

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK**

Syngenta Crop Protection LLC,

Plaintiff,

V.

Dr. Earl Ray Dorsey,

Defendant.

Case No. 23mc6019 CJS

Original Proceeding:

In re Paraquat Product Liab. Litig.,
Case No. 3:21-md-3004-NJR (S.D. Ill.)

**NOTICE OF SYNGENTA'S MOTION TO COMPEL OR IN THE ALTERNATIVE, TO
TRANSFER TO THE SOUTHERN DISTRICT OF ILLINOIS**

PLEASE TAKE NOTICE that, pursuant to Fed. R. Civ. P. 37(a)(2) and Fed R. Civ. P. 45(d)(2)(B)(i), upon the accompanying (i) Memorandum of Law in Support of Petitioner Syngenta Crop Protection LLC’s Motion to Compel Compliance with Subpoena Duces Tecum served upon Earl Ray Dorsey, and (ii) Declaration of Ragan Naresh, dated August 7, 2023 and the exhibits attached thereto, Syngenta Crop Protection LLC, by and through its undersigned counsel, will and hereby does move this Court at the United States District Court for the Western District of New York, at the United States Courthouse, 100 State Street, Rochester, NY 14614, for an Order (a) pursuant to Fed. R. Civ. P. 45(d)(2)(B)(i) and Rule 37(a)(1) of the Federal Rules of Civil Procedure to compel compliance with a third-party subpoena issued to Dr. Earl Ray Dorsey from the United States District Court for the Southern District of Illinois in connection with *In re Paraquat Product Liab. Litig.*, Adv. Case No. 3:21-md-3004-NJR (S.D. Ill.) (the “Underlying Action”). In the alternative, pursuant to Fed. R. Civ. P. 45(f), Syngenta asks that the Court refer this motion to the Court in the Underlying Action from which the subpoena was issued and which has familiarity

with the discovery issues in this litigation and for such other and further relief as the Court deems just and proper.

August 10, 2023

Respectfully submitted,



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Plaintiff Syngenta Crop Protection, LLC (“Syngenta”) respectfully submits this Memorandum of Law in Support of its Motion, pursuant to Rule 45 and Rule 37 of the Federal Rules of Civil Procedure, to compel Dr. Earl Ray Dorsey to comply with the subpoena to produce documents (the “Subpoena,” attached as Exhibit 1) served upon Dr. Dorsey in connection with *In re Paraquat Liability Litigation*, Case No. 3:21-md-3004-NJR (S.D. Ill.), or, in the alternative, to transfer the case to the issuing court in the Southern District of Illinois pursuant to Rule 45(f).

PRELIMINARY STATEMENT

Syngenta seeks to compel compliance with a subpoena issued over three months ago to Dr. Earl Ray Dorsey. Dr. Dorsey is a neurologist at the University of Rochester. Recently, he and a co-author, Dr. Amit Ray, published an article claiming that paraquat causes Parkinson’s disease (the “Dorsey and Ray Article”). This article has been repeatedly cited by Plaintiffs in an ongoing multi-district litigation (“MDL”), *In re Paraquat Liability Litigation*, Case No. 3:21-md-3004-NJR (S.D. Ill.), in support of their litigation claims that paraquat causes Parkinson’s disease. MDL Plaintiffs’ significant reliance on Dr. Dorsey’s article squarely puts at issue the science underlying the article and any conflicts of interest related to the article. Moreover, MDL Plaintiffs have also argued that Syngenta has sought to “control” the science concerning paraquat’s safety. Syngenta, however, believes that lawyers representing 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. If that is true, then Syngenta is plainly entitled to demonstrate to the MDL Court, and potentially to the jury, that the science that MDL Plaintiffs intend to rely upon was influenced by plaintiffs’ counsel—particularly given that MDL Plaintiffs intend to argue that it was *Syngenta* that was seeking to influence external scientists.

As a procedural matter, Syngenta issued the subpoena only after Plaintiffs repeatedly put the Dorsey and Ray Article at issue through their briefing and expert reports. Syngenta separately

subpoenaed Dr. Dorsey and Dr. Ray for documents related to their article, including drafts and communications with Plaintiffs' attorneys. Dr. Ray, for his part, served no objections and produced responsive documents. Dr. Dorsey, by contrast, has refused to produce a single document, despite Syngenta's attempts to reach resolution and narrow disputes. Notably, Dr. Dorsey does not assert privilege over any of the requested documents. And if he had no communications with Plaintiffs' counsel, he could simply say so. But he has not made any such representations, instead relying on non-privilege objections to flatly refuse to produce a single document in response to the subpoena.

