

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

SYNGENTA CROP PROTECTION LLC,

Plaintiff,

vs.

Case No.: 6:23-mc-06019-DGL

DR. EARL RAY DORSEY,

Defendant.

**MEMORANDUM OF LAW ON BEHALF OF EARL RAY DORSEY, MD IN OPPOSITION TO
SYNGENTA'S MOTION TO COMPEL AND IN SUPPORT OF
THE CROSS-MOTION TO QUASH**

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PRELIMINARY STATEMENT

Syngenta Crop Protection LLC is a defendant in multidistrict litigation known as *In re Paraquat Liability Litigation* pending in the Southern District of Illinois (the “MDL”). The plaintiffs in the MDL allege that they developed Parkinson’s disease as a result of exposure to the herbicide paraquat, manufactured by the defendants, including Syngenta. Counsel for Syngenta served a Subpoena on Dr. Earl Ray Dorsey, a Professor of Neurology at the University of Rochester with extensive knowledge of Parkinson’s disease. Dr. Dorsey promptly objected to the Subpoena. Syngenta has now moved to compel compliance, and Dr. Dorsey has cross-moved to quash.

Syngenta’s motion to compel should be denied and the Subpoena should be quashed. The impetus for the Subpoena was an article that Dr. Dorsey co-authored titled “Paraquat, Parkinson’s Disease, and Agnotology” that was published in the academic journal *Movement Disorders* on March 6, 2023. Syngenta, clearly unhappy with the article’s contents, crafted a Subpoena on the eve of trial, apparently to try to discredit Dr. Dorsey’s research, pick apart every communication he ever made about his article, and inappropriately drag him into litigation in which he has never been involved. When Dr. Dorsey objected to the subpoena, Syngenta did not even try to respond to his legitimate objections or negotiate the breadth of the requests and simply jumped to filing this motion, a motion the Court should deny.

As set forth in detail below, the information Syngenta seeks—drafts, work papers, analysis, submission and peer review materials, documents Dr. Dorsey reviewed when preparing his *Movement Disorders* article, and any other document or communication related to his article—is both irrelevant to the MDL and confidential. Syngenta relies on pure speculation and a “hunch” that Dr. Dorsey’s article was, somehow, improperly “influenced” by the MDL plaintiffs’ counsel

before the article’s publication. Contrary to the apparent belief of Syngenta’s attorneys, Dr. Dorsey was never instructed, coached, or encouraged to prepare his article. Syngenta further insists that the requested documents are relevant based on, quite literally, Syngenta’s self-proclaimed “entitlement” to the documents and general propositions of relevance. In fact, Syngenta entirely ignores the overwhelming body of law that confirms the confidentiality of a non-party researcher’s work product to prevent a “potential chilling effect.”

Aside from the dangerous repercussions that stem from adhering to the untimely Subpoena, Syngenta’s overbroad demands either fail to articulate the documents sought with any specificity or seek information that is publicly available and accessible within seconds. Dr. Dorsey therefore respectfully requests the Court to deny Syngenta’s motion to compel and grant his cross-motion to quash.

ARGUMENT

POINT I

SYNGENTA’S SUBPOENA IS UNTIMELY

The deadlines for fact and expert discovery in the MDL have long expired. Syngenta’s service of the Dorsey Subpoena appears to be an attempt to bypass the governing Discovery Schedule and Case Management Orders.

A subpoena to obtain discovery information generally should not be enforced when it is served after the discovery deadline has passed. (*Ferrer v. Racette*, 2017 U.S. Dist. LEXIS 68059, at *4 [N.D.N.Y.] [granting motion to quash where subpoena was issued two weeks after the close of discovery]; *Playboy Enters. Int’l Inc. v. On Line Entm’t, Inc.*, 2003 U.S. Dist. LEXIS 26867, at *1 [E.D.N.Y.] [granting motion to quash where “plaintiffs took it upon themselves to serve subpoenas, without prior application to the Court, months after discovery closed, little more than

a month before trial, upon a non-party from whom discovery was never before sought.”]). Instead, the party seeking discovery should make an application to reopen discovery, which application must satisfy the good cause standard. (*Ferrer*, 2017 U.S. Dist. LEXIS 68059, at *5; *Agapito v. AHDS Bagel, LLC*, 2018 U.S. Dist. LEXIS 83403, at *1-2 [S.D.N.Y.] [granting motion to quash where party issued subpoena two weeks after the close of discovery and failed to adequately demonstrate that good cause existed to reopen discovery]).

The MDL Court’s Second Order Amending Discovery Schedule (“Second Order”) provides: “The parties shall complete fact discovery and medical examinations in all six trial selection cases on or before **July 25, 2022.**” (*See* Ex. A [emphasis added]). Despite this fact discovery cutoff, Syngenta served the subpoena on Dr. Dorsey on June 23, 2023, nearly one year after the close of fact discovery.

