suggested a retail price of $12 an acre. Is that sort of order of magnitude of what you think the retail capture might be for Xtend, and do you have any regulatory hurdles to sell that product and get it qualified in South America? I know you mentioned China in terms of approving it, but what about for use in South America?

Hugh Grant

Yes, so Bob, thanks for the questions. I'll let Brett say a few words. The competitor pricing is news - I haven't heard that. I mean, we're focused on our own franchise. Here's what I can tell you, and we mentioned this in the prepared remarks, tremendous interest and enormous amount of pent-up demand. I wish we had it today, but tremendous grower interest, and I think we're going to be so much smarter with what Brett said, the in excess of half a million acres that are already committed. This thing sold out faster than a Rolling Stone comeback concert, so we will see this fly off the shelves.

Brett, a word on that regulatory timetable and maybe how Latin America looks?

Brett Begemann

Yes, thanks Hugh. Good morning, Bob. I think the excitement around Xtend is as much or more than I've seen around any biotech launch we've ever had, and I've been around for all of them. It's really a compelling vote of confidence by our growers, and it also is the expression of a huge need, and that's demonstrated by how quickly we sold out of the XtendFlex varieties that we have available for delta pine this year in the south. On Xtend soybeans, we're going to be ramping aggressively for an over 3 million acre launch next year, which I'm highly confident will be in high demand by customers. We'll take full advantage of this year to do testing again, to look at the product and get farmer feedback as we've done with our new products before we get to final pricing.

I would point you to we did price the XtendFlex cotton in the south at $6, but we also extended a rebate to farmers because they won't have the opportunity to use dicamba this year, but they will get the opportunity to use two herbicide modes of action with glufosinate.

In South America, let me split South America into Argentina and Brazil. In Argentina, dicamba has had a registration in the past. We'll be moving very quickly there. They have similar challenges to what you see in North America, and dicamba with Xtend will have a nice fit. I would expect that we will lag where we're at in the U.S., but we will be moving very quickly down there. In Brazil, we have more work to do with our partners there to get the original dicamba product approved in Brazil, and then we'll move into the over-the-top with the Xtend. So Brazil will be lagging by a margin compared to Argentina, and Argentina will be right behind the U.S.

As far as the regulatory, we're on path. We're on track with the regulatory.

Bob Koort

Great, that's very helpful. Thank you.

Operator

Our next question comes from the line of Chris Parkinson with Credit Suisse. Please go ahead with your question.

Chris Parkinson

Perfect, thank you. Despite some volume headwinds, I guess, in the U.S. since 2012, you've been gaining some solid corn share across South America and Europe, particularly in eastern Europe. How much farther can this go, and do you feel it's getting more difficult to gain share in a lower soft commodity environment? Then also just kind of on the peripheral, how do you feel about South Africa and Southeast Asia as another pillar, or in aggregate is it too small to move the needle? Thank you.

Hugh Grant

Yes Chris, thanks for the two questions. I think we referenced, or I made comment to the model, our premise on how we deliver and share value with growers, and it's hard to say in a tough [indiscernible], but I'm heartened to see that even in these tough times, that model is intact. As the dust settles, I think as we look around, we're probably seeing that we held or grew share in every one of our major markets worldwide. It's never easy and every year is a new year, and every year the grower decides fresh; but I'm heartened by the results and the fact that they continue to reach for innovation, even in a $4 corn environment.

Then your other question was Southeast Asia and South Africa, and Brett, I don't think these are--we don't consider them small markets, right?

Brett Begemann

No, I think we have to be careful calling them small markets, because there's a lot of corn in South Africa as well as in Asia. Here's how I think about it, is a million acres of corn is a million acres of corn. It doesn't matter what country it's grown in. We've done extremely well in South Africa. We continue to do really well with those products. I have to tell you, I'm getting more excited about Southeast Asia. We got the approval for our biotech products in Vietnam in corn most recently. We'll get to get those in the field with farmers. We're hearing really good conversations from some of the other countries in Southeast Asia. We've been in the Philippines for a number of years and gone very well there, so there is a real opportunity there to expand the biotech opportunity in Southeast Asia, and that could carry over to India, which is another large corn market. So it's a good opportunity across the corn, even in some of these smaller countries.

Chris Parkinson

Perfect. Just a quick follow-up - regarding Intacta, can you just comment a little more on what you're hearing from existing growers and then potential new growers, given the addition of 50-plus varieties year-on-year? So in other words, what part of that incremental 15 million acres next year, that 30 versus the 15, will be contingent on new varieties versus older varieties, and is there any supply impediment there based on the new varieties? Then also, you mentioned the yield benefit, but what are you hearing from the customers regarding the cost savings angle going forward?

Brett Begemann

Well as I said, I'm real excited about the Intacta performance. It's really knocked it out of the park when you have two years back-to-back of four bushel yield advantage and you see the kind of insect performance we're getting out of the product. So specific to your question, I don't believe that we will be supply constrained in the core markets of Brazil, where we've had products in the market for a couple years. The new varieties really expand the footprint across Brazil to where now we will have varieties available in virtually every growing zone of Brazil. We were getting close last year; now we're there. So we have the real opportunity, and doubling when you have a small acreage is one thing, but doubling when you have 15 million acres and saying we're going to 30, what we're hearing from growers that are already using Intacta is they're going to use a lot more. What we're hearing from those that haven't used a lot is they're hearing from their neighbors and what they've seen, and they're going to use a lot more. So I expect a robust expansion of that business next year.

Hugh Grant

This is the transition from the what-if to the what-is, so the performance is concrete and demonstrable, and the coffee shops are helping in the sales conversation now.

Chris Parkinson

Perfect.

Hugh Grant

Thank you.

Operator

Our next question comes from the line of PJ Juvekar with Citi. Please proceed with your question.

PJ Juvekar

Yes, hi. Good morning. I had a question about cadence of earnings. Now you are saying that third quarter EPS will be 80 to 85% of the second half, so fourth quarter is 15 to 20% of second half. That seems much larger than what you previously expected. I think in January you said fourth quarter would be breakeven to slightly positive. So I guess my question is are we seeing earnings shift from 2Q into 3Q, and then from 3Q into 4Q?

Pierre Courduroux

So PJ, thanks for the question. What we're assuming and the way we are thinking about the fourth quarter right now is we are assuming that the timing of the deliveries in the U.S. will allow for lower returns, so whatever moves from Q3 to Q4, depending on the returns, we are assuming there will be more in Q3 this year. Last year, as you remember, we had unusually high returns in Q4, and we are not expecting that. I mean, we could plan one way or the other, but at this point in time we are planning for lesser returns and potentially lesser sales in Q3 to add up to those returns, so that's a big variable there in the equation.

The second variable is we are expecting a strong start in South America based on what we are seeing right now in Safrinha. I mean, the dynamics in South America are turning towards corn a little more favorable, and we are expecting a strong start of the season in South America, so that would be nice upside versus last year where you remember, this was the beginning of the decline. So right now, we are expecting a level of rebound in South America in the quarter, obviously continued very strong performance of soybeans--I mean, as Brett was saying when we were talking about Intacta, we talked about the U.S. as well, so strong soybeans.

The last point I want to make is obviously, and we talked about that in the prepared remarks, is also Q4 is our largest opportunity for spend management, and that's where we spend our discretionary dollars. Most of our discretionary dollars are spent in the fourth quarter, and the reduction in spend we're looking at right now, a big part of that will happen in Q4. So for all those reasons, that's why we have--and we've ranged it, obviously. We have not given precise guidance for the quarters, but that's the way we are thinking about the quarters and the timing and the cadence of the earnings to come.

PJ Juvekar

Thank you. On your price point, you expect lower returns this year. Why is that? Thank you.

Pierre Courduroux

Well, we expect lower returns because actually right now--I mean, the mood in the market has been fairly [indiscernible], so we think that retail and the farmers have not overcommitted onto the volumes of corn. Remember last year at this time, people were way more bullish than they are right now, so that's why--and if returns are going to be higher, we should be enjoying more sales as well in the third quarter, so this is a correction variable in our planning based on our acres. That's the way we've been thinking about it.

PJ Juvekar

Thank you.

Operator

Our next question comes from the line of David Begleiter with Deutsche Bank. Please proceed with your question.

David Begleiter

Thank you. There's been some negative news on Roundup the last few weeks. Given that, how do you assess the overall risk to the portfolio and to earnings from Roundup, given what's happened and going forward?

Hugh Grant

Yes David, thank you. So I don't see any impact in the business. We continue to support the platform. There's strong demand out there, and I think it's unfortunate that junk science and this kind of mischief creates so much confusion for consumers. We continue to grow--growers are looking for safe, effective solutions, and I think Roundup and the combination of Roundup and the upcoming dicamba work that we're doing, this is going to be a blockbuster product and it's going to be huge.

So we continue to be committed, and the product is now close to 40 years old. It's been in almost constant regulatory review for that time and it's had a spotless bill of health through that entire four decades, David, so unfortunate noise presents a distraction more than a reality.

David Begleiter

Why do you think it happened now or came back to life at this time?

Hugh Grant

I'm sorry - say that again?

David Begleiter

Why do you think the news came, or WHO--the World Health Organization re-looked at this issue now, as opposed to prior periods?

Hugh Grant

I'm not going to speculate on that. Here's how I would look at it. Germany was the last major regulatory body that took a look at glyphosate. I always say this is like painting the Golden Gate Bridge - you know, by the time you finish, you start again. Germany took four years - they were the rapporter country for the European Union. They took four years to study the safety of the product and give it once again an impeccable opinion. The IARC team took a week, and during that week they reviewed a handful of products and reached their conclusion. So I said at the time that there's a cherrypicking element on you pick and choose what you look for, that the German reviews, the U.S. reviews - we're not starting in Canada and the U.S. again. When you use substantive science and you use state-of-the-art analytical techniques, I feel very, very confident about the strength of the product.

David Begleiter

Thank you.

Hugh Grant

Thanks for the question.

Operator

Our next question is from the line of Mark Connelly with CLSA. Please go ahead with your question.

Mark Connelly

Thanks. Hugh, so farmers didn't really trade down, and U.S. corn acres weren't down all that much either, so two big worries didn't come to pass. But there were some state-to-state changes, and as you think about those shifts, is that going to meaningfully affect your ability to penetrate markets like doubles, where you've historically been lighter? Related to that, as marginal acres do come out, is it safe to assume that your share in those markets tends to be lower anyway?

Hugh Grant

Yes, that's a great question, and you do see the play out on the mosaic between that. I think one of the general trends this year we've seen in some of these marginal acres is growers looking for a bit more value. We talked earlier about people holding on to some of those high performing hybrids for one more year, so we've seen that and it plays out in your observation on a bit more in doubles.

