

1 James G. O'Brien (SBN 308239)  
ZOLL & KRANZ, LLC  
2 6620 W. Central Ave., Suite 100  
Toledo, Ohio 43617  
3 Tel. (419) 841-9623  
Fax (419) 841-9719  
4 Email jim@toledolaw.com

5 *Counsel for Plaintiff Larry J. Faschingbauer*

6  
7 IN THE UNITED STATES DISTRICT COURT  
8 FOR THE NORTHERN DISTRICT OF CALIFORNIA

9  
10 **LARRY J. FASCHINGBAUER**

11 Plaintiff,

12 v.

13 **MONSANTO COMPANY**

14 Defendant.

Civil Action No.: 3:17-cv-659

Judge:

**COMPLAINT**

**WITH JURY DEMAND ENDORSED HEREON**

15  
16  
17 Plaintiff Larry J. Faschingbauer, by and through his undersigned counsel, for his Complaint  
18 against Defendant Monsanto Company, avers and states:

19  
20 **Introduction**

21 1. In 1970, Defendant Monsanto Company, Inc. (“Monsanto”) discovered the herbicidal  
22 properties of glyphosate and began marketing it in products in 1974 under the brand name  
23 Roundup®. Roundup® is a non-selective herbicide used to kill weeds that commonly compete  
24 with the growing of crops. In addition to the active ingredient glyphosate, Roundup® contains  
25 the surfactant Polyethoxylated tallow amine (POEA) and/or adjuvants and other so-called  
26 “inert” ingredients. In 2001, glyphosate was the most-used pesticide active ingredient in  
27

1 American agriculture with 85–90 million pounds used annually. That number grew to 185  
2 million pounds in 2007.<sup>1</sup> As of 2013, glyphosate was the world’s most widely used herbicide.

3 2. Monsanto is a multinational agricultural biotechnology corporation based in St. Louis,  
4 Missouri, and incorporated in Delaware. It is the world's leading producer of glyphosate. As of  
5 2009, Monsanto was the world’s leading producer of seeds, accounting for 27% of the world  
6 seed market.<sup>2</sup> The majority of these seeds are of the Roundup Ready<sup>®</sup> brand. The stated  
7 advantage of Roundup Ready<sup>®</sup> crops is that they substantially improve a farmer’s ability to  
8 control weeds, because glyphosate can be sprayed in the fields during the growing season  
9 without harming the crops. In 2010, an estimated 70% of corn and cotton and 90% of soybean  
10 fields in the United States were Roundup Ready<sup>®</sup>.<sup>3</sup>

11 3. Monsanto’s glyphosate products are registered in 130 countries and approved for use on  
12 over 100 different crops.<sup>4</sup> They are ubiquitous in the environment. Numerous studies confirm  
13 that glyphosate is found in rivers, streams, and groundwater in agricultural areas where  
14 Roundup<sup>®</sup> is used.<sup>5</sup> It has been found in food,<sup>6</sup> in the urine of agricultural workers,<sup>7</sup> and even in  
15 the urine of urban dwellers who are not in direct contact with glyphosate.<sup>8</sup>

---

17 1 Arthur Grube et al., U.S. Env’tl. Prot. Agency, *Pesticides Industry Sales and Usage, 2006–2007 Market Estimates*  
14 (2011), available at [http://www.epa.gov/pesticides/pestsales/07pestsales/market\\_estimates2007.pdf](http://www.epa.gov/pesticides/pestsales/07pestsales/market_estimates2007.pdf).

18 2 ETC Group, *Who Will Control the Green Economy?* 22 (2011), available at  
19 [http://www.etcgroup.org/files/publication/pdf\\_file/ETC\\_wwctge\\_4web\\_Dec2011.pdf](http://www.etcgroup.org/files/publication/pdf_file/ETC_wwctge_4web_Dec2011.pdf).

20 3 William Neuman & Andrew Pollack, *Farmers Cope With Roundup-Resistant Weeds*, N.Y. TIMES, May 3, 2010,  
available at <http://www.nytimes.com/2010/05/04/business/energy-environment/04weed.html?pagewanted>.

21 4 Monsanto, *Backgrounder-History of Monsanto’s Glyphosate Herbicides* (Sep. 2, 2015),  
[http://www.monsanto.com/products/documents/glyphosate-background-materials/back\\_history.pdf](http://www.monsanto.com/products/documents/glyphosate-background-materials/back_history.pdf).

22 5 See U.S. Geological Survey, *USGS Technical Announcement: Widely Used Herbicide Commonly Found in Rain*  
23 *and Streams in the Mississippi River Basin* (2011), available at  
<http://www.usgs.gov/newsroom/article.asp?ID=2909>; see also U.S. Env’tl. Prot. Agency, *Technical Factsheet on:*  
24 *Glyphosate*, available at <http://www.epa.gov/safewater/pdfs/factsheets/soc/tech/glyphosa.pdf>.

25 6 Thomas Bohn et al., *Compositional Differences in Soybeans on the Market: Glyphosate Accumulates in Roundup*  
*Ready GM Soybeans*, 153 FOOD CHEMISTRY 207 (2013), available at  
<http://www.sciencedirect.com/science/article/pii/S0308814613019201>.

26 7 John F. Acquavella et al., *Glyphosate Biomonitoring for Farmers and Their Families: Results from the Farm*  
*Family Exposure Study*, 112(3) ENVTL. HEALTH PERSPECTIVES 321 (2004), available at  
27 <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1241861/>; Kathryn Z. Guyton et al., *Carcinogenicity of*

1 4. On March 20, 2015, the International Agency for Research on Cancer (“IARC”), an  
2 agency of the World Health Organization (“WHO”), issued an evaluation of several herbicides,  
3 including glyphosate. That evaluation was based, in part, on studies of exposures to glyphosate  
4 in several countries around the world, and it traces the health implications from exposure to  
5 glyphosate since 2001.

6 5. On July 29, 2015, IARC issued the formal monograph relating to glyphosate. In that  
7 monograph, the IARC Working Group provides a thorough review of the numerous studies and  
8 data relating to glyphosate exposure in humans.

9 6. The IARC Working Group classified glyphosate as a Group 2A herbicide, which means  
10 that it is *probably carcinogenic to humans*. The IARC Working Group concluded that the  
11 cancers most associated with glyphosate exposure are non-Hodgkin lymphoma and other  
12 haematopoietic cancers, including lymphocytic lymphoma / chronic lymphocytic leukemia, B-  
13 cell lymphoma, and multiple myeloma.<sup>9</sup>

14 7. The IARC evaluation is significant. It confirms what has been believed for years: that  
15 glyphosate is toxic to humans.

16 8. Nevertheless, Monsanto, since it began selling Roundup<sup>®</sup>, has represented it as safe to  
17 humans and the environment. Indeed, Monsanto has repeatedly proclaimed and continues to  
18 proclaim to the world, and particularly to United States consumers, that glyphosate-based  
19 herbicides, including Roundup<sup>®</sup>, create no unreasonable risks to human health or to the  
20 environment.

---

24 *Tetrachlorvinphos, Parathion, Malathion, Diazinon & Glyphosate*, 112 IARC Monographs 76, section 5.4  
25 (2015), available at [http://dx.doi.org/10.1016/S1470-2045\(15\)70134-8](http://dx.doi.org/10.1016/S1470-2045(15)70134-8).

26 <sup>8</sup> Dirk Brändli & Sandra Reinacher, *Herbicides found in Human Urine*, 1 ITHAKA JOURNAL 270 (2012), available  
at <http://www.ithaka-journal.net/druckversionen/e052012-herbicides-urine.pdf>.

27 <sup>9</sup> See Guyton et al., *Carcinogenicity of Tetrachlorvinphos, Parathion, Malathion, Diazinon & Glyphosate*, *supra*.

**Jurisdiction and Venue**

1  
2 9. Federal diversity jurisdiction in this Court is proper under 28 U.S.C. § 1332 because  
3 Plaintiff is a citizen of Wisconsin, a different state than the Defendant's states of citizenship  
4 (Missouri and Delaware), and the aggregate amount in controversy exceeds \$75,000, exclusive  
5 of interest and costs.

6 10. This Court has personal jurisdiction over Monsanto under 735 Ill. Comp. Stat. 5/2-  
7 209(a)(1) and (b)(4) because Monsanto transacts business in Wisconsin and is a corporation  
8 doing business within Wisconsin. Monsanto knows or should have known that its Roundup<sup>®</sup>  
9 products are and were sold throughout the Wisconsin, and, more specifically, caused Roundup<sup>®</sup>  
10 to be sold to Plaintiff and/or to his employers in Wisconsin.

11 11. In addition, Monsanto maintains sufficient contacts with the State of Wisconsin such  
12 that this Court's exercise of personal jurisdiction over it does not offend traditional notions of  
13 fair play and substantial justice.

14 12. Venue is proper within this District under 28 U.S.C. § 1391(b)(2) because the events  
15 giving rise to this action happened in or are closely related to this District.

16  
17 **Parties**

18 **Plaintiff Larry J. Faschingbauer**

19 13. Plaintiff Larry J. Faschingbauer is a natural person, is a citizen of the State of Wisconsin,  
20 and is a resident of Chippewa County, Wisconsin.

21 14. Mr. Faschingbauer was exposed to Roundup<sup>®</sup> in or around Bloomer, Wisconsin, from  
22 around the 1980s through the present. he was diagnosed with Non-Hodgkin lymphoma in The  
23 Mayo Clinic in Rochester, Minnesota May 2012.  
24  
25  
26  
27

**Defendant Monsanto Company**

1  
2 15. Defendant Monsanto Company is a corporation created under the laws of the State of  
3 Delaware with its headquarters and principal place of business in St. Louis, Missouri.

4  
5 **Facts**

6 16. At all times relevant to this complaint, Monsanto was the entity that discovered the  
7 herbicidal properties of glyphosate and the manufacturer of Roundup<sup>®</sup>, which contains the  
8 active ingredient glyphosate and the surfactant POEA, as well as adjuvants and other “inert”  
9 ingredients. Glyphosate is a broad-spectrum, non-selective herbicide used in a wide variety of  
10 herbicidal products around the world.

11 17. Plants treated with glyphosate translocate the systemic herbicide to their roots, shoot  
12 regions, and fruit, where it interferes with the plant’s ability to form aromatic amino acids  
13 necessary for protein synthesis. Treated plants generally die within two to three days. Because  
14 plants absorb glyphosate, it cannot be completely removed by washing or peeling produce or by  
15 milling, baking, or brewing grains.

16 18. For nearly 40 years, farms across the world have used Roundup<sup>®</sup> without knowing of the  
17 dangers its use poses. That is because when Monsanto first introduced Roundup<sup>®</sup>, it touted  
18 glyphosate as a technological breakthrough: it could kill almost every weed without causing  
19 harm either to people or to the environment. Of course, history has shown that not to be true.  
20 According to the WHO, the main chemical ingredient of Roundup<sup>®</sup>—glyphosate—is a probable  
21 cause of cancer. Those most at risk are farm workers and other individuals with workplace  
22 exposure to Roundup<sup>®</sup>, such as garden center workers, nursery workers, and landscapers.  
23 Agricultural workers are, once again, victims of corporate greed. Monsanto assured the public  
24 that Roundup<sup>®</sup> was harmless. In order to prove this, Monsanto has championed falsified data and  
25 has attacked legitimate studies that revealed Roundup<sup>®</sup>’s dangers. Monsanto has led a  
26  
27

1 prolonged campaign of misinformation to convince government agencies, farmers and the  
2 general population that Roundup<sup>®</sup> is safe.

3  
4 **The Discovery of Glyphosate and Development of Roundup<sup>®</sup>**

5 19. The herbicidal properties of glyphosate were discovered in 1970 by Monsanto chemist  
6 John Franz. The first glyphosate-based herbicide was introduced to the market in the mid-1970s  
7 under the brand name Roundup<sup>®</sup>.<sup>10</sup> From the outset, Monsanto marketed Roundup<sup>®</sup> as a “safe”  
8 general-purpose herbicide for widespread commercial and consumer use. It still markets  
9 Roundup<sup>®</sup> as safe today.<sup>11</sup>

10 20. In addition to the active ingredient glyphosate, Roundup<sup>®</sup> formulations also contain  
11 adjuvants and other chemicals, such as the surfactant POEA, which are considered “inert” and  
12 therefore protected as “trade secrets” in manufacturing. Growing evidence suggests that these  
13 adjuvants and additional components of Roundup<sup>®</sup> formulations are not, in fact, inert and are  
14 toxic in their own right.

15  
16 **Registration of Herbicides under Federal Law**

17 21. The manufacture, formulation, and distribution of herbicides, such as Roundup<sup>®</sup>, are  
18 regulated under the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA” or “Act”),  
19 7 U.S.C. § 136 *et seq.* FIFRA requires that all pesticides be registered with the Environmental  
20 Protection Agency (“EPA” or “Agency”) prior to their distribution, sale, or use, except as  
21 described by the Act. 7 U.S.C. § 136a(a).

22 22. Because pesticides are toxic to plants, animals, and humans, at least to some degree, the  
23 EPA requires as part of the registration process, among other things, a variety of tests to  
24

25 <sup>10</sup> Monsanto, *Backgrounder, History of Monsanto’s Glyphosate Herbicide* (Sep. 2, 2015),  
[http://www.monsanto.com/products/documents/glyphosate-background-materials/back\\_history.pdf](http://www.monsanto.com/products/documents/glyphosate-background-materials/back_history.pdf).

26 <sup>11</sup> Monsanto, *What is Glyphosate?* (Sep. 2, 2015), <http://www.monsanto.com/sitecollectiondocuments/glyphosate-safety-health.pdf>.

