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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
Eastern Division**

JOHN D. SANDERS and FRANK
TANNER,

Plaintiffs,

v.

MONSANTO COMPANY,

Defendant.

Case No. 5:16-cv-00726

COMPLAINT

JURY TRIAL DEMANDED

1 **INTRODUCTION**

2 1. In 1970, Defendant Monsanto Company, Inc. (“Monsanto”)
3 discovered the herbicidal properties of glyphosate and began marketing it in
4 products in 1974 under the brand name Roundup[®]. Roundup[®] is a non-selective
5 herbicide used to kill weeds that commonly compete with the growing of crops.
6 In addition to the active ingredient glyphosate, Roundup[®] contains the surfactant
7 Polyethoxylated tallow amine (POEA) and/or adjuvants and other so-called
8 “inert” ingredients. In 2001, glyphosate was the most-used pesticide active
9 ingredient in American agriculture with 85–90 million pounds used annually.
10 That number grew to 185 million pounds in 2007.¹ As of 2013, glyphosate was
11 the world’s most widely used herbicide.

12 2. Monsanto is a multinational agricultural biotechnology corporation
13 based in St. Louis, Missouri, and incorporated in Delaware. It is the world's
14 leading producer of glyphosate. As of 2009, Monsanto was the world’s leading
15 producer of seeds, accounting for 27% of the world seed market.² The majority of
16 these seeds are of the Roundup Ready[®] brand. The stated advantage of Roundup

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

19 ² ETC Group, *Who Will Control the Green Economy?* 22 (2011), available
20 at
http://www.etcgroup.org/files/publication/pdf_file/ETC_wwctge_4web_Dec2011.pdf.

1 Ready[®] crops is that they substantially improve a farmer's ability to control
2 weeds, because glyphosate can be sprayed in the fields during the growing season
3 without harming the crops. In 2010, an estimated 70% of corn and cotton and
4 90% of soybean fields in the United States were Roundup Ready[®].³

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

11
12 ³ William Neuman & Andrew Pollack, *Farmers Cope With Roundup-*
13 *Resistant Weeds*, N.Y. TIMES, May 3, 2010, available at
14 [http://www.nytimes.com/2010/05/04/business/energy-](http://www.nytimes.com/2010/05/04/business/energy-environment/04weed.html?pagewan)
15 [environment/04weed.html?pagewan](http://www.nytimes.com/2010/05/04/business/energy-environment/04weed.html?pagewan).

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

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

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

1 4. On March 20, 2015, the International Agency for Research on Cancer
2 (“IARC”), an agency of the World Health Organization (“WHO”), issued an
3 evaluation of several herbicides, including glyphosate. That evaluation was based,
4 in part, on studies of exposures to glyphosate in several countries around the
5 world, and it traces the health implications from exposure to glyphosate since
6 2001.

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

11 6. The IARC Working Group classified glyphosate as a Group 2A
12 herbicide, which means that it is *probably carcinogenic to humans*. The IARC
13 Working Group concluded that the cancers most associated with glyphosate
14 exposure are non-Hodgkin lymphoma and other haematopoietic cancers, including

15 ⁷ John F. Acquavella et al., *Glyphosate Biomonitoring for Farmers and
16 Their Families: Results from the Farm Family Exposure Study*, 112(3) ENVTL.
HEALTH PERSPECTIVES 321 (2004), *available at*
17 <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1241861/>; Kathryn Z. Guyton et
18 al., *Carcinogenicity of Tetrachlorvinphos, Parathion, Malathion, Diazinon &*
Glyphosate, 112 IARC Monographs 76, section 5.4 (2015), *available at*
19 [http://dx.doi.org/10.1016/S1470-2045\(15\)70134-8](http://dx.doi.org/10.1016/S1470-2045(15)70134-8).

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

1 lymphocytic lymphoma / chronic lymphocytic leukemia, B-cell lymphoma, and
2 multiple myeloma.⁹

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

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

10 **JURISDICTION AND VENUE**

11 9. Federal diversity jurisdiction in this Court is proper under 28 U.S.C.
12 § 1332 because Plaintiffs are citizens of a different state than the Defendant's
13 states of citizenship, and the aggregate amount in controversy exceeds \$75,000,
14 exclusive of interest and costs.

15 10. This Court has personal jurisdiction over Monsanto under Cal. Code
16 Civ. Proc. § 410 because Monsanto knows or should have known that its
17 Roundup[®] products are sold throughout the State of California, and, more
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19 _____
20 ⁹ See Guyton et al., *Carcinogenicity of Tetrachlorvinphos, Parathion, Malathion, Diazinon & Glyphosate*, *supra*.

1 specifically, caused Roundup[®] to be sold to Plaintiffs and/or Plaintiff Sanders's
2 employers in the State of California.

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

6 12. Venue is proper within this District under 28 U.S.C. § 1391(b)(2)
7 because Plaintiffs live in and were diagnosed in this District. Further, Monsanto,
8 as a corporate entity, is deemed to reside in any judicial district in which it is
9 subject to personal jurisdiction.

10 **THE PARTIES**

11 **Plaintiff John Sanders**

12 13. Plaintiff John Sanders resides in Redlands, California. He was
13 exposed to Roundup[®] in Redlands from approximately 1983 to 2014. He was
14 diagnosed with non-Hodgkin lymphoma ("NHL") in San Bernardino County in
15 2014.

16 **Plaintiff Frank Tanner**

17 14. Plaintiff Frank Tanner resides in Duarte, California. He was exposed
18 to Roundup[®] in Los Angeles County, California from around 1974 through 2015.
19 He was diagnosed with NHL in Arcadia, California, in 2005.

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Defendant

15. Defendant Monsanto is a Delaware corporation with its headquarters and principal place of business in St. Louis, Missouri.

16. At all times relevant to this complaint, Monsanto was the entity that discovered the herbicidal properties of glyphosate and the manufacturer of Roundup[®], which contains the active ingredient glyphosate and the surfactant POEA, as well as adjuvants and other “inert” ingredients.

FACTS

17. Glyphosate is a broad-spectrum, non-selective herbicide used in a wide variety of herbicidal products around the world.

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

19. For nearly 40 years, farms across the world have used Roundup[®] without knowing of the dangers its use poses. That is because when Monsanto first introduced Roundup[®], it touted glyphosate as a technological breakthrough: it could kill almost every weed without causing harm either to people or to the

1 environment. Of course, history has shown that not to be true. According to the
2 WHO, the main chemical ingredient of Roundup[®]—glyphosate—is a probable
3 cause of cancer. Those most at risk are farm workers and other individuals with
4 workplace exposure to Roundup[®], such as garden center workers, nursery
5 workers, and landscapers. Agricultural workers are, once again, victims of
6 corporate greed. Monsanto assured the public that Roundup[®] was harmless. In
7 order to prove this, Monsanto has championed falsified data and has attacked
8 legitimate studies that revealed Roundup[®]'s dangers. Monsanto has led a
9 prolonged campaign of misinformation to convince government agencies, farmers
10 and the general population that Roundup[®] is safe.

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

12 20. The herbicidal properties of glyphosate were discovered in 1970 by
13 Monsanto chemist John Franz. The first glyphosate-based herbicide was
14 introduced to the market in the mid-1970s under the brand name Roundup[®].¹⁰
15 From the outset, Monsanto marketed Roundup[®] as a “safe” general-purpose
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19 ¹⁰ Monsanto, *Backgrounder, History of Monsanto's Glyphosate Herbicide*
20 (Sep. 2, 2015), http://www.monsanto.com/products/documents/glyphosate-background-materials/back_history.pdf.

1 herbicide for widespread commercial and consumer use. It still markets
2 Roundup[®] as safe today.¹¹

3 21. In addition to the active ingredient glyphosate, Roundup[®]
4 formulations also contain adjuvants and other chemicals, such as the surfactant
5 POEA, which are considered “inert” and therefore protected as “trade secrets” in
6 manufacturing. Growing evidence suggests that these adjuvants and additional
7 components of Roundup[®] formulations are not, in fact, inert and are toxic in their
8 own right.

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

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

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

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

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

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

13 25. The EPA and the State of California registered Roundup[®] for
14 distribution, sale, and manufacture in the United States and the State of California.

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

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

10 28. In the case of glyphosate, and therefore Roundup[®], the EPA had
11 planned on releasing its preliminary risk assessment—in relation to the
12 reregistration process—no later than July 2015. The EPA completed its review of
13 glyphosate in early 2015, but it delayed releasing the risk assessment pending
14 further review in light of the WHO’s health-related findings.

15 ***Scientific Fraud Underlying the Marketing and Sale of Glyphosate/Roundup[®]***

16 29. Based on early studies showing that glyphosate could cause cancer in
17 laboratory animals, the EPA originally classified glyphosate as *possibly*
18 *carcinogenic to humans* (Group C) in 1985. After pressure from Monsanto,
19 including contrary studies it provided to the EPA, the EPA changed its
20 classification to *evidence of non-carcinogenicity in humans* (Group E) in 1991. In

1 so classifying glyphosate, however, the EPA made clear that the designation did
2 not mean the chemical does not cause cancer: “It should be emphasized, however,
3 that designation of an agent in Group E is based on the available evidence at the
4 time of evaluation and should not be interpreted as a definitive conclusion that the
5 agent will not be a carcinogen under any circumstances.”¹²

6 30. On two occasions, the EPA found that the laboratories hired by
7 Monsanto to test the toxicity of its Roundup[®] products for registration purposes
8 committed fraud.