But Brett, we've kind of been tailoring the portfolio to some of that.

Brett Begemann

That's exactly right. If you think about the Double Pro product, that's the fit that it has in the marketplace. If you're a farmer in a root worm area, you're focused on root worm products and SmartStax, and that's why we see strength in SmartStax this year. If you're on the fringe, you're the one taking a look at this, saying hey, what's my opportunity, and as we said, a few people did make a trade there but it was small.

Specific to your question on the puts and takes across the states, we've planted very low corn so far and what happens between now and the middle of the summer is Mother Nature will have a whole lot to do with which states are up and down. There's intentions right now, but the weather will have a big play into where we end up, and I'm still confident at this point in time those will all wash out. We'll be in a good position by the time we get to end of year. It won't change our outcomes.

Mark Connelly

Okay, very helpful. Thank you.

Operator

Our next question comes from the line of Michael Piken with Cleveland Research. Please proceed with your question.

Michael Piken

Yes, hi. Thanks for the question. Just wanted to check in in terms of where you guys are in terms of getting Chinese approval for Xtend, and how important is that in terms of a commercial launch here in the U.S.?

Hugh Grant

Yes, as we mentioned earlier, so we've got all the files in, we've done all the submissions. The Chinese authorities, in our opinion, now have the dossiers that they need to make their decision, and it is important, so we need that Chinese approval. But if you look back over the years, China has been consistent. They're usually the last approval, but they've been consistent in their processes, so we have no reason--at this stage, we've no reason to doubt that history will repeat itself again.

Michael Piken

Okay, terrific. Then just shifting down to South America, with respect to the usage of Intacta, I know obviously you guys are working to get Xtend approved down there, but would you be amenable to selling Intacta and have it be used with a competitor's other herbicide type product, or is it going to be basically used exclusively with Xtend, or has that decision been made yet? Thanks.

Hugh Grant

It'd be ultimately used with other products, but the main focus for us has been getting the regulatory approvals, getting the field trials, getting the grower experience. That's still--that's beyond the curve in the road at the moment. We just need to get the product in the hands of growers.

Michael Piken

Okay, terrific. Thank you.

Hugh Grant

Thank you, Michael.

Operator

The next question is coming from the line of Joel Jackson with BMO Capital Markets. Please go ahead with your question.

Joel Jackson

Hi, thanks. Good morning. The first question is going back to Intacta - you talked about 30 million acres. Can we talk about are there production constraints? What could the range be if the demand proves better, and maybe you could break down into how much of that would come from Argentina.

Hugh Grant

I guess we're beyond the production constraint stage now in terms of size of markets, and more importantly the range of varieties. So that won't be the constraint going forward, and I think it goes to my earlier point on velocity and growing that pie, so we'll be realistic in our pricing to try and drive penetration as quickly as we can.

Brett, anything else on--?

Brett Begemann

So the 30 million that we're talking about, it's early. We're still counting how much seed is coming in from harvest, and we won't know that because we [indiscernible] multipliers and seed producers. But we feel good about the 30, and I'd just point to that's for the whole South America market, and we're further along in Brazil than we are in Argentina, so as that mix comes to light, we'll share that as we go forward.

Joel Jackson

Okay, and finally if you look at the operational spend coming down a little bit more than you thought, can you talk about where we would see most of the cost coming down and any programs that end up getting delayed?

Pierre Courduroux

So as I mentioned, the fourth quarter is where we have most of our discretionary spend, and it's going to be coming mostly--I mean, on top of what we've already done, a large part is going to be coming from that discretionary spend, and it's going to be the key driver. In addition to that, since we point to the low end of our guidance and compared to last year we may see lesser accruals regarding our incentives, and obviously--I mean, it's a downside for the full year but we also have a positive impact from the currency. So it's a downside for our whole business, but when you look at operating spend, this is a tailwind, I would say, just for that very specific line of the P&L.

So these are--discretionary spend is the bigger one, currency, and then potential some adjustments on our accruals.

Laura Meyer

Rob, I think we're close to time - we're actually a little bit past time, so from a Q&A, I'd like to thank everybody for joining us today with their questions and pass it over to Hugh for some concluding comments.

Hugh Grant

Thanks Laura, and apologies to those on the line for running a little bit late. I hope you feel the second quarter gave you a clearer view into our 2015 opportunity. With the continued strength in our soybean business, and we were very pleased with the performance, and despite the sizeable currency and corn acreage headwinds, we still expect this year to deliver double-digit ongoing earnings per share growth and more than $2 billion of free cash flow for this fiscal year. I think more importantly, that reinforces the confidence that we have in our five-year plan to at least double our ongoing earnings per share as we delivered on several key milestones, including a record second-year ramp with Intacta and continued progress towards our capital allocation commitments.

So as I shared at the start of the call today, the fundamentals of our business are unchanged, and these accomplishments are the cornerstones for our long-term growth drivers. Cyclicality in agriculture may cause our rate of gain to be uneven at times, but it doesn't change the trajectory for growth, particularly given the continued growth of long-term global demand for both corn and soybeans.

So with that, I'd like to thank you for your interest in Monsanto and for joining us today.

Operator

This concludes today's teleconference. You may now disconnect your lines at this time and we thank you for your participation.

Exhibit 7
Filed
Separately
Under Seal

Exhibit 8
Filed
Separately
Under Seal

Exhibit 9
Filed
Separately
Under Seal

Exhibit 10
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Separately
Under Seal

Exhibit 11
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Separately
Under Seal

Exhibit 12

Monsanto Emails: 'Let's Beat the S*** Out of' Moms Worried About Cancer-Linked Weedkiller

AUGUST 28, 2019

WASHINGTON – A Monsanto executive said he wanted to "beat the shit out of" a mothers' group that urged the company to stop selling its Roundup weedkiller, according to internal emails obtained by lawyers for victims who say the pesticide caused their cancer.

The **July 2013 emails,** (https://www.baumhedlundlaw.com/pdf/monsanto-documents-2/MONGLY00940553-REVISED-REDACTIONS.pdf) reported today **by New Food Economy** (https://newfoodeconomy.org/monsanto-bayer-roundup-moms-across-america/), reveal an exchange between Dr. Daniel Goldstein of Monsanto and two outside consultants about how to respond to an **open letter from Moms Across America** (https://www.momsacrossamerica.com/open_letter_to_monsanto_from_moms), a grassroots advocacy group. The emails were obtained during the discovery process for litigation against Bayer, Monsanto's parent company, over Roundup, which three separate juries have found caused cancer in people.

Moms Across America's letter to then-Monsanto CEO Hugh Grant cited scientific studies linking glyphosate, the active ingredient in Roundup, to cancer. It also

decried the company's marketing of seeds for genetically modified foods: "We Moms know your Mom would be proud of you if you put the health of the nation first and stopped selling GMO seeds and spraying Glyphosate (Roundup®) and other harsher pesticides," the letter said.

In the emails, Goldstein wrote that the group was making "a pretty nasty looking set of allegations" and that he had been "arguing for a week to beat the shit out of them."

Using identical scatological language, one of the consultants – Bruce Chassy, then a professor at the University of Illinois – also advocated attacking the moms' group. The other consultant – Wayne Parrot, a University of Georgia crop scientist – disagreed: "You can't beat up mothers, even if they are dumb mothers but you can beat up the organic industry," which he falsely claimed "paid for and wrote that letter."

"These ugly emails reveal the utter contempt that Monsanto has for public health and for consumers, including mothers who only want to protect their kids' health," said EWG President Ken Cook. "Bayer is reeling from its monumental blunder of buying Monsanto, and these emails should remind them that they acquired the company that gave us DDT, Agent Orange and PCBs."

In the same email exchange, Goldstein noted a surge in public comments to the Environmental Protection Agency on its proposed rule to allow higher levels of glyphosate on supermarket produce.

"BTW – a minor tolerance increase petition for glyphosate on specialty crops got 10,821 negative public comments in the last 48 hours – NOT form letters – individually written comments," Goldstein wrote. "We're on our way to being corporate road kill."

Next week the EPA will close the public comment period for its review of glyphosate's registration

glyphosate's registration (https://www.federalregister.gov/documents/2019/06/26/2019-13524/glyphosate-proposed-interim-registration-review-decision-extension-of-comment-period), or license for use. Nearly 7,000 comments have been submitted to date, overwhelmingly opposing any further use of the weedkiller.

In another email, a Monsanto scientist expressed concerns about the health risks from glyphosate. In May 2014, toxicologist Donna Farmer warned a company spokesperson against making public comments about the safety of Roundup: "We cannot say it (glyphosate) is 'safe'... we can say history of safe use, used safely etc."

In March 2015, the International Agency for Research on Cancer, or IARC, classified glyphosate as "probably carcinogenic to humans," (https://www.iarc.fr/featured-news/media-centre-iarc-news-glyphosate/) setting off a flurry of activities at Monsanto attacking IARC's assessment.

Monsanto hired a consulting firm to draft a paper refuting IARC's findings, with the working title "An Expert Panel Concludes There Is No Evidence That Glyphosate Is Carcinogenic to Humans."

One Monsanto consultant pushed back. In a November 2015 email, Tom Sorahan, an epidemiologist at the University of Birmingham, warned (http://baumhedlundlaw.com/pdf/monsanto-documents/33-Monsanto-Consultant-You-Cant-Say-That-There-is-no-Evidence-of-Roundup-Carcinogenicity.pdf): "We can't say 'no evidence' because that means there is not a single scrap of evidence, and I don't see how we can go that far."

All of the emails can be found here (http://baumhedlundlaw.com/pdf/monsanto-documents/monsanto-documents-chart-101217.pdf), courtesy of the law firm Baum Hedlund Aristei & Goldman.

Trial juries in three California lawsuits against Bayer-Monsanto have found in favor of the plaintiffs (https://www.ewg.org/release/jury-slams-bayer-monsanto-latest-roundup-cancer-trial), all of whom have been diagnosed with non-Hodgkin lymphoma. There are now roughly 13,000 other cases against Bayer-Monsanto awaiting trial in the U.S. alone.

Since Bayer bought Monsanto last year, the price of its stock has plunged,

shareholders are up in arms, and the deal is widely seen as one of the biggest miscalculations in corporate history. (https://www.wsj.com/articles/bayers-roundup-woes-send-investors-fleeing-11558266059?mod=article_inline)

EWG has conducted three rounds of tests (https://www.ewg.org/childrenshealth/monsanto-weedkiller-still-contaminates-foods-marketed-to-children/) of popular oat-based cereals and other foods, including Cheerios, marketed toward children, and detected glyphosate in nearly every sample.

###

The Environmental Working Group is a nonprofit, non-partisan organization that empowers people to live healthier lives in a healthier environment. Through research, advocacy and unique education tools, EWG drives consumer choice and civic action.

