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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10 PETER JOHANSING,

11 *Plaintiff,*

12 vs.

13 MONSANTO COMPANY,

14 *Defendant.*

Case No. 2:16-cv-5035

COMPLAINT

DEMAND FOR JURY TRIAL

15
16 **INTRODUCTION**

17 1. Peter Johansing tended to his family ranch with great care. From 1975 to
18 early 2016 he regularly used the weed killer Roundup, an herbicide created and
19 manufactured by the Monsanto Company. Roundup was supposed to be safe. After all,
20 Monsanto promoted Roundup as being harmless to humans for over thirty years—going
21 so far as to proclaim the product safe as table salt. The truth, however, is far more
22 insidious. The active chemical in Roundup, glyphosate, is a carcinogen, and Monsanto
23 has known this fact for decades.

24 2. In January 2004, after using Roundup for several decades, Mr. Johansing
25 was diagnosed with Non-Hodgkins Lymphoma (“NHL”).

26 3. Last year, the International Agency for Research on Cancer (IARC), an
27 organization within the World Health Organization (WHO), conducted an exhaustive
28 analysis on the toxicity of glyphosate. The IARC, which has already reviewed

1 hundreds of other chemical agents, convened a panel of seventeen renowned scientists
2 from eleven countries, specifically screened to avoid potential conflicts of interest, to
3 conduct a systematic review of all publically available information about glyphosate.
4 The year-long study resulted in the publication of an IARC Monograph—the
5 authoritative standard for cancer hazard assessment around the world. The IARC
6 classified glyphosate as a Group 2A hazard, meaning it is a probable human
7 carcinogen—the second highest hazard rating. Additionally, the IARC concluded there
8 was a positive association between glyphosate exposure and non-Hodgkin lymphoma.
9 As a result of the IARC’s study of glyphosate, the State of California’s Office of
10 Environmental Health Hazard Assessment (OEHHA) has decided to list glyphosate as
11 an agent “known to the state to cause cancer” under Proposition 65.

12 4. In 1970, Defendant Monsanto discovered the herbicidal properties of
13 glyphosate and began using it in its products in 1974, and marketing it under the brand
14 name Roundup. Roundup is a non-selective herbicide used to kill weeds that
15 commonly compete with the growing of crops. By 2001, glyphosate had become the
16 most-used active ingredient in American agriculture with 85–90 million pounds used
17 annually. That number grew to 185 million pounds by 2007.

18 5. Monsanto has represented Roundup as being safe to humans and the
19 environment since it began selling the herbicide. Indeed, Monsanto has proclaimed and
20 continues to proclaim to the world, and particularly to United States consumers, that
21 glyphosate-based herbicides, including Roundup, create no unreasonable risks to human
22 health or to the environment. This is untrue. Before glyphosate was first approved by
23 the Environmental Protection Agency (EPA), Monsanto knew that glyphosate could
24 pose significant risks to human health, including a risk of causing cancer. This lawsuit
25 seeks to hold Monsanto accountable for this misconduct.

26 **PARTIES**

27 6. Plaintiff Peter Johansing resides and is a citizen of the County of San Luis
28 Obispo, California. Plaintiff owns a family ranch in San Miguel, California. Plaintiff

1 regularly used Roundup on his ranch.

2 7. Defendant Monsanto Company (“Monsanto”) is a Delaware corporation
3 with its headquarters and principal place of business in St. Louis, Missouri. Monsanto
4 is a citizen of the States of Missouri and Delaware. Monsanto is not a citizen of the
5 state of California. At all times relevant to this complaint, Monsanto was the entity
6 that discovered the herbicidal properties of glyphosate and was the manufacturer of the
7 Roundup at issue.

8 **JURISDICTION AND VENUE**

9 8. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332.
10 There is complete diversity of citizenship between the parties. In addition, Plaintiff
11 seeks damages in excess of \$75,000, exclusive of interest and costs.

12 9. This Court has personal jurisdiction over Monsanto insofar as Monsanto
13 is authorized and licensed to conduct business in the State of California, maintains and
14 carries on systematic and continuous contacts in this judicial district, regularly
15 transacts business within this judicial district, and regularly avails itself of the benefits
16 of this judicial district.

17 10. Additionally, Monsanto caused tortious injury by acts and omissions in
18 this judicial district and caused tortious injury in this district by acts and omissions
19 outside this district while regularly doing and soliciting business, engaging in a
20 persistent course of conduct, and deriving substantial revenue from goods used or
21 consumed and services rendered in this judicial district.

22 11. Venue is proper before this Court pursuant to 28 U.S.C. § 1391 because a
23 substantial part of the events or omissions giving rise to this claim occurred within this
24 judicial district.

25 **FACTUAL ALLEGATIONS**

26 12. Glyphosate is a broad-spectrum, non-selective herbicide used in a wide
27 variety of herbicidal products around the world, including the popular herbicide
28 Roundup.

1 13. Glyphosate interferes with a plant's ability to form aromatic amino acids
2 necessary for protein synthesis. Plants treated with glyphosate generally die within
3 two to three days. Because plants absorb glyphosate, it cannot be completely removed
4 by washing or peeling produce, or by milling, baking, or brewing grains.

5 14. The herbicidal properties of glyphosate were discovered in 1970 by
6 Monsanto chemist John Franz. The first glyphosate-based herbicide was introduced to
7 the market in the mid-1970s under the brand name Roundup.

8 15. For about 40 years, farmers around the world have used Roundup,
9 containing glyphosate, without knowing of the dangers its use poses. That is because,
10 when Monsanto first introduced Roundup, it touted glyphosate as a technological
11 breakthrough: it could kill almost every weed without causing harm either to people or
12 to the environment. History, however, has demonstrated otherwise. According to the
13 WHO, the main chemical ingredient of Roundup—glyphosate—is a probable
14 carcinogen. Those most at risk are farm workers and other individuals with workplace
15 exposure to Roundup, such as workers in garden centers, nurseries, and landscapers.
16 Monsanto assured the public that Roundup was harmless. In order to prove this,
17 Monsanto championed falsified data and attacked legitimate studies exposing
18 glyphosate's dangers. Monsanto orchestrated a prolonged campaign of misinformation
19 to convince government agencies, farmers, and the general population that Roundup
20 was safe. As a result of this deception, agricultural workers and farmers have been
21 exposed to a carcinogen, while Monsanto has made billions.

22 **I. Registration of Herbicides**

23 16. The manufacture, formulation, and distribution of herbicides, such as
24 Roundup, is regulated under the Federal Insecticide, Fungicide, and Rodenticide Act
25 (FIFRA), 7 U.S.C. §§ 136 *et seq.* FIFRA requires that all pesticides be registered with
26 the EPA prior to distribution, sale, or use, except as described by the Act. 7 U.S.C. §
27 136a(a).

