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19 **UNITED STATES DISTRICT COURT**
20 **CENTRAL DISTRICT OF CALIFORNIA**
21 **Western Division**

22 Enrique RUBIO,
23 Plaintiff,
24 v.
25 MONSANTO COMPANY,
26 Defendant.

Civil Case No. 2:15-cv-7426

COMPLAINT

JURY TRIAL DEMANDED

1 **INTRODUCTION**

2 1. In 1970, Defendant Monsanto Company, Inc. discovered the herbicidal
3 properties of glyphosate and began marketing it in products in 1974 under the
4 brand name Roundup[®]. Roundup[®] is a non-selective herbicide used to kill weeds
5 that commonly compete with the growing of crops. By 2001, glyphosate had
6 become the most-used active ingredient in American agriculture with 85–90
7 millions of pounds used annually. That number grew to 185 million pounds by
8 2007.¹ As of 2013, glyphosate was the world’s most widely used herbicide.

9 2. Monsanto is a multinational agricultural biotechnology corporation
10 based in St. Louis, Missouri. It is the world's leading producer of glyphosate. As
11 of 2009, Monsanto was the world’s leading producer of seeds, accounting for 27%
12 of the world seed market.² The majority of these seeds are of the Roundup Ready[®]
13 brand. The stated advantage of Roundup Ready[®] crops is that they substantially
14 improve a farmer’s ability to control weeds, since glyphosate can be sprayed in the
15 fields during the growing season without harming their crops. In 2010, an
16 estimated 70% of corn and cotton, and 90% of soybean fields in the United States
17 were Roundup Ready[®].³

18
19
20 ¹ Arthur Grube et al., U.S. Environmental Protection Agency, *Pesticides*
21 *Industry Sales and Usage, 2006–2007 Market Estimates* 14 (2011), available at
http://www.epa.gov/pesticides/pestsales/07pestsales/market_estimates2007.pdf.

22 ² ETC Group, *Who Will Control the Green Economy?* 22 (2011), available at
23 [http://www.etcgroup.org/files/publication/pdf_file/ETC_wwctge_4web_Dec2011.p](http://www.etcgroup.org/files/publication/pdf_file/ETC_wwctge_4web_Dec2011.pdf)
24 [df](http://www.etcgroup.org/files/publication/pdf_file/ETC_wwctge_4web_Dec2011.pdf).

25 ³ William Neuman & Andrew Pollack, *Farmers Cope With Roundup-*
26 *Resistant Weeds*, N.Y. Times, May 3, 2010, available at
[http://www.nytimes.com/2010/05/04/business/energy-](http://www.nytimes.com/2010/05/04/business/energy-environment/04weed.html?pagewan)
[environment/04weed.html?pagewan](http://www.nytimes.com/2010/05/04/business/energy-environment/04weed.html?pagewan).

1 3. Monsanto’s glyphosate products are registered in 130 countries and
2 approved for use on over 100 different crops.⁴ They are ubiquitous in the
3 environment. Numerous studies confirm that glyphosate is found in rivers, streams,
4 and groundwater in agricultural areas where Roundup[®] is used⁵. It has been found
5 in food⁶, in the urine of agricultural workers^{7 8}, and even in the urine of urban
6 dwellers who are not in direct contact with glyphosate.⁹

7 4. On March 20, 2015, the International Agency for Research on Cancer
8 (“IARC”), an agency of the World Health Organization (“WHO”), issued an
9 evaluation of several herbicides, including glyphosate. That evaluation was based,
10

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

14 ⁵ See U.S. Geological Survey, *USGS Technical Announcement: Widely Used*
15 *Herbicide Commonly Found in Rain and Streams in the Mississippi River Basin*
16 (2011), available at <http://www.usgs.gov/newsroom/article.asp?ID=2909>; see also
17 U.S. Evtl. Prot. Agency, *Technical Factsheet on: Glyphosate*, available at
18 <http://www.epa.gov/safewater/pdfs/factsheets/soc/tech/glyphosa.pdf>.

19 ⁶ Thomas Bohn et al., *Compositional Differences in Soybeans on the Market:*
20 *Glyphosate Accumulates in Roundup Ready GM Soybeans*, 153 *Food Chemistry*
21 207 (2013), available at
22 <http://www.sciencedirect.com/science/article/pii/S0308814613019201>.

23 ⁷ John F. Acquavella et al., *Glyphosate Biomonitoring for Farmers and Their*
24 *Families: Results from the Farm Family Exposure Study*, 112(3) *Environmental*
25 *Health Perspectives* 321 (2004), available at
26 <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1241861/>.

⁸ Kathryn Z. Guyton et al., *Carcinogenicity of Tetrachlorvinphos, Parathion,*
Malathion, Diazinon & Glyphosate, 112 *IARC Monographs* 76, section 5.4 (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).

⁹ Dirk Brändli & Sandra Reinacher, *Herbicides found in Human Urine*, 1
Ithaca Journal 270 (2012), available at [http://www.ithaca-
journal.net/druckversionen/e052012-herbicides-urine.pdf](http://www.ithaca-journal.net/druckversionen/e052012-herbicides-urine.pdf).

1 in part, on studies of exposures to glyphosate in several countries around the world,
2 and it traces the health implications from exposure to glyphosate since 2001.

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

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

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

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

19
20 **JURISDICTION AND VENUE**

21 9. Federal diversity jurisdiction in this Court is proper under 28 U.S.C.
22 § 1332 because Plaintiff Enrique Rubio is a citizen of a different state from the
23 Defendant Monsanto Company's states of citizenship, and the aggregate amount in
24 controversy exceeds \$75,000, exclusive of interest and costs.

25 _____
26 ¹⁰ See Guyton et al., *Carcinogenicity of Tetrachlorvinphos, Parathion, Malathion, Diazinon & Glyphosate*, *supra*.