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More meat means more land use and even more greenhouse gases (/news-insights/news/2022/01/more-meat-means-more-land-use-and-even-more-greenhouse-gases)

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Don’t believe the meat industry’s claims of embracing sustainability and using less land to produce more meat. Land use, and its associated greenhouse gas emissions, are rising.

Plowing grassland...

ALL NEWS (/NEWS-INSIGHTS/NEWS)

Exhibit 13

Add your name to the open letter!

--

Dear Mr Grant,

Studies show over 90% of us have your company's chemicals in our blood.

Studies also show that those chemicals are "probably" carcinogenic, and are also damaging to our planet's biodiversity and food security.

Your legal attacks and public relations strategy aim to question the science behind these conclusions. So this is our challenge: Avaaz will donate to fund a new, entirely independent study of your glyphosate product, Roundup, if you match our donation, and agree to respect the results.

We're keen on truly independent, trustworthy science to assess the environmental health and safety of your products. The question you can answer for the world here is, are you?

Sincerely,

Sign the open letter :

Email

SIGN THE LETTER

By continuing you agree to receive Avaaz emails. Our Privacy Policy will protect your data and explains how it can be used. You can unsubscribe at any time.

more than a month ago		Daleen Australia
more than a month ago		Shari M. United States of America
more than a month ago		Jitakirin United Kingdom
more than a month ago		Rob G. United Kingdom
more than a month ago		Muhammad A. United States of America

Exhibit 14
Filed
Separately
Under Seal

EXHIBIT D

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY

ALLAN SHELTON, et al.,	)	
	)	
Plaintiffs,	)	**Case No. 1816-CV17026**
	)	
vs.	)	
	)	
MONSANTO COMPANY,	)	
	)	
Defendant.	)	
	)	

NONPARTY HUGH GRANT'S REPLY IN SUPPORT OF HIS MOTION FOR PROTECTIVE ORDER CONCERNING HIS TRIAL TESTIMONY AND ACCOMPANYING MEMORANDUM OF LAW

Mr. Grant's opening brief demonstrated that (1) he is the former CEO of Monsanto, but has not had any connection to Monsanto or Bayer since his retirement in June 2018; (2) he has, at most, little personal knowledge, and no unique knowledge, of the issues to be tried in this case; (3) notwithstanding that, he sat for a five hour deposition in the Roundup® MDL litigation—litigation that presents issues identical to those presented by this case, (4) this case is one of 14 similar cases that are currently set for trial in Jackson County, St. Louis County or St. Louis City (including five cases involving OnderLaw), presenting the specter that Mr. Grant, who resides in the City of St. Louis, could be subpoenaed to appear to testify in numerous trials; and, therefore, (5) under the governing case law, the trial subpoena to Mr. Grant should be quashed.

Plaintiffs' opposition repeatedly asserts that Mr. Grant has "unique and personal knowledge related to issues that are at the heart of Plaintiff Shelton's claims and Monsanto's defenses". But Plaintiffs' own exhibits demonstrate that Mr. Grant has only a general and high-level knowledge of the issues that Plaintiffs see as central to this litigation. Moreover, Plaintiffs ignore that whatever limited knowledge Mr. Grant has, he had that same knowledge on February

4, 2019, when he sat for a five-hour deposition in the Roundup® MDL litigation, which resulted in 264 pages of transcript that may be used in this litigation.[1] Moreover, Mr. Grant's deposition took place only a few months before the MDL trial. Not only were segments of his deposition played at the MDL trial, but his deposition was also featured during plaintiffs' opening and closing statements. There is no need to call Mr. Grant live in this trial.

The question for the Court is not whether a high-ranking official must appear and provide testimony on subject matters that are uniquely within his knowledge. The question is whether a former high-ranking official must appear and testify at the first of what could be many Missouri trials when he has already given exhaustive testimony on the issues in this case and that testimony demonstrates both that he has no unique knowledge and that previously deposed individuals are much more knowledgeable about the topics in this litigation than he is. As shown below, Mr. Grant's trial testimony is wholly unnecessary and serves only to harass and burden Mr. Grant. Therefore, Mr. Grant respectfully requests that this Court enter a protective order barring Plaintiffs from subpoenaing him for trial testimony in this matter.[2]

I. The Burden Of Appearing At Trial Far Outweighs Plaintiffs' Need.

As noted throughout this reply, Mr. Grant has already given a 5-hour deposition that generated 260+ pages of testimony on the very issues in this case. Plaintiffs argue that the MDL deposition is insufficient because the testimony was in a different Roundup® case, these litigants

[1] All objections made during the MDL deposition are preserved and subject to final ruling by the Court.

[2] Plaintiffs note that a St. Louis County court previously denied Mr. Grant's motion for a protective order regarding giving trial testimony *Adams v. Monsanto*, 17SL-CC02721 (Dec. 20, 2019). In that matter, Mr. Grant filed a Writ of Prohibition with the Missouri Court of Appeals. *State ex rel. Grant v. May*, ED108556. The Court of Appeals ordered Responded to file Suggestions in Opposition. However, the *Adams* case was removed from the trial docket and the writ was withdrawn before the issue was fully briefed and ruled on.

did not get a chance to examine him under oath, and the cases are subject to different set of laws. What plaintiffs ignore, however, is that the issues and legal theories in the two cases are identical. *Compare* First Am. Pet. at ¶¶ 84-181 (bringing claims of Strict Liability (Design Defect); Strict Liability (Failure to Warn); Negligence; Fraud, Misrepresentation, and Suppression; Violation of Missouri Merchandising Practice Act; Breach of Warranties; Breach of Implied Warranty of Merchantability) *with* MDL 3d Am. Compl. at ¶¶ 114-170 (bringing claims that include Strict Liability (Design Defect); Strict Liability (Failure to Warn); Negligence/Negligent Misrepresentation). Therefore, Plaintiffs' need for live trial testimony is negligible at best.

As noted in Mr. Grant's initial brief, it is significant and important to the decision of this motion that many similar cases are pending before the Missouri courts. Indeed, this case is one of 14 similar cases that are currently set for trial just in in Jackson County, St. Louis County or St. Louis City (including five cases involving OnderLaw). For Mr. Grant to be subject to subpoenas in every other Missouri trial and in any cases that are set for trial in the future would be an unwarranted imposition on a non-party witness with little (if any) involvement in the issues that are the subject of these trials.

II. Mr. Grant Was Deposed in the MDL and Plaintiffs' Own Exhibits Show That He Does Not Possess Unique Personal Knowledge About This Case.

Plaintiffs point to eleven documents (out of more than 20 million pages of documents produced by Monsanto) that they assert show that Mr. Grant was an "active participant" and "decision-maker" in all things Roundup®. Opp'n at 4-7. But the documents show the opposite: Mr. Grant was merely being kept informed and at most offering high-level suggestions; others at Monsanto (many of whom have been deposed) were responsible for the actual oversight and decision-making related to Roundup®. In addition, as noted below and Plaintiffs surely know, Mr. Grant has already testified under oath about these topics.

Plaintiffs' Exhibit 2 is a May 2000 email, sent to well over 30 recipients, regarding a publication on glyphosate, to which Mr. Grant "responded all" and asked to be kept "in the loop" about "PR info" related to the publication. Opp'n, Ex. 2. The email demonstrates that there were individuals in the Monsanto organization who were more knowledgeable about this publication and related PR than Mr. Grant. In fact, some of those individuals—Dr. Heydens and Dr. Farmer—have provided comprehensive testimony regarding this publication and this specific email. Mr. Grant's response asks only that he be kept informed about what others were doing – the opposite of "unique personal knowledge."

Plaintiffs' Exhibit 3 is an email from Mr. Grant to two high-level Monsanto employees regarding a Reuters article titled, Cancer cause or crop aid? Herbicide faces big test. Mr. Grant only asks a question: how can the industry respond to the headline.

Plaintiffs' Exhibit 4 is an interview that Mr. Grant gave in 2016 during which he stated, "Roundup® is not a carcinogen." First, Mr. Grant provided testimony about this interview (and that specific line from it) at his MDL deposition. *See* Grant Tr. 43:24-45:20. Second, Sam Murphey, Monsanto's corporate witness, was deposed in the MDL about Monsanto's public response to IARC and related media efforts. Third, this interview is over 20 minutes long and covers topics such as GMOs, sustainable agriculture, and what needs to be done in our world to reduce use of water in agriculture, increase food security, and prevent climate change. Mr. Grant discusses pesticides with the interviewer for less than 3 minutes. The bulk of Mr. Grant's interview therefore is, at best, far afield from the core scientific issues in this case and, at worst, irrelevant. Finally, as noted above, Mr. Grant's testimony shows that he relied on a variety of others within Monsanto who had knowledge of this issue and his statements about it were not based on his own unique personal knowledge.

Plaintiffs' Exhibit 5 is an email sent to Mr. Grant and 25 others regarding IARC's plan to classify glyphosate as a probable carcinogen. The sheer number of recipients on the email belies Plaintiffs' claim that Mr. Grant has "unique personal knowledge," and Mr. Grant was examined about IARC's classification of glyphosate at length during his deposition. Tr. 52:20-53:19; 110:15-20; 112:10-114:8.

Plaintiffs' Exhibit 6 is a 2015 Earnings Call Transcript during which Mr. Grant spoke about Roundup® and was critical about IARC's classification of glyphosate as a probable carcinogen. First, there is nothing unique about the statements Mr. Grant made during this, or any other earnings call. As is common practice for senior executives, Mr. Grant's remarks were synthesized from a variety of different sources within Monsanto who had knowledge of the subjects addressed in the call and were not based on his own unique personal knowledge. Second, during the MDL deposition, Mr. Grant was examined about IARC's classification of glyphosate – the same issue he addressed on this call. Tr. 52:20-53:19; 110:15-20; 112:10-114:8.

Plaintiffs' Exhibit 7 is a different Monsanto employee's (Daniel Goldstein) personal employment objectives for some year, to be used during his year-end performance review. It mentions that his duties for that year were anticipated to include preparing materials for Mr. Grant in connection with a shareholder meeting. It does not disclose whether he in fact prepared them and if so what use – if any – Mr. Grant made of them. Mr. Goldstein was deposed and asked about this document in the MDL. *See* Goldstein MDL Dep. Tr. 116:11-143:19 (Jan. 18, 2017). Moreover, Mr. Grant testified in his deposition about interactions at shareholder meetings. Tr. 146.

Plaintiffs' Exhibit 8 is an email from Mr. Grant to three high-level Monsanto employees regarding IARC's classification of glyphosate. There is nothing unique about Mr. Grant's

response that Monsanto needs to "take a hard line" on IARC's classification of glyphosate. Moreover, Mr. Grant was examined about IARC's classification of glyphosate at length during his deposition. Tr. 52:20-53:19; 110:15-20; 112:10-114:8.

