

FILED BY FAX
ALAMEDA COUNTY
August 28, 2017

CLERK OF
THE SUPERIOR COURT
By Alicia Espinoza, Deputy

CASE NUMBER:
RG17862702

1 Richard A. Clark
State Bar No. 39558
2 (rclark@pmcos.com)
Steven R. Platt
3 State Bar No. 245510
(splatt@pmcos.com)
4 PARKER, MILLIKEN, CLARK, O'HARA
& SAMUELIAN, P.C.
5 555 S. Flower Street, 30th Floor
Los Angeles, CA 90071
6 Telephone: (213) 683-6500
Facsimile: (213) 683-6669
7

8 Gregory S. Chernack (*pro hac vice* motion pending)
(gchernack@hollingsworthllp.com)
9 HOLLINGSWORTH LLP
1350 I Street, N.W.
10 Washington, DC 20005
Telephone: (202) 898-5800
11 Facsimile: (202) 682-1639

12 Attorneys for Defendant
MONSANTO COMPANY

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 FOR THE COUNTY OF ALAMEDA

16 ALVA AND ALBERTA PILLIOD,
CHARLES BAKER, JOHN NOVAK,
17 SHARON ROWLAND, SHARON
MCCLURG and MARJORIE GRUBKA,

18 Plaintiffs,

19 v.

20 MONSANTO COMPANY, WILBUR-
ELLIS COMPANY LLC, and WILBUR-
21 ELLIS FEED, LLC,

22 Defendants.
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RG-17-862702

ASSIGNED FOR ALL PURPOSES TO
JUDGE George C. Hernandez, Jr.,
DEPARTMENT 17

**ANSWER OF MONSANTO COMPANY TO
PLAINTIFFS ALVA AND ALBERTA
PILLIOD'S UNVERIFIED COMPLAINT;
DEMAND FOR JURY TRIAL**

Complaint filed: June 2, 2017

Trial Date: Not assigned

1 Comes now defendant MONSANTO COMPANY ("Monsanto") and answers the
2 Complaint of Plaintiffs Alva and Alberta Pilliod¹:

3 1. Pursuant to Code of Civil Procedure Section 431.30(d), Monsanto files its general
4 denial to said Complaint and denies, generally and specifically, each and every allegation of said
5 Complaint, and the whole thereof, and denies that Plaintiffs have sustained or will sustain
6 damage in the sum or sums alleged, or in any sum or amount whatsoever or at all.

7 2. Further answering the Complaint, Monsanto denies that Plaintiffs sustained or will
8 sustain any injury, damage or loss by reason of any act or omission of Monsanto.

9 Monsanto is informed and believes, and therefore alleges the following separate and
10 affirmative defenses:

11 FIRST DEFENSE

12 (FAILURE TO STATE A CAUSE OF ACTION – ALL CAUSES OF ACTION)

13 3. The Complaint, in whole or part, fails to state a claim or cause of action against
14 Monsanto upon which relief can be granted.

15 SECOND DEFENSE

16 (PRODUCT NOT DEFECTIVE OR UNREASONABLY
17 DANGEROUS – ALL CAUSES OF ACTION)

18 4. Plaintiffs' claims are barred in whole because they cannot proffer any scientifically
19 reliable evidence that the products at issue were defective or unreasonably dangerous.

20 THIRD DEFENSE

21 (LACK OF PROXIMATE CAUSE – ALL CAUSES OF ACTION)

22 5. Any alleged negligent or culpable conduct of Monsanto, none being admitted, was
23 so insubstantial as to be insufficient to be a proximate or substantial contributing cause of any
24 injuries allegedly experienced by Plaintiff Alva Pilliod ("Plaintiff").

25
26 ¹ On August 4, 2017, the Court issued an order regarding severance that directed plaintiffs
27 Charles Baker, John Novak, Sharon Rowland, Sharon McClurg, and Marjorie Grubka to file
28 separate complaints and stated that those complaints will be transferred to other courts.
Therefore, Monsanto answers the Complaint only as to Alva and Alberta Pilliod, *see* CRC
3.1320(j), and reserves the right to answer or otherwise respond to the other plaintiffs' claims at a
later date.

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FOURTH DEFENSE

(ADEQUATE WARNINGS – ALL CAUSES OF ACTION)

6. Plaintiffs' claims are barred, in whole or in part, because the products at issue were designed, manufactured, marketed, and labeled with proper warnings, information, cautions and instructions, in accordance with the state of the art and the state of scientific and technological knowledge.

FIFTH DEFENSE

(STATUTORY AND REGULATORY COMPLIANCE – ALL CAUSES OF ACTION)

7. Plaintiffs' claims are barred, in whole or in part, because the products at issue were not defective or unreasonably dangerous in that they complied with, at all relevant times, all applicable government safety standards.

SIXTH DEFENSE

(FIFRA STATUTORY PREEMPTION – ALL CAUSES OF ACTION)

8. Plaintiffs' claims are preempted, in whole or in part, by applicable federal law relating to the design, testing, producing, manufacturing, labeling, distributing, modeling, processing, and supply of Roundup[®]-branded products and/or glyphosate-containing products.