Because Dr. Dorsey has refused to comply with Syngenta's subpoena and the parties are at an impasse, Syngenta respectfully moves (a) pursuant to Rule 45 and Rule 37 of the Federal Rules of Civil Procedure to compel compliance with the Subpoena on an expedited basis, or, in the alternative, (b) pursuant to Fed. R. Civ. P. 45(f) to transfer the Motion to Compel to Chief Judge Rosenstengel of the Southern District of Illinois, who presides over the MDL.

NATURE OF THE DISPUTE

A. The Paraquat MDL

On June 7, 2021, the Judicial Panel on Multidistrict Litigation created the Paraquat Multidistrict Litigation for cases in which plaintiffs allege "injuries associated with exposure to the pesticide paraquat" involving "common factual issues concerning the propensity of paraquat to cause Parkinson's disease." *In re Paraquat Prods. Liab. Litig.*, MDL No. 3004 (S.D. Ill. June 8, 2022), ECF No. 1 at 1–2 (the "MDL"). The MDL Court has selected bellwethers and overseen bellwether-specific fact and expert discovery, and although it has set certain interim deadlines, it has never set a formal fact discovery cutoff. Indeed, MDL Plaintiffs have continued to conduct discovery of Syngenta and of third-parties to this day. The Court has set a hearing on the parties'

Daubert motions to begin on August 21, 2023, and the first trial is currently set to begin October 16, 2023.

At the time the MDL was formed, there was ***no article in the peer-reviewed literature*** that concluded that paraquat causes Parkinson's Disease. To the contrary, external researchers unaffiliated with Syngenta and governmental regulators had reached the ***opposite*** conclusion. Ex. 13 (Weed 2021) (there is "a consensus exists in the scientific community that the available evidence ***does not*** warrant a claim that paraquat causes [PD]") (emphasis added); Ex. 14 (Shrestha 2020) (Agricultural Health Study that followed more than 38,000 chemical applicators and over 27,000 of their spouses (66,110 participants in total) for over 20 years and reported no statistically significant link between paraquat and PD); Ex. 15 (EPA Sept. 2020) at 2 (explaining that high-dose injections of animals with paraquat were not useful in assessing risk to farmers, and that the EPA "remains confident in its review process and its conclusion that the weight of evidence was insufficient to link paraquat exposure from pesticidal use of US registered products to PD in humans").

B. The Dorsey and Ray Article.

On March 6, 2023, in the midst of expert discovery in the MDL, Dr. Dorsey and Dr. Ray published a "viewpoint" article in *Movement Disorders* titled "Paraquat, Parkinson's Disease, and Agnotology" (the "Dorsey and Ray Article").¹ Unlike a "Clinical Research" article or a "Review" article—*i.e.*, *scientific* articles—"Viewpoint" articles "present a pragmatic or contrary view based on the author's opinion."² The Dorsey and Ray Article, for the most part, appears to be based on an article in the British periodical *The Guardian* authored by Carey Gillam (not a scientist), which

¹ Available at <https://movementdisorders.onlinelibrary.wiley.com/doi/full/10.1002/mds.29371>.

² International Parkinson and Movement Disorder Society, *Author Guidelines*, <https://movementdisorders.onlinelibrary.wiley.com/hub/journal/23301619/forauthors.html>.

in turn, purports to summarize a collection of documents provided to Ms. Gillam by a plaintiffs' lawyer (not a scientist). Dorsey and Ray Article at reference list (citing *The Guardian* Article).³ To complete the circle, *The Guardian* Article *itself* cites Dorsey, calling him "one of a number of leading scientists from around the world who say research clearly shows paraquat exposure can cause Parkinson's disease."⁴

Based on the productions by Dr. Ray, it appears that preliminary drafts of the Dorsey and Ray Article did not purport to draw any conclusions as to the *scientific* question of whether paraquat causes Parkinson's Disease. For example, neither a November 1, 2022 nor a December 14, 2022 draft of the article purported to draw such a conclusion. *See* Exs. 16 (11/1/22 Draft) & 17 (12/14/22 Draft). Suddenly, however, in a December 19, 2022 draft, a new scientific conclusion appeared, arguing that *The Guardian* Article (which, again, was not written by scientists or peer reviewed) "indicate[s] that we know what one cause of Parkinson's disease is—paraquat." Ex. 18 (12/19/22 Draft). This conclusion is remarkable not only for appearing out of thin air, but also because it stands in stark contrast to the actual *scientific* research to have reached the opposite conclusion. *See supra* at 3. That conclusion was contained in the final version of the Dorsey and Ray Article, which was published on March 6, 2023.