Dr. Dorsey promptly responded to the Subpoena on July 6, 2023, asserting, among other things, a timeliness objection. In response, Syngenta addressed the purported timeliness of the Subpoena in only one sentence of its Memorandum of Law, arguing that “although [the MDL Court] has set certain interim deadlines, it has never set a formal fact discovery cutoff.” (*See* Syngenta’s MOL, p. 2). This statement seems to contradict the MDL Court’s July 25, 2022 deadline. The Second Order also referenced previously amended deadlines for fact and expert discovery (*see* Ex. A, p. 1), which belie any contention that the MDL Court “has never set a formal fact discovery cutoff.”

The Third Order Amending Discovery Schedule (“Third Order”) clarified and amended portions of the Second Order, but never revoked the July 25, 2022 deadline for fact discovery. (*See* Ex. B). For instance, the Third Order set deadlines for the parties to supplement initial witness disclosures, depose witnesses with information relevant to expert disclosures, and disclose treating

physicians. (*Id.*, p. 1-3). The MDL Court’s Case Management Order No. 16 (“CMO No. 16”) further set deadlines for the completion of expert depositions and expert reports, with the last deadline for expert depositions scheduled for March 20, 2023. (*See* Ex. C, p. 2-3). CMO No. 16 also scheduled a final pretrial conference for October 3, 2023 and a jury trial in the first trial selection case for October 16, 2023. (*Id.*, p. 3). These expert discovery and trial deadlines were not superseded by a subsequent order. Case Management Order No. 17 focused exclusively on the deadlines for summary judgment and *Daubert* motions, with the hearing on these motions scheduled to begin on August 21, 2023. (*See* Ex. D, p. 2). In fact, the MDL Court set aside the entire week of August 21 for this hearing. (*Id.*). Moreover, Syngenta fully acknowledged the August 21 hearing and October 16 deadlines. (*See* Syngenta MOL, p. 2-3).

In addition to the timeliness objection asserted in Dr. Dorsey’s Objections and Responses to the Subpoena, counsel for Dr. Dorsey raised a timeliness objection via email correspondence with Syngenta’s counsel on July 7, 2023. (*See* Ex. E). Counsel failed to rebut the objection or explain the timeliness of the Subpoena. Instead, he responded that “As I understand it, Dr. Dorsey refuses to produce any documents of any kind in response to the subpoena. If that understanding is incorrect, please let me know.” (*Id.*). When Dr. Dorsey’s counsel reminded Syngenta’s counsel that “You have not responded to any of those points,” including the timeliness objection, Syngenta once again failed to show how the Subpoena is timely.

Syngenta has not offered this Court any affirmative proof that fact discovery remains ongoing or that the July 25, 2022 cutoff was superseded by a subsequent schedule. Rather, Syngenta states in its Memorandum that the “MDL Plaintiffs have continued to conduct discovery of Syngenta and of third-parties to this day,” but offers no evidence to the Court of any recent discovery. It appears that instead, Syngenta wishes the Court to take it at its word that the MDL

Court “has never set a formal fact discovery cutoff.” (*See, e.g., In re Estate of Maniaci-Canni*, 2013 U.S. Dist. LEXIS 129758, at *19 n.6 [E.D.N.Y.] [noting that the court could “only consider facts which are corroborated by sworn affidavits or other comparable evidence.”]; *Langenberg v. Sofair*, 2006 U.S. Dist. LEXIS 65276, at *15 [disregarding the facts asserted in memorandum of law where they were not accompanied by a supporting affidavit based on personal knowledge]).

As a collateral matter, Syngenta does not articulate why there is good cause to reopen discovery only a few weeks away from the first day of trial and after the briefing of *Daubert* and summary judgment motions. (*Revander v. Denman*, 2004. U.S. Dist. LEXIS 628, at *4 [S.D.N.Y.] [“Subpoenas calling for ‘any and all records’ are exactly the kind of ‘shotgun’ subpoenas that should not be issued on the eve of trial.”]). Denial of Syngenta’s motion to compel is warranted on timeliness grounds alone.

POINT II

SYNGENTA HAS NOT ENGAGED IN A GOOD FAITH MEET AND CONFER

Syngenta’s Subpoena should be quashed based on its failure to satisfy this Court’s requirements for bringing forth a discovery motion. Local Rule 7(d)(3) requires that a motion for the production of documents be “accompanied by an affidavit showing that sincere attempts to resolve the discovery dispute have been made.” The affidavit must detail the times and places of the parties’ meetings or discussions concerning the discovery dispute and the names of all parties participating therein, and all related correspondence must be attached. (*See* Local Rule 7[d][3]).

