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15 Attorneys for Defendant  
 16 MONSANTO COMPANY

17 UNITED STATES DISTRICT COURT  
 18 CENTRAL DISTRICT OF CALIFORNIA

19  
 20 BRENDA HUERTA and JAMES  
 HUERTA,

21 Plaintiffs,

22 v.

23 MONSANTO COMPANY,  
 24 SUPERIOR SOD I LP, and  
 SUPERIOR SOD LLC,

25 Defendants.  
 26  
 27  
 28

**C.V. NO.: 5:16-cv-1513**

**MONSANTO COMPANY'S NOTICE  
 OF REMOVAL**

[Removal from Superior Court of  
 California, County of Riverside,  
 Case No. RIC1600639]

1 Defendant Monsanto Company (“Monsanto”), by filing this notice of  
2 removal and related papers, removes this action from the Superior Court of  
3 California, Riverside County, to the United States District Court for the Central  
4 District of California pursuant to 28 U.S.C. §§ 1332, 1441, and 1446. Defendant  
5 Monsanto’s principal place of business is located at 800 North Lindbergh  
6 Boulevard, St. Louis, Missouri 63167. Plaintiffs Brenda Huerta and James Huerta  
7 purportedly reside in Corona, California. Complaint, *Huerta v. Monsanto Co.*,  
8 Docket No. RIC1600639 (“Compl.”) ¶¶ 14-16.

9 In support of removal, Monsanto states:

- 10 1. Plaintiffs commenced this product liability action in the Superior Court  
11 of California, Riverside County, on or about January 20, 2016, by  
12 filing a “Complaint and Demand for Jury Trial” (“Complaint”),  
13 captioned Brenda Huerta, et al. v. Monsanto Company, et al., Docket  
14 No. RIC1600639 (the “State Court Action”). A copy of the Complaint  
15 is attached as Exhibit 1.
- 16 2. Monsanto has not been served with the Complaint in the state court  
17 action, and no further proceedings have occurred in the state court  
18 action. No notice of service has been filed as to the non-Monsanto  
19 defendants.
- 20 3. Plaintiffs allege that they suffered injuries, including non-Hodgkin’s  
21 lymphoma, as a result of exposure to Roundup<sup>®</sup>, a product  
22 manufactured by Monsanto. Compl. ¶¶ 71 – 72. Mr. Huerta’s injuries  
23 are limited to an alleged loss of consortium. *See* Compl. ¶¶ 72, 160-  
24 61.
- 25 4. Roundup<sup>®</sup>’s active ingredient, glyphosate, is the most widely-used  
26 weed killer in the United States. Since its introduction in 1974, the  
27 U.S. Environmental Protection Agency (“EPA”) repeatedly has  
28

1 concluded, including as recently as last year, that exposure to  
2 Roundup<sup>®</sup> does not cause cancer.

3 **GROUND FOR REMOVAL**

4 5. As outlined in more detail below, this Court has subject matter  
5 jurisdiction pursuant to 28 U.S.C.A. §1332(a)(1) (West 2015), which  
6 confers “original jurisdiction of all civil actions where the [amount] in  
7 controversy exceeds the sum or value of \$75,000, exclusive of interest  
8 [or] costs, and is between . . . citizens of different states.”

9 **COMPLETE DIVERSITY EXISTS BETWEEN**

10 **PLAINTIFFS AND MONSANTO**

11 6. Plaintiffs Brenda Huerta and James Huerta are citizens of California,  
12 residing in Corona, California. Compl. ¶¶ 14-16.

13 7. Monsanto is, and has been at all relevant times, incorporated in the  
14 state of Delaware, with a principal place of business in the state of  
15 Missouri.

16 8. The Complaint seeks compensatory and punitive damages, together  
17 with court costs, attorneys’ fees, and all such other relief as the Court  
18 deems proper. *See* Compl. 19-20 (demand). Upon information and  
19 belief, plaintiffs’ Complaint seeks damages in excess of \$75,000,  
20 exclusive of interest and costs. 28 U.S.C.A. § 1332(a) (West 2015).

21 9. Thus, there is complete diversity between plaintiffs and defendant  
22 Monsanto. As explained below, the remaining defendants have been  
23 fraudulently joined or fraudulently misjoined.

24 **THE SUPERIOR SOD DEFENDANTS ARE FRAUDULENTLY JOINED**

25 **AND THEIR CITIZENSHIP SHOULD BE DISREGARDED**

26 10. The doctrine of fraudulent joinder allows a court to disregard the  
27 citizenship of an in-state defendant for the purposes of diversity  
28 jurisdiction if “the plaintiff fails to state a cause of action against a

1 resident defendant, and the failure is obvious according to the settled  
2 rules of the state.” *Morris v. Princess Cruises, Inc.*, 236 F.3d 1061,  
3 1067 (9<sup>th</sup> Cir. 2001).