One day after the Dorsey and Ray Article was published in *Movement Disorders*, an excerpt from the article was "reprinted with permission" in *The New Lede* as a "guest column" by

³ C. Gillam and A. Uteova, *Secret files suggest chemical giant feared weedkiller's link to Parkinson's disease*, *The Guardian* (Oct. 20, 2022), <https://www.theguardian.com/us-news/2022/oct/20/syngenta-weedkiller-pesticide-parkinsons-disease-paraquat-documents> ("The Guardian Article")

⁴ *Id.*

Dr. Dorsey and Dr. Ray.⁵ The managing editor of The New Lede is Ms. Gillam—the same person who authored *The Guardian* Article.⁶

C. Plaintiffs Put The Dorsey And Ray Article At Issue

Almost immediately upon the publication of the Dorsey and Ray Article, MDL Plaintiffs began pointing to it to support their claim that paraquat causes Parkinson's Disease. MDL Plaintiffs have repeatedly cited it in their briefing, *see, e.g.*, Ex. 11 (Pls.' Resp. to Defs.' Partial Mot. to Strike Wells Rebuttal Report) at 2–3, and supplied it to their experts as reliance materials, *see* Ex. 19 (Wells Reliance List). Thus, MDL Plaintiffs' heavy reliance on the Ray and Dorsey Article, put the provenance, basis, and conclusions of that article at issue.

Thus, to summarize the series of events: first, a plaintiffs' lawyer leaked litigation documents to a journalist; then, the journalist published an article purporting to summarize those documents in *The Guardian*, quoting Dr. Dorsey in the process; then Dr. Dorsey cited back to *The Guardian* Article and claimed that *The Guardian* Article demonstrates a causal link between paraquat and Parkinson's disease (despite the fact that no peer reviewed study has ever reached that conclusion); then Dorsey and Ray are featured on an online platform called *The New Lede* managed by the same journalist who wrote *The Guardian* Article; and then finally, the MDL Plaintiffs have sought to support their scientific claims by pointing to the Dorsey and Ray Article.

D. Syngenta's Subpoena to Dr. Dorsey

In light of Plaintiffs' significant reliance on the Dorsey and Ray Article, Syngenta served subpoenas *duces tecum* on Dr. Dorsey and Dr. Ray. Syngenta provided the MDL Plaintiffs with notice of the subpoenas on May 5, 2023. Ex. 7 (G. Brier e-mail to Pls.' counsel attaching notices

⁵ E. Ray Dorsey and Amit Ray, *Guest column: Paraquat and the deliberate production of ignorance*, The New Lede (Mar. 7, 2023), <https://www.thenewlede.org/2023/03/guest-column-paraquat-and-the-deliberate-production-of-ignorance/>.

⁶ The New Lede, *About Us*, <https://www.thenewlede.org/about-us/>.

of subpoena); Ex. 8 (Notice of Dorsey Subpoena); Ex. 9 (Notice of Ray Subpoena). Plaintiffs' counsel did not object to the service of either subpoena. Decl. of R. Naresh ¶ 22. Process servers subsequently attempted to serve Dr. Dorsey and Dr. Ray at their respective residences, but they were unsuccessful in initial attempts. *See id.* ¶ 23. The process servers were finally able to serve Dr. Ray at his residence nearly four weeks later on June 1, 2023. Ex. 4 (Affidavit of Service, Ray).

The servers continued trying to serve Dr. Dorsey at his home. Ultimately, Michael Rooney, counsel for the University of Rochester contacted Syngenta counsel on June 12, and he “expressed concern . . . about the multiple attempts to serve Dr. Dorsey with this subpoena at his house.” Ex. 10 (E-mail chain between M. Rooney & R. Naresh). Mr. Rooney asked Syngenta’s counsel to direct service to the Directors’ Office at Strong Memorial Hospital, who would accept service on Dr. Dorsey’s behalf. *See id.* After Mr. Rooney declined to accept service of the subpoena electronically, *id.*, the Directors’ Office at Strong Memorial Hospital accepted physical service on behalf of Dr. Dorsey on June 23. Ex. 3 (Affidavit of Service, Dorsey).