9 31. In the first instance, Monsanto, in seeking initial registration of
10 Roundup[®] by the EPA, hired Industrial Bio-Test Laboratories (“IBT”) to perform
11 and evaluate pesticide toxicology studies relating to Roundup[®].¹³ IBT performed
12 about 30 tests on glyphosate and glyphosate-containing products, including nine
13 of the 15 residue studies needed to register Roundup[®].

14 32. In 1976, the United States Food and Drug Administration (“FDA”)
15 performed an inspection of IBT that revealed discrepancies between the raw data
16 and the final report relating to the toxicological impacts of glyphosate. The EPA

17 ¹² U.S. Env'tl. Prot. Agency, *Memorandum, Subject: SECOND Peer Review*
18 *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)
19 [Oct-91_265.pdf](http://www.epa.gov/pesticides/chem_search/cleared_reviews/csr_PC-103601_30-Oct-91_265.pdf).

20 ¹³ 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 subsequently audited IBT; it too found the toxicology studies conducted for the
2 Roundup[®] herbicide to be invalid.¹⁴ An EPA reviewer stated, after finding
3 “routine falsification of data” at IBT, that it was “hard to believe the scientific
4 integrity of the studies when they said they took specimens of the uterus from
5 male rabbits.”¹⁵

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

7 34. In the second incident of data falsification, Monsanto hired Craven
8 Laboratories in 1991 to perform pesticide and herbicide studies, including for
9 Roundup[®]. In that same year, the owner of Craven Laboratories and three of its
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12 ¹⁴ U.S. Env'tl. Prot. Agency, *Summary of the IBT Review Program Office of*
13 *Pesticide Programs* (1983), available at
14 [http://nepis.epa.gov/Exe/ZyNET.exe/91014ULV.TXT?ZyActionD=ZyDocument
&Client=EPA&Index=1981+Thru+1985&Docs=&Query=&Time=&EndTime=&
15 SearchMethod=1&TocRestrict=n&Toc=&TocEntry=&QField=&QFieldYear=&Q
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Page=x&ZyPURL.](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)

¹⁵ Marie-Monique Robin, *The World According to Monsanto: Pollution, 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.¹⁶

3 35. 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 ***The Importance of Roundup[®] to Monsanto's Market Dominance Profits***

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

13 37. 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
18 were planted on more than 80 million acres worldwide and nearly 70% of

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20 ¹⁶ Monsanto, *Backgrounder, Testing Fraud: IBT and Craven Laboratories, supra.*

1 American soybeans were planted from Roundup Ready[®] seeds. It also secured
2 Monsanto's dominant share of the glyphosate/Roundup[®] market through a
3 marketing strategy that coupled proprietary Roundup Ready[®] seeds with
4 continued sales of its Roundup[®] herbicide.

5 38. Through a three-pronged strategy of increasing production,
6 decreasing prices, and by coupling with Roundup Ready[®] seeds, Roundup[®]
7 became Monsanto's most profitable product. In 2000, Roundup[®] accounted for
8 almost \$2.8 billion in sales, outselling other herbicides by a margin of five to one,
9 and accounting for close to half of Monsanto's revenue.¹⁷ Today, glyphosate
10 remains one of the world's largest herbicides by sales volume.

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

12 39. In 1996, the New York Attorney General ("NYAG") filed a lawsuit
13 against Monsanto based on its false and misleading advertising of Roundup[®]
14 products. Specifically, the lawsuit challenged Monsanto's general representations
15 that its spray-on glyphosate-based herbicides, including Roundup[®], were "**safer**
16 **than table salt**" and "**practically non-toxic**" to mammals, birds, and fish.

17 Among the representations the NYAG found deceptive and misleading about the
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19 ¹⁷ David Barboza, *The Power of Roundup; A Weed Killer Is A Block for*
20 *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 human and environmental safety of glyphosate and/or Roundup[®] are the
2 following:

3 a) “Remember that environmentally friendly
4 Roundup herbicide is biodegradable. It won’t build up in
5 the soil so you can use Roundup with confidence along
6 customers’ driveways, sidewalks and fences ...”

7 b) “And remember that Roundup is biodegradable
8 and won’t build up in the soil. That will give you the
9 environmental confidence you need to use Roundup
10 everywhere you've got a weed, brush, edging or trimming
11 problem.”

12 c) “Roundup biodegrades into naturally occurring
13 elements.”

14 d) “Remember that versatile Roundup herbicide
15 stays where you put it. That means there's no washing or
16 leaching to harm customers' shrubs or other desirable
17 vegetation.”

18 e) “This non-residual herbicide will not wash or
19 leach in the soil. It ... stays where you apply it.”

20 f) “You can apply Accord with ‘confidence because
it will stay where you put it’ it bonds tightly to soil
particles, preventing leaching. Then, soon after
application, soil microorganisms biodegrade Accord into
natural products.”

g) “Glyphosate is less toxic to rats than table salt
following acute oral ingestion.”

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

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i) “You can feel good about using herbicides by Monsanto. They carry a toxicity category rating of ‘practically non-toxic’ as it pertains to mammals, birds and fish.”

j) “Roundup can be used where kids and pets will play and breaks down into natural material.” This ad depicts a person with his head in the ground and a pet dog standing in an area which has been treated with Roundup.¹⁸

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

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

* * *

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

* * *

c) its glyphosate-containing pesticide products or any component thereof stay where they are applied under

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

1 all circumstances and will not move through the
2 environment by any means.

3 * * *

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

7 * * *

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

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

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

16 42. In 2009, France’s highest court ruled that Monsanto had not told the
17 truth about the safety of Roundup[®]. The French court affirmed an earlier
18 judgement that Monsanto had falsely advertised its herbicide Roundup[®] as
19 “biodegradable” and that it “left the soil clean.”¹⁹

20 *Classifications and Assessments of Glyphosate*

43. The IARC process for the classification of glyphosate followed
IARC’s stringent procedures for the evaluation of a chemical agent. Over time,

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

1 the IARC Monograph program has reviewed 980 agents. Of those reviewed, it
2 has determined 116 agents to be Group 1 (Known Human Carcinogens); 73 agents
3 to be Group 2A (Probable Human Carcinogens); 287 agents to be Group 2B
4 (Possible Human Carcinogens); 503 agents to be Group 3 (Not Classified); and
5 one agent to be Probably Not Carcinogenic.

6 44. The established procedure for IARC Monograph evaluations is
7 described in the IARC Programme's Preamble.²⁰ Evaluations are performed by
8 panels of international experts, selected on the basis of their expertise and the
9 absence of actual or apparent conflicts of interest.

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

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

1 Working Group findings are published in *The Lancet Oncology*, and within a year
2 after the meeting, the finalized Monograph is published.

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

9 47. In March 2015, IARC reassessed glyphosate. The summary
10 published in *The Lancet Oncology* reported that glyphosate is a Group 2A agent
11 and probably carcinogenic in humans.

12 48. On July 29, 2015, IARC issued its Monograph for glyphosate,
13 Monograph Volume 112. For Volume 112, a Working Group of 17 experts from
14 11 countries met at IARC from March 3–10, 2015 to assess the carcinogenicity of
15 certain herbicides, including glyphosate. The March meeting culminated a nearly
16 one-year review and preparation by the IARC Secretariat and the Working Group,
17 including a comprehensive review of the latest available scientific evidence.
18 According to published procedures, the Working Group considered “reports that
19 have been published or accepted for publication in the openly available scientific
20 literature” as well as “data from governmental reports that are publicly available.”

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

6 50. Glyphosate was identified as the second-most used household
7 herbicide in the United States for weed control between 2001 and 2007 and the
8 most heavily used herbicide in the world in 2012.

9 51. Exposure pathways are identified as air (especially during spraying),
10 water, and food. Community exposure to glyphosate is widespread and found in
11 soil, air, surface water, and groundwater, as well as in food.

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

16 53. The IARC Working Group found an increased risk between exposure
17 to glyphosate and NHL and several subtypes of NHL, and the increased risk
18 persisted after adjustment for other pesticides.

19 54. The IARC Working Group also found that glyphosate caused DNA
20 and chromosomal damage in human cells. One study in community residents

1 reported increases in blood markers of chromosomal damage (micronuclei) after
2 glyphosate formulations were sprayed.

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

8 56. The IARC Working Group also noted that glyphosate has been
9 detected in the urine of agricultural workers, indicating absorption. Soil microbes
10 degrade glyphosate to aminomethylphosphoric acid (AMPA). Blood AMPA
11 detection after exposure suggests intestinal microbial metabolism in humans.

12 57. The IARC Working Group further found that glyphosate and
13 glyphosate formulations induced DNA and chromosomal damage in mammals,
14 and in human and animal cells in utero.

15 58. The IARC Working Group also noted genotoxic, hormonal, and
16 enzymatic effects in mammals exposed to glyphosate.²¹ Essentially, glyphosate
17 inhibits the biosynthesis of aromatic amino acids, which leads to several metabolic

18
19
20 ²¹ Guyton et al., *Carcinogenicity of Tetrachlorvinphos, Parathion, Malathion, Diazinon & Glyphosate*, *supra* at 77.

1 disturbances, including the inhibition of protein and secondary product
2 biosynthesis and general metabolic disruption.

3 59. The IARC Working Group also reviewed an Agricultural Health
4 Study, consisting of a prospective cohort of 57,311 licensed pesticide applicators
5 in Iowa and North Carolina.²² While this study differed from others in that it was
6 based on a self-administered questionnaire, the results support an association
7 between glyphosate exposure and multiple myeloma, hairy cell leukemia (HCL),
8 and chronic lymphocytic leukemia (CLL), in addition to several other cancers.