28 17. Because pesticides are toxic to plants, animals, and humans, at least to

1 some degree, the EPA requires as part of the registration process, among other things,
2 a variety of tests to evaluate the potential for exposure to pesticides, toxicity to people
3 and other potential non-target organisms, and other adverse effects on the environment.
4 Registration by the EPA, however, is not an assurance or finding of safety. The EPA
5 does not deem certain products “safe,” but only that use of the product in accordance
6 with its label directions “will not generally cause unreasonable adverse effects on the
7 environment.” 7 U.S.C. § 136a(c)(5)(D).

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

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

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

26 21. In the case of glyphosate, the EPA planned on releasing its preliminary
27 risk assessment—in relation to the re-registration process—no later than July 2015.
28 The EPA completed its review of glyphosate in early 2015, but it delayed releasing the

1 risk assessment pending further review in light of the WHO's health-related findings.

2 22. In April 2016, the EPA posted a risk assessment of glyphosate on its
3 website and then immediately retracted it. The EPA subsequently indicated that the
4 posting was inadvertent, that the document posted was not the EPA's final assessment
5 or even a preliminary one, and that the EPA intended to issue a final report by the end
6 of 2016.

7 **II. Scientific Fraud Underlying the Marketing and Sale of Glyphosate**

8 23. Based on early studies that glyphosate could cause cancer in laboratory
9 animals, the EPA originally classified glyphosate as possibly carcinogenic to humans
10 (Group C) in 1985. After pressure from Monsanto, including contrary studies it
11 provided to the EPA, the EPA changed its classification to evidence of non-
12 carcinogenicity in humans (Group E) in 1991. In so classifying glyphosate, however,
13 the EPA stated that "[i]t should be emphasized, however, that designation of an agent in
14 Group E is based on the available evidence at the time of evaluation and should not be
15 interpreted as a definitive conclusion that the agent will not be a carcinogen under any
16 circumstances."

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

19 25. In the first instance, Monsanto hired Industrial Bio-Test Laboratories
20 ("IBT") to perform and evaluate pesticide toxicology studies relating to Roundup. IBT
21 performed approximately 30 tests on glyphosate and glyphosate-containing-products,
22 including 9 of the 15 residue studies needed to register Roundup with the EPA.

23 26. In 1976, the Food and Drug Administration ("FDA") performed an
24 inspection of IBT and discovered discrepancies between the raw data and the final
25 report relating to the toxicological impacts of glyphosate. The EPA subsequently
26 audited IBT and determined that the toxicology studies conducted for the Roundup
27 were invalid. An EPA reviewer stated, after finding "routine falsification of data" at
28 IBT, that it was "hard to believe the scientific integrity of the studies when they said

1 they took specimens of the uterus from male rabbits.”

2 27. Three top executives of IBT were convicted of fraud in 1983.

3 28. In the second incident, Monsanto hired Craven Laboratories in 1991 to
4 perform pesticide and herbicide studies, including several studies on Roundup. That
5 same year, the owner of Craven Laboratories and three of its employees were indicted,
6 and later convicted, of fraudulent laboratory practices in the testing of pesticides and
7 herbicides.

8 **III. Monsanto’s Market Dominance**

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

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

24 31. Through a three-pronged strategy of increased production, decreased
25 prices and by coupling with Roundup Ready seeds, Roundup became Monsanto’s most
26 profitable product. In 2000, Roundup accounted for almost \$2.8 billion in sales,
27 outselling other herbicides by a margin of five to one, and accounting for close to half
28 of Monsanto’s revenue. Today, glyphosate remains one of the world’s largest

1 herbicides by sales volume.

2 **IV. Monsanto Falsely Advertised Roundup as Being Safe for Decades**

3 32. In 1996, the New York Attorney General (“NYAG”) filed a lawsuit
4 against Monsanto based on its false and misleading advertising of Roundup products.
5 Specifically, the lawsuit challenged Monsanto’s general representations that its spray-
6 on glyphosate-based herbicides, including Roundup, were “safer than table salt” and
7 “practically non-toxic” to mammals, birds, and fish. Among the representations the
8 NYAG found deceptive and misleading about the human and environmental safety of
9 Roundup are:

- 10 a. “Remember that environmentally friendly Roundup herbicide is
11 biodegradable. It won’t build up in the soil so you can use Roundup with
12 confidence along customers’ driveways, sidewalks and fences.”
- 13 b. “And remember that Roundup is biodegradable and won’t build up in the
14 soil. That will give you the environmental confidence you need to use
15 Roundup everywhere you’ve got a weed, brush, edging or trimming
16 problem.”
- 17 c. “Roundup biodegrades into naturally occurring elements.”
- 18 d. “Remember that versatile Roundup herbicide stays where you put it. That
19 means there’s no washing or leaching to harm customers’ shrubs or other
20 desirable vegetation.”
- 21 e. “This non-residual herbicide will not wash or leach in the soil. It ... stays
22 where you apply it.”
- 23 f. You can apply Roundup with “confidence because it will stay where you
24 put it,” it bonds tightly to soil particles, preventing leaching. Then, soon
25 after application, soil microorganisms biodegrade Roundup into natural
26 products.
- 27 g. “Glyphosate is less toxic to rats than table salt following acute oral
28 ingestion.”

- 1 h. “Glyphosate’s safety margin is much greater than required. It has over a
2 1,000-fold safety margin in food and over a 700-fold safety margin for
3 workers who manufacture it or use it.”
- 4 i. “You can feel good about using herbicides by Monsanto. They carry a
5 toxicity category rating of ‘practically non-toxic’ as it pertains to
6 mammals, birds and fish.”
- 7 j. “Roundup can be used where kids and pets will play and breaks down into
8 natural material.” This ad depicts a person with his head in the ground and
9 a pet dog standing in an area that has been treated with Roundup.

10 33. On November 19, 1996, Monsanto entered into an Assurance of
11 Discontinuance with NYAG, in which Monsanto agreed, among other things, “to cease
12 and desist from publishing or broadcasting any advertisements [in New York] that
13 represent, directly or by implication” that:

- 14 a. glyphosate-containing pesticide products or any component thereof are
15 safe, non-toxic, harmless or free from risk;
- 16 b. glyphosate-containing pesticide products or any component thereof
17 manufactured, formulated, distributed or sold by Monsanto are
18 biodegradable;
- 19 c. glyphosate-containing pesticide products or any component thereof stay
20 where they are applied under all circumstances and will not move through
21 the environment by any means;
- 22 d. glyphosate-containing pesticide products or any component thereof are
23 “good” for the environment or are “known for their environmental
24 characteristics”;
- 25 e. glyphosate-containing pesticide products or any component thereof are
26 safer or less toxic than common consumer products other than herbicides;
27 and,
- 28 f. glyphosate-containing products or any component thereof might be

1 classified as “practically non-toxic.”

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

4 35. In 2009, France’s highest court ruled that Monsanto had not told the truth
5 about the safety of Roundup. The French court affirmed an earlier judgment that
6 Monsanto had falsely advertised its herbicide Roundup as “biodegradable” and that it
7 “left the soil clean.”

