

# The Schindler Law Firm, P.C.

**Attorneys at Law**  
7710 Carondelet Avenue, Suite 333  
Saint Louis, Missouri 63105

Phone: (314) 862-1411  
Facsimile: (314) 862-1701  
Email: [josh@schindlerlawfirm.com](mailto:josh@schindlerlawfirm.com)

November 17, 2023

**By regular mail and email to:**

David Crumplar  
Jacobs & Crumplar, P.A.  
750 Shipyard Drive, Suite 200  
Wilmington, DE 19801  
[davy@jcdelaw.com](mailto:davy@jcdelaw.com)

**RE: Written objections to Subpoena seeking records and a personal appearance, pursuant to Superior Court Rule 45(c)(2)(B).**

Dear Mr. Crumplar:

I am outside counsel for v-Fluence Interactive Public Relations (“v-Fluence”). While v-Fluence is a Delaware corporation (and maintains a registered agent in your state), its principal place of business is St. Louis, Missouri. Furthermore, the person who is most knowledgeable regarding the documents (and information) which is sought in your subpoena is Jay Byrne, who resides in St. Louis. Requiring Mr. Byrne to appear at your offices in Wilmington, Delaware on December 7, 2023, and/or January 23, 2024, (to produce documents and testify, respectively), would impose an undue burden and expense. See Superior Court Civil Rule 45(c)(1); see also *Albert Sec Comm’n v. Ryckman*, 2015 WL 2265473 (Del. Super Ct. 2015). Additionally, the scope of the requests for documents and electronically stored information is overly broad and unduly burdensome, and would similarly impose an undue expense on v-Fluence. Pursuant to Rule 45(c)(2)(B), please consider this a timely objection to your subpoena on such grounds (as more specifically stated below).

However, it is my sincere hope that we can meet and confer to resolve concerns over the subpoena. In order to make that call/meeting more productive, I will explain what v-Fluence does in general, and more specifically the limited role v-Fluence has relative to Paraquat, and more specifically still, as that work relates to Syngenta. Please note: for purposes of this response/objection, I am using Syngenta Crop Protection, L.L.C. (“Syngenta”) as you define it in Instruction “F” of your subpoena, and “Paraquat” as defined in Instruction “E.”

## The Work.

As an initial matter, v-Fluence’s business (the “Work”) involves locating and aggregating publicly available content from diverse, third-party sources using proprietary software and analytical techniques, and then sharing access to the resulting database via newsletters to subscribers (“Subscribers”), and/or presenting such information at various conferences/events as guest speakers. Occasionally, v-Fluence is contacted by independent journalists/writers regarding information analyzed pursuant to this Work.

In other words, v-Fluence has never conducted primary research on Paraquat safety, carcinogenicity, or any other product attribute; and v-Fluence has never been asked to do any marketing, advertising, or public relations work specific to Paraquat for Syngenta. In fact, Syngenta has never

engaged v-Fluence to perform any work on Paraquat other than to monitor publicly available information, provide benchmark assessments of content and stakeholder sources, and to provide supplemental contextual analysis (examples include providing the reader information about the author, whether the source materials relied upon by the author have been criticized, and whether the author has accepted funds from third-parties with potential conflicts of interest). While Syngenta employees may have attended some of the conferences at which v-Fluence presented (during which Paraquat may have been discussed in general terms), they did so only as members of a general audience.

### The Documents.

v-Fluence's document retention policy permanently deletes all contracts and client-specific documents (the "Documents"), on a rolling basis, after 7 years (and all emails after 6 months to 2 years). It might, however, have some Documents beyond this period due to litigation holds in matters unrelated to Paraquat. Thus, to the extent that we can reach an agreement on the scope of the subpoena, v-Fluence will endeavor to perform a comprehensive search within the agreed upon scope.

Additionally, while I have not yet had an opportunity to review the contracts between v-Fluence and Syngenta, those agreements likely have confidentiality provisions. To the extent that responses affect such obligations and/or duties owed to third-parties, any agreement between us must include appropriate safeguards to avoid breaching same. More specifically, I could not determine if there is a protective order in place for this litigation, and while I remain ready to meet and confer before producing any documents, I will need to confirm/obtain such an order. Similarly, any agreement between us would not waive any objection to producing documents subject to the attorney-client, work produce privileges, and any other applicable privilege. Finally, I understand that there are pending motions to be heard later this year which may streamline the litigation and impact the allowable scope of your subpoena. If that is the case, I recommend that any "meet and confer" between us regarding your requests, take place after the ruling(s) on same.

### Temporal Scope.

Rule 45 places a duty on the requesting party to narrow their inquiry to avoid imposing an undue economic hardship. Unfortunately, the "Relevant Time Frame" even if restricted to twenty-one (21) years, creates a hardship for my client. However, that temporal limitation was gutted by Instruction G, which requires my client to search records beyond the 21-year restriction. Similarly, that Instruction expands the scope of the numbered paragraphs by asking my client to seek documents which "relate" to the numbered requests.