1 evaluate the potential for exposure to pesticides, toxicity to people and other potential non-target  
2 organisms, and other adverse effects on the environment. Registration by the EPA, however, is  
3 not an assurance or finding of safety. The determination the Agency must make in registering  
4 or re-registering a product is not that the product is “safe,” but rather that use of the product in  
5 accordance with its label directions “will not generally cause unreasonable adverse effects on  
6 the environment.” 7 U.S.C. § 136a(c)(5)(D).

7 23. FIFRA defines “unreasonable adverse effects on the environment” to mean “any  
8 unreasonable risk to man or the environment, taking into account the economic, social, and  
9 environmental costs and benefits of the use of any pesticide.” 7 U.S.C. § 136(bb). FIFRA thus  
10 requires EPA to make a risk/benefit analysis in determining whether a registration should be  
11 granted or a pesticide allowed to continue to be sold in commerce.

12 24. The EPA and the State of California registered Roundup<sup>®</sup> for distribution, sale, and  
13 manufacture in the United States and the State of California.

14 25. FIFRA generally requires that the registrant, Monsanto in the case of Roundup<sup>®</sup>,  
15 conducts the health and safety testing of pesticide products. The EPA has protocols governing  
16 the conduct of tests required for registration and the laboratory practices that must be followed  
17 in conducting these tests. The data produced by the registrant must be submitted to the EPA for  
18 review and evaluation. The government is not required, nor is it able, however, to perform the  
19 product tests that are required of the manufacturer.

20 26. The evaluation of each pesticide product distributed, sold, or manufactured is completed  
21 at the time the product is initially registered. The data necessary for registration of a pesticide  
22 has changed over time. The EPA is now in the process of re-evaluating all pesticide products  
23 through a Congressionally-mandated process called “re-registration.” 7 U.S.C. § 136a-1. In  
24 order to reevaluate these pesticides, the EPA is demanding the completion of additional tests  
25 and the submission of data for the EPA’s recent review and evaluation.

1 27. In the case of glyphosate, and therefore Roundup<sup>®</sup>, the EPA had planned on releasing its  
2 preliminary risk assessment—in relation to the reregistration process—no later than July 2015.  
3 The EPA completed its review of glyphosate in early 2015, but it delayed releasing the risk  
4 assessment pending further review in light of the WHO’s health-related findings.

5  
6 **Scientific Fraud Underlying the Marketing and Sale of Glyphosate/Roundup<sup>®</sup>**

7 28. Based on early studies showing that glyphosate could cause cancer in laboratory animals,  
8 the EPA originally classified glyphosate as *possibly carcinogenic to humans* (Group C) in 1985.  
9 After pressure from Monsanto, including contrary studies it provided to the EPA, the EPA  
10 changed its classification to *evidence of non-carcinogenicity in humans* (Group E) in 1991. In so  
11 classifying glyphosate, however, the EPA made clear that the designation did not mean the  
12 chemical does not cause cancer: “It should be emphasized, however, that designation of an  
13 agent in Group E is based on the available evidence at the time of evaluation and should not be  
14 interpreted as a definitive conclusion that the agent will not be a carcinogen under any  
15 circumstances.”<sup>12</sup>

16 29. On two occasions, the EPA found that the laboratories hired by Monsanto to test the  
17 toxicity of its Roundup<sup>®</sup> products for registration purposes committed fraud.

18 30. In the first instance, Monsanto, in seeking initial registration of Roundup<sup>®</sup> by the EPA,  
19 hired Industrial Bio-Test Laboratories (“IBT”) to perform and evaluate pesticide toxicology  
20 studies relating to Roundup<sup>®</sup>.<sup>13</sup> IBT performed about 30 tests on glyphosate and glyphosate-  
21 containing products, including nine of the 15 residue studies needed to register Roundup<sup>®</sup>.

22 31. In 1976, the United States Food and Drug Administration (“FDA”) performed an  
23 inspection of IBT that revealed discrepancies between the raw data and the final report relating  
24

25 <sup>12</sup> U.S. Env’tl. Prot. Agency, *Memorandum, Subject: SECOND Peer Review of Glyphosate 1* (1991), available at  
26 [http://www.epa.gov/pesticides/chem\\_search/cleared\\_reviews/csr\\_PC-103601\\_30- Oct-91\\_265.pdf](http://www.epa.gov/pesticides/chem_search/cleared_reviews/csr_PC-103601_30- Oct-91_265.pdf).

27 <sup>13</sup> Monsanto, *Backgrounder, Testing Fraud: IBT and Craven Laboratories* (Sep. 2, 2015),  
28 [http://www.monsanto.com/products/documents/glyphosate-background-materials/ibt\\_craven\\_bkg.pdf](http://www.monsanto.com/products/documents/glyphosate-background-materials/ibt_craven_bkg.pdf).



1 to the toxicological impacts of glyphosate. The EPA subsequently audited IBT; it too found the  
2 toxicology studies conducted for the Roundup<sup>®</sup> herbicide to be invalid.<sup>14</sup> An EPA reviewer  
3 stated, after finding “routine falsification of data” at IBT, that it was “hard to believe the  
4 scientific integrity of the studies when they said they took specimens of the uterus from male  
5 rabbits.”<sup>15</sup>

6 32. Three top executives of IBT were convicted of fraud in 1983.

7 33. In the second incident of data falsification, Monsanto hired Craven Laboratories in 1991  
8 to perform pesticide and herbicide studies, including for Roundup<sup>®</sup>. In that same year, the  
9 owner of Craven Laboratories and three of its employees were indicted, and later convicted, of  
10 fraudulent laboratory practices in the testing of pesticides and herbicides.<sup>16</sup>

11 34. Despite the falsity of the tests that underlie its registration, within a few years of its  
12 launch, Monsanto was marketing Roundup<sup>®</sup> in 115 countries.

13  
14 **The Importance of Roundup<sup>®</sup> to Monsanto’s Market Dominance Profits**

15 35. The success of Roundup<sup>®</sup> was key to Monsanto’s continued reputation and dominance in  
16 the marketplace. Largely due to the success of Roundup<sup>®</sup> sales, Monsanto’s agriculture division  
17 was out-performing its chemicals division’s operating income, and that gap increased yearly. But  
18 with its patent for glyphosate expiring in the United States in the year 2000, Monsanto needed a  
19 strategy to maintain its Roundup<sup>®</sup> market dominance and to ward off impending competition.

20 36. In response, Monsanto began the development and sale of genetically engineered  
21 Roundup Ready<sup>®</sup> seeds in 1996. Since Roundup Ready<sup>®</sup> crops are resistant to glyphosate,  
22 farmers can spray Roundup<sup>®</sup> onto their fields during the growing season without harming the

23  
24 <sup>14</sup> U.S. Env’tl. Prot. Agency, *Summary of the IBT Review Program Office of Pesticide Programs* (1983), available at  
<https://nepis.epa.gov/Exe/ZyPDF.cgi/91014ULV.PDF?Dockey=91014ULV.PDF>.

25 <sup>15</sup> Marie-Monique Robin, *The World According to Monsanto: Pollution, Corruption and the Control of the World’s*  
26 *Food Supply* (2011) (citing U.S. Env’tl. Prot. Agency, *Data Validation, Memo from K. Locke, Toxicology Branch,*  
*to R. Taylor, Registration Branch.* Washington, D.C. (August 9, 1978)).

27 <sup>16</sup> Monsanto, *Backgrounder, Testing Fraud: IBT and Craven Laboratories, supra.*

1 crop. This allowed Monsanto to expand its market for Roundup<sup>®</sup> even further; by 2000,  
2 Monsanto's biotechnology seeds were planted on more than 80 million acres worldwide and  
3 nearly 70% of American soybeans were planted from Roundup Ready<sup>®</sup> seeds. It also secured  
4 Monsanto's dominant share of the glyphosate/Roundup<sup>®</sup> market through a marketing strategy  
5 that coupled proprietary Roundup Ready<sup>®</sup> seeds with continued sales of its Roundup<sup>®</sup> herbicide.  
6 37. Through a three-pronged strategy of increasing production, decreasing prices, and by  
7 coupling with Roundup Ready<sup>®</sup> seeds, Roundup<sup>®</sup> became Monsanto's most profitable product.  
8 In 2000, Roundup<sup>®</sup> accounted for almost \$2.8 billion in sales, outselling other herbicides by a  
9 margin of five to one, and accounting for close to half of Monsanto's revenue.<sup>17</sup> Today,  
10 glyphosate remains one of the world's largest herbicides by sales volume.

11 **Monsanto has known for decades that it falsely advertises the safety of Roundup<sup>®</sup>**  
12

13 38. In 1996, the New York Attorney General ("NYAG") filed a lawsuit against Monsanto  
14 based on its false and misleading advertising of Roundup<sup>®</sup> products. Specifically, the lawsuit  
15 challenged Monsanto's general representations that its spray-on glyphosate-based herbicides,  
16 including Roundup<sup>®</sup>, were "**safer than table salt**" and "**practically non-toxic**" to mammals,  
17 birds, and fish. Among the representations the NYAG found deceptive and misleading about the  
18 human and environmental safety of glyphosate and/or Roundup<sup>®</sup> are the following:

- 19 a) "Remember that environmentally friendly Roundup herbicide is biodegradable.  
20 It won't build up in the soil so you can use Roundup with confidence along  
21 customers' driveways, sidewalks and fences ..."
- 22 b) "And remember that Roundup is biodegradable and won't build up in the soil.  
23 That will give you the environmental confidence you need to use Roundup  
24 everywhere you've got a weed, brush, edging or trimming problem."

25  
26 <sup>17</sup> David Barboza, *The Power of Roundup; A Weed Killer Is A Block for Monsanto to Build On*, N.Y. TIMES, Aug. 2,  
27 2001, available at <http://www.nytimes.com/2001/08/02/business/the-power-of-roundup-a-weed-killer-is-a-block-for-monsanto-to-build-on.html>.

- 1 c) "Roundup biodegrades into naturally occurring elements."  
2 d) "Remember that versatile Roundup herbicide stays where you put it. That  
3 means there's no washing or leaching to harm customers' shrubs or other  
4 desirable vegetation."  
5 e) "This non-residual herbicide will not wash or leach in the soil. It ... stays  
6 where you apply it."  
7 f) "You can apply Accord with 'confidence because it will stay where you put it'  
8 it bonds tightly to soil particles, preventing leaching. Then, soon after  
9 application, soil microorganisms biodegrade Accord into natural products."  
10 g) "Glyphosate is less toxic to rats than table salt following acute oral ingestion."  
11 h) "Glyphosate's safety margin is much greater than required. It has over a  
12 1,000-fold safety margin in food and over a 700-fold safety margin for workers  
13 who manufacture it or use it."  
14 i) "You can feel good about using herbicides by Monsanto. They carry a toxicity  
15 category rating of 'practically non-toxic' as it pertains to mammals, birds and  
16 fish."  
17 j) "Roundup can be used where kids and pets will play and breaks down into  
18 natural material." This ad depicts a person with his head in the ground and a pet  
19 dog standing in an area which has been treated with Roundup.<sup>18</sup>

20 39. On November 19, 1996, Monsanto entered into an Assurance of Discontinuance with  
21 NYAG, in which Monsanto agreed, among other things, "to cease and desist from publishing or  
22 broadcasting any advertisements [in New York] that represent, directly or by implication" that:

- 23 a) its glyphosate-containing pesticide products or any component thereof are safe,  
24 non-toxic, harmless or free from risk.

25 \* \* \*

26 <sup>18</sup> Attorney General of the State of New York, In the Matter of Monsanto Company, Assurance of Discontinuance  
27 Pursuant to Executive Law § 63(15) (Nov. 1996).

1 b) its glyphosate-containing pesticide products or any component thereof  
2 manufactured, formulated, distributed or sold by Monsanto are biodegradable

3 \* \* \*

4 c) its glyphosate-containing pesticide products or any component thereof stay  
5 where they are applied under all circumstances and will not move through the  
6 environment by any means.

7 \* \* \*

8 d) its glyphosate-containing pesticide products or any component thereof are  
9 “good” for the environment or are “known for their environmental  
10 characteristics.”

11 \* \* \*

12 e) glyphosate-containing pesticide products or any component thereof are safer or  
13 less toxic than common consumer products other than herbicides;

14 f) its glyphosate-containing products or any component thereof might be classified  
15 as “practically non-toxic.”

16 40. Monsanto did not alter its advertising in the same manner in any state other than New  
17 York, and on information and belief it still has not done so today.

18 41. In 2009, France’s highest court ruled that Monsanto had not told the truth about the  
19 safety of Roundup<sup>®</sup>. The French court affirmed an earlier judgement that Monsanto had falsely  
20 advertised its herbicide Roundup<sup>®</sup> as “biodegradable” and that it “left the soil clean.”<sup>19</sup>

21 **Classifications and Assessments of Glyphosate**

22  
23 42. The IARC process for the classification of glyphosate followed IARC’s stringent  
24 procedures for the evaluation of a chemical agent. Over time, the IARC Monograph program  
25 has reviewed 980 agents. Of those reviewed, it has determined 116 agents to be Group 1

26 <sup>19</sup> *Monsanto Guilty in ‘False Ad’ Row*, BBC, Oct. 15, 2009, available at  
27 <http://news.bbc.co.uk/2/hi/europe/8308903.stm>.

1 (Known Human Carcinogens); 73 agents to be Group 2A (Probable Human Carcinogens); 287  
2 agents to be Group 2B (Possible Human Carcinogens); 503 agents to be Group 3 (Not  
3 Classified); and one agent to be Probably Not Carcinogenic.

4 43. The established procedure for IARC Monograph evaluations is described in the IARC  
5 Programme's Preamble.<sup>20</sup> Evaluations are performed by panels of international experts, selected  
6 on the basis of their expertise and the absence of actual or apparent conflicts of interest.

