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ALAMEDA COUNTY

MAR 29 2019

CLERK OF THE SUPERIOR COURT

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

) Com No DC17060700

| | PILLIOD, et al. |) Case No. RG17802702 |
|----------|-------------------|---|
| 18 19 | Plaintiffs, |) ASSIGNED FOR ALL PURPOSES TO) JUDGE WINIFRED SMITH) DEPARTMENT 21 |
| 20 | VS. |) |
| 21 | MONSANTO COMPANY, |) MONSANTO COMPANY'S BENCH) BRIEF REGARDING DESIGNATED TESTIMONY OF DR. WHITE AM |
| 22 | Defendant. |) TESTIMONY OF DR. WILLIAM HEYDENS |
| 23 | | Trial Date: March 18, 2019 |

Monsanto moves for reconsideration of multiple rulings excluding testimony Monsanto designated for Dr. William Heydens regarding various regulatory evaluations upon which Monsanto relied, in part, in forming its belief that Roundup was non-carcinogenic.

It appears the Court excluded this testimony because it pertained to regulatory approvals that Monsanto did not submit in connection with its RJN and request for admission under Evidence Code section 1280. For example, the Court sustained an objection to 322:10-328:4—testimony regarding the 1993 EPA RED—that is EPA's official finding regarding non-carcinogenicity of glyphosate that controlled until examinations in recent years, which the Court accepted into evidence Wednesday. The evidence is directly relevant to Monsanto's defenses in this case.

Monsanto's witnesses must be able to testify about EPA regulatory findings such as the 1993 RED as a basis for its corporate conduct even if Monsanto has not yet sought to admit those documents into evidence. *Casella v. SouthWest Dealer Servs., Inc.*, 157 Cal. App. 4th 1127, 1147 (2007) (admitting testimony about out-of-court statements probative of a party's "state of mind" for its conduct). The admissibility of *testimony* regarding Monsanto's reliance on a particular document is a fundamentally different inquiry than whether the document itself is admissible. Additionally, Monsanto notes that the documents it submitted for judicial notice are not the exclusive documents for which it may seek judicial notice in this case.

Therefore, Monsanto seeks clarity with respect to testimony concerning the following documents:

- Reregistration Eligibility Decision (RED) Glyphosate, Office of Prevention, Pesticides, and Toxic Substances (1993) ("1993 RED").
 - 0 322:10-328:4
 - 0. 351:16-352:4
- 2. EPA, Alkyl Amine Polyalkoxylates (JITF CST 4 Inert Ingredients). Human Health Risk Assessment to Support Proposed Exemption from Requirement of a Tolerance

When Used as an Inert Ingredient in Pesticide Formulations, (April 2009) ("2009 EPA Surfactant Cluster Approvals")

- 0 361:5-364:8
- EPA, Cancer Assessment Review Committee, Health Effects Division, Office of Pesticide Programs, U.S. Environmental Protection Agency, Cancer Assessment Document – Evaluation of the Carcinogenic Potential of Glyphosate (Oct. 1, 2015) ("2015 CARC Report")
 - 0 329:15-336:10
 - 0 345:5-347:15
 - 0 352:5-354:13

Although not at issue today, Monsanto notes that each of the documents in question is admissible by the same criteria under Sections 1280 and 452 applied yesterday to the admission of the 2016 and 2017 EPA OPP documents. For example, on 350:22-355:5, Dr. Heydens discusses the database of information reviewed by EPA in the 1993 RED, then the 2015 CARC, and finally the 2016 OPP. Though Monsanto may seek admission of these documents under Sections 1280 and 452 later, at this time it does not seek to publish to the jury and send into evidence the documents discussed. It merely is seeking testimony from a company witness about these documents as probative of the reasons for Monsanto's conduct.

Finally, there are two rulings that appear to simply be mistakes, and Monsanto respectfully requests that the Court revisit them. First, the Court sustained an objection to 348:24-356:3, but this testimony concerns Ex. 43 (2016 OPP Report), which has been admitted. Similarly, on page 20 of the rulings sheet, the Court wrote that it excluded all testimony from 322:3-341:4, but also noted that testimony with respect to the 2016 OPP Report should remain. The testimony with respect to the 2016 OPP Report is 336:13-341:4. Therefore, Monsanto believes that the Court intended to permit 348:24-356:3 and 336:13-341:4.

Monsanto requests that the Court rule that the testimony listed above may be played.

| 1. | DATED: March 29, 2019 | Respectfully submitted, |
|--------|-----------------------|---|
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PROOF OF ELECTRONIC SERVICE

Roundup Products Cases, Case No. JCCP 4953 Pilliod, et al. v. Monsanto Company, Case No. RG17862702 Alameda County Superior Court

I am employed in the County of San Francisco, State of California. I am over the age of 18 and not a party to the within action. My business address is One California Street, 18th Floor, San Francisco, California 94111.

On March 29, 2019, I served a true and correct copy of the documents described as:

MONSANTO COMPANY'S BENCH BRIEF REGARDING DESIGNATED TESTIMONY OF DR. WILLIAM HEYDENS

on the interested parties by electronic transfer to Case Anywhere via the Internet, pursuant to the Court's Case Management Order No. 2 Authorizing Electronic Service dated March 23, 2018.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this Proof of Electronic Service was executed on March 29, 2019 at San Francisco, California.

Sherie McLean