

A158228

**IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT, DIVISION TWO**

ALVA AND ALBERTA PILLIOD,
Plaintiffs and Cross-Appellants,

v.

MONSANTO COMPANY,
Defendant and Appellant.

APPEAL FROM ALAMEDA COUNTY SUPERIOR COURT
WINIFRED SMITH, JUDGE • CASE No. RG17862702

**APPLICATION FOR LEAVE TO FILE COMBINED
APPELLANT'S REPLY BRIEF AND CROSS-
RESPONDENT'S BRIEF OF 28,535 WORDS;
DECLARATION OF DAVID M. AXELRAD;
[PROPOSED] ORDER**

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**IN THE COURT OF APPEAL
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**APPLICATION FOR LEAVE TO FILE
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BRIEF OF 28,535 WORDS**

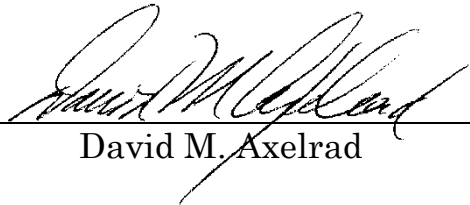
Pursuant to rule 8.204(c)(5) of the California Rules of Court, defendant and appellant Monsanto Company respectfully requests permission to file a combined appellant’s reply brief and cross-respondent’s brief of 28,535 words.

Good cause for this application is set forth in the attached declaration of David M. Axelrad.

Document received by the CA 1st District Court of Appeal.

July 1, 2020

HORVITZ & LEVY LLP
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By: 
David M. Axelrad

Attorneys for Defendant and Appellant
MONSANTO COMPANY

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DECLARATION OF DAVID M. AXELRAD

I, David M. Axelrad, declare as follows:

1. I am an attorney admitted to practice before this court. I am a partner with Horvitz & Levy LLP. Our firm has associated with Bryan Cave Leighton Paisner LLP as co-counsel of record for defendant and appellant Monsanto Company in this appeal. I am one of the attorneys responsible for preparing the combined appellant's reply brief and cross-respondent's brief. I have personal knowledge of the facts set forth herein, except as to those stated on information and belief and, as to those, I am informed and believe them to be true. If called as a witness, I could and would competently testify to the matters stated herein.

2. Trial of this matter involved extensive lay and expert testimony addressing complex scientific issues relating to the alleged relationship between Plaintiffs' illnesses and their exposures to Roundup, a glyphosate-containing herbicide manufactured by Monsanto. After trial, the jury awarded Plaintiffs approximately \$2.055 billion in compensatory and punitive damages. The trial court conditionally granted a new trial unless Plaintiffs agreed to accept awards totaling about \$87 million. Plaintiffs accepted the reduced awards, but cross appealed from the conditional new-trial order after Monsanto appealed from the judgment and order denying JNOV. In their cross-appeal, Plaintiffs ask this court to reinstate their damages awards to roughly \$575 million total.

3. The reporter's transcript in this appeal consists of 34 volumes containing 5,771 pages. The appellant's appendix

consists of 10 volumes containing 10,826 pages. The respondents' appendix consists of one volume containing 54 pages. This record is significantly larger than the average length record on appeal. (See Cal. Rules of Court, rule 8.63(b)(3) ["In a civil case, a record containing one volume of clerk's transcript or appendix and two volumes of reporter's transcript is considered an average-length record"].)

4. Rule 8.204(c) of the California Rules of Court provides that a combined appellant's reply brief and cross-respondent's brief may contain no more than 28,000 words. (See Cal. Rules of Court, rule 8.204(c)(1), (4).) Rule 8.204(c)(5) provides that "[o]n application, the presiding justice may permit a longer brief for good cause shown." This request to file an oversized brief is prompted by the length and complexity of the appellate briefing to date, the length of the record, and the complexity of the facts and legal issues relating to the claims on which Plaintiffs prevailed at trial.

