



IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

ANTONIO EMILIO HUPAN and)
MARIEL ESTELA VIERA DA COSTA,)
Individually, and as Parents and Natural)
Guardians of TAMARA LUJAN HUPAN,)
a minor; ARIEL HORACIO WENTZ and)
VANESA ELIZABETH TIZATO, Individually,)
and as Parents and Natural Guardians of)
UZIEL ARAI WENTZ, a minor; OSVALDO)
KIONA and MIRIAM IRENE KACHENKO,)
Individually, and as Parents and Natural Guardians)
of OSVALDO MAURICIO KIONA, a minor;)
ANTONIO DE LARA and TERESA ALICIA)
RAITTER DA SILVA, Individually, and as Parents, Natural)
Guardians, and Personal Representatives of)
The Estate of ANDREA VICTORIA DE LARA,)
a minor; LUIS ANIBAL HUBSCHER and PATRICIA)
JABOVSKI, Individually, and as Parents and)
Natural Guardians of CAMILA DE LOS ANGELES)
HUBSCHER, a minor; MIGUEL ANGEL PETROSKI and)
CLAUDIA FRANCISCA MEYER, Individually, and as)
Parents, Natural Guardians, and Personal Representatives)
of The Estate of GLADIS INES PETROSKI, a)
minor; CARMEN INES PETROSKI, Individually,)
and as Parent and Natural Guardian of MARISEL)
ANABELLA FRELICH, a minor; MAURICIO)
GABRIEL KRAMER and MARIA CARMEN)
SCHOLZE, Individually, and as Parents and)
Natural Guardians of ALEJANDRO MAURICIO)
KRAMER, a minor,)

Plaintiffs,)

v.)

MONSANTO COMPANY, a Delaware Corporation;)
PHILIP MORRIS GLOBAL BRANDS INC. ,)
a Delaware Corporation, *f/k/a* PHILIP MORRIS)
INTERNATIONAL FINANCE CORPORATION)
a/k/a PHILIP MORRIS BRANDS SÀRL *sued*)
individually and as successor-in-interest to FTR)
HOLDING S.A. individually and as successor-in-interest)
to MASSALIN PARTICULARES S.A *and as successor-*)
in-interest to TABACOS NORTE S.A.;)

**FIRST AMENDED
COMPLAINT**

Case No: N12C-02-171 VLM

JURY OF TWELVE
DEMANDED

PHILIP MORRIS USA, INC., f/k/a PHILIP MORRIS)
INCORPORATED *sued individually and as*)
successor-in-interest to PHILIP MORRIS LATIN)
AMERICA INC., PHILIP MORRIS GLOBAL)
BRANDS INC., PHILIP MORRIS INTERNATIONAL)
FINANCE CORPORATION, FTR HOLDINGS, S.A.,)
PHILIP MORRIS PRODUCTS S.A., ARGENTINA)
HOLDINGS INC., TABACOS NORTE S.A., *and*)
MASSALIN PARTICULARES S.A.)
)
)
Defendants.)

NOW come Plaintiffs, ANTONIO EMILIO HUPAN and MARIEL ESTELA VIERA DA COSTA, Individually, and as Parents and Natural Guardians of TAMARA LUJAN HUPAN, a minor; ARIEL HORACIO WENTZ and VANESA ELIZABETH TIZATO, Individually, and as Parents and Natural Guardians of UZIEL ARAI WENTZ, a minor; OSVALDO KIONA and MIRIAM IRENE KACHENKO, Individually, and as Parents and Natural Guardians of OSVALDO MAURICIO KIONA, a minor; ANTONIO DE LARA and TERESA ALICIA RAITTER DA SILVA, Individually, and as Parents, Natural Guardians, and Personal Representatives of The Estate of ANDREA VICTORIA DE LARA, a minor; LUIS ANIBAL HUBSCHER and PATRICIA JABOVSKI, Individually, and as Parents and Natural Guardians of CAMILA DE LOS ANGELES HUBSCHER, a minor; MIGUEL ANGEL PETROSKI and CLAUDIA FRANCISCA MEYER, Individually, and as Parents, Natural Guardians and Personal Representatives of the Estate of GLADYS INES PETROSKI, a minor; CARMEN INES PETROSKI, Individually, and as Parent and Natural Guardian of MARISEL ANABELLA FRELICH, a minor; MAURICIO GABRIEL KRAMER and MARIA CARMEN SCHOLZE, Individually, and as Parents and Natural Guardians of ALEJANDRO MAURICIO KRAMER, a minor; their attorneys BIFFERATO LLC, PHILLIPS & PAOLICELLI LLP, WATERS & KRAUS

LLP, AND THORNTON LAW FIRM LLP and in support of their claims against the Defendants, respectfully state as follows:

INTRODUCTION

1. This lawsuit concerns children born with severe birth defects.

2. These children and their parents all reside in the Republic of Argentina, in the Province of Misiones. Misiones is located in the northeastern corner of Argentina where it borders on both Brazil and Paraguay. This region is largely rural, agricultural and semi-tropical. It is notable as an area devoted to the cultivation of tobacco.

3. Annually, roughly 14,000 metric tons of tobacco is imported into the United States from Argentina. Most of the tobacco grown in Argentina is cultivated in Misiones.

4. The injured infant Plaintiffs are offspring of agricultural workers who at relevant times were engaged in the cultivation of tobacco as well as other crops.

5. Defendants are either corporations who wrongfully participated in the promotion, manufacture, design, sale, distribution and/or use of a reproductively toxic herbicide, which was used by the parental Plaintiffs in the cultivation of tobacco and other crops; and/or corporations who wrongfully participated in the promotion, cultivation, purchasing, design, sale and distribution of tobacco using the aforesaid toxin.

6. Defendant Monsanto Inc. (“**MONSANTO**”) designed the Roundup that was used by Plaintiffs and held property over all patents and trademarks regarding the chemical formulation of Roundup. After 1999, glyphosate-based herbicides with the same or substantially similar chemical formulation as Roundup (“generic Roundup”), as designed by **MONSANTO**, were manufactured and distributed by local companies in Argentina, including Atanor and Red Surcos f/k/a Ciagro. All Parent Plaintiffs used Roundup, and Parent Plaintiffs Ariel Horacio

Wentz, Vanesa Elizabeth Tizato, Luis Anibal Hubscher, Patricia Jabovski, and Carmen Ines Petroski also used generic Roundup that was manufactured and distributed by Atanor and Red Surcos f/k/a Ciagro.

7. Plaintiffs contend that these Defendants, acting both individually and collectively, in violation of the laws of both Argentina and the United States, wrongfully caused the parental and infant Plaintiffs to be exposed to those chemicals and substances which they both knew, or should have known, would cause the infant offspring of the parental Plaintiffs to be born with devastating birth defects.

8. Plaintiffs further contend that this misconduct proximately caused the birth defects suffered by the injured Plaintiffs.

9. Moreover, Defendants wrongfully concealed information concerning the nature of their misconduct, and also made false or misleading statements respecting the safety of the exposures they were promoting. These statements were made for the purpose of inducing the parental Plaintiffs to acquiesce in the aforementioned exposures, secure in the “knowledge” that their potential offspring were being protected. Defendants were successful in achieving their desired result. By this conduct Defendants also both assumed and then breached duties to the infant plaintiffs.