Plaintiffs' Exhibit 9 is an email sent to Mr. Grant and seven others regarding the Labeling Hearing at the Senate Committee on Agriculture, Nutrition, and Forestry. Contrary to the Plaintiffs' description, the email makes no reference to efforts by Monsanto or Mr. Grant to discredit IARC. Rather, it states that "IARC's findings" regarding red meat and processed meat "may further underscore IARC's lack of credibility." The number of recipients on the email belies Plaintiffs' claim that Mr. Grant has "unique personal knowledge," and Mr. Grant was examined about IARC's classification of glyphosate at length during his deposition. Tr. 52:20-53:19; 110:15-20; 112:10-114:8.

Plaintiffs' Exhibit 10 is an email chain regarding Monsanto's response to the American Academy of Pediatrics' letter and donation return. First, it shows that someone else drafted a response for Mr. Grant, Mr. Grant reviewed it, offered no edits or comments, and okayed adding his signature to the letter. That is, again, the opposite of having "unique personal knowledge". Second, this email was included in Mr. Grant's reliance materials and MDL counsel examined Mr. Grant at length about the American Academy of Pediatrics' letter. Tr. 79:11-83:8. Third, three other individuals in the Monsanto organization—Ms. Farmer, Mr. Goldstein, and Mr. Murphy—also provided testimony about this letter.

Plaintiffs' Exhibit 11 is an email from Michael Parrish to Jeremy Stump regarding the EPA and glyphosate. Mr. Grant is not on the document but nevertheless was examined about it at his deposition and provided substantive deposition testimony about his communications with the

EPA. Tr. 56:15-61:2 and Ex. 6 to Deposition. Plaintiffs fail explain why this testimony is insufficient or what other information they think that Mr. Grant uniquely possesses on this point.[3]

Plaintiffs' Exhibit 14 is an email chain that includes Mr. Grant and almost 20 other Monsanto people that discusses the potential approval for the sale of glyphosate in Europe in 2016. Mr. Grant makes a suggestion regarding handling media inquiries and Sam Murphey explains to Mr. Grant that his suggestion is not in line with "the primary strategy" in such matters. The email thus shows Mr. Grant did not develop but instead had to be informed of the "primary strategy" that was being implemented regarding media inquiries – the opposite of having "unique personal knowledge" of it. Additionally, Messrs. Murphey, Heering, and Rands have already been deposed on this very topic and those depositions can be used in this litigation.

III. Plaintiffs' Caselaw Is Unpersuasive Given the Unique Facts in This Case.

As stated in the introduction, the fact that Mr. Grant has already been deposed on the topics that are relevant to this case, is a unique and important fact. Plaintiffs cite *State ex rel. R. W. Filkey, Inc. v. Scott*, 407 S.W.2d 79 (Mo. App. 1966) for the proposition that a litigant has the right to require a witness' attendance at trial. In *Scott*, however, the witness only challenged the request for production, not the subpoena.

Plaintiffs heavily rely on *Cox v. Kansas City Chiefs Football Club, Inc.*, 473 S.W.3d 107 (Mo. banc 2015) in their argument and try to minimize the stark differences between this case and *Cox*. In *Cox*, the CEO of the Kansas City Chiefs imposed his own personal view on employing younger staff and made that view the company policy. *Cox*, 473 S.W.3d at 127. Therefore,

[3] Exhibit 12 is an article that includes a one sentence reference to a letter to Mr. Grant from Moms Across America. Exhibit 13 is a "Open Letter" to Monsanto and Mr. Grant that is found on the website of an online activist organization. Neither exhibit pertains to any unique personal knowledge that Mr. Grant has regarding this litigation.

plaintiff's theory was that the CEO originated a company policy of age discrimination. *Id*. The Missouri Supreme Court held that trial court abused its discretion in not permitting the CEO to be deposed. *Id*. The Supreme Court explained, "when the Chiefs deny that [CEO] said he wanted to go in a more youthful direction and deny that there was any company-wide effort or direction to replace older workers with younger workers, there are specific questions that only [CEO] can answer." *Id*. Here, Plaintiffs have failed to identify one question that only Mr. Grant can answer. Rather, they summarily assert that Mr. Grant was "an originator of policies and positions at Monsanto regarding the safety of Roundup," (Opp'n 8) despite citing numerous documents in the opposition that demonstrate that the opposite is in fact true. Opp'n 5-7. Regardless, *Cox* is inapposite because Mr. Grant has already sat for a deposition.

Plaintiffs go on to state that Mr. Grant must come to trial because Monsanto's corporate witness can't testify regarding (1) what Grant knew before he made statements to public, investors, regulators; (2) what Grant knew and said when meeting with EPA about Roundup®;[4] (3) Grant's responses to inquiries about safety of Roundup; (4) Grant's role as a decision maker and what those decisions were based on re continuing to say Roundup safe in face of concerns from scientific community. Opp'n 8. But Plaintiffs forget that Mr. Grant has already provided testimony on these subjects. Additionally, while a corporate witness may not be able to speak to some of these topics, a number of fact witnesses have given testimony in all four categories.

Plaintiffs attempt to distinguish *State ex rel. Ford Motor Co. v. Messina*, 71 S.W.3d 602 (Mo. banc 2002) by arguing that the subpoenas were quashed because there was no evidence that the executives had any knowledge or involvement in the 1987 tires that were the subject of the

[4] Plaintiffs' Exhibit 11 demonstrates that at least two other Monsanto witnesses were present for that meeting.

lawsuit. Plaintiffs focus expressly on the considerations that dictated the outcome in *Messina* and fail to trace *Messina*'s steps – including showing a need for Mr. Grant's depositions. As discussed at length above and in the Motion for Protective Order, no need exists and a protective order should issue.[5]

Plaintiffs' reliance on orders in the Medtronic, Talc, and Paxil litigations only confirms their failure to grasp the applicable standard because in those cases – unlike here – the parties were seeking depositions rather than live trial testimony, and were able to articulate specific knowledge and involvement unique to the CEOs as a predicate for obtaining depositions. In *Anders v. Medtronic*, for example, the court initially prohibited the plaintiffs from deposing defendant Medtronic's CEO based on a finding that the plaintiffs had not demonstrated that the CEO had relevant information that could not be "sought by less burdensome means." Order at 3-4, *Anders v. Medtronic, Inc.*, No. 1322-CC10219-02 (Mo. Cir. Ct. Jan. 5, 2017). It was only after the plaintiffs conducted deposition discovery of other, lower level employees that revealed that the

[5] Plaintiff also notes that *Messina* does not apply to former CEOs. While there are no Missouri cases that apply an "Apex" type rule to former high-level executives, there are several courts that have done so: *Givens v. Newsom*, 2021 WL 65878, **7-8 (E.D. Cal. Jan. 7, 2021) (applying the apex doctrine to grant a protective order related to the depositions of two former officials and noting "the rationale of protecting highly visible public servants from becoming targets for unnecessary, or at worst harassing, discovery requests survives their departure from office"); *K.C.R. v. Cty. of L.A.*, 2014 WL 3434257, at *3 (C.D. Cal. July 11, 2014) ("Executives and high-ranking officials continue to be protected by the apex doctrine even after leaving office."); *Robertson v. McNeil-PPC Inc.,* 2014 WL 12576817, at *17 (C.D. Cal. Jan. 13, 2014) (finding that apex doctrine applies to retired executives in order to avoid "a tremendous potential for abuse and harassment"); *Moyle v. Liberty Mut. Retirement Benefit Plan*, 2012 WL 5373421, at *3 (S.D. Cal. Oct. 30, 2012) ("Former executives . . . are within the scope of the apex doctrine."); *Sargent v. City of Seattle*, 2013 WL 1898213, at *3 n.2 (W.D. Wash. May 7, 2013) (This application makes perfect sense because a "former high-ranking [executive], whose past official conduct may potentially implicate [him] in a significant number of related legal actions, ha[s] a legitimate interest in avoiding unnecessary entanglements in civil litigation.")

CEO "was uniquely involved in the subject of the lawsuit" and had information unavailable from other sources that the deposition was allowed to go forward. *Id*. at 4-5. Specifically, the plaintiffs presented the court with evidence that the CEO was directly involved in the "promotion of" the medical device at issue and had participated in commissioning a project to share clinical research data related to the product, conduct that the court held was "unique" to the CEO, "goes to the heart of [p]laintiffs' claims and affects the liability of [d]efendants." *Id*. In *Young v. Johnson & Johnson*, No. 1522-CC09728-02 (Oct. 29, 2018) the court allowed the deposition of a current CEO, who had not been previously deposed, to go forward under strict parameters, including imposing limitations on the length and subject matter of the deposition. And while the court in *Orrick v. Smithkline Beecham Corp.*, No. 1322-CC00079-01 (Mo. Cir. Ct. Aug. 27, 2015), issued only a one-page order that does not include any explanation of its decision to permit a CEO deposition, plaintiffs themselves state in their briefing that the CEO there had "personal involvement in the promotion, sale and marketing" of the relevant drug, including personal involvement in communications about the "marketing and research" for the product (Opp'n at 10). Here, Mr. Grant has already been deposed in Roundup® litigation and Plaintiffs fail to show that Mr. Grant has the unique personal knowledge that was apparently shown in other litigations.

Finally, Plaintiffs cite to *State v. Sanchez*, 752 S.W.2d 319 (Mo. 1988) to support their argument that Mr. Grant should testify live because former testimony is often a weaker substitute for live testimony. The language in *Sanchez* is dicta and is easily distinguishable. *Sanchez* involved the criminal prosecution of a child abuser and whether the state adequately showed that the abuse victims were unavailable to testify live. The language cited by Plaintiffs comes where the court is discussing the Sixth Amendment's right to confront the witnesses who is accusing the defendant of a crime and the rule that requires the state either to produce the declarant at trial or to

demonstrate such declarant's unavailability. *Sanchez*, 752 S.W.2d at 331-2. There is no such constitutional right in play here.

CONCLUSION

For all of these reasons, Hugh Grant respectfully requests that the Court enter a protective order barring Plaintiffs from subpoenaing Hugh Grant's trial testimony in this matter.

DATED: February 9, 2022

Respectfully submitted,

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Attorneys for Non-Party Hugh Grant

CERTIFICATE OF SERVICE

The undersigned certifies that on February 9, 2022, the foregoing was filed with the Clerk of the Court for Jackson County, Missouri using Missouri Courts' eFiling System which sent notification of such filing to all persons listed in the Court's electronic notification system.