- 4 11. Upon information and belief, Defendant Superior Sod LLC is  
5 incorporated in the state of Delaware, with a principal place of  
6 business in the state of California.
- 7 12. Upon information and belief, Defendant Superior Sod I LP is a  
8 California limited partnership with a principal place of business in the  
9 state of California.
- 10 13. Plaintiffs bring two causes of action against the Superior Sod  
11 defendants, sounding in failure-to-warn strict liability and negligence.  
12 Compl. ¶¶ 89 – 110, 126 – 142. Plaintiffs allege they were exposed to  
13 Roundup<sup>®</sup> in Tehachapi, California (in Kern County) on a farm owned  
14 and/or controlled by the Superior Sod defendants. Compl. ¶¶ 71-72.
- 15 14. Defendants Superior Sod LLC and Superior Sod I LP are fraudulently  
16 joined to plaintiffs’ complaint. This is a product liability action  
17 against defendant Monsanto. All of plaintiffs’ factual allegations  
18 concern alleged labeling and warning defects surrounding the use of  
19 Roundup<sup>®</sup>. Compl. ¶¶ 21-70.
- 20 15. Nowhere in plaintiffs’ 20-page complaint do they make any specific  
21 factual allegations of liability for the allegedly dangerous properties of  
22 Roundup<sup>®</sup> against the Superior Sod defendants. Plaintiffs thus have  
23 failed to adequately state a products liability claim or strict liability  
24 claim against Superior Sod. Further, as a matter of law, Superior Sod  
25 may not be held liable in strict liability for applying a  
26 pesticide/herbicide. *See Jensen v. Santa Clara Cty.*, 32 F. App’x 203,  
27 206 (9<sup>th</sup> Cir. 2002) (citing *Luthringer v. Moore*, 31 Cal. 2d 489, 496,  
28 190 P.2d 1 (1948)).

1           16. In order to prevail in a product liability case on a claim of negligence  
2           under California law, plaintiffs must show that the alleged defect in the  
3           Roundup® they were exposed to “was due to negligence of the  
4           defendant.” *In re Toyota Motor Corp. Unintended Acceleration Mktg.,*  
5           *Sales Practices, and Prod. Liab. Litig.*, 754 F. Supp. 2d 1208, 1223  
6           (C.D. Cal. 2010) (omitting internal citations). Plaintiffs make no  
7           allegations in their complaint that the alleged defect in Roundup®  
8           (manufactured by Monsanto) was due to the negligence of the Superior  
9           Sod defendants.

10           17. Likewise, if such a claim were otherwise viable, in order to prevail in a  
11           product liability case on a failure-to-warn claim under California law,  
12           plaintiffs must show the Superior Sod defendants “knew or reasonably  
13           should have known that” Roundup® was “dangerous or was likely to  
14           be dangerous when used or misused in a reasonably foreseeable  
15           manner.” *Sclafani v. Air & Liquid Sys. Corp.*, Nos. 2:12-cv-3013-  
16           SVW-PJW, 2:12-cv-3037-SVW-PJW, 2013 WL 2477077, at \*6 (C.D.  
17           Cal. May 9, 2013) (omitting internal citations). Plaintiffs make no  
18           factual allegations in their complaint that the Superior Sod defendants  
19           had actual knowledge of or should have had knowledge of the  
20           allegedly carcinogenic properties of Roundup®.

21           18. In fact, plaintiffs make great effort to allege that Monsanto misled the  
22           public into believing that Roundup® was safe. Compl. ¶ 23 (“For  
23           nearly 40 years, farms across the world have used Roundup® without  
24           knowing of the dangers its use poses . . . Monsanto led a prolonged  
25           campaign of misinformation to convince government agencies,  
26           farmers and the general population that Roundup® was safe.”).

27           19. Plaintiffs seek to allege a separate claim against the Superior Sod  
28           defendants based upon their alleged negligent spraying of Roundup.

1 Compl. ¶ 136. This claim likewise fails to state a cause of action (and  
2 is thus fraudulently joined) because plaintiffs still would need to show  
3 that the Superior Sod defendants knew or had reason to know that  
4 exposure to Roundup® could cause cancer. *See Myers v. United States*,  
5 652 F.3d 1021, 1035 (9<sup>th</sup> Cir. 2011).