10. The physical injuries suffered by the infant Plaintiffs and the damages suffered by all Plaintiffs are compensable under the laws of both Argentina and the United States.

11. The misconduct broadly described above was planned, organized and orchestrated by Defendants in the United States for the purpose (that was realized) of earning profits that were received by Defendants in the United States.

12. Defendants' misconduct was, at a minimum, executed with a conscious or reckless disregard of the safety and well-being of Plaintiffs and was motivated by simple greed.

THE PARTIES

A. PLAINTIFFS

13. The injured Plaintiff Tamara Lujan Hupan was born on November 12, 1996 with severe birth defects including epidermolysis bullosa.

14. Parental Plaintiffs Antonio Emilio Hupan and Mariel Estela Da Costa are the natural parents and guardians of the injured Plaintiff Tamara Lujan Hupan.

15. The injured Plaintiff Uziel Arai Wentz was born on March 17, 2008 with severe birth defects including myelomeningocele (spina bifida).

16. Parental Plaintiffs Ariel Horacio Wentz and Vanesa Elizabeth Tizato are the natural parents and guardians of the injured Plaintiff Uziel Arai Wentz.

17. The injured Plaintiff Osvaldo Mauricio Kiona was born on December 21, 1997 with severe birth defects including myelomeningocele (spina bifida).

18. Parental Plaintiffs Osvaldo Kiona and Miriam Irene Kachenko are the natural parents and guardians of the injured Plaintiff Osvaldo Mauricio Kiona.

19. The injured Plaintiff Andrea Victoria De Lara was born on February 17, 2008 with severe birth defects including myelomeningocele (spina bifida) and hydrocephalus. Plaintiff Andrea Victoria De Lara died on or around April 23, 2009.

20. Parental Plaintiffs Antonio De Lara and Teresa Alicia Raiter Da Silva are the natural parents, guardians and Personal Representatives of the Estate of the injured Plaintiff Victoria De Lara.

21. The injured Plaintiff Camila De Los Angeles Hubscher was born on February 24, 1997 with severe birth defects including psychomotor retardation, cleft palate and poor ossification of skull and bones.

22. Parental Plaintiffs Luis Anibal Hubscher and Patricia Jabovski are the natural parents and guardians of the injured Plaintiff Camila De Los Angeles Hubscher.

23. The injured Plaintiff Gladys Ines Petroski was born on June 7, 2003 with severe birth defects including hydrocephalus, myelomeningocele (spina bifida), and heart disease. Plaintiff Gladys Ines Petroski died on or around July 7, 2003.

24. Parental Plaintiffs Miguel Angel Petroski and Claudia Francisca Meyer are the natural parents, guardians and Personal Representatives of the Estate of injured Plaintiff Gladys Ines Petroski.

25. The injured Plaintiff Marisel Anabella Frelich was born on January 6, 1999 with severe birth defects including myelomeningocele (spina bifida) and hydrocephalus.

26. Parental Plaintiff Carmen Ines Petroski is the natural parent and guardian of the injured Plaintiff Marisel Anabella Frelich.

27. The injured Plaintiff Alejandro Mauricio Kramer was born on April 6, 1996 with severe birth defects including myelomeningocele (spina bifida).

28. Parental Plaintiffs Mauricio Kramer and Maria Carmen Scholze are the natural parents and guardians of the injured Plaintiff Alejandro Mauricio Kramer.

B. DEFENDANTS

The Philip Morris Defendants

29. Defendant **PHILIP MORRIS USA, INC.**, *a/k/a* PHILIP MORRIS INCORPORATED *sued individually and as successor-in-interest to* PHILIP MORRIS LATIN

AMERICA INC., PHILIP MORRIS GLOBAL BRANDS INC., PHILIP MORRIS INTERNATIONAL FINANCE CORPORATION, FTR HOLDINGS, S.A., PHILIP MORRIS PRODUCTS S.A., ARGENTINA HOLDINGS INC., TABACOS NORTE S.A., and MASSALIN PARTICULARES S.A. (hereinafter, “PHILIP MORRIS USA, INC.”) is a Virginia corporation registered to do business in the State of Delaware. PHILIP MORRIS USA, INC.’s address for receipt of process is Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware, 19801.

30. Defendant **PHILIP MORRIS GLOBAL BRANDS INC.**, *f/k/a* PHILIP MORRIS INTERNATIONAL FINANCE CORPORATION *a/k/a* PHILIP MORRIS BRANDS SÀRL, *sued individually and as successor-in-interest to* FTR HOLDING S.A., MASSALIN PARTICULARES S.A. *and* TABACOS NORTE S.A. (hereinafter, “PHILIP MORRIS GLOBAL BRANDS”) is a *Delaware* corporation whose registered agent for service of process is at Corporation Trust Center 1209 Orange Street, Wilmington, DE, 19801.

31. PHILIP MORRIS GLOBAL BRANDS INC. and PHILIP MORRIS USA, INC. are collectively referred to as “the **Philip Morris Defendants**” herein.

The Monsanto Company

32. Defendant **MONSANTO COMPANY** (hereinafter, “**MONSANTO**”) is a Delaware corporation whose address for service of process is Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808.

THE PHILIP MORRIS GROWING SCHEME IN ARGENTINA

33. Tabacos Norte is a tobacco brokerage company in Misiones province, Argentina. Tabacos Norte was created in 1984 as a joint venture between Carolina Leaf Tobacco Co., Dibrell Brothers Inc., Dimon International, Inc. and Alliance One International, Inc.

(collectively “Carolina Leaf”), together with Massalin Particulares, an Argentine subsidiary of the **Philip Morris Defendants**, for the purpose of producing tobacco suitable for use in the North and South American tobacco markets through its contract tobacco farmers in Misiones.¹

34. Under the direction and control of its corporate parent, Tabacos Norte produced and brokered tobacco for use in Philip Morris tobacco products sold by Defendant PHILIP MORRIS USA, INC. in the United States.

35. Massalin Particulares is the current owner of Tabacos Norte and was at all relevant times an owner of Tabacos Norte, as well as a purchaser of tobacco from Tabacos Norte. Massalin Particulares authorized and directed the conduct of Tabacos Norte.²

36. At all relevant times, the **Philip Morris Defendants** and other related entities owned and operated an Argentine subsidiary, Massalin Particulares, and authorized, participated in, controlled and directed the acts and omissions of Massalin Particulares and Tabacos Norte. As such, the **Philip Morris Defendants** are liable to Plaintiffs for the acts and omissions of Massalin Particulares and Tabacos Norte alleged in this complaint.