8 **V. Assessments of Glyphosate**

9 36. IARC was created in 1965 as the specialized cancer agency of the World
10 Health Organization with support of the United States. IARC promotes international
11 collaboration in cancer research, “bringing together skills in epidemiology, laboratory
12 sciences, and biostatistics to identify the causes of cancer[.]”

13 37. IARC is transparent. The minutes and documents presented at its council
14 meetings are publicly available and, thus, are subject to scientific scrutiny. Starting in
15 1971, IARC began assessing whether chemicals were carcinogenic through the
16 Monograph program.

17 38. The IARC process for the classification of glyphosate followed the
18 stringent procedures for the evaluation of a chemical agent. Over time, the IARC
19 Monograph program has reviewed 980 agents. Of those reviewed, it has determined
20 116 agents to be Group 1 (Known Human Carcinogens); 73 agents to be Group 2A
21 (Probable Human Carcinogens); 287 agents to be Group 2B (Possible Human
22 Carcinogens); 503 agents to be Group 3 (Not Classified); and one agent to be Probably
23 Not Carcinogenic.

24 39. The established procedure for IARC Monograph evaluations is described
25 in the IARC Programme’s Preamble. Evaluations are performed by panels of
26 international experts, selected on the basis of their expertise and the absence of actual
27 or apparent conflicts of interest.

28 40. A year before the Monograph meeting, the meeting is announced and

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

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

16 42. In March 2015, IARC reassessed glyphosate. The summary published in
17 The Lancet Oncology reported that glyphosate is a Group 2A agent and probably
18 carcinogenic in humans.

19 43. On July 29, 2015, IARC issued its Monograph for glyphosate, Monograph
20 112. For Volume 112, the volume that assessed glyphosate, the Working Group
21 consisted of 17 experts from 11 countries who met from March 3–10, 2015, to assess
22 the carcinogenicity of certain herbicides, including glyphosate. Among the members
23 were Lauren Zeise, Ph.D., of the California Environmental Protection Agency,
24 Matthew T. Martin, Ph.D, a scientist with the U.S. Environmental Protection Agency,
25 and Gloria D. Jahnke, D.V.M., D.A.B.T. of the National Institute of Environmental
26 Health Sciences.

27 44. The March meeting culminated after a nearly one-year review and
28 preparation by the IARC Secretariat and the Working Group, including a

1 comprehensive review of the latest available scientific evidence. According to
2 published procedures, the Working Group considered “reports that have been
3 published or accepted for publication in the openly available scientific literature” as
4 well as “data from governmental reports that are publicly available.”

5 45. The studies considered the various exposure groups, including
6 occupational exposure of farmers and tree nursery workers in the United States,
7 forestry workers in Canada and Finland, municipal weed-control workers in the United
8 Kingdom, and para-occupational exposure in farming families.

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

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

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

19 49. The IARC Working Group conducted a systematic review of over 15
20 studies designed to assess whether there was an association between Roundup
21 exposure in agricultural workers and Non-Hodgkin Lymphoma (NHL). The
22 researchers reviewed each study, identified the results and assessed each study’s
23 strengths and weaknesses. The IARC Working Group concluded that, despite the
24 limited evidence concerning the carcinogenicity of glyphosate in humans, a “positive
25 association has been observed for non-Hodgkin lymphoma.”

26 50. Overall, nine epidemiological studies showed positive associations
27 between glyphosate and NHL, with several studies showing statistically significant
28 relative risks of NHL exceeding 2.0 and even 3.0.

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

6 52. The IARC Working Group also found that glyphosate caused DNA and
7 chromosomal damage in human cells. One study in community residents reported
8 increases in blood markers of chromosomal damage (micronuclei) after glyphosate
9 formulations were sprayed. In assessing the genotoxicity of glyphosate (the property
10 of chemical agents that damages the genetic information within a cell causing
11 mutations, which may lead to cancer), the IARC Working Group concluded “[t]here is
12 strong evidence that glyphosate causes genotoxicity.”

13 53. Additionally, the IARC assessed whether glyphosate exposure can induce
14 oxidative stress, which is thought to be involved in the development of numerous
15 conditions, including cancer, autism, and Parkinson’s disease. The IARC concluded
16 that “strong evidence exists that glyphosate . . . can induce oxidative stress.” This
17 could be an important mechanism by which Roundup causes cancer.¹

18 54. In the IARC monograph for glyphosate, there is an entire section devoted
19 to exposure to humans, looking at studies examining glyphosate exposures in various
20 settings including agricultural ones. The IARC Working Group noted that glyphosate
21 has been detected in urine of agricultural workers, indicating absorption. The IARC
22 Working Group specifically evaluated farm workers in the United States, and found
23 that, within the days following the application of Roundup to a crop, approximately
24 60% of farm workers tested positive for glyphosate in the urine. Additionally, the

25 _____
26 ¹ In addition to DNA damage and oxidative stress, scientists have suggested Roundup’s association
27 with various serious health conditions is linked to the effect Roundup has on the digestive system.
28 Specifically, scientists believe the same mechanism that makes Roundup toxic to weeds also makes it
toxic to the microbes within the human gut. When humans are exposed to Roundup, it leads to a
chronic inflammatory state in the gut, as well an impaired gut barrier, which can lead to many long-
term health effects, including an increased risk of cancer.

1 IARC Working Group noted that soil microbes degrade glyphosate to
2 aminomethylphosphoric acid (AMPA). Blood AMPA detection after exposure
3 suggests intestinal microbial metabolism in humans.

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

10 56. In addition to the IARC's assessment, in 2014, scientists published a
11 systematic review and meta-analysis on the relationship between non-Hodgkin
12 lymphoma and occupational exposure to agricultural pesticides, including glyphosate,
13 in the International Journal of Environmental Research and Public Health. The study
14 showed a statistically significant association between farm workers exposed to
15 Roundup and non-Hodgkin lymphoma. The study confirmed two smaller studies from
16 2002 and 2008, published in the journal *Leukemia & Lymphoma* (2002) and the
17 *International Journal on Cancer* (2008), both of which also showed a statistically
18 significant increase in non-Hodgkin lymphoma among agricultural workers exposed to
19 glyphosate.

20 57. Recent studies, including a glyphosate residue study published in the
21 *Journal of Environmental & Analytical Toxicology* in 2014, indicate that "chronically
22 ill humans showed significantly higher glyphosate residues in urine than healthy
23 population." Glyphosate has been detected in the blood and urine of agricultural
24 workers, indicating that agricultural use of Roundup leads to its absorption.

25 58. In addition to the studies examining glyphosate, research also suggests
26 that the carcinogenic properties of Roundup are magnified by the addition of adjuvants
27 in the Roundup formulation. Adjuvants are chemicals that are designed to modify or
28 enhance the effects of other agents. Monsanto has been including adjuvants with

1 glyphosate in its Roundup products, which are designed to increase the effectiveness of
2 the herbicide. Studies show, however, that the addition of adjuvants also greatly
3 increases the carcinogenic properties of Roundup. Notably, Monsanto has
4 systematically tested glyphosate without the adjuvants and used those tests to lobby the
5 EPA that Roundup is safe.