It is not enough for a party to “go through the motions” of conferring. Rather, the moving party must make a genuine attempt to resolve the dispute through non-judicial means. (*See Colton v. Fuller*, 2022 U.S. Dist. LEXIS 29130, at *7 [W.D.N.Y.] [denying motion to compel discovery that lacked the certification required by Local Rule 7(d)(3)]). For purposes of Fed. R. Civ. P.

37(a)(1), the parties must make an effort to resolve the dispute by addressing what issues genuinely require a judicial determination. (*See id.*; *Thomas v. Prinzi*, 2017 U.S. Dist. LEXIS 113976, at *1 [W.D.N.Y.] [denying three motions to compel discovery “because they are not accompanied by a certification that the movant has in good faith conferred or attempted to confer with the . . . party failing to make disclosure or discovery in an effort to obtain it without court action, as required by Rule 37(a)(1) of the Federal Rules of Civil Procedure.”])).

Syngenta neglected to attach the required affidavit detailing the date and time of the parties’ sole discussion concerning the instant dispute; in fact it also inexplicably failed to attach the related correspondence. That email correspondence between Dr. Dorsey and Syngenta’s counsel reflects Syngenta’s failure to directly address the legal issues surrounding the Subpoena. (*See Ex. E*). Dr. Dorsey raised valid objections regarding the timeliness, confidentiality implications, and undue burden associated with the Subpoena. In response, Syngenta’s counsel merely sought a “yes or no” answer as to whether Dr. Dorsey would disclose any documents, rather than engaging in a thoughtful discussion about the substantive issues. Syngenta’s failure to engage in a meaningful meet and confer, and thus to adhere to this Court’s mandated procedure, warrants automatic dismissal of its motion.

POINT III

THE SUBPOENA SEEKS ENTIRELY IRRELEVANT DOCUMENTS

Syngenta likewise failed to carry its burden of establishing that the subpoenaed documents are relevant to the underlying action. Rule 26(b)(1) of the Federal Rules of Civil Procedure states that a party may obtain discovery of any nonprivileged matter that is relevant to any party’s claim or defense. In the context of a motion to compel discovery, the burden of demonstrating relevance is on the party seeking discovery. (*See Neogenix Oncology, Inc. v. Gordon*, 2017 U.S. Dist. LEXIS

49293, at *22-23 [E.D.N.Y.] [denying motion to compel enforcement of non-party subpoena where party failed to establish the relevance of the requested documents]; *Perkins v. Chelsea Piers Mgmt.*, 2012 U.S. Dist. LEXIS 146719, at *2 [S.D.N.Y.] [denying motion to compel where plaintiff's "bare-bones motion" failed to articulate the relevance of the requested documents]; *Zanowic v. Reno*, 2000 U.S. Dist. LEXIS 13845, at *6 [S.D.N.Y.] ["Since the party seeking discovery bears the burden of initially showing relevance, the moving party's failure to explain the relevance of this information is fatal to its motion to compel."]). A subpoena, moreover, is subject to Rule 26(b)(1)'s overriding relevance requirement and may be quashed if it seeks clearly irrelevant matter. (*Snider v. Lugli*, 2011 U.S. Dist. LEXIS 127855, at *7 [E.D.N.Y.]).

To establish the necessary relevance element, a party "must do more than offer mere speculation or conjecture." (*See Neogenix Oncology*, 2017 U.S. Dist. LEXIS 49293, at *28-29 [E.D.N.Y.]; *Lemanik v. McKinley Allsopp, Inc.*, 125 F.R.D. 602, 609-610 [S.D.N.Y.] [denying discovery requests based on speculation]). Indeed, courts faced with such requests "routinely decline to authorize fishing expeditions." (*See Tottenham v. Trans World Gaming Corp.*, 2002 U.S. Dist. LEXIS 11313, at *3-5 [S.D.N.Y.] ["Discovery, however, is not intended to be a fishing expedition, but rather is meant to allow the parties to flesh out allegations for which they initially have at least a modicum of objective support."])).

Syngenta speculates that its requests for Dr. Dorsey's communications with journalists and certain MDL plaintiffs' attorneys and experts are "plainly relevant" because of potential bias or improper "influence" over Dr. Dorsey's March 6, 2023 article published in *Movement Disorders*. For instance, Syngenta "believes that lawyers representing the plaintiffs have been involved with, and perhaps even encouraged, Dr. Dorsey to write the Dorsey and Ray Article so that plaintiffs can cite it in the litigation." (Syngenta MOL, p. 1). The Subpoena specifically requests:

- “All Documents containing or memorializing any communication between [Dr. Dorsey] and any of the following: (a) Carey Gillam, (b) Aliya Uteuova, (c) editors for the *Guardian*, or (d) editors of the *New Lede*.” (Request No. 5);
- “All Documents containing or memorializing any communication between [Dr. Dorsey] and any attorneys representing Plaintiffs in any lawsuit filed against Syngenta alleging injury caused by a connection between Paraquat and Parkinson’s Disease[.]” (Request No. 6); and
- “All Documents containing or memorializing any communication with respect to Paraquat between [Dr. Dorsey] and any persons serving as experts for Plaintiffs in any lawsuit filed against Syngenta alleging injury caused by a connection between Paraquat and Parkinson’s Disease[.]” (Request No. 7).