37. Defendant **PHILIP MORRIS USA, INC.** entered into an agreement with FTR Holdings, S.A. to provide research and cover expenses for FTR Holdings, S.A. and to effectively operate the two businesses as a “single entity.”³ **PHILIP MORRIS USA, INC.**, directly through its division called “Tobacco Technology Group,” controlled and managed the tobacco production enterprise of Massalin Particulares and Tabacos Norte to ensure that the

¹ Dibrell International, Inc.’ 1997 Tobacco Situation report on Argentina; Draft letter Philip Morris Incorporated, Inter-Office Corrbates number 2500007200

² Philip Morris Corporate Secretary System Company Percentage Listing, Bates number 2083346753; Registre du Commerce, Repubilque et Canton de Neuchatel for Philip Morris SARL

³ Letter from FTR to Philip Morris dated 1/18/1994.

tobacco produced in Argentina was sufficient for its American products.⁴ As a result, Tabacos Norte produced and brokered the sale of Misiones tobacco, which was ultimately used in Philip Morris tobacco products sold by Defendant **PHILIP MORRIS USA, INC.** in the United States.

THE CULTIVATION OF TOBACCO IN
MISIONES, ARGENTINA

38. The cultivation of tobacco in the Province of Misiones occurs on small family-owned farms, which are generally less than 10 acres in size. The injured Plaintiffs and their natural parents lived and worked at all relevant times on such small farms.

39. In addition to growing tobacco as a cash crop, these family farms also grow fruits and vegetables and raise livestock which are consumed by the farmers and their families, including the instant Plaintiffs.

40. The domestic crops which are consumed by the farmers and their families are interspersed with the tobacco crops in the same or immediately adjacent fields. Similarly, the livestock on these farms are present in fields where tobacco is grown.

41. Tabacos Norte is a “leaf supplier company” in Misiones, Argentina which is owned and wholly controlled by the **Philip Morris Defendants** and others. It was created by the **Philip Morris Defendants** and others in or about 1984.

42. Farmers cultivating tobacco in Misiones, Argentina, including the instant Plaintiffs, are contracted to a leaf supplier company like Tabacos Norte which sells them crop production supplies including herbicides and other pesticides⁵ on credit and contracts to buy their harvest.

⁴ Various TTG Philip Morris USA and Philip Morris Inc documents.

⁵Any reference to “other pesticides” refers exclusively to Plaintiffs’ claims against the Philip Morris Defendants, not the Monsanto Company.

43. Historically, the type of tobacco grown in Misiones was primarily “criollo misionero” which is native to the region and did not require extensive use of pesticides. The **Philip Morris Defendants**, through Tabacos Norte, required that contract farmers grow a type of Burley tobacco, which was in demand for Philip Morris-brand cigarettes in the United States and around the world. Burley tobacco is cultivated with heavier pesticide application, which was unknown in the region until the **Philip Morris Defendants** and others introduced Burley tobacco and the accompanying pesticides to its contract farmers.

44. The leaf purchase contracts require farmers to conform with the growing specifications of Tabacos Norte or their crop will not be purchased. This means that farmers must buy the seed and agricultural chemicals required by the company and must apply the prescribed chemicals to their tobacco crops at the recommended intervals or lose the ability to sell their harvest and repay their debts to the leaf supplier company.

45. Tabacos Norte employs “agricultural technicians” who visit the contract farms to distribute crop supplies, including chemicals, and ensure the crop is being grown in compliance with Tabacos Norte crop specifications.

46. The **Philip Morris Defendants** and others directly develop the crop guidelines for the agricultural technicians to impose on the Tabacos Norte contract farmers.

47. The **Philip Morris Defendants** and others have periodically studied Tabacos Norte contract farmers to determine what specifications and implementation plans will result in the most desirable tobacco harvest.

48. Accordingly, the **Philip Morris Defendants** are explicitly aware that the contract farmers, including the instant Plaintiffs, reside, eat, sleep and raise their families within a few yards of where they cultivate tobacco and apply the prescribed chemicals.

49. The **Philip Morris Defendants** are also expressly aware that contract farmers, including the instant Plaintiffs, typically grow food for family consumption in the immediate area where they cultivate tobacco and apply the prescribed chemicals.

50. The **Philip Morris Defendants** have hosted many of the Tabacos Norte agricultural technicians and managers in Virginia in order to train them in crop control and cultivation techniques for implementation in Misiones, Argentina.

51. The **Philip Morris Defendants** have a right of first refusal to purchase leaves grown by contract farmers in Misiones and procured through Tabacos Norte.

52. The relationship between Tabacos Norte and the **Philip Morris Defendants** includes the express understanding that some leaves purchased from Misiones farmers will be imported to the United States for use.

PESTICIDES AND THEIR USE IN MISIONES

53. At all relevant times, the cultivation of tobacco and other crops in Misiones by the parental Plaintiffs employs several forms of agricultural poisons, commonly referred to as “pesticides.” Among these pesticides are herbicides which are used to kill weeds and other undesired plant life. Contained within these pesticides are hazardous chemicals, including both active ingredients and adjuvants, known to be reproductively toxic.

54. On information and belief, in the early 1980s, **MONSANTO** commenced heavily marketing Roundup, a glyphosate-based herbicide, to farmers in Argentina. Roundup is used to kill undesired plant life and to clear fields before and after the growing season. In particular, **MONSANTO** has promoted “no-till farming,” which requires the copious application of “Roundup” in place of plowing the fields.

55. **MONSANTO** developed and designed glyphosate as an herbicide in the 1970s. It patented its glyphosate-based herbicide and branded it “Roundup.” **MONSANTO** also conducted all the research and medical studies regarding the safety of glyphosate-based herbicides in order to get its “Roundup” product to market.

56. After 1999, glyphosate-based herbicides with the same chemical formulation as designed by **MONSANTO**, or “generic Roundup,” were manufactured and distributed by local companies in Argentina, including Atanor and Red Surcos f/k/a Ciagro, for use by farmers in Argentina.

57. At all relevant times, small family farmers in Misiones, Argentina, including the instant Plaintiffs, were advised by **MONSANTO** and the **Philip Morris Defendants** to use glyphosate frequently and in quantities beyond what would be necessary for effective weed control.

58. “Roundup” as used herein refers to Roundup® products, Roundup™ products, or any other glyphosate-containing Roundup products manufactured, distributed, designed or licensed for use by **MONSANTO** (and its agents) in Argentina and to which the Plaintiffs were exposed.

59. **MONSANTO** promoted the use of Roundup and the **Philip Morris Defendants** promoted the use of Roundup and other pesticides to tobacco farmers in Misiones even though they were on direct and explicit notice that at all relevant times farmers in Misiones, including the instant Plaintiffs, lacked the necessary personal protective equipment and other safety knowledge and skills required to minimize harmful exposures to Roundup.

60. What is more, at all relevant times **MONSANTO** and the **Philip Morris Defendants** did not recommend protective measures to farmers and their families in Misiones. In

fact, aforementioned Defendants actively recommended and/or required that contracted tobacco farmers, including the instant Plaintiffs, purchase excessive quantities of Roundup.

61. At all relevant times, Defendants were on direct and explicit notice that fruits, vegetables and farm animals designated for family consumption would be contaminated with pesticides including Roundup if contract farmers followed the Defendants' aggressive chemical application specifications for tobacco cultivation.

62. At all relevant times, Tabacos Norte agricultural technicians provided seeds for non-tobacco crops, such as fruits and vegetables for personal consumption, to the contracted tobacco farmers and recommended that the contract farmers use Roundup and other pesticides on these other crops as well.