To emphasize why your requests will result in an undue burden and expense to my client, v-Fluence has performed work for Syngenta on matters unrelated to Paraquat for more than two decades. In addition, my client performs work for other clients in the agriculture space. Although not related to their work for Syngenta, the terms Syngenta and Paraquat appear in their work product for these third-parties. As such, and notwithstanding the document retention policy outlined previously, the search term "Syngenta" resulted in more than ten thousand documents "arguably" responsive to your requests (and

this does not even include information which v-Fluence makes available to the general public and subscribers).

The Individual Objections/Responses.

In addition to all previous objections, I will address each of your individual requests, in numbered order and as follows:

- 1) v-Fluence objects to the request as it is vague, ambiguous, overly broad, and unduly burdensome. Notwithstanding these objections, it appears you are seeking all contracts with Syngenta which arguably are related to Paraquat, and my client will produce responsive documents, if any, subject to a broader agreement on all issues raised herein.
- 2) v-Fluence objects to the request as it is vague. Notwithstanding the foregoing, v-Fluence is not aware of any such documents. Subject to a broader agreement on all issues raised in this letter, if any are found, such documents will be produced.
- 3) v-Fluence does not believe there are any responsive documents. Subject to a broader agreement on all issues raised in this letter, if any are found, such documents will be produced.
- 4) v-Fluence objects to the request as it is overly broad and unduly burdensome. As mentioned above, v-Fluence has worked with Syngenta on products other than Paraquat. To stress, because v-Fluence monitors and archives information in the public domain, a search based on the terms Paraquat and Syngenta will yield over ten thousand results, and a vast majority of those documents are in the public domain. Asking v-Fluence to bear the economic cost of gathering and producing these documents will create an undue economic hardship.
- 5) v-Fluence objects to the request as it is overly broad, unduly burdensome, and vague. My client will produce responsive documents, if any, subject to a broader agreement on all issues raised in this letter.
- 6) v-Fluence objects to the request as it is vague. More specifically, some of the terms such as qual-chat transcripts and virtual dial testing are not defined. Notwithstanding the foregoing, and subject to a broader agreement on all issues raised in this letter, to the extent documents are located, documents will be produced. However, as v-Fluence has never conducted any surveys for Syngenta, it is unlikely that any such documents exist.
- 7) v-Fluence objects as the request is vague, overly broad, and unduly burdensome. Some of the Subscribers or those who attended conferences at which v-Fluence spoke may have been reporters and/or worked for media outlets, newspapers, etc. But, as stated above, v-Fluence employees never presented on Paraquat, and any reference to that product, if any, were in general terms.
- 8) v-Fluence objects to the request as it is overly broad and unduly burdensome because "general public" could be anyone. Notwithstanding the foregoing, v-Fluence has no communications with farmers, landscapers or other users ("Users") of Paraquat. It is, however, possible that Users fall within the category of Subscribers or someone who attended a conference/event. But, v-Fluence does not keep a list of people who attend conferences/events, and Subscribers do not provide their occupations. Also, as mentioned in response to request #7, v-Fluence never spoken directly on the topic of Paraquat. Thus, I do not believe there will be any responsive documents, but to the extent such documents are located, they will be produced subject to the broader agreement on all issues raised in this letter.

- 9) See objections/response to request #8. v-Fluence does no independent analysis or research relative to the any relevant product, including but not limited to, Paraquat. Thus, my client does not believe there will be any responsive documents but to the extent such documents are located, they will be produced if there is broader agreement on all issues raised in this letter.
- 10) v-Fluence objects to the request as it is vague, overly broad and unduly burdensome. Notwithstanding this objection, v-Fluence has never been asked by Syngenta (or anyone else) to do any PR, marketing, or advertising specific to Paraquat. Thus, my client does not believe there will be any responsive documents. To the extent such documents are located, they will be produced subject to broader agreement on all issues raised in this letter.
- 11) v-Fluence objects to this request as it is vague, overly broad, and unduly burdensome. As mentioned, it is possible that as part of its Work or in preparing information for Subscribers, Paraquat was mentioned in general terms. We will produce responsive documents, if any, subject to a broader agreement on all issues raised in this letter.
- 12) v-Fluence objects to this request as it is overly broad and unduly burdensome. As mentioned, v-Fluence has done work for Syngenta for over twenty years. My client will produce responsive documents, if any, subject to a broader agreement on all issues raised in this letter.
- 13) None. v-Fluence has never created or funded any group whose purpose or goal was to improve the public's perception of Paraquat. Thus, I do not believe there will be any responsive documents, but to the extent such documents are located, they will be produced subject to a broader agreement on all issues raised in this letter.

I look forward to discussing all the issues raised in this letter.

Very truly yours,

/s/ Joshua M. Schindler  
Joshua M. Schindler