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

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

14 **Release Patterns**

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

19 It may also be released to the environment during

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

1 its manufacture, formulation, transport, storage, disposal
2 and cleanup, and from spills. Since glyphosate is not a
3 listed chemical in the Toxics Release Inventory, data on
releases during its manufacture and handling are not
available.

4 Occupational workers and home gardeners may be
5 exposed to glyphosate by inhalation and dermal contact
6 during spraying, mixing, and cleanup. They may also be
7 exposed by touching soil and plants to which glyphosate
was applied. Occupational exposure may also occur
during glyphosate's manufacture, transport storage, and
disposal.²³

8 61. In 1995, the Northwest Coalition for Alternatives to Pesticides
9 reported that in California, the state with the most comprehensive program for
10 reporting of pesticide-caused illness, glyphosate was the third most commonly-
11 reported cause of pesticide illness among agricultural workers.²⁴

12 ***The Toxicity of Other Ingredients in Roundup[®]***

13 62. In addition to the toxicity of the active ingredient, glyphosate, several
14 studies support the hypothesis that the glyphosate-based formulation in
15 Defendant's Roundup[®] products is more dangerous and toxic than glyphosate
16

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

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

1 alone. Indeed, as early as 1991, available evidence demonstrated that glyphosate
2 formulations were significantly more toxic than glyphosate alone.

3 63. In 2002, a study by Julie Marc, entitled “Pesticide Roundup Provokes
4 Cell Division Dysfunction at the Level of CDK1/Cyclin B Activation,” revealed
5 that Roundup[®] causes delays in the cell cycles of sea urchins but that the same
6 concentrations of glyphosate alone were ineffective and did not alter cell cycles.²⁵

7 64. A 2004 study by Marc and others, entitled “Glyphosate-based
8 pesticides affect cell cycle regulation,” demonstrated a molecular link between
9 glyphosate-based products and cell cycle dysregulation. The researchers noted
10 that “cell-cycle dysregulation is a hallmark of tumor cells and human cancer.
11 Failure in the cell-cycle checkpoints leads genomic instability and subsequent
12 development of cancers from the initial affected cell.” Further, “[s]ince cell cycle
13 disorders such as cancer result from dysfunction of a unique cell, it was of interest
14 to evaluate the threshold dose of glyphosate affecting the cells.”²⁶

15 65. In 2005, a study by Francisco Peixoto, entitled “Comparative effects
16 of the Roundup and glyphosate on mitochondrial oxidative phosphorylation,”

17
18 ²⁵ Julie Marc, et al., *Pesticide Roundup Provokes Cell Division Dysfunction*
19 *at the Level of CDK1/Cyclin B Activation*, 15 CHEM. RES. TOXICOL. 326–331
20 (2002), available at <http://pubs.acs.org/doi/full/10.1021/tx015543g>.

²⁶ Julie Marc, et al., *Glyphosate-based pesticides affect cell cycle*
regulation, 96 BIOLOGY OF THE CELL 245, 245-249 (2004), available at
<http://onlinelibrary.wiley.com/doi/10.1016/j.biolcel.2003.11.010/epdf>.

1 demonstrated that Roundup[®]'s effects on rat liver mitochondria are far more toxic
2 than equal concentrations of glyphosate alone. The Peixoto study further
3 suggested that the harmful effects of Roundup[®] on mitochondrial bioenergetics
4 could not be exclusively attributed to glyphosate but could be the result of other
5 chemicals, such as the surfactant POEA, or in the alternative, due to a potential
6 synergic effect between glyphosate and other ingredients in the Roundup[®]
7 formulation.²⁷

8 66. In 2009, Nora Benachour and Gilles-Eric Seralini published a study
9 examining the effects of Roundup[®] and glyphosate on human umbilical,
10 embryonic, and placental cells. The study tested dilution levels of Roundup[®] and
11 glyphosate that were far below agricultural recommendations, corresponding with
12 low levels of residue in food. The researchers ultimately concluded that supposed
13 "inert" ingredients, and possibly POEA, alter human cell permeability and amplify
14 toxicity of glyphosate alone. The researchers further suggested that assessments
15 of glyphosate toxicity should account for the presence of adjuvants or additional
16 chemicals used in the formulation of the complete pesticide. The study confirmed

18 ²⁷ Francisco Peixoto, *Comparative effects of the Roundup and glyphosate on*
19 *mitochondrial oxidative phosphorylation*, 61 CHEMOSPHERE 1115, 1122 (2005),
20 *available at*
https://www.researchgate.net/publication/7504567_Comparative_effects_of_the_Roundup_and_glyphosate_on_mitochondrial_oxidative_phosphorylation.

1 that the adjuvants present in Roundup[®] are not, in fact, inert and that Roundup[®] is
2 potentially far more toxic than its active ingredient glyphosate alone.²⁸

3 67. The results of these studies were at all times available to Defendant.
4 Defendant thus knew or should have known that Roundup[®] is more toxic than
5 glyphosate alone and that safety studies of Roundup[®], Roundup's adjuvants and
6 "inert" ingredients, and/or the surfactant POEA were necessary to protect
7 Plaintiffs from Roundup[®].

8 68. Despite its knowledge that Roundup[®] is considerably more dangerous
9 than glyphosate alone, Defendant continued to promote Roundup[®] as safe.

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

11 69. Several countries around the world have instituted bans on the sale of
12 Roundup[®] and other glyphosate-containing herbicides, both before and since
13 IARC first announced its assessment for glyphosate in March 2015, and more
14 countries undoubtedly will follow suit as the dangers of the use of Roundup[®]
15 become more widely known. The Netherlands issued a ban on all glyphosate-
16 based herbicides in April 2014, including Roundup[®], which will take effect by the
17 end of 2015. In issuing the ban, the Dutch Parliament member who introduced the

18
19 ²⁸ Nora Benachour, et al., *Glyphosate Formulations Induce Apoptosis and*
20 *Necrosis in Human Umbilical, Embryonic, and Placental Cells*, 22 CHEM. RES.
TOXICOL. 97-105 (2008), available at
<http://big.assets.huffingtonpost.com/france.pdf>.

1 successful legislation stated: “Agricultural pesticides in user-friendly packaging
2 are sold in abundance to private persons. In garden centers, Roundup[®] is
3 promoted as harmless, but unsuspecting customers have no idea what the risks of
4 this product are. Especially children are sensitive to toxic substances and should
5 therefore not be exposed to it.”²⁹

6 70. The Brazilian Public Prosecutor in the Federal District requested that
7 the Brazilian Justice Department suspend the use of glyphosate.³⁰

8 71. France banned the private sale of Roundup[®] and glyphosate
9 following the IARC assessment for Glyphosate.³¹

10 72. Bermuda banned both the private and commercial sale of
11 glyphosates, including Roundup[®]. The Bermuda government explained its ban as

12 ²⁹ *Holland’s Parliament Bans Glyphosate Herbicides*, The Real Agenda,
13 April 14, 2014, available at <http://real-agenda.com/hollands-parliament-bans-glyphosate-herbicides/>.

14 ³⁰ Christina Sarich, *Brazil’s Public Prosecutor Wants to Ban Monsanto’s*
15 *Chemicals Following Recent Glyphosate-Cancer Link*, GLOBAL RESEARCH, May
16 14, 2015, available at <http://www.globalresearch.ca/brazils-public-prosecutor-wants-to-ban-monsantos-chemicals-following-recent-glyphosate-cancer-link/5449440>; see Ministério Público Federal, *MPF/DF reforça pedido para que glifosato seja banido do mercado nacional*, April, 14, 2015, available at
17 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.

18 ³¹ Zoe Schlanger, *France Bans Sales of Monsanto’s Roundup in Garden*
19 *Centers, 3 Months After U.N. Calls it ‘Probable Carcinogen’*, NEWSWEEK, June
20 15, 2015, available at <http://www.newsweek.com/france-bans-sale-monsantos-roundup-garden-centers-after-un-names-it-probable-343311>.

1 follows: “Following a recent scientific study carried out by a leading cancer
2 agency, the importation of weed spray ‘Roundup’ has been suspended.”³²

3 73. The Sri Lankan government banned the private and commercial use
4 of glyphosate, particularly out of concern that glyphosate has been linked to fatal
5 kidney disease in agricultural workers.³³

6 74. The government of Colombia announced its ban on using Roundup[®]
7 and glyphosate to destroy illegal plantations of coca, the raw ingredient for
8 cocaine, because of the WHO’s finding that glyphosate is probably carcinogenic.³⁴

9 ***Proposition 65 Listing***

10 75. On September 4, 2015, California’s Office of Environmental Health
11 Hazard Assessment (“OEHHA”) published a notice of intent to include glyphosate
12 on the state’s list of known carcinogens under Proposition 65.³⁵ California’s Safe
13

14 ³² *Health Minister: Importation of Roundup Weed Spray Suspended*, Today
15 in Bermuda, May, 11 2015, available at
[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).

16 ³³ *Sri Lanka’s New President Puts Immediate Ban on Glyphosate
Herbicides*, Sustainable Pulse, May 25, 2015, available at
17 [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).

18 ³⁴ *Columbia to ban coca spraying herbicide glyphosate*, BBC, May 10,
19 2015, available at <http://www.bbc.com/news/world-latin-america-32677411>.