63. At all relevant times, Defendants were on direct and explicit notice that water wells and streams meant for family use, including drinking, cooking, bathing, laundering, washing, and recreation, would be contaminated with pesticides including Roundup if contract farmers followed the Defendants' aggressive chemical application specifications for tobacco cultivation.

64. The **Philip Morris Defendants**, acting directly and through their agents, servants and employees, controlled and directed the use of Roundup and other pesticides in the cultivation of tobacco at all relevant times, both with respect to the chemicals used, the manner in which they were to be used, and the dosages used.

65. Upon information and belief **MONSANTO**, acting in concert with the **Philip Morris Defendants**, consulted and designed the manner in which Roundup was to be used by contract tobacco farmers in Misiones.

66. On information and belief, the Plaintiffs and other farmers in Misiones practice tobacco farming as instructed, using massive amounts of Roundup and other pesticides. On Misiones farms, and in the case of these Plaintiffs, multiple applications of Roundup are typically used before, during and after the tobacco growing season whether or not the farmers practice no-till farming.

67. Upon information and belief, at all relevant times, Roundup was the most abundantly used herbicide—consisting, at present, of at least 75% of all glyphosate-based herbicides used in Argentina. At earlier times Roundup comprised even greater percentages of the glyphosate-based herbicides used in Argentina.

68. The Parent Plaintiffs reported using Roundup at all times relevant hereto. After Monsanto's patent on Roundup expired, all Parent Plaintiffs continued to use Roundup, and Parent Plaintiffs Ariel Horacio Wentz, Vanesa Elizabeth Tizato, Luis Anibal Hubscher, Patricia Jabovski, and Carmen Ines Petroski also used generic Roundup that was manufactured and distributed by Atanor and Red Surcos f/k/a Ciagro.

EXPOSURE

69. At all relevant times, Plaintiff tobacco farmers in Misiones lacked necessary personal protective equipment, safety knowledge, and safety skills to be able to use Roundup and other pesticides in a manner that did not cause harm to them or their unborn children.

70. At all relevant times, Defendants did not recommend, provide, or otherwise suggest adequate protective measures.

71. What is more, at all relevant times Defendants' application recommendations and instructions called for excessive use of Roundup and other pesticides and

ensured that Plaintiff tobacco farmers and their families would be exposed to dangerous levels of said pesticides.

72. Plaintiff tobacco farmers in Misiones applied Roundup and other pesticides manually at all relevant times and were not protected by enclosed tractors and/or application equipment.

73. At all relevant times, Plaintiffs carried liquid pesticides in canisters on their backs. The farmers walked through the fields with the canisters on their backs and sprayed these pesticides by hand. Farmers were often accompanied by spouses who assisted in the application of pesticides and also would remove pesticide covered weeds and other unwanted growths from the fields.

74. At all relevant times, Plaintiff tobacco farmers were left to mix and prepare Roundup and other pesticides for application themselves, and were thus exposed by dispensing Roundup into individual canisters from larger containers and by mixing the ingredients. This practice often takes place in sheds or other confined spaces and spouses of tobacco farmers assist in the dispensing and mixing operation. This was a significant source of inhalation and dermal exposure for the instant Plaintiffs.

75. Plaintiffs' tobacco farms are small family farms where the tobacco fields are located in close proximity to the family home. Accordingly, pesticides were stored in and near the home at all relevant times, which caused further inhalation and dermal exposure while farmers and their families were present in and near the home.

76. Plaintiff tobacco farmers often lacked the proper tools and containers for mixing and using pesticides and resorted to repurposing household objects to use in chemical

preparation. Such contaminated household tools and containers were later used for other tasks on the farm and in the home, for example, as containers for water used for household purposes.

77. The Plaintiff tobacco farmers' lack of training and instruction on the safe disposal of unused Roundup and other pesticides caused further exposure. Leftover pesticides were discarded in locations where they leached into the water supply.

78. At all relevant times, the source of water for most of the Plaintiff tobacco farmers were streams and groundwater present on, adjacent to, or nearby Plaintiffs' farms. The fields on which tobacco and other crops were farmed by Plaintiffs were usually adjacent to or nearby streams and wells.

79. Runoff from these fields, especially during and after periods of heavy rain, contaminates the surface and groundwater sources used by Plaintiff tobacco farmers and their families with Roundup and other pesticides.

80. The streams and other contaminated surface water bodies are used by Plaintiffs for drinking water, cooking, laundering clothing, bathing, irrigation, and recreation, which resulted in additional exposure of Plaintiffs to pesticides.

81. At all relevant times, Plaintiff tobacco farmers in Misiones did not have or use gloves or other protective clothing. Accordingly, liquid pesticides dripped on to Plaintiffs' hands and bodies and were absorbed through the skin.

82. At all relevant times, Plaintiff tobacco farmers did not have or use masks or respirators. The vapors, mist, and aerosols from liquid pesticides were inhaled by farmers and their families.

83. Upon information and belief these pesticides also became present in the drinking water consumed by parental Plaintiffs and in the food that Plaintiffs ate.

84. In addition, the parental Plaintiffs were exposed to pesticides while otherwise working in or being present in the fields where these chemicals were present, or in handling crops, plants or weeds to which these chemicals had been applied. Exposures also occurred as a consequence of leaks or spills of pesticides.

85. The injured Plaintiffs were exposed to Roundup and other pesticides *in utero* and/or by virtue of parental exposures causing reproductive damage to parental germ cells and/or sperm or ova. Specifically, the *in utero* periods of exposure were as follows:

- A. Parental Plaintiffs Antonio Emilio Hupan and Mariel Estela Viera Da Costa were exposed to Roundup from on or around February 12, 1996 until the birth of injured Plaintiff Tamara Lujan Hupan on November 12, 1996.
- B. Parental Plaintiffs Ariel Horacio Wentz and Vanesa Elizabeth Tizato were exposed to Roundup and generic Roundup made by Atanor and Red Surcos f/k/a Ciagro from on or about June 17, 2007 until the birth of injured Plaintiff Uziel Arai Wentz on March 17, 2008.
- C. Parental Plaintiffs Osvaldo Kiona and Miriam Irene Kachenko were exposed to Roundup from on or about March 21, 1997 until the birth of injured Plaintiff Osvaldo Mauricio Kiona on December 21, 1997.
- D. Parental Plaintiffs Antonio De Lara and Teresa Alicia Raitter Da Silva were exposed to Roundup from on or about May 17, 2007 until the birth of injured Plaintiff Andrea Victoria De Lara on February 17, 2008.
- E. Parental Plaintiffs Luis Anibal Hubscher and Patricia Jabovski were exposed to Roundup and generic Roundup made by Atanor and Red Surcos f/k/a

Ciagro from on or about May 25, 1996 until the birth of injured Plaintiff Camila De Los Angeles Hubscher on February 24, 1997.

- F. Parental Plaintiffs Miguel Angel Petroski and Claudia Francisca Meyer were exposed to Roundup from on or about September 7, 2002 until the birth of injured Plaintiff Gladis Ines Petroski on June 7, 2003.
- G. Parental Plaintiff Carmen Ines Petroski was exposed to Roundup and generic Roundup made by Atanor and Red Surcos f/k/a Ciagro from on or about April 6, 1998 until the birth of injured Plaintiff Marisel Anabella Frelich on January 6, 1999.
- H. Parental Plaintiffs Mauricio Kramer and Maria Carmen Scholze were exposed to Roundup from on or about July 4, 1995 until the birth of injured Plaintiff Alejandro Mauricio Kramer on April 6, 1996.