But these subpoenaed communications do not evince a shred of bias or improper motive.

Dr. Dorsey is not a witness, expert or otherwise, in the underlying action. (*See* Dorsey Dec. ¶ 4). He has never been retained by any party to the MDL and has no connection to the litigation. (*See id.* ¶¶ 4-5). He never notified any attorneys in the MDL or journalists that he was drafting the article ultimately published in *Movement Disorders*. (*See id.* ¶¶ 5, 7, 9-10). He acknowledges that he forwarded the article via email to two journalists, Ms. Gillam and Ms. Uteuova, **after** the article became publicly available on March 6, 2023. (*See id.* ¶¶ 5, 10). Dr. Dorsey never shared the article with any of the MDL plaintiffs’ attorneys. (*See id.* ¶¶ 5-9). Rather, Kathryn Forgie, an attorney in the MDL, reached out to Dr. Dorsey on March 8, 2023, after the article was published. (*See id.* ¶ 9). Dr. Dorsey also forwarded the piece to Dr. David Michaels and Dr. Beate Ritz *after* the article’s publication. (*See id.* ¶ 14). He never corresponded with Dr. Michaels, Dr. Ritz, or Dr. Timothy Greenamyre about his forthcoming publication before March 6, 2023. (*See id.* ¶¶ 12, 14). Syngenta’s sheer speculation that Dr. Dorsey’s article was “influenced by journalists and plaintiffs’ lawyers” is simply not supportable.¹

¹ To the extent the Subpoena demands “All Documents relating to or reflecting any financial arrangements involving [Dr. Dorsey], or any entity, organization, or foundation on which [Dr. Dorsey] serves or is otherwise involved, relating to Paraquat” (Request No. 10), such financial

Syngenta cites two cases in support of its contention that the subpoenaed communications are “relevant to bias and motive,” neither of which is applicable to the facts here. First, Syngenta cites *Dominicci v. Ford* for the proposition that the requested communications are discoverable because the “bias, motive or interest of a *witness*” is relevant. (*See* 119 A.D.3d 1360, 1361 [4th Dep’t 2014] [emphasis added]). But, unlike the physician in *Dominicci* who was retained by the defendant insurance company, Dr. Dorsey is not, and never has been, a retained witness in the MDL. And in *Porcha v. Binette*, the subpoenaed non-party physician was *paid* by the defendants’ insurer (155 A.D.3d 1676, 1676-1677 [4th Dep’t 2017]), a critical fact not present here. Simply put, Dr. Dorsey has nothing to do with the MDL. He has never been retained or paid by any party to the action, and there is no bias at issue merely because Dr. Dorsey co-authored a scholarly article.

Syngenta further claims that the Subpoena properly seeks drafts of Dr. Dorsey’s *Movement Disorders* article, arguing that it is “plainly entitled to know how” Dr. Dorsey reached the conclusion that paraquat causes Parkinson’s disease. Specifically, Syngenta seeks:

- “All Documents relating to or reflecting drafts of, work papers related to, analysis related to, or sources of information in the article[.]” (Request No. 1);
- “All Documents cited or referred to in the article . . . or otherwise reviewed in the process of drafting the article.” (Request No. 2);
- “All Documents related to the submission and peer review process of the article[.]” (Request No. 3); and
- “All Documents and communications related to the article[.]” (Request No. 4).

These portions of the Subpoena are, once again, utterly irrelevant to any party’s claim or defense in the MDL. Syngenta relies on no case law for its purported “entitlement” to the inner

disclosures are similarly irrelevant to the MDL and publicly articulated in Dr. Dorsey’s article. (*See* Point IV, *infra*).

workings of a non-party researcher's article just because it disagrees with the article's conclusion. Dr. Dorsey's public article and publicly cited sources may be relevant to the MDL plaintiffs' claim, but the work product that preceded the article certainly does not become automatically relevant because a party feels it is "entitled" to such work product. (*See, e.g., Neogenix Oncology*, 2017 U.S. Dist. LEXIS 49293, at *29-32 [reasoning that party's claimed "entitlement" to documents from non-party was based on no case law other than "general propositions concerning relevance," no facts, and no evidence]).

Syngenta should not be permitted to place Dr. Dorsey on trial and pick apart his thought process and communications based on a conclusory invocation of relevance. Syngenta is free to, and almost certainly already has, retained its own experts to address Dr. Dorsey's article. Its failure to establish relevance of drafts or work papers, combined with the chilling effect such disclosure would have on scientific publications, as described immediately below, compels the denial of Syngenta's motion.