6 20. Separately, plaintiffs' complaint states that the plaintiffs lived on the  
7 Superior Sod Farm for four years, which raises the likelihood that they  
8 worked at the farm. If plaintiffs were employees of Superior Sod, then  
9 their claims against Superior Sod are barred by the exclusive remedy  
10 afforded by California's Workers' Compensation system, *see, e.g.*,  
11 *Wright v. FMC Corp.*, 146 Cal. Rptr. 740, 740 (Cal. Ct. App. 1978)  
12 (barring claims against employer for injuries allegedly sustained  
13 mixing pesticides under California Workers' Compensation Law), and  
14 would separately preclude plaintiffs from relying on the Superior Sod  
15 defendants to secure diversity jurisdiction. California federal courts  
16 routinely deny motions to remand when plaintiffs fraudulently join  
17 barred workers compensation claims against one defendant with  
18 claims against another, diverse defendant, in order to defeat diversity  
19 jurisdiction. *See Langevin v. Fed. Exp. Corp.*, No. CV 14 08105, 2015  
20 WL 1006367, at \*10-11 (C.D. Cal. Mar. 6, 2015) (finding plaintiff's  
21 Intentional Infliction of Emotional Distress claims barred by workers'  
22 compensation laws, holding that non-diverse defendants were  
23 fraudulently joined, and denying motion to remand); *Ross v. Morgan*  
24 *Stanley Smith Barney, LLC*, No. 2:12-cv-09687, 2013 WL 865598, at  
25 \*4-5 (C.D. Cal. Mar. 7, 2013) (same).

26 21. In sum, plaintiffs' Complaint contains no factual allegations sufficient  
27 to support their legal claims against the Superior Sod defendants.

28 Thus, the Superior Sod defendants have been fraudulently joined, and

1 their citizenship should be disregarded for diversity purposes. *See,*  
2 *e.g., Burns v. Medtronic, Inc.*, No. 2:13-cv-6093-SVW-Ex, 2013 WL  
3 5596122, at \*2 (C.D. Cal. Oct. 8, 2013) (denying motion to remand  
4 case when case was removed pursuant to 28 U.S.C. §1332 and  
5 allegations against non-diverse co-defendant were not sufficient to  
6 support a claim against that co-defendant).

7 **THE DOCTRINE OF FRAUDULENT MISJOINDER ALSO DEFEATS**  
8 **DIVERSITY**

9 22. The doctrine of fraudulent misjoinder may also be applied to disregard  
10 the citizenship of in-state defendants for the purposes of diversity  
11 jurisdiction if the claim against the non-diverse defendants “have no  
12 real connection with the controversy” involving the diverse  
13 defendants. *See Sutton v. Davol, Inc.*, 251 F.R.D. 500, 504 (E.D. Cal.  
14 2008). A misjoinder occurs when two or more defendants are included  
15 in the same claim, yet the claims against each defendant either (1) do  
16 not arise out of the same transaction, occurrence, or series of  
17 transactions or occurrences, or (2) do not share a common question of  
18 law or fact. Fed. R. Civ. P. 20(a)(2); *id.* at Rule 21.

19 23. Even if plaintiffs could assert a viable cause of action resulting from  
20 the Superior Sod defendants’ allegedly negligent spraying of  
21 Roundup<sup>®</sup>, those claims would be fraudulently misjoined with their  
22 claims against Monsanto.

23 24. Plaintiffs’ product liability claims against Monsanto, based upon  
24 Monsanto’s alleged misrepresentations and omissions in the warning  
25 accompanying Roundup<sup>®</sup>, Compl. ¶¶ 21 – 70, are separate and  
26 dissimilar from plaintiffs’ claims of negligent spraying against the  
27 Superior Sod defendants, Compl. ¶ 136.

1           25. Plaintiffs’ negligent spraying claims, to the extent they exist, are  
2           predicated upon the allegedly careless operation of herbicide spraying  
3           apparatus, rather than the alleged inherently dangerous properties of  
4           Roundup®. Plaintiffs’ claims against the Superior Sod defendants do  
5           not satisfy the same transaction or occurrence requirement or the  
6           common question requirement for joinder with the claims alleged  
7           against Monsanto. *See supra* ¶ 22.

8           26. Because plaintiffs’ negligent spraying claims against the Superior Sod  
9           defendants do not share common questions of law or fact with  
10          plaintiffs’ claims against Monsanto, and/or do not arise out of the same  
11          transaction, occurrence, or series of transactions or occurrences, the  
12          joinder of the Superior Sod defendants is improper and should not be  
13          considered for diversity purposes. *See Sutton*, 251 F.R.D. at 505  
14          (severing and remanding claims of medical malpractice against doctors  
15          who implanted patient with recalled medical device from product  
16          liability claims against device manufacturer).

17          **THE OTHER PREREQUISITES FOR REMOVAL ARE SATISFIED**

18          27. The Superior Court of California, Riverside County, is located within  
19          the Central District of California, and, therefore, removal to this court  
20          satisfies the venue requirements of 28 U.S.C.A. § 1446(a) (West  
21          2015).

22          28. A copy of the written notice required by 28 U.S.C.A § 1446(d) (West  
23          2015) is attached as Exhibit 2 and is being filed in the Superior Court  
24          of California, Riverside County, and served on plaintiffs.

25  
26        ///

27        ///

28        ///



1 If any question arises as to the propriety of this removal action, Monsanto  
2 respectfully requests the opportunity to submit briefing and oral argument and to  
3 conduct discovery in support of its position that subject matter jurisdiction exists.  
4

5 DATED: January 26, 2016

Respectfully submitted,

6  
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