6 59. Several countries around the world have instituted bans on the sale of
7 Roundup and other glyphosate-containing herbicides, both before and since IARC first
8 announced its assessment for glyphosate in March 2015, and more countries
9 undoubtedly will follow suit as the dangers of the use of Roundup are more widely
10 known.

11 60. The Netherlands issued a ban on all glyphosate-based herbicides in April
12 2014, including Roundup, which takes effect by the end of 2015. In issuing the ban,
13 the Dutch Parliament member who introduced the successful legislation stated:
14 “Agricultural pesticides in user-friendly packaging are sold in abundance to private
15 persons. In garden centers, Roundup is promoted as harmless, but unsuspecting
16 customers have no idea what the risks of this product are. Especially children are
17 sensitive to toxic substances and should therefore not be exposed to it.”

18 61. The Brazilian Public Prosecutor in the Federal District requested that the
19 Brazilian Justice Department suspend the use of glyphosate.

20 62. France banned the private sale of Roundup and glyphosate following the
21 IARC assessment.

22 63. Bermuda banned both the private and commercial sale of glyphosate,
23 including Roundup. The Bermuda government explained: “Following a recent
24 scientific study carried out by a leading cancer agency, the importation of weed spray
25 ‘Roundup’ has been suspended.”

26 64. The Sri Lankan government banned the private and commercial use of
27 glyphosate out of concern that glyphosate has been linked to fatal kidney disease in
28 agricultural workers.

1 65. The government of Columbia announced a ban on using Roundup and
2 glyphosate to destroy illegal plantations of coca, the raw ingredient for cocaine in
3 response to the IARC's assessment.

4 66. In November 2015, 96 prominent experts, including almost the whole
5 IARC team, reiterated IARC's assessment that Roundup is probably a human
6 carcinogen.

7 67. In late February 2016, another 14 scientists signed a consensus statement
8 in the Environmental Health journal, saying regulatory estimates of tolerable exposure
9 levels for glyphosate were based on outdated science.

10 68. In June 2016, the European Union refused to re-register glyphosate
11 containing herbicides due to safety concerns and will, in all likelihood, begin recalling
12 all glyphosate-containing products within the European Union. Indeed, in June 2016,
13 the EU did not vote to extend the registration of glyphosate due to safety concerns.
14 The fate of the product in Europe is now in question.

15 **VI. Plaintiff's Exposure to Glyphosate and Subsequent Cancer**

16 69. Mr. Johansing regularly used Roundup on his family ranch from 1975 to
17 early 2016. He had read and followed the product label's instructions and thus felt
18 safe using Roundup. If he had known it could cause cancer, Mr. Johansing would not
19 have used Roundup.

20 70. In January 2004, Mr. Johansing was diagnosed with Non-Hodgkins
21 Lymphoma.

22 71. It was not until recently, in early 2016, that Mr. Johansing learned that his
23 NHL was caused by his exposure to Roundup. He did not know about and did not see
24 any information linking Roundup exposure to his injury. Indeed, Monsanto actively
25 promoted and stated that Roundup was safe to humans and, thus, Mr. Johansing could
26 not reasonably have known that his cancer was caused by Monsanto's Roundup.

27 72. Upon being diagnosed with NHL, Mr. Johansing did inquire as to what
28 may have caused his injury with his physicians, but neither his physicians nor any

1 credible authority indicated that his use of Roundup was associated with his injury.
2 No reasonable inquiry would have discovered that Roundup was linked to cancer.

3 **LIMITATION ON ALLEGATIONS**

4 73. Plaintiff incorporates by reference each and every allegation set forth in
5 the preceding paragraphs as if fully stated herein.

6 74. The allegations in this pleading are made pursuant to California law. To
7 the extent California law imposes a duty or obligation on the Monsanto that exceeds
8 those required by federal law, Plaintiff does not assert such claims. All claims asserted
9 herein run parallel to federal law, i.e., the Monsanto's violations of California law were
10 also violations of federal law. Had Monsanto honestly complied with California law, it
11 would also have complied with federal law.

12 75. Additionally, Plaintiff's claims do not seek to enforce federal law. These
13 claims are brought under California law, notwithstanding the fact that such claims run
14 parallel to federal law.

15 76. As alleged in this pleading, the Monsanto violated U.S.C. § 136j and 40
16 C.F.R. § 156.10(a)(5) by distributing Roundup, which was misbranded pursuant to 7
17 U.S.C. § 136(g). Federal law specifically prohibits the distribution of a misbranded
18 herbicide.

19 **COUNT I: STRICT LIABILITY (DESIGN DEFECT)**

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

22 78. Plaintiff brings this strict liability claim against Monsanto for defective
23 design.

24 79. At all times relevant to this litigation, Monsanto engaged in the business
25 of testing, developing, designing, manufacturing, marketing, selling, distributing, and
26 promoting Roundup products, which are defective and unreasonably dangerous to
27 consumers, including Plaintiff, thereby placing Roundup products into the stream of
28 commerce. These actions were under the ultimate control and supervision of

1 Defendant. At all times relevant to this litigation, Defendant designed, researched,
2 developed, manufactured, produced, tested, assembled, labeled, advertised, promoted,
3 marketed, sold, and distributed the Roundup products used by Plaintiff, as described
4 above.

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

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

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

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

25 84. At all times relevant to this action, Defendant knew or had reason to know
26 that its Roundup products were defective and were inherently dangerous and unsafe
27 when used in the manner instructed and provided by Defendant.

28 85. Therefore, at all times relevant to this litigation, Defendant's Roundup

1 products, as researched, tested, developed, designed, licensed, manufactured, packaged,
2 labeled, distributed, sold and marketed by Defendant were defective in design and
3 formulation, in one or more of the following ways:

- 4 a. When placed in the stream of commerce, Defendant's Roundup products
5 were defective in design and formulation, and, consequently, dangerous to
6 an extent beyond that which an ordinary consumer would contemplate.
- 7 b. When placed in the stream of commerce, Defendant's Roundup products
8 were unreasonably dangerous in that they were hazardous and posed a
9 grave risk of cancer and other serious illnesses when used in a reasonably
10 anticipated manner.
- 11 c. When placed in the stream of commerce, Defendant's Roundup products
12 contained unreasonably dangerous design defects and were not reasonably
13 safe when used in a reasonably anticipated or intended manner.
- 14 d. Defendant did not sufficiently test, investigate, or study its Roundup
15 products and, specifically, the active ingredient glyphosate.
- 16 e. Exposure to Roundup and glyphosate-containing products presents a risk
17 of harmful side effects that outweigh any potential utility stemming from
18 the use of the herbicide.
- 19 f. Defendant knew or should have known at the time of marketing its
20 Roundup products that exposure to Roundup and specifically, its active
21 ingredient glyphosate, could result in cancer and other severe illnesses
22 and injuries.
- 23 g. Defendant did not conduct adequate post-marketing surveillance of its
24 Roundup products.
- 25 h. Defendant could have employed safer alternative designs and
26 formulations.