1 ***The Discovery of Glyphosate and Development of Roundup[®]***

2 19. The herbicidal properties of glyphosate were discovered in 1970 by
3 Monsanto chemist John Franz. The first glyphosate-based herbicide was introduced
4 to the market in the mid-1970s under the brand name Roundup[®].¹¹ From the outset,
5 Monsanto marketed Roundup[®] as a “safe” general-purpose herbicide for
6 widespread commercial and consumer use. It still markets Roundup[®] as safe
7 today.¹²

8
9 ***Registration of Herbicides under Federal Law***

10 20. The manufacture, formulation and distribution of herbicides, such as
11 Roundup[®], are regulated under the Federal Insecticide, Fungicide, and Rodenticide
12 Act (“FIFRA” or “Act”), 7 U.S.C. § 136 *et seq.* FIFRA requires that all pesticides
13 be registered with the Environmental Protection Agency (“EPA” or “Agency”)
14 prior to their distribution, sale, or use, except as described by the Act. 7 U.S.C.
15 § 136a(a)

16 21. Because pesticides are toxic to plants, animals, and humans, at least to
17 some degree, the EPA requires as part of the registration process, among other
18 things, a variety of tests to evaluate the potential for exposure to pesticides, toxicity
19 to people and other potential non-target organisms, and other adverse effects on the
20 environment. Registration by the EPA, however, is not an assurance or finding of
21 safety. The determination the Agency must make in registering or re-registering a
22 product is not that the product is “safe,” but rather that use of the product in

23
24 ¹¹ Monsanto, *Backgrounder, History of Monsanto’s Glyphosate Herbicide*
25 (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 ¹² Monsanto, *What is Glyphosate?* (Sep. 2, 2015),
<http://www.monsanto.com/sitecollectiondocuments/glyphosate-safety-health.pdf>.

1 accordance with its label directions “will not generally cause unreasonable adverse
2 effects on the environment.” 7 U.S.C. § 136a(c)(5)(D).

3 22. FIFRA defines “unreasonable adverse effects on the environment” to
4 mean “any unreasonable risk to man or the environment, taking into account the
5 economic, social, and environmental costs and benefits of the use of any pesticide.”
6 7 U.S.C. § 136(bb). FIFRA thus requires EPA to make a risk/benefit analysis in
7 determining whether a registration should be granted or allowed to continue to be
8 sold in commerce.

9 23. The EPA and the State of California registered Roundup[®] for
10 distribution, sale, and manufacture in the United States and the State of California.

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

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

25 26. In the case of glyphosate, and therefore Roundup[®], the EPA had
26 planned on releasing its preliminary risk assessment—in relation to the

1 reregistration process—no later than July 2015. The EPA completed its review of
2 glyphosate in early 2015, but it delayed releasing the risk assessment pending
3 further review in light of the WHO’s health-related findings.

4
5 ***Scientific Fraud Underlying the Marketing and Sale of Glyphosate/Roundup***

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

16 28. On two occasions, the EPA found that the laboratories hired by
17 Monsanto to test the toxicity of its Roundup[®] products for registration purposes
18 committed fraud.

19 29. In the first instance, Monsanto, in seeking initial registration of
20 Roundup[®] by EPA, hired Industrial Bio-Test Laboratories (“IBT”) to perform and
21 evaluate pesticide toxicology studies relating to Roundup[®].¹⁴ IBT performed about

22 _____
23 ¹³ U.S. Env’tl. Prot. Agency, *Memorandum, Subject: SECOND Peer Review*
24 *of Glyphosate 1* (1991), available at
[http://www.epa.gov/pesticides/chem_search/cleared_reviews/csr_PC-103601_30-](http://www.epa.gov/pesticides/chem_search/cleared_reviews/csr_PC-103601_30-Oct-91_265.pdf)
25 [Oct-91_265.pdf](http://www.epa.gov/pesticides/chem_search/cleared_reviews/csr_PC-103601_30-Oct-91_265.pdf).

26 ¹⁴ Monsanto, *Backgrounder, Testing Fraud: IBT and Craven Laboratories*
(Sep. 2, 2015), [http://www.monsanto.com/products/documents/glyphosate-](http://www.monsanto.com/products/documents/glyphosate-background-materials/ibt_craven_bkg.pdf)
[background-materials/ibt_craven_bkg.pdf](http://www.monsanto.com/products/documents/glyphosate-background-materials/ibt_craven_bkg.pdf).

1 30 tests on glyphosate and glyphosate-containing products, including nine of the 15
2 residue studies needed to register Roundup[®].

3 30. In 1976, the United States Food and Drug Administration (“FDA”)
4 performed an inspection of Industrial Bio-Test Industries (“IBT”) that revealed
5 discrepancies between the raw data and the final report relating to the toxicological
6 impacts of glyphosate. The EPA subsequently audited IBT; it too found the
7 toxicology studies conducted for the Roundup[®] herbicide to be invalid.¹⁵ An EPA
8 reviewer stated, after finding “routine falsification of data” at IBT, that it was “hard
9 to believe the scientific integrity of the studies when they said they took specimens
10 of the uterus from male rabbits.”¹⁶

11 31. Three top executives of IBT were convicted of fraud in 1983.

12 32. In the second incident of data falsification, Monsanto hired Craven
13 Laboratories in 1991 to perform pesticide and herbicide studies, including for
14 Roundup[®]. In that same year, the owner of Craven Laboratories and three of its
15

16 ¹⁵ U.S. Env'tl. Prot. Agency, *Summary of the IBT Review Program Office of*
17 *Pesticide Programs* (1983), available at
18 <http://nepis.epa.gov/Exe/ZyNET.exe/91014ULV.TXT?ZyActionD=ZyDocument&Client=EPA&Index=1981+Thru+1985&Docs=&Query=&Time=&EndTime=&SearchMethod=1&TocRestrict=n&Toc=&TocEntry=&QField=&QFieldYear=&QFieldMonth=&QFieldDay=&IntQFieldOp=0&ExtQFieldOp=0&XmlQuery=&File=D%3A%5Czyfiles%5CIndex%20Data%5C81thru85%5CTxt%5C00000022%5C91014ULV.txt&User=ANONYMOUS&Password=anonymous&SortMethod=h%7C-&MaximumDocuments=1&FuzzyDegree=0&ImageQuality=r75g8/r75g8/x150y150g16/i425&Display=p%7Cf&DefSeekPage=x&SearchBack=ZyActionL&Back=ZyActionS&BackDesc=Results%20page&MaximumPages=1&ZyEntry=1&SeekPage=x&ZyPURL>
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25 ¹⁶ Marie-Monique Robin, *The World According to Monsanto: Pollution,*
26 *Corruption and the Control of the World's 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)*).