7 44. One year before the Monograph meeting, the meeting is announced and there is a call  
8 both for data and for experts. Eight months before the Monograph meeting, the Working Group  
9 membership is selected and the sections of the Monograph are developed by the Working Group  
10 members. One month prior to the Monograph meeting, the call for data is closed and the  
11 various draft sections are distributed among Working Group members for review and comment.  
12 Finally, at the Monograph meeting, the Working Group finalizes review of all literature,  
13 evaluates the evidence in each category, and completes the overall evaluation. Within two weeks  
14 after the Monograph meeting, the summary of the Working Group findings are published in *The*  
15 *Lancet Oncology*, and within a year after the meeting, the finalized Monograph is published.

16 45. In assessing an agent, the IARC Working Group reviews the following information:  
17 (a) human, experimental, and mechanistic data; (b) all pertinent epidemiological studies and  
18 cancer bioassays; and (c) representative mechanistic data. The studies must be publicly  
19 available and have sufficient detail for meaningful review, and reviewers cannot be associated  
20 with the underlying study.

21 46. In March 2015, IARC reassessed glyphosate. The summary published in *The Lancet*  
22 *Oncology* reported that glyphosate is a Group 2A agent and probably carcinogenic in humans.

23 47. On July 29, 2015, IARC issued its Monograph for glyphosate, Monograph Volume 112.  
24 For Volume 112, a Working Group of 17 experts from 11 countries met at IARC from March 3–  
25 10, 2015 to assess the carcinogenicity of certain herbicides, including glyphosate. The March

---

26 <sup>20</sup> World Health Org., *IARC Monographs on the Evaluation of Carcinogenic Risks to Humans: Preamble* (2006),  
27 available at <http://monographs.iarc.fr/ENG/Preamble/CurrentPreamble.pdf>.

1 meeting culminated a nearly one-year review and preparation by the IARC Secretariat and the  
2 Working Group, including a comprehensive review of the latest available scientific evidence.  
3 According to published procedures, the Working Group considered “reports that have been  
4 published or accepted for publication in the openly available scientific literature” as well as  
5 “data from governmental reports that are publicly available.”

6 48. The studies considered the following exposure groups: (1) occupational exposure of  
7 farmers and tree nursery workers in the United States, forestry workers in Canada and Finland  
8 and municipal weed-control workers in the United Kingdom; and (2) para- occupational  
9 exposure in farming families.

10 49. Glyphosate was identified as the second-most used household herbicide in the United  
11 States for weed control between 2001 and 2007 and the most heavily used herbicide in the  
12 world in 2012.

13 50. Exposure pathways are identified as air (especially during spraying), water, and food.  
14 Community exposure to glyphosate is widespread and found in soil, air, surface water, and  
15 groundwater, as well as in food.

16 51. The assessment of the IARC Working Group identified several case control studies of  
17 occupational exposure in the United States, Canada, and Sweden. These studies show a human  
18 health concern from agricultural and other work-related exposure to glyphosate.

19 52. The IARC Working Group found an increased risk between exposure to glyphosate and  
20 NHL and several subtypes of NHL, and the increased risk persisted after adjustment for other  
21 pesticides.

22 53. The IARC Working Group also found that glyphosate caused DNA and chromosomal  
23 damage in human cells. One study in community residents reported increases in blood markers  
24 of chromosomal damage (micronuclei) after glyphosate formulations were sprayed.

25 54. In male CD-1 mice, glyphosate induced a positive trend in the incidence of a rare tumor:  
26 renal tubule carcinoma. A second study reported a positive trend for haemangiosarcoma in  
27

1 male mice. Glyphosate increased pancreatic islet-cell adenoma in male rats in two studies. A  
2 glyphosate formulation promoted skin tumors in an initiation-promotion study in mice.

3 55. The IARC Working Group also noted that glyphosate has been detected in the urine of  
4 agricultural workers, indicating absorption. Soil microbes degrade glyphosate to  
5 aminomethylphosphoric acid (AMPA). Blood AMPA detection after exposure suggests  
6 intestinal microbial metabolism in humans.

7 56. The IARC Working Group further found that glyphosate and glyphosate formulations  
8 induced DNA and chromosomal damage in mammals, and in human and animal cells in utero.

9 57. The IARC Working Group also noted genotoxic, hormonal, and enzymatic effects in  
10 mammals exposed to glyphosate.<sup>21</sup> Essentially, glyphosate inhibits the biosynthesis of aromatic  
11 amino acids, which leads to several metabolic disturbances, including the inhibition of protein  
12 and secondary product biosynthesis and general metabolic disruption.

13 58. The IARC Working Group also reviewed an Agricultural Health Study, consisting of a  
14 prospective cohort of 57,311 licensed pesticide applicators in Iowa and North Carolina.<sup>22</sup> While  
15 this study differed from others in that it was based on a self-administered questionnaire, the  
16 results support an association between glyphosate exposure and multiple myeloma, hairy cell  
17 leukemia (HCL), and chronic lymphocytic leukemia (CLL), in addition to several other cancers.

18  
19 **Other Earlier Findings About Glyphosate's Dangers to Human Health**

20 59. The EPA has a technical fact sheet, as part of its Drinking Water and Health, National  
21 Primary Drinking Water Regulations publication, relating to glyphosate. This technical fact  
22 sheet predates IARC's March 20, 2015 evaluation. The fact sheet describes the release patterns  
23 for glyphosate as follows:

24  
25 <sup>21</sup> Guyton et al., *Carcinogenicity of Tetrachlorvinphos, Parathion, Malathion, Diazinon & Glyphosate*, *supra* at 77.

26 <sup>22</sup> Anneclare J. De Roos et al., *Cancer Incidence Among Glyphosate-Exposed Pesticide Applicators in the*  
27 *Agricultural Health Study*, 113 *Env'tl Health Perspectives* 49–54 (2005), available at  
<http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1253709/pdf/ehp0113-000049.pdf>.

### Release Patterns

1 Glyphosate is released to the environment in its use as a herbicide for  
2 controlling woody and herbaceous weeds on forestry, right-of-way, cropped and  
3 non-cropped sites. These sites may be around water and in wetlands.

4 It may also be released to the environment during its manufacture, formulation,  
5 transport, storage, disposal and cleanup, and from spills. Since glyphosate is  
6 not a listed chemical in the Toxics Release Inventory, data on releases during  
7 its manufacture and handling are not available.

8 Occupational workers and home gardeners may be exposed to glyphosate by  
9 inhalation and dermal contact during spraying, mixing, and cleanup. They  
10 may also be exposed by touching soil and plants to which glyphosate was  
11 applied. Occupational exposure may also occur during glyphosate's  
12 manufacture, transport storage, and disposal.<sup>23</sup>

13 60. In 1995, the Northwest Coalition for Alternatives to Pesticides reported that in  
14 California, the state with the most comprehensive program for reporting of pesticide-caused  
15 illness, glyphosate was the third most commonly-reported cause of pesticide illness among  
16 agricultural workers.<sup>24</sup>

### **The Toxicity of Other Ingredients in Roundup®**

17 61. In addition to the toxicity of the active ingredient, glyphosate, several studies support the  
18 hypothesis that the glyphosate-based formulation in Defendant's Roundup® products is more  
19 dangerous and toxic than glyphosate alone. Indeed, as early as 1991, available evidence  
20 demonstrated that glyphosate formulations were significantly more toxic than glyphosate  
21 alone.<sup>25</sup>

22 62. In 2002, a study by Julie Marc, entitled "Pesticide Roundup Provokes Cell Division  
23 Dysfunction at the Level of CDK1/Cyclin B Activation," revealed that Roundup® causes delays

---

24 <sup>23</sup> U.S. Env'tl. Prot. Agency, *Technical Factsheet on: Glyphosate, supra*.

25 <sup>24</sup> Caroline Cox, *Glyphosate, Part 2: Human Exposure and Ecological Effects*, 15 J. PESTICIDE REFORM 4 (1995);  
26 W.S. Peas et al., *Preventing pesticide-related illness in California agriculture: Strategies and priorities*.  
27 *Environmental Health Policy Program Report*, Univ. of Cal. School of Public Health, Calif. Policy Seminar (1993).

28 <sup>25</sup> Martinez, T.T. and K. Brown, *Oral and pulmonary toxicology of the surfactant used in Roundup herbicide*, PROC.  
WEST. PHARMACOL. SOC. 34:43-46 (1991).



1 in the cell cycles of sea urchins but that the same concentrations of glyphosate alone were  
2 ineffective and did not alter cell cycles.<sup>26</sup>

3 63. A 2004 study by Marc and others, entitled “Glyphosate-based pesticides affect cell cycle  
4 regulation,” demonstrated a molecular link between glyphosate-based products and cell cycle  
5 dysregulation. The researchers noted that “cell-cycle dysregulation is a hallmark of tumor cells  
6 and human cancer. Failure in the cell-cycle checkpoints leads genomic instability and  
7 subsequent development of cancers from the initial affected cell.” Further, “[s]ince cell cycle  
8 disorders such as cancer result from dysfunction of a unique cell, it was of interest to evaluate the  
9 threshold dose of glyphosate affecting the cells.”<sup>27</sup>

10 64. In 2005, a study by Francisco Peixoto, entitled “Comparative effects of the Roundup and  
11 glyphosate on mitochondrial oxidative phosphorylation,” demonstrated that Roundup<sup>®</sup>'s effects  
12 on rat liver mitochondria are far more toxic than equal concentrations of glyphosate alone. The  
13 Peixoto study further suggested that the harmful effects of Roundup<sup>®</sup> on mitochondrial  
14 bioenergetics could not be exclusively attributed to glyphosate but could be the result of other  
15 chemicals, such as the surfactant POEA, or in the alternative, due to a potential synergic effect  
16 between glyphosate and other ingredients in the Roundup<sup>®</sup> formulation.<sup>28</sup>

17 65. In 2009, Nora Benachour and Gilles-Eric Seralini published a study examining the  
18 effects of Roundup<sup>®</sup> and glyphosate on human umbilical, embryonic, and placental cells. The  
19 study tested dilution levels of Roundup<sup>®</sup> and glyphosate that were far below agricultural  
20 recommendations, corresponding with low levels of residue in food. The researchers ultimately  
21 concluded that supposed “inert” ingredients, and possibly POEA, alter human cell permeability

---

22 <sup>26</sup> Julie Marc, et al., *Pesticide Roundup Provokes Cell Division Dysfunction at the Level of CDKI/Cyclin B*  
23 *Activation*, 15 CHEM. RES. TOXICOL. 326–331 (2002), available at  
<http://pubs.acs.org/doi/full/10.1021/tx015543g>.

24 <sup>27</sup> Julie Marc, et al., *Glyphosate-based pesticides affect cell cycle regulation*, 96 BIOLOGY OF THE CELL 245, 245-  
249 (2004), available at <http://onlinelibrary.wiley.com/doi/10.1016/j.biolcel.2003.11.010/epdf>.

25 <sup>28</sup> Francisco Peixoto, *Comparative effects of the Roundup and glyphosate on mitochondrial oxidative*  
26 *phosphorylation*, 61 CHEMOSPHERE 1115, 1122 (2005), available at  
27 [https://www.researchgate.net/publication/7504567\\_Comparative\\_effects\\_of\\_the\\_Roundup\\_and\\_glyphos](https://www.researchgate.net/publication/7504567_Comparative_effects_of_the_Roundup_and_glyphosate_on_mitochondrial_oxidative_phosphorylation)  
ate\_on\_mitochondrial\_oxidative\_phosphorylation.

1 and amplify toxicity of glyphosate alone. The researchers further suggested that assessments of  
2 glyphosate toxicity should account for the presence of adjuvants or additional chemicals used in  
3 the formulation of the complete pesticide. The study confirmed that the adjuvants present in  
4 Roundup<sup>®</sup> are not, in fact, inert and that Roundup<sup>®</sup> is potentially far more toxic than its active  
5 ingredient glyphosate alone.<sup>29</sup>

6 66. The results of these studies were at all times available to Defendant. Defendant thus  
7 knew or should have known that Roundup<sup>®</sup> is more toxic than glyphosate alone and that safety  
8 studies of Roundup<sup>®</sup>, Roundup's adjuvants and "inert" ingredients, and/or the surfactant POEA  
9 were necessary to protect Plaintiff from Roundup<sup>®</sup>.

10 67. Despite its knowledge that Roundup<sup>®</sup> is considerably more dangerous than glyphosate  
11 alone, Defendant continued to promote Roundup<sup>®</sup> as safe.

### 12 **Recent Worldwide Bans on Roundup<sup>®</sup>/Glyphosate**

13  
14 68. Several countries around the world have instituted bans on the sale of Roundup<sup>®</sup> and  
15 other glyphosate-containing herbicides, both before and since IARC first announced its  
16 assessment for glyphosate in March 2015, and more countries undoubtedly will follow suit as  
17 the dangers of the use of Roundup<sup>®</sup> become more widely known. The Netherlands issued a ban  
18 on all glyphosate-based herbicides in April 2014, including Roundup<sup>®</sup>, which will take effect by  
19 the end of 2015. In issuing the ban, the Dutch Parliament member who introduced the  
20 successful legislation stated: "Agricultural pesticides in user-friendly packaging are sold in  
21 abundance to private persons. In garden centers, Roundup<sup>®</sup> is promoted as harmless, but  
22 unsuspecting customers have no idea what the risks of this product are. Especially children are  
23 sensitive to toxic substances and should therefore not be exposed to it."<sup>30</sup>

24  
25 <sup>29</sup> Nora Benachour, et al., *Glyphosate Formulations Induce Apoptosis and Necrosis in Human Umbilical,  
Embryonic, and Placental Cells*, 22 CHEM. RES. TOXICOL. 97-105 (2008), available at  
<http://big.assets.huffingtonpost.com/france.pdf>.