Two weeks after accepting service, on July 7, counsel for Dr. Dorsey at Ward Greenberg served responses and objections to the subpoena. Ex. 5 (Dorsey Responses & Objections). Dr. Dorsey’s Responses and Objections to each Request refuse to produce a single document. *Id.* Syngenta met and conferred with counsel for Dr. Dorsey on July 7 in an attempt to resolve or narrow the disputes and reach agreement. Dr. Dorsey was unwilling to negotiate on any issue, and his counsel confirmed that Dr. Dorsey does not intend to produce any documents. Syngenta thus moves to compel Dr. Dorsey to produce all responsive documents in his possession.

In contrast, Dr. Ray, responded to his subpoena and has served no objections of any kind. To date, Dr. Ray has produced three drafts of the underlying article. *See* Ex. 6 (Ray Responses & Objections). Dr. Ray’s production of three drafts of the article confirms that Dr. Dorsey has

responsive documents in his possession. And Dr. Ray's discovery responses suggest that there may be additional responsive documents that Dr. Ray is not himself directly involved in, as he responds to certain requests with the response: "Amit Ray was not involved in such exchanges." *See, e.g., id.* at Request No. 5. Notably, where Dr. Ray did not have responsive documents, his responses indicate "N/A," apparently distinguishing between requests where Dr. Ray was not involved and requests where Dr. Ray does not have any responsive documents. *Id.* at Request No. 10.

As recently as August 9, 2023, after refusing to produce any documents, Dr. Dorsey yet again invoked the class action MDL lawsuit in an article published by the Rochester Institute of Technology.⁷ At the same time that Dr. Dorsey objects to the subpoena requests as "inherently overly burdensome to a non-party," Ex. 5 at 2, he continues to publicly discuss the lawsuit. *See id.* The article states that Ray and Dorsey "allege that the facts outlined in the current paraquat lawsuit present a contemporary case of agnotology in action"; as Ray puts it, agnotology highlights the idea that "ignorance . . . can be very willfully introduced into populations" and that "[a] lot of hands can be involved in making sure that certain information . . . doesn't leave the control of those corporations." *Id.* Dorsey also made clear his position on the lawsuit: "[w]e cannot let these individuals and these corporations act like this and get away with it." *Id.*

JURISDICTION

This Court has jurisdiction to enforce this Subpoena. Dr. Dorsey is employed in Rochester, New York. The Subpoena was served at the Strong Memorial Hospital in Rochester, as requested by counsel for Dr. Dorsey's employer. Ex. 3 (Affidavit of Service, Dorsey). Under Rule 45(d),

⁷ Felicia Swartzenberg, *Exploring the deadly connection between Parkinson's disease, weed killer, and misinformation*, Rochester Institute of Technology (Aug. 9, 2023).

the party serving a subpoena generally “may move the court for the district where compliance is required for an order compelling production or inspection.” Fed. R. Civ. P. 45(d)(2)(B)(i).

LEGAL STANDARD

A. Motion To Compel

“Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case....” Fed. R. Civ. P. 26(b)(1). “Although not unlimited, relevance, for purposes of discovery, is an extremely broad concept.” *Chen-Oster v. Goldman, Sachs & Co.*, 293 F.R.D. 557, 561 (S.D.N.Y. 2013) (citations omitted). “[T]he burden of establishing that the requested documents and records are utterly irrelevant is on the person being subpoenaed.” *Dominicci v. Ford*, 989 N.Y.S.2d 733, 735 (N.Y. App. Div. 2014) (quoting *Gertz v. Richards*, 233 A.D.2d 366, 366 (1996)). “The reach of a subpoena issued pursuant to Fed. R. Civ. P. 45 is subject to the general relevancy standard applicable to discovery under Fed. R. Civ. P. 26(b)(1).” *Syposs v. United States*, 181 F.R.D. 224, 226 (W.D.N.Y. 1998) (citation omitted).