86. In addition the injured Plaintiffs continued to be exposed to these chemicals after birth in the same manner in which the parental Plaintiffs were environmentally exposed.

87. Roundup is not only used for the cultivation of tobacco and other cash crops, but also as a consumer product that was used around Plaintiffs' homes and gardens.

88. Roundup contains reproductive toxins capable of producing genetic, teratogenic and/or developmental injury to humans. Additionally, Roundup contains chemical ingredients which are individually reproductive toxins capable of producing genetic, teratogenic, and/or developmental injury to humans. These toxic chemical ingredients include so-called "inert" ingredients, also referred to as adjuvants.

89. Exposure to Roundup and other pesticides produces additive or synergistic effects so that the reproductive harm inflicted on the injured Plaintiffs by multiple chemical

exposures is greater than the harm inflicted by any one chemical ingredient, and is often greater than the sum of the harms inflicted by each of the chemicals separately.

90. Regardless, the harms inflicted by Roundup, were, by themselves sufficient to cause the injuries suffered by the injured Plaintiffs.

91. At all relevant times, it was well understood by all Defendants that a developing fetus is considerably more fragile and susceptible to toxic injury than adult human beings, and that levels of exposure which might not inflict harm on adults cause severe damage and birth defects in exposed fetuses.

92. It was also well-known by all Defendants that tobacco farmers in Misiones, including the parental Plaintiffs and their offspring, would be exposed to Roundup and other pesticides on multiple occasions in the manner described above.

MANUFACTURE AND DISTRIBUTION OF GLYPHOSATE IN ARGENTINA:
MONSANTO

93. **MONSANTO** researched, developed, designed, manufactured, marketed and supplied Roundup containing the herbicide glyphosate to Plaintiffs and Tabacos Norte at all relevant times and are otherwise liable to Plaintiffs for acts and omissions, as alleged herein.⁶ **MONSANTO** controlled and directed its subsidiary's production and sale of Roundup containing the herbicide glyphosate to Plaintiffs and Tabacos Norte.⁷

DEFENDANTS' MISCONDUCT

A. MONSANTO

⁶ http://www.monsanto.com/products/Documents/glyphosate-background-materials/back_history.pdf;
http://www.monsanto.com.ar/nuestros_productos/informacion_tecnica_seguridad/otros_temas/resistencia_malezas.a_spx

⁷ <http://www.secinfo.com/dsvrt.55Zm.1.htm>

94. **MONSANTO** is the world's leading producer of glyphosate, an herbicide that it developed and first introduced to the market in 1976.

95. At all relevant times, **MONSANTO** has marketed glyphosate as posing little or no risk to human or environmental health when in fact **MONSANTO** knew or had reason to know that aforementioned herbicide is a reproductive toxin, teratogenic, genotoxic and otherwise harmful.

96. **MONSANTO** is responsible for nearly 80% of all glyphosate worldwide and at least 75% of the glyphosate currently being applied in Argentina. At the earliest relevant times **MONSANTO** was responsible for all or virtually all of the glyphosate sold to be applied in Misiones.

97. Roundup™ is **MONSANTO**'s brand name for its glyphosate herbicide. Roundup™ contains glyphosate and a "trade secret" blend of supposedly "inert ingredients." "Roundup" as used herein refers to Roundup® products, Roundup™ products, or any other glyphosate-containing Roundup products manufactured, distributed, or licensed for use by **MONSANTO** in Argentina and to which the Plaintiffs were exposed.

98. **MONSANTO** designed the glyphosate-based herbicide to be sold as a product, and was responsible for all research into its safety.

99. **MONSANTO** is the owner of all patents and trademarks of the Roundup products sold in Argentina.

100. The commercial formulation of glyphosate and so called "inert ingredients" in Roundup have been shown to be even more reproductively toxic to humans and wildlife than glyphosate alone.

101. The “inert ingredients” in Roundup include, but are not limited to, the surfactant polythoylated tallow amine (POEA) which heightens the herbicide’s potency by increasing its penetration into plant and animal cells.

102. POEA is not actually “inert.”

103. Industry and independent studies dating back to 1980 or earlier show that glyphosate causes birth defects, and skeletal malformations in particular.

104. Beginning in the early 1980s, **MONSANTO** commenced heavily marketing Roundup to owners of small family farms in Misiones, Argentina. Defendants encouraged families to apply chemicals liberally within a few yards their homes.

105. The farmers, mostly tobacco producers, were advised by **MONSANTO** to use glyphosate frequently and in quantities beyond what would be necessary for effective weed control. Defendants did this purely to increase profit.

106. After 1999, local Argentine companies including Atanor and Red Surcos f/k/a Ciagro manufactured, supplied and distributed generic Roundup to farmers in Argentina using the same chemical formulation as Roundup as designed by **MONSANTO**.

107. Today more than 200 million liters of glyphosate herbicide are sprayed on Argentine crops every year. Comparable quantities were used in earlier relevant times.

108. At all relevant times **MONSANTO** improperly designed and manufactured Roundup.

109. After its patent expired, **MONSANTO** remained strictly liable for the defective design of Roundup in generic Roundup products manufactured, sold and distributed by local Argentine companies including Atanor and Red Surcos f/k/a Ciagro, under Argentina law,

specifically Article 1113 of the Argentine Civil Code and Article 40 Argentine Consumer Protection Law (24.240).

110. At all relevant times, **MONSANTO** failed and refused to warn or advise Plaintiffs and/or Plaintiffs' parents of the dangerous characteristics of glyphosate, and Roundup in particular.

111. At all relevant times, **MONSANTO** failed to investigate, study, determine, impose or comply with reasonable standards and regulations to protect and promote the safety or to minimize the dangers to those using or who would foreseeably use or be harmed by the aforesaid pesticides, including the injured Plaintiffs and the injured Plaintiffs' parents.

112. At all relevant times, **MONSANTO** failed to fully and properly test and study the aforesaid pesticides to learn of the hazards associated with their use.

113. **MONSANTO** made express and implied warranties and representations, incorrectly and untruthfully, that glyphosate, and Roundup products in particular, were safe and suitable for use.

114. At all relevant times, **MONSANTO** affirmatively misled plaintiffs and their customers by funding, publishing, and promoting scientific studies stating that glyphosate causes no adverse health effects in humans when they knew or should have known that their commercial formulation Roundup was, and is, far more toxic than glyphosate alone and is known to cause adverse health effects in humans and their unborn children.

115. Motivated by a desire for unwarranted economic gain and profit **MONSANTO** willfully and recklessly ignored knowledge, in existence at all relevant times, of the health hazards of the aforementioned Roundup and have thereby exhibited reckless disregard

for the health and well-being of the injured Plaintiffs and their parents, and numerous others who use their products.

B. THE PHILIP MORRIS DEFENDANTS

116. The **Philip Morris Defendants** are sophisticated, multi-national corporations and leading producers of tobacco products worldwide.⁸

117. Tabacos Norte, under the direction of the **Philip Morris Defendants** and others, controlled the method and means by which the tobacco was grown and which pesticides were applied to crops grown by parental Plaintiffs for use in products manufactured and sold by the **Philip Morris Defendants**.