20 ³⁵ Cal. Env’tl. Prot. Agency Office of Env’tl. Health Hazard Assessment,
Notice of Intent to List Chemicals by the Labor Code Mechanism:
Tetrachlorvinphos, Parathion, Malathion, Glyphosate (Sept. 4, 2015),

1 Drinking Water and Toxic Enforcement Act of 1986 (informally known as
2 “Proposition 65”), requires the state to maintain and, at least once a year, revise
3 and republish a list of chemicals “known to the State of California to cause cancer
4 or reproductive toxicity.”³⁶ The OEHHA determined that glyphosate met the
5 criteria for the listing mechanism under the Labor Code following IARC’s
6 assessment of the chemical.³⁷

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

14
15 http://oehha.ca.gov/prop65/CRNR_notices/admin_listing/intent_to_list/pdf_zip/090415NOIL_LCSet27.pdf.

16
17 ³⁶ *Frequently Asked Questions*, STATE OF CAL. DEP’T OF JUSTICE, OFFICE OF THE ATTORNEY GENERAL, <http://oag.ca.gov/prop65/faq> (last visited April 19, 2016).

18 ³⁷ Cal. Env’tl. Prot. Agency Office of Env’tl. Health Hazard Assessment, Notice of Intent to List Chemicals by the Labor Code Mechanism: Tetrachlorvinphos, Parathion, Malathion, Glyphosate (Sept. 4, 2015), http://oehha.ca.gov/prop65/CRNR_notices/admin_listing/intent_to_list/pdf_zip/090415NOIL_LCSet27.pdf.

1 mechanism presented various constitutional violations because it “effectively
2 empowers an unelected, undemocratic, unaccountable, and foreign body to make
3 laws applicable in California.”⁴¹ Among other things, Monsanto argued that
4 Proposition 65’s requirement to provide a “clear and reasonable warning” to
5 consumers that the chemical is a known carcinogen would damage its reputation
6 and violate its First Amendment rights.⁴²

7 80. The case remains pending.

8 *EFSA Report on Glyphosate*

9 81. On November 12, 2015, the European Food Safety Authority
10 (EFSA), the European Union’s primary agency for food safety, reported on its
11 evaluation of the Renewal Assessment Report (RAR) on glyphosate.⁴³ The
12 Rapporteur Member State assigned to glyphosate, the German Federal Institute for
13 Risk Assessment (BfR), had produced the RAR as part of the renewal process for
14 glyphosate in the EU.

15 82. BfR sent its draft RAR to EFSA and the RAR underwent a peer
16 review process by EFSA, other member states, and industry groups. As part of the

17 ⁴¹ *Id.* at 3.

18 ⁴² *Id.*

19 ⁴³ European Food Safety Auth., Conclusion on the peer review of the
20 pesticide risk assessment of the active substance glyphosate, *available at*
http://www.efsa.europa.eu/sites/default/files/scientific_output/files/main_documents/4302.pdf.

1 on-going peer review of Germany’s reevaluation of glyphosate, EFSA had also
2 received a second mandate from the European Commission to consider IARC’s
3 findings regarding the potential carcinogenicity of glyphosate and glyphosate-
4 containing products.

5 83. Based on a review of the RAR, which included data from industry-
6 submitted unpublished studies, EFSA sent its own report (“Conclusion”) to the
7 European Commission, finding that “glyphosate is unlikely to pose a carcinogenic
8 hazard to humans and the evidence does not support classification with regard to
9 its carcinogenic potential according to Regulation (EC) No 1272/2008.”⁴⁴ EFSA
10 therefore disagreed with IARC: glyphosate was not genotoxic and did not present
11 a carcinogenic threat to humans.

12 84. In explaining why its results departed from IARC’s conclusion,
13 EFSA drew a distinction between the EU and IARC approaches to the study and
14 classification of chemicals.⁴⁵ Although IARC examined “both glyphosate—an
15 active substance—and glyphosate-based formulations, grouping all formulations
16 regardless of their composition,” EFSA explained that it considered only
17 glyphosate and that its assessment focuses on “each individual chemical, and each

18 ⁴⁴ *Id.*

19 ⁴⁵ EFSA Fact Sheet: Glyphosate, EFSA
20 http://www.efsa.europa.eu/sites/default/files/corporate_publications/files/efsaexplainsglyphosate151112en.pdf.

1 marketed mixture separately.”⁴⁶ IARC, on the other hand, “assesses generic
2 agents, including groups of related chemicals, as well as occupational or
3 environmental exposure, and cultural or behavioural practices.”⁴⁷ EFSA accorded
4 greater weight to studies conducted with glyphosate alone than studies of
5 formulated products.⁴⁸

6 85. EFSA went further and noted:

7 [A]lthough some studies suggest that certain glyphosate-
8 based formulations may be genotoxic (i.e. damaging to
9 DNA), others that look solely at the active substance
10 glyphosate do not show this effect. It is likely, therefore,
11 that *the genotoxic effects observed in some glyphosate-*
12 *based formulations are related to the other constituents*
13 *or “co-formulants”*. Similarly, certain glyphosate-based
14 formulations display higher toxicity than that of the active
15 ingredient, presumably because of the presence of co-
16 formulants. In its assessment, *EFSA proposes that the*
17 *toxicity of each pesticide formulation and in particular*
18 *its genotoxic potential should be further considered and*
19 *addressed by Member State authorities while they re-*
20 *assess uses of glyphosate-based formulations in their*
*own territories.*⁴⁹

15 86. Notwithstanding its conclusion, EFSA did set exposure levels for
16 glyphosate. Specifically, EFSA proposed an acceptable daily intake (ADI) of 0.5
17 mg/kg of body weight per day; an acute reference dose (ARfD) of 0.5 mg/kg of

18 ⁴⁶ *Id.*

19 ⁴⁷ *Id.*

20 ⁴⁸ *Id.*

⁴⁹ *Id.*

1 body weight; and an acceptable operator exposure level (AOEL) of 0.1 mg/kg bw
2 per day.⁵⁰

3 *Leading Scientists Dispute EFSA's Conclusion*

4 87. On November 27, 2015, 96 independent academic and governmental
5 scientists from around the world submitted an open letter to the EU health
6 commissioner, Vytenis Andriukaitis.⁵¹ The scientists expressed their strong
7 concerns and urged the commissioner to disregard the “flawed” EFSA report,
8 arguing that “the BfR decision is not credible because it is not supported by the
9 evidence and it was not reached in an open and transparent manner.”⁵²

10 88. Signatories to the letter included Dr. Christopher J. Portier, Ph.D.,
11 and other renowned international experts in the field, some of whom were part of
12 the IARC Working Group assigned to glyphosate.

13 89. In an exhaustive and careful examination, the scientists scrutinized
14 EFSA's conclusions and outlined why the IARC Working Group decision was “by
15 far the more credible”:

16 ⁵⁰ European Food Safety Auth., Conclusion on the peer review of the
17 pesticide risk assessment of the active substance glyphosate, *supra*.

18 ⁵¹ Letter from Christopher J. Portier et al. to Commission Vytenis
19 Andriukaitis, Open letter: Review of the Carcinogenicity of Glyphosate by EFSA
20 and BfR (Nov. 27, 2015), <http://www.zeit.de/wissen/umwelt/2015-11/glyphosat-offener-brief.pdf>; <http://www.theguardian.com/environment/2016/jan/13/eu-scientists-in-row-over-safety-of-glyphosate-weedkiller>.

⁵² *Id.*

1 The IARC WG decision was reached relying on open and
2 transparent procedures by independent scientists who
3 completed thorough conflict-of-interest statements and
4 were not affiliated or financially supported in any way by
5 the chemical manufacturing industry. It is fully referenced
6 and depends entirely on reports published in the open,
7 peer-reviewed biomedical literature. It is part of a long
8 tradition of deeply researched and highly credible reports
9 on the carcinogenicity of hundreds of chemicals issued
10 over the past four decades by IARC and used today by
11 international agencies and regulatory bodies around the
12 world as a basis for risk assessment, regulation and public
13 health policy.⁵³

8 90. With respect to human data, the scientists pointed out that EFSA
9 agreed with IARC that there was “*limited evidence* of carcinogenicity” for non-
10 Hodgkin lymphoma, but EFSA nonetheless dismissed an association between
11 glyphosate exposure and carcinogenicity. IARC applies three levels of evidence
12 in its analyses of human data, including sufficient evidence and limited evidence.
13 EFSA’s ultimate conclusion that “there was no unequivocal evidence for a clear
14 and strong association of NHL with glyphosate” was misleading because it was
15 tantamount to IARC’s highest level of evidence: “sufficient evidence,” which
16 means that a causal relationship has been established. However, the scientists
17 argued, “[l]egitimate public health concerns arise when ‘causality is credible,’ i.e.,
18 when there is *limited evidence*.”⁵⁴

19 ⁵³ *Id.*

20 ⁵⁴ *Id.*

1 91. Among its many other deficiencies, EFSA’s conclusions regarding
2 animal carcinogenicity data were “scientifically unacceptable,” particularly in
3 BfR’s use of historical control data and in its trend analysis. Indeed, BfR’s
4 analysis directly contradicted the Organisation for Economic Co-operation and
5 Development (“OECD”) testing guidelines while citing and purporting to follow
6 those same guidelines. For instance, the EFSA report dismisses observed trends in
7 tumor incidence “because there are no individual treatment groups that are
8 significantly different from controls and because the maximum observed response
9 is reportedly within the range of the historical control data.” However, according
10 to the scientists, concurrent controls are recommended over historical controls in
11 all guidelines, scientific reports, and publications, and, if it is employed, historical
12 control data “should be from studies in the same timeframe, for the same exact
13 animal strain, preferably from the same laboratory or the same supplier and
14 preferably reviewed by the same pathologist.” BfR’s use of historical control data
15 violated these precautions: “only a single study used the same mouse strain as the
16 historical controls, but was reported more than 10 years after the historical control
17 dataset was developed.” Further deviating from sound scientific practices, the
18 data used by the BfR came from studies in seven different laboratories. The
19 scientists concluded:

20

1 BfR reported seven positive mouse studies with three
2 studies showing increases in renal tumors, two with
3 positive findings for hemangiosarcomas, and two with
4 positive findings for malignant lymphomas. BfR
5 additionally reported two positive findings for tumors in
6 rats. Eliminating the inappropriate use of historical data,
7 the unequivocal conclusion is that these are not negative
8 studies, but in fact document the carcinogenicity of
9 glyphosate in laboratory animals.⁵⁵

6 92. The letter also critiqued the EFSA report's lack of transparency and
7 the opacity surrounding the data cited in the report: "citations for almost all of the
8 references, even those from the open scientific literature, have been redacted from
9 the document" and "there are no authors or contributors listed for either document,
10 a requirement for publication in virtually all scientific journals." Because BfR
11 relied on unpublished, confidential industry-provided studies, it is "impossible for
12 any scientist not associated with BfR to review this conclusion with scientific
13 confidence."⁵⁶

14 93. On March 3, 2016, the letter was published in the Journal of
15 Epidemiology & Community Health.⁵⁷

17 ⁵⁵ *Id.*

18 ⁵⁶ *Id.*

19 ⁵⁷ Christopher J. Portier, et al., *Differences in the carcinogenic evaluation of*
20 *glyphosate between the International Agency for Research on Cancer (IARC) and*
the European Food Safety Authority (EFSA), JOURNAL OF EPIDEMIOLOGY &
CMTY. HEALTH, Mar. 3, 2016, available at
<http://jech.bmj.com/content/early/2016/03/03/jech-2015-207005.full>.

1 *Statement of Concern Regarding Glyphosate-Based Herbicides*

2 94. On February 17, 2016, a consensus statement published in the journal
3 *Environmental Health*, entitled “Concerns over use of glyphosate-based herbicides
4 and risks associated with exposures: a consensus statement,” assessed the safety of
5 glyphosate-based herbicides (GBHs).⁵⁸ The paper’s “focus is on the unanticipated
6 effects arising from the worldwide increase in use of GBHs, coupled with recent
7 discoveries about the toxicity and human health risks stemming from use of
8 GBHs.”⁵⁹ The researchers drew seven factual conclusions about GBHs:

- 9 1. GBHs are the most heavily applied herbicide in the
10 world and usage continues to rise;
- 11 2. Worldwide, GBHs often contaminate drinking
12 water sources, precipitation, and air, especially in
13 agricultural regions;
- 14 3. The half-life of glyphosate in water and soil is
15 longer than previously recognized;
- 16 4. Glyphosate and its metabolites are widely present
17 in the global soybean supply;
- 18 5. Human exposures to GBHs are rising;

18 ⁵⁸ John P. Myers, et al, *Concerns over use of glyphosate-based herbicides
19 and risks associated with exposures: a consensus statement*, *Environmental Health*
20 (2016), available at <http://ehjournal.biomedcentral.com/articles/10.1186/s12940-016-0117-0>.

⁵⁹ *Id.*

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- 6. Glyphosate is now authoritatively classified as a probable human carcinogen; and
- 7. Regulatory estimates of tolerable daily intakes for glyphosate in the United States and European Union are based on outdated science.⁶⁰

95. The researchers noted that GBH use has increased approximately 100-fold since the 1970s. Further, far from posing a limited hazard to vertebrates, as previously believed, two decades of evidence demonstrated that “several vertebrate pathways are likely targets of action, including hepatorenal damage, effects on nutrient balance through glyphosate chelating action and endocrine disruption.”⁶¹

96. The paper attributes uncertainties in current assessments of glyphosate formulations to the fact that “[t]he full list of chemicals in most commercial GBHs is protected as ‘commercial business information,’ despite the universally accepted relevance of such information to scientists hoping to conduct an accurate risk assessment of these herbicide formulations.” Further, the researchers argue, “[t]he distinction in regulatory review and decision processes between ‘active’ and ‘inert’ ingredients has no toxicological justification, given

⁶⁰ *Id.*

⁶¹ *Id.*

1 increasing evidence that several so-called ‘inert’ adjuvants are toxic in their own
2 right.”⁶²

3 97. Among various implications, the researchers conclude that “existing
4 toxicological data and risk assessments are not sufficient to infer that GBHs, as
5 currently used, are safe.” Further, “GBH-product formulations are more potent, or
6 toxic, than glyphosate alone to a wide array of non-target organisms including
7 mammals, aquatic insects, and fish.” Accordingly, “risk assessments of GBHs
8 that are based on studies quantifying the impacts of glyphosate alone
9 underestimate both toxicity and exposure, and thus risk.” The paper concludes
10 that this “shortcoming has repeatedly led regulators to set inappropriately high
11 exposure thresholds.”⁶³

12 98. The researchers also critique the current practice of regulators who
13 largely rely on “unpublished, non-peer reviewed data generated by the registrants”
14 but ignore “published research because it often uses standards and procedures to
15 assess quality that are different from those codified in regulatory agency data
16 requirements, which largely focus on avoiding fraud.” In the researchers’ view,
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19 ⁶² *Id.*

20 ⁶³ *Id.*

1 “[s]cientists independent of the registrants should conduct regulatory tests of
2 GBHs that include glyphosate alone, as well as GBH-product formulations.”⁶⁴

3 99. The researchers also call for greater inclusion of GBHs in
4 government-led toxicology testing programs:

5 [A] fresh and independent examination of GBH toxicity
6 should be undertaken, and . . . this re-examination be
7 accompanied by systematic efforts by relevant agencies to
8 monitor GBH levels in people and in the food supply,
9 none of which are occurring today. The U.S. National
10 Toxicology Program should prioritize a thorough
11 toxicological assessment of the multiple pathways now
12 identified as potentially vulnerable to GBHs.⁶⁵

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

17 “[W]e recommend that a system be put in place through
18 which manufacturers of GBHs provide funds to the
19 appropriate regulatory body as part of routine registration
20 actions and fees. Such funds should then be transferred to
appropriate government research institutes, or to an
agency experienced in the award of competitive grants. In
either case, funds would be made available to independent
scientists to conduct the appropriate long-term (minimum
2 years) safety studies in recognized animal model
systems. A thorough and modern assessment of GBH
toxicity will encompass potential endocrine disruption,

⁶⁴ *Id.*

⁶⁵ *Id.*

1 impacts on the gut microbiome, carcinogenicity, and
2 multigenerational effects looking at reproductive
3 capability and frequency of birth defects.”⁶⁶

3 *FDA Announces Testing of Glyphosate Residue in Foods*

4 101. On February 17, 2016, the U.S. Food and Drug Administration
5 (“FDA”) announced that, for the first time in its history, the agency planned to
6 start testing certain foods for glyphosate residues. FDA spokeswoman Lauren
7 Sucher explained: “The agency is now considering assignments for Fiscal Year
8 2016 to measure glyphosate in soybeans, corn, milk, and eggs, among other
9 potential foods.”⁶⁷

10 102. In 2014, the U.S. Government Accountability Office (GAO) had
11 severely rebuked the FDA for its failures to both monitor for pesticide residue,
12 including that of glyphosate, and to disclose the limitations of its monitoring and
13 testing efforts to the public.⁶⁸ The GAO had cited numerous undisclosed
14 deficiencies in the FDA’s process, specifically highlighting its omission of
15 glyphosate testing.

16 ⁶⁶ *Id.*

17 ⁶⁷ Carey Gillam, *FDA to Start Testing for Glyphosate in Food*, TIME, Feb.
18 17, 2016, available at [http://time.com/4227500/fda-glyphosate-
testing/?xid=tcoshare](http://time.com/4227500/fda-glyphosate-testing/?xid=tcoshare).

19 ⁶⁸ U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-15-38, FDA AND USDA
20 SHOULD STRENGTHEN PESTICIDE RESIDUE MONITORING PROGRAMS AND FURTHER
DISCLOSE MONITORING LIMITATIONS (2014), available at
<http://www.gao.gov/products/GAO-15-38>.

1 harmless.⁷² The paper reported the Swedish environment minister, Åsa Romson,
2 as stating: “We won’t take risks with glyphosate and we don’t think that the
3 analysis done so far is good enough. We will propose that no decision is taken
4 until further analysis has been done and the Efsa scientists have been more
5 transparent about their considerations.”⁷³

6 107. The Netherlands, in particular, argued that the relicensing should be
7 put on hold until after a separate evaluation of glyphosate’s toxicity can be
8 conducted.⁷⁴

9 108. Leading up to the vote, Italy joined the other EU states in opposing
10 the license renewal, citing health concerns.⁷⁵

11 109. On March 8, 2016, the EU ultimately decided to delay its vote and is
12 scheduled to meet again on May 18–19, 2016.⁷⁶

14 ⁷² Arthur Neslen, *EU states rebel against plans to relicense weedkiller
15 glyphosate*, THE GUARDIAN, Mar. 4, 2016, available at
16 <http://www.theguardian.com/environment/2016/mar/04/eu-states-rebel-against-plans-to-relicense-weedkiller-glyphosate>.

