

BY FAX

1 Kelly A. Evans (*pro hac vice*)  
2 (kevans@efstrialaw.com)  
3 Jay J. Schuttert (*pro hac vice*)  
4 (jschuttert@efstrialaw.com)  
5 EVANS FEARS & SCHUTTERT LLP  
6 2300 West Sahara Avenue, Suite 900  
7 Las Vegas, NV 89102  
8 Tel: (702) 805-0290  
9 Fax: (702) 805-0291

10 Tarek Ismail (*pro hac vice*)  
11 (tismail@goldmanismail.com)  
12 Joe Tomaselli (*pro hac vice*)  
13 (jtomaselli@goldmanismail.com)  
14 GOLDMAN ISMAIL TOMASELLI  
15 BRENNAN & BAUM LLP  
16 564 West Randolph Street, Suite 400  
17 Chicago, IL 60661  
18 Tel: (312) 881-5970  
19 Fax: (312) 881-5191

20 Attorneys for Defendant MONSANTO  
21 COMPANY  
22 \*Additional counsel listed on signature block

**FILED**  
**ALAMEDA COUNTY**

MAR 29 2019

CLERK OF THE SUPERIOR COURT

By Jaquana Turner Deputy

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

17 ) Case No. RG17862702  
18 ) ASSIGNED FOR ALL PURPOSES TO  
19 ) JUDGE WINIFRED SMITH  
20 ) DEPARTMENT 21  
21 ) **MONSANTO COMPANY'S BENCH**  
22 ) **BRIEF REGARDING DESIGNATED**  
23 ) **TESTIMONY OF DR. WILLIAM**  
24 ) **HEYDENS**  
25 ) Trial Date: March 18, 2019

18 PILLIOD, et al.  
19 Plaintiffs,  
20 vs.  
21 MONSANTO COMPANY,  
22 Defendant.

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

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

11 Monsanto’s witnesses must be able to testify about EPA regulatory findings such as the  
12 1993 RED as a basis for its corporate conduct even if Monsanto has not yet sought to admit those  
13 documents into evidence. *Casella v. SouthWest Dealer Servs., Inc.*, 157 Cal. App. 4th 1127,  
14 1147 (2007) (admitting testimony about out-of-court statements probative of a party’s “state of  
15 mind” for its conduct). The admissibility of *testimony* regarding Monsanto’s reliance on a  
16 particular document is a fundamentally different inquiry than whether the document itself is  
17 admissible. Additionally, Monsanto notes that the documents it submitted for judicial notice are  
18 not the exclusive documents for which it may seek judicial notice in this case.

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

- 21 1. *Reregistration Eligibility Decision (RED) Glyphosate*, Office of Prevention,  
22 Pesticides, and Toxic Substances (1993) (“1993 RED”).
  - 23 ○ 322:10-328:4
  - 24 ○ 351:16-352:4
- 25 2. EPA, *Alkyl Amine Polyalkoxylates (JITF CST 4 Inert Ingredients). Human Health*  
26 *Risk Assessment to Support Proposed Exemption from Requirement of a Tolerance*  
27  
28



1 DATED: March 29, 2019

Respectfully submitted,

2 /s/ Kirby Griffis  
3 Kirby Griffis (*pro hac vice*)  
4 (kgriffis@hollingsworthllp.com)  
5 Martin C. Calhoun (*pro hac vice*)  
6 (mcalhoun@hollingsworthllp.com)  
7 HOLLINGSWORTH LLP  
8 1350 I Street, N.W.  
9 Washington, DC 20005  
10 Tel: (202) 898-5800  
11 Fax: (202) 682-1639

12 Kelly A. Evans (*pro hac vice*)  
13 (kevans@efstriallaw.com)  
14 Jay J. Schuttert (*pro hac vice*)  
15 (jschuttert@efstriallaw.com)  
16 EVANS FEARS & SCHUTTERT LLP  
17 2300 West Sahara Avenue, Suite 900  
18 Las Vegas, NV 89102  
19 Tel: (702) 805-0290  
20 Fax: (702) 805-0291

21 Tarek Ismail (*pro hac vice*)  
22 (tismail@goldmanismail.com)  
23 Joe Tomaselli (*pro hac vice*)  
24 (jtomaselli@goldmanismail.com)  
25 GOLDMAN ISMAIL TOMASELLI  
26 BRENNAN & BAUM LLP  
27 564 West Randolph Street, Suite 400  
28 Chicago, IL 60661  
Tel: (312) 881-5970  
Fax: (312) 881-5191

Eugene Brown  
(ebrown@hinshawlaw.com)  
Amea Mikacich  
(amikacich@hinshawlaw.com)  
HINSHAW & CULBERTSON LLP  
One California Street, 18th Floor  
San Francisco, CA 94111  
Tel: (415) 362-6000  
Fax: (415) 834-9070

Attorneys for Defendant  
MONSANTO COMPANY

