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14
15 **UNITED STATES DISTRICT COURT**
16 **SOUTHERN DISTRICT OF CALIFORNIA**

17 CITY OF CHULA VISTA, a) Case No. _____
18 municipal corporation;)
19)
20 Plaintiff,) **COMPLAINT**
21 v.)
22)
23 MONSANTO COMPANY,)
24 SOLUTIA INC., and)
25 PHARMACIA CORPORATION,)
26 Defendants.)

1 Plaintiff the CITY OF CHULA VISTA (“the City”) hereby alleges, upon
2 information and belief, as follows:

3 **I. INTRODUCTION**

4 1. Polychlorinated biphenyls (or “PCBs”) are man-made chemical
5 compounds that have become notorious as global environmental contaminants –
6 found in bays, oceans, rivers, streams, soil, and air. PCBs are persistent in the
7 environment, easily transfer up the food chain, or bioaccumulate, and
8 concentrations in tissues biomagnify as this process occurs. As a result, PCBs
9 have been detected in the tissues of all living beings on earth including all forms of
10 marine life, various animals and birds, plants and trees, and humans. The extent of
11 PCB contamination is troubling because PCBs cause a variety of adverse human
12 health effects. In humans, PCB exposure is associated with cancer as well as
13 serious non-cancer health effects, including effects on the immune system,
14 reproductive system, nervous system, endocrine system and other health effects.
15 In addition, PCBs can impair and even destroy populations of fish, birds, and other
16 animals.

17 2. Monsanto Company has repeatedly held itself out as the sole
18 manufacturer of PCBs in the United States between 1935 to 1979, and trademarked
19 the name “Aroclor” for certain PCB compounds. Although Monsanto knew for
20 decades that PCBs were toxic, knew that they could not be contained and as a
21 result were widely contaminating all natural resources and living organisms, and
22 knew that there was no safe way to dispose of PCBs, Monsanto concealed these
23 facts and continued producing PCBs until Congress enacted the Toxic Substances
24 Control Act (“TSCA”), which banned the manufacture and most uses of PCBs as
25 of January 1, 1979.

26 3. U.S. EPA (2000b) has classified PCBs as ‘probable human
27 carcinogens.’ Studies have suggested that PCBs may play a role in inducing breast
28 cancer. Studies have also linked PCBs to increased risk for several other cancers

1 including liver, biliary tract, gall bladder, gastrointestinal tract, pancreas,
2 melanoma, and non-Hodgkin's lymphoma. PCBs may also cause non-carcinogenic
3 effects, including reproductive effects and developmental effects (primarily to the
4 nervous system). PCBs tend to accumulate in the human body in the liver, adipose
5 tissue (fat), skin, and breast milk. PCBs have also been found in human plasma,
6 follicular fluid, and sperm fluid. Fetuses may be exposed to PCBs in utero, and
7 babies may be exposed to PCBs during breastfeeding. According to U.S. EPA
8 (2000b), some human studies have also suggested that PCB exposure may cause
9 adverse effects in children and developing fetuses while other studies have not
10 shown effects. Reported effects include lower IQ scores, low birth weight, and
11 lower behavior assessment scores.

12 4. PCBs have traveled into the City of Chula Vista's stormwater system
13 and San Diego Bay in a variety of ways. PCBs were used in many industrial and
14 commercial applications such as paint, caulking, transformers, capacitors, coolants,
15 hydraulic fluids, plasticizers, sealants, inks, lubricants, and other uses. PCBs
16 regularly leach, leak, off-gas, and escape their intended applications, causing
17 runoff during naturally occurring storm and rain events, after being released into
18 the environment. The runoff originates from multiple sources and industries and
19 enters the City of Chula Vista's stormwater system and San Diego Bay through
20 stormwater and dry weather runoff.

21 5. The natural fate and transport of PCBs result in the gathering and
22 collection in stormwater through no fault of the City of Chula Vista, which
23 lawfully discharges water into San Diego Bay through its Municipal Separate
24 Storm Sewer System (MS4) NPDES permit.

25 6. Monsanto's PCBs have been found in and around San Diego Bay
26 ("the Bay") at levels that require cleanup in certain areas. At different times and
27 locations, PCBs have been detected in the Bay's water, sediments, fish, and
28 lobsters. PCBs entered the Bay in a variety of ways. PCBs regularly leach, leak,

1 off-gas, and escape their intended applications into air, soil, and water. PCBs also
2 leach from landfills and other disposal locations and can enter the Bay with
3 stormwater and dry weather runoff.

4 7. U.S. EPA classifies San Diego Bay as “Impaired” due to the presence
5 of PCBs.