1 employees were indicted, and later convicted, of fraudulent laboratory practices in
2 the testing of pesticides and herbicides.¹⁷

3 33. Despite the falsity of the tests that underlie its registration, within a
4 few years of its launch, Monsanto was marketing Roundup[®] in 115 countries.
5

6 ***The Importance of Roundup[®] to Monsanto's Market Dominance Profits***

7 34. The success of Roundup[®] was key to Monsanto's continued reputation
8 and dominance in the marketplace. Largely due to the success of Roundup[®] sales,
9 Monsanto's agriculture division was out-performing its chemicals division's
10 operating income, and that gap increased yearly. But with its patent for glyphosate
11 expiring in the United States in the year 2000, Monsanto needed a strategy to
12 maintain its Roundup[®] market dominance and to ward off impending competition.

13 35. In response, Monsanto began the development and sale of genetically
14 engineered Roundup Ready[®] seeds in 1996. Since Roundup Ready[®] crops are
15 resistant to glyphosate; farmers can spray Roundup[®] onto their fields during the
16 growing season without harming the crop. This allowed Monsanto to expand its
17 market for Roundup[®] even further; by 2000, Monsanto's biotechnology seeds were
18 planted on more than 80 million acres worldwide and nearly 70% of American
19 soybeans were planted from Roundup Ready[®] seeds. It also secured Monsanto's
20 dominant share of the glyphosate/Roundup[®] market through a marketing strategy
21 that coupled proprietary Roundup Ready[®] seeds with continued sales of its
22 Roundup[®] herbicide.

23 36. Through a three-pronged strategy of increased production, decreased
24 prices and by coupling with Roundup Ready[®] seeds, Roundup[®] became Monsanto's
25

26 ¹⁷ Monsanto, *Backgrounder, Testing Fraud: IBT and Craven Laboratories, supra.*

1 most profitable product. In 2000, Roundup[®] accounted for almost \$2.8 billion in
2 sales, outselling other herbicides by a margin of five to one, and accounting for
3 close to half of Monsanto's revenue.¹⁸ Today, glyphosate remains one of the
4 world's largest herbicides by sales volume.

5
6 ***Monsanto has known for decades that it falsely advertises the safety of Roundup[®]***

7 37. In 1996, the New York Attorney General ("NYAG") filed a lawsuit
8 against Monsanto based on its false and misleading advertising of Roundup[®]
9 products. Specifically, the lawsuit challenged Monsanto's general representations
10 that its spray-on glyphosate-based herbicides, including Roundup[®], were "**safer**
11 **than table salt**" and "**practically non-toxic**" to mammals, birds, and fish. Among
12 the representations the NYAG found deceptive and misleading about the human
13 and environmental safety of Roundup[®] are the following:

14 a) Remember that environmentally friendly Roundup
15 herbicide is biodegradable. It won't build up in the soil so
16 you can use Roundup with confidence along customers'
17 driveways, sidewalks and fences ...

18 b) And remember that Roundup is biodegradable and
19 won't build up in the soil. That will give you the
20 environmental confidence you need to use Roundup
21 everywhere you've got a weed, brush, edging or trimming
22 problem.

23 c) Roundup biodegrades into naturally occurring
24 elements.

25 ¹⁸ David Barboza, *The Power of Roundup; A Weed Killer Is A Block for*
26 *Monsanto to Build On*, N.Y. Times, Aug. 2, 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 d) Remember that versatile Roundup herbicide stays
2 where you put it. That means there's no washing or
3 leaching to harm customers' shrubs or other desirable
vegetation.

4 e) This non-residual herbicide will not wash or leach in
5 the soil. It ... stays where you apply it.

6 f) You can apply Accord with “ confidence because it
7 will stay where you put it” it bonds tightly to soil
8 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
11 following acute oral ingestion.

12 h) Glyphosate's safety margin is much greater than
13 required. It has over a 1,000-fold safety margin in food
14 and over a 700-fold safety margin for workers who
manufacture it or use it.

15 i) You can feel good about using herbicides by
16 Monsanto. They carry a toxicity category rating of
17 'practically non-toxic' as it pertains to mammals, birds
18 and fish.

19 j) “Roundup can be used where kids and pets will play
20 and breaks down into natural material.” This ad depicts a
21 person with his head in the ground and a pet dog standing
in an area which has been treated with Roundup.¹⁹

22 38. On November 19, 1996, Monsanto entered into an Assurance of
23 Discontinuance with NYAG, in which Monsanto agreed, among other things, “to
24

25 ¹⁹ Attorney General of the State of New York, In the Matter of Monsanto
26 Company, Assurance of Discontinuance Pursuant to Executive Law § 63(15) (Nov.
1996).

1 cease and desist from publishing or broadcasting any advertisements [in New York]
2 that represent, directly or by implication” that:

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

6 * * *

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

10 * * *

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

15 * * *

16 d) its glyphosate-containing pesticide products or any
17 component thereof are "good" for the environment or are
18 "known for their environmental characteristics."

19 * * *

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

23 f) its glyphosate-containing products or any component
24 thereof might be classified as "practically non-toxic."

25 39. Monsanto did not alter its advertising in the same manner in any state
26 other than New York, and on information and belief still has not done so today.

1 40. In 2009, France's highest court ruled that Monsanto had not told the
2 truth about the safety of Roundup[®]. The French court affirmed an earlier
3 judgement that Monsanto had falsely advertised its herbicide Roundup[®] as
4 "biodegradable" and that it "left the soil clean."²⁰

5
6 *Classifications and Assessments of Glyphosate*

7 41. The IARC process for the classification of glyphosate followed the
8 stringent procedures for the evaluation of a chemical agent. Over time, the IARC
9 Monograph program has reviewed 980 agents. Of those reviewed, it has
10 determined 116 agents to be Group 1 (Known Human Carcinogens); 73 agents to
11 be Group 2A (Probable Human Carcinogens); 287 agents to be Group 2B (Possible
12 Human Carcinogens); 503 agents to be Group 3 (Not Classified); and one agent to
13 be Probably Not Carcinogenic.

14 42. The established procedure for IARC Monograph evaluations is
15 described in the IARC Programme's Preamble.²¹ Evaluations are performed by
16 panels of international experts, selected on the basis of their expertise and the
17 absence of actual or apparent conflicts of interest.