Once the moving party has shown that the documents are relevant, a party moving to quash the subpoena or resist discovery must prove that a subpoena imposes an undue burden. *Aristocrat Leisure Ltd. v. Deutsche Bank Tr. Co. Americas*, 262 F.R.D. 293, 299-300 (S.D.N.Y. 2009). “Whether a subpoena imposes an ‘undue burden’ depends upon ‘such factors 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.’” *Cohen v. N.Y.C.*, 255 F.R.D. 110, 117-118 (S.D.N.Y. 2008) (citation omitted).

B. Motion To Transfer

Rule 45 allows a court to transfer motions to enforce a subpoena to the court that issued the subpoena “if the court finds exceptional circumstances.” Fed. R. Civ. P. 45(f). Courts find

exceptional circumstances by looking at factors like the “posture and complexity of the underlying action” and the “risk of conflicting rulings.” *EB Holdings II, Inc. v. Am. Int’l Grp., Inc.*, No. 22 Misc. 70 (ER), 2022 WL 748098, at *1 (S.D.N.Y. Mar. 11, 2022). Courts have also transferred cases to avoid unnecessary delay, *SBA Commc’ns Corp v. Fractus, S.A.*, No. Misc. 130 (ER), 2019 WL 4879333, at *2 (S.D.N.Y. Oct. 3, 2019), and where the motion to compel raises “issues of relevance, proportionality, and efficiency” with which the court overseeing the underlying litigation is already familiar. *Iwanski v. Milliman, Inc.*, 472 F. Supp. 3d 104, 104 (S.D.N.Y. 2020), *report and recommendation adopted*, 2020 WL 5665696 (S.D.N.Y. Aug. 13, 2020).

ARGUMENT

I. The Requested Documents Are Relevant.

As set forth above, Syngenta drafted a targeted subpoena and then attempted to work cooperatively with counsel for Dr. Dorsey to reduce any undue burden he believes would result from the subpoena. Dr. Dorsey flatly refuses to produce any documents of any kind.

The information sought by Syngenta is plainly relevant. The over-arching thrust of Syngenta’s subpoena is two-fold: (1) what role did lawyers and journalists have with respect to the Dorsey and Ray Article?; and (2) what did Dr. Dorsey rely on to reach a scientific conclusion that no one else has ever reached in the peer-reviewed literature? Thus, Syngenta requested, among other things:

- The drafts of and sources of information in the Dorsey and Ray Article (No. 1);
- The documents reviewed in drafting the Dorsey and Ray Article (No. 2);
- The documents related to the submission and peer review process of the Dorsey and Ray Article (No. 3);
- Communications between Dorsey and the authors and editors of *The Guardian* and *The New Lede* (No. 5);

- Communications between Dorsey and the Plaintiffs' attorneys in the MDL and in other lawsuits alleging injury caused by a connection between Paraquat and Parkinson's Disease (No. 6);
- Communications between Dorsey and the Plaintiffs' experts in the MDL and other lawsuits alleging injury caused by a connection between Paraquat and Parkinson's Disease (No. 7); and
- Documents reflecting any financial arrangements relating to Paraquat (No. 10).

Exs. 1 (Dorsey Subpoena) & 2 (Ray Subpoena) at Request Nos. 1, 2, 3, 5, 6, 7, 10.

These requests are relevant, first and foremost, because the Dorsey and Ray Article claims that paraquat causes Parkinson's Disease, and in a case alleging that paraquat causes Parkinson's Disease, Syngenta is plainly entitled to know how the article reached that conclusion—particularly given that no peer reviewed scientific study has ever done so. The requests are doubly relevant because MDL Plaintiffs themselves are pointing to the Dorsey and Ray Article to support their scientific claims. *E.g.*, Ex. 11 (Pls.' Resp. to Defs.' Partial Mot. to Strike Wells Rebuttal Report) at 2–3. And the requests are triply relevant because MDL Plaintiffs have argued that Syngenta's lawyers and PR professionals sought to influence the science, *e.g.*, Ex. 20 (MDL Pls.' Sealed Opp. to Syngenta Partial Mot. For Summ. J.) at 10–11. If it turns out that one of Plaintiffs' core pieces of scientific evidence was influenced by journalists and plaintiffs' lawyers, then that is plainly something that Syngenta is entitled to demonstrate to the MDL Court overseeing the pending *Daubert* motions and, ultimately, to the jury.

