

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

6 Tarek Ismail (*pro hac vice*)
(tismail@goldmanismail.com)
7 Joe Tomaselli (*pro hac vice*)
(jtomaselli@goldmanismail.com)
8 GOLDMAN ISMAIL TOMASELLI BRENNAN & BAUM LLP
564 West Randolph Street, Suite 400
9 Chicago, IL 60661
Tel: (312) 881-5970
10 Fax: (312) 881-5191

11 Attorneys for Defendant MONSANTO COMPANY
*Additional counsel listed on signature block

12
13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **FOR THE COUNTY OF ALAMEDA**

15 COORDINATION PROCEEDING
SPECIAL TITLE (Rule 3.550)
16
17 ROUNDUP PRODUCTS CASES

JCCP NO. 4953
ASSIGNED FOR ALL PURPOSES TO
JUDGE WINIFRED SMITH
DEPARTMENT 21

18 THIS DOCUMENT RELATES TO:
19 *Alva Pilliod and Alberta Pilliod v.*
Monsanto Company, Case No.
20 RG17862702

**DEFENDANT MONSANTO COMPANY'S
REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF MOTION FOR SUMMARY
JUDGMENT OR SUMMARY ADJUDICATION**

BY FAX

Hearing Date: March 7, 2019
Time: 10:00 a.m.
Department: 21
Reservation No.: R-2048303

1 **TO EACH PARTY AND THEIR ATTORNEYS OF RECORD:**

2 You ARE HEREBY NOTIFIED THAT, pursuant to California Evidence Code sections
3 451, 452 and 453, and California Code of Civil Procedure section 437c(b), Defendant
4 MONSANTO COMPANY (“Monsanto”) will and hereby does request that this Court take judicial
5 notice of the following public records and documents in connection with the Motion for Summary
6 Judgment or Summary Adjudication concurrently filed by Monsanto:

7 **Exhibit 1:** A true and correct copy of the United States Environmental Protection
8 Agency’s (“U.S. EPA”) Pesticide Registration Notice (“PRN”) 98-10 (Oct. 22, 1998).¹

9 **Exhibit 2:** A true and correct copy of U.S. EPA’s *Reregistration Eligibility Decision*
10 (*“RED”*) for *Glyphosate* (Sept. 1993).²

11 **Exhibit 3:** A true and correct copy of excerpts of *Glyphosate; Pesticide Tolerances*, 62
12 Fed. Reg. 17,723, 17,724, 17,728 (Apr. 11, 1997).

13 **Exhibit 4:** A true and correct copy of excerpts of *Glyphosate; Pesticide Tolerances*, 67
14 Fed. Reg. 60,934, 60,935, 60,936, 60,943 (Sept. 27, 2002).

15 **Exhibit 5:** A true and correct copy of excerpts of *Glyphosate; Pesticide Tolerance*, 69 Fed.
16 Reg. 65,081, 65,086 (Nov. 10, 2004).

17 **Exhibit 6:** A true and correct copy of excerpts of *Glyphosate; Pesticide Tolerances*, 73
18 Fed. Reg. 73,586, 73,589 (Dec. 3, 2008).

19 **Exhibit 7:** A true and correct copy of excerpts of *Glyphosate; Pesticide Tolerances*, 78
20 Fed. Reg. 25,396, 25,398 (May 1, 2013).

21 **Exhibit 8:** A true and correct copy of the October 1, 2015 report of the U.S. EPA Cancer
22 Assessment Review Committee (“CARC”) Health Effects Division, Office of Pesticide Programs’
23 *Cancer Assessment Document - Evaluation of the Carcinogenic Potential of Glyphosate*.³

24 **Exhibit 9:** A true and correct copy of the September 12, 2016 report of the U.S. EPA
25

26 ¹ <https://www.epa.gov/sites/production/files/2014-04/documents/pr98-10.pdf>

27 ² https://www3.epa.gov/pesticides/chem_search/reg_actions/reregistration/red_PC-417300_1-Sep-93.pdf

28 ³ <https://www.regulations.gov/document?D=EPA-HQ-OPP-2016-0385-0014>

1 Office of Pesticide Programs’ *Glyphosate Issue Paper: Evaluation of Carcinogenic Potential*.⁴

2 **Exhibit 10:** A true and correct copy of the December 12, 2017 report of the U.S. EPA
3 Office of Pesticide Programs’ *Revised Glyphosate Issue Paper: Evaluation of Carcinogenic*
4 *Potential*.⁵

5 **Exhibit 11:** A true and correct copy of the Feb. 6, 2018 sworn written testimony of Dr.
6 Anna Lowit (Science Advisor, U.S. EPA Office of Pesticide Programs) before the United States
7 House of Representatives Committee on Science, Space, and Technology.⁶

8 **Exhibit 12:** A true and correct copy of the Jan. 25, 2010 U.S. EPA Approval Letter with
9 approved Monsanto GBH product labeling.⁷

10 **Exhibit 13:** A true and correct copy of the July 1, 2009 U.S. EPA Approval Letter with
11 approved Monsanto GBH product labeling.⁸

12 **Exhibit 14:** A true and correct copy of the March 10, 2016 U.S. EPA Approval Letter with
13 approved Monsanto GBH product labeling.⁹

14 **Exhibit 15:** A true and correct copy of the October 18 2016 U.S. EPA Approval Letter
15 with approved Monsanto GBH product labeling.¹⁰

16 **Exhibit 16:** A true and correct copy of the February 22, 2018 U.S. EPA Approval Letter
17 with approved Monsanto GBH product labeling.¹¹

18 **Exhibit 17:** A true and correct copy of the December 21, 2018 U.S. EPA letter to the
19 Australian Senate.