18 43. One year before the Monograph meeting, the meeting is announced
19 and there is a call both for data and for experts. Eight months before the
20 Monograph meeting, the Working Group membership is selected and the sections
21 of the Monograph are developed by the Working Group members. One month
22 prior to the Monograph meeting, the call for data is closed and the various draft

23

24 ²⁰ *Monsanto Guilty in 'False Ad' Row*, BBC, Oct. 15, 2009, available at
<http://news.bbc.co.uk/2/hi/europe/8308903.stm>.

25 ²¹ World Health Organization, *IARC Monographs on the Evaluation of*
26 *Carcinogenic Risks to Humans: Preamble* (2006), available at
<http://monographs.iarc.fr/ENG/Preamble/CurrentPreamble.pdf>.

1 sections are distributed among Working Group members for review and comment.
2 Finally, at the Monograph meeting, the Working Group finalizes review of all
3 literature, evaluates the evidence in each category, and completes the overall
4 evaluation. Within two weeks after the Monograph meeting, the summary of the
5 Working Group findings are published in *Lancet Oncology*, and within a year after
6 the meeting, the final Monograph is finalized and published.

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

12 45. In March 2015, IARC reassessed glyphosate. The summary published
13 in *The Lancet Oncology* reported that glyphosate is a Group 2A agent and probably
14 carcinogenic in humans.

15 46. On July 29, 2015, IARC issued its Monograph for glyphosate,
16 Monograph 112. For Volume 112, the volume that assessed glyphosate, a Working
17 Group of 17 experts from 11 countries met at IARC from March 3–10, 2015, to
18 assess the carcinogenicity of certain herbicides, including glyphosate. The March
19 meeting culminated nearly a one-year review and preparation by the IARC
20 Secretariat and the Working Group, including a comprehensive review of the latest
21 available scientific evidence. According to published procedures, the Working
22 Group considered “reports that have been published or accepted for publication in
23 the openly available scientific literature” as well as “data from governmental
24 reports that are publicly available.”

25 47. The studies considered the following exposure groups: occupational
26 exposure of farmers and tree nursery workers in the United States, forestry workers

1 in Canada and Finland and municipal weed-control workers in the United
2 Kingdom; and para-occupational exposure in farming families.

3 48. Glyphosate was identified as the second-most used household
4 herbicide in the United States for weed control between 2001 and 2007 and the
5 most heavily used herbicide in the world in 2012.

6 49. Exposure pathways are identified as air (especially during spraying),
7 water, and food. Community exposure to glyphosate is widespread and found in
8 soil, air, surface water, and groundwater, as well as in food.

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

13 51. The IARC Working Group found an increased risk between exposure
14 to glyphosate and non-Hodgkin lymphoma (“NHL”) and several subtypes of NHL,
15 and the increased risk persisted after adjustment for other pesticides.

16 52. The IARC Working Group also found that glyphosate caused DNA
17 and chromosomal damage in human cells. One study in community residents
18 reported increases in blood markers of chromosomal damage (micronuclei) after
19 glyphosate formulations were sprayed.

20 53. In male CD-1 mice, glyphosate induced a positive trend in the
21 incidence of a rare tumor, renal tubule carcinoma. A second study reported a
22 positive trend for haemangiosarcoma in male mice. Glyphosate increased
23 pancreatic islet-cell adenoma in male rats in two studies. A glyphosate formulation
24 promoted skin tumors in an initiation-promotion study in mice.

25 54. The IARC Working Group also noted that glyphosate has been
26 detected in the urine of agricultural workers, indicating absorption. Soil microbes

1 degrade glyphosate to aminomethylphosphoric acid (AMPA). Blood AMPA
2 detection after exposure suggests intestinal microbial metabolism in humans.

3 55. The IARC Working Group further found that glyphosate and
4 glyphosate formulations induced DNA and chromosomal damage in mammals, and
5 in human and animal cells in utero.

6 56. The IARC Working Group also noted genotoxic, hormonal, and
7 enzymatic effects in mammals exposed to glyphosate.²² Essentially, glyphosate
8 inhibits the biosynthesis of aromatic amino acids, which leads to several metabolic
9 disturbances, including the inhibition of protein and secondary product
10 biosynthesis²³ and general metabolic disruption.²⁴

11 57. The IARC Working Group also reviewed an Agricultural Health
12 Study, consisting of a prospective cohort of 57,311 licensed pesticide applicators in
13 Iowa and North Carolina. While this study differed from others in that it was
14 based on a self-administered questionnaire, the results support an association
15 between glyphosate exposure and Multiple Myeloma, Hairy Cell Leukemia (HCL),
16 and Chronic Lymphocytic Leukemia (CLL), in addition to several other cancers.

17
18 ***Other Earlier Findings About Glyphosate's Dangers to Human Health***

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

23
24 _____
25 ²² Guyton et al., *Carcinogenicity of Tetrachlorvinphos, Parathion, Malathion,*
26 *Diazinon & Glyphosate, supra* at 77.

1 **Release Patterns**

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

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

12 Occupational workers and home gardeners may be
13 exposed to glyphosate by inhalation and dermal contact
14 during spraying, mixing, and cleanup. They may also be
15 exposed by touching soil and plants to which glyphosate
16 was applied. Occupational exposure may also occur
17 during glyphosate's manufacture, transport storage, and
18 disposal.²⁵

19 59. In 1995, the Northwest Coalition for Alternatives to Pesticides
20 reported that in California, the state with the most comprehensive program for
21 reporting of pesticide-caused illness, glyphosate was the third most commonly-
22 reported cause of pesticide illness among agricultural workers.²⁶

23 ²⁵ U.S. Env'tl. Prot. Agency, *Technical Factsheet on: Glyphosate, supra.*

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

1 ***Recent Worldwide Bans on Roundup[®]/Glyphosate***

2 60. Several countries around the world have instituted bans on the sale of
3 Roundup[®] and other glyphosate-containing herbicides, both before and since IARC
4 first announced its assessment for glyphosate in March 2015, and more countries
5 undoubtedly will follow suit in light of the as the dangers of the use of Roundup[®]
6 are more widely known. The Netherlands issued a ban on all glyphosate-based
7 herbicides in April 2014, including Roundup[®], which takes effect by the end of
8 2015. In issuing the ban, the Dutch Parliament member who introduced the
9 successful legislation stated: “Agricultural pesticides in user-friendly packaging are
10 sold in abundance to private persons. In garden centers, Roundup[®] is promoted as
11 harmless, but unsuspecting customers have no idea what the risks of this product
12 are. Especially children are sensitive to toxic substances and should therefore not
13 be exposed to it.”²⁷

14 61. The Brazilian Public Prosecutor in the Federal District requested that
15 the Brazilian Justice Department suspend the use of glyphosate.²⁸

16 62. France banned the private sale of Roundup[®] and glyphosate following
17 the IARC assessment for Glyphosate.²⁹

18 _____
19 ²⁷ *Holland’s Parliament Bans Glyphosate Herbicides*, The Real Agenda,
20 April 14, 2014, available at <http://real-agenda.com/hollands-parliament-bans-glyphosate-herbicides/>.