New York courts have compelled non-parties to produce documents relevant to bias and motive, as “[q]uestions concerning the bias, motive or interest of a witness are relevant and should be ‘freely permitted and answered.’” *Dominicci*, 989 N.Y.S.2d at 735 (quoting *Burke v. Cty. of Erie*, 110 A.D.3d 1461, 1462 (N.Y. App. Div.)); accord *Porcha v. Binette*, 63 N.Y.S.3d 793 (N.Y. App. Div. 2017). In *Dominicci*, for example, the Appellate Division affirmed the denial of a

motion to quash filed by an examining physician that had been hired by defendant's insurance company in order to explore the bias or interest of the doctor, including any payments made by the insurance company to the doctor. 989 N.Y.S.2d at 735. The same principles apply here, albeit on a larger scale, where MDL Plaintiffs heavily rely on Dr. Dorsey's article to support the causation theory they seek to extend to thousands of Plaintiffs. MDL Plaintiffs put Dr. Dorsey's article and its underlying support squarely at issue in the MDL; it is thus paramount that Syngenta be allowed to test its credibility and explore potential biases underlying that article to ensure the MDL court and jury affords it the appropriate weight.

II. Dr. Dorsey Will Not Suffer Undue Burden by Complying with the Subpoena.

Dr. Dorsey will not suffer undue burden by complying with the subpoena. Because the subpoenaed documents are plainly relevant, Dr. Dorsey bears the burden to establish that producing these materials would be unduly burdensome. *See, e.g., Cohen*, 255 F.R.D. at 117–18 (“Once relevance has been shown, it is up to the responding party to justify curtailing discovery.”). Whether a subpoena imposes an “undue burden” depends on 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.” *Id.* (citation omitted). As set forth above, any responsive documents in Dr. Dorsey's possession are plainly relevant. The remaining factors confirm that the requests pose no undue burden to Dr. Dorsey. Again, he does not claim privilege over any of the requested materials.

First, Dr. Dorsey has not articulated any burden with any specificity—he has simply made boilerplate burden objections. Such boilerplate objections are improper and fail to carry his burden. *In re Air Crash Near Clarence Ctr., N.Y., on Feb. 12, 2009*, 277 F.R.D. 251, 254–255 (W.D.N.Y. 2011) (“Objections must clearly set forth the specifics of each objection and how that objection relates to the discovery being demanded. Pat, generic, boilerplate, and non-specific

objections will not suffice.”); *N. Shore-Long Island Jewish Health Sys., Inc. v. MultiPlan, Inc.*, 325 F.R.D. 36, 48 (E.D.N.Y. 2018) (“[G]eneral and conclusory objections as to relevance, overbreadth, or burden are insufficient to exclude discovery of requested information.”). And if there are no responsive documents in any category, then there is of course no burden at all.

Second, Syngenta’s requests are narrowly tailored to reduce any undue burden on Dr. Dorsey, and the documents sought are clearly defined. Ex. 1 (Dorsey Subpoena). As one example, Syngenta asked for communications between Dorsey and Plaintiffs’ attorneys and experts in specific lawsuits, and the requests specifically defined the Plaintiffs’ attorneys in its Appendices A and B. Ex. 1 (Dorsey Subpoena) at Request Nos. 6 & 7. With a well-defined universe of contacts, it should be a quick exercise for Dorsey and his counsel to search for and determine whether any responsive communications exist. If they do not, there is clearly no burden. If there are, those communications are plainly relevant here. Syngenta served the same set of document requests to Dr. Ray, who responded without a single burden or overbreadth objection. Ex. 6 (Ray Responses & Objections). It is clear from Dr. Ray’s document production that Dr. Dorsey has at least some responsive documents. However, Dr. Dorsey’s counsel has made no representations to suggest that the requests implicate a voluminous set of documents. To the extent there is a large universe of potentially responsive documents, Syngenta is willing to confer to refine the requests and remove any undue burden—but that was not an exercise Dr. Dorsey was willing to engage in, given that he flatly refused to produce any documents at all.