27 86. Plaintiff was exposed to Defendant's Roundup products in the course of
28 his work as a farmer, as described above, without knowledge of Roundup's dangerous

1 characteristics.

2 87. At all times relevant to this litigation, Plaintiff used and/or was exposed to
3 the use of Defendant's Roundup products in an intended or reasonably foreseeable
4 manner, i.e., as a rancher, without knowledge of Roundup's dangerous characteristics.

5 88. Plaintiff could not reasonably have discovered the defects and risks
6 associated with Roundup or glyphosate-containing products before or at the time of
7 exposure due to the Defendant's suppression of scientific information linking
8 glyphosate to cancer.

9 89. The harm caused by Defendant's Roundup products far outweighed their
10 benefit, rendering Defendant's product dangerous to an extent beyond that which an
11 ordinary consumer would contemplate. Defendant's Roundup products were and are
12 more dangerous than alternative products and Defendant could have designed its
13 Roundup products to make them less dangerous. Indeed, at the time Defendant
14 designed its Roundup products, the state of the industry's scientific knowledge was
15 such that a less risky design or formulation was attainable.

16 90. At the time Roundup products left Defendant's control, there was a
17 practical, technically feasible and safer alternative design that would have prevented
18 the harm without substantially impairing the reasonably anticipated or intended
19 function of Defendant's herbicides.

20 91. Defendant's defective design of its Roundup products was willful,
21 wanton, fraudulent, malicious, and conducted with reckless disregard for the health
22 and safety of users of the Roundup products, including Plaintiff herein.

23 92. Therefore, as a result of the unreasonably dangerous condition of its
24 Roundup products, Defendant is strictly liable to Plaintiff.

25 93. The defects in Defendant's Roundup products were substantial and
26 contributing factors in causing Plaintiff's cancer, and, but for Defendant's misconduct
27 and omissions, Plaintiff would not have sustained his injuries.

28 94. Defendant's conduct, as described above, was reckless. Defendant risked

1 the lives of consumers and users of its products, including Plaintiff, with knowledge of
2 the safety problems associated with Roundup and glyphosate-containing products, and
3 suppressed this knowledge from the general public. Defendant made conscious
4 decisions not to redesign, warn or inform the unsuspecting public. Defendant's
5 reckless conduct warrants an award of punitive damages.

6 95. As a direct and proximate result of Defendant placing its defective
7 Roundup products into the stream of commerce, Plaintiff sustained a loss of income,
8 loss of earning capacity and property damage, including lost income from his farm.

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

13 **COUNT II: STRICT LIABILITY (FAILURE TO WARN)**

14 97. Plaintiff incorporates by reference each and every allegation set forth in
15 the preceding paragraphs as if fully stated herein.

16 98. Plaintiff brings this strict liability claim against Defendant for failure to
17 warn.

18 99. At all times relevant to this litigation, Defendant engaged in the business of
19 testing, developing, designing, manufacturing, marketing, selling, distributing, and
20 promoting Roundup products, which are defective and unreasonably dangerous to
21 consumers, including Plaintiff, because they do not contain adequate warnings or
22 instructions concerning the dangerous characteristics of Roundup and specifically, the
23 active ingredient glyphosate. These actions were under the ultimate control and
24 supervision of Defendant.

25 100. Defendant researched, developed, designed, tested, manufactured,
26 inspected, labeled, distributed, marketed, promoted, sold, and otherwise released into
27 the stream of commerce its Roundup products, and in the course of same, directly
28 advertised or marketed the products to consumers and end users, including Plaintiff,

1 and therefore had a duty to warn of the risks associated with the use of Roundup and
2 glyphosate-containing products.

3 101. At all times relevant to this litigation, Defendant had a duty to properly
4 test, develop, design, manufacture, inspect, package, label, market, promote, sell,
5 distribute, maintain, supply, provide proper warnings, and take such steps as necessary
6 to ensure its Roundup products did not cause users and consumers to suffer from
7 unreasonable and dangerous risks. Defendant had a continuing duty to warn Plaintiff of
8 the dangers associated with Roundup use and exposure. Defendant, as manufacturer,
9 seller, or distributor of chemical herbicides is held to the knowledge of an expert in the
10 field.

11 102. At the time of manufacture, Defendant could have provided the warnings
12 or instructions regarding the full and complete risks of Roundup and glyphosate-
13 containing products because it knew or should have known of the unreasonable risks of
14 harm associated with the use of and/or exposure to such products.

15 103. At all times relevant to this litigation, Defendant failed to investigate,
16 study, test, or promote the safety or to minimize the dangers to users and consumers of
17 its product and to those who would foreseeably use or be harmed by Defendant's
18 herbicides, including Plaintiff.

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

26 105. Defendant knew or should have known that its products created significant
27 risks of serious bodily harm to consumers, as alleged herein, and Defendant failed to
28 adequately warn consumers, i.e., the reasonably foreseeable users, of the risks of

1 exposure to its products. Defendant has wrongfully concealed information concerning
2 the dangerous nature of Roundup and its active ingredient glyphosate, and further made
3 false and/or misleading statements concerning the safety of Roundup and glyphosate.

4 106. 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 California and throughout the United States, including
7 Plaintiff, without substantial change in their condition as designed, manufactured, sold,
8 distributed, labeled, and marketed by Defendant.

9 107. Plaintiff was exposed to Defendant's Roundup products in the course of
10 his work as a farmer, as described above, without knowledge of their dangerous
11 characteristics.

12 108. At all times relevant to this litigation, Plaintiff used and/or was exposed to
13 the use of Defendant's Roundup products while using them for their intended or
14 reasonably foreseeable purposes, without knowledge of their dangerous characteristics.

15 109. Plaintiff could not have reasonably discovered the defects and risks
16 associated with Roundup or glyphosate-containing products prior to or at the time of
17 Plaintiff's exposure. Plaintiff relied upon the skill, superior knowledge, and judgment
18 of Defendant to know about and disclose serious health risks associated with using the
19 products.

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

26 111. The information that Defendant did provide or communicate failed to
27 contain relevant warnings, hazards, and precautions that would have enabled farmers
28 such as Plaintiff to utilize the products safely and with adequate protection. Instead,

1 Defendant disseminated information that was inaccurate, false and misleading, and
2 which failed to communicate accurately or adequately the comparative severity,
3 duration, and extent of the risk of injuries with use of and/or exposure to Roundup and
4 glyphosate; continued to aggressively promote the efficacy of its products, even after it
5 knew or should have known of the unreasonable risks from use or exposure; and
6 concealed, downplayed, or otherwise suppressed, through aggressive marketing and
7 promotion, any information or research about the risks and dangers of exposure to
8 Roundup and glyphosate.

9 112. This alleged failure to warn is not limited to the information contained on
10 Roundup's labeling. The Defendant was able, in accord with federal law, to comply
11 with California law by disclosing the known risks associated with Roundup through
12 other non-labeling mediums, i.e., promotion, advertisements, public service
13 announcements, and/or public information sources. The Defendant, however, did not
14 disclose these known risks through any medium.