21 ²⁸ Christina Sarich, *Brazil’s Public Prosecutor Wants to Ban Monsanto’s*
22 *Chemicals Following Recent Glyphosate-Cancer Link*, Global Research, May 14,
23 2015, available at <http://www.globalresearch.ca/brazils-public-prosecutor-wants-to-ban-monsantos-chemicals-following-recent-glyphosate-cancer-link/5449440>; see
24 Ministério Público Federal, *MPF/DF reforça pedido para que glifosato seja banido do mercado nacional*, April, 14, 2015, available at
25 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.
26

1 63. Bermuda banned both the private and commercial sale of glyphosates,
2 including Roundup[®]. The Bermuda government explained its ban as follows:
3 “Following a recent scientific study carried out by a leading cancer agency, the
4 importation of weed spray ‘Roundup’ has been suspended.”³⁰

5 64. The Sri Lankan government banned the private and commercial use of
6 glyphosates, particularly out of concern that Glyphosate has been linked to fatal
7 kidney disease in agricultural workers.³¹

8 65. The government of Columbia announced its ban on using Roundup[®]
9 and glyphosate to destroy illegal plantations of coca, the raw ingredient for cocaine,
10 because of the WHO’s finding that glyphosate is probably carcinogenic.³²

11
12 ***Plaintiff’s Exposure to Roundup[®]***

13 66. Plaintiff Enrique Rubio is 58 years old and began working in
14 agriculture in or around 1986 in Oregon, where he picked vegetables for about two
15 years. In 1988, he started working in Fillmore, California at California Water Cress
16

17 ²⁹ Zoe Schlanger, *France Bans Sales of Monsanto’s Roundup in Garden*
18 *Centers, 3 Months After U.N. Calls it ‘Probable Carcinogen’*, Newsweek, June 15,
19 2015, available at [http://www.newsweek.com/france-bans-sale-monsantos-
roundup-garden-centers-after-un-names-it-probable-343311](http://www.newsweek.com/france-bans-sale-monsantos-roundup-garden-centers-after-un-names-it-probable-343311).

20 ³⁰ *Health Minister: Importation of Roundup Weed Spray Suspended*, Today
21 in Bermuda, May, 11 2015, available at
22 [http://www.todayinbermuda.com/news/health/item/1471-health-minister-
importation-of-roundup-weed-spray-suspended](http://www.todayinbermuda.com/news/health/item/1471-health-minister-importation-of-roundup-weed-spray-suspended).

23 ³¹ *Sri Lanka’s New President Puts Immediate Ban on Glyphosate Herbicides*,
24 Sustainable Pulse, May 25, 2015, available at
25 [http://sustainablepulse.com/2015/05/25/sri-lankas-new-president-puts-immediate-
ban-on-glyphosate-herbicides/#.VeduYk3bKAw](http://sustainablepulse.com/2015/05/25/sri-lankas-new-president-puts-immediate-ban-on-glyphosate-herbicides/#.VeduYk3bKAw).

26 ³² *Columbia to ban coca spraying herbicide glyphosate*, BBC, May 10, 2015,
available at <http://www.bbc.com/news/world-latin-america-32677411>.

1 Inc. Mr. Rubio worked at this location between 1988 and 1993, during which time
2 he worked in the fields on strawberry, cucumber, and other vegetable crops. His
3 duties involved spraying the fields, weeds, and bugs with Roundup[®] and other
4 pesticides or chemicals. As an applicator, Mr. Rubio drove a tractor, wore a
5 backpack, and also utilized a hand pump to spray Roundup. During application, his
6 protection was limited to a paper face mask. Mr. Rubio sprayed two days per week
7 and all year.

8 67. Mr. Rubio subsequently moved to El Paso, Texas, for work where he
9 worked at Sangro between 1993 and 1995. There, Mr. Rubio also worked as an
10 applicator, and sprayed onion and other vegetable fields. Again, Mr. Rubio sprayed
11 Roundup once or twice per week all year. However, the frequency at which he
12 sprayed Roundup in Texas was lower than while he worked in California.

13 68. In 1995, Mr. Rubio was diagnosed with bone cancer but he is not
14 aware of the type of cancer he has. Since his diagnosis, Mr. Rubio has moved from
15 Texas to Colorado to live with his nephew. As a result of his illness, Mr. Rubio has
16 been out of work and subsists on government benefits.

17
18 **CLAIM ONE**

19 **STRICT LIABILITY (DESIGN DEFECT)**

20 69. Plaintiff incorporates by reference each and every allegation set forth
21 in the preceding paragraphs as if fully stated herein.

22 70. Plaintiff brings this strict liability claim against Defendant for
23 defective design.

24 71. At all times relevant to this litigation, Defendant engaged in the
25 business of testing, developing, designing, manufacturing, marketing, selling,
26 distributing, and promoting Roundup[®] products, which are defective and

1 unreasonably dangerous to consumers, including Plaintiff, thereby placing
2 Roundup[®] products into the stream of commerce. These actions were under the
3 ultimate control and supervision of Defendant. At all times relevant to this
4 litigation, Defendant designed, researched, developed, manufactured, produced,
5 tested, assembled, labeled, advertised, promoted, marketed, sold, and distributed the
6 Roundup[®] products used by the Plaintiff, as described above.

7 72. At all times relevant to this litigation, Defendant's Roundup[®] products
8 were manufactured, designed, and labeled in an unsafe, defective, and inherently
9 dangerous manner that was dangerous for use by or exposure to the public, and, in
10 particular, the Plaintiff.

