IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

In re: PARAQUAT PRODUCTS LIABILITY LITIGATION **This Document Relates to All Cases.**	**Case No. 3:21-md-3004-NJR** **MDL No. 3004**

CASE MANAGEMENT ORDER NO. 21
RELATING TO LIMITED THIRD-PARTY DISCOVERY

ROSENSTENGEL, Chief Judge:

On May 15, 2023, the Court entered Case Management Order No. 18 relating to Deceased Plaintiffs' Submissions and Cases Based on Implausible Theories of Proof (CMO 18). (Doc. 4242.) CMO 18 reflects the Court's concern "about the presence of cases on its docket that present implausible or far-fetched theories of liability, and therefore would not have been filed but for the availability of this multidistrict litigation." (CMO 18 at 3.) The Court identified four categories of cases that present implausible theories of liability: "(i) a plaintiff states that they have no information concerning their exposure to paraquat (as opposed to a different product); or (ii) a plaintiff has no medical evidence to support a diagnosis of Parkinson's disease; or (iii) a plaintiff claims to have used paraquat in a form in which it never existed (e.g., in powder or pellet form); or (iv) there are other evidentiary issues such as those that led to the voluntarily dismissal of the bellwether plaintiffs." (*Id.* at 4.)

Since CMO 18 was issued, the Court has reiterated its concern about the existence of many implausible and unsubstantiated claims on the docket in this MDL. During the

August 2023 hearing on motions filed pursuant to Federal Rule of Evidence 702, the Court clarified CMO 18 and ordered that the parties' "time in the coming weeks . . . be focused on getting [the] docket cleaned up." (Doc. 4795 at 184:9-10; *id.* at 183:14-17 (explaining that CMO 18 ordered "examination and clean up of the docket").) On January 22, 2024, the Court issued Case Management Order No. 20 (CMO 20), selecting certain cases for limited discovery to address the Court's concern "that a significant number of plaintiffs in the MDL . . . do not plausibly allege exposure to paraquat." (Doc. 5102 at 2.) In the two weeks following the issuance of CMO 20, nine of the 25 Plaintiffs who were selected for limited discovery voluntarily dismissed their complaints. This prompted the Court to issue Case Management Order No. 20A (CMO 20A), where it selected nine additional Plaintiffs for limited discovery. (Doc. 5127.) As stated in CMO 20A, "[t]hese dismissals . . . only reinforced the Court's concern about the proliferation of non-meritorious claims on the docket of this MDL." (*Id.* at 1.)

The Court asked the Special Master to review and analyze the documentary evidence of Plaintiffs' use of and/or exposure to paraquat as shown in their Plaintiff's Assessment Questionnaires ("PAQ"). The Special Master has advised the Court that many Plaintiffs in the MDL have not produced any documentary evidence in support of their exposure allegations, despite the opportunity to do so in the PAQ itself, as well as requests for the same types of documents made by Defendants to certain Plaintiffs in letters sent to Plaintiffs' counsel. This may be because such proof does not exist, or it may instead be because the relevant documentary evidence is in the possession, custody, or control of a third-party. Until now, the Court has not required Plaintiffs to request or

produce such documentary evidence. *See* Section XXIII of the Plaintiff's Assessment Questionnaire ("For purposes of this Plaintiff's Assessment Questionnaire, you are not required to obtain records from third party entities ….")[1]

In light of the foregoing, the Court directs *each Plaintiff in this MDL* to serve third-party subpoenas pursuant to Federal Rule of Civil Procedure 45 seeking documentary evidence providing proof of use and/or exposure to paraquat. Each Plaintiff is encouraged to serve any and all subpoenas he or she believes are necessary to establish documentary proof of his or her use of and/or exposure to paraquat. The Court likewise directs each Plaintiff to produce—by uploading to the PAQ portal—any documentary evidence providing proof of use and/or exposure currently in their possession, custody, or control that has not already been uploaded to the PAQ portal. This additional limited third-party discovery will provide Plaintiffs an opportunity to better determine the strength of their claims, as well as expose non-meritorious claims. Additional information about Plaintiffs in this MDL also will assist the Court in facilitating the expeditious, economical, and just resolution of this litigation, which has been the Court's goal since the MDL's inception. (*See* Doc. 16.)

The Court **ORDERS** that the third-party subpoenas be served by **March 11, 2023.** The subpoenas **SHALL** specify a return date of **21 days from service**. Any documents received in response to the subpoenas **SHALL** be uploaded to the PAQ portal within **10 days** of production to Plaintiffs' counsel by the third-party. So long as all documents

[1] *See* Plaintiff's Assessment Questionnaire, available at https://www.ilsd.uscourts.gov//documents/Paraquat/PlaintiffAssmntQuestionnaire.pdf.

received in response to a subpoena are uploaded to the PAQ portal, they do not otherwise need to be served on defense counsel or the Special Master. Given the expected number of forthcoming subpoenas, Lead Counsel for all parties **SHALL** confer regarding the notice requirements under Rule 45(a)(4) and refer any disputes to the Special Master.

Finally, it is this Court's preference to adjudicate any discovery disputes concerning this CMO. Should a dispute arise in connection with a subpoena issued pursuant to this CMO, the Plaintiff serving the subpoena **SHALL** promptly notify this Court and inform the presiding Judge of this Court's preference to decide it.

IT IS SO ORDERED.

DATED: February 26, 2024

NANCY J. ROSENSTENGEL
Chief U.S. District Judge