6 8. As a public property owner and former trustee of the Bay, Plaintiff
7 seeks to recover damages for retrofit injuries to stormwater system property and/or
8 other public property including trust lands to the extent the City is trustee of such
9 public lands.

10 II. PARTIES

11 A. Plaintiff

12 9. Plaintiff City of Chula Vista (“Plaintiff” or “City”) is a California
13 Charter City and municipal corporation, duly organized and existing by virtue of
14 the laws of the State of California. The City was the trustee of certain relevant
15 tidelands and submerged lands in and around the Bay from the early 1900s through
16 1963, when that property was transferred to the Port District.

17 10. Plaintiff brings this suit pursuant to California Code of Civil
18 Procedure 731, and California Civil Code sections 3479, 3480, 3491, 3493, and
19 3494 and any other applicable codes or sources of relief available for monetary
20 damages caused by Monsanto’s PCBs.

21 B. Defendants

22 11. Defendant Monsanto Company is a Delaware corporation with its
23 principal place of business in St. Louis, Missouri.

24 12. Defendant Solutia Inc. (“Solutia”) is a Delaware corporation with its
25 headquarters and principal place of business in St. Louis, Missouri.

26 13. Defendant Pharmacia LLC (formerly known as “Pharmacia
27 Corporation” and successor to the original Monsanto Company) is a Delaware
28 LLC with its principal place of business in Peapack, New Jersey. Pharmacia is

1 now a wholly-owned subsidiary of Pfizer, Inc.

2 14. The original Monsanto Company (“Old Monsanto”) operated an
3 agricultural products business, a pharmaceutical and nutrition business, and a
4 chemical products business. Old Monsanto began manufacturing PCBs in the
5 1930s and continued to manufacture commercial PCBs until the late 1970s.

6 15. Through a series of transactions beginning in approximately 1997,
7 Old Monsanto’s businesses were spun off to form three separate corporations. The
8 corporation now known as Monsanto operates Old Monsanto’s agricultural
9 products business. Old Monsanto’s chemical products business is now operated by
10 Solutia. Old Monsanto’s pharmaceuticals business is now operated by Pharmacia.

11 16. Solutia was organized by Old Monsanto to own and operate its
12 chemical manufacturing business. Solutia assumed the operations, assets, and
13 liabilities of Old Monsanto’s chemicals business.¹

14 17. Although Solutia assumed and agreed to indemnify Pharmacia (then
15 known as Monsanto Company) for certain liabilities related to the chemicals
16 business, Defendants have entered into agreements to share or apportion liabilities,
17 and/or to indemnify one or more entity, for claims arising from Old Monsanto’s
18 chemical business – including the manufacture and sale of PCBs.²

19 18. In 2003, Solutia filed a voluntary petition for reorganization under
20 Chapter 11 of the U.S. Bankruptcy Code. Solutia’s reorganization was completed
21 in 2008. In connection with Solutia’s Plan of Reorganization, Solutia, Pharmacia
22 and Monsanto entered into several agreements under which Monsanto continues to
23

24
25 ¹ See MONSANTO COMPANY’S ANSWER TO THE COMPLAINT AND JURY DEMAND,
26 *Town of Lexington v. Pharmacia Corp., Solutia, Inc., and Monsanto Company*,
27 C.A. No. 12-CV-11645, D. Mass. (October 8, 2013); see also *Relationships*
28 *Among Monsanto Company, Pharmacia Corporation, Pfizer Inc., and Solutia Inc.*,
<http://www.monsanto.com/whoware/pages/monsanto-relationships-pfizer-solutia.aspx> (last accessed April 26, 2018).

² See *id.*

1 manage and assumed financial responsibility for certain tort litigation and
2 environmental remediation related to the Chemicals Business.³

3 19. Monsanto represented in its most recent Form 10-K (for the fiscal
4 year ending August 31, 2016): “Monsanto is involved in environmental
5 remediation and legal proceedings to which Monsanto is party in its own name and
6 proceedings to which its former parent, Pharmacia LLC (“Pharmacia”) or its
7 former subsidiary, Solutia, Inc. (“Solutia”) is a party but that Monsanto manages
8 and for which Monsanto is responsible pursuant to certain indemnification
9 agreements. In addition, Monsanto has liabilities established for various product
10 claims. With respect to certain of these proceedings, Monsanto has established a
11 reserve for the estimated liabilities.” The document specifies that the company
12 holds \$545 million in that reserve.⁴

13 20. Monsanto, Solutia, and Pharmacia are collectively referred to in this
14 Complaint as “Defendants” or “Monsanto.”