11 73. At all times relevant to this litigation, Defendant's Roundup[®] products
12 reached the intended consumers, handlers, and users or other persons coming into
13 contact with these products in New York and throughout the United States,
14 including Plaintiff, without substantial change in their condition as designed,
15 manufactured, sold, distributed, labeled, and marketed by Defendant.

16 74. Defendant's Roundup[®] products, as researched, tested, developed,
17 designed, licensed, manufactured, packaged, labeled, distributed, sold, and
18 marketed by Defendant were defective in design and formulation in that when they
19 left the hands of the Defendant's manufacturers and/or suppliers, they were
20 unreasonably dangerous and dangerous to an extent beyond that which an ordinary
21 consumer would contemplate.

22 75. Defendant's Roundup[®] products, as researched, tested, developed,
23 designed, licensed, manufactured, packaged, labeled, distributed, sold, and
24 marketed by Defendant were defective in design and formulation in that when they
25 left the hands of Defendant's manufacturers and/or suppliers, the foreseeable risks
26 exceeded the alleged benefits associated with their design and formulation.

1 76. At all times relevant to this action, Defendant knew or had reason to
2 know that its Roundup[®] products were defective and were inherently dangerous and
3 unsafe when used in the manner instructed and provided by Defendant.

4 77. Therefore, at all times relevant to this litigation, Defendant's
5 Roundup[®] products, as researched, tested, developed, designed, licensed,
6 manufactured, packaged, labeled, distributed, sold and marketed by Defendant were
7 defective in design and formulation, in one or more of the following ways:

8 a. When placed in the stream of commerce, Defendant's
9 Roundup[®] products were defective in design and formulation, and,
10 consequently, dangerous to an extent beyond that which an ordinary
11 consumer would contemplate.

12 b. When placed in the stream of commerce, Defendant's
13 Roundup[®] products were unreasonably dangerous in that they were
14 hazardous and posed a grave risk of cancer and other serious illnesses
15 when used in a reasonably anticipated manner.

16 c. When placed in the stream of commerce, Defendant's
17 Roundup[®] products contained unreasonably dangerous design defects
18 and were not reasonably safe when used in a reasonably anticipated or
19 intended manner.

20 d. Defendant did not sufficiently test, investigate, or study
21 its Roundup[®] products and, specifically, the active ingredient
22 glyphosate.

23 e. Exposure to Roundup[®] and glyphosate-containing
24 products presents a risk of harmful side effects that outweigh any
25 potential utility stemming from the use of the herbicide.
26

1 f. Defendant knew or should have known at the time of
2 marketing its Roundup[®] products that exposure to Roundup[®] and
3 specifically, its active ingredient glyphosate, could result in cancer and
4 other severe illnesses and injuries.

5 g. Defendant did not conduct adequate post-marketing
6 surveillance of its Roundup[®] products.

7 h. Defendant could have employed safer alternative designs
8 and formulations.

9 78. Plaintiff was exposed to Defendant's Roundup[®] products in the course
10 of her employment as a horticultural worker, as described above, without
11 knowledge of their dangerous characteristics.

12 79. At all times relevant to this litigation, Plaintiff used and/or was
13 exposed to the use of Defendant's Roundup[®] products in an intended or reasonably
14 foreseeable manner without knowledge of their dangerous characteristics.

15 80. Plaintiff could not have reasonably discovered the defects and risks
16 associated with Roundup[®] or glyphosate-containing products before or at the time
17 of exposure.

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

25 82. At the time Roundup[®] products left Defendant's control, there was a
26 practical, technically feasible and safer alternative design that would have

1 prevented the harm without substantially impairing the reasonably anticipated or
2 intended function of Defendant's herbicides.

3 83. Defendant's defective design of its Roundup[®] products was willful,
4 wanton, fraudulent, malicious, and conducted with reckless disregard for the health
5 and safety of users of the Roundup[®] products, including the Plaintiff herein.

6 84. Therefore, as a result of the unreasonably dangerous condition of its
7 Roundup[®] products, Defendant is strictly liable to Plaintiff.

8 85. The defects in Defendant's Roundup[®] products were substantial and
9 contributing factors in causing Plaintiff's grave injuries, and, but for Defendant's
10 misconduct and omissions, Plaintiff would not have sustained her injuries.

11 86. Defendant's conduct, as described above, was reckless. Defendant
12 risked the lives of consumers and users of its products, including Plaintiff, with
13 knowledge of the safety problems associated with Roundup[®] and glyphosate-
14 containing products, and suppressed this knowledge from the general public.
15 Defendant made conscious decisions not to redesign, warn or inform the
16 unsuspecting public. Defendant's reckless conduct warrants an award of punitive
17 damages.

18 87. As a direct and proximate result of Defendant placing its defective
19 Roundup[®] products into the stream of commerce, Plaintiff has suffered and
20 continues to suffer grave injuries, and has endured physical pain and discomfort, as
21 well as economic hardship, including considerable financial expenses for medical
22 care and treatment. Plaintiff will continue to incur these expenses in the future.

23 88. WHEREFORE, Plaintiff respectfully requests that this Court enter
24 judgment in Plaintiff's favor for compensatory and punitive damages, together with
25 interest, costs herein incurred, attorneys' fees and all such other and further relief as
26

1 this Court deems just and proper. Plaintiff also demands a jury trial on the issues
2 contained herein.

3
4 **CLAIM TWO**

5 **STRICT LIABILITY (FAILURE TO WARN)**

6 89. Plaintiff incorporates by reference each and every allegation set forth
7 in the preceding paragraphs as if fully stated herein.

8 90. Plaintiff brings this strict liability claim against Defendant for failure
9 to warn.

10 91. At all times relevant to this litigation, Defendant engaged in the
11 business of testing, developing, designing, manufacturing, marketing, selling,
12 distributing, and promoting Roundup[®] products, which are defective and
13 unreasonably dangerous to consumers, including Plaintiff, because they do not
14 contain adequate warnings or instructions concerning the dangerous characteristics
15 of Roundup[®] and specifically, the active ingredient glyphosate. These actions were
16 under the ultimate control and supervision of Defendant.