26 <sup>30</sup> *Holland's Parliament Bans Glyphosate Herbicides*, The Real Agenda, April 14, 2014, available at [http://real-](http://real-agenda.com/hollands-parliament-bans-glyphosate-herbicides/)  
27 [agenda.com/hollands-parliament-bans-glyphosate-herbicides/](http://real-agenda.com/hollands-parliament-bans-glyphosate-herbicides/).

1 69. The Brazilian Public Prosecutor in the Federal District requested that the Brazilian  
2 Justice Department suspend the use of glyphosate.<sup>31</sup>

3 70. France banned the private sale of Roundup<sup>®</sup> and glyphosate following the IARC  
4 assessment for Glyphosate.<sup>32</sup>

5 71. Bermuda banned both the private and commercial sale of glyphosates, including  
6 Roundup<sup>®</sup>. The Bermuda government explained its ban as follows: “Following a recent  
7 scientific study carried out by a leading cancer agency, the importation of weed spray  
8 ‘Roundup’ has been suspended.”<sup>33</sup>

9 72. The Sri Lankan government banned the private and commercial use of glyphosate,  
10 particularly out of concern that glyphosate has been linked to fatal kidney disease in agricultural  
11 workers.<sup>34</sup>

12 73. The government of Colombia announced its ban on using Roundup<sup>®</sup> and glyphosate to  
13 destroy illegal plantations of coca, the raw ingredient for cocaine, because of the WHO’s  
14 finding that glyphosate is probably carcinogenic.<sup>35</sup>

---

15  
16  
17  
18 <sup>31</sup> Christina Sarich, *Brazil’s Public Prosecutor Wants to Ban Monsanto’s Chemicals Following Recent Glyphosate-  
19 Cancer Link*, GLOBAL RESEARCH, May 14, 2015, available at <http://www.globalresearch.ca/brazils-public-prosecutor-wants-to-ban-monsantos-chemicals-following-recent-glyphosate-cancer-link/5449440>; see Ministério Público Federal, *MPF/DF reforça pedido para que glifosato seja banido do mercado nacional*, April, 14, 2015, available at [http://noticias.pgr.mpf.mp.br/noticias/noticias-do-site/copy\\_of\\_meio-ambiente-e-patrimonio-cultural/mpf-df-reforca-pedido-para-que-glifosato-seja-banido-do-mercado-nacional](http://noticias.pgr.mpf.mp.br/noticias/noticias-do-site/copy_of_meio-ambiente-e-patrimonio-cultural/mpf-df-reforca-pedido-para-que-glifosato-seja-banido-do-mercado-nacional).

20  
21 <sup>32</sup> Zoe Schlanger, *France Bans Sales of Monsanto’s Roundup in Garden Centers, 3 Months After U.N. Calls it  
22 ‘Probable Carcinogen’*, NEWSWEEK, June 15, 2015, available at <http://www.newsweek.com/france-bans-sale-monsantos-roundup-garden-centers-after-un-names-it-probable-343311>.

23 <sup>33</sup> *Health Minister: Importation of Roundup Weed Spray Suspended*, Today in Bermuda, May, 11 2015, available at <http://www.todayinbermuda.com/news/health/item/1471-health-minister-importation-of-roundup-weed-spray-suspended>.

24 <sup>34</sup> *Sri Lanka’s New President Puts Immediate Ban on Glyphosate Herbicides*, Sustainable Pulse, May 25, 2015, available at <http://sustainablepulse.com/2015/05/25/sri-lankas-new-president-puts-immediate-ban-on-glyphosate-herbicides/#.VeduYk3bKAw>.

25 <sup>35</sup> *Columbia to ban coca spraying herbicide glyphosate*, BBC, May 10, 2015, available at <http://www.bbc.com/news/world-latin-america-32677411>.

**Proposition 65 Listing**

1  
2 74. On September 4, 2015, California’s Office of Environmental Health Hazard Assessment  
3 (“OEHHA”) published a notice of intent to include glyphosate on the state’s list of known  
4 carcinogens under Proposition 65.<sup>36</sup> California’s Safe Drinking Water and Toxic Enforcement  
5 Act of 1986 (informally known as “Proposition 65”), requires the state to maintain and, at least  
6 once a year, revise and republish a list of chemicals “known to the State of California to cause  
7 cancer or reproductive toxicity.”<sup>37</sup> The OEHHA determined that glyphosate met the criteria for  
8 the listing mechanism under the Labor Code following IARC’s assessment of the chemical.<sup>38</sup>

9 75. The listing process under the Labor Code is essentially automatic. The list of known  
10 carcinogens, at a minimum, must include substances identified by reference in Labor Code §  
11 6382(b)(1). That section of the Labor Code identifies “[s]ubstances listed as human or animal  
12 carcinogens by the International Agency for Research on Cancer (IARC).” IARC’s  
13 classification of glyphosate as a Group 2A chemical (“probably carcinogenic to humans”)  
14 therefore triggered the listing.

15 76. A business that deploys a listed chemical in its products must provide “clear and  
16 reasonable warnings” to the public prior to exposure to the chemical. To be clear and  
17 reasonable, a warning must “(1) clearly communicate that the chemical is known to cause  
18 cancer, and/or birth defects or other reproductive harm; and (2) effectively reach the person  
19 before exposure.”<sup>39</sup> The law also prohibits the discharge of listed chemicals into drinking water.

20  
21  
22 <sup>36</sup> Cal. Env’tl. Prot. Agency Office of Env’tl. Health Hazard Assessment, Notice of Intent to List Chemicals by the  
Labor Code Mechanism: Tetrachlorvinphos, Parathion, Malathion, Glyphosate (Sept. 4, 2015),  
[http://oehha.ca.gov/prop65/CRNR\\_notices/admin\\_listing/intent\\_to\\_list/pdf\\_zip/090415NOIL\\_LCSet27.pdf](http://oehha.ca.gov/prop65/CRNR_notices/admin_listing/intent_to_list/pdf_zip/090415NOIL_LCSet27.pdf).

23 <sup>37</sup> *Frequently Asked Questions*, STATE OF CAL. DEP’T OF JUSTICE, OFFICE OF THE ATTORNEY GENERAL,  
24 <http://oag.ca.gov/prop65/faq> (last visited April 19, 2016).

25 <sup>38</sup> Cal. Env’tl. Prot. Agency Office of Env’tl. Health Hazard Assessment, Notice of Intent to List Chemicals by the  
Labor Code Mechanism: Tetrachlorvinphos, Parathion, Malathion, Glyphosate (Sept. 4, 2015),  
[http://oehha.ca.gov/prop65/CRNR\\_notices/admin\\_listing/intent\\_to\\_list/pdf\\_zip/090415NOIL\\_LCSet27.pdf](http://oehha.ca.gov/prop65/CRNR_notices/admin_listing/intent_to_list/pdf_zip/090415NOIL_LCSet27.pdf).

26 <sup>39</sup> *Frequently Asked Questions*, STATE OF CAL. DEPARTMENT OF JUSTICE, OFFICE OF THE ATTORNEY  
27 GENERAL, *supra*.

1 77. Monsanto disputed the listing decision and, in January 2016, filed a lawsuit against  
 2 OEHHA and the agency's acting director, Lauren Zeise, in California state court, seeking  
 3 declaratory and injunctive relief to prevent OEHHA from listing glyphosate.<sup>40</sup>

4 78. Monsanto alleged that OEHHA's exclusive reliance on the IARC decision signified that  
 5 "OEHHA effectively elevated the determination of an ad hoc committee of an unelected, foreign  
 6 body, which answers to no United States official (let alone any California state official), over  
 7 the conclusions of its own scientific experts."<sup>41</sup> Monsanto further alleged that the Labor Code  
 8 listing mechanism presented various constitutional violations because it "effectively empowers  
 9 an unelected, undemocratic, unaccountable, and foreign body to make laws applicable in  
 10 California."<sup>42</sup> Among other things, Monsanto argued that Proposition 65's requirement to  
 11 provide a "clear and reasonable warning" to consumers that the chemical is a known carcinogen  
 12 would damage its reputation and violate its First Amendment rights.<sup>43</sup>

13 79. The case remains pending.

14 **EFSA Report on Glyphosate**

15  
 16 80. On November 12, 2015, the European Food Safety Authority (EFSA), the European  
 17 Union's primary agency for food safety, reported on its evaluation of the Renewal Assessment  
 18 Report (RAR) on glyphosate.<sup>44</sup> The Rapporteur Member State assigned to glyphosate, the  
 19 German Federal Institute for Risk Assessment (BfR), had produced the RAR as part of the  
 20 renewal process for glyphosate in the EU.

21 \_\_\_\_\_  
 22 <sup>40</sup> Monsanto Company's Verified Petition for Writ of Mandate and Complaint for Preliminary and Permanent  
 23 Injunctive and Declaratory Relief, *Monsanto Co. v. Office of the Env't'l Health Hazard Assessment, et al.*, No. 16-  
 CECEG-00183 (Cal. Super. Ct.) *available at* <http://www.monsanto.com/files/documents/monvoehha.pdf>.

24 <sup>41</sup> *Id.* at 2.

25 <sup>42</sup> *Id.* at 3.

26 <sup>43</sup> *Id.*

27 <sup>44</sup> European Food Safety Auth., Conclusion on the peer review of the pesticide risk assessment of the active  
 substance glyphosate, *available at* [http://www.efsa.europa.eu/sites/default/files/scientific\\_output/files/main\\_documents/4302.pdf](http://www.efsa.europa.eu/sites/default/files/scientific_output/files/main_documents/4302.pdf).

1 81. BfR sent its draft RAR to EFSA and the RAR underwent a peer review process by  
2 EFSA, other member states, and industry groups. As part of the on-going peer review of  
3 Germany's reevaluation of glyphosate, EFSA had also received a second mandate from the  
4 European Commission to consider IARC's findings regarding the potential carcinogenicity of  
5 glyphosate and glyphosate-containing products.

6 82. Based on a review of the RAR, which included data from industry-submitted  
7 unpublished studies, EFSA sent its own report ("Conclusion") to the European Commission,  
8 finding that "glyphosate is unlikely to pose a carcinogenic hazard to humans and the evidence  
9 does not support classification with regard to its carcinogenic potential according to Regulation  
10 (EC) No 1272/2008."<sup>45</sup> EFSA therefore disagreed with IARC: glyphosate was not genotoxic  
11 and did not present a carcinogenic threat to humans.

12 83. In explaining why its results departed from IARC's conclusion, EFSA drew a distinction  
13 between the EU and IARC approaches to the study and classification of chemicals.<sup>46</sup> Although  
14 IARC examined "both glyphosate—an active substance—and glyphosate-based formulations,  
15 grouping all formulations regardless of their composition," EFSA explained that it considered  
16 only glyphosate and that its assessment focuses on "each individual chemical, and each  
17 marketed mixture separately."<sup>47</sup> IARC, on the other hand, "assesses generic agents, including  
18 groups of related chemicals, as well as occupational or environmental exposure, and cultural or  
19 behavioural practices."<sup>48</sup> EFSA accorded greater weight to studies conducted with glyphosate  
20 alone than studies of formulated products.<sup>49</sup>

21 84. EFSA went further and noted:  
22

---

23 <sup>45</sup> *Id.*

24 <sup>46</sup> EFSA Fact Sheet: Glyphosate, EFSA  
[http://www.efsa.europa.eu/sites/default/files/corporate\\_publications/files/efsaexplainsglyphosate151112\\_en.pdf](http://www.efsa.europa.eu/sites/default/files/corporate_publications/files/efsaexplainsglyphosate151112_en.pdf).

25 <sup>47</sup> *Id.*

26 <sup>48</sup> *Id.*

27 <sup>49</sup> *Id.*

1 [A]lthough some studies suggest that certain glyphosate-based formulations  
2 may be genotoxic (i.e. damaging to DNA), others that look solely at the active  
3 substance glyphosate do not show this effect. It is likely, therefore, that ***the***  
4 ***genotoxic effects observed in some glyphosate-based formulations are related***  
5 ***to the other constituents or “co-formulants”***. Similarly, certain glyphosate-  
6 based formulations display higher toxicity than that of the active ingredient,  
7 presumably because of the presence of co-formulants. In its assessment, ***EFSA***  
8 ***proposes that the toxicity of each pesticide formulation and in particular its***  
9 ***genotoxic potential should be further considered and addressed by***  
10 ***Member State authorities while they re-assess uses of glyphosate-based***  
11 ***formulations in their own territories.***<sup>50</sup>

85. Notwithstanding its conclusion, EFSA did set exposure levels for glyphosate.  
8 Specifically, EFSA proposed an acceptable daily intake (ADI) of 0.5 mg/kg of body weight per  
9 day; an acute reference dose (ARfD) of 0.5 mg/kg of body weight; and an acceptable operator  
10 exposure level (AOEL) of 0.1 mg/kg bw per day.<sup>51</sup>

### 12 ***Leading Scientists Dispute EFSA’s Conclusion***

13 86. On November 27, 2015, 96 independent academic and governmental scientists from  
14 around the world submitted an open letter to the EU health commissioner, Vytenis  
15 Andriukaitis.<sup>52</sup> The scientists expressed their strong concerns and urged the commissioner to  
16 disregard the “flawed” EFSA report, arguing that “the BfR decision is not credible because it is  
17 not supported by the evidence and it was not reached in an open and transparent manner.”<sup>53</sup>

18 87. Signatories to the letter included Dr. Christopher J. Portier, Ph.D., and other renowned  
19 international experts in the field, some of whom were part of the IARC Working Group assigned  
20 to glyphosate.

---

22 <sup>50</sup> *Id.*

23 <sup>51</sup> European Food Safety Auth., Conclusion on the peer review of the pesticide risk assessment of the active  
24 substance glyphosate, *supra*.

25 <sup>52</sup> Letter from Christopher J. Portier et al. to Commission Vytenis Andriukaitis, Open letter: Review of the  
26 Carcinogenicity of Glyphosate by EFSA and BfR (Nov. 27, 2015), <http://www.zeit.de/wissen/umwelt/2015-11/glyphosat-offener-brief.pdf>; <http://www.theguardian.com/environment/2016/jan/13/eu-scientists-in-row-over-safety-of-glyphosate-weedkiller>.

