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7
8 **UNITED STATES DISTRICT COURT**
9 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

10 Ruben Hernandez and Martha Hernandez,

11 Plaintiffs,

12 v.

13 Monsanto Company,

14 Defendant.

'17CV2009 CAB JLB

COMPLAINT WITH JURY DEMAND

15 Plaintiffs, Ruben Hernandez and Martha Hernandez, by and through their undersigned counsel,
16 for their Complaint against Defendant Monsanto Company, state:

17 **INTRODUCTION**

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

1 agriculture with 85-90 million pounds used annually. That number grew to 185 million pounds
2 in 2007.¹ As of 2013, glyphosate was the world's most widely used herbicide.

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

12 3. Monsanto's glyphosate products are registered in 130 countries and approved for use on
13 over 100 different crops.⁴ They are ubiquitous in the environment. Numerous studies confirm
14 that glyphosate is found in rivers, streams, and groundwater in agricultural areas where Roundup®
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19 ¹ Arthur Grube et al., U.S. Env'tl. Prot. Agency, *Pesticides Industry Sales and Usage, 2006-2007*
20 *Market Estimates* 14 (2011), available at

21 http://www.epa.gov/pesticides/pestsales/07pestsales/market_estimates2007.pdf

22 ² ETC Group, *Who Will Control the Green Economy?* 22 (2011), available at

23 http://www.etcgroup.org/files/publication/pdf_file/ETC_wwctge_4web_Dec2011.pdf

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

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

1 is used.⁵ It has been found in food,⁶ in the urine of agricultural workers,⁷ and even in the urine of
2 urban dwellers who are not in direct contact with glyphosate.⁸

3 4. On March 20, 2015, the International Agency for Research on Cancer (“IARC”), an agency
4 of the World Health Organization (“WHO”), issued an evaluation of several herbicides, including
5 glyphosate. That evaluation was based, in part, on studies of exposures to glyphosate in several
6 countries around the world, and it traces the health implications from exposure to glyphosate since
7 2001.

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

12 6. The IARC Working Group classified glyphosate as a Group 2A herbicide, which means
13 that it is *probably carcinogenic to humans*. The IARC Working Group concluded that the cancers
14 most associated with glyphosate exposure are non-Hodgkin lymphoma and other haematopoietic
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16 ⁵ See U.S. Geological Survey, *USGS Technical Announcement: Widely Used Herbicide*
17 *Commonly Found in Rain and Streams in the Mississippi River Basin* (2011), available at
18 <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>.

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

21 ⁷ John F. Acquavella et al., *Glyphosate Biomonitoring for Farmers and Their Families: Results*
from the Farm Family Exposure Study, 112(3) *ENVTL. HEALTH PERSPECTIVES* 321
22 (2004), available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1241861/>; Kathryn Z.
Guyton et al., *Carcinogenicity of Tetrachlorvinphos, Parathion, Malathion, Diazinon &*
Glyphosate, 112 *IARC Monographs* 76, section 5.4 (2015), available at
23 [http://dx.doi.org/10.1016/S1470-2045\(15\)70134-8](http://dx.doi.org/10.1016/S1470-2045(15)70134-8).

24 ⁸ Dirk Brändli & Sandra Reinacher, *Herbicides found in Human Urine*, 1 *ITHAKA JOURNAL*
25 270 (2012), available at <http://www.ithaka-journal.net/druckversionen/e052012-herbicides-urine.pdf>.

1 cancers, including 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 believed for years: that
4 glyphosate is toxic to humans.

5 8. Nevertheless, Monsanto, since it began selling Roundup[®], has represented it as safe to
6 humans and the environment. Indeed, Monsanto has repeatedly proclaimed and continues to
7 proclaim to the world, and particularly to United States consumers, that glyphosate-based
8 herbicides, including Roundup[®], create no unreasonable risks to human health or to the
9 environment.
10

11 JURISDICTION AND VENUE

12 9. Federal diversity jurisdiction in this Court is proper under 28 U.S.C. § 1332 because
13 Plaintiffs are citizens of California, a different state than the Defendant's place of incorporation
14 (Delaware) and Defendant's headquarters (Missouri), and the aggregate amount in controversy
15 exceeds \$75,000, exclusive of interest and costs.
16

17 10. This Court has personal jurisdiction over Monsanto because Monsanto transacts business
18 in California and is a corporation doing business within California. Monsanto knows or should
19 have known that its Roundup[®] products are and were sold throughout the State of California, and,
20 more specifically, caused Roundup[®] to be sold to Plaintiffs and/or their employers in California.
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24 ⁹ See Guyton et al., *Carcinogenicity of Tetrachlorvinphos, Parathion, Malathion, Diazinon &*
25 *Glyphosate, supra.*

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

4 12. Venue is proper within this District because the events giving rise to this action happened
5 in or are closely related to this District.

6 **PARTIES**

7 **PLAINTIFF RUBEN HERNANDEZ**

8
9 13. Plaintiff Ruben Hernandez is a natural person, is a citizen of the State of California, and is
10 a resident of Calexico, California.

11 14. Mr. Hernandez was exposed to Roundup[®] in or around Imperial Valley, California; Blythe,
12 California; Yuma, Arizona; Salinas, California; Phoenix, Arizona; Wilcox, Arizona; Elfrida,
13 Arizona; and Center, Colorado, from around 1974 through 2012; and Calexico, California, from
14 around 1987 through 2017. He was diagnosed with Extranodal Marginal Zone Lymphoma
15 (MALT) in October 2015.

16
17 15. Plaintiff Martha Hernandez is a natural person, is a citizen of the State of California, is a
18 resident of Calexico, California, and is the spouse of Plaintiff Ruben Hernandez.

19 **DEFENDANT MONSANTO COMPANY**

20 16. Defendant Monsanto Company is a corporation created under the laws of the State of
21 Delaware with its headquarters and principal place of business in St. Louis, Missouri.
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FACTS

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

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

7
8 18. Plants treated with glyphosate translocate the systemic herbicide to their roots, shoot
9 regions, and fruit, where it interferes with the plant’s ability to form aromatic amino acids
10 necessary for protein synthesis. Treated plants generally die within two to three days. Because
11 plants absorb glyphosate, it cannot be completely removed by washing or peeling produce or by
12 milling, baking, or brewing grains.