17 ⁷³ *Id.*

18 ⁷⁴ Arthur Neslen, *Vote on Controversial weedkiller’s European licence
19 postponed*, THE GUARDIAN, Mar. 8, 2016, available at
<http://www.theguardian.com/environment/2016/mar/08/eu-vote-on-controversial-weedkiller-licence-postponed-glyphosate>.

20 ⁷⁵ *Id.*

⁷⁶ *Id.*

1 Roundup[®] was injurious to his health, he did not wear any protective gear while
2 spraying.

3 114. From January 1986 through May 2014, Mr. Sanders owned and
4 operated a farming company. His work was substantively identical as to when he
5 was a ranch hand for the prior two years—controlling weeds with Roundup[®] in
6 orange and grapefruit groves.

7 115. Mr. Sanders purchased Roundup[®] for his farming company's use.

8 116. In 1998, Mr. Sanders was diagnosed with esophageal cancer. He did
9 not undergo chemotherapy; instead, part of his esophagus was removed. This
10 cancer is in remission.

11 117. In May 2014, Mr. Sanders was diagnosed with low-grade B-cell
12 lymphoma, a type of NHL, in San Bernardino County, California. He obtained a
13 confirmation of this diagnosis at the City of Hope comprehensive cancer center in
14 Duarte, California.

15 118. Shortly after the diagnosis, Mr. Sanders sold his work equipment and
16 retired.

17 119. Mr. Sanders's NHL is currently in remission.

18 120. During the entire time that Mr. Sanders was exposed to Roundup[®], he
19 did not know that exposure to Roundup[®] was injurious to his health or the health
20 of others.

1 125. In 2005, Mr. Tanner was diagnosed with NHL at Methodist Hospital
2 in Arcadia, California. He received chemotherapy and radiation treatment for
3 approximately seven months. Following this treatment, the cancer went into
4 remission.

5 126. In 2006, Mr. Tanner sold his landscaping business.

6 127. From 2006 to approximately 2008, he continued to perform
7 landscape work for former clients upon request. He used Roundup[®] to control
8 weeds for these clients.

9 128. Mr. Tanner purchased Roundup[®] for business and personal uses.

10 129. In 2012, Mr. Tanner was diagnosed with skin lymphoma on his right
11 arm. This lymphoma was diagnosed as being a type of NHL. He received
12 approximately twelve radiation treatments, and the cancer is now in remission.

13 130. During the time Mr. Tanner used Roundup[®] at work and through
14 2015, he also used Roundup[®] at home to control weeds. At home, he used the
15 formulation with 41% glyphosate, and he sprayed it approximately once a month.
16 He stopped using Roundup[®] entirely in 2015 when he learned of its injurious
17 nature, including the link between exposure to Roundup[®] and NHL.

18 131. During the entire time that Mr. Tanner was exposed to Roundup[®], he
19 did not know that exposure to Roundup[®] was injurious to his health or the health
20 of others.

1 132. Mr. Tanner first learned that exposure to Roundup[®] can cause non-
2 Hodgkin lymphoma and other serious illnesses sometime after July 29, 2015,
3 when IARC first published its evaluation of glyphosate.

4 **TOLLING OF THE STATUTE OF LIMITATIONS**

5 *Discovery Rule Tolling*

6 133. Plaintiffs had no way of knowing about the risk of serious illness
7 associated with the use of and/or exposure to Roundup[®] and glyphosate until
8 IARC released its formal assessment of glyphosate in July 2015. This is the
9 quintessential case for tolling.

10 134. Within the time period of any applicable statutes of limitations,
11 Plaintiffs could not have discovered, through the exercise of reasonable diligence,
12 that exposure to Roundup[®] and glyphosate is injurious to human health.

13 135. Plaintiffs did not discover, and did not know of facts that would cause
14 a reasonable person to suspect, the risks associated with the use of and/or
15 exposure to Roundup[®] and glyphosate; nor would a reasonable and diligent
16 investigation by them have disclosed that Roundup[®] and glyphosate would cause
17 their illnesses.

18 136. For these reasons, all applicable statutes of limitations have been
19 tolled by operation of the discovery rule with respect to Plaintiffs' claims.
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Fraudulent Concealment Tolling

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

138. Instead of disclosing critical safety information about Roundup® and glyphosate, Monsanto has consistently and falsely represented the safety of its Roundup® products.

Estoppel

139. Monsanto was under a continuous duty to disclose to consumers, users and other persons coming into contact with its products, including Plaintiffs, accurate safety information concerning its products and the risks associated with the use of and/or exposure to Roundup® and glyphosate.

140. Instead, Monsanto knowingly, affirmatively, and actively concealed safety information concerning Roundup® and glyphosate and the serious risks associated with the use of and/or exposure to its products.

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

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CLAIM ONE

STRICT LIABILITY (DESIGN DEFECT)

142. Plaintiffs incorporate by reference each and every allegation set forth in the preceding paragraphs as if fully stated herein.

143. Plaintiffs bring this strict liability claim against Defendant for defective design.

144. At all times relevant to this litigation, Defendant engaged in the business of testing, developing, designing, manufacturing, marketing, selling, distributing, and promoting Roundup[®] products, which are defective and unreasonably dangerous to consumers and users and other persons coming into contact them, including Plaintiffs, thereby placing Roundup[®] products into the stream of commerce. These actions were under the ultimate control and supervision of Defendant. At all times relevant to this litigation, Defendant designed, researched, developed, formulated, manufactured, produced, tested, assembled, labeled, advertised, promoted, marketed, sold, and distributed the Roundup[®] products used by the Plaintiffs, and/or to which the Plaintiffs were exposed, as described above.

145. At all times relevant to this litigation, Defendant's Roundup[®] products were manufactured, designed, and labeled in an unsafe, defective, and

1 inherently dangerous manner that was dangerous for use by or exposure to the
2 public, and, in particular, the Plaintiffs.

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

8 147. Defendant's Roundup[®] products, as researched, tested, developed,
9 designed, licensed, formulated, manufactured, packaged, labeled, distributed, sold,
10 and marketed by Defendant were defective in design and formulation in that when
11 they left the hands of the Defendant's manufacturers and/or suppliers, they were
12 unreasonably dangerous and dangerous to an extent beyond that which an ordinary
13 consumer would contemplate.

14 148. Defendant's Roundup[®] products, as researched, tested, developed,
15 designed, licensed, formulated, manufactured, packaged, labeled, distributed, sold,
16 and marketed by Defendant were defective in design and formulation in that when
17 they left the hands of Defendant's manufacturers and/or suppliers, the foreseeable
18 risks associated with these products' reasonably foreseeable uses exceeded the
19 alleged benefits associated with their design and formulation.

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

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

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

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

17 d. Defendant did not sufficiently test, investigate, or study
18 its Roundup[®] products and, specifically, the active ingredient
19 glyphosate.
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1 e. Exposure to Roundup[®] and glyphosate-containing
2 products presents a risk of harmful side effects that outweighs any
3 potential utility stemming from the use of the herbicide.

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

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

10 h. Defendant could have employed safer alternative designs
11 and formulations.

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

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

19 152. The harm caused by Defendant's Roundup[®] products far outweighed
20 their benefit, rendering Defendant's products dangerous to an extent beyond that

1 which an ordinary consumer would contemplate. Defendant's Roundup[®] products
2 were and are more dangerous than alternative products and Defendant could have
3 designed its Roundup[®] products to make them less dangerous. Indeed, at the time
4 that Defendant designed its Roundup[®] products, the state of the industry's
5 scientific knowledge was such that a less risky design or formulation was
6 attainable.

7 153. At the time Roundup[®] products left Defendant's control, there was a
8 practical, technically feasible, and safer alternative design that would have
9 prevented the harm without substantially impairing the reasonably anticipated or
10 intended function of Defendant's Roundup[®] herbicides.

11 154. Defendant's defective design of Roundup[®] amounts to willful,
12 wanton, and/or reckless conduct by Defendant.

13 155. Therefore, as a result of the unreasonably dangerous condition of its
14 Roundup[®] products, Defendant is strictly liable to Plaintiffs.

15 156. The defects in Defendant's Roundup[®] products were substantial and
16 contributing factors in causing Plaintiffs' grave injuries, and, but for Defendant's
17 misconduct and omissions, Plaintiffs would not have sustained their injuries.

18 157. As a direct and proximate result of Defendant placing its defective
19 Roundup[®] products into the stream of commerce, Plaintiffs have suffered and
20 continues to suffer grave injuries, and has endured pain and discomfort, as well as

1 economic hardship, including considerable financial expenses for medical care
2 and treatment. Plaintiffs will continue to incur these expenses in the future.

3 158. WHEREFORE, Plaintiffs respectfully request that this Court enter
4 judgment in Plaintiffs' favor for compensatory and punitive damages, together
5 with interest, costs herein incurred, attorneys' fees, and all such other and further
6 relief as this Court deems just and proper. Plaintiffs also demand a jury trial on
7 the issues contained herein.

8 **CLAIM TWO**

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

10 159. Plaintiffs incorporate by reference each and every allegation set forth
11 in the preceding paragraphs as if fully stated herein.

12 160. Plaintiffs bring this strict liability claim against Defendant for failure
13 to warn.