17 92. Defendant researched, developed, designed, tested, manufactured,
18 inspected, labeled, distributed, marketed, promoted, sold, and otherwise released
19 into the stream of commerce its Roundup[®] products, and in the course of same,
20 directly advertised or marketed the products to consumers and end users, including
21 the Plaintiff, Plaintiff's employer, Plaintiff's co-workers, and persons responsible
22 for consumers (such as employers), and therefore had a duty to warn of the risks
23 associated with the use of Roundup[®] and glyphosate-containing products.

24 93. At all times relevant to this litigation, Defendant had a duty to properly
25 test, develop, design, manufacture, inspect, package, label, market, promote, sell,
26 distribute, maintain supply, provide proper warnings, and take such steps as

1 necessary to ensure that its Roundup[®] products did not cause users and consumers
2 to suffer from unreasonable and dangerous risks. Defendant had a continuing duty
3 to warn the Plaintiff of the dangers associated with Roundup[®] use and exposure.
4 Defendant, as manufacturer, seller, or distributor of chemical herbicides is held to
5 the knowledge of an expert in the field.

6 94. At the time of manufacture, Defendant could have provided the
7 warnings or instructions regarding the full and complete risks of Roundup[®] and
8 glyphosate-containing products because it knew or should have known of the
9 unreasonable risks of harm associated with the use of and/or exposure to such
10 products.

11 95. At all times relevant to this litigation, Defendant failed to investigate,
12 study, test, or promote the safety or to minimize the dangers to users and consumers
13 of its product and to those who would foreseeably use or be harmed by Defendant's
14 herbicides, including Plaintiff.

15 96. Despite the fact that Defendant knew or should have known that
16 Roundup[®] posed a grave risk of harm, it failed to exercise reasonable care to warn
17 of the dangerous risks associated with use and exposure. The dangerous
18 propensities of its products and the carcinogenic characteristics of glyphosate, as
19 described above, were known to Defendant, or scientifically knowable to Defendant
20 through appropriate research and testing by known methods, at the time it
21 distributed, supplied or sold the product, and not known to end users and
22 consumers, such as Plaintiff and the horticultural company who employed her.

23 97. Defendant knew or should have known that its products created
24 significant risks of serious bodily harm to consumers, as alleged herein, and
25 Defendant failed to adequately warn consumers and reasonably foreseeable users of
26 the risks of exposure to its products. Defendant has wrongfully concealed

1 information concerning the dangerous nature of Roundup[®] and its active ingredient
2 glyphosate, and further made false and/or misleading statements concerning the
3 safety of Roundup[®] and glyphosate.

4 98. At all times relevant to this litigation, Defendant's Roundup[®] products
5 reached the intended consumers, handlers, and users or other persons coming into
6 contact with these products in New York and throughout the United States,
7 including Plaintiff, without substantial change in their condition as designed,
8 manufactured, sold, distributed, labeled, and marketed by Defendant.

9 99. Plaintiff was exposed to Defendant's Roundup[®] products in the course
10 of her employment as a horticultural worker, as described above, without
11 knowledge of their dangerous characteristics.

12 100. At all times relevant to this litigation, Plaintiff used and/or was
13 exposed to the use of Defendant's Roundup[®] products in their intended or
14 reasonably foreseeable manner without knowledge of their dangerous
15 characteristics.

16 101. Plaintiff could not have reasonably discovered the defects and risks
17 associated with Roundup[®] or glyphosate-containing products prior to or at the time
18 of Plaintiff's exposure. Plaintiff relied upon the skill, superior knowledge, and
19 judgment of Defendant.

20 102. Defendant knew or should have known that the minimal warnings
21 disseminated with its Roundup[®] products were inadequate, but they failed to
22 communicate adequate information on the dangers and safe use/exposure and failed
23 to communicate warnings and instructions that were appropriate and adequate to
24 render the products safe for their ordinary, intended and reasonably foreseeable
25 uses, including agricultural and horticultural applications.
26

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

12 104. To this day, Defendant has failed to adequately and accurately warn of
13 the true risks of Plaintiff's injuries associated with the use of and exposure to
14 Roundup[®] and its active ingredient glyphosate, a probable carcinogen.

15 105. As a result of their inadequate warnings, Defendant's Roundup[®]
16 products were defective and unreasonably dangerous when they left the possession
17 and/or control of Defendant, were distributed by Defendant, and used by Plaintiff in
18 the course of her employment as a horticultural worker.

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

23 107. The defects in Defendant's Roundup[®] products were substantial and
24 contributing factors in causing Plaintiff's injuries, and, but for Defendant's
25 misconduct and omissions, Plaintiff would not have sustained their injuries.
26

1 and/or sell a product that was not unreasonably dangerous to consumers and users
2 of the product.

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

10 115. At all times relevant to this litigation, Defendant knew or, in the
11 exercise of reasonable care, should have known of the hazards and dangers of
12 Roundup[®] and specifically, the carcinogenic properties of the chemical glyphosate.

13 116. Accordingly, at all times relevant to this litigation, Defendant knew or,
14 in the exercise of reasonable care, should have known that use of or exposure to its
15 Roundup[®] products could cause or be associated with Plaintiff's injuries and thus
16 created a dangerous and unreasonable risk of injury to the users of these products,
17 including Plaintiff.

18 117. Defendant also knew or, in the exercise of reasonable care, should
19 have known that users and consumers of Roundup[®] were unaware of the risks and
20 the magnitude of the risks associated with use of and/or exposure to Roundup[®] and
21 glyphosate-containing products.

22 118. As such, Defendant breached its duty of reasonable care and failed to
23 exercise ordinary care in the design, research, development, manufacture, testing,
24 marketing, supply, promotion, advertisement, packaging, sale, and distribution of
25 its Roundup[®] products, in that Defendant manufactured and produced defective
26 herbicides containing the chemical glyphosate, knew or had reason to know of the

1 defects inherent in its products, knew or had reason to know that a user's or
2 consumer's exposure to the products created a significant risk of harm and
3 unreasonably dangerous side effects, and failed to prevent or adequately warn of
4 these risks and injuries.

5 119. Despite its ability and means to investigate, study, and test its products
6 and to provide adequate warnings, Defendant has failed to do so. Indeed,
7 Defendant has wrongfully concealed information and has further made false and/or
8 misleading statements concerning the safety and/or exposure to Roundup[®] and
9 glyphosate.