13 19. For nearly 40 years, farms across the world have used Roundup[®] without knowing of the
14 dangers its use poses. That is because when Monsanto first introduced Roundup[®], it touted
15 glyphosate as a technological breakthrough: it could kill almost every weed without causing harm
16 either to people or to the environment. Of course, history has shown that not to be true. According
17 to WHO, the main ingredient of Roundup[®] – glyphosate – is a probable cause of cancer. Those
18 most at risk are farm workers and other individuals with workplace exposure to Roundup[®], such
19 as garden center workers, nursery workers, and landscapers. Agricultural workers are, once again,
20 victims of corporate greed. Monsanto assured the public that Roundup[®] was harmless. In order
21 to prove this, Monsanto has championed falsified data and has attacked legitimate studies that
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1 revealed Roundup®'s dangers. Monsanto has led a prolonged campaign of misinformation to
2 convince government agencies, farmers and the general population that Roundup® is safe.

3 **The Discovery of Glyphosate and Development of Roundup®**

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

9
10 21. In addition to the active ingredient glyphosate, Roundup® formulations also contain
11 adjuvants and other chemicals such as the surfactant POEA, which are considered "inert" and
12 therefore protected as "trade secrets" in manufacturing. Growing evidence suggests that these
13 adjuvants and additional components of Roundup® formulations are not, in fact, inert and are toxic
14 in their own right.

15 **Registration of Herbicides under Federal Law**

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17 22. The manufacture, formulation, and distribution of herbicides, such as Roundup®, are
18 regulated under the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA" or "Act"), 7
19 U.S.C. § 136 *et seq.* FIFRA requires that all pesticides be registered with the Environmental
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22 _____
23 ¹⁰ Monsanto, *Backgrounder, History of Monsanto's Glyphosate Herbicide* (Sep. 2, 2015),
available at [http://www.monsanto.com/products/documents/glyphosate-background-](http://www.monsanto.com/products/documents/glyphosate-background-materials/back_history.pdf)
[materials/back_history.pdf](http://www.monsanto.com/products/documents/glyphosate-background-materials/back_history.pdf).

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

1 Protection Agency (“EPA” or “Agency”) prior to their distribution, sale, or use, except as
2 described by the Act. 7 U.S.C. § 136a(a).

3 23. Because pesticides are toxic to plants, animals, and humans, at least to some degree, the
4 EPA requires as part of the registration process, among other things, a variety of tests to evaluate
5 the potential for exposure to pesticides, toxicity to people and other potential non-target
6 organisms, and other adverse effects on the environment. Registration by the EPA, however, is
7 not an assurance or finding of safety. The determination the Agency must make in registering or
8 re-registering a product is not that the product is “safe,” but rather that use of the product in
9 accordance with its label directions “will not generally cause unreasonable adverse effects on the
10 environment.” 7 U.S.C. § 136a(c)(5)(D).

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

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

20 26. FIFRA generally requires that the registrant, Monsanto in the case of Roundup[®], conducts
21 the health and safety testing of pesticide products. The EPA has protocols governing the conduct
22 of tests required for registration and the laboratory practices that must be followed in conducting
23 these tests. The data produced by the registrant must be submitted to the EPA for review and
24

1 evaluation. The government is not required, nor is it able, however, to perform the product tests
2 that are required of the manufacturer.

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

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

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

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

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

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

10 32. In 1976, the United States Food and Drug Administration (“FDA”) performed an
11 inspection of IBT that revealed discrepancies between the raw data and the final report relating to
12 the toxicological impacts of glyphosate. The EPA subsequently audited IBT; it too found the
13 toxicology studies conducted for the Roundup[®] herbicide to be invalid.¹⁴ An EPA reviewer stated,
14 after finding “routine” falsification of data” at IBT, that it was “hard to believe the scientific
15 integrity of the studies when they said they took specimens of the uterus from male rabbits.”¹⁵
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18 ¹² U.S. Env'tl. Prot. Agency, *Memorandum, Subject: SECOND Peer Review of Glyphosate 1*
19 (1991), available at 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,
21 available at http://www.monsanto.com/products/documents/glyphosate-background-materials/ibt_craven_bkg.pdf.

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

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

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

2 34. In the second incident of data falsification, Monsanto hired Craven Laboratories in 1991
3 to perform pesticide and herbicide studies, including for Roundup[®]. In that same year, the owner
4 of Craven Laboratories and three of its employees were indicted, and later convicted, of fraudulent
5 laboratory practices in the testing of pesticides and herbicides.¹⁶

6 35. Despite the falsity of the tests that underlie its registration, within a few years of its launch,
7 Monsanto was marketing Roundup[®] in 115 countries.
8

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

10 36. The success of Roundup[®] was key to Monsanto's continued reputation and dominance in
11 the marketplace. Largely due to the success of Roundup[®] sales, Monsanto's agriculture division
12 was out-performing its chemicals division's operating income, and that gap increased yearly. But
13 with its patent for glyphosate expiring in the United States in the year 2000, Monsanto needed a
14 strategy to maintain its Roundup[®] market dominance and to ward off impending competition.
15