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

1 162. Defendant researched, developed, designed, tested, manufactured,
2 inspected, labeled, distributed, marketed, promoted, sold, and otherwise released
3 into the stream of commerce its Roundup[®] products, and in the course of same,
4 directly advertised or marketed the products to consumers and end users, including
5 Plaintiffs, Plaintiffs' employers, Plaintiffs' co-workers, and persons responsible
6 for consumers (such as employers), and Defendant therefore had a duty to warn of
7 the risks associated with the reasonably foreseeable uses (and misuses) of
8 Roundup[®] and glyphosate-containing products.

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

17 164. At the time of manufacture, Defendant could have provided warnings
18 or instructions regarding the full and complete risks of Roundup[®] and glyphosate-
19 containing products because it knew or should have known of the unreasonable
20 risks of harm associated with the use of and/or exposure to these products.

1 165. At all times relevant to this litigation, Defendant failed to investigate,
2 study, test, or promote the safety or to minimize the dangers to users and
3 consumers of its Roundup[®] products and to those who would foreseeably use or
4 be harmed by Defendant's herbicides, including Plaintiffs.

5 166. Despite the fact that Defendant knew or should have known that
6 Roundup[®] products posed a grave risk of harm, it failed to warn of the dangerous
7 risks associated with their use and exposure. The dangerous propensities of its
8 products and the carcinogenic characteristics of glyphosate, as described above,
9 were known to Defendant, or scientifically knowable to Defendant through
10 appropriate research and testing by known methods, at the time it distributed,
11 supplied, or sold the product, and not known to end users and consumers, such as
12 Plaintiffs' employers.

13 167. Defendant knew or should have known that its Roundup[®] and
14 glyphosate-containing products created significant risks of serious bodily harm to
15 consumers, as alleged herein, and Defendant failed to adequately warn consumers
16 and reasonably foreseeable users of the risks of exposure to these products.
17 Defendant has wrongfully concealed information concerning the dangerous nature
18 of Roundup[®] and its active ingredient glyphosate, and further made false and/or
19 misleading statements concerning the safety of Roundup[®] and glyphosate.
20

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

6 169. At all times relevant to this litigation, Plaintiffs used and/or was
7 exposed to the use of Defendant's Roundup[®] products in their intended or
8 reasonably foreseeable manner without knowledge of their dangerous
9 characteristics.

10 170. Plaintiffs could not have reasonably discovered the defects and risks
11 associated with Roundup[®] or glyphosate-containing products before or at the time
12 of Plaintiffs' exposure. Plaintiffs relied upon the skill, superior knowledge, and
13 judgment of Defendant.

14 171. Defendant knew or should have known that the minimal warnings
15 disseminated with its Roundup[®] products were inadequate, but it failed to
16 communicate adequate information on the dangers and safe use/exposure and
17 failed to communicate warnings and instructions that were appropriate and
18 adequate to render the products safe for their ordinary, intended, and reasonably
19 foreseeable uses, including agricultural and horticultural applications.

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

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

16 174. As a result of their inadequate warnings, Defendant's Roundup[®]
17 products were defective and unreasonably dangerous when they left the possession
18 and/or control of Defendant, were distributed by Defendant, and used by
19 Plaintiffs.

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1 175. Defendant is liable to Plaintiffs for injuries caused by its failure, as
2 described above, to provide adequate warnings or other clinically relevant
3 information and data regarding the appropriate use of its Roundup[®] products and
4 the risks associated with the use of or exposure to Roundup[®] and glyphosate.

5 176. The defects in Defendant's Roundup[®] products were substantial and
6 contributing factors in causing Plaintiffs' injuries, and, but for Defendant's
7 misconduct and omissions, Plaintiffs would not have sustained their injuries.

8 177. Had Defendant provided adequate warnings and instructions and
9 properly disclosed and disseminated the risks associated with its Roundup[®]
10 products, Plaintiffs could have avoided the risk of developing injuries as alleged
11 herein and Plaintiffs' employers could have obtained alternative herbicides.

12 178. As a direct and proximate result of Defendant placing its defective
13 Roundup[®] products into the stream of commerce, Plaintiffs have suffered and
14 continue to suffer severe injuries, and have endured physical pain and discomfort,
15 as well as economic hardship, including considerable financial expenses for
16 medical care and treatment. Plaintiffs will continue to incur these expenses in the
17 future.

18 179. WHEREFORE, Plaintiffs respectfully request that this Court enter
19 judgment in Plaintiffs' favor for compensatory and punitive damages, together
20 with interest, costs herein incurred, attorneys' fees, and all such other and further

1 relief as this Court deems just and proper. Plaintiffs also demand a jury trial on
2 the issues contained herein.

3 **CLAIM THREE**

4 **NEGLIGENCE**

5 180. Plaintiffs incorporate by reference each and every allegation set forth
6 in the preceding paragraphs as if fully stated herein.

7 181. Defendant, directly or indirectly, caused Roundup[®] products to be
8 sold, distributed, packaged, labeled, marketed, promoted, and/or used by
9 Plaintiffs.

10 182. At all times relevant to this litigation, Defendant had a duty to
11 exercise reasonable care in the design, research, manufacture, marketing,
12 advertisement, supply, promotion, packaging, sale, and distribution of its
13 Roundup[®] products, including the duty to take all reasonable steps necessary to
14 manufacture, promote, and/or sell a product that was not unreasonably dangerous
15 to consumers, users, and other persons coming into contact with the product.

16 183. At all times relevant to this litigation, Defendant had a duty to
17 exercise reasonable care in the marketing, advertisement, and sale of its Roundup[®]
18 products. Defendant's duty of care owed to consumers and the general public
19 included providing accurate, true, and correct information concerning the risks of
20 using Roundup[®] and appropriate, complete, and accurate warnings concerning the

1 potential adverse effects of exposure to Roundup[®] and, in particular, its active
2 ingredient glyphosate.

3 184. At all times relevant to this litigation, Defendant knew or, in the
4 exercise of reasonable care, should have known of the hazards and dangers of
5 Roundup[®] and specifically, the carcinogenic properties of the chemical
6 glyphosate.

7 185. Accordingly, at all times relevant to this litigation, Defendant knew
8 or, in the exercise of reasonable care, should have known that use of or exposure
9 to its Roundup[®] products could cause Plaintiffs' injuries and thus created a
10 dangerous and unreasonable risk of injury to the users of these products, including
11 Plaintiffs.

12 186. Defendant knew or, in the exercise of reasonable care, should have
13 known that Roundup[®] is more toxic than glyphosate alone and that safety studies
14 on Roundup[®], Roundup[®]'s adjuvants and "inert" ingredients, and/or the surfactant
15 POEA were necessary to protect Plaintiffs from Roundup[®].

16 187. Defendant knew or, in the exercise of reasonable care, should have
17 known that tests limited to Roundup's active ingredient glyphosate were
18 insufficient to prove the safety of Roundup.

19 188. Defendant also knew or, in the exercise of reasonable care, should
20 have known that users and consumers of Roundup[®] were unaware of the risks and

1 the magnitude of the risks associated with the use of and/or exposure to Roundup[®]
2 and glyphosate-containing products.

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

12 190. Defendant failed to appropriately and adequately test Roundup[®],
13 Roundup[®]'s adjuvants and "inert" ingredients, and/or the surfactant POEA to
14 protect Plaintiffs from Roundup[®].

15 191. Despite its ability and means to investigate, study, and test its
16 products and to provide adequate warnings, Defendant has failed to do so. Indeed,
17 Defendant has wrongfully concealed information and has further made false
18 and/or misleading statements concerning the safety and/or exposure to Roundup[®]
19 and glyphosate.

20

1 192. Defendant's negligence included:

2 a. Manufacturing, producing, promoting, formulating,
3 creating, developing, designing, selling, and/or distributing its
4 Roundup[®] products without thorough and adequate pre- and post-
5 market testing;

6 b. Manufacturing, producing, promoting, formulating,
7 creating, developing, designing, selling, and/or distributing
8 Roundup[®] while negligently and/or intentionally concealing and
9 failing to disclose the results of trials, tests, and studies of exposure to
10 glyphosate, and, consequently, the risk of serious harm associated
11 with human use of and exposure to Roundup[®];

12 c. Failing to undertake sufficient studies and conduct
13 necessary tests to determine whether or not Roundup[®] products and
14 glyphosate-containing products were safe for their intended use in
15 agriculture, horticulture, and at-home use;

16 d. Failing to undertake sufficient studies and conduct
17 necessary tests to determine the safety of "inert" ingredients and/or
18 adjuvants contained within Roundup[®], and the propensity of these
19 ingredients to render Roundup[®] toxic, increase the toxicity of
20 Roundup[®], whether these ingredients are carcinogenic, magnify the

1 carcinogenic properties of Roundup[®], and whether or not “inert”
2 ingredients and/or adjuvants were safe for use;

3 e. Failing to use reasonable and prudent care in the design,
4 research, manufacture, formulation, and development of Roundup[®]
5 products so as to avoid the risk of serious harm associated with the
6 prevalent use of Roundup[®]/glyphosate as an herbicide;

7 f. Failing to design and manufacture Roundup[®] products
8 so as to ensure they were at least as safe and effective as other
9 herbicides on the market;

10 g. Failing to provide adequate instructions, guidelines, and
11 safety precautions to those persons who Defendant could reasonably
12 foresee would use and/or be exposed to its Roundup[®] products;

13 h. Failing to disclose to Plaintiffs, users, consumers, and
14 the general public that the use of and exposure to Roundup[®]
15 presented severe risks of cancer and other grave illnesses;

16 i. Failing to warn Plaintiffs, users, consumers, and the
17 general public that the product’s risk of harm was unreasonable and
18 that there were safer and effective alternative herbicides available to
19 Plaintiffs and other users or consumers;
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j. Systematically suppressing or downplaying contrary evidence about the risks, incidence, and prevalence of the side effects of Roundup[®] and glyphosate-containing products;

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

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

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

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

1 o. Continuing the manufacture and sale of its products with
2 the knowledge that the products were unreasonably unsafe and
3 dangerous.

