

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

CITY OF SAN JOSE,  
Plaintiff,

v.

MONSANTO COMPANY, et al.,  
Defendants.

Case No. [5:15-cv-03178-EJD](#)

**ORDER DENYING PLAINTIFFS’  
MOTION FOR LEAVE TO FILE  
MOTION FOR RECONSIDERATION**

Re: Dkt. No. 157

CITY OF OAKLAND,  
Plaintiff,

v.

MONSANTO COMPANY, et al.,  
Defendants.

Case No. [5:15-cv-05152-EJD](#)

Re: Dkt. No. 127

CITY OF BERKELEY,  
Plaintiff,

v.

MONSANTO COMPANY, et al.,  
Defendants.

Case No. [5:16-cv-00071-EJD](#)

Re: Dkt. No. 120

1           The Court previously ordered that the Cities’ three related federal actions in the Northern  
2 District of California must be stayed while the Cities’ administrative actions are pending. Order  
3 Granting Defs.’ Mot. to Stay (“Stay Order”) 2–4, Case No. 15-cv-3178, Dkt. No. 144. The Cities  
4 moved for certification of that order for interlocutory appeal, which the Court denied. Case No.  
5 15-cv-3178, Dkt. No. 156.

6           The Cities now move for leave to file a motion for reconsideration of the Stay Order. Case  
7 No. 15-cv-3178, Dkt. No. 157. The Cities argue that this Court should reconsider its decision  
8 because the U.S. District Court for the Southern District of California recently determined that a  
9 similar claim by City of San Diego could proceed against Monsanto, despite the fact that San  
10 Diego was simultaneously pursuing a test claim before the California Commission on State  
11 Mandates. Id. at 2–3; see also City of San Diego v. Monsanto, Case No. 3:15-cv-00578-WQH-  
12 AGS, Dkt. No. 163 (S.D. Cal. Nov. 22, 2017). According to the Cities, the San Diego order  
13 “constitutes a material change in law that did not exist at the time of this Court’s Stay Order.”  
14 Case No. 15-cv-3178, Dkt. No. 157 at 3.

15           Civil Local Rule 7-9(a) states: “Before the entry of a judgment adjudicating all of the  
16 claims and the rights and liabilities of all the parties in a case, any party may make a motion before  
17 a Judge requesting that the Judge grant the party leave to file a motion for reconsideration of any  
18 interlocutory order. . . . No party may notice a motion for reconsideration without first obtaining  
19 leave of Court to file the motion.” Civil Local Rule 7-9(b) provides three grounds for  
20 reconsideration of an interlocutory order:

- 21                           (1) That at the time of the motion for leave, a material difference in  
22 fact or law exists from that which was presented to the Court before  
23 entry of the interlocutory order for which reconsideration is sought.  
24 The party also must show that in the exercise of reasonable diligence  
the party applying for reconsideration did not know such fact or law  
at the time of the interlocutory order; or
- 25                           (2) The emergence of new material facts or a change of law  
26 occurring after the time of such order; or
- 27                           (3) A manifest failure by the Court to consider material facts or

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

dispositive legal arguments which were presented to the Court before such interlocutory order.

Rule 7-9(c) further requires that “[n]o motion for leave to file a motion for reconsideration may repeat any oral or written argument made by the opposing party in support of or in opposition to the interlocutory order which the party now seeks to have reconsidered.” Whether to grant leave to file under Rule 7-9 is committed to the Court’s sound discretion. See Montebueno Mktg., Inc. v. Del Monte Corp.—USA, 570 F. App’x 675, 676 (9th Cir. 2014).

The Court has reviewed the Cities’ arguments in its motion for leave to file a motion for reconsideration. The Court has also reviewed the San Diego court’s order. The Court is not persuaded that the San Diego order presents a material change in law that warrants reconsideration of this Court’s Stay Order. Accordingly, the Cities’ motion for leave to file a motion for reconsideration is DENIED.

**IT IS SO ORDERED.**

Dated: December 20, 2017



EDWARD J. DAVILA  
United States District Judge