118. These pesticides included Roundup® products, Roundup™ products, or any other glyphosate-containing Roundup products manufactured, distributed, or licensed for use by **MONSANTO** in Argentina and to which the Plaintiffs were exposed.

119. At all relevant times, the **Philip Morris Defendants** failed and refused to warn or advise injured and parental Plaintiffs of the dangerous characteristics of glyphosate and other pesticides.

120. At all relevant times, the **Philip Morris Defendants** failed to investigate, study, determine, impose or comply with reasonable standards and regulations to protect and promote the safety or to minimize the dangers to those using or who would foreseeably use or be harmed by the aforesaid pesticides, including the injured and parental Plaintiffs.

121. At all relevant times, the **Philip Morris Defendants** failed to fully and properly test and study the aforesaid pesticides to learn of the hazards associated with their use.

⁸ For example, PHILIP MORRIS INTERNATIONAL, INC. has sales in approximately 180 countries and held an estimated 16.0 percent share of the international cigarette market outside of the U.S. in 2010.

122. Motivated by a desire for unwarranted economic gain and profit, the **Philip Morris Defendants** willfully and recklessly ignored knowledge, in existence at all relevant times, of the health hazards of the aforementioned pesticides and have thereby exhibited reckless disregard for the health and well-being of the injured and parental Plaintiffs.

123. At all relevant times, some or all parental Plaintiffs had tobacco cultivation contracts with Tabacos Norte.

124. Tabacos Norte controlled and directed all material aspects of the production of tobacco by parental Plaintiffs for purchase by Tabacos Norte, including providing the seeds, providing and/or directing the Plaintiffs' use of and exposure to Roundup and other pesticides used in the production of tobacco for purchase by Tabacos Norte which caused Plaintiffs' injuries.

125. The injuries of Plaintiffs are a direct and proximate result of the negligence of Tabacos Norte, under the direction and control of the **Philip Morris** and others, in that said entity created hazardous and deadly conditions to which Plaintiffs were exposed and which caused Plaintiffs to be exposed to a large amount of pesticides.

126. Tabacos Norte, under the direction and control of the **Philip Morris Defendants** and others, was negligent in one, some or all of the following respects, among others, same being the proximate cause of Plaintiffs' injuries:

- (a) in negligently designing and implementing tobacco growing guidelines for Misiones, Argentina, which called for excessive pesticide use by farmers, including parent Plaintiffs, who were untrained and ill-equipped to protect themselves or their families from toxic exposure;
- (b) in failing to timely and adequately warn parent Plaintiffs of the dangerous characteristics and serious health hazards associated with exposure to Roundup and other pesticides;
- (c) in failing to provide parental Plaintiffs with information as to what would be reasonably

safe and sufficient wearing apparel and proper protective equipment and appliances, if in truth there were any, to protect infant Plaintiffs from being harmed and disabled by exposure to pesticides;

(d) in failing to place timely and adequate warnings on the containers of said pesticides to warn of the dangers to health from coming into contact with these agricultural poisons;

(e) in failing to take reasonable precautions or exercise reasonable care to publish, adopt and enforce a safety plan or safe method of handling and installing pesticides, or utilizing the machinery requiring or calling for the use of pesticides in a safe manner; (e) in failing to develop and utilize a substitute material or design to eliminate pesticides and by requiring parental Plaintiffs to use these poisons, despite the pre-existing safer modes of tobacco production;

(f) in failing to properly design and manufacture pesticides for safe use under conditions of use that were reasonably anticipated;

(g) in failing to properly test said pesticides before they were released for Plaintiffs' use; and,

(h) in requiring parental Plaintiffs to maintain, store and mix their own pesticides, without warning them of the dangers therein.

TIMELINESS

127. Each of the Plaintiffs were unaware of either the misconduct of Defendants or the causal relationship between that misconduct and the birth defects suffered by the infant Plaintiffs except within two years of the date on which this action was commenced. Accordingly these claims are timely under the law of both Argentina and Delaware.

128. Under Argentine law the applicable statute of limitations period is two years (Article 4037 of the Civil Code) as it is in Delaware. However, in Argentina it is also true that actions brought on behalf of minors are tolled for infancy when the minor lacks representation (Article 3966 of the Civil Code).

129. The age of majority in Argentina is 18 (Argentine Law 26.579).

130. In Argentina the accrual of a personal injury claim will be tolled by ignorance of the necessary facts to bring a claim, which means that where a plaintiff is unable to determine the misconduct or cause of his or her injury, the limitations period does not begin to run until such time as plaintiff had a “reasonable possibility of knowledge” of the cause of her injury and who is responsible.

131. Plaintiff’s knowledge of her claim must be real and effective.

132. In all events, each of the infant and parental Plaintiffs are individuals of limited education, residing in a rural and relatively primitive section of Argentina, who lacked the ability to comprehend and access to obtain sophisticated medical or scientific information respecting the cause of their or their children’s birth defects. Similarly, they were not in a position to obtain meaningful information about the toxicological properties of the chemicals to which they were exposed.

133. In addition, the parental Plaintiffs were explicitly caused to believe that the products to which they were exposed were not reproductive toxins, by virtue of the following conduct and statements made by Defendants:

- a) **Philip Morris Defendants** and others, through Tabacos Norte’s agricultural technicians, explicitly assured Plaintiff tobacco farmers that Roundup and other pesticides sold by the leaf supplier company were safe and did not pose risks,

reproductive or otherwise, when used in the manner that Tabacos Norte recommends;

- b) **Philip Morris** and others, through Tabacos Norte, produce annual information sheets on pesticides for the contract farmers, many of whom cannot read. The sheet for glyphosate, in its current form, states that glyphosate “normally does not present risks,” does not provide any information about chronic exposure to glyphosate and does not mention reproductive toxicity or teratogenicity; and,
- c) In Argentina, **MONSANTO** and its agents have loudly and publicly disclaimed that Roundup and other glyphosate products can cause birth defects. Stating that “Glyphosate does not adversely affect reproduction or development” and “glyphosate is not a developmental or reproductive toxicant.”

134. The above described statements were expressly made, and the above-described omissions were either deliberately or negligently perpetrated by Defendants for the express purpose of inducing the reliance of the parental Plaintiffs so that they would use the products at issue, and thereby promote the profit seeking activities of Defendants. These false and/or misleading statements were relied upon by the parental Plaintiffs and proximately resulted in harm to their offspring.

135. Plaintiffs did not learn of the false and misleading nature of these statements except within 2 years of the commencement of this action.

136. Nor could Plaintiffs by any reasonable inquiry under the circumstances have been on notice of either the misconduct or cause of their injuries at any earlier date than within two years of the commencement of this suit.

PROXIMATE CAUSATION

137. Conduct described above was a substantial factor in bringing about injuries and damages suffered by the Plaintiffs.

138. Conduct described above was a competent and producing cause without which these children would have been born unharmed.

139. Defendants' misconduct in managing the use of agricultural chemicals in Misiones was a proximate cause of, and a substantial causative factor in, Plaintiffs' aforesaid injuries.