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

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

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

10 39. In 1996, the New York Attorney General ("NYAG") filed a lawsuit against Monsanto
11 based on its false and misleading advertising of Roundup[®] products. Specifically, the lawsuit
12 challenged Monsanto's general representations that its spray-on glyphosate-based herbicides,
13 including Roundup[®], were "safer than table salt" and "practically non-toxic" to mammals,
14 birds, and fish. Among the representations the NYAG found deceptive and misleading about the
15 human and environmental safety of glyphosate and/or Roundup[®] are the following:
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- 17 a) "Remember that environmentally friendly Roundup herbicide is biodegradable. It
18 won't build up in the soil so you can use Roundup with confidence along customers'
19 driveways, sidewalks and fences..."
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23 ¹⁷ David Barboza, *The Power of Roundup; A Weed Killer Is a Block for Monsanto to Build On*,
24 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](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 b) “And remember that Roundup is biodegradable and won’t build up in the soil. That
2 will give you the environmental confidence you need to use Roundup everywhere
3 you’ve got a weed, brush, edging or trimming problem.”
- 4 c) “Roundup biodegrades into naturally occurring elements.”
- 5 d) “Remember that versatile Roundup herbicide stays where you put it. That means
6 there’s no washing or leaching to harm customers’ shrubs or other desirable
7 vegetation.”
- 8 e) “This non-residual herbicide will not wash or leach in the soil. It ... stays where
9 you apply it.”
- 10 f) “You can apply Roundup with ‘confidence because it will stay where you put it’ it
11 binds tightly to soil particles, preventing leaching. Then, soon after application, soil
12 microorganisms biodegrade Roundup into natural products.”
- 13 g) “Glyphosate is less toxic to rats than table salt following acute oral ingestion.”
- 14 h) “Glyphosate’s safety margin is much greater than required. It has over a 1,000-fold
15 safety margin in food and over a 700-fold safety margin for workers who
16 manufacture it or use it.”
- 17 i) “You can feel good about using herbicides by Monsanto. They carry a toxicity
18 category rating of ‘practically non-toxic’ as it pertains to mammals, birds and fish.”
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1 j) “Roundup can be used where kids and pets will play and breaks down into natural
2 material.” This ad depicts a person with his head in the ground and a pet dog
3 standing in an area which has been treated with Roundup®.¹⁸

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

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

9 * * *

10
11 b) its glyphosate containing pesticide products or any component thereof
12 manufactured, formulated, distributed or sold by Monsanto are biodegradable.

13 * * *

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

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19 d) its glyphosate containing pesticide products or any component thereof are “good”
20 for the environment or are “known for their environmental characteristics.”

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

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

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

7 42. In 2009, France’s highest court ruled that Monsanto had not told the truth about the safety
8 of Roundup®. The French court affirmed an earlier judgment that Monsanto had falsely advertised
9 its herbicide Roundup® as “biodegradable” and that it “left the soil clean.”¹⁹
10

11 **Classification and Assessments of Glyphosate**

12 43. The IARC process for the classification of glyphosate followed IARC’s stringent
13 procedures for the evaluation of a chemical agent. Over time, the IARC Monograph program has
14 reviewed 980 agents. Of those reviewed, it has determined 116 agents to be Group 1 (Known
15 Human Carcinogens); 73 agents to be Group 2A (Probable Human Carcinogens); 287 agents to
16 be Group 2B (Possible Human Carcinogens); 503 agents to be Group 3 (Not Classified); and one
17 agent to be Probably Not Carcinogenic.
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24 ¹⁹ *Monsanto Guilty in ‘False Ad’ Row*, BBC, Oct. 15, 2009, available at
<http://news.bbc.co.uk/2/hi/europe/8308903.stm>.

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

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

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

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

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

1 48. On July 29, 2015, IARC issued its Monograph for glyphosate, Monograph Volume 112.
2 For Volume 112, a Working Group of 17 experts from 11 countries met at IARC from March 3-
3 10, 2015 to assess the carcinogenicity of certain herbicides, including glyphosate. The March
4 meeting culminated a nearly one year review and preparation by the IARC Secretariat and the
5 Working Group, including a comprehensive review of the latest available scientific evidence.
6 According to published procedures, the Working Group considered “reports that have been
7 published or accepted for publication in the openly available scientific literature” as well as “data
8 from governmental reports that are publicly available.”
9

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

14 50. Glyphosate was identified as the second most used household herbicide in the United States
15 for weed control between 2001 and 2007 and the most heavily used herbicide in the world in 2012.
16

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

20 52. The assessment of the IARC Working Group identified several case control studies of
21 occupational exposure in the United States, Canada, and Sweden. These studies show a human
22 health concern from agricultural and other work related exposure to glyphosate.
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1 53. The IARC Working Group found an increased risk between exposure to glyphosate and
2 NHL and several subtypes of NHL, and the increased risk persisted after adjustment for other
3 pesticides.

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

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

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

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

17 58. The IARC Working Group also noted genotoxic, hormonal, and enzymatic effects in
18 mammals exposed to glyphosate.²¹ Essentially, glyphosate inhibits the biosynthesis of aromatic
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24 ²¹ Guyton et al., *Carcinogenicity of Tetrachlorvinphos, Parathion, Malathion, Diazinon &*
25 *Glyphosate, supra* at 77.

1 amino acids, which leads to several metabolic disturbances, including the inhibition of protein and
2 secondary product biosynthesis and general metabolic disruption.

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

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

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

14 **Release Patterns**

15
16 Glyphosate is released to the environment in its use as an herbicide for controlling
17 woody and herbaceous weeds on forestry, right-of-way, cropped and non-cropped sites.
18 These sites may be around water and in wetlands. It may also be released to the
19 environment during its manufacture, formulation, transport, storage, disposal and
20 cleanup, and from spills. Since glyphosate is not a listed chemical in the Toxics Release
21 Inventory, data on releases during its manufacture and handling are not available.
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24 ²² Anneclare J. De Roos et al., *Cancer Incidence Among Glyphosate-Exposed Pesticide*
25 *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 Occupational workers and home gardeners may be exposed to glyphosate by inhalation
2 and dermal contact during spraying, mixing, and cleanup. They may also be exposed
3 by touching soil and plants to which glyphosate was applied. Occupational exposure
4 may also occur during glyphosate's manufacture, transport storage, and disposal.²³

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

9
10 **The Toxicity of Other Ingredients in Roundup®**

11 62. In addition to the toxicity of the active ingredient, glyphosate, several studies support the
12 hypothesis that the glyphosate-based formulation in Defendant's Roundup® products is more
13 dangerous and toxic than glyphosate alone. Indeed, as early as 1991, available evidence
14 demonstrated that glyphosate formulations were significantly more toxic than glyphosate alone.²⁵

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

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²³ U.S. Evtl. Prot. Agency, *Technical Factsheet on: Glyphosate, supra.*

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

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

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

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

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

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20 ²⁶ Julie Marc, et al., *Pesticide Roundup Provokes Cell Division Dysfunction at the Level of*
CDK1/Cyclin B Activation, 15 CHEM. RES. TOXICOL. 326-331 (2002), available at
21 <http://pubs.acs.org/doi/full/10.1021/tx015543g>.