/s/ Gerard T. Noce

Exhibit E – To be filed under seal

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY

ALLAN SHELTON, et al.,)
)
Plaintiff,)
)
-vs-) Case No. 1816-CV17026
)
MONSANTO, et al.,)
)
Defendant.)

TRANSCRIPT OF PROCEEDINGS

On Friday, March 4, 2022, the above cause came on for hearing before the Honorable Charles H. McKenzie, Judge of Division 13 of the 16th Judicial Circuit, Jackson County Court, at Kansas City, Missouri:

APPEARANCES:

For the Plaintiffs:
FRAZER, PLC
By: Mr. Roe Frazer and
Mr. Trey Frazer
Burton Hills II
30 Burton Hills Boulevard, Suite 450
Nashville, Tennessee 37215

For the Defendants:
SHOOK HARDY & BACON, LLC
By: Ms. Hildy Sastre and
Mr. James E. Shepherd
2555 Grand Boulevard
Kansas City, Missouri 64108

For Mr. Hugh Grant:
HEPLER BROOM, LLC
By: Mr. Gerard Noce and
Ms. Elizabeth Kellett
211 North Broadway, Suite 2700
St. Louis, Missouri 63102

A P P E A R A N C E S
(Continued)

For Mr. Hugh Grant:
FOLAND, WICKENS, ROPER AND CRAWFORD, P.C.
By: Mr. Joseph Roper
1200 Main Street, Suite 2200
Kansas City, Missouri 64105

AMY L. MCCOMBS, CCR #1140
16th Judicial Circuit at Kansas City, Missouri

THE COURT: The Court will now call Allan Shelton versus Monsanto Company, 1816-CV17026. Counsel, state your appearances.

MR. NOCE: Gerard Noce, Your Honor, on behalf of the nonparty subpoenaed witness, Mr. Grant.

MR. ROPER: Joe Roper also on behalf of Mr. Grant.

MR. TREY FRAZER: Good morning. Trey Frazer on behalf of the plaintiff, Allan Shelton.

THE COURT: All right. There's other attorneys on this -- in this hearing. I would assume those who have identified themselves are those that will be speaking on the motion.

The Court's reviewed the motion, I'm aware of the circumstances. I've also reviewed the deposition of Mr. Grant that was taken that is the subject of another motion for protective order that I haven't ruled on yet, but so -- I say all that so that to the degree you want to consider that in presenting your arguments, I will permit you to go forward now.

It's Mr. Grant's motion. So, Mr. Noce, will you be speaking on behalf of Mr. Grant?

MR. NOCE: Yes, I will, Your Honor. And

Mr. Roper may have some comments in response or in reply.

May it please the Court. The plaintiffs have subpoenaed Hugh Grant, who has been retired since 2018 as former CEO of Monsanto. He has never been an employee of Bayer. He has no financial ties to Monsanto or Bayer.

We have filed this motion for protective order, we seek to have that trial subpoena quashed. That's the remedy we're looking for, Your Honor.

I think that the biggest distinction this case has over all the cases that have been filed and referenced in the pleadings, in our motion for protective order and suggestions in the plaintiff's response and our reply, the biggest distinction here is that almost three years ago -- in fact, over three years ago -- Mr. Grant gave a 250-page deposition that covered five hours, taken by the plaintiff's lawyers to be used in the multidistrict litigation and that -- and it has been agreed, subject to some objections and some issues relating to confidential documents used in the deposition, that the deposition can be used here as if it was taken in this case.

That deposition was clearly taken for use at trial, was used in trial, was used in the opening statement and the closing argument of the plaintiff's lawyers in that MDL trial. The issues in that case, Your Honor, are identical to the issues in this case.

And I know you've read the deposition, Judge, you've read the papers, but I can't emphasize too much how little value Mr. Grant's testimony, in addition to the deposition that they have, would add to this case. He has almost no personal knowledge, no unique knowledge. He's not a toxicologist, he's not an epidemiologist, and he's not a regulatory expert. He did not work in those areas during his time at Monsanto. He has no personal knowledge of the plaintiff in this case, Mr. Shelton, whatsoever.

All the relevant testimony was used -- was obtained in the MDL depositions. Topics that are identified by the plaintiffs in this case were covered in that deposition. What he knew before he made statements to public -- to the public, investors, regulators, what he knew and said while meeting with the EPA about Roundup, his responses to inquiries about the safety of Roundup, Grant's

role in the deposition is a decision maker and the decisions were made continuing to say that Roundup was safe in the face of concerns of the scientific community.

All that was covered. 250 pages, Judge. All that was covered. He provided deposition testimony on his background, Roundup, the regulatory environment, Monsanto's relationship with its customers, studies related to Roundup, allegations that Roundup causes cancer, Bayer's acquisition of Monsanto, Roundup's labeling, OEHHA, the California Proposition 65, IARC's classification of Roundup as a probable human carcinogen, and then contact with the EPA regarding Roundup.

He also during this deposition, while he had high-level information about those various subjects, there were other people who had working information, who worked on these issues, who worked in these departments every day at Monsanto whose depositions have been taken, including scientists, members, and marketers of the government regulatory affairs department.

All that information's been provided by others, either because the plaintiffs knew about

that from other sources or were directed that way in that deposition given by Mr. Grant almost -- well, more than three years ago.

I know the Court's looked at the case law, and I know you'll look at it again. I think it is important to look at Messina. No depositions taken. Those were issues regarding depositions, Judge. Here, they have the deposition. The apex rule in other courts has been reviewed and has been accepted, even as it relates to former CEO's like Mr. Hunt in this case.

The plaintiffs put a lot of faith in the Cox case. The Cox case came out of Kansas City, it involved the Chiefs, involved Lamar Hunt. The difference in the Cox case was Mr. Hunt gave no deposition, and Mr. Hunt, after the Court reviewed it, at the urging of plaintiff's counsel, Mr. Egan, was able to establish that the very issues that were at the heart of Mr. Cox's case were based upon the statements by Mr. Lamar Hunt, his feelings about being -- going to younger employees. That was his policy. And his deposition wasn't taken, his trial testimony was quashed, and the supreme court rightfully said no,

this goes to the heart of the matter, he has personal knowledge. That's the distinction with Cox.

If you look at the other cases that have been cited by the plaintiffs' lawyers, trial cases, Anders versus Medtronic, they were seeking a deposition of the CEO. Young versus Johnson and Johnson, again a deposition. That's distinguished here. It's different than what we have here. Orrick is the same.

They bring up the Adam's case, surprisingly, that was in St. Louis. We were in that case. We filed a motion to quash. In that case, keep in mind, Judge, that the subpoena was issued to Mr. (inaudible), you know, our client and Hugh Grant, Mr. Grant.

THE COURT: You're breaking up a little bit, Mr. Noce. You broke up just right there. Would you repeat what you just said regarding the Adams case.

MR. NOCE: That could have been just my voice, Judge, I don't know. I'm trying to get through correctly.

The significance of the Adams case, which I was involved in, Judge, I think you start

with it's a trial subpoena and Mr. Hunt lives in the central west end of St. Louis and was subpoenaed to be in Clayton. I would tell the Court -- I think you'll notice, that's about a four-mile drive for Mr. Hunt as opposed to a 250-mile drive here.

But even there, issued the subpoena, there was a special master who made findings denying our request. Judge May denied our request. We filed a writ -- petition for writ of prohibition and the Court of Appeals in St. Louis issued an order requiring the plaintiffs, or Judge May, to answer our petition. That case went away due to COVID and all that, so the petition was withdrawn and there was no resolution, but I think it's significant. That doesn't happen very often where the court of appeals makes that -- enters that order.

So, Judge, I do want to address briefly the -- I think the case law is with us, Judge. I believe it is with us. The plaintiffs have in their reply and provided the Court under seal a -- 14 exhibits that they think essentially mandates that this motion be denied and that he be required to give testimony. I would tell the Court.

THE COURT REPORTER: I'm sorry to interrupt, but could everybody go to mute that's not talking?

THE COURT: Yes. Thank you, Amy. Everybody go to mute unless you're talking, please. That will help us out a little bit.

Sometimes what we've found, Mr. Noce, is there seems to be some interruption when people kind of move around their microphone because it just starts -- the microphone seems to warble a little bit. So I'll just -- in the many times we've been doing this, that seems to be one experience we've noticed. Go ahead.

MR. NOCE: Thank you, Your Honor. Our review of the exhibits that the plaintiffs have filed with their response to our motion, I would say that if you look at Exhibit Nos. 2 and 14, that appears to be their best shot, and that appears to be the strength of their argument. But if you look at those two, I would say, Judge, those don't really reach the issue. If that's the best they got, they don't really get home with those two exhibits. Those are exhibits that indicate that -- let me look at it. One is a -- is simply -- let me get my notes -- okay.

In Exhibit 2, it's an email, May of 2000 email, sent to 30 recipients, including Mr. Grant, and Mr. Grant responded to all saying he wanted to keep the -- be kept in the loop about the P.R. info related to the publication. This doesn't show any unique knowledge whatsoever, Your Honor.

And No. 14 is an email that includes Mr. Grant and almost 20 other Monsanto people discussing the potential approval of the sale of glyphosate in Europe in 2016. He makes a suggestion, Mr. Grant does, regarding how to handle a primary strategy, but Mr. Murphy, Herring and Rand have already been deposed, and they were the people who were involved in the day-to-day issues, and their depositions have been taken and can be used in this litigation.

Judge, a review of some of the others, the exhibits that they've marked, they don't establish any unique knowledge on the part of Mr. Grant. He may have been cc'd, things of that nature. A third group, and it includes No. 4, it shows that Mr. Grant was simply being informed and kept apprised, nothing more than that.

And Nos. 12 and 13, these are documents that originated outside of Monsanto with no

evidence that he took any action at all and weren't sent to him.

Judge, I think that they don't -- they do not establish what's required from Messina to require this witness to come here.

So if you get to the end of the line and see, one, no unique, no unique knowledge; two, a 250-page deposition that covered every imaginable issue relevant to this case, you sit back and say, Why is his testimony necessary? Why should he appear live in the Kansas City courtroom?

I would direct the Court's attention to the motion for protective order filed by Rob Adams on behalf of Monsanto as it related to Mr. Begemann's deposition and the remedy sought there. It suggests to us that the sole purpose the plaintiffs are -- have for bringing Mr. Grant to Kansas City is to put on a dog and pony show like they tried against Mr. Begemann insinuating that he's a bad grandparent, accusing him of -- willing to bribe the EPA, things of that nature. Judge, there's no other reason. His presence -- and when you keep in mind -- somebody's calling me from Foland and Wickens, and I don't think it's Joe, so I'm going to leave that alone. Sorry, Your Honor.