DAMAGES

140. As a consequence of the foregoing misconduct the injured Plaintiffs ANDREA VICTORIA DE LARA, MARISEL ANABELLA FRELICH, CAMILA DE LOS ANGELES HUBSCHER, TAMARA LUJAN HUPAN, ALEJANDRO MAURICIO KRAMER, MAURICIO OSVALDO KIONA, GLADIS INES PETROSKI, and UZIEL ARAI WENTZ each sustained severe and permanent birth defects, and have suffered and with reasonable certainty will suffer each of the following injuries or damages for the remainder of their lives:

- (a) severe and constant conscious physical pain and suffering;
- (b) severe and continuing mental anguish, psychological and emotional injury;
- (c) physical disability and disfigurement;
- (d) loss of the enjoyment of life's pleasures;
- (e) inability to participate in normal activities;
- (f) medical and healthcare expenses;
- (g) household and home care expenses;

- (h) rehabilitation expenses;
- (i) loss of income;
- (j) loss of the ability to have a normal family life or married life;
- (k) loss of the ability to have children;
- (l) impaired cognitive and mental functions;
- (m) moral damages;
- (n) increased risk of future disability as a consequence of toxic exposure;
- (o) social isolation; and
- (p) such other damages as may be allowed by law.

141. Parental Plaintiffs ANTONIO DE LARA, TERESA ALICIA RAITTER DA SILVA, CARMEN INES PETROSKI, LUIS ANIBAL HUBSCHER, PATRICIA JABOSKI, ANTONIO EMILIO HUPAN, MARIEL ESTELA VIERA DA COSTA, MAURICIO KRAMER, MARIA CARMEN SCHOLZE, OSVALDO KIONA, MIRIAM IRENE KACHENKO, MIGUEL ANGEL PETROSKI, CLAUDIA FRANCISCA MEYER, ARIEL WENTZ, VANESA ELIZABETH TIZATO have suffered the following injuries or damages as a consequence of the above-described misconduct:

- (a) grief as a consequence of their child's disabilities;
- (b) mental anguish and upset;
- (c) loss of consortium;
- (d) household expenses;
- (e) outrage;
- (f) fear respecting their future reproductive choices;

- (g) lost income;
- (h) mental anguish respecting their own personal future;
- (i) moral damages;
- (j) other economic damages;

and such other damages as may be allowed by law.

142. In addition, Plaintiffs claim to entitlement to punitive and exemplary damages as permitted under Consumer Law 24240, or otherwise.

NEGLIGENCE AS AGAINST ALL DEFENDANTS

143. The allegations in paragraphs One (1) through One hundred forty-two (142) are realleged and incorporated by reference within this Count.

144. Defendants willfully, recklessly and negligently failed and refused to warn or advise the plaintiffs and others of the dangers and hazards of the aforesaid pesticides, and the dangers posed to the health and welfare of those coming in contact with or using the aforesaid pesticides.

145. Defendants willfully, recklessly and negligently failed to provide needed, accurate and adequate warnings and information of the health hazards and dangers of the aforesaid pesticides to the plaintiffs and those who would reasonably and foreseeably come into contact with, use or be harmed by them.

146. Defendants willfully, recklessly and negligently failed to study, investigate, ascertain, impose or comply with reasonable standards and regulations to protect and promote the health and safety of or minimize the dangers to those using or coming into contact with the aforesaid pesticides.

147. Defendants willfully, recklessly and negligently failed to fully and properly test and study the aforesaid pesticides to fully learn of the hazards associated with those products and their use.

148. Defendants willfully, recklessly and negligently failed to develop, make available, provide, or promote pesticides which were free of defect, and/or failed to design the aforesaid equipment so as to prohibit or minimize their hazards.

149. Defendants willfully, recklessly and negligently failed to provide instructions of potentially safer methods of handling the aforesaid pesticides to users or others foreseeably coming with or using it.

150. Defendants negligently failed to provide a safe place to work.

151. **MONSANTO** willfully, recklessly, negligently and defectively designed glyphosate based herbicides.

152. **MONSANTO** negligently researched and investigated the safety of glyphosate based herbicides.

153. **MONSANTO** willfully, recklessly and negligently made false and misleading public statements regarding the safety of glyphosate based herbicides.

154. **MONSANTO** willfully, recklessly and negligently provided inadequate labels and safety warnings for its glyphosate based herbicides.

155. Defendants were otherwise negligent.

156. As a proximate consequence of the acts, omissions, willfulness, recklessness and negligence of defendants, each plaintiff sustained the injuries and damages set forth above, and the respective defendants against whom the aforesaid claims are made by the plaintiffs as set forth herein, are accordingly liable for negligence.

157. As a proximate result, each plaintiff has been damaged as set forth above and is entitled to compensatory damages.

STRICT LIABILITY AS AGAINST MONSANTO

158. The allegations from paragraphs One (1) through One hundred fifty-seven (157) are realleged and incorporated by reference within this Count.

159. In accordance with Argentine law, whoever designs, manufactures, distributes and/or places a brand on a product is jointly liable for the harm it causes.

160. Argentine law recognizes defects in manufacturing, design and warning.

161. As a direct and proximate result of the defective, unsafe and unreasonably dangerous condition of **MONSANTO's** chemicals and substances, each plaintiff herein sustained all of the injuries as set forth above.

162. As a proximate result of the foregoing, each Plaintiff has been damaged, and **MONSANTO** as set forth above, is strictly liable to each Plaintiff who has made claims against them as set forth herein.

BREACH OF WARRANTY AS AGAINST MONSANTO

163. The allegations from paragraphs One (1) through One hundred sixty-two (162) are realleged and incorporated by reference within this Count.

164. As a direct and proximate result of the breach of express and implied warranties made by **MONSANTO** with respect to their pesticides herein, each Plaintiff sustained the injuries and damages as set forth above.

165. As a proximate result of the foregoing, each plaintiff, as set forth above, has been damaged, and **MONSANTO** is strictly liable for breach of warranty to each plaintiff.

**ABNORMALLY DANGEROUS AND
ULTRA HAZARDOUS ACTIVITY AS AGAINST ALL DEFENDANTS**

166. The allegations from paragraphs One (1) through One hundred sixty-five (165) are realleged and incorporated by reference within this Count.

167. Each Defendant knew or should have known that their aforesaid conduct exposed Plaintiffs to an abnormally dangerous and ultrahazardous activity.

168. As a direct and proximate result of the acts, omissions, wilfulness, recklessness and negligence of Defendants, each Plaintiff sustained the injuries and damages set forth above, and the respective Defendants against whom the aforesaid claims are made by the Plaintiffs as set forth herein are accordingly liable for abnormally dangerous and ultra-hazardous activity.

169. As a proximate result, each Plaintiff, as set forth above, has been damaged, and the Defendants are strictly liable to each Plaintiff who has made claims against them as set forth herein.

AIDING AND ABETTING AS AGAINST THE PHILIP MORRIS DEFENDANTS

170. The allegations of paragraphs One (1) through One hundred sixty-nine (169) are realleged and incorporated by reference within this Count.