15 113. To this day, Defendant has failed to adequately and accurately warn of the
16 risks of cancer associated with the use of and exposure to Roundup and its active
17 ingredient glyphosate.

18 114. As a result of their inadequate warnings, Defendant's Roundup products
19 were defective and unreasonably dangerous when they left the possession and/or
20 control of Defendant, were distributed by Defendant, and used by Plaintiff in the
21 course of work as a farmer.

22 115. Defendant is liable to Plaintiff for injuries caused by its negligent or
23 willful failure, as described above, to provide adequate warnings or other clinically
24 relevant information and data regarding the appropriate use of its products and the
25 risks associated with the use of or exposure to Roundup and glyphosate.

26 116. Had Defendant provided adequate warnings and instructions and properly
27 disclosed and disseminated the risks associated with its Roundup products, Plaintiff
28 could have avoided the risk of developing injuries and could have obtained or used

1 alternative herbicides.

2 117. As a direct and proximate result of Defendant placing its defective
3 Roundup products into the stream of commerce, Plaintiff sustained a loss of income,
4 loss of earning capacity and property damage, including lost income from his farm.

5 118. WHEREFORE, Plaintiff respectfully requests that this Court enter
6 judgment in Plaintiff's favor for compensatory and punitive damages, together with
7 interest, costs herein incurred, attorneys' fees and all such other and further relief as
8 this Court deems just and proper.

9 **COUNT III: NEGLIGENCE**

10 119. Plaintiff incorporates by reference each and every allegation set forth in
11 the preceding paragraphs as if fully stated herein.

12 120. Defendant, directly or indirectly, caused Roundup products to be sold,
13 distributed, packaged, labeled, marketed, promoted, and/or used by Plaintiff.

14 121. At all times relevant to this litigation, Defendant had a duty to exercise
15 reasonable care in the design, research, manufacture, marketing, advertisement, supply,
16 promotion, packaging, sale, and distribution of its Roundup products, including the
17 duty to take all reasonable steps necessary to manufacture, promote, and/or sell a
18 product that was not unreasonably dangerous to consumers and users of the product.

19 122. At all times relevant to this litigation, Defendant had a duty to exercise
20 reasonable care in the marketing, advertisement, and sale of the Roundup products.
21 Defendant's duty of care owed to consumers and the general public included providing
22 accurate, true, and correct information concerning the risks of using Roundup and
23 appropriate, complete, and accurate warnings concerning the potential adverse effects
24 of exposure to Roundup, and, in particular, its active ingredient glyphosate.

25 123. At all times relevant to this litigation, Defendant knew or, in the exercise
26 of reasonable care, should have known of the hazards and dangers of Roundup and
27 specifically, the carcinogenic properties of the chemical glyphosate.

28 124. Accordingly, at all times relevant to this litigation, Defendant knew or, in

1 the exercise of reasonable care, should have known that use of or exposure to its
2 Roundup products could cause or be associated with Plaintiff's injuries and cancer, and
3 thus, created a dangerous and unreasonable risk of injury to the users of these products,
4 including Plaintiff.

5 125. Defendant also knew or, in the exercise of reasonable care, should have
6 known that users and consumers of Roundup were unaware of the risks and the
7 magnitude of the risks associated with use of and/or exposure to Roundup and
8 glyphosate-containing products.

9 126. As such, Defendant breached its duty of reasonable care and failed to
10 exercise ordinary care in the design, research, development, manufacture, testing,
11 marketing, supply, promotion, advertisement, packaging, sale, and distribution of its
12 Roundup products, in that Defendant manufactured and produced defective herbicides
13 containing the chemical glyphosate, knew or had reason to know of the defects
14 inherent in its products, knew or had reason to know that a user's or consumer's
15 exposure to the products created a significant risk of harm and unreasonably dangerous
16 side effects, and failed to prevent or adequately warn of these risks and injuries.

17 127. Defendant was negligent in its promotion of Roundup, outside of the
18 labeling context, by failing to disclose material risk information as part of its promotion
19 and marketing of Roundup, including the Internet, television, print advertisements, etc.
20 Nothing prevented Defendant from being honest in its promotional activities, and in
21 fact, Defendant had a duty to disclose the truth about the risks associated with Roundup
22 in its promotional efforts, outside of the of the context of labeling.

23 128. Despite its ability and means to investigate, study, and test its products
24 and to provide adequate warnings, Defendant has failed to do so. Indeed, Defendant
25 has wrongfully concealed information and has further made false and/or misleading
26 statements concerning the safety and/or exposure to Roundup and glyphosate.

27 129. Defendant's negligence included:

28 a. Manufacturing, producing, promoting, formulating, creating, developing,

1 designing, selling, and/or distributing its Roundup products without
2 thorough and adequate pre- and post-market testing;

- 3 b. Manufacturing, producing, promoting, formulating, creating, developing,
4 designing, selling, and/or distributing Roundup while negligently and/or
5 intentionally concealing and failing to disclose the results of trials, tests,
6 and studies of exposure to glyphosate, and, consequently, the risk of
7 serious harm associated with human use of and exposure to Roundup;
- 8 c. Failing to undertake sufficient studies and conduct necessary tests to
9 determine whether or not Roundup products and glyphosate-containing
10 products were safe for their intended use in agriculture and horticulture;
- 11 d. Failing to use reasonable and prudent care in the design, research,
12 manufacture, and development of Roundup products so as to avoid the
13 risk of serious harm associated with the prevalent use of
14 Roundup/glyphosate as an herbicide;
- 15 e. Failing to design and manufacture Roundup products so as to ensure they
16 were at least as safe and effective as other herbicides on the market;
- 17 f. Failing to provide adequate instructions, guidelines, and safety
18 precautions to those persons Defendant could reasonably foresee would
19 use and be exposed to its Roundup products;
- 20 g. Failing to disclose to Plaintiff, users/consumers, and the general public
21 that use of and exposure to Roundup presented severe risks of cancer and
22 other grave illnesses;
- 23 h. Failing to warn Plaintiff, consumers, and the general public that the
24 product's risk of harm was unreasonable and that there were safer and
25 effective alternative herbicides available to Plaintiff and other consumers;
- 26 i. Systematically suppressing or downplaying contrary evidence about the
27 risks, incidence, and prevalence of the side effects of Roundup and
28 glyphosate-containing products;

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

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

20 131. Plaintiff did not know the nature and extent of the injuries that could
21 result from the intended use of and/or exposure to Roundup or its active ingredient
22 glyphosate.

23 132. Defendant's negligence was the proximate cause of Plaintiff's cancer, i.e.,
24 absent Defendant's negligence, Plaintiff would not have developed cancer.

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

1 Plaintiff. Defendant's reckless conduct therefore warrants an award of punitive
2 damages.

3 134. As a direct and proximate result of Defendant placing its defective
4 Roundup products into the stream of commerce, Plaintiff sustained a loss of income,
5 loss of earning capacity and property damage, including lost income from his farm.