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

24 ²⁸ Francisco Peixoto, *Comparative effects of the Roundup and glyphosate on mitochondrial*
oxidative phosphorylation, 61 CHEMOSPHERE 1115, 1122 (2005), available at
25 https://www.researchgate.net/publications/7504567_Comparative_effects_of_the_Roundup_and_glyphosate_on_mitochondrial_oxidative_phosphorylation.

1 66. In 2009, Nora Benachour and Gilles-Eric Seralini published a study examining the effects
2 of Roundup[®] and glyphosate on human umbilical, embryonic, and placental cells. The study
3 tested dilution levels of Roundup[®] and glyphosate that were far below agricultural
4 recommendations, corresponding with low levels of residue in food. The researchers ultimately
5 concluded that supposed “inert” ingredients, and possibly POEA, alter human cell permeability
6 and amplify toxicity of glyphosate alone. The researchers further suggested that assessments of
7 glyphosate toxicity should account for the presence of adjuvants or additional chemicals used in
8 the formulation of the complete pesticide. The study confirmed that the adjuvants present in
9 Roundup[®] are not, in fact, inert and that Roundup[®] is potentially far more toxic than its active
10 ingredient glyphosate alone.²⁹

12 67. The results of these studies were at all times available to Defendant. Defendant thus knew
13 or should have known that Roundup[®] is more toxic than glyphosate alone and that safety studies
14 of Roundup[®], Roundup[®]'s adjuvants and “inert” ingredients, and/or the surfactant POEA were
15 necessary to protect Plaintiff from Roundup[®].

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

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

20 69. Several countries around the world have instituted bans on the sale of Roundup[®] and other
21 glyphosate-containing herbicides, both before and since IARC first announced its assessment for
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23 ²⁹ Nora Benachour, et al., *Glyphosate Formulations Induce Apoptosis and Necrosis in Human*
24 *Ubilical, Embryonic, and Placental Cells*, 22 CHEM. RES. TOXICOL. 97-105 (2008),
available at <http://big.assets.huffingtonpost.com/france.pdf>.

1 glyphosate in march 2015, and more countries undoubtedly will follow suit as the dangers of the
2 use of Roundup[®] become more widely known. The Netherlands issued a ban on all glyphosate-
3 based herbicides in April 2014, including Roundup[®], which took effect at the end of 2015. In
4 issuing the ban, the Dutch Parliament member who introduced the successful legislation stated:
5 “Agricultural pesticides in user-friendly packaging are sold in abundance to private persons. In
6 garden centers, Roundup[®] is promoted as harmless, but unsuspecting customers have no idea what
7 the risks of this product are. Especially children are sensitive to toxic substances and should
8 therefore not be exposed to it.”³⁰

9
10 70. The Brazilian Public Prosecutor in the Federal District requested that the Brazilian Justice
11 Department suspend the use of glyphosate.³¹

12 71. France banned the private sale of Roundup[®] and glyphosate following the IARC
13 assessment for Glyphosate.³²

14 72. Bermuda banned both the private and commercial sale of glyphosates, including
15 Roundup[®]. The Bermuda government explained its ban as follows: “Following a recent scientific
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18 ³⁰ *Holland’s Parliament Bans Glyphosate Herbicides*, The Real Agenda, April 14, 2014,
19 available at <http://real-agenda.com/hollands-parliament-bans-glyphosate-herbicides/>.

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

23 ³² Zoe Schlanger, *France Bans Sales of Monsanto’s Roundup in Garden Centers, 3 Months After*
24 *U.N. Calls it “Probable Carcinogen”*, NEWSWEEK, JUNE 15, 2015, available at
[http://www.newsweek.com/france-bans-sale-monsantos-roundup-garden-ceners-after-un-names-](http://www.newsweek.com/france-bans-sale-monsantos-roundup-garden-ceners-after-un-names-it-probable-343311)
[it-probable-343311](http://www.newsweek.com/france-bans-sale-monsantos-roundup-garden-ceners-after-un-names-it-probable-343311).

1 study carried out by a leading cancer agency, the importation of weed spray ‘Roundup’ has been
2 suspended.”³³

3 73. The Sri Lankan government banned the private and commercial use of glyphosate,
4 particularly out of concern that glyphosate has been linked to fatal kidney disease in agricultural
5 workers.³⁴

6 74. The government of Columbia announced its ban on using Roundup® and glyphosate to
7 destroy illegal plantations of coca, the raw ingredient for cocaine, because of the WHO’s finding
8 that glyphosate is probably carcinogenic.³⁵

9 **Proposition 65 Listing**

10
11 75. On September 4, 2015, California’s Office of Environmental Health Hazard Assessment
12 (“OEHHA”) published a notice of intent to include glyphosate on the state’s list of known
13 carcinogens under Proposition 65.³⁶ California’s Safe Drinking Water and Toxic Enforcement
14 Act of 1986 (informally known as “Proposition 65”), requires the state to maintain and, at least,
15 once a year, revise and republish a list of chemicals “known to the State of California to cause
16

17
18 ³³ *Health Minister: Importation of Roundup Weed Spray Suspended*, Today in Bermuda, May
19 11, 2015, available at <http://www.todayinbermuda.com/news/health/item/1471-health-minister-importation-of-roundup-weed-spray-suspended>.

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

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

23 ³⁶ Cal. Evtl. Prot. Agency Office of Evtl. Health Hazard Assessment, Notice of Intent to List
24 Chemicals by the Labor Code Mechanism: Tetrachlorvinphos, Parathion, Malathion, Glyphosate
(Sept. 4, 2015), available at
http://oehha.ca.gov/prop65/CRNR_notices/admin_listing/intent_to_list/pdf_zip/090415NOIL_LCSet27.pdf.