171. The Philip Morris Defendants, by and through their employees, aided and abetted the actions of Tobacos Norte and Massalin Particulares in causing the toxic exposures which resulted in Plaintiffs' injuries and damages.

172. As a direct and proximate result of the conduct of Defendants' employees in aiding and abetting, Tobacos Norte and Massalin Particulares, each of the Plaintiffs sustained the injuries and damages set forth above.

WILLFUL AND WANTON MISCONDUCT AS AGAINST ALL DEFENDANTS

173. The allegations of paragraphs One (1) through One hundred seventy-two (172) are realleged and incorporated by reference within this Count.

174. Defendants intentionally, willfully or with a reckless disregard for the safety of Plaintiffs, caused Plaintiffs to be exposed to pesticides which were defective, unsafe and/or unreasonably dangerous.

175. Defendants intentionally, willfully or with a reckless disregard for the safety of Plaintiffs, failed to utilize proper measures to prevent Plaintiffs, from being exposed to harmful pesticides.

176. Defendants intentionally, willfully or with a reckless disregard for the safety of Plaintiffs, failed and refused to warn or advise Plaintiffs of the dangerous characteristics of the pesticides and of the health threats or adverse consequences to those who might use or be exposed to these harmful chemicals.

177. Defendants intentionally, willfully or with a reckless disregard for the safety of Plaintiffs, failed to study, investigate, determine, impose or comply with reasonable standards and regulations to protect and promote the health and safety of, or to minimize the dangers to those using, or who would foreseeably use or be harmed by the aforesaid pesticides, including parental Plaintiffs and their offspring.

178. Defendants intentionally, willfully or with a reckless disregard for the safety of Plaintiffs, failed to fully and properly test and study the aforesaid pesticides to learn of the hazards associated with their use.

179. Defendants intentionally, willfully or with a reckless disregard for the safety of Plaintiffs, made express and implied warranties and representations, incorrectly and untruthfully, that the pesticides were safe and suitable for use.

180. Defendants intentionally, willfully or with a reckless disregard for the safety of Plaintiffs, ignored and concealed from the plaintiffs knowledge, in existence at all relevant times, of the health hazards of the aforementioned pesticides.

181. Defendants' willful, wanton, and intentional misconduct evinces a total, conscious and/or reckless disregard for the life and well-being of Plaintiffs as well as for the health, well-being and rights of others who used or otherwise came into contact with the aforesaid pesticides.

182. As a direct and proximate result of the willful, wanton and intentional misconduct of Defendants, each Plaintiff sustained the injuries and damages set forth above.

183. In addition to compensatory damages, an award of punitive damages is appropriate and necessary in order to punish Defendants for their willful, wanton, intentional and/or reckless misconduct and to deter Defendants and others similarly situated from engaging in like misconduct in the future.

CAUSE OF ACTION PURSUANT TO ARTICLE 1109 OF THE ARGENTINE CIVIL CODE

184. The allegations set forth in paragraphs One (1) through One hundred eighty-three (183) of this Complaint are repeated and realleged and incorporated by reference within this cause of action as if repeated in full herein.

185. The aforesaid misconduct constitutes a violation of the provisions of Article 1109 from the Argentine Civil Code.

CAUSE OF ACTION PURSUANT TO ARTICLE 1113 OF THE ARGENTINE CIVIL CODE AS AGAINST MONSANTO

186. The allegations set forth in paragraphs One (1) through One hundred eighty-five (185) of this Complaint are repeated and realleged and incorporated by reference within this cause of action as if repeated in full herein.

187. **MONSANTO** is strictly liable under Article 1113 of the Argentine Civil Code for the defective design of Roundup. As a direct and proximate result of the defective, unsafe and unreasonably dangerous condition of **MONSANTO's** Roundup, each plaintiff herein sustained all of the injuries as set forth above.

188. As a result of Roundup's defective design, **MONSANTO** is strictly liable under Article 1113 of the Argentine Civil code for injuries caused by the generic Roundup products manufactured, sold and distributed by local Argentine companies including Atanor and Red Surcos f/k/a Ciagro.

189. Parent Plaintiffs Ariel Horacio Wentz, Vanesa Elizabeth Tizato, Luis Anibal Hubscher, Patricia Jabovski, and Carmen Ines Petroski and their plaintiff children sustained all of the injuries as set forth above as a direct and proximate result of the defective, unsafe and unreasonably dangerous condition of **MONSANTO's** Roundup and the same or substantially similar generic Roundup products manufactured, sold and distributed by local Argentine companies including Atanor and Red Surcos f/k/a Ciagro,

190. As a proximate result of the foregoing, each Plaintiff has been damaged, and **MONSANTO** as set forth above, is strictly liable to each Plaintiff who has made claims against them as set forth herein.

191. The aforesaid misconduct constitutes a violation of the provisions of Article 1113 from the Argentine Civil Code.

**CAUSE OF ACTION PURSUANT TO ARGENTINE CONSUMER PROTECTION LAW
24240**

192. The allegations set forth in paragraphs One (1) through One hundred ninety-one (191) of this Complaint are repeated and realleged and incorporated by reference within this cause of action as if repeated in full herein.

193. The aforesaid misconduct constitutes a violation of the provisions of Argentine Consumer Protection Law 24240.

**CAUSE OF ACTION PURSUANT TO ARTICLE 40 OF THE ARGENTINE
CONSUMER PROTECTION LAW (24.240) AS AGAINST MONSANTO**

194. The allegations set forth in paragraphs One (1) through One hundred ninety-three (193) of this Complaint are repeated and realleged and incorporated by reference within this cause of action as if repeated in full herein.

195. **MONSANTO** is liable under Article 40 of the Argentine Consumer Protection Law (24.240) for the defective design of Roundup. As a direct and proximate result of the defective, unsafe and unreasonably dangerous condition of **MONSANTO's** Roundup, each plaintiff herein sustained all of the injuries as set forth above.

196. As a result of Roundup's defective design, **MONSANTO** is strictly liable under Article 40 of the Argentine Consumer Protection Law (24.240) for injuries caused by the generic Roundup products manufactured, sold and distributed by local Argentine companies including Atanor and Red Surcos f/k/a Ciagro.

197. Parent Plaintiffs Ariel Horacio Wentz, Vanesa Elizabeth Tizato, Luis Anibal Hubscher, Patricia Jabovski, and Carmen Ines Petroski and their plaintiff children sustained all of the injuries as set forth above as a direct and proximate result of the defective, unsafe and unreasonably dangerous condition of **MONSANTO's** Roundup and the same or substantially

similar generic Roundup products manufactured, sold and distributed by local Argentine companies including Atanor and Red Surcos f/k/a Ciagro,

198. As a proximate result of the foregoing, each Plaintiff has been damaged, and **MONSANTO** is liable to each Plaintiff as set forth herein.

199. The aforesaid misconduct constitutes a violation of Article 40 of the Argentine Consumer Protection Law (24.240).

WHEREFORE, Plaintiffs pray this Court to enter judgment against Defendants and to award: compensatory damages in an amount to be proved at trial; punitive damages in an amount sufficient to punish Defendants for their misconduct and to deter similarly situated parties from committing like acts of misconduct in the future; and for such other and further relief that this Court deems appropriate.

Dated: January 29, 2016

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