6 135. WHEREFORE, Plaintiff respectfully requests that this Court enter
7 judgment in Plaintiff's favor for compensatory and punitive damages, together with
8 interest, costs herein incurred, attorneys' fees and all such other and further relief as
9 this Court deems just and proper.

10 **COUNT IV: FRAUD**

11 136. Plaintiff incorporates by reference each and every allegation set forth in
12 the preceding paragraphs as if fully stated herein.

13 137. Defendant has defrauded the agricultural community in general and
14 Plaintiff in particular by misrepresenting the true safety of Roundup and by failing to
15 disclose known risks of cancer. Thus, this fraud relates both to fraudulent
16 representations *and* omissions.

17 138. Monsanto misrepresented and/or failed to disclose, *inter alia*, that: (1)
18 glyphosate and its major metabolite aminomethylphosphonic acid (AMPA) could cause
19 cancer; (2) glyphosate and AMPA are known to be genotoxic in humans and laboratory
20 animals because exposure is known to cause DNA strand breaks (a precursor to cancer);
21 (3) glyphosate and AMPA are known to induce oxidative stress in humans and
22 laboratory animals (a precursor to cancer); (3) glyphosate and AMPA interfere with the
23 aromatic amino acids within the human gut, leading to downstream health conditions
24 including cancer; (4) exposure to glyphosate and AMPA is causally associated with
25 non-Hodgkin lymphoma; and (5) the laboratory tests attesting to the safety of
26 glyphosate were flawed and/or fraudulent. These representations and omissions
27 occurred in the product labeling, product advertising, and promotional materials. These
28 representations and omissions occurred in California between 1998 and 2013. The

1 exact wording of the misrepresentations and omissions exist within Monsanto's
2 possession.

3 139. Due to these misrepresentations and omissions, at all times relevant to this
4 litigation, Defendant's Roundup was misbranded under 7 U.S.C. § 136(g) and its
5 distribution within California and around the United States was a violation of 7 U.S.C.
6 § 136j and 40 C.F.R. § 156.10(a)(5).

7 140. Plaintiff relied on the Defendant's misrepresentations and/or material
8 omissions regarding the safety of Roundup and its active ingredient glyphosate in
9 deciding whether to purchase and/or use the product on his farm. Plaintiff did not
10 know nor could he reasonably have known of the misrepresentations and/or material
11 omissions by Defendant concerning Roundup and its active ingredient glyphosate.

12 141. The misrepresentations and/or material omissions that form the basis of
13 this fraud claim are not limited to statements made on the Roundup labeling, as defined
14 under federal law, but also involve Defendant's representations and omissions made as
15 part of its promotion and marketing of Roundup, including on the Internet, television,
16 in print advertisements, etc. Nothing prevented Defendant from disclosing the truth
17 about the risks associated with Roundup in its promotional efforts outside of the
18 labeling context, using the forms of media and promotion Defendant traditionally used
19 to promote the product's efficacy and benefits.

20 142. When Defendant made the misrepresentations and/or omissions as alleged
21 in this pleading, it did so with the intent of defrauding and deceiving the public in
22 general and the agricultural community and with the intent of inducing the public and
23 agricultural community to purchase and use Roundup.

24 143. Defendant made these misrepresentations and/or material omissions with
25 malicious, fraudulent and/or oppressive intent toward Plaintiff and the public
26 generally. Defendant's conduct was willful, wanton, and/or reckless. Defendant
27 deliberately recommended, manufactured, produced, marketed, sold, distributed,
28 merchandized, packaged, promoted and advertised the dangerous and defective

1 herbicide Roundup. This constitutes an utter, wanton, and conscious disregard of the
2 rights and safety of a large segment of the public, and by reason thereof, Defendant, is
3 liable for reckless, willful, and wanton acts and omissions which evidence a total and
4 conscious disregard for the safety of Plaintiff and others which proximately caused the
5 injuries as set forth herein.

6 144. As a proximate result of Defendant's fraudulent and deceitful conduct and
7 representations, Plaintiff sustained a loss of income, loss of earning capacity and
8 property damage, including lost income from his farm.

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

13 **COUNT V: BEACH OF EXPRESS WARRANTIES**

14 146. Plaintiff incorporates by reference each and every allegation set forth in
15 the preceding paragraphs as if fully stated herein.

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

21 148. Defendant had a duty to exercise reasonable care in the research,
22 development, design, testing, packaging, manufacture, inspection, labeling,
23 distributing, marketing, promotion, sale, and release of its Roundup products, including
24 a duty to:

- 25 a. ensure that its products did not cause the user unreasonably dangerous
26 side effects;
- 27 b. warn of dangerous and potentially fatal side effects; and
- 28 c. disclose adverse material facts, such as the true risks associated with the

1 use of and exposure to Roundup and glyphosate-containing products,
2 when making representations to consumers and the general public,
3 including Plaintiff.

4 149. As alleged throughout this pleading, the ability of Defendant to properly
5 disclose those risks associated with Roundup is not limited representations made on
6 the labeling.

7 150. At all times relevant to this litigation, Defendant expressly represented
8 and warranted to the purchasers of its products, by and through statements made by
9 Defendant in labels, publications, package inserts, and other written materials intended
10 for consumers and the general public, that its Roundup products were safe to human
11 health and the environment, effective, fit, and proper for their intended use. Defendant
12 advertised, labeled, marketed, and promoted Roundup products, representing the
13 quality to consumers and the public in such a way as to induce their purchase or use,
14 thereby making an express warranty that its Roundup products would conform to the
15 representations.

16 151. These express representations include incomplete warnings and
17 instructions that purport, but fail, to include the complete array of risks associated with
18 use of and/or exposure to Roundup and glyphosate. Defendant knew and/or should
19 have known that the risks expressly included in Roundup warnings and labels did not
20 and do not accurately or adequately set forth the risks of developing the serious injuries
21 complained of herein. Nevertheless, Defendant expressly represented that its Roundup
22 products were safe and effective, that they were safe and effective for use by individuals
23 such as Plaintiff, and/or that they were safe and effective as agricultural herbicides.

24 152. The representations about Roundup, as set forth herein, contained or
25 constituted affirmations of fact or promises made by the seller to the buyer, which
26 related to the goods and became part of the basis of the bargain, creating an express
27 warranty that the goods would conform to the representations.

28 153. Defendant placed its Roundup products into the stream of commerce for

1 sale and recommended their use to consumers and the public without adequately
2 warning of the true risks of developing the injuries associated with the use of and
3 exposure to Roundup and its active ingredient glyphosate.