5. Monsanto has asserted at least nine issues in its appeal. Those issues include:

a. Whether Plaintiffs' design defect and warning claims are preempted by federal law.

b. Whether there was substantial evidence to support the jury's finding of a failure to warn under a strict liability or negligence theory.

c. Whether there was substantial evidence to support the jury's finding of a design defect under a strict liability consumer expectations or negligence theory.

d. Whether there was substantial evidence that Plaintiffs' exposures to glyphosate or glyphosate-based herbicides caused their injuries.

e. Whether the trial court abused its discretion by denying Monsanto's request to sever Plaintiffs' claims for trial.

f. Whether the trial court abused its discretion by admitting evidence concerning fraudulent testing by a third-party testing laboratory unrelated to Monsanto.

g. Whether the trial of this case was tainted by prejudicial attorney misconduct.

h. Whether there was clear and convincing evidence that Monsanto acted with malice or oppression in the conduct that gave rise to liability in this case.

i. Whether the punitive damages awards are constitutionally excessive and violate due process.

6. In their cross-appeal, Plaintiffs challenge the trial court's decision to reduce their compensatory and punitive damages.

7. Each of these issues requires extensive discussion of the complex factual record in this case and numerous legal principles and authorities. Although we have made every effort to minimize the length of the combined appellant's reply brief and cross-respondent's brief through judicious editing, we have concluded that Monsanto's position on these issues cannot be adequately stated within the 28,000-word limit provided by rule 8.204(c), and that Monsanto's ability to persuasively present its

position on these issues would be seriously impaired without leave to file a brief of 28,535 words.

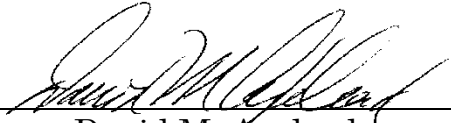
8. This court has extended the word limits for the two briefs previously filed in this appeal. In February 2020, the court granted Monsanto's request for leave to file an appellant's opening brief totaling 26,418 words. In April 2020, the court granted Plaintiffs' request for leave to file a combined respondents' brief and cross-appellants' opening brief totaling 39,027 words. Monsanto currently seeks leave to file a combined appellant's reply brief and cross-respondent's brief totaling 28,535 words.

9. Plaintiffs are not likely to suffer any prejudice if this request is granted. As noted above, Monsanto seeks leave to file a 28,535-word combined brief, which is significantly shorter than Plaintiffs' 39,027-word combined brief, even though the two briefs address the same legal issues. If this request is denied, Monsanto's ability to oppose Plaintiffs' effort to uphold the judgment as remitted and reinstate roughly \$575 million in compensatory and punitive damages will be impaired.

10. For all the foregoing reasons, Monsanto respectfully requests permission to file a combined appellant's reply brief and cross-respondent's brief totaling 28,535 words, in order to provide the court with a thorough analysis of the multiple legal issues presented in this appeal and cross-appeal.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 1, 2020, at Burbank, California.



David M. Axelrad

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ALVA AND ALBERTA PILLIOD,
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v.

MONSANTO COMPANY,
Defendant and Appellant.

[PROPOSED] ORDER

The application of defendant and appellant Monsanto Company to file an oversized combined appellant's reply brief and cross-respondent's brief totaling 28,535 words is granted.

July __, 2020

PRESIDING JUSTICE

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PROOF OF SERVICE

**Pilliod et al. v. Monsanto Company
Case No. A158228**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 3601 West Olive Avenue, 8th Floor, Burbank, CA 91505-4681.

On July 1, 2020, I served true copies of the following document(s) described as **APPLICATION FOR LEAVE TO FILE COMBINED APPELLANT'S REPLY BRIEF AND CROSS-RESPONDENT'S BRIEF OF 28,535 WORDS; DECLARATION OF DAVID M. AXELRAD; [PROPOSED] ORDER** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Horvitz & Levy LLP's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

BY E-MAIL OR ELECTRONIC TRANSMISSION: Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission via Court's Electronic Filing System (EFS) operated by ImageSoft TrueFiling (TrueFiling) as indicated on the attached service list:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 1, 2020, at Burbank, California.



Justin A. Volk

SERVICE LIST
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Case No. A158228

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<p>Honorable Winifred Smith Alameda County Superior Court 1221 Oak Street Oakland, CA 94612</p>	<p>Trial Court Judge</p> <p>Case Number: RG17862702</p> <p><i>Served via U.S. Mail</i></p>

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