4 193. Defendant knew and/or should have known that it was foreseeable
5 that consumers and/or users, such as Plaintiffs, would suffer injuries as a result of
6 Defendant's failure to exercise ordinary care in the manufacturing, marketing,
7 labeling, distribution, and sale of Roundup[®].

8 194. Plaintiffs did not know the nature and extent of the injuries that could
9 result from the intended use of and/or exposure to Roundup[®] or its active
10 ingredient glyphosate.

11 195. Defendant's negligence was the proximate cause of the injuries,
12 harm, and economic losses that Plaintiffs suffered, and will continue to suffer, as
13 described herein.

14 196. Defendant's conduct, as described above, was reckless. Defendant
15 regularly risks the lives of consumers and users of its products, including
16 Plaintiffs, with full knowledge of the dangers of its products. Defendant has made
17 conscious decisions not to redesign, re-label, warn, or inform the unsuspecting
18 public, including Plaintiffs. Defendant's reckless conduct therefore warrants an
19 award of punitive damages.

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1 Roundup® products into the stream of commerce. These actions were under the
2 ultimate control and supervision of Defendant.

3 201. Defendant had a duty to exercise reasonable care in the research,
4 development, design, testing, packaging, manufacture, inspection, labeling,
5 distributing, marketing, promotion, sale, and release of its Roundup® products,
6 including a duty to:

- 7 a. ensure that its products did not cause the user
8 unreasonably dangerous side effects;
- 9 b. warn of dangerous and potentially fatal side effects; and
- 10 c. disclose adverse material facts, such as the true risks
11 associated with the use of and exposure to Roundup® and glyphosate-
12 containing products, when making representations to consumers and
13 the general public, including Plaintiffs.

14 202. At all times relevant to this litigation, Defendant expressly
15 represented and warranted to the purchasers of its products, by and through
16 statements made by Defendant in labels, publications, package inserts, and other
17 written materials intended for consumers and the general public, that its
18 Roundup® products were safe to human health and the environment, effective, fit,
19 and proper for their intended use. Defendant advertised, labeled, marketed, and
20 promoted Roundup® products, representing the quality to consumers and the

1 public in such a way as to induce their purchase or use, thereby making an express
2 warranty that its Roundup® products would conform to the representations.

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

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

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

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

7 a. Defendant represented through its labeling, advertising,
8 and marketing materials that its Roundup® products were safe, and
9 fraudulently withheld and concealed information about the risks of
10 serious injury associated with use of and/or exposure to Roundup®
11 and glyphosate by expressly limiting the risks associated with use
12 and/or exposure within its warnings and labels; and

13 b. Defendant represented that its Roundup® products were
14 safe for use and fraudulently concealed information that
15 demonstrated that glyphosate, the active ingredient in Roundup®, had
16 carcinogenic properties, and that its Roundup® products, therefore,
17 were not safer than alternatives available on the market.

18 207. Upon information and belief, Plaintiffs were in privity with
19 Defendant, and as such, Plaintiffs are entitled to assert this claim.
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1 208. On information and belief, Plaintiffs justifiably and detrimentally
2 relied on the express warranties and representations of Defendant in the purchase
3 and use of its Roundup[®] products. When Plaintiffs made the decision to purchase
4 Roundup[®], they reasonably relied upon Defendant to disclose known defects,
5 risks, dangers, and side effects of Roundup[®] and glyphosate.

6 209. Defendant had sole access to material facts concerning the nature of
7 the risks associated with its Roundup[®] products as expressly stated within its
8 warnings and labels, and Defendant knew that consumers and users such as
9 Plaintiffs could not have reasonably discovered that the risks expressly included in
10 Roundup[®] warnings and labels were inadequate and inaccurate.

11 210. Plaintiffs had no knowledge of the falsity or incompleteness of
12 Defendant's statements and representations concerning Roundup[®].

13 211. Plaintiffs used and/or were exposed to the use of Roundup[®] as
14 researched, developed, designed, tested, formulated, manufactured, inspected,
15 labeled, distributed, packaged, marketed, promoted, sold, or otherwise released
16 into the stream of commerce by Defendant.

17 212. Had the warnings and labels for Roundup[®] products accurately and
18 adequately set forth the true risks associated with the use of such products,
19 including Plaintiffs' injuries, rather than expressly excluding such information and
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1 warranting that the products were safe for their intended use, Plaintiffs could have
2 avoided the injuries complained of herein.

3 213. As a direct and proximate result of Defendant's wrongful acts and
4 omissions, Plaintiffs have suffered severe injuries. Plaintiffs have endured pain
5 and suffering, have suffered economic losses (including significant expenses for
6 medical care and treatment), and will continue to incur these expenses in the
7 future.

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

13 **CLAIM FIVE**

14 **BREACH OF IMPLIED WARRANTIES**

15 215. Plaintiffs incorporate by reference each and every allegation set forth
16 in the preceding paragraphs as if fully stated herein.

17 216. At all times relevant to this litigation, Defendant engaged in the
18 business of testing, developing, designing, formulating, manufacturing, marketing,
19 selling, distributing, and promoting its Roundup[®] products, which are defective
20 and unreasonably dangerous to users and consumers, including Plaintiffs, thereby

1 placing Roundup[®] products into the stream of commerce. These actions were
2 under the ultimate control and supervision of Defendant.

3 217. Before the time that Plaintiffs were exposed to the use of the
4 aforementioned Roundup[®] products, Defendant impliedly warranted to its
5 consumers and users—including Plaintiffs and Plaintiff Sanders’s employers—
6 that its Roundup[®] products were of merchantable quality and safe and fit for the
7 use for which they were intended; specifically, as horticultural herbicides.

8 218. Defendant, however, failed to disclose that Roundup[®] has dangerous
9 propensities when used as intended and that the use of and/or exposure to
10 Roundup[®] and glyphosate-containing products carries an increased risk of
11 developing severe injuries, including Plaintiffs’ injuries.

12 219. Upon information and belief, Plaintiffs and Plaintiff Sanders’s
13 employers reasonably relied upon the skill, superior knowledge and judgment of
14 Defendant and upon its implied warranties that the Roundup[®] products were of
15 merchantable quality and fit for their intended purpose or use.

16 220. Upon information and belief, Plaintiffs and Plaintiff Sanders’s
17 employers were at all relevant times in privity with Defendant, and as such,
18 Plaintiffs are entitled to assert this claim.

19 221. Plaintiff Sanders is the intended third-party beneficiary of implied
20 warranties made by Defendant to the purchasers of its horticultural herbicides,

1 including the company and/or companies that employed Plaintiff Sanders, and as
2 such, Plaintiff Sanders is entitled to assert this claim.

3 222. Upon information and belief, Plaintiffs and Plaintiff Sanders's
4 employers reasonably relied upon the skill, superior knowledge and judgment of
5 Defendant and upon its implied warranties that the Roundup[®] products were of
6 merchantable quality and fit for their intended purpose or use.

7 223. The Roundup[®] products were expected to reach and did in fact reach
8 consumers and users, including Plaintiffs, without substantial change in the
9 condition in which they were manufactured and sold by Defendant.

10 224. At all times relevant to this litigation, Defendant was aware that
11 consumers and users of its products, including Plaintiffs, would use Roundup[®]
12 products as marketed by Defendant, which is to say that Plaintiffs were the
13 foreseeable users of Roundup[®].

14 225. Defendant intended that its Roundup[®] products be used in the manner
15 in which Plaintiffs in fact used them and Defendant impliedly warranted each
16 product to be of merchantable quality, safe, and fit for this use, despite the fact
17 that Roundup[®] was not adequately tested or researched.

18 226. In reliance upon Defendant's implied warranty, Plaintiffs used
19 Roundup[®] as instructed and labeled and in the foreseeable manner intended,
20 recommended, promoted and marketed by Defendant.

1 227. Neither Plaintiffs nor Plaintiff Sanders’s employers could have
2 reasonably discovered or known of the risks of serious injury associated with
3 Roundup® or glyphosate.

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

9 229. The harm caused by Defendant’s Roundup® products far outweighed
10 their benefit, rendering the products more dangerous than an ordinary consumer or
11 user would expect and more dangerous than alternative products.

12 230. As a direct and proximate result of Defendant’s wrongful acts and
13 omissions Plaintiffs have suffered severe and permanent physical and emotional
14 injuries. Plaintiffs have endured pain and suffering, have suffered economic loss
15 (including significant expenses for medical care and treatment) and will continue
16 to incur these expenses in the future.

17 231. WHEREFORE, Plaintiffs respectfully request that this Court enter
18 judgment in Plaintiffs’ favor for compensatory and punitive damages, together
19 with interest, costs herein incurred, attorneys’ fees, and all such other and further
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1 relief as this Court deems just and proper. Plaintiffs also demand a jury trial on
2 the issues contained herein.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiffs request that the Court enter judgment in his favor
5 and against Monsanto, awarding as follows:

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

11 **JURY TRIAL DEMAND**

12 Plaintiffs demand a trial by jury on all of the triable issues within this
13 Complaint.

14 Dated: April 19, 2016
15 Los Angeles, California

16 **WEITZ & LUXENBERG, P.C.**

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