27 <sup>53</sup> *Id.*

1 88. In an exhaustive and careful examination, the scientists scrutinized EFSA's conclusions  
2 and outlined why the IARC Working Group decision was "by far the more credible":

3 The IARC WG decision was reached relying on open and transparent  
4 procedures by independent scientists who completed thorough conflict-of-  
5 interest statements and were not affiliated or financially supported in any way  
6 by the chemical manufacturing industry. It is fully referenced and depends  
7 entirely on reports published in the open, peer-reviewed biomedical literature.  
8 It is part of a long tradition of deeply researched and highly credible reports  
9 on the carcinogenicity of hundreds of chemicals issued over the past four  
10 decades by IARC and used today by international agencies and regulatory  
11 bodies around the world as a basis for risk assessment, regulation and public  
12 health policy.<sup>54</sup>

9 89. With respect to human data, the scientists pointed out that EFSA agreed with IARC that  
10 there was "*limited evidence* of carcinogenicity" for non-Hodgkin lymphoma, but EFSA  
11 nonetheless dismissed an association between glyphosate exposure and carcinogenicity. IARC  
12 applies three levels of evidence in its analyses of human data, including sufficient evidence and  
13 limited evidence. EFSA's ultimate conclusion that "there was no unequivocal evidence for a  
14 clear and strong association of NHL with glyphosate" was misleading because it was tantamount  
15 to IARC's highest level of evidence: "sufficient evidence," which means that a causal  
16 relationship has been established. However, the scientists argued, "[l]egitimate public health  
17 concerns arise when 'causality is credible,' i.e., when there is *limited evidence*."<sup>55</sup>

18 90. Among its many other deficiencies, EFSA's conclusions regarding animal  
19 carcinogenicity data were "scientifically unacceptable," particularly in BfR's use of historical  
20 control data and in its trend analysis. Indeed, BfR's analysis directly contradicted the  
21 Organisation for Economic Co-operation and Development ("OECD") testing guidelines while  
22 citing and purporting to follow those same guidelines. For instance, the EFSA report dismisses  
23 observed trends in tumor incidence "because there are no individual treatment groups that are  
24 significantly different from controls and because the maximum observed response is reportedly  
25

---

26 <sup>54</sup> *Id.*

27 <sup>55</sup> *Id.*



1 within the range of the historical control data.” However, according to the scientists, concurrent  
2 controls are recommended over historical controls in all guidelines, scientific reports, and  
3 publications, and, if it is employed, historical control data “should be from studies in the same  
4 timeframe, for the same exact animal strain, preferably from the same laboratory or the same  
5 supplier and preferably reviewed by the same pathologist.” BfR’s use of historical control data  
6 violated these precautions: “only a single study used the same mouse strain as the historical  
7 controls, but was reported more than 10 years after the historical control dataset was  
8 developed.” Further deviating from sound scientific practices, the data used by the BfR came  
9 from studies in seven different laboratories. The scientists concluded:

10 BfR reported seven positive mouse studies with three studies showing increases  
11 in renal tumors, two with positive findings for hemangiosarcomas, and two  
12 with positive findings for malignant lymphomas. BfR additionally reported  
13 two positive findings for tumors in rats. Eliminating the inappropriate use of  
14 historical data, the unequivocal conclusion is that these are not negative  
15 studies, but in fact document the carcinogenicity of glyphosate in laboratory  
16 animals.<sup>56</sup>

17 91. The letter also critiqued the EFSA report’s lack of transparency and the opacity  
18 surrounding the data cited in the report: “citations for almost all of the references, even those  
19 from the open scientific literature, have been redacted from the document” and “there are no  
20 authors or contributors listed for either document, a requirement for publication in virtually all  
21 scientific journals.” Because BfR relied on unpublished, confidential industry-provided studies,  
22 it is “impossible for any scientist not associated with BfR to review this conclusion with  
23 scientific confidence.”<sup>57</sup>

24 92. On March 3, 2016, the letter was published in the *Journal of Epidemiology &*  
25 *Community Health*.<sup>58</sup>

---

26 <sup>56</sup> *Id.*

27 <sup>57</sup> *Id.*

28 <sup>58</sup> Christopher J. Portier, et al., *Differences in the carcinogenic evaluation of glyphosate between the International Agency for Research on Cancer (IARC) and the European Food Safety Authority (EFSA)*, *JOURNAL OF EPIDEMIOLOGY & CMTY. HEALTH*, Mar. 3, 2016, available at <http://jech.bmj.com/content/early/2016/03/03/jech-2015-207005.full>.

**Statement of Concern Regarding Glyphosate-Based Herbicides**

1  
2 93. On February 17, 2016, a consensus statement published in the journal Environmental  
3 Health, entitled “Concerns over use of glyphosate-based herbicides and risks associated with  
4 exposures: a consensus statement,” assessed the safety of glyphosate-based herbicides  
5 (GBHs).<sup>59</sup> The paper’s “focus is on the unanticipated effects arising from the worldwide  
6 increase in use of GBHs, coupled with recent discoveries about the toxicity and human health  
7 risks stemming from use of GBHs.”<sup>60</sup> The researchers drew seven factual conclusions about  
8 GBHs:

- 9 1. GBHs are the most heavily applied herbicide in the world and usage continues to rise;
- 10 2. Worldwide, GBHs often contaminate drinking water sources, precipitation, and air, especially in agricultural regions;
- 11 3. The half-life of glyphosate in water and soil is longer than previously recognized;
- 12 4. Glyphosate and its metabolites are widely present in the global soybean supply;
- 13 5. Human exposures to GBHs are rising;
- 14 6. Glyphosate is now authoritatively classified as a probable human carcinogen; and
- 15 7. Regulatory estimates of tolerable daily intakes for glyphosate in the United States and European Union are based on outdated  
16 science.<sup>61</sup>

17  
18  
19 94. The researchers noted that GBH use has increased approximately 100-fold since the  
20 1970s. Further, far from posing a limited hazard to vertebrates, as previously believed, two  
21 decades of evidence demonstrated that “several vertebrate pathways are likely targets of action,  
22  
23

---

24 <sup>59</sup> John P. Myers, et al, *Concerns over use of glyphosate-based herbicides and risks associated with exposures: a*  
25 *consensus statement*, Environmental Health (2016), available at  
<http://ehjournal.biomedcentral.com/articles/10.1186/s12940-016-0117-0>.

26 <sup>60</sup> *Id.*

27 <sup>61</sup> *Id.*

1 including hepatorenal damage, effects on nutrient balance through glyphosate chelating action  
2 and endocrine disruption.”<sup>62</sup>

3 95. The paper attributes uncertainties in current assessments of glyphosate formulations to  
4 the fact that “[t]he full list of chemicals in most commercial GBHs is protected as ‘commercial  
5 business information,’ despite the universally accepted relevance of such information to  
6 scientists hoping to conduct an accurate risk assessment of these herbicide formulations.”  
7 Further, the researchers argue, “[t]he distinction in regulatory review and decision processes  
8 between ‘active’ and ‘inert’ ingredients has no toxicological justification, given increasing  
9 evidence that several so-called ‘inert’ adjuvants are toxic in their own right.”<sup>63</sup>

10 96. Among various implications, the researchers conclude that “existing toxicological data  
11 and risk assessments are not sufficient to infer that GBHs, as currently used, are safe.” Further,  
12 “GBH-product formulations are more potent, or toxic, than glyphosate alone to a wide array of  
13 non-target organisms including mammals, aquatic insects, and fish.” Accordingly, “risk  
14 assessments of GBHs that are based on studies quantifying the impacts of glyphosate alone  
15 underestimate both toxicity and exposure, and thus risk.” The paper concludes that this  
16 “shortcoming has repeatedly led regulators to set inappropriately high exposure thresholds.”<sup>64</sup>

17 97. The researchers also critique the current practice of regulators who largely rely on  
18 “unpublished, non-peer reviewed data generated by the registrants” but ignore “published  
19 research because it often uses standards and procedures to assess quality that are different from  
20 those codified in regulatory agency data requirements, which largely focus on avoiding fraud.”  
21 In the researchers’ view, “[s]cientists independent of the registrants should conduct regulatory  
22 tests of GBHs that include glyphosate alone, as well as GBH-product formulations.”<sup>65</sup>

---

24 <sup>62</sup> *Id.*

25 <sup>63</sup> *Id.*

26 <sup>64</sup> *Id.*

27 <sup>65</sup> *Id.*

1 98. The researchers also call for greater inclusion of GBHs in government-led toxicology  
2 testing programs:

3 [A] fresh and independent examination of GBH toxicity should be undertaken,  
4 and . . . this re-examination be accompanied by systematic efforts by relevant  
5 agencies to monitor GBH levels in people and in the food supply, none of  
6 which are occurring today. The U.S. National Toxicology Program should  
7 prioritize a thorough toxicological assessment of the multiple pathways now  
8 identified as potentially vulnerable to GBHs.<sup>66</sup>

9 99. The researchers suggest that, in order to fill the gap created by an absence of government  
10 funds to support research on GBHs, regulators could adopt a system through which  
11 manufacturers fund the registration process and the necessary testing:

12 “[W]e recommend that a system be put in place through which  
13 manufacturers of GBHs provide funds to the appropriate regulatory body as part  
14 of routine registration actions and fees. Such funds should then be transferred  
15 to appropriate government research institutes, or to an agency experienced in the  
16 award of competitive grants. In either case, funds would be made available to  
17 independent scientists to conduct the appropriate long-term (minimum 2 years)  
18 safety studies in recognized animal model systems. A thorough and modern  
19 assessment of GBH toxicity will encompass potential endocrine disruption,  
20 impacts on the gut microbiome, carcinogenicity, and multigenerational effects  
21 looking at reproductive capability and frequency of birth defects.”<sup>67</sup>

### 16 *FDA Announces Testing of Glyphosate Residue in Foods*

17 100. On February 17, 2016, the U.S. Food and Drug Administration (“FDA”) announced that,  
18 for the first time in its history, the agency planned to start testing certain foods for glyphosate  
19 residues. FDA spokeswoman Lauren Sucher explained: “The agency is now considering  
20 assignments for Fiscal Year 2016 to measure glyphosate in soybeans, corn, milk, and eggs,  
21 among other potential foods.”<sup>68</sup>

22 101. In 2014, the U.S. Government Accountability Office (GAO) had severely rebuked the  
23 FDA for its failures to both monitor for pesticide residue, including that of glyphosate, and to  
24

25 <sup>66</sup> *Id.*

26 <sup>67</sup> *Id.*

27 <sup>68</sup> Carey Gillam, *FDA to Start Testing for Glyphosate in Food*, TIME, Feb. 17, 2016, available at  
28 <http://time.com/4227500/fda-glyphosate-testing/?xid=tcoshare>.

1 disclose the limitations of its monitoring and testing efforts to the public.<sup>69</sup> The GAO had cited  
2 numerous undisclosed deficiencies in the FDA's process, specifically highlighting its omission  
3 of glyphosate testing.

4 102. Indeed, in the past, both the FDA and the U.S. Department of Agriculture (USDA) had  
5 routinely excluded glyphosate from their testing for the residues of hundreds of other pesticides,  
6 on the rationale that it was too expensive and unnecessary to protect public health. Ms. Sucher,  
7 the FDA spokeswoman, however, now states that "the agency has developed 'streamlined  
8 methods' for testing for the weed killer."<sup>70</sup>

9 103. The FDA's move is significant as the agency possesses enforcement authority and can  
10 seek action if pesticide residues exceed enforcement guidelines.<sup>71</sup>

#### 11 **European Union Vote on Glyphosate Renewal**

12  
13 104. The license for glyphosate in the European Union (EU) was set to expire on June 30,  
14 2016.

15 105. Without an extension of the license, Monsanto's Roundup<sup>®</sup> and other glyphosate-based  
16 herbicides faced a general phase out in EU markets.<sup>72</sup>

17 106. In the months leading up to the license expiration date, protracted meetings and votes  
18 among national experts from the 28 EU Member States failed to produce agreement on an  
19 extension.

---

22 <sup>69</sup> U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-15-38, FDA AND USDA SHOULD STRENGTHEN PESTICIDE  
23 RESIDUE MONITORING PROGRAMS AND FURTHER DISCLOSE MONITORING LIMITATIONS (2014), available  
24 at <http://www.gao.gov/products/GAO-15-38>.

25 <sup>70</sup> Gillam, *supra* note 68.

26 <sup>71</sup> *Id.*; Pesticide Q&A, U.S. FOOD AND DRUG ADMINISTRATION,  
27 <http://www.fda.gov/Food/FoodborneIllnessContaminants/Pesticides/ucm114958.htm> (last visited April 19, 2016).

28 <sup>72</sup> Philip Blenkinsop, Alissa de Carbonnel & Barbara Lewis European, *Commission to extend glyphosate license for 18 months*, REUTERS, June 28, 2016, available at <http://www.reuters.com/article/us-health-eu-glyphosate-idUSKCN0ZE25B>.