1 cancer or reproductive toxicity.”³⁷ The OEHHA determined that glyphosate met the criteria for
2 the listing mechanism under the Labor Code following IARC’s assessment of the chemical.³⁸

3 76. The listing process under the Labor Code is essentially automatic. The list of known
4 carcinogens, at a minimum, must include substances identified by reference in Labor Code §
5 6382(b)(1). That section of the Labor Code identifies “[s]ubstances listed as human or animal
6 carcinogens by the International Agency for Research on Cancer (IARC).” IARC’s classification
7 of glyphosate as a Group 2A chemical (“probably carcinogenic to humans”) therefore triggered
8 the listing.
9

10 77. A business that deploys a listed chemical in its products must provide “clear and reasonable
11 warnings” to the public prior to exposure to the chemical. To be clear and reasonable, a warning
12 must “(1) clearly communicate that the chemical is known to cause cancer, and/or birth defects or
13 other reproductive harm; and (2) effectively reach the person before exposure.”³⁹ The law also
14 prohibits the discharge of listed chemicals into drinking water.
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20 ³⁷ *Frequently Asked Questions*, STATE OF CAL. DEPT OF JUSTICE, OFFICE OF THE
21 ATTORNEY GENERAL, available at <http://oag.ca.gov/prop65/faq>.

22 ³⁸ Cal. Evtl. Prot. Agency Office of Evtl. Health Hazard Assessment, Notice of Intent to List
23 Chemicals by the Labor Code Mechanism: Tetrachlorvinphos, Parathion, Malathion, Glyphosate
(Sept. 4, 2015), available at
http://oehha.ca.gov/prop65/CRNR_notices/admin_listing/intent_to_list/pdf_zip/090415NOIL_L_CSet27.pdf.

24 ³⁹ *Frequently Asked Questions*, STATE OF CAL. DEPARTMENT OF JUSTICE, OFFICE OF
25 HE ATTORNEY GENERAL, *supra*.

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

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

14 *EFSA Report on Glyphosate*

15 80. On November 12, 2015, the European Food Safety Authority (EFSA), the European
16 Union's primary agency for food safety, reported on its evaluation of the Renewal Assessment
17 Report (RAR) on glyphosate.⁴⁴ The Rapporteur Member State assigned to glyphosate, the

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

22 ⁴¹ *Id.* at 2.

23 ⁴² *Id.* at 3.

24 ⁴³ *Id.*

25 ⁴⁴ European Food Safety Auth., Conclusion on the peer review of the pesticide risk assessment
of the active substance glyphosate, available at
http://www.efsa.europa.eu/sites/default/files/scientific_output/files/main_documents/4302.pdf.

1 German Federal Institute for Risk Assessment (BfR), had produced the RAR as part of the renewal
2 process for glyphosate in the EU.

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

8
9 82. Based on a review of the RAR, which included data from industry submitted unpublished
10 studies, EFSA sent its own report ("Conclusion") to the European Commission, finding that
11 "glyphosate is unlikely to pose a carcinogenic hazard to humans and the evidence does not support
12 classification with regard to its carcinogenic potential according to Regulation (EC) No
13 1272/2008."⁴⁵ EFSA therefore disagreed with IARC: glyphosate was not genotoxic and did not
14 present a carcinogenic threat to humans.

15
16 83. In explaining why its results departed from IARC's conclusion, EFSA drew a distinction
17 between the EU and IARC approaches to the study and classification of chemicals.⁴⁶ Although
18 IARC examined "both glyphosate – an active substance – and glyphosate-based formulations,
19 grouping all formulations regardless of their composition," EFSA explained that it considered
20 only glyphosate and that its assessment focuses on "each individual chemical, and each marketed
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23 ⁴⁵ *Id.*

24 ⁴⁶ EFSA Fact Sheet: Glyphosate, EFSA, available at
http://www.efsa.europa.eu/sites/default/files/corporate_publications/files/efsaexplainsglyphosate151112en.pdf.

1 mixture separately.”⁴⁷ IARC, on the other hand, “assesses generic agents, including groups of
2 related chemicals, as well as occupational or environmental exposure, and cultural or behavioural
3 practices.”⁴⁸ EFSA accorded greater weight to studies conducted with glyphosate alone than
4 studies of formulated products.⁴⁹

5 84. EFSA went further and noted:

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

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18 85. Notwithstanding its conclusion, EFSA did set exposure levels for glyphosate. Specifically,
19 EFSA proposed an acceptable daily intake (ADI) of 0.5 mg/kg of body weight per day; an acute
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23 ⁴⁷ *Id.*

24 ⁴⁸ *Id.*

25 ⁴⁹ *Id.*

⁵⁰ *Id.*

1 reference dose (ARfD) of 0.5 mg/kg of body weight; and an acceptable operator exposure level
2 (AOEL) of 0.1 mg/kg bw per day.⁵¹

3 **Leading Scientists Dispute EFSA's Conclusion**

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

9
10 87. Signatories to the letter included Dr. Christopher J. Portier, Ph.D., and other renowned
11 international experts in the field, some of whom were part of the IARC Working Group assigned
12 to glyphosate.

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

15 The IARC WG decision was reached relying on open and transparent procedures by
16 independent scientists who completed thorough conflict-of-interest statements and
17 were not affiliated or financially supported in any way by the chemical manufacturing
18 industry. It is fully referenced and depends entirely on reports published in the open,
19

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21 ⁵¹ European Food Safety Auth., Conclusion on the peer review of the pesticide risk assessment
of the active substance glyphosate, *supra*.

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

25 ⁵³ *Id.*

1 peer-reviewed biomedical literature. It is part of a long tradition of deeply researched
2 and highly credible reports on the carcinogenicity of hundreds of chemicals issued over
3 the past four decades by IARC and used today by international agencies and regulatory
4 bodies around the world as a basis for risk assessment, regulation and public health
5 policy.⁵⁴

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

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17 90. Among its many other deficiencies, EFSA’s conclusions regarding animal carcinogenicity
18 data were “scientifically unacceptable,” particularly in BfR’s use of historical control data and in
19 its trend analysis. Indeed, BfR’s analysis directly contradicted the Organisation for Economic
20 Co-operation and Development (“OECD”) testing guidelines while citing and purporting to
21 follow those same guidelines. For instance, the EFSA report dismisses observed trends in tumor
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24 ⁵⁴ *Id.*

⁵⁵ *Id.*

1 incidence “because there are no individual treatment groups that are significantly different from
2 controls and because the maximum observed response is reportedly within the range of the
3 historical control data.” However, according to the scientists, concurrent controls are
4 recommended over historical controls in all guidelines, scientific reports, and publications, and,
5 if it is employed, historical control data “should be from studies in the same timeframe, for the
6 same exact animal strain, preferably from the same laboratory or the same supplier and preferably
7 reviewed by the same pathologist.” BfR’s use of historical control data violated these precautions:
8 “only a single study used the same mouse strain as the historical controls, but was reported more
9 than 10 years after the historical control dataset was developed.” Further deviating from sound
10 scientific practices, the data used by the BfR came from studies in seven different laboratories.
11 The scientists concluded:

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

19
20 91. The letter also critiqued the EFSA report’s lack of transparency and the opacity
21 surrounding the data cited in the report: “citations for almost all of the references, even those from
22 the open scientific literature, have been redacted from the document” and “there are no authors or
23

24 ⁵⁶ *Id.*

1 contributors listed for either document, a requirement for publication in virtually all scientific
2 journals.” Because BfR relied on unpublished, confidential industry provided studies, it is
3 “impossible for any scientist not associated with BfR to review this conclusion with scientific
4 confidence.”⁵⁷

5 92. On March 3, 2016, the letter was published in the Journal of Epidemiology & Community
6 Health.⁵⁸

7
8 **Statement of Concern Regarding Glyphosate-Based Herbicides**

9 93. On February 17, 2016, a consensus statement published in the journal Environmental
10 Health, entitled “Concerns over use of glyphosate-based herbicides and risks associated with
11 exposures: a consensus statement,” assessed the safety of glyphosate-based herbicides (GBHs).⁵⁹
12 The paper’s “focus is on the unanticipated effects arising from the worldwide increase in use of
13 GBHs, coupled with recent discoveries about the toxicity and human health risks stemming from
14 use of GBHs.”⁶⁰ The researchers drew seven factual conclusions about GBHs:

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16 1. GBHs are the most heavily applied herbicide in the world and usage continues to
17 rise;

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⁵⁷ *Id.*

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

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

25 ⁶⁰ *Id.*

- 1 2. Worldwide, GBHs often contaminate drinking water sources, precipitation, and air,
- 2 especially in agricultural regions;
- 3 3. The half-life of glyphosate in water and soil is longer than previously recognized;
- 4 4. Glyphosate and its metabolites are widely present in the global soybean supply;
- 5 5. Human exposures to GBHs are rising;
- 6 6. Glyphosate is now authoritatively classified as a probable human carcinogen; and
- 7 7. Regulatory estimates of tolerable daily intakes for glyphosate in the United States
- 8 and European Union are based on outdated science.⁶¹
- 9

10 94. The researchers noted that GBH use has increased approximately 100-fold since the 1970s.

11 Furthermore, far from posing a limited hazard to vertebrates, as previously believed, two decades

12 of evidence demonstrated that “several vertebrate pathways are likely targets of action, including

13 hepatorenal damage, effects on nutrient balance through glyphosate chelating action and

14 endocrine disruption.”⁶²

15 95. The paper attributed uncertainties in current assessments of glyphosate formulations to the

16 fact that “[t]he full list of chemicals in most commercial GBHs is protected as ‘commercial

17 business information,’ despite the universally accepted relevance of such information to scientists

18 hoping to conduct an accurate risk assessment of these herbicide formulations.” Further, the

19 researchers argue, “[t]he distinction in regulatory review and decision processes between ‘active’

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21

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24 ⁶¹ *Id.*

25 ⁶² *Id.*

1 and ‘inert’ ingredients has no toxicological justification, given increasing evidence that several
2 so-called ‘inert’ adjuvants are toxic in their own right.”⁶³

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

10
11 97. The researchers also critique the current practice of regulators who largely rely on
12 “unpublished, non-peer reviewed data generated by the registrants” but ignore “published research
13 because it often uses standards and procedures to assess quality that are different from those
14 codified in regulatory agency data requirements, which largely focus on avoiding fraud.” In the
15 researchers’ view, “[s]cientists independent of the registrants should conduct regulatory tests of
16 GBHs that include glyphosate alone, as well as GBH-product formulations.”⁶⁵

17
18 98. The researchers also call for greater inclusion of GBHs in government-led toxicology
19 testing programs:

20 [A] fresh and independent examination of GBH toxicity should be undertaken, and . . .
21 this re-examination be accompanied by systematic efforts by relevant agencies to
22

23 ⁶³ *Id.*

24 ⁶⁴ *Id.*

25 ⁶⁵ *Id.*

1 monitor GBH levels in people and in the food supply, none of which are occurring
2 today. The U.S. National Toxicology Program should prioritize a thorough
3 toxicological assessment of the multiple pathways now identified as potentially
4 vulnerable of GBHs.⁶⁶

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

8
9 “[W]e recommend that a system be put in place through which manufacturers of GBHs
10 provide funds to the appropriate regulatory body as part or routine registration actions
11 and fees. Such funds should then be transferred to appropriate government research
12 institutes, or to an agency experienced in the award of competitive grants. In either
13 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, impacts on the gut microbiome, carcinogenicity, and
multigenerational effects looking at reproductive capability and frequency of birth
defects.”⁶⁷

14 **FDA Announces Testing of Glyphosate Residue in Foods**

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

21
22
23 ⁶⁶ *Id.*

24 ⁶⁷ *Id.*

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

1 101. In 2014, the U.S. Government Accountability Office (GAO) had severely rebuked the FDA
2 for its failures to both monitor for pesticide residue, including that of glyphosate, and to disclose
3 the limitations of its monitoring and testing efforts to the public.⁶⁹ The GAO had cited numerous
4 undisclosed deficiencies in the FDA's process, specifically highlighting its omission of glyphosate
5 testing.

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

11 103. The FDA's move is significant as the agency possesses enforcement authority and can seek
12 action if pesticide residues exceed enforcement guidelines.⁷¹

13 European Union Vote on Glyphosate Renewal

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

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

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19
20 ⁶⁹ U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-15-38, FDA AND USDA SHOULD
21 STRENGTHEN PESTICIDE RESIDUE MONITORING PROGRAMS AND FURTHER
22 DISCLOSE MONITORING LIMITATIONS (2014), available at
<http://www.gao.gov/products/GAO-15-38>.

⁷⁰ Gillam, *supra* note 68.

⁷¹ *Id.*; Pesticide Q&A, U.S. FOOD AND DRUG ADMINISTRATION, available at
<http://www.fda.gov/Food/FoodborneIllnessContaminants/Pesticides/ucm114958.htm>.