10 120. Defendant's negligence included:

11 a. Manufacturing, producing, promoting, formulating,
12 creating, developing, designing, selling, and/or distributing its
13 Roundup[®] products without thorough and adequate pre- and post-
14 market testing;

15 b. Manufacturing, producing, promoting, formulating,
16 creating, developing, designing, selling, and/or distributing Roundup[®]
17 while negligently and/or intentionally concealing and failing to
18 disclose the results of trials, tests, and studies of exposure to
19 glyphosate, and, consequently, the risk of serious harm associated with
20 human use of and exposure to Roundup[®];

21 c. Failing to undertake sufficient studies and conduct
22 necessary tests to determine whether or not Roundup[®] products and
23 glyphosate-containing products were safe for their intended use in
24 agriculture and horticulture;

25 d. Failing to use reasonable and prudent care in the design,
26 research, manufacture, and development of Roundup[®] products so as

1 to avoid the risk of serious harm associated with the prevalent use of
2 Roundup[®]/glyphosate as an herbicide;

3 e. Failing to design and manufacture Roundup[®] products so
4 as to ensure they were at least as safe and effective as other herbicides
5 on the market;

6 f. Failing to provide adequate instructions, guidelines, and
7 safety precautions to those persons who Defendant could reasonably
8 foresee would use and be exposed to its Roundup[®] products;

9 g. Failing to disclose to Plaintiffs, users/consumers, and the
10 general public that use of and exposure to Roundup[®] presented severe
11 risks of cancer and other grave illnesses;

12 h. Failing to warn Plaintiff, consumers, and the general
13 public that the product's risk of harm was unreasonable and that there
14 were safer and effective alternative herbicides available to Plaintiff and
15 other consumers;

16 i. Systematically suppressing or downplaying contrary
17 evidence about the risks, incidence, and prevalence of the side effects
18 of Roundup[®] and glyphosate-containing products;

19 j. Representing that its Roundup[®] products were safe for
20 their intended use when, in fact, Defendant knew or should have
21 known that the products were not safe for their intended purpose;

22 k. Declining to make or propose any changes to Roundup[®]
23 products' labeling or other promotional materials that would alert the
24 consumers and the general public of the risks of Roundup[®] and
25 glyphosate;
26

1 l. Advertising, marketing, and recommending the use of the
2 Roundup[®] products, while concealing and failing to disclose or warn
3 of the dangers known by Defendant to be associated with or caused by
4 the use of or exposure to Roundup[®] and glyphosate;

5 m. Continuing to disseminate information to its consumers,
6 which indicate or imply that Defendant's Roundup[®] products are not
7 unsafe for use in the agricultural and horticultural industries; and

8 n. Continuing the manufacture and sale of its products with
9 the knowledge that the products were unreasonably unsafe and
10 dangerous.

11 121. Defendant knew and/or should have known that it was foreseeable that
12 consumers such as Plaintiff would suffer injuries as a result of Defendant's failure
13 to exercise ordinary care in the manufacturing, marketing, labeling, distribution,
14 and sale of Roundup[®].

15 122. Plaintiff did not know the nature and extent of the injuries that could
16 result from the intended use of and/or exposure to Roundup[®] or its active ingredient
17 glyphosate.

18 123. Defendant's negligence was the proximate cause of the injuries, harm,
19 and economic losses that Plaintiff suffered, and will continue to suffer, as described
20 herein.

21 124. Defendant's conduct, as described above, was reckless. Defendant
22 regularly risks the lives of consumers and users of their products, including
23 Plaintiff, with full knowledge of the dangers of its products. Defendant has made
24 conscious decisions not to redesign, re-label, warn, or inform the unsuspecting
25 public, including Plaintiffs. Defendant's reckless conduct therefore warrants an
26 award of punitive damages.

1 merchantable quality and safe and fit for the use for which they were intended;
2 specifically, as horticultural herbicides.

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

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

11 132. Upon information and belief, Plaintiff's employer was at all relevant
12 times in privity with Defendant.

13 133. Plaintiff is the intended third-party beneficiaries of implied warranties
14 made by Defendant to the purchasers of its horticultural herbicides, including the
15 company that employed Plaintiff, and as such Plaintiff is entitled to assert this
16 claim.

17 134. The Roundup[®] products were expected to reach and did in fact reach
18 consumers and users, including Plaintiff, without substantial change in the
19 condition in which they were manufactured and sold by Defendant.

20 135. At all times relevant to this litigation, Defendant was aware that
21 consumers and users of its products, including Plaintiff, would use Roundup[®]
22 products as marketed by Defendant, which is to say that Plaintiff was a foreseeable
23 user of Roundup[®].

24 136. Defendant intended that its Roundup[®] products be used in the manner
25 in which Plaintiff in fact used them and Defendant impliedly warranted each
26

1 product to be of merchantable quality, safe, and fit for this use, despite the fact that
2 Roundup[®] was not adequately tested or researched.

3 137. In reliance upon Defendant's implied warranty, Plaintiff used
4 Roundup[®] as instructed and labeled and in the foreseeable manner intended,
5 recommended, promoted and marketed by Defendant.

6 138. Neither Plaintiff nor Plaintiff's employer could have reasonably
7 discovered or known of the risks of serious injury associated with Roundup[®] or
8 glyphosate.

9 139. Defendant breached its implied warranty to Plaintiff in that its
10 Roundup[®] products were not of merchantable quality, safe, or fit for their intended
11 use, or adequately tested. Roundup[®] has dangerous propensities when used as
12 intended and can cause serious injuries, including those injuries complained of
13 herein.

14 140. The harm caused by Defendant's Roundup[®] products far outweighed
15 their benefit, rendering the products more dangerous than an ordinary consumer or
16 user would expect and more dangerous than alternative products.

17 141. As a direct and proximate result of Defendant's wrongful acts and
18 omissions Plaintiff has suffered severe and permanent physical and emotional
19 injuries. Plaintiff has endured pain and suffering, have suffered economic loss
20 (including significant expenses for medical care and treatment) and will continue to
21 incur these expenses in the future.

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

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PRAYER FOR RELIEF

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

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

JURY TRIAL DEMAND

Plaintiff demands a trial by jury on all of the triable issues within this Complaint.

Dated: September 22, 2015
Los Angeles, California

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