1 107. For instance, on March 4, 2016, *The Guardian* reported that France, the Netherlands,  
 2 and Sweden did not support EFSA's assessment that glyphosate was harmless.<sup>73</sup> The paper  
 3 quoted the Swedish environment minister, Åsa Romson, as stating: "We won't take risks with  
 4 glyphosate and we don't think that the analysis done so far is good enough. We will propose  
 5 that no decision is taken until further analysis has been done and the Efsa scientists have been  
 6 more transparent about their considerations."<sup>74</sup>

7 108. The Netherlands argued that relicensing should be placed on hold until after a separate  
 8 evaluation of glyphosate's toxicity can be conducted.<sup>75</sup> Leading up to the vote, Italy joined the  
 9 other EU states in opposing the license renewal, citing health concerns.<sup>76</sup>

10 109. On June 6, 2016, Member States voted but failed to reach a qualified majority in favor or  
 11 against the re-authorization of glyphosate.<sup>77</sup>

12 110. On June 29, 2016, the EU Commission extended the European license for glyphosate for  
 13 18 months to allow the European Chemical Agency to rule on the safety of the chemical, which  
 14 is expected by the end of 2017.<sup>78</sup>

15 111. On July 11, 2016, the EU voted in favor of a proposal to restrict the conditions of use of  
 16 glyphosate in the EU, including a ban on common co-formulant POE-tallowamine (POEA)  
 17 from all glyphosate-based herbicides, including Roundup.<sup>79</sup>

---

19 <sup>73</sup> Arthur Neslen, *EU states rebel against plans to relicense weedkiller glyphosate*, THE GUARDIAN, Mar. 4, 2016,  
 20 available at <http://www.theguardian.com/environment/2016/mar/04/eu-states-rebel-against-plans-to-relicense-weedkiller-glyphosate>.

21 <sup>74</sup> *Id.*

22 <sup>75</sup> Arthur Neslen, *Vote on Controversial weedkiller's European licence postponed*, THE GUARDIAN, Mar. 8, 2016,  
 23 available at <http://www.theguardian.com/environment/2016/mar/08/eu-vote-on-controversial-weedkiller-licence-postponed-glyphosate>.

24 <sup>76</sup> *Id.*

25 <sup>77</sup> Manon Flausch, *Commission prolongs glyphosate license by 18 months*, EURACTIV, June 29, 2016, available at  
<http://www.euractiv.com/section/agriculture-food/news/commission-prolongs-glyphosate-licence-by-18-months/>

26 <sup>78</sup> Arthur Neslen, *Controversial chemical in Roundup weedkiller escapes immediate ban*, THE GUARDIAN, June 29,  
 27 2016, available at <https://www.theguardian.com/business/2016/jun/29/controversial-chemical-roundup-weedkiller-escapes-immediate-ban>

1 112. These restrictions, which are non-binding on the EU states, are expected to apply until  
2 the European Chemicals Agency issues an opinion on the chemical's safety.<sup>80</sup>

3  
4 **Plaintiff Larry J. Faschingbauer's Exposure to Roundup®**

5 113. Larry J. Faschingbauer is a farmer in Bloomer, Wisconsin.

6 114. For decades, Mr. Faschingbauer has used Roundup on his crops and has been exposed to  
7 Roundup from nearby use of the chemical.

8 115. In May 2012, Mr. Faschingbauer was diagnosed with Non-Hodgkin lymphoma.

9 116. During the entire time in which Mr. Faschingbauer was exposed to Roundup®, he did not  
10 know that exposure to Roundup® was injurious to his health or the health of others.

11 117. Mr. Faschingbauer first learned that exposure to Roundup® can cause NHL and other  
12 serious illnesses sometime after July 29, 2015, when IARC first published its evaluation of  
13 glyphosate.

14  
15 **Tolling of the Statute of Limitations**

16 **Discovery Rule Tolling**

17 118. Plaintiff had no way of knowing about the risk of serious illness associated with the use  
18 of and/or exposure to Roundup® and glyphosate until IARC released its formal assessment of  
19 glyphosate in July 2015. This is the quintessential case for tolling.

20 119. Within the time period of any applicable statutes of limitations, Plaintiff could not have  
21 discovered, through the exercise of reasonable diligence, that exposure to Roundup® and  
22 glyphosate is injurious to human health.

23  
24  
25 <sup>79</sup> Sarantis Michalopoulos, *EU agrees ban on glyphosate co-formulant*, EURACTIV, July 11, 2016, available at  
[http://www.euractiv.com/section/agriculture-food/news/eu-agrees-ban-on-glyphosate-co-](http://www.euractiv.com/section/agriculture-food/news/eu-agrees-ban-on-glyphosate-co-formulant/?nl_ref=16562829)  
[formulant/?nl\\_ref=16562829](http://www.euractiv.com/section/agriculture-food/news/eu-agrees-ban-on-glyphosate-co-formulant/?nl_ref=16562829)

26 <sup>80</sup> See Arthur Neslen, *Controversial chemical in Roundup weedkiller escapes immediate ban*, THE GUARDIAN, June  
27 29, 2016.

1 120. Plaintiff did not discover, and did not know of facts that would cause a reasonable  
2 person to suspect, the risks associated with the use of and/or exposure to Roundup<sup>®</sup> and  
3 glyphosate; nor would a reasonable and diligent investigation by him have disclosed that  
4 Roundup<sup>®</sup> and glyphosate would cause his illness.

5 121. For these reasons, all applicable statutes of limitations have been tolled by operation of  
6 the discovery rule with respect to Plaintiff's claims.

7  
8 **Fraudulent Concealment Tolling**

9 122. All applicable statutes of limitations have also been tolled by Monsanto's knowing and  
10 active fraudulent concealment and denial of the facts alleged herein throughout the time period  
11 relevant to this action.

12 123. Instead of disclosing critical safety information about Roundup<sup>®</sup> and glyphosate,  
13 Monsanto has consistently and falsely represented the safety of its Roundup<sup>®</sup> products.

14  
15 **Estoppel**

16 124. Monsanto was under a continuous duty to disclose to consumers, users and other persons  
17 coming into contact with its products, including Plaintiff, accurate safety information  
18 concerning its products and the risks associated with the use of and/or exposure to Roundup<sup>®</sup> and  
19 glyphosate.

20 125. Instead, Monsanto knowingly, affirmatively, and actively concealed safety information  
21 concerning Roundup<sup>®</sup> and glyphosate and the serious risks associated with the use of and/or  
22 exposure to its products.

23 126. Based on the foregoing, Monsanto is estopped from relying on any statutes of limitations  
24 in defense of this action.



**Claims for Relief**

**Count One**  
**Strict Liability (Design Defect)**

1  
2  
3  
4  
5 127. Plaintiff incorporates by reference all preceding paragraphs of this Complaint as if fully  
6 set forth herein, and further alleges:

7 128. Plaintiff brings: this strict liability claim against Defendant for defective design.

8 129. At all times relevant to this litigation, Defendant engaged in the business of testing,  
9 developing, designing, manufacturing, marketing, selling, distributing, and promoting  
10 Roundup<sup>®</sup> products, which are defective and unreasonably dangerous to consumers, users, and  
11 other persons coming into contact with them, including Mr. Faschingbauer, thereby placing  
12 Roundup<sup>®</sup> products into the stream of commerce. These actions were under the ultimate control  
13 and supervision of Defendant.

14 130. At all times relevant to this litigation, Defendant designed, researched, developed,  
15 formulated, manufactured, produced, tested, assembled, labeled, advertised, promoted, marketed,  
16 sold, and distributed the Roundup<sup>®</sup> products used by Mr. Faschingbauer, and/or to which Mr.  
17 Faschingbauer was exposed, as described above.

18 131. At all times relevant to this litigation, Defendant's Roundup<sup>®</sup> products were  
19 manufactured, designed, and labeled in an unsafe, defective, and inherently dangerous manner  
20 that was dangerous for use by or exposure to the public, and, in particular, Mr. Faschingbauer.

21 132. At all times relevant to this litigation, Defendant's Roundup<sup>®</sup> products reached the  
22 intended consumers, handlers, and users or other persons coming into contact with these  
23 products in Illinois and throughout the United States, including Mr. Faschingbauer, without  
24 substantial change in their condition as designed, manufactured, sold, distributed, labeled, and  
25 marketed by Defendant.

26 133. Defendant's Roundup<sup>®</sup> products, as researched, tested, developed, designed, licensed,  
27 formulated, manufactured, packaged, labeled, distributed, sold, and marketed by Defendant,

1 were defective in design and formulation in that when they left the hands of the Defendant's  
2 manufacturers and/or suppliers, they were unreasonably dangerous because they were not as  
3 safe as an ordinary consumer would expect when used in an intended or reasonably foreseeable  
4 manner.

5 134. Defendant's Roundup<sup>®</sup> products, as researched, tested, developed, designed, licensed,  
6 formulated, manufactured, packaged, labeled, distributed, sold, and marketed by Defendant,  
7 were defective in design and formulation in that when they left the hands of Defendant's  
8 manufacturers and/or suppliers, the foreseeable risks associated with these products' reasonably  
9 foreseeable uses exceeded the alleged benefits associated with their design and formulation.

10 135. Therefore, at all times relevant to this litigation, Defendant's Roundup<sup>®</sup> products, as  
11 researched, tested, developed, designed, licensed, manufactured, packaged, labeled, distributed,  
12 sold and marketed by Defendant, were defective in design and formulation, in one or more of  
13 the following ways:

- 14 a) When placed in the stream of commerce, Defendant's Roundup<sup>®</sup> products were  
15 defective in design and formulation, and, consequently, dangerous to an extent  
16 beyond that which an ordinary consumer would expect.
- 17 b) When placed in the stream of commerce, Defendant's Roundup<sup>®</sup> products were  
18 unreasonably dangerous in that they were hazardous and posed a grave risk of  
19 cancer and other serious illnesses when used in a reasonably anticipated manner.
- 20 c) When placed in the stream of commerce, Defendant's Roundup<sup>®</sup> products  
21 contained unreasonably dangerous design defects and were not reasonably safe  
22 when used in a reasonably anticipated or intended manner.
- 23 d) Defendant did not sufficiently test, investigate, or study its Roundup<sup>®</sup> products  
24 and, specifically, the active ingredient glyphosate.
- 25  
26  
27

1 e) Exposure to Roundup<sup>®</sup> and glyphosate-containing products presents a risk of  
2 harmful side effects that outweighs any potential utility stemming from the use of  
3 the herbicide.

4 f) Defendant knew or should have known at the time of marketing its Roundup<sup>®</sup>  
5 products that exposure to Roundup<sup>®</sup> and specifically, its active ingredient  
6 glyphosate, could result in cancer and other severe illnesses and injuries.

7 g) Defendant did not conduct adequate post-marketing surveillance of its Roundup<sup>®</sup>  
8 products.

9 h) Defendant could have employed safer alternative designs and formulations.

10 136. At all times relevant to this litigation, Plaintiff used and/or was exposed to the use of  
11 Defendant's Roundup<sup>®</sup> products in an intended or reasonably foreseeable manner without  
12 knowledge of their dangerous characteristics.

13 137. Plaintiff could not have reasonably discovered the defects and risks associated with  
14 Roundup<sup>®</sup> or glyphosate-containing products before or at the time of exposure.

15 138. The harm caused by Defendant's Roundup<sup>®</sup> products far outweighed their benefit,  
16 rendering Defendant's products dangerous to an extent beyond that which an ordinary consumer  
17 would contemplate. Defendant's Roundup<sup>®</sup> products were and are more dangerous than  
18 alternative products and Defendant could have designed its Roundup<sup>®</sup> products to make them  
19 less dangerous. Indeed, at the time that Defendant designed its Roundup<sup>®</sup> products, the state of  
20 the industry's scientific knowledge was such that a less risky design or formulation was  
21 attainable.

22 139. At the time Roundup<sup>®</sup> products left Defendant's control, there was a practical,  
23 technically feasible, and safer alternative design that would have prevented the harm without  
24 substantially impairing the reasonably anticipated or intended function of Defendant's Roundup<sup>®</sup>  
25 herbicides.

1 140. Defendant's defective design of Roundup<sup>®</sup> amounts to willful, wanton, and/or reckless  
2 conduct by Defendant.

3 141. Therefore, as a result of the unreasonably dangerous condition of its Roundup<sup>®</sup> products,  
4 Defendant is strictly liable to Plaintiff.

5 142. The defects in Defendant's Roundup<sup>®</sup> products were substantial and contributing factors  
6 in causing Plaintiff's grave injuries, and, but for Defendant's misconduct and omissions,  
7 Plaintiff would not have sustained his injuries.

8 143. As a direct and proximate result of Defendant placing its defective Roundup<sup>®</sup> products  
9 into the stream of commerce, Plaintiff has suffered and continues to suffer grave injuries, and he  
10 has endured pain and discomfort, as well as economic hardship, including considerable financial  
11 expenses for medical care and treatment. Plaintiff will continue to incur these expenses in the  
12 future.

13 WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in Plaintiff's favor  
14 for compensatory and punitive damages, together with interest, costs herein incurred, attorneys'  
15 fees, and all such other and further relief as this Court deems just and proper. Plaintiff also  
16 demands a jury trial on the issues contained herein.

17  
18 **Count Two**  
19 **Strict Liability (Failure to Warn)**

20 144. Plaintiff incorporates by reference all preceding paragraphs of this Complaint as if fully  
21 set forth herein, and further alleges:

22 145. Plaintiff brings this strict liability claim against Defendant for failure to warn.

23 146. At all times relevant to this litigation, Defendant engaged in the business of testing,  
24 developing, designing, manufacturing, marketing, selling, distributing, and promoting Roundup<sup>®</sup>  
25 products, which are defective and unreasonably dangerous to consumers, including Plaintiff,  
26 because they do not contain adequate warnings or instructions concerning the dangerous  
27

1 characteristics of Roundup<sup>®</sup> and specifically, the active ingredient glyphosate. These actions  
2 were under the ultimate control and supervision of Defendant.

3 147. Defendant researched, developed, designed, tested, manufactured, inspected, labeled,  
4 distributed, marketed, promoted, sold, and otherwise released into the stream of commerce its  
5 Roundup<sup>®</sup> products, and in the course of same, directly advertised or marketed the products to  
6 consumers and end users, including Plaintiff, Plaintiff's employees, Plaintiff's co-workers, and  
7 persons responsible for consumers (such as employers), and Defendant therefore had a duty to  
8 warn of the risks associated with the reasonably foreseeable uses (and misuses) of Roundup<sup>®</sup>  
9 and glyphosate-containing products and a duty to instruct on the proper, safe use of these  
10 products.