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

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

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

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

14 109. On June 6, 2016, Member States voted but failed to reach a qualified majority in favor or
15 against the re-authorization of glyphosate.⁷⁷

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

⁷⁴ *Id.*

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

⁷⁶ *Id.*

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

1 110. On June 29, 2016, the EU Commission extended the European license for glyphosate for
2 18 months to allow the European Chemical Agency to rule on the safety of the chemical, which
3 is expected by the end of 2017.⁷⁸

4 111. On July 11, 2016, the EU voted in favor of a proposal to restrict the conditions of use of
5 glyphosate in the EU, including a ban on common co-formulant POE-tallowamine (POEA) from
6 all glyphosate-based herbicides, including Roundup[®].⁷⁹

7 112. These restrictions, which are non-binding on the EU states, are expected to apply until the
8 European Chemicals Agency issues an opinion on the chemical's safety.⁸⁰

9
10 **Plaintiff Ruben Hernandez's Exposure to Roundup[®]**

11 113. Ruben Hernandez used Roundup[®] for at least 42 years on his property in Calexico,
12 California, as well as on various farms while he was employed as a farm laborer in Imperial
13 Valley, California; Blythe, California; Yuma, Arizona; Salinas, California; Phoenix, Arizona;
14 Wilcox, Arizona; Elfrida, Arizona; and Center, Colorado.

15 114. Mr. Hernandez frequently purchased Roundup[®] in its liquid form in Calexico, California.

16 115. In October 2015, doctors diagnosed Mr. Hernandez with Extranodal Marginal Zone
17 Lymphoma (MALT).
18

19
20 _____
21 ⁷⁸ Arthur Neslen, *Controversial chemical in Roundup weedkiller escapes immediate ban*, THE
22 GUARDIAN, June 29, 2016, available at
<http://www.theguardian.com/business/2016/jun/29/controversial-chemical-roundup-weedkiller-escapes-immediate-ban>.

23 ⁷⁹ Sarantis Michalopoulos, *EU agrees ban on glyphosate co-formulant*, EURACTIV, July 11,
2016, available at http://www.euractiv.com/section/agriculture-food/news/eu-agrees-ban-on-glyphosate-coformulant/?nl_ref=16562829.

24 ⁸⁰ See Arthur Neslen, *Controversial chemical in Roundup weedkiller escapes immediate ban*,
THE GUARDIAN, June 29, 2016.

1 116. Since his diagnosis, Mr. Hernandez has been treated for the cancer.

2 117. During the entire time in which Mr. Hernandez was exposed to Roundup[®], he did not know
3 that exposure to Roundup[®] was injurious to his health or the health of others.

4 118. Mr. Hernandez first learned that exposure to Roundup[®] can cause NHL and other serious
5 illnesses sometime after July 29, 2015, when IARC first published its evaluation of glyphosate.

6 **TOLLING OF THE STATUTE OF LIMITATIONS**
7 **DISCOVERY RULE TOLLING**

8 119. Plaintiffs had no way of knowing about the risk of serious illness associated with the use
9 of and/or exposure to Roundup[®] and glyphosate. The earliest date one could have learned of the
10 link would have been after IARC released its formal assessment of glyphosate in July 2015. This
11 is the quintessential case for tolling.

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

15 121. Plaintiffs did not discover, and did not know of facts that would cause a reasonable person
16 to suspect, the risks associated with the use of and/or exposure to Roundup[®] and glyphosate; nor
17 would a reasonable and diligent investigation by them have disclosed that Roundup[®] and
18 glyphosate would cause Mr. Hernandez's illness.

19 122. For these reasons, all applicable statutes of limitations have been tolled by operation of the
20 discovery rule with respect to Plaintiffs' claim.
21
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25

1 **Fraudulent Concealment Tolling**

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

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

7 **Estoppel**

8
9 125. Monsanto was under a continuous duty to disclose to consumers, users and other person
10 coming into contact with its products, including Plaintiffs, accurate safety information concerning
11 its products and the risks associated with the use of and/or exposure to Roundup® and glyphosate.

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

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

17
18 **COUNT ONE**
19 **STRICT LIABILITY**
(DESIGN DEFECT)

20 128. Plaintiffs incorporate by reference all other paragraphs of this Complaint as if fully set forth
21 herein, and further allege:

22 129. Plaintiffs bring this strict liability claim against Defendant for defective design.
23
24
25

1 130. At all times relevant to this litigation, Defendant engaged in the business of testing,
2 developing, designing, manufacturing, marketing, selling, distributing, and promoting Roundup®
3 products, which are defective and unreasonably dangerous to consumers, users and other persons
4 coming into contact with them, including Plaintiffs, thereby placing Roundup® products into the
5 stream of commerce. These actions were under the ultimate control and supervision of Defendant.

6 131. At all times relevant to this litigation, Defendant designed, researched, developed,
7 formulated, manufactured, produced, tested, assembled, labeled, advertised, promoted, marketed,
8 sold and distributed the Roundup® products used by Plaintiff Ruben Hernandez and/or to which
9 Plaintiff Ruben Hernandez was exposed, as described above.
10

11 132. At all times relevant to this litigation, Defendant's Roundup® products were manufactured,
12 designed and labeled in an unsafe, defective, and inherently dangerous manner that was dangerous
13 for use by or exposure to the public, and, in particular, Plaintiffs.

14 133. At all times relevant to this litigation, Defendant's Roundup® products reached the intended
15 consumers, handlers, and users or other persons coming into contact with these products in Illinois
16 and throughout the United States, including Plaintiffs without substantial change in their condition
17 as designed, manufactured, sold, distributed, labeled, and marketed by Defendants.
18

19 134. Defendant's Roundup® products, as researched, tested, developed, designed, licensed,
20 formulated, manufactured, packaged, labeled, distributed, sold, and marketed by Defendant, were
21 defective in design and formulation in that when they left the hands of the Defendant's
22 manufacturers and/or suppliers, they were unreasonably dangerous because they were not as safe
23
24
25

1 as an ordinary consumer would expect when used in an intended or reasonably foreseeable
2 manner.