20 **Authority for Exhibits 3-7:** Under California Evidence Code section 451(b), the Court
21 *must* take judicial notice of “[a]ny matter made a subject of judicial notice by . . . Section 1507 of

22 _____
23 ⁴ <https://www.regulations.gov/document?D=EPA-HQ-OPP-2016-0385-0094>

24 ⁵ <https://www.regulations.gov/document?D=EPA-HQ-OPP-2016-0385-0528>

25 ⁶ <https://science.house.gov/legislation/hearings/full-committee-hearing-defense-scientific-integrity-examining-iarc-monograph>

26 ⁷ https://www3.epa.gov/pesticides/chem_search/pppls/000524-00517-20100125.pdf

27 ⁸ https://www3.epa.gov/pesticides/chem_search/pppls/000524-00579-20090701.pdf

28 ⁹ https://www3.epa.gov/pesticides/chem_search/pppls/071995-00051-20160310.pdf

¹⁰ https://www3.epa.gov/pesticides/chem_search/pppls/000524-00343-20161018.pdf

¹¹ https://www3.epa.gov/pesticides/chem_search/pppls/093236-00004-20180222.pdf

1 Title 44 of the United States Code.” Cal. Evid. Code § 451(b). That federal statute mandates that
2 materials in the Federal Register be judicially noticed. 44 U.S.C. § 1507 (“The contents of the
3 Federal Register shall be judicially noticed”). Therefore, Exhibits 2-6, each of which is
4 published in the Federal Register, must be judicially noticed. *See Black v. Fin. Freedom Senior*
5 *Funding Corp.*, 92 Cal. App. 4th 917, 934 n.13 (2001) (granting in part party’s request for judicial
6 notice because Cal. Evid. Code § 451 “mandates judicial notice of any matter made a subject of
7 judicial notice by . . . Section 1507 of Title 44 of the United States Code. That federal statute
8 provides that the contents of the Federal Register shall be judicially noticed.”) (internal quotation
9 marks omitted) (alteration in original).

10 **Authority for Exhibits 1-2, 8-10, and 12-17:** Agency records, reports, and orders are
11 “official acts” of which a court may take judicial notice. *Rodas v. Spiegel*, 87 Cal. App. 4th 513,
12 518 (2001) (taking judicial notice of a decision and order of the California Department of
13 Consumer Affairs and holding, “[o]fficial acts include records, reports and orders of
14 administrative agencies”); *see also Gallagher v. Boller*, 231 Cal. App. 2d 482, 489 (1964) (taking
15 judicial notice of agency “guide book”). For example, California courts have taken judicial notice
16 of letters issued by state and federal executive government agencies. *In re H.C.*, 17 Cal. App. 5th
17 1261, 1268 n.4 (2017) (taking judicial notice of a portion of the Child Welfare Policy Manual
18 because its publication is an official act of an executive department of the United States); *Stevens*
19 *v. Super. Ct.*, 75 Cal. App. 4th 594, 608 (1999) (taking judicial notice of letters issued by the
20 California Department of Insurance). Much like the agency decisions and guidance documents in
21 *Rodas* and *In re H.C.*, the U.S. EPA letters cited above that officially approved labeling for
22 Monsanto GBH products, the U.S. EPA’s agency reports on glyphosate (the 1993 Reregistration
23 Eligibility Decision; the 2015 CARC report; and the 2016 and 2017 Office of Pesticide Programs
24 reports); and the California OEHHA 1997 and 2007 reports are records, reports, and decisions of
25 administrative agencies and therefore qualify as official acts of an executive department of the
26 United States and of California, respectively. Moreover, these exhibits all are publicly available on
27 the agencies’ websites (as shown by the website links cited above), so there is no reason to doubt
28 the authenticity of these exhibits. Accordingly, the Court may and should take judicial notice of

1 these exhibits. *See Rodas*, 87 Cal. App. 4th at 518 (2001); *In re H.C.*, 17 Cal. App. 5th at 1268
2 n.4; Cal. Evid. Code §452(c).

3 **Authority for Exhibit 11:** Under California Evidence Code section 452(c), the Court may
4 take judicial notice of “[o]fficial acts of the legislative, executive, and judicial departments of the
5 United States and of any state of the United States.” Cal. Evid. Code § 452(c). Testimony before a
6 legislative body is an official act of the legislature and therefore appropriate for judicial notice.
7 *Post v. Prati*, 90 Cal. App. 3d 626, 634 (1979) (affirming the trial court’s decision to take judicial
8 notice of, *inter alia*, excerpts of testimony given at legislative hearings because the testimony is
9 “in the category of official acts of the legislative, executive, and judicial departments of the United
10 States and of any state in the United States.”) (internal quotation marks omitted).

11 Dr. Lowit is a Science Advisor for the U.S. EPA, an executive branch agency, who
12 provided sworn written testimony on behalf of that agency before a committee of the United States
13 House of Representatives, a legislative body. Like the testimony that was judicially noticed in
14 *Post*, Dr. Lowit’s testimony qualifies as an official act of a legislative department of the United
15 States and should be judicially noticed. *See id.*; Cal. Evid. Code § 452(c).

16 Accordingly, Monsanto respectfully requests that this Court take judicial notice of the
17 above-referenced documents.

18
19
20
21
22
23
24
25
26
27
28

1 Executed this 12th day of February 2019.

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
17 LLP
18 2300 West Sahara Avenue, Suite
19 900
20 Las Vegas, NV 89102
21 Tel: (702) 805-0290
22 Fax: (702) 805-0291

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

Eugene Brown
(ebrown@hinshawlaw.com)
Amee 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