SEVENTH DEFENSE

(PREEMPTION – CONTINUED EPA APPROVAL – ALL CAUSES OF ACTION)

9. Plaintiffs' claims are preempted, in whole or in part, because of U.S. EPA findings that glyphosate does not cause cancer in humans and/or because of U.S. EPA-approved product labeling.

EIGHTH DEFENSE

(PRIMARY JURISDICTION – ALL CAUSES OF ACTION)

10. Plaintiffs' claims are barred, in whole or in part, by the doctrine of primary jurisdiction, including by the authority delegated by Congress to the U.S. EPA.

1 NINTH DEFENSE

2 (INDEPENDENT/INTERVENING/SUPERSEDING CAUSES – ALL
3 CAUSES OF ACTION)

4 11. Plaintiffs' claims are barred, in whole or in part, because Plaintiff's injuries, if any,
5 were the result of conduct of Plaintiff, independent third parties, and/or events that were
6 extraordinary under the circumstances, not foreseeable in the normal course of events, and/or
7 independent, intervening and superseding causes of the alleged injuries, including but not limited
8 to Plaintiff's pre-existing medical conditions.

9 TENTH DEFENSE

10 (RESTATEMENT (SECOND) OF TORTS § 402A, COMMENTS J AND K – ALL
11 CAUSES OF ACTION)

12 12. The doctrines contained in Restatement (Second) of Torts § 402A, comments j and
13 k, bar Plaintiffs' claims against Monsanto in whole or in part.

14 ELEVENTH DEFENSE

15 (STATUTE OF LIMITATIONS AND/OR REPOSE – ALL CAUSES OF ACTION)

16 13. Applicable statutes of limitations and/or repose bar Plaintiffs' claims in whole or
17 in part.

18 TWELFTH DEFENSE

19 (MISUSE OR FAILURE TO FOLLOW INSTRUCTIONS – ALL
20 CAUSES OF ACTION)

21 14. Plaintiff's misuse or abnormal use of the product or failure to follow instructions
22 bar Plaintiffs' claims in whole or in part.

23 THIRTEENTH DEFENSE

24 (ALTERNATIVE CAUSES – ALL CAUSES OF ACTION)

25 15. If Plaintiff suffered injury or damages as alleged, which is denied, such injury or
26 damages resulted from: (a) acts or omissions of persons or entities for which Monsanto is neither
27 liable nor responsible or, in the alternative, Monsanto is entitled to an assessment of the relative
28 degree of fault of all such persons and entities; or (b) resulted from diseases and/or causes that are

1 not related or connected with any product sold, distributed, or manufactured by Monsanto. Such
2 acts or omissions on the part of others or diseases or causes constitute an independent, intervening
3 and sole proximate cause of Plaintiff's alleged injury or damages.

4 FOURTEENTH DEFENSE

5 (LACK OF PRIVITY; NO DUTY – ALL CAUSES OF ACTION)

6 16. Monsanto had no legal relationship or privity with Plaintiffs and owed no duty to
7 Plaintiffs by which liability could be attributed to it.

8 FIFTEENTH DEFENSE

9 (NO WARRANTIES – ALL CAUSES OF ACTION)

10 17. Monsanto made no warranties of any kind or any representations of any nature
11 whatsoever to Plaintiffs. If any such warranties were made, which Monsanto specifically denies,
12 then Plaintiffs failed to give notice of any breach thereof.

13 SIXTEENTH DEFENSE

14 (COMMERCIAL FREE SPEECH – ALL CAUSES OF ACTION)

15 18. Plaintiffs' claims are preempted in whole or part by the Freedom of Speech Clause
16 of the First Amendment of the U.S. Constitution.

17 SEVENTEENTH DEFENSE

18 (PUNITIVE DAMAGES UNCONSTITUTIONAL – ALL
19 CAUSES OF ACTION)

20 19. Plaintiffs' claims for punitive damages are barred because such an award would
21 violate Monsanto's due process, equal protection and other rights under the United States
22 Constitution, the California Constitution, and/or other applicable state constitutions – and would
23 be improper under the common law and public policies of the United States, the laws of
24 California and/or other states' laws.

25 EIGHTEENTH DEFENSE

26 (CONDUCT DOES NOT WARRANT PUNITIVE DAMAGES – ALL
27 CAUSES OF ACTION)

28 20. Plaintiffs' claims for punitive damages are barred because Plaintiffs have failed to

1 allege conduct warranting imposition of punitive damages under California and/or other
2 applicable state laws.

3 NINETEENTH DEFENSE

4 (PUNITIVE DAMAGES BARRED OR LIMITED BY OPERATION OF LAW- ALL
5 CAUSES OF ACTION)

6 21. Plaintiffs' claims for punitive damages are barred and/or limited by operation of
7 state and/or federal law.