In -- you know, Judge, there are a number, as you know, 11 cases right here with this same set of plaintiffs' lawyers. And there are a number of these cases, I think I looked today and they were about 25 new cases filed in St. Louis County alone, requiring this man to come in to Kansas City to give testimony when this has already been covered in a deposition taken three years ago when matters were more fresh to him, and keeping in mind he's had no contact with Roundup at all since that time.

I would ask the Court for the remedy we're seeking here and that is enter the protective order, quash the subpoena, Judge. They've got a deposition. They have everything they need other than to try to embarrass this man in front of a jury. Thank you, Your Honor.

THE COURT REPORTER: You're on mute, Judge.

THE COURT: I can follow orders, Amy. Hold on just a second. Let me come right back to you. Let me get something.

And, excuse me, I did reference Mr. Grant's deposition. What I did review, Mr. Noce, was Mr. Begemann's deposition. I wanted to

confirm that's what I did, so -- because he had some familiarity with a lot of these kind of apex issues as well.

MR. NOCE: Yes, sir.

THE COURT: Just wanted to correct myself on that and wanted to review that.

Okay. Mr. Frazer, I'll let you speak on the plaintiff's behalf.

MR. TREY FRAZER: Thank you, Your Honor.

May it please the Court. I don't think there's any question that Mr. Grant was CEO of Monsanto during the relevant time period here, 2003 to 2018. That's the exact time frame when our plaintiff was using the product at issue, Roundup. He was the CEO.

If you look at the Messina case, for example, the CEO is not compelled to testify because the product at issue was manufactured over ten years before that CEO became CEO. That's not the case here.

But under the basic test, in Messina, Mr. Grant has a tremendous amount of knowledge that is admissible and relevant. And any burden to Mr. Grant is minimal at best and substantially outweighed by the need for his live testimony.

And other courts who have faced this issue have realized this. For example, in the Adams case, as my colleague mentioned, Judge May ordered Mr. Grant to testify live at trial. And I find it ironic that Mr. Grant's lawyers argued that Mr. Grant has no personal or unique knowledge, yet he was able to sit for five hours and provide 250 pages worth of testimony, many of which were admitted in the only federal case to go to trial by Judge Chhabria. If he had no personal knowledge, that never would have been admitted at trial.

Quite frankly, there's no other person better suited to testify live at trial about Monsanto's corporate knowledge, corporate culture, and the corporate actions took during the most relevant time period here in the early 2000s.

He was the decision maker, the CEO, the most powerful person in the company and also the chairman of the board. It was up to him. He had the power whether to put a warning label on the product. He chose not to. That was a decision he made. We can't ask anybody else why he made that decision except Mr. Grant.

You can't ask a soldier on the

battlefield why the general sent him to the battlefield. You have to ask the general, okay, and that's who we're dealing with here. Did he -- there's other questions that only he can answer. Did he, as CEO and chairman of the board, ever even attempt to meet with scientists at IARC in order to at least try to gain a basic understanding of their views that were contrary to the company.

Did he ever listen to any scientist outside of Monsanto who didn't have a pecuniary gain in keeping -- or interest in keeping Roundup on the market without a warning label? Did he ever suggest to the board that they should add -- that Monsanto should add a warning label? Or not even the warning, did he ever suggest to the board that, hey, maybe we should add some language about IARC's finding on the label. Well, we know he probably didn't. And it doesn't really matter what his answer is, yes or no, both answers are relevant here.

And with respect to the burden, I'd like to make the point that he'd probably have a better argument if he was still the CEO, but he's not, he's retired. He did very well, financially, at

Monsanto and with the acquisition of Monsanto by Bayer, so the burden here is minimal. He's not taking off his time as CEO, he's retired, and he would just have to make the four-hour or five-hour drive, whatever it is, to Kansas City for one day to testify. That's not a huge burden.

And, yes, he has been deposed before, we acknowledge that, but that case, it was a separate case, we weren't involved in that case, we had no opportunity to take -- or to ask him questions. We shouldn't have to rely on other lawyers, who are not representing Mr. Shelton, to ask the questions. And they didn't ask a lot of the questions that we want to ask. So the fact that he has given just one deposition in one other case in California does not mean he shouldn't testify live at trial.

And with respect to counsel's argument, if I could address a few arguments that they made.

THE COURT: Mr. Frazer, excuse me. If anybody presented to me the exhibit, which would be the deposition from the Roundup litigation --

MR. TREY FRAZER: The transcript, Your Honor?

THE COURT: Yeah.

MR. TREY FRAZER: I don't believe so.

THE COURT: I don't remember seeing it in my review, but there's a lot of things I've been reviewing on this case. And I don't remember seeing it.

MR. TREY FRAZER: Okay. We could get that to you, Your Honor.

THE COURT: I'm not saying you need to, I'm just asking if it's here.

MR. TREY FRAZER: I don't believe so, Your Honor.

THE COURT: All right.

MR. TREY FRAZER: Counsel made the argument that he's not an employee at Bayer so he shouldn't have to be -- he shouldn't have to be ordered to testify at trial. We're not even suing Bayer, we're suing Monsanto. That's the company that's the defendant here, and he was the CEO of Monsanto for 15 years and has worked there for 30 years.

And the fact that he's not a toxicologist or epidemiologist is irrelevant. We're not going to ask him about toxicology studies or epidemiology studies. There are other witnesses like Mr. Grant who can provide very

valuable testimony in terms of decisions that were made at the company.

And the 14 exhibits that we submitted, Your Honor, as we said in the footnote, those were, you know, selected over a spectrum of thousands of emails that clearly indicate that he has personal knowledge.

And going back to the burden, counsel makes the argument that, well, this might open the flood gates up to future burdens of Mr. Grant having to testify at future trials. I think he overstates the burden of testifying in a single trial. This isn't about whether he'll be ordered into court in the future, it's about whether he'll be ordered into court for this case. Whether he might be forced to testify at other trials is a question for other trial judges.

And so with that, Your Honor, we would respectfully request that you deny Mr. Grant's motion for protective order.

THE COURT: Mr. Frazer, I know I signed the order allowing for you to file your exhibits under seal. The other thing I didn't know was whether any of those exhibits had actually been filed under seal.

MR. TREY FRAZER: Local counsel filed those, and it's my understanding that those were filed under seal, Your Honor.

THE COURT: Hold on. These files sometimes, I'd rather have paper so I can see what I'm seeing and know it's not there. Hold on just a second. Would that be Mr. Blair?

MR. TREY FRAZER: Yes, Your Honor.

THE COURT: Yeah. When I was looking at, again, the electronic file, I just didn't see -- and, again, there's so many entries here, I just didn't see, after my order, that anything had been filed. So if anybody can look at that file and tell me otherwise, I'm more than happy to analyze it.

MR. TREY FRAZER: I'd have to check with our -- I apologize, I'd have to check with --

THE COURT: I understand.

MR. TREY FRAZER: -- with who filed it.

THE COURT: I'll be honest with you, I'm going to take this under advisement. And I want to catch up with everything.

MS. KELLETT: I apologize. I think they were filed on March 1st. I think they were filed a long time after your order.

THE COURT REPORTER: I'm sorry. Who is speaking?

MS. KELLETT: Beth Kellett on behalf of Mr. Grant.

THE COURT: I've got a -- off record for a minute.

(Discussion off the record.)

THE COURT: All right. We'll proceed. Mr. Frazer, did you have anything else to offer or did you conclude your comments?

MR. TREY FRAZER: I'm finished, Your Honor, unless you have any questions.

THE COURT: No. I do, but I'm going to wait until the end and see what questions are answered via the arguments. Go ahead. Mr. Noce or Mr. Roper, did you want to comment further?

THE COURT REPORTER: You're on mute.

MR. ROPER: Sorry, my apologies. I have just a couple of things I want to add, Judge. You know, much of the guidance for you in making this decision is probably contained in the Cox case, which I know you and I both remember when it was going on, because it involved the Kansas City Chiefs. I think that case right there delineates exactly what should guide your ruling here.

That case, the entire theory in the case, Judge, was that the idea to get rid of the old people and hire young people was Clark Hunt's idea, the owner of the Kansas City Chiefs. That was the plaintiff's theory and the plaintiff believed they had evidence of that. In other words, the primary directive that drove the entire case came from that level.

That is not this at all. What Mr. Noce's argument established, and I believe you'll find, if you look at that five-hour deposition, Judge, is all of that stuff is covered and then in none of it is Mr. Grant established to be the primary director, motivator, initiator of any of these issues.

And I would direct your attention, Judge, specifically to page 8 of the plaintiff's papers in opposition to our motion here, where they say -- and I'm quoting -- that Mr. Grant is, quote, an originator of policies and positions, not the originator. They don't even allege that. They said "an originator," which goes directly to our point, is that in all of these issues that were covered in this deposition and that are issues in that case, there are lots of other

people with more knowledge that were deposed and are available to give evidence on these issues other than Mr. Grant. He is not the originator, he is an originator. In other words, all these 14 exhibits they attach establish is that he touched stuff. Well, he was the CEO, that seems obvious.

So I -- to echo what Mr. Noce said, we just do not believe that these 14 items they attach -- and if they had more that were useful to them, they would have attached them -- that that establishes what they need to establish. In other words, that there's questions that Mr. Grant can answer that no one else can in this case.

THE COURT: Anybody else want to comment before I ask a few questions? Not hearing anybody.

So, Mr. Grant, has he testified yet in any of the jury trials that have gone on in which Monsanto was the defendant?

MR. TREY FRAZER: Your Honor, he testified by video in the Hardeman trial, his testimony was played. And, of course, that court didn't have subpoena power over him because he was a Missouri resident. Otherwise, I venture to guess, that he would have been live at trial.

THE COURT: And were you all involved in the Hardeman trial?

MR. TREY FRAZER: No, Your Honor.

THE COURT: And, Mr. Frazer, you have not deposed Mr. Grant in this case?

MR. TREY FRAZER: That's correct, Your Honor.

THE COURT: So, Mr. Frazer, you've kind of given me some insight into the deposition taken in the -- in the other Monsanto litigation, I think the 250-page deposition that Mr. Noce referenced.

First of all, I'd ask you both, when was that deposition taken?

MR. NOCE: That was February of 2009, Your Honor.

MR. TREY FRAZER: 2019.

MR. NOCE: '19. I'm sorry.

THE COURT: Okay. Was he identified and required to testify as Hugh Grant or as the corporate representative of Monsanto?

MR. NOCE: I'd have look at it, Judge, but I believe he was testifying as Hugh Grant.

MR. TREY FRAZER: That's consistent with my recollection, Your Honor.

MR. NOCE: Yeah. There was another person in other litigation who, I believe, testified as the corporate rep, Mr. Murphy, I think.