11 148. At all times relevant to this litigation, Defendant had a duty to properly test, develop,  
12 design, manufacture, inspect, package, label, market, promote, sell, distribute, maintain supply,  
13 provide proper warnings, and take such steps as necessary to ensure that its Roundup<sup>®</sup> products  
14 did not cause users and consumers to suffer from unreasonable and dangerous risks. Defendant  
15 had a continuing duty to warn Plaintiff of the dangers associated with Roundup<sup>®</sup> use and  
16 exposure, and a continuing duty to instruct on the proper, safe use of these products. Defendant,  
17 as manufacturer, seller, or distributor of chemical herbicides, is held to the knowledge of an  
18 expert in the field.

19 149. At the time of manufacture, Defendant could have provided warnings or instructions  
20 regarding the full and complete risks of Roundup<sup>®</sup> and glyphosate-containing products because it  
21 knew or should have known of the unreasonable risks of harm associated with the use of and/or  
22 exposure to these products.

23 150. At all times relevant to this litigation, Defendant failed to investigate, study, test, or  
24 promote the safety of its Roundup<sup>®</sup> products. Defendant also failed to minimize the dangers to  
25 users and consumers of its Roundup<sup>®</sup> products and to those who would foreseeably use or be  
26 harmed by Defendant's herbicides, including Plaintiff.

1 151. Despite the fact that Defendant knew or should have known that Roundup<sup>®</sup> products  
2 posed a grave risk of harm, it failed to warn of the dangerous risks associated with their use and  
3 exposure. The dangerous propensities of its products and the carcinogenic characteristics of  
4 glyphosate, as described above, were known to Defendant, or scientifically knowable to  
5 Defendant through appropriate research and testing by known methods, at the time it  
6 distributed, supplied, or sold the product, and not known to end users and consumers, such as  
7 Plaintiff and Plaintiff's employers.

8 152. Defendant knew or should have known that its Roundup<sup>®</sup> and glyphosate-containing  
9 products created significant risks of serious bodily harm to consumers, as alleged herein, and  
10 Defendant failed to adequately warn consumers and reasonably foreseeable users of the risks of  
11 exposure to these products. Defendant has wrongfully concealed information concerning the  
12 dangerous nature of Roundup<sup>®</sup> and its active ingredient glyphosate, and further made false  
13 and/or misleading statements concerning the safety of Roundup<sup>®</sup> and glyphosate.

14 153. At all times relevant to this litigation, Defendant's Roundup<sup>®</sup> products reached the  
15 intended consumers, handlers, and users or other persons coming into contact with these  
16 products throughout the United States, including Plaintiff, without substantial change in their  
17 condition as designed, manufactured, sold, distributed, labeled, and marketed by Defendant.

18 154. At all times relevant to this litigation, Plaintiff used and/or was exposed to the use of  
19 Defendant's Roundup<sup>®</sup> products in their intended or reasonably foreseeable manner without  
20 knowledge of their dangerous characteristics.

21 155. Plaintiff could not have reasonably discovered the defects and risks associated with  
22 Roundup<sup>®</sup> or glyphosate-containing products before or at the time of Plaintiff's exposure.  
23 Plaintiff relied upon the skill, superior knowledge, and judgment of Defendant.

24 156. Defendant knew or should have known that the minimal warnings disseminated with its  
25 Roundup<sup>®</sup> products were inadequate, but it failed to communicate adequate information on the  
26 dangers and safe use/exposure and failed to communicate warnings and instructions that were  
27

1 appropriate and adequate to render the products safe for their ordinary, intended, and reasonably  
2 foreseeable uses, including agricultural and horticultural applications.

3 157. The information that Defendant did provide or communicate failed to contain relevant  
4 warnings, hazards, and precautions that would have enabled agricultural workers, horticultural  
5 workers and/or at-home users such as Plaintiff to utilize the products safely and with adequate  
6 protection. Instead, Defendant disseminated information that was inaccurate, false, and  
7 misleading and which failed to communicate accurately or adequately the comparative severity,  
8 duration, and extent of the risk of injuries associated with use of and/or exposure to Roundup<sup>®</sup>  
9 and glyphosate; continued to aggressively promote the efficacy of its products, even after it knew  
10 or should have known of the unreasonable risks from use or exposure; and concealed,  
11 downplayed, or otherwise suppressed, through aggressive marketing and promotion, any  
12 information or research about the risks and dangers of exposure to Roundup<sup>®</sup> and glyphosate.

13 158. To this day, Defendant has failed to adequately and accurately warn of the true risks of  
14 Plaintiff's injuries associated with the use of and exposure to Roundup<sup>®</sup> and its active ingredient  
15 glyphosate, a probable carcinogen.

16 159. As a result of their inadequate warnings, Defendant's Roundup<sup>®</sup> products were defective  
17 and unreasonably dangerous when they left the possession and/or control of Defendant, were  
18 distributed by Defendant, and used by Plaintiff.

19 160. Defendant is liable to Plaintiff for injuries caused by its failure, as described above, to  
20 provide adequate warnings or other clinically relevant information and data regarding the  
21 appropriate use of its Roundup<sup>®</sup> products and the risks associated with the use of or exposure to  
22 Roundup<sup>®</sup> and glyphosate.

23 161. The defects in Defendant's Roundup<sup>®</sup> products were substantial and contributing factors  
24 in causing Plaintiff's injuries, and, but for Defendant's misconduct and omissions, Plaintiff  
25 would not have sustained his injuries.

1 162. Had Defendant provided adequate warnings and instructions and properly disclosed and  
2 disseminated the risks associated with its Roundup<sup>®</sup> products, Plaintiff could have avoided the  
3 risk of developing injuries as alleged herein and Plaintiff and Plaintiff's employers could have  
4 obtained alternative herbicides.

5 163. As a direct and proximate result of Defendant placing its defective Roundup<sup>®</sup> products  
6 into the stream of commerce, Plaintiff has suffered and continues to suffer severe injuries, and  
7 had endured physical pain and discomfort, as well as economic hardship, including  
8 considerable financial expenses for medical care and treatment. Plaintiff will continue to incur  
9 these expenses in the future.

10 WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in Plaintiff's favor  
11 for compensatory and punitive damages, together with interest, costs herein incurred, attorneys'  
12 fees, and all such other and further relief as this Court deems just and proper. Plaintiff also  
13 demands a jury trial on the issues contained herein.

14  
15 **Count Three**  
16 **Negligence**

17 164. Plaintiff incorporates by reference all preceding paragraphs of this Complaint as if fully  
18 set forth herein, and further alleges:

19 165. Defendant, directly or indirectly, caused Roundup<sup>®</sup> products to be sold, distributed,  
20 packaged, labeled, marketed, and/or promoted.

21 166. Defendant, directly or indirectly, caused Roundup<sup>®</sup> products to be purchased and/or used  
22 by Plaintiff.

23 167. At all times relevant to this litigation, Defendant had a duty to exercise reasonable care  
24 in the design, research, manufacture, marketing, advertisement, supply, promotion, packaging,  
25 sale, and distribution of its Roundup<sup>®</sup> products, including the duty to take all reasonable steps  
26



1 necessary to manufacture, promote, and/or sell a product that was not unreasonably dangerous  
2 to consumers, users, and other persons coming into contact with the product.

3 168. At all times relevant to this litigation, Defendant had a duty to exercise reasonable care  
4 in the marketing, advertisement, and sale of its Roundup<sup>®</sup> products. Defendant's duty of care  
5 owed to consumers and the general public included providing accurate, true, and correct  
6 information concerning the risks of using Roundup<sup>®</sup> and appropriate, complete, and accurate  
7 warnings concerning the potential adverse effects of exposure to Roundup<sup>®</sup> and, in particular, its  
8 active ingredient glyphosate.

9 169. At all times relevant to this litigation, Defendant knew or, in the exercise of reasonable  
10 care, should have known of the hazards and dangers of Roundup<sup>®</sup> and specifically, the  
11 carcinogenic properties of the chemical glyphosate.

12 170. Accordingly, at all times relevant to this litigation, Defendant knew or, in the exercise of  
13 reasonable care, should have known that use of or exposure to its Roundup<sup>®</sup> products could  
14 cause Plaintiff's injuries and thus created a dangerous and unreasonable risk of injury to the  
15 users of these products, including Plaintiff.

16 171. Defendant knew or, in the exercise of reasonable care, should have known that  
17 Roundup<sup>®</sup> is more toxic than glyphosate alone and that safety studies on Roundup<sup>®</sup>, Roundup<sup>®</sup>'s  
18 adjuvants and "inert" ingredients, and/or the surfactant POEA were necessary to protect Plaintiff  
19 from Roundup<sup>®</sup>.

20 172. Defendant knew or, in the exercise of reasonable care, should have known that tests  
21 limited to Roundup's active ingredient glyphosate were insufficient to prove the safety of  
22 Roundup<sup>®</sup>.

23 173. Defendant also knew or, in the exercise of reasonable care, should have known that users  
24 and consumers of Roundup<sup>®</sup> were unaware of the risks and the magnitude of the risks  
25 associated with the use of and/or exposure to Roundup<sup>®</sup> and glyphosate-containing products.

1 174. As such, Defendant breached its duty of reasonable care and failed to exercise ordinary  
2 care in the design, research, development, manufacture, testing, marketing, supply, promotion,  
3 advertisement, packaging, sale, and distribution of its Roundup<sup>®</sup> products, in that Defendant  
4 manufactured and produced defective herbicides containing the chemical glyphosate, knew or  
5 had reason to know of the defects inherent in its products, knew or had reason to know that a  
6 user's or consumer's exposure to the products created a significant risk of harm and  
7 unreasonably dangerous side effects, and failed to prevent or adequately warn of these risks and  
8 injuries.

9 175. Defendant failed to appropriately and adequately test Roundup<sup>®</sup>, Roundup<sup>®</sup>'s adjuvants  
10 and "inert" ingredients, and/or the surfactant POEA to protect Plaintiff from Roundup<sup>®</sup>.

11 176. Despite its ability and means to investigate, study, and test its products and to provide  
12 adequate warnings, Defendant has failed to do so. Indeed, Defendant has wrongfully concealed  
13 information and has further made false and/or misleading statements concerning the safety  
14 and/or exposure to Roundup<sup>®</sup> and glyphosate.

15 177. Defendant's negligence included:

- 16 a) Manufacturing, producing, promoting, formulating, creating, developing,  
17 designing, selling, and/or distributing its Roundup<sup>®</sup> products without thorough  
18 and adequate pre- and post-market testing;
- 19 b) Manufacturing, producing, promoting, formulating, creating, developing,  
20 designing, selling, and/or distributing Roundup<sup>®</sup> while negligently and/or  
21 intentionally concealing and failing to disclose the results of trials, tests, and  
22 studies of exposure to glyphosate, and, consequently, the risk of serious harm  
23 associated with human use of and exposure to Roundup<sup>®</sup>;
- 24 c) Failing to undertake sufficient studies and conduct necessary tests to determine  
25 whether or not Roundup<sup>®</sup> products and glyphosate-containing products were safe  
26 for their intended use in agriculture, horticulture, and at-home use;

- 1 d) Failing to undertake sufficient studies and conduct necessary tests to determine  
2 the safety of “inert” ingredients and/or adjuvants contained within Roundup<sup>®</sup>,  
3 and the propensity of these ingredients to render Roundup<sup>®</sup> toxic, increase the  
4 toxicity of Roundup<sup>®</sup>, whether these ingredients are carcinogenic, magnify the  
5 carcinogenic properties of Roundup<sup>®</sup>, and whether or not “inert” ingredients  
6 and/or adjuvants were safe for use;
- 7 e) Failing to use reasonable and prudent care in the design, research, manufacture,  
8 formulation, and development of Roundup<sup>®</sup> products so as to avoid the risk of  
9 serious harm associated with the prevalent use of Roundup<sup>®</sup>/glyphosate as an  
10 herbicide;
- 11 f) Failing to design and manufacture Roundup<sup>®</sup> products so as to ensure they were  
12 at least as safe and effective as other herbicides on the market;
- 13 g) Failing to provide adequate instructions, guidelines, and safety precautions to  
14 those persons who Defendant could reasonably foresee would use and/or be  
15 exposed to its Roundup<sup>®</sup> products;
- 16 h) Failing to disclose to Plaintiff, users, consumers, and the general public that the  
17 use of and exposure to Roundup<sup>®</sup> presented severe risks of cancer and other  
18 grave illnesses;
- 19 i) Failing to warn Plaintiff, users, consumers, and the general public that the  
20 product’s risk of harm was unreasonable and that there were safer and effective  
21 alternative herbicides available to Plaintiff and other users or consumers;
- 22 j) Systematically suppressing or downplaying contrary evidence about the risks,  
23 incidence, and prevalence of the side effects of Roundup<sup>®</sup> and glyphosate-  
24 containing products;
- 25  
26  
27  
28

- 1 k) Representing that its Roundup<sup>®</sup> products were safe for their intended use when,  
2 in fact, Defendant knew or should have known that the products were not safe for  
3 their intended use;
- 4 l) Declining to make or propose any changes to Roundup<sup>®</sup> products' labeling or  
5 other promotional materials that would alert the consumers and the general  
6 public of the risks of Roundup<sup>®</sup> and glyphosate;
- 7 m) Advertising, marketing, and recommending the use of Roundup<sup>®</sup> products, while  
8 concealing and failing to disclose or warn of the dangers known by Defendant to  
9 be associated with or caused by the use of or exposure to Roundup<sup>®</sup> and  
10 glyphosate;
- 11 n) Continuing to disseminate information to its consumers, which indicate or imply  
12 that Defendant's Roundup<sup>®</sup> products are not unsafe for use in the agricultural,  
13 horticultural industries, and/or home use; and
- 14 o) Continuing the manufacture and sale of its products with the knowledge that the  
15 products were unreasonably unsafe and dangerous.