Third, Dr. Dorsey objects to the production of his work papers and drafts of his article because they are “confidential and/ or proprietary information” pursuant to *In re Fosamax Product Liability Litigation*, No. 1:06-MD-1789 (JFK)(JCF), 2009 WL 2395899 (S.D.N.Y. Aug. 4, 2009). Dorsey’s objection is off base. To begin, *Fosamax* is factually inapposite. In *Fosamax*, the

defendant subpoenaed a doctor who participated in a drug safety report issued by the National Academy of Sciences, which did not study the drug at issue (Fosamax), nor did the study focus on any “single drug or category of pharmaceuticals.” *Fosamax*, 2009 WL 2395899 at *1. Moreover, the *Fosamax* subpoena sought the doctor’s deposition testimony—the Dorsey subpoena does not—and the information sought was “at best . . . tangentially related to the plaintiffs’ allegations.” *Id.* at *3. The opposite is true here, where the Dorsey and Ray Article is about paraquat and Parkinson’s specifically, and has been repeatedly cited to support the causation claim lodged by the MDL Plaintiffs. Moreover, 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 or other agreements (indeed, there is a protective order in place in the MDL). And in any event, it is certainly not the case that *all* of the documents subpoenaed by Syngenta implicate such a confidentiality concern, as evidenced by the fact that Dorsey only lodged this objection in response to certain requests. Ex. 5 (Dorsey Responses & Objections) at 1, 2, 3, 4.

Fourth, Dorsey’s objection that certain of the materials are available publicly fails for a number of reasons. To begin, for some of the requests, the objection misconstrues the request. For example, Dorsey objects to Syngenta’s Request No. 1, since data “cited in the paper are publicly available from the sources referenced.” *See id.* at Response No. 1. But Request No. 1 is not limited to the public literature, nor is that even its primary thrust—it is focused on drafts and work papers, three of which his co-author, Ray, has already produced. *Id.*; Exs. 16-18 (Drafts produced by Ray). To the extent some of Syngenta’s requests include documents that Dorsey publicly disclosed, like sources he cited in his article, Plaintiffs’ counsel can easily direct Syngenta to that information to avoid any duplicative or unnecessary production obligations. But where there are responsive documents *in addition to* the publicly available documents, Dorsey must

produce them unless they are subject to some protected privilege. Moreover, during the meet and confer process, Dorsey's counsel argued that certain of the materials—such as Dorsey's communications with Plaintiffs' counsel—can simply be obtained by discovery of Plaintiffs. Not so. Syngenta has no idea *which* Plaintiffs' counsel Dorsey has been in communications with (there are hundreds), and even if Syngenta knew, a discovery request of *Plaintiffs* would likely not extend to communications that *counsel* had with Dorsey.

Because the documents are plainly relevant to the MDL, and because Dr. Dorsey has not established an undue burden, he should be compelled to comply with Syngenta's subpoena by either producing documents or affirming that no such responsive documents exist.

III. In the Alternative, Syngenta's Motion to Compel Should Be Transferred to the MDL Court.

While Syngenta asks that this Court grant its Motion to Compel, Syngenta moves, in the alternative, to transfer the Motion to Chief Judge Rosenstengel of the Southern District of Illinois, who oversees the MDL. Chief Judge Rosenstengel is well situated to rule on the Motion and to do so in an expedited fashion. *See Stanziale v. Pepper Hamilton LLP*, No. M8-85 (PART I) (CSH), 2007 WL 473703, at *5 (S.D.N.Y. Feb. 9, 2007). Chief Judge Rosenstengel's experience overseeing a wide variety of disputes in the MDL puts her in a position to readily decide the issues raised by Syngenta's Motion to Compel. The sheer size, complexity, and unique nature of the MDL weigh in favor of transfer.

The MDL parties recently completed expert depositions and submitted *Daubert* briefing on the state of the causation science. Plaintiffs cite to the Dorsey and Ray Article in their *Daubert* briefing. Ex. 12 (Pls.' Sealed Opp'n to Syngenta's Motion to Exclude Dr. Wells' Expert Testimony) at 4–5. A *Daubert* hearing is scheduled in August. Given the enormous scope of the MDL and the extensive discovery and motions practice that she has overseen, Chief Judge

Rosenstengel is extremely familiar with the underlying facts in dispute, the state of the science, and the parties to the action that are at play in this motion to compel.

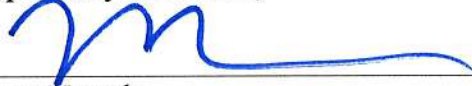
In contrast to these factors that favor transfer, Dr. Dorsey will not suffer prejudice from the Motion being heard by Chief Judge Rosenstengel. His attorneys in this district “may file papers and appear on the motion as an officer of the issuing court.” Fed. R. Civ. P. 45(f).