THE COURT: Well, here -- you know, obviously all of us have sat through trials, and I'm trying to embrace an aspect of the trial where if we were in realtime and all exercising the obligation of producing witnesses and allowing them to testify. You know, if it wasn't for Mr. Grant testifying and allowing the plaintiffs to take the deposition as they -- or excuse me -- allowing his testimony to the jury, who else would do it? In other words, for those issues that they have referenced as being relevant to Mr. Grant's testimony, based upon his work with Monsanto, who else would do it?

MR. NOCE: Judge, I would -- you know, I'm not representing Monsanto, but --

THE COURT: Yeah, Monsanto's here. You know, I mean, that's obviously --

MR. NOCE: Right, right.

THE COURT: Because, you know, right, that's the point, Mr. Noce, you're not here. If I grant your motion, then I would propose we

wouldn't see you, but yet now Mr. Frazer and his colleagues are required to present evidence that references the subject matter for which they urge me to allow Mr. Grant to testify to. How do we get there?

I would presume Ms. Sastre's here. I know I saw her at one point. Yes, she's here. I mean, how do we get there? I'll let both sides argue that. Mr. Noce, you can too. You're experienced, Mr. Roper obviously is, so.

MR. NOCE: Your Honor, we have -- our review indicates that this -- that all these issues have been covered by people with more specific and unique knowledge on behalf of Monsanto taken by plaintiffs not only here, but other cases with transcripts available for use. I would defer to the Monsanto attorneys. If I'm incorrect on that assertion, please correct me.

THE COURT: I'm assuming also, Ms. Sastre, that while you didn't join the motion, you're not objecting to the motion that was filed on behalf of Mr. Grant?

MS. SASTRE: That's correct, Your Honor. Good morning, Judge. It's nice to see you. Your Honor, I believe one of my colleagues, Mr.

Shepherd, who has been in front of Your Honor, can address these issues with the Court.

MR. SHEPHERD: Yeah, thank you, Hildy. Your Honor, there are, as Mr. Noce said, a number of witnesses who have been deposed and whose testimony is available to address the issues. The issues have already been addressed with Mr. Grant in the deposition and those -- that deposition can be played.

And, Your Honor, there will be Monsanto witnesses called live at trial who do have the knowledge and can answer questions about the science, the regulatory and decision-making process that was happening over time regarding the product at issue.

Two other things too, Judge, while I've got the microphone for a second. I just want to be clear that while Mr. Grant did have testimony in the Hardeman case, that was not live testimony in which he was asked questions live. His deposition was played in the Hardeman trial, which is something that could happen here.

And as far as I believe, Mr. Frazer said they do not have an opportunity to ask their questions, the deposition was taken in the MDL.

Mr. Frazer and Mr. Onder have cases in the MDL. The leadership that they impart selected to be leadership in the MDL and whose interests are aligned with Mr. Onder and Mr. Frazer took those depositions. So it's not as though their interests weren't represented, they're -- the leadership they selected took that deposition.

MR. TREY FRAZER: And, Your Honor, if I may respond to that.

MS. SASTRE: I'll make one quick comment, Mr. Frazer. And I'm sorry to --

THE COURT: Go ahead, go ahead.

MS. SASTRE: And then we'll be quiet on this subject. But I just wanted to add sort of a little bit more big picture in looking at this issue, and I think this is responsive to Your Honor's questions.

The fact of the matter is, is that trial after trial has proceeded without this witness and without him coming to court to testify, whether it be live because the case was in Missouri or whether it be via video or anything else. And that is because trial lawyers from around the country have found that all of the testimony that they needed on these issues were contained within

the volumes and volumes and volumes of depositions that have been taken from folks from Monsanto for years.

The deposition discovery that has been taken in this case is as significant as probably any lawyer involved with this litigation has ever seen. It's been incredibly extensive. And I think now to suggest that what is clearly the very tail end of Roundup to suggest now that in this trial that somehow this testimony and information on these topics and whether there should have been a warning on the product, all of this has been covered ad nauseam by other deponents. And really we just don't see, Judge, that there's anything new here for him to address. It's simply unnecessary, it's burdensome, and, candidly, I really do think it's intended to harass, Your Honor.

THE COURT: Mr. Frazer.

MR. TREY FRAZER: Thank you, Your Honor. First of all, with respect to the leadership in the MDL, we did not select that leadership, Judge Chhabria did. We had -- we took no part in selecting the leadership. I wish we did because then we'd be on it. So I don't know why he

brought that up.

And in terms of trial after trial proceeding without Mr. Grant's live testimony, that's because trial after trial after trial has been in California where the Court has no jurisdiction to compel him to testify live. This is the first trial proceeding in Missouri besides one other trial in St. Louis, and the St. Louis County judge, Judge May, has already ordered that Mr. Grant should be compelled to testify at trial.

And in terms of all -- they keep making the same argument, so I guess I'll keep responding to it, Your Honor. But the fact that there are other witnesses available to give relevant testimony about epidemiology and toxicology, that's a red herring. That has nothing to do with Mr. Grant's personal knowledge, the decisions he made, why he made them, why he attacked IARC, what he recommended to the board. He had the power, he had the authority, everybody else points to him. So if we're not able to call him live at trial and we ask why these decisions were made, they can't -- that's a foundation objection. We can't ask anybody. He is the only person that we can ask.

MR. SHEPHERD: I would point out that if

Your Honor reads the transcript, you'll find that he was --

THE COURT: Mr. Shepherd, that's you? Hold on.

MR. SHEPHERD: Yes, Your Honor. I'm sorry.

THE COURT: Identify yourself with your full name, sir, because you are speaking on -- which is fine, I just need to --

MR. SHEPHERD: Yep. James Shepherd for Defendant Monsanto.

THE COURT: Thank you, sir.

MR. SHEPHERD: I would just point out that many of the questions that Mr. Frazer just pointed out have been asked of Mr. Grant, as the Court will see when he looks at the deposition.

THE COURT: Okay.

MR. TREY FRAZER: And, Your Honor, I'll represent to this Court that we'll have --

THE COURT REPORTER: Who is speaking, please? Oh, Mr. Frazer. I couldn't tell that was you. Could you start over, please.

MR. NOCE: I'm sorry. This is Gerry Noce, Your Honor. If I can just respond to one point raised by Mr. Frazer. He says trial after

trial has been taken or have been conducted in California without his testimony or without him appearing live. Well, that may be true, but if there was additional information, something in addition that was needed from Mr. -- from our client, he could have been subpoenaed to appear for a video deposition if they really needed evidence to supplement what's already in that 250-page deposition if it was necessary. That's my only two cents that I wanted to add, Judge.

THE COURT: So let me ask a question. What -- and, Mr. Noce, with some specificity, obviously, I think I would consider everything, but one of the things I want to consider is the hardship for Mr. Grant in testifying live in the trial. This trial, Allan Shelton.

MR. NOCE: Well, the travel would be one thing, Your Honor. Who knows what will be the situation with whether it's required to be by automobile or by airplane to get there. The situation with, Your Honor, the never -- the varying situation, I hope we're past it, but the COVID issues, things of that matter, Judge.

He does have other matters he attends to, you know, while he is retired from Monsanto

for the last almost four years and has never worked for Bayer. He is involved in other matters. I don't think it's necessarily relevant here, but he does some board work and things of that nature.

THE COURT: Okay.

MR. ROE FRAZER: Your Honor, on burden -- this is Roe Frazer for the record -- it was reported in St. Louis papers that Mr. Grant received over $60 million when Bayer bought Monsanto. So I think that goes into the burden equation just a little bit.

THE COURT: I'll tell you, I'm going to -- Mr. Frazer, with all due respect, I'm not going to consider that because I can just see us going down a whole other path on that subject. Thank you, but, nope, I'm not going to consider it.

All right. Anything else on the issue with Mr. Grant?

MR. TREY FRAZER: Nothing from the plaintiff, Your Honor.

MR. NOCE: Nothing on behalf of Mr. Grant, Judge.

THE COURT: Mr. Roper, anything else since you're not sitting next to Mr. Noce?

MR. ROPER: No, Your Honor. Thank you.

THE COURT: So what I need then, I need to get those -- we will do what we can or you'll hear from us that we can't get to those exhibits that were filed March 1. There's been enough reference to the deposition of Mr. Grant and the MDL that I think it would serve me well to at least have it. To say every page of it would probably be more than you could ask of me with the other obligations I have on this case and others, but I want to kind of get a flavor of it and see who was there and what went on.

MR. NOCE: We'll get it to you, Your Honor.

THE COURT: And that can be by an email unless you feel that's also under seal or something of that nature, which it very well could be, then do as you need to to protect that issue.

Okay. Let me ask if there's anything else on Mr. Grant, because I'm going to -- you know, I think I referenced what I needed to reference. I will read Cox with more focus and Messina I've read, but Cox, I will give that a little more attention. All right. Okay. So while I've got you --

MR. NOCE: I'm going to leave, Your Honor. Thank you very much. We appreciate it.

THE COURT: Okay, Mr. Noce. Always a pleasure seeing you sir. It's been awhile.

MR. NOCE: You too, Judge.

THE COURT: Off record.

C E R T I F I C A T E

STATE OF MISSOURI)
) ss
COUNTY OF JACKSON)

I, Amy L. McCombs, Certified Court Reporter, certify that I am the official court reporter for Division 13 of the 16th Judicial Jackson County Circuit Court, that on Friday, March, 4, 2022, I was present via videoconference and reported all of the proceedings in Allan Shelton, Plaintiff, vs. Monsanto, Defendant, Case No. 1816-CV17026.

I further certify that the foregoing 35 pages contain a true and accurate reproduction of the proceedings transcribed.

/s/ Amy L. McCombs

AMY L. MCCOMBS, CCR #1140

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY

ALLAN SHELTON, et al.,	)	
	)	
Plaintiffs,	)	**Case No. 1816-CV17026**
	)	
vs.	)	
	)	
MONSANTO COMPANY,	)	
	)	
Defendant.	)	
	)	

NONPARTY HUGH GRANT'S SUPPLEMENT IN SUPPORT OF HIS MOTION FOR PROTECTIVE ORDER CONCERNING HIS TRIAL TESTIMONY

Currently pending before this court is Nonparty Hugh Grant's Motion for Protective Order Concerning his Trial Testimony. When this motion was filed, on January 11, 2022, the operative trial subpoena commanded that Mr. Grant appear for the February 1, 2022 trial to testify on behalf of Plaintiff Allan Shelton. Ex. A. On February 28, 2022, the Court entered a Third Amended Scheduling Order, which continued the trial to May 2, 2022. On March 9, 2022, Plaintiff filed a new trial subpoena commanding that Mr. Grant appear to give trial testimony on May 6, 2022. Ex. B.[1]

The arguments made in Mr. Grant's motion for a protective order and reply in support of his motion for a protective order remain the same and apply equally to this new trial subpoena. However, Mr. Grant wishes to file this supplement in order to add the new trial subpoena to the record.