16 178. Defendant knew and/or should have known that it was foreseeable that consumers  
17 and/or users, such as Plaintiff, would suffer injuries as a result of Defendant's failure to exercise  
18 ordinary care in the manufacturing, marketing, labeling, distribution, and sale of Roundup<sup>®</sup>.

19 179. Plaintiff did not know the nature and extent of the injuries that could result from the  
20 intended use of and/or exposure to Roundup<sup>®</sup> or its active ingredient glyphosate.

21 180. Defendant's negligence was the proximate cause of the injuries, harm, and economic  
22 losses that Plaintiff suffered, and will continue to suffer, as described herein.

23 181. Defendant's conduct, as described above, was reckless. Defendant regularly risks the  
24 lives of consumers and users of its products, including Plaintiff, with full knowledge of the  
25 dangers of its products. Defendant has made conscious decisions not to redesign, re-label, warn,  
26

1 or inform the unsuspecting public, including Plaintiff. Defendant's reckless conduct therefore  
2 warrants an award of punitive damages.

3 182. As a proximate result of Defendant's wrongful acts and omissions in placing its  
4 defective Roundup<sup>®</sup> products into the stream of commerce without adequate warnings of the  
5 hazardous and carcinogenic nature of glyphosate, Plaintiff has suffered and continues to suffer  
6 severe and permanent physical and emotional injuries. Plaintiff has endured pain and suffering,  
7 has suffered economic losses (including significant expenses for medical care and treatment) and  
8 will continue to incur these expenses in the future.

9 WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in Plaintiff's favor  
10 for compensatory and punitive damages, together with interest, costs herein incurred, attorneys'  
11 fees, and all such other and further relief as this Court deems just and proper. Plaintiff also  
12 demands a jury trial on the issues contained herein.

13  
14 **Count Four**  
15 **Breach of Express Warranty**

16 183. Plaintiff incorporates by reference all preceding paragraphs of this Complaint as if fully  
17 set forth herein, and further alleges:

18 184. At all times relevant to this litigation, Defendant engaged in the business of testing,  
19 developing, designing, manufacturing, marketing, selling, distributing, and promoting its  
20 Roundup<sup>®</sup> products, which are defective and unreasonably dangerous to consumers, including  
21 Plaintiff, thereby placing Roundup<sup>®</sup> products into the stream of commerce. These actions were  
22 under the ultimate control and supervision of Defendant.

23 185. At all times relevant to this litigation, Defendant expressly represented and warranted to  
24 the purchasers of its Roundup<sup>®</sup> products, by and through statements made by Defendant in  
25 labels, publications, package inserts, and other written materials intended for consumers and the  
26 general public, that its Roundup<sup>®</sup> products were safe to human health and the environment,  
27

1 effective, fit, and proper for their intended use. Defendant advertised, labeled, marketed, and  
2 promoted Roundup<sup>®</sup> products, representing the quality to consumers and the public in such a  
3 way as to induce their purchase or use, thereby making an express warranty that its Roundup<sup>®</sup>  
4 products would conform to the representations.

5 186. These express representations include incomplete warnings and instructions that purport,  
6 but fail, to include the complete array of risks associated with use of and/or exposure to  
7 Roundup<sup>®</sup> and glyphosate. Defendant knew and/or should have known that the risks expressly  
8 included in Roundup<sup>®</sup> warnings and labels did not and do not accurately or adequately set forth  
9 the risks of developing the serious injuries complained of herein. Nevertheless, Defendant  
10 expressly represented that its Roundup<sup>®</sup> products were safe and effective, that they were safe and  
11 effective for use by individuals such as Plaintiff, and/or that they were safe and effective as  
12 agricultural herbicides.

13 187. The representations about Roundup<sup>®</sup>, as set forth herein, contained or constituted  
14 affirmations of fact or promises made by the seller to the buyer, which related to the goods and  
15 became part of the basis of the bargain, creating an express warranty that the goods would  
16 conform to the representations.

17 188. Defendant placed its Roundup<sup>®</sup> products into the stream of commerce for sale and  
18 recommended their use to consumers and the public without adequately warning of the true risks  
19 of developing the injuries associated with the use of and exposure to Roundup<sup>®</sup> and its active  
20 ingredient glyphosate.

21 189. Defendant breached these warranties because, among other things, its Roundup<sup>®</sup> products  
22 were defective, dangerous, unfit for use, did not contain labels representing the true and  
23 adequate nature of the risks associated with their use, and were not merchantable or safe for their  
24 intended, ordinary, and foreseeable use and purpose. Specifically, Defendant breached the  
25 warranties in the following ways:

1 a) Defendant represented through its labeling, advertising, and marketing materials  
2 that its Roundup<sup>®</sup> products were safe, and fraudulently withheld and concealed  
3 information about the risks of serious injury associated with use of and/or  
4 exposure to Roundup<sup>®</sup> and glyphosate by expressly limiting the risks associated  
5 with use and/or exposure within its warnings and labels; and

6 b) Defendant represented that its Roundup<sup>®</sup> products were safe for use and  
7 fraudulently concealed information that demonstrated that glyphosate, the active  
8 ingredient in Roundup<sup>®</sup>, had carcinogenic properties, and that its Roundup<sup>®</sup>  
9 products, therefore, were not safer than alternatives available on the market.

10 190. Monsanto's warranties and representations, as described herein, concerning the qualities  
11 of Roundup<sup>®</sup> products, became a basis of the bargain for Plaintiff's employers' purchases of  
12 Roundup<sup>®</sup> products. Therefore, vertical privity is not required.

13 191. On information and belief, Plaintiff's employers justifiably and detrimentally relied on  
14 the express warranties and representations of Defendant in the purchase and use of its  
15 Roundup<sup>®</sup> products. When Plaintiff's employers made the decision to purchase Roundup<sup>®</sup>, they  
16 reasonably relied upon Defendant to disclose known defects, risks, dangers, and side effects of  
17 Roundup<sup>®</sup> and glyphosate.

18 192. Plaintiff was exposed to the labels on the Roundup<sup>®</sup> products that he mixed and applied  
19 as part of his job.

20 193. Defendant had sole access to material facts concerning the nature of the risks associated  
21 with its Roundup<sup>®</sup> products as expressly stated within its warnings and labels, and Defendant  
22 knew that consumers and users such as Plaintiff could not have reasonably discovered that the  
23 risks expressly included in Roundup<sup>®</sup> warnings and labels were inadequate and inaccurate.

24 194. Plaintiff had no knowledge of the falsity or incompleteness of Defendant's statements  
25 and representations concerning Roundup<sup>®</sup>.

1 195. Plaintiff used and/or was exposed to the use of Roundup<sup>®</sup> as researched, developed,  
2 designed, tested, formulated, manufactured, inspected, labeled, distributed, packaged, marketed,  
3 promoted, sold, or otherwise released into the stream of commerce by Defendant.

4 196. Had the warnings and labels for Roundup<sup>®</sup> products accurately and adequately set forth  
5 the true risks associated with the use of such products, including Plaintiff's injuries, rather than  
6 expressly excluding such information and warranting that the products were safe for their  
7 intended use, Plaintiff could have avoided the injuries complained of herein.

8 197. As a direct and proximate result of Defendant's wrongful acts and omissions, Plaintiff  
9 has suffered severe injuries. Plaintiff has endured pain and suffering, has suffered economic  
10 losses (including significant expenses for medical care and treatment), and will continue to incur  
11 these expenses in the future.

12 WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in Plaintiff's favor  
13 for compensatory and punitive damages, together with interest, costs herein incurred, attorneys'  
14 fees, and all such other and further relief as this Court deems just and proper. Plaintiff also  
15 demands a jury trial on the issues contained herein.

16  
17 **Count Five**  
18 **Breach of Implied Warranty of Merchantability**

19 198. Plaintiff incorporates by reference all preceding paragraphs of this Complaint as if fully  
20 set forth herein, and further alleges:

21 199. At all times relevant to this litigation, Defendant engaged in the business of testing,  
22 developing, designing, formulating, manufacturing, marketing, selling, distributing, and  
23 promoting its Roundup<sup>®</sup> products, which are defective and unreasonably dangerous to users and  
24 consumers, including Plaintiff, thereby placing Roundup<sup>®</sup> products into the stream of commerce.

25 200. These actions were under the ultimate control and supervision of Defendant.  
26  
27



1 201. Before the time that Plaintiff was exposed to the use of the aforementioned Roundup<sup>®</sup>  
2 products, Defendant impliedly warranted to its consumers and users—including Plaintiff and  
3 Plaintiff's employers—that its Roundup<sup>®</sup> products were of merchantable quality and safe and fit  
4 for the use for which they were intended; specifically, as horticultural herbicides.

5 202. Defendant, however, failed to disclose that Roundup<sup>®</sup> has dangerous propensities when  
6 used as intended and that the use of and/or exposure to Roundup<sup>®</sup> and glyphosate- containing  
7 products carries an increased risk of developing severe injuries, including Plaintiff's injuries.

8 203. Upon information and belief, Plaintiff and Plaintiff's employers reasonably relied upon  
9 the skill, superior knowledge and judgment of Defendant and upon its implied warranties that  
10 the Roundup<sup>®</sup> products were of merchantable quality and fit for their intended purpose or use.

11 204. Upon information and belief, Plaintiff and Plaintiff's employers reasonably relied upon  
12 the skill, superior knowledge and judgment of Defendant and upon its implied warranties that  
13 the Roundup<sup>®</sup> products were of merchantable quality and fit for their intended purpose or use.

14 205. The Roundup<sup>®</sup> products were expected to reach and did in fact reach consumers and  
15 users, including Plaintiff, without substantial change in the condition in which they were  
16 manufactured and sold by Defendant.

17 206. At all times relevant to this litigation, Defendant was aware that consumers and users of  
18 its products, including Plaintiff, would use Roundup<sup>®</sup> products as marketed by Defendant,  
19 which is to say that Plaintiff was the foreseeable user of Roundup<sup>®</sup>.

20 207. Defendant intended that its Roundup<sup>®</sup> products be used in the manner in which Plaintiff  
21 in fact used them and Defendant impliedly warranted each product to be of merchantable  
22 quality, safe, and fit for this use, despite the fact that Roundup<sup>®</sup> was not adequately tested or  
23 researched.

24 208. In reliance upon Defendant's implied warranty, Plaintiff used Roundup<sup>®</sup> as instructed  
25 and labeled and in the foreseeable manner intended, recommended, promoted and marketed by  
26 Defendant.

1 209. Neither Plaintiff nor Plaintiff's employers could have reasonably discovered or known of  
2 the risks of serious injury associated with Roundup<sup>®</sup> or glyphosate.

3 210. Defendant breached its implied warranty to Plaintiff in that its Roundup<sup>®</sup> products were  
4 not of merchantable quality, safe, or fit for their intended use, or adequately tested. Roundup<sup>®</sup>  
5 has dangerous propensities when used as intended and can cause serious injuries, including  
6 those injuries complained of herein.

7 211. The harm caused by Defendant's Roundup<sup>®</sup> products far outweighed their benefit,  
8 rendering the products more dangerous than an ordinary consumer or user would expect and  
9 more dangerous than alternative products.

10 212. As a direct and proximate result of Defendant's wrongful acts and omissions Plaintiff  
11 has suffered severe and permanent physical and emotional injuries. Plaintiff has endured pain  
12 and suffering, has suffered economic loss (including significant expenses for medical care and  
13 treatment) and will continue to incur these expenses in the future.

14 WHEREFORE, Plaintiff respectfully request that this Court enter judgment in Plaintiff's favor  
15 for compensatory and punitive damages, together with interest, costs herein incurred, attorneys'  
16 fees, and all such other and further relief as this Court deems just and proper. Plaintiff also  
17 demand a jury trial on the issues contained herein.

18  
19 **Prayer for Relief**

20 WHEREFORE, Plaintiff requests that the Court enter judgment in their favor and against  
21 Monsanto, awarding as follows:

- 22 A. compensatory damages in an amount to be proven at trial;  
23 B. punitive damages;  
24 C. costs including reasonable attorneys' fees, court costs, and other litigation  
25 expenses; and  
26 D. any other relief the Court may deem just and proper.

1 February 9, 2017.

Respectfully Submitted,

2 /s/ James G. O'Brien  
James G. O'Brien (SBN 308239)  
3 ZOLL & KRANZ, LLC  
6620 W. Central Ave., Suite 100  
4 Toledo, OH 43617  
Tel. (419) 841-9623  
5 Fax (419) 841-9719  
Email jim@toledolaw.com

6 *Counsel for Plaintiff Larry J. Faschingbauer*

7  
8  
9  
10 **Jury Demand**

11 Plaintiff hereby requests a trial by jury on all triable issues.

12  
13 /s/ James G. O'Brien  
James G. O'Brien (SBN 308239)

14 *Counsel for Plaintiff Larry J. Faschingbauer*

CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

DEFENDANTS

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

(c) Attorneys (Firm Name, Address, and Telephone Number)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
3 Federal Question (U.S. Government Not a Party)
2 U.S. Government Defendant
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for PTF and DEF for Citizen of This State, Citizen of Another State, and Citizen or Subject of a Foreign Country.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation-Transfer, 8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Brief description of cause:

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE: SIGNATURE OF ATTORNEY OF RECORD:

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

**Authority For Civil Cover Sheet.** The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.)
- c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section “(see attachment).”
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an “X” in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
  - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
  - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
  - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an “X” in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an “X” in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
  - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
  - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
  - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
  - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
  - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
  - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an “X” in this box if you are filing a class action under Federal Rule of Civil Procedure 23. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- Date and Attorney Signature.** Date and sign the civil cover sheet.