POINT IV

THE SUBPOENA IMPOSES AN UNDUE BURDEN ON DR. DORSEY

FRCP 45(d)(3)(A)(iv) requires that a subpoena be quashed if it subjects a person to undue burden. To determine whether a subpoena imposes an undue burden, courts weigh the burden to the subpoenaed party against the value of the information to the serving party by considering factors such as relevance, the need of the party for the documents, the breadth of the document request, the time period covered by it, the particularity with which the documents are described and the burden imposed. (*Donohue v. Nostro*, 2022 U.S. Dist. LEXIS 173579, at *12 [W.D.N.Y.]). Rule 45(d)(3)(B)(i), moreover, permits a court to quash a subpoena if it requires disclosing a "trade secret or other confidential research, development, or commercial information."

A. Syngenta Improperly Requests Confidential Information

Undue burden encompasses both the personal hardship of the subpoenaed party and the wider social consequences of permitting discovery. (See *In re Fosamax Prods. Liab. Litig.*, 2009 U.S. Dist. LEXIS 70246, at *34-39 [S.D.N.Y.] [granting motion to quash subpoena served on non-party researcher because the undue burden of disclosing the researcher's testimony outweighed its necessity]). Third parties generally are afforded more sympathy in weighing the burden of discovery because they have no personal stake in the litigation. (*Id.*). Moreover, courts are wary of compelling discovery from third party researchers because it risks inadvertent disclosure of protected information. (*Id.*; *Dow Chemical Co. v. Allen*, 672 F.2d 1262, 1276 [7th Cir. 1982]). Any accidental disclosure could disrupt a researcher's relationships at work and even jeopardize his career. (*Fosamax*, 2009 U.S. Dist. LEXIS 70246, at *34; *Dow Chemical*, 672 F. 2d at 1276).

The resulting social consequences of disclosing a third party researcher's work product are far more serious than any personal hardship because it "risks chilling participation in beneficial public research." (See *Fosamax*, 2009 U.S. Dist. LEXIS 70246, at *35; *Dow Chemical*, 672 F.2d at 1273-76; *Plough, Inc. v. National Academy of Sciences*, 530 A.2d 1152, 1156-1161 [D.C. Cir. 1987] [reasoning that documents reflecting non-party researchers' confidential deliberations, preliminary drafts, and peer review were not subject to disclosure]). There is a serious danger that permitting discovery in these situations "inevitably tends to check the ardor and fearlessness of scholars, qualities at once so fragile and so indispensable for fruitful academic labor." (See *Fosamax*, 2009 U.S. Dist. LEXIS 70246, at *35 [quoting *Sweezy v. New Hampshire*, 345 U.S. 234, 262 (1957)]).

Fosamax is particularly instructive. There, the court recognized the personal and social consequences of compelling a non-party researcher's testimony. (2009 U.S. Dist. LEXIS 70246,

at *34-38). The researcher was on a scientific committee that issued a report about the current drug safety system in the United States. (*Id.* at *27-28). The court reasoned the researcher had “no interest in the [underlying multidistrict] litigation” and that disclosing his role in “private, internal” research matters would cause him to “suffer personal hardship.” (*Id.* at * 35). The court further reasoned that upholding the subpoena raised “serious concerns” because the candor of committee members was necessary to “ensure the free exchange of ideas paramount to producing the best reports.” (*Id.* at *38). Compelling testimony about internal committee matters “would chill the crucial atmosphere of candor” and handicap the committee’s ability to recruit participants, who may fear the potential for embarrassment associated with disclosure in connection with litigation. (*Id.*). The court granted the researcher’s motion to quash the subpoena. (*Id.* at *40).

Plough likewise addressed the “potential chilling effect” of disclosing a non-party researcher’s work product. (530 A.2d at 1156-58). There, a pharmaceutical manufacturer faced allegations that its aspirin caused the plaintiff to develop Reye Syndrome. (*Id.* at 1154). To support these claims, the plaintiff cited a government study validated by a research academy. (*Id.*). The manufacturer then subpoenaed the academy, seeking documents reflecting confidential deliberations, preliminary drafts, and peer review. (*Id.*). In upholding the lower court’s decision to quash the subpoena, the court credited the academy’s claim that “its ability to convince volunteers to serve on its committees would be impaired, since individuals would be reluctant to serve if they knew their comments were subject to disclosure.” (*Id.* at 1156-57). The court further reasoned:

[e]ven limited disclosure of the preliminary conclusions, hypotheses, thoughts and ideas ventured by Committee members prior to their being tested and criticized would not only embarrass those members, it would discourage members of [Academy] committees in the future from expressing themselves freely during their deliberations, and might cause some potential volunteers to refrain from participating in [Academy] studies altogether.