15 **III. JURISDICTION AND VENUE**

16 21. This Court has jurisdiction pursuant to 28 U.S.C. §1332 because
17 complete diversity exists between Plaintiff and Defendants. Plaintiff is located in
18 California, but no Defendant is a citizen of California. Monsanto Company is a
19 Delaware corporation with its principal place of business in St. Louis, Missouri.
20 Solutia is a Delaware corporation with its principal place of business in St. Louis,
21 Missouri. Pharmacia is a Delaware limited liability company with its principal
22 place of business in Peapack, New Jersey.

23 22. Venue is appropriate in this judicial district pursuant to 28 U.S.C. §
24

25 ³ See Monsanto’s Form 8-K (March 24, 2008), and Form 10-Q (June 27, 2008),
26 available at <http://www.monsanto.com/investors/pages/sec-filings.aspx> (last
27 accessed April 26, 2018).

28 ⁴ See Monsanto Company, Form 10-K (for the fiscal year ended Aug. 31, 2016),
available at [http://www.monsanto.com/investors/pages/sec-
filings.aspx?page=0&group=1&limit=1](http://www.monsanto.com/investors/pages/sec-filings.aspx?page=0&group=1&limit=1) (last accessed April 26, 2018).

1 1391(a) because a substantial part of the property that is the subject of the action is
2 situated in this judicial district.

3 **IV. PLAINTIFF'S STANDING**

4 **I. STORMWATER SYSTEM DAMAGE AND RETROFIT**

5 23. The City has property rights in its stormwater system, captured
6 stormwater, and tidelands or submerged lands, and other public trust lands that are
7 contaminated with Monsanto's PCBs, to the extent the City of Chula Vista owns or
8 holds lands in public trust.

9 24. The City owns, manages, and operates a municipal stormwater and
10 dry weather runoff system, which captures, collects, reuses for beneficial purposes,
11 and/or transports stormwater and dry weather runoff.

12 25. Monsanto's PCBs have contaminated and damaged multiple facilities
13 within the City's stormwater and dry weather runoff systems.

14 26. As a result of Monsanto's PCB's presence, the City cannot operate
15 many of its stormwater and dry weather runoff systems as designed because the
16 system now requires upgrades and retrofits to accommodate Monsanto's PCBs.

17 27. The City has incurred and will continue to incur costs to reduce PCBs
18 from stormwater and dry weather runoff, which includes efforts to capture and
19 beneficially use stormwater and dry weather runoff to augment existing water
20 supplies.

21 28. The City's stormwater and dry weather runoff management system is
22 damaged such that multiple facilities within the City's system have been and must
23 be further retrofitted and improved in order to reduce and remove PCBs from
24 stormwater and dry weather runoff. The retrofits and improvements required to
25 reduce PCBs from stormwater and dry weather runoff have cost and will continue
26 to cost the City money.

27 29. The City's stormwater system includes and will include into the future
28 inlets, outfalls, pipes, drains, catch basins, bioswales, gutters, city streets, and other

1 infrastructure and systems. The City owns and operates the entire system,
2 significant parts of which have been damaged and must be retrofitted to
3 accommodate for the presence of Monsanto's PCBs.

4 30. The retrofits include but are not limited to new infrastructure build,
5 infrastructure renovation, additional street sweeping, system cleaning additional
6 filtering, new engineering and design, new source control program development
7 and management, and other additional retrofits to the current system.

8 31. Retrofits to impacted facilities within the City's stormwater system
9 are required to reduce and remove Monsanto's PCBs to prevent further
10 contamination of the San Diego Bay.

11 32. Retrofits to the City stormwater system are in compliance with the
12 City's BMP Design Manual⁵, discussed further in the following sections.

13 33. The City's retrofits also include new development designed to remove
14 or reduce Monsanto's PCBs from City stormwater and dry weather runoff while
15 capturing stormwater and dry weather runoff for beneficial uses to augment
16 existing water supplies.

17 **II. AB 2594 STORMWATER RESOURCES: USE OF CAPTURED WATER.**

18 34. The Legislature codified the City's property interest in stormwater as
19 a usufructuary right. On August 25, 2016, the California State Legislature
20 unanimously passed legislation confirming and codifying the Cities' use rights in
21 stormwater. Assembly Bill 2594 passed in the Senate on August 22, 2016 by a
22 vote of 38-0.⁶ AB 2594 passed in the Assembly on August 25, 2016 by a vote of
23 78-0.⁷ Not one California Senator or Assemblymember voted against AB 2594.

24 _____
25 ⁵ City of Chula Vista, BMP Design Manual, December 2015 / First Update May
26 2017, <https://www.chulavistaca.gov/home/showdocument?id=11881> (last accessed
27 August 21, 2018).

28 ⁶https://leginfo.legislature.ca.gov/faces/billVotesClient.xhtml?bill_id=201520160A
B2594 (last accessed April 26, 2018)

⁷ *Id.*