[1] As with the original trial subpoena, Plaintiff's new trial subpoena is defective under RSMo. § 491.130 because it was not served with the required mileage and witness fees. Counsel for Mr. Grant alerted Plaintiff's counsel to this deficiency as to the original trial subpoena on January 7, 2022. Plaintiff's counsel has stated that they will provide the required fees. The fees are currently outstanding.

For the reasons stated in the pending motion for a protective order and reply in support, Hugh Grant respectfully requests that the Court enter a protective order barring Plaintiffs from subpoenaing his trial testimony in this matter.

DATED: March 23, 2022

Respectfully submitted,

HEPLERBROOM LLC

By: */s/ Gerard T. Noce*

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Attorneys for Non-Party Hugh Grant

CERTIFICATE OF SERVICE

The undersigned certifies that on March 23, 2022, the foregoing was filed with the Clerk of the Court for Jackson County, Missouri using Missouri Courts' eFiling System which sent notification of such filing to all persons listed in the Court's electronic notification system.

/s/ Gerard T. Noce

Exhibit A

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI

☒ AT KANSAS CITY ☐ AT INDEPENDENCE

ALLAN SHELTON

vs

Case No. 1816-CV17026

MONSANTO COMPANY

SUBPOENA
ORDER TO APPEAR/PRODUCE DOCUMENTS

The State of Missouri to: Hugh Grant, 4 Hortense Place, St. Louis, Missouri 63108 (person subpoenaed)

You are commanded:

☒ To appear at the Jackson County Circuit Court, 415 East 12th Street, Division 13, Kansas City, Missouri 64106
on Tuesday, February 1, 2022 at 9:00 A.M.

☒ To testify on behalf of Plaintiff Allan Shelton, who has requested your attendance

☐ To contact _____
on _____ (date), at _____ (time)

☐ To bring the following: _____

COURT ADMINISTRATOR'S OFFICE
CIRCUIT COURT OF JACKSON COUNTY, MISSOURI

December 16, 2021
DATE

BY _____
COURT ADMINISTRATOR

Pltf/Pet Attorney: W. Wylie Blair
Address: OnderLaw, LLC 110 E. Lockwood Ave
St. Louis, Missouri 63119
Phone: c/o Laura Freeborn 314-227-7639

Def/Res Attorney: Anthony R. Martinez
Address: Shook, Hardy & Bacon, LLP
2555 Grand Blvd, Kansas City, MO 64108
Phone: 816-559-2683

SUBPOENA RETURN

MUST BE SWORN BEFORE A NOTARY PUBLIC IF SUBPOENA IS NOT SERVED BY AN AUTHORIZED OFFICER

I certify that I have executed this writ in _____ County, MO on _____ (date), at _____ (time), by:

☐ Delivering a copy personally to the person subpoenaed at _____ (address)

☐ Making a diligent search for and failing to find the person to be subpoenaed.

FEE PAID $ _____

_____
PERSON SERVING SUBPOENA

STATE OF MISSOURI
COUNTY OF JACKSON

Subscribed and sworn to before me on _____

(SEAL)

_____
NOTARY PUBLIC

My Commission Expires: _____

Exhibit B

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
☒ AT KANSAS CITY ☐ AT INDEPENDENCE

ALLEN SHELTON

vs

Case No. 1816-CV17026

MONSANTO COMPANY

SUBPOENA
ORDER TO APPEAR/PRODUCE DOCUMENTS

The State of Missouri to: Hugh Grant, 4 Hortense Place, St. Louis, Missouri 63108 (person subpoenaed).

You are commanded:

☒ To appear at the Jackson County Circuit Court, 415 East 12th Street, Division 13, Kansas City, Missouri 64106 on Friday, May 6, 2022, 20 22, at 9:00 A.M.
☒ To testify on behalf of: Plaintiff Allen Shelton, who has requested your attendance.
☐ To contact _____ on _____ (date), at _____ (time).
☐ To bring the following: _____

March 9, 2022
DATE

COURT ADMINISTRATOR'S OFFICE
CIRCUIT COURT OF JACKSON COUNTY, MISSOURI

BY _____
COURT ADMINISTRATOR

Plt/Pet Attorney: W. Wylie Blair
Address: OnderLaw, LLC, 110 E. Lockwood Avenue
St. Louis, Missouri 63119
Phone: c/o Lauren Freeman (314)227-7639

Def/Res Attorney: Anthony R. Martinez
Address: Shook, Hardy & Bacon, LLP
2555 Grand Blvd., Kansas City, Missouri 64108
Phone: (816)559-2683

SUBPOENA RETURN
MUST BE SWORN BEFORE A NOTARY PUBLIC IF SUBPOENA IS NOT SERVED BY AN AUTHORIZED OFFICER

I certify that I have executed this writ in _____ County, MO on _____ (date), at _____ (time), by:

☐ Delivering a copy personally to the person subpoenaed at _____ (address).
☐ Making a diligent search for and failing to find the person to be subpoenaed.

FEE PAID $ _____

_____
PERSON SERVING SUBPOENA

STATE OF MISSOURI
COUNTY OF JACKSON

Subscribed and sworn to before me on _____

(SEAL)

_____
NOTARY PUBLIC

My Commission Expires: _____

INSTRUCTIONS

1. This subpoena will remain in effect until this trial is concluded or you are discharged by the court. You must attend trial from time to time as directed. NO ADDITIONAL SUBPOENA IS REQUIRED FOR YOUR FUTURE APPEARANCE AT ANY TRIAL OF THIS CASE. If you fail to appear, you may be held in contempt of court.

2. If you have any questions regarding this subpoena, contact the person who request it, listed on the first page.

3. BRING THIS FORM WITH YOU TO COURT. This form must be completed, signed and returned to the clerk as soon as you have testified or been dismissed.

WITNESS CLAIM

I have served _____ day(s) as a witness and I have traveled _____ mile(s) round-trip from my home to the courthouse to attend this proceeding.

_____
Signature

_____
Current Address

_____
City, State, Zip

Subscribed and sworn to before me on _____ (date).

Total Claimed $_____ By _____
Deputy Clerk

Exhibit H – To be filed under seal

EXHIBIT I

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY

ALLAN SHELTON,	)	
Plaintiff,	)	**Case No. 1816-CV17026**
	)	
v.	)	**Division 13**
	)	
MONSANTO COMPANY,	)	
Defendants.	)	

ORDER

NOW, on this 31st day of March, 2022, the Court takes up for consideration *NONPARTY HUGH GRANT'S MOTION FOR PROTECTIVE ORDER CONCERNING HIS TRIAL TESTIMONY AND ACCOMPANYING MEMORANDUM OF LAW*, filed on January 11, 2022, *PLAINTIFF ALLAN SHELTON'S RESPONSE TO NON-PARTY HUGH GRANT'S MOTION FOR PROTECTIVE ORDER CONCERNING HIS TRIAL TESTIMONY*, filed on January 21, 2022, *NONPARTY HUGH GRANT'S REPLY IN SUPPORT OF HIS MOTION FOR PROTECTIVE ORDER*, filed on February 9, 2022 and *NONPARTY HUGH GRANT'S SUPPLEMENT OF HIS MOTION FOR PROTECTIVE ORDER CONCERNING HIS TRIAL TESTIMONY* , filed on March 23, 2022.

DISCUSSION

Plaintiff Allan Shelton is suing Monsanto claiming that after using Roundup, a product manufactured and sold by Monsanto, he was diagnosed with Non-Hodgkins Lymphoma. He claims that Roundup caused him to contract that disease. Hugh Grant is the former Chairman and Chief Executive Officer of Monsanto from 2004 until his retirement in 2018. The Plaintiff has subpoenaed him to testify in the trial of this case which will begin with a jury being summoned to serve on April 27, 2022. Evidence is expected to begin in early May 2022. Mr.

Grant moves for the Court to grant him a Protective Order which would bar the Plaintiff from calling him as a witness in their case during the trial.

A party who seeks discovery has the burden of proving discoverability. However, the party who is opposing discovery carries the burden of showing good cause to limit discovery. A Court may grant a protective order if annoyance, oppression and undue burden and expense outweigh the need for discovery. However, litigants may depose top level executives who have discoverable information. *State ex rel. Ford Motor Company v. Messina* 71 S.W. 3d 602, 606 & 607 (Mo banc 2002). While the issues presented in *Messina* addressed discovery depositions, the Court finds that the guidance provided is generally applicable to the issues presented in Mr. Grant's Motion.

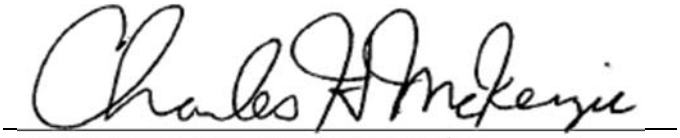
In this case after a review of the exhibits attached to Plaintiff's responsive pleading, it is clear to the Court that the Plaintiff is seeking testimony that relates to Mr. Grant's personal knowledge and his actions in response to issues regarding the product Roundup. Therefore, the Court finds that he possesses discoverable information. However, the Court also must determine if there is a less burdensome means to obtain the information. This Court's analysis on that issue is therefore guided by *Cox v. Kansas Chiefs Football Club Inc.*, 473 S.W. 3d 107 (Mo banc 2015), where the Court found that the top level executive for the Kansas City Chiefs Football Club had specific information regarding issues that were being addressed in that case. The information related to specific statements he allegedly made to others that were found to be of material significance to the case, for which only he could answer. He, therefore, was required to be deposed and potentially testify in the trial. *Id.* at 127.

In this case , the Court finds that the exhibits presented show that the witness has information that can be considered allegedly material to the Plaintiff's case, for which he was personally and directly involved, and for which only he can answer.

While the Court is aware that Mr. Grant was deposed in February 2019 in *In re: Roundup Products Liability Litigation*, MDL No. 274, that deposition was not taken by Plaintiff's counsel in this case, but by other attorneys who do not appear to have any connection to the case at bar, nor were they representing Mr. Shelton.

Therefore, after full consideration of the matter, and being duly advised of the same, the Court determines that Non-Party Hugh Grant's motion should be, and is hereby, **DENIED.**

IT IS SO ORDERED.



CHARLES H MCKENZIE, Judge

Certificate of Service

This is to certify that a copy of the foregoing was automatically forwarded to the attorneys of record through the Court's eFiling system. In addition, this certifies that a copy of the foregoing was hand delivered/faxed/emailed/mailed to the following on March 31, 2022.

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Lindsey M. Conrad, Law Clerk Division 13