(*Id.* at 1157-58). The court upheld the decision to quash the subpoena because the potential chilling effect “significantly outweighed the need.” (*Id.* at 1160).

Other courts have acknowledged the gravity of this type of potential chilling effect. (*See Dow Chemical*, 672 F.2d at 1276 [upholding refusal to enforce subpoena *duces tecum* because researchers “with the knowledge throughout continuation of their studies that the fruits of their labors had been appropriated by and were being scrutinized by a not-unbiased third party . . . carries the potential for chilling”]; *Crescenta Valley Water Dist. v. Exxon Mobil Corp.*, 269 F.R.D. 360, 365 [S.D.N.Y. 2010] [reasoning that a research institute was not required to produce its internal communications or internal work product relating to a study because “revealing these discussions may discourage researchers from freely expressing positions that, although controversial, need to be tested”]; *In re Bextra & Celebrex Mktg. Sales Practices & Prod. Liab. Litig.*, 2008 U.S. Dist. LEXIS 21098, at *9-10 [N.D. Ill.] [denying motion to compel subpoenaed peer reviewers’ comments, evaluations, and analyses because “it is not unreasonable to believe that compelling production of peer review documents would compromise the process”]; *Richards of Rockford, Inc. v. Pacific Gas & Electric Co.*, 71 F.R.D. 388, 390 [N.D. Cal. 1976] [quashing subpoena of third party research assistant because “compelled disclosure of confidential information would without question severely stifle research into questions of public policy, the very subjects in which the public interest is greatest.”]; *Apicella v. McNeil Laboratories, Inc.*, 66 F.R.D. 78, 85 [E.D.N.Y. 1975] [denying discovery of identity of third party author of scientific report because “if research consultants were forced to participate in searching cross-examinations, often resulting in embarrassment and inconvenience, they would hesitate to act as sources in the future, to the detriment of the medical community and the public”]).

Syngenta conveniently turns a blind eye to this overwhelming body of law. Requests No. 1, 2, 3, and 4 of the Subpoena demanded that Dr. Dorsey produce his drafts, work papers, analysis, submission and peer review materials, documents reviewed when preparing his *Movement Disorders* article, and any other document or communication related to his article. Dr. Dorsey objected on the grounds that these demands sought “confidential and/or proprietary information that is protected from disclosure” because the demands risked “chilling participation in beneficial public research.” (*See Syngenta Ex. 5, p. 2-4*).

Significantly, in response, Syngenta offers no case law whatsoever in support of the contention that it is entitled to the confidential work product of a non-party researcher. The Subpoena, however, carries serious repercussions. Dr. Dorsey is a researcher and professor who submitted a scholarly article to publication. Compelling discovery of his internal drafts, preliminary analyses and opinions, and peer review would chill the crucial atmosphere of candor and seriously damage the ability of researchers to conduct their studies in an uninhibited manner. Further it would discourage participation in research by those who may fear the potential for embarrassment. Indeed, Syngenta revealed its true colors when it attempted to embarrass Dr. Dorsey and unfairly picked apart the three preliminary drafts that were disclosed by Professor Ray. (*See Syngenta MOL, p. 4*). Syngenta’s criticism of the drafts undercuts its own argument because it shows why the public policy of protecting a researcher’s work product exists in the first place: to prevent “chilling participation in beneficial public research.”

Instead of affirmatively offering case law to rebut Dr. Dorsey’s objection, Syngenta posits two legally insignificant factual distinctions between *Fosamax* and the underlying MDL here. Curiously, Syngenta focuses on the fact that the subpoenaed researcher in *Fosamax* “did not study the drug at issue (*Fosamax*),” whereas Dr. Dorsey’s *Movement Disorders* article is about paraquat

and Parkinson's disease, which is the focus of the MDL. (*See* Syngenta MOL, p. 12-13). Syngenta further fixes on the fact that the *Fosamax* subpoena sought the researcher's deposition testimony, whereas Syngenta's Subpoena requests documents. (*Id.* at 13). These distinctions are of no moment. The *Fosamax* court discussed only the content of the researcher's study in its analysis of the relevance of the subpoena at issue. The facts on which Syngenta concentrates never factored into the *Fosamax* court's undue burden analysis. (*See* 2009 U.S. Dist. LEXIS 70246, at *34-39). In fact, Syngenta entirely ignores the significant body of law addressing the social consequences of confidential research, and has offered nothing to counter these very real concerns.

Syngenta further argues that "even if there were some legitimate 'confidentiality' concern, then that is something that can plainly be handled in the ordinary course with an appropriate protective order." (Syngenta MOL, p. 13). Syngenta is mistaken. A protective order limiting discovery of Dr. Dorsey's work product to litigation purposes at best might reduce the chilling effects of disclosure, but not eliminate them. (*See, e.g., Fosamax*, 2009 U.S. Dist. LEXIS 70246, at *40 [reasoning that quashing the subpoena was the "most appropriate protective measure" because of the danger of disclosure of protected information and "substantial risk of chilling"]; *Plough*, 530 A.2d at 1160 [finding "blanket protection" was the appropriate remedy rather than a protective order]). Syngenta has not explained how a protective order would prevent a chilling effect.