CONCLUSION

For the foregoing reasons, Syngenta respectfully requests this Court grant its Motion to Compel, or in the alternative, transfer the Motion to the District Court for the Southern District of Illinois.⁸

August 10, 2023

Respectfully submitted,



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⁸ Syngenta has filed a Proposed Order that grants the Motion to Compel or, in the alternative, grants the Motion to Transfer.

- IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK**

5. Attached as Exhibit 4 is a true and correct copy of the Affidavit of Service of the Subpoena served on Dr. Amit Ray, dated June 1, 2023.

6. Attached as Exhibit 5 is a true and correct copy of Dr. Dorsey's Responses and Objections to the Syngenta Subpoena served by counsel for Dr. Dorsey on counsel for Syngenta on July 6, 2023.

7. Attached as Exhibit 6 is a true and correct copy of Dr. Ray's Responses to the Syngenta Subpoena served by counsel for the Rochester Institute of Technology on counsel for Syngenta on July 10, 2023.

8. Attached as Exhibit 7 is a true and correct copy of the May 5, 2023 email from Syngenta counsel Grace Brier to the MDL Plaintiffs providing notice of Syngenta's subpoenas to Dr. Dorsey and Dr. Ray in the MDL.

9. Attached as Exhibit 8 is a true and correct copy of the Notice of Subpoena to Dr. Dorsey.

10. Attached as Exhibit 9 is a true and correct copy of the Notice of Subpoena to Dr. Ray.

11. Attached as Exhibit 10 is a true and correct copy of the June 2023 email correspondence between counsel for the University of Rochester, Michael Rooney, and counsel for Syngenta, Ragan Naresh and Grace Brier.

12. Attached as Exhibit 11 is a true and correct copy of Plaintiffs' Response to Defendants' Partial Motion to Strike Dr. Wells' Rebuttal Report dated April 3, 2023.

13. Attached as Exhibit 12 is a true and correct copy of Plaintiffs' Opposition to Defendants' Motion to Exclude Dr. Wells' Expert Testimony dated July 10, 2023. Exhibit 12 was filed under seal in the Multi-district Litigation.

14. Attached as Exhibit 13 is a true and correct copy of Douglas L. Weed's scientific article titled *Does Paraquat Cause Parkinson's Disease? A Review of Reviews*, published in 2021.

15. Attached as Exhibit 14 is a true and correct copy of Srishti Shrestha et al.'s scientific article titled *Pesticide Use and Incident Parkinson's Disease in a Cohort of Farmers and Their Spouses*, published in 2020.

16. Attached as Exhibit 15 is a true and correct copy of the U.S. Environmental Protection Agency's memorandum with the subject *Paraquat: Response to Comments on the Draft Human Health Risk Assessment*, dated September 24, 2020.

17. Attached as Exhibit 16 is a true and correct copy of a November 1, 2022 draft of the Dorsey & Ray Article produced by Amit Ray in response to Syngenta Crop Protection, LLC's May 5, 2023 subpoena.

18. Attached as Exhibit 17 is a true and correct copy of a December 14, 2022 draft of the Dorsey & Ray Article produced by Amit Ray in response to Syngenta Crop Protection, LLC's May 5, 2023 subpoena.

19. Attached as Exhibit 18 is a true and correct copy of a December 19, 2022 draft of the Dorsey & Ray Article produced by Amit Ray in response to Syngenta Crop Protection, LLC's May 5, 2023 subpoena.

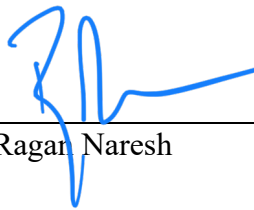
20. Attached as Exhibit 19 is a true and correct copy of Martin T. Wells's materials considered list produced with his October 13, 2022 expert report served in the Paraquat MDL.

21. Attached as Exhibit 20 is a true and correct copy of MDL Plaintiffs' Memorandum in Opposition to Syngenta Defendants' Partial Motion for Summary Judgment, dated July 10, 2023.

22. Syngenta received no objections to the service of the subpoenas from Plaintiffs' counsel.

23. The process servers that attempted to serve Dr. Ray and Dr. Dorsey were unsuccessful in initial attempts to serve either subpoena recipient at their residences.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 10th day of August, 2023 in the District of Columbia.

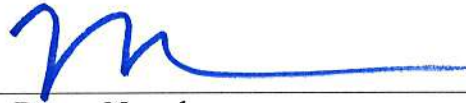


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Dated: August 10, 2023



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