4 154. Defendant breached these warranties because, among other things, its
5 Roundup products were defective, dangerous, unfit for use, did not contain labels
6 representing the true and adequate nature of the risks associated with their use, and were
7 not merchantable or safe for their intended, ordinary, and foreseeable use and purpose.
8 Specifically, Defendant breached the warranties in the following ways:

- 9 a. Defendant represented through its labeling, advertising, and marketing
10 materials that its Roundup products were safe, and fraudulently withheld
11 and concealed information about the risks of serious injury associated
12 with use of and/or exposure to Roundup and glyphosate by expressly
13 limiting the risks associated with use and/or exposure within its warnings
14 and labels; and
- 15 b. Defendant represented that its Roundup products were safe for use and
16 fraudulently concealed information that demonstrated that glyphosate, the
17 active ingredient in Roundup, had carcinogenic properties, and that its
18 Roundup products, therefore, were not safer than alternatives available on
19 the market.

20 155. Plaintiff detrimentally relied on the express warranties and representations
21 of Defendant concerning the safety and/or risk profile of Roundup in making a decision
22 to purchase the product. Plaintiff reasonably relied upon Defendant to disclose known
23 defects, risks, dangers, and side effects of Roundup and glyphosate. Once Plaintiff
24 discovered the relationship between Roundup and cancer, Plaintiff stopped using the
25 product on his farm. He would not have purchased or used Roundup had the Defendant
26 properly disclose the risks associated with the product, either through advertising,
27 labeling, or any other form of disclosure.

28 156. Defendant had sole access to material facts concerning the nature of the

1 risks associated with its Roundup products as expressly stated within its warnings and
2 labels, and Defendant knew that consumers and users such as Plaintiff could not have
3 reasonably discovered that the risks expressly included in Roundup warnings and labels
4 were inadequate and inaccurate.

5 157. Plaintiff had no knowledge of the falsity or incompleteness of
6 Defendant's statements and representations concerning Roundup.

7 158. Plaintiff used and/or was exposed to the use of Roundup as researched,
8 developed, designed, tested, manufactured, inspected, labeled, distributed, packaged,
9 marketed, promoted, sold, or otherwise released into the stream of commerce by
10 Defendant.

11 159. Had the warnings, labels, advertisements, or promotional material for
12 Roundup products accurately and adequately set forth the true risks associated with the
13 use of such products, including Plaintiff's injuries, rather than expressly excluding
14 such information and warranting that the products were safe for their intended use,
15 Plaintiff could have avoided the injuries complained of herein.

16 160. As a direct and proximate result of Defendant breach of express warranty,
17 Plaintiff died and Plaintiff's heirs have sustained a loss of income, loss of earning
18 capacity and property damage, including lost income from his farm.

19 161. WHEREFORE, Plaintiff respectfully requests that this Court enter
20 judgment in Plaintiff's favor for compensatory and punitive damages, together with
21 interest, costs herein incurred, attorneys' fees, and all such other and further relief as
22 this Court deems just and proper.

23 **COUNT VI: BREACH OF IMPLIED WARRANTIES**

24 162. Plaintiff incorporates by reference each and every allegation set forth in
25 the preceding paragraphs as if fully stated herein.

26 163. At all times relevant to this litigation, Defendant engaged in the business
27 of testing, developing, designing, manufacturing, marketing, selling, distributing, and
28 promoting its Roundup products, which are defective and unreasonably dangerous to

1 consumers, including Plaintiff, thereby placing Roundup products into the stream of
2 commerce. These actions were under the ultimate control and supervision of
3 Defendant.

4 164. Before the time Plaintiff was exposed to the aforementioned Roundup
5 products, Defendant impliedly warranted to its consumers—including Plaintiff—that
6 its Roundup products were of merchantable quality and safe and fit for the use for
7 which they were intended; specifically, as agricultural herbicides.

8 165. Defendant, however, failed to disclose that Roundup has dangerous
9 propensities when used as intended and that use of and/or exposure to Roundup and
10 glyphosate-containing products carries an increased risk of developing severe injuries
11 and death, including Plaintiff's cancer.

12 166. Plaintiff was the intended beneficiary of the implied warranties made by
13 Defendant to the purchasers of its herbicides.

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

17 168. At all times relevant to this litigation, Defendant was aware that
18 consumers and users of its products, including Plaintiff, would use Roundup products
19 as marketed by Defendant, which is to say that Plaintiff was a foreseeable user of
20 Roundup.

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

25 170. In reliance upon Defendant's implied warranty, Plaintiff used Roundup as
26 instructed and labeled and in the foreseeable manner intended, recommended,
27 promoted and marketed by Defendant.

28 171. Plaintiff could not have reasonably discovered or known of the risks of

1 serious injury associated with Roundup or glyphosate.

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

6 173. The harm caused by Defendant's Roundup products far outweighed their
7 benefit, rendering the products more dangerous than an ordinary consumer or user
8 would expect and more dangerous than alternative products.

9 174. As a direct and proximate result of Defendant's breach of implied
10 warranty, Plaintiff sustained a loss of income, loss of earning capacity and property
11 damage, including lost income from his farm.

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

16
17 **EXEMPLARY DAMAGES ALLEGATIONS**

18 176. Plaintiff incorporates by reference each and every allegation set forth in
19 the preceding paragraphs as if fully stated herein.

20 177. Defendant's conduct as alleged herein was done with oppression, fraud,
21 and malice. Defendant was fully aware of Roundup's safety risks. Nonetheless,
22 Defendant deliberately crafted its label, marketing, and promotion to mislead farmers
23 and consumers.

24 178. This was not done by accident or through some justifiable negligence.
25 Rather, Defendant knew that it could turn a profit by convincing the agricultural
26 industry that Roundup was harmless to humans, and that full disclosure of Roundup's
27 true risks would limit the amount of money Defendant would make selling Roundup in
28 California. This was accomplished not only through its misleading labeling, but

1 through a comprehensive scheme of selective fraudulent research and testing,
2 misleading advertising, and deceptive omissions as more fully alleged throughout this
3 pleading. Plaintiff, like all other farmers within California, was robbed of his right to
4 make an informed decision about whether to purchase and use an herbicide on his
5 property, knowing the full risks attendant to that use. Such conduct was done with
6 conscious disregard of Plaintiff's rights.

7 179. There is no indication that Defendant will stop its deceptive and unlawful
8 marketing practices unless it is punished and deterred. Accordingly, Plaintiff requests
9 punitive damages against the Defendant for the harms caused to Plaintiff prior to his
10 cancer.

11 **JURY TRIAL DEMAND**

12 180. Plaintiff demands a trial by jury on all of the triable issues within this
13 pleading.

14 **PRAYER FOR RELIEF**

15 181. WHEREFORE, Plaintiff requests that the Court enter judgment in her
16 favor and against the Defendant, awarding the Estate of Plaintiff:

- 17 a. actual or compensatory damages in such amount to be determined at trial
18 and as provided by applicable law;
- 19 b. exemplary and punitive damages sufficient to punish and deter the
20 Defendant and others from future fraudulent practices;
- 21 c. pre-judgment and post-judgment interest;
- 22 d. costs including reasonable attorneys' fees, court costs, and other litigation
23 expenses; and
- 24 e. any other relief the Court may deem just and proper.

25 Dated: July 8, 2016

BAUM HEDLUND ARISTEI & GOLDMAN, P.C.

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