Syngenta also improperly argues that the requested documents are discoverable because Dr. Dorsey did not invoke any privilege. Dr. Dorsey, however, was not required to invoke a privilege to prevent the discovery of the subpoenaed items. Federal courts interpreting the discovery rules frequently deny discovery absent claims of formal privilege, based upon reasons of public policy. (*See Plough*, 530 A.2d at 1157; *see also Bextra & Celebrix*, 2008 U.S. Dist.

LEXIS 21098, at *10 [“Given the Court’s findings concerning relevance and undue burden, the Court may decline to compel production of the requested documents without even reaching the question of privilege.”]). Syngenta’s motion to compel documents in response to Requests No. 1, 2, 3, and 4 in the Subpoena should be denied.

B. Syngenta Failed to Demonstrate a Need for the Subpoenaed Documents

In measuring a party’s need for evidence, courts look to a variety of factors, including the need to prepare an adequate defense or establish a claim, the availability of alternative evidence, and whether the subpoenaed information is available from any other source. (*See Alcon Vision, LLC v. Allied Vision Grp., Inc.*, 2019 U.S. Dist. LEXIS 152073, at *6 [S.D.N.Y.] [granting motion to quash where subpoena imposed undue burden because subpoenaed information could be obtained from a party]; *Fosamax*, 2009 U.S. Dist. LEXIS 70246, at *32-33).

Syngenta argues that the Subpoena is necessary because it is “plainly entitled” to know how Dr. Dorsey’s article concluded that paraquat causes Parkinson’s disease. It further argues that because the MDL plaintiffs cite to Dr. Dorsey’s article to support their scientific claim, Syngenta needs unfettered access to Dr. Dorsey’s work product and communications.

Syngenta has failed to show any meaningful need for the subpoenaed items. Syngenta’s concern is with rebutting the conclusion that paraquat causes Parkinson’s disease, which has been the central question from the moment the plaintiffs commenced the MDL. But to rebut the conclusion that paraquat causes Parkinson’s disease, Syngenta has at its disposal many other means than securing the requested documents and attacking the deliberative process by which Dr. Dorsey reached his conclusion. Syngenta can secure its own experts to evaluate the conclusion. If Syngenta’s experts find the conclusion to be flawed, the MDL plaintiffs’ experts may be confronted with these findings. Syngenta may further attack the MDL plaintiffs’ conclusion about

paraquat by bringing forth *Daubert* motions. *Plough* similarly reasoned that the pharmaceutical manufacturer failed to show a need for the subpoenaed preliminary drafts and peer review documents because the manufacturer could have instead secured its own experts to evaluate and rebut the scientific conclusion at issue. (530 A.2d at 1159-60). Expert review and the briefing of *Daubert* motions are all milestones which have occurred in the MDL. The burden of disclosing Dr. Dorsey's preliminary analyses and communications thus decidedly outweighs any purported necessity.

C. The Subpoena is Overbroad and Seeks Publicly Available Information

A subpoena that is overbroad and fails to specify the particular records sought may be quashed in its entirety. (*See New Falls Corp. v. Soni*, 2022 U.S. Dist. LEXIS 227830, at *10-11 [E.D.N.Y.] [reasoning that subpoena imposed undue burden because it was “wildly overbroad” and sought a seemingly limitless range of documents over a seven-year time period]; *Sinai v. O'Connor*, 2019 N.Y. Misc. LEXIS 2812, at *5-6 [N.Y. Sup. Ct.] [“Where, as here, a subpoena seeks ‘any and all documents’ and fails to specify the particular records sought, the party subject to the subpoena is not required to ‘cull the good from the bad.’”]).

Syngenta maintains that its requests are “narrowly tailored to reduce any undue burden on Dr. Dorsey, and the documents sought are clearly defined.” Specifically, Syngenta demands:

- “All Documents and communications related to the article *Paraquat, Parkinson's Disease and Agnotology*, published in *Movement Disorders* on March 6, 2023.” (Request No. 4);
- “All Documents relating to and copies of any literature authored in whole or in part by [Dr. Dorsey] relating to Paraquat.” (Request No. 8);
- “All Documents relating to any association between Paraquat and Parkinson's Disease.” (Request No. 9);
- “All Documents relating to or reflecting any financial arrangements involving [Dr. Dorsey] or any entity, organization, or foundation on which [Dr. Dorsey] serves or is otherwise involved, relating to Paraquat.” (Request No. 10).