8 TWENTIETH DEFENSE

9 (CONTRIBUTORY/COMPARATIVE NEGLIGENCE - ALL CAUSES
10 OF ACTION)

11 22. Plaintiffs' causes of action are barred in whole or in part by Plaintiff's own
12 contributory/comparative negligence.

13 TWENTY-FIRST DEFENSE

14 (FAILURE TO MITIGATE DAMAGES - ALL CAUSES OF ACTION)

15 23. Plaintiffs' causes of action are barred in whole or in part by Plaintiff's own failure
16 to mitigate damages.

17 TWENTY-SECOND DEFENSE

18 (SOPHISTICATED USER DOCTRINE - ALL CAUSES OF ACTION)

19 24. Plaintiffs' causes of action are barred in whole or in part by the sophisticated user
20 doctrine.

21 TWENTY-THIRD DEFENSE

22 (COLLATERAL SOURCE - ALL CAUSES OF ACTION)

23 25. To the extent that Plaintiff recovered payments for his alleged injuries from any
24 collateral source(s) or other source(s), Plaintiff's recovery in this lawsuit, if any, shall be reduced
25 to the extent allowed by applicable law.

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1 TWENTY-FOURTH DEFENSE

2 (ALLEGED INJURIES NOT CAUSED BY MONSANTO PRODUCT – ALL
3 CAUSES OF ACTION)

4 26. If Plaintiffs have been injured or damaged, no injury or damages being admitted,
5 such injuries or damages were not caused by a Monsanto product.

6 TWENTY-FIFTH DEFENSE

7 (MISJOINDER OF PARTIES – ALL CAUSES OF ACTION)

8 27. Plaintiff's claims are barred, in whole or in part, because some or all of the parties
9 have been improperly joined in this action.

10 TWENTY-SIXTH DEFENSE

11 (RELIEF SOUGHT BASED ON OTHER STATES' LAWS – ALL CAUSES OF ACTION)

12 28. Plaintiffs' claims are barred to the extent that Plaintiffs seek relief under the laws
13 of states that do not govern Plaintiffs' claims.

14 TWENTY-SEVENTH DEFENSE

15 (RESERVATION OF RIGHT TO ASSERT ADDITIONAL
16 DEFENSES – ALL CAUSES OF ACTION)

17 29. Monsanto hereby gives notice that it intends to rely upon such other defenses as
18 may become available or apparent during the course of discovery and thus reserves its right to
19 amend this Answer to assert such defenses.

20 WHEREFORE, Monsanto prays as follows:


- 21 1. That Plaintiffs take nothing by way of their Complaint;
22 2. That the Complaint be dismissed, in its entirety with prejudice;
23 3. That Monsanto be awarded judgment in this action;
24 4. That Monsanto be awarded costs of suit;

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5. That Monsanto be awarded such other and further relief as the Court deems just and proper.

DATED: August 28, 2017

Respectfully submitted,



Steven R. Platt
Richard A. Clark
PARKER, MILLIKEN, CLARK, O'HARA
& SAMUELIAN, P.C.

Gregory S. Chernack (*pro hac vice* motion pending)
HOLLINGSWORTH LLP

Attorneys for Defendant
MONSANTO COMPANY

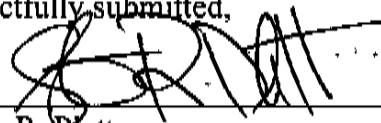
DEMAND FOR JURY TRIAL

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Defendant MONSANTO COMPANY hereby demands a jury trial in the above-entitled action.

DATED: August 28, 2017

Respectfully submitted,



Steven R. Platt
Richard A. Clark
PARKER, MILLIKEN, CLARK, O'HARA
& SAMUELIAN, P.C.

Gregory S. Chernack (appearance *pro hac vice*)
HOLLINGSWORTH LLP

Attorneys for Defendant
MONSANTO COMPANY

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PROOF OF SERVICE

Pilliod, et al. vs. Monsanto Company, et al., Case No. RG17862702

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 555 South Flower Street, 30th Floor, Los Angeles, California 90071.

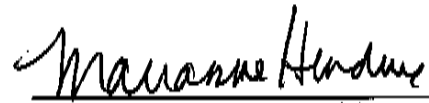
On August 28, 2017, I served the documents described as **ANSWER OF MONSANTO COMPANY TO PLAINTIFFS ALVA AND ALBERTA PILLIOD'S UNVERIFIED COMPLAINT; DEMAND FOR JURY TRIAL** on the following:

Timothy Litzenburg
Curtis G. Hoke
THE MILLER FIRM, LLC
108 Railroad Avenue
Orange, VA 22960
Attorneys for Plaintiffs

(BY MAIL) By placing a true copy in envelope(s) addressed as referenced above. The envelope(s) were then sealed and deposited for collection and mailing in accordance with my employer's normal procedures. I am readily familiar with the firm's practice for collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service, with all postage prepaid, at Los Angeles, California, on the same day in the ordinary course of business.

(STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on August 28, 2017 at Los Angeles, California.



Marianne Hendrix