These demands are plainly overbroad and fail to identify the documents sought with any specificity. For instance, the requests for “All Documents” captures a seemingly limitless range of documents relating to paraquat. (*See Alcon Vision*, 2019 U.S. Dist. LEXIS 152073, at *7 [granting motion to quash where subpoena requested “All Documents” regarding several topics]). Courts regularly quash subpoenas that are overbroad, and this Court has discretion to quash the Subpoena in its entirety rather than prune the instant demands. (*See, e.g., Estate of Ungar v. Palestinian Authority*, 332 F. App’x 643, 645 [2d Cir. 2009] [affirming district court’s quashing of subpoena “because it was overly broad and burdensome”]; *Morelli v. Alters*, 2020 U.S. Dist. LEXIS 207362, at *6 [S.D.N.Y.] [quashing three subpoenas that were “substantially overbroad” and seemingly issued for purposes of harassment]).

The Subpoena further wastes Dr. Dorsey’s time and resources by demanding the production of publicly available documents. The Subpoena requests:

- “All Documents cited or referred to in [Dr. Dorsey’s article]” (Request No. 2);
- “All Documents relating to and copies of any literature authored in whole or in part by [Dr. Dorsey] relating to Paraquat.” (Request No. 5); and
- “All Documents relating to or reflecting any financial arrangements involving [Dr. Dorsey] or any entity, organization, or foundation on which [Dr. Dorsey] serves or is otherwise involved, relating to Paraquat.” (Request No. 10).

Courts have discretion to quash a subpoena that seeks publicly available materials equally accessible to the party issuing the subpoena. (*See Travelers Indem. Co. v. Metro. Life Ins. Co.*, 228 F.R.D. 111, 112 [Conn. Dist. Ct. 2005]). The sources cited in Dr. Dorsey’s article, his vast body of published work, and the requested financial disclosures are plainly articulated within Dr. Dorsey’s *Movement Disorders* piece.

In response to the undue burden objections that Dr. Dorsey asserted in response to the above requests, Syngenta complains that Dr. Dorsey’s counsel “can easily direct Syngenta to that

information to avoid any duplicative or unnecessary production obligations.” (Syngenta MOL, p. 13). To the contrary, it is not the obligation of Dr. Dorsey or Dr. Dorsey’s counsel to “direct” any publicly available information that is accessible to Syngenta within seconds via an internet search. Requests No. 2, 4, 5, 8, 9 and 10 of the Subpoena are inappropriate and unduly burdensome.

POINT V

SYNGENTA’S MOTION TO TRANSFER TO THE ISSUING COURT SHOULD BE DENIED

FRCP 45(f) allows for the compliance court hearing a subpoena proceeding to transfer the proceeding to the issuing court when there are “exceptional circumstances.” The proponent of transfer bears the burden of showing that such circumstances are present. (*Cadence Pharms., Inc. v. Multisorb Techs., Inc.*, 2016 U.S. Dist. LEXIS 107769, at *11 [W.D.N.Y.]). Whether exceptional circumstances exist turns on the facts of each case. (*Id.*). The court considering the transfer motion should not assume that the issuing court is in a better position to resolve subpoena-related motions. (*Id.* [“The issuing court always is familiar with the proceeding before it and that by itself is not exceptional.”]). In fact, the Advisory Committee commented that “the prime concern should be avoiding burdens on local nonparties subject to subpoenas.” (*Id.* at *12). Transfer is appropriate only if the interests of the party serving the subpoena outweigh the interests of the nonparty served with the subpoena in obtaining local resolution of the motion. (*Id.*). The court must ultimately serve the interests of justice and judicial efficiency. (*Full Circle United, LLC v. Bay Tek Ent., Inc.*, 581 F. Supp. 3d 523, 525 [S.D.N.Y. 2022]).

Syngenta points to only two facts in support of its motion to transfer to the Southern District of Illinois. First, it claims that the “enormous scope” of the MDL warrants transfer. (Syngenta MOL, p. 14). Syngenta is, once again, mistaken. The Subpoena targets a local researcher at a local university who Syngenta eagerly seeks to discredit. Syngenta focuses squarely upon Dr. Dorsey

and, while the social repercussions of adherence to the Subpoena are far reaching, this proceeding is not.

Second, Syngenta relies on the MDL plaintiffs' mere citation of Dr. Dorsey's article as a basis to transfer this entire proceeding to the issuing court. (*Id.*). The citation of Dr. Dorsey's article in another litigation, however, is a far cry from an "exceptional circumstance" warranting transfer. Syngenta's failure to articulate a need for the subpoenaed documents, compounded by the fact that the burden imposed on Dr. Dorsey is a local matter, far outweighs Syngenta's self-proclaimed "entitlement" to those documents. The motion to transfer should be dismissed out of hand.

CONCLUSION

For the foregoing reasons, the Court should deny Syngenta's motion to compel and grant Dr. Dorsey's cross-motion to quash the Subpoena.

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