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

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

- 13 a) When placed in the stream of commerce, Defendant's Roundup® products were
14 defective in design and formulation, and, consequently, dangerous to an extent
15 beyond that which an ordinary consumer would expect.
16
17 b) When placed in the stream of commerce, Defendant's Roundup® products were
18 unreasonably dangerous in that they were hazardous and posed a grave risk of
19 cancer and other serious illnesses when used in a reasonably anticipated manner.
20
21 c) When placed in the stream of commerce, Defendant's Roundup® products contained
22 unreasonably dangerous design defects and were not reasonably safe when used in
23 a reasonably anticipated or intended manner.
24
25

- 1 d) Defendant did not sufficiently test, investigate, or study its Roundup® products and,
2 specifically, the active ingredient glyphosate.
- 3 e) Exposure to Roundup® and glyphosate-containing products presents a risk of
4 harmful side effects that outweighs any potential utility stemming from the use of
5 the herbicide.
- 6 f) Defendant knew or should have known at the time of marketing its Roundup®
7 products that exposure to Roundup® and specifically, its active ingredient
8 glyphosate, could result in cancer and other severe illnesses and injuries.
- 9 g) Defendant did not conduct adequate post-marketing surveillance of its Roundup®
10 products.
- 11 h) Defendant could have employed safer alternative designs and formulations.

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

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

19 139. The harm caused by Defendant's Roundup® products far outweighed their benefit,
20 rendering Defendant's products dangerous to an extent beyond that which an ordinary consumer
21 would contemplate. Defendant's Roundup® products were and are more dangerous than
22 alternative products and Defendant could have designed its Roundup® products to make them less
23

1 dangerous. Indeed, at the time that Defendant designed its Roundup® products, the state of the
2 industry's scientific knowledge was such that a less risky design or formulation was attainable.

3 140. At the time Roundup® products left Defendant's control, there was a practical, technically
4 feasible, and safer alternative design that would have prevented the harm without substantially
5 impairing the reasonably anticipated or intended function of Defendant's Roundup® herbicides.

6 141. Defendant's defective design of Roundup® amounts to willful, wanton, and/or reckless
7 conduct by Defendant.

8 142. Therefore, as a result of unreasonably dangerous condition of its Roundup® products,
9 Defendant is strictly liable to Plaintiffs.

10 143. The defects in Defendant's Roundup® products were substantial and contributing factors
11 in causing Plaintiff Ruben Hernandez's grave injuries, and, but for Defendant's misconduct and
12 omissions, Plaintiff Ruben Hernandez would not have sustained his injuries.

13 144. As a direct and proximate result of Defendant placing its defective Roundup® products into
14 the stream of commerce, Plaintiff Ruben Hernandez has suffered and continues to suffer grave
15 injuries, and he has endured pain and discomfort, as well as economic hardship, including
16 considerable financial expenses for medical care and treatment. Plaintiff Ruben Hernandez will
17 continue to incur these expenses in the future.

18 WHEREFORE, Plaintiffs request that the Court enter judgment in Plaintiffs' favor for
19 compensatory and punitive damages, together with interest, costs herein incurred, attorneys' fees,
20 and all such other and further relief as this Court deems just and proper. Plaintiffs also demand a
21 jury trial on the issues contained herein.
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23
24

**COUNT TWO
STRICT LIABILITY
(FAILURE TO WARN)**

1
2
3 145. Plaintiffs incorporate by reference all other paragraphs of this Complaint as if fully set forth
4 herein, and further allege:

5 146. Plaintiffs bring this strict liability claim against Defendant for failure to warn.

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

13 148. Defendant researched, developed, designed, tested, manufactured, inspected, labeled,
14 distributed, marketed, promoted, sold, and otherwise released into the stream of commerce its
15 Roundup® products, and in the course of same, directly advertised or marketed the products to
16 consumers and end users, including Plaintiffs, Plaintiffs' employers, Plaintiffs' co-workers, and
17 persons responsible for consumers (such as employers), and Defendant therefore had a duty to
18 warn of the risks associated with the reasonably foreseeable uses (and misuses) of Roundup® and
19 glyphosate-containing products and a duty to instruct on the proper, safe use of these products.
20

21 149. At all times relevant to this litigation, Defendant had a duty to properly test, develop,
22 design, manufacture, inspect, package, label, market, promote, sell, distribute, maintain supply,
23 provide proper warnings, and take such steps as necessary to ensure that its Roundup® products
24

1 did not cause users and consumers to suffer from unreasonable and dangerous risks. Defendant
2 had a continuing duty to instruct on the proper, safe use of these products. Defendant, as
3 manufacturer, seller, or distributor of chemical herbicides, is held to the knowledge of an expert
4 in the field.

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

9
10 151. At all times relevant to this litigation, Defendant failed to investigate, study, test, or
11 promote the safety of its Roundup® products. Defendant also failed to minimize the dangers to
12 users and consumer of its Roundup® products and to those who would foreseeably use or be
13 harmed by Defendant's herbicides, including Plaintiffs.

14 152. Despite the fact that Defendant knew or should have known that Roundup® products posed
15 a grave risk of harm, it failed to warn of the dangerous risks associated with their use and exposure.
16 The dangerous propensities of its products and the carcinogenic characteristics of glyphosate, as
17 described above, were known to Defendant, or scientifically knowable to Defendant through
18 appropriate research and testing by known methods, at the time it distributed, supplied, or sold the
19 product, and not known to end users and consumers, such as Plaintiffs and Plaintiffs' employers.
20

21 153. Defendant knew or should have known that its Roundup® and glyphosate-containing
22 products created significant risks of serious bodily harm to consumers, as alleged herein, and
23 Defendant failed to adequately warn consumers and reasonably foreseeable users of the risks of
24

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

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

8 155. At all times relevant to this litigation, Plaintiff Ruben Hernandez used and/or was exposed
9 to the use of Defendant's Roundup® products in their intended or reasonably foreseeable manner
10 without knowledge of their dangerous characteristics.

11 156. Plaintiffs could not have reasonably discovered the defects and risks associated with
12 Roundup® or glyphosate-containing products before or at the time of Plaintiff Ruben Hernandez's
13 exposure. Plaintiff Ruben Hernandez relied upon the skill, superior knowledge, and judgment of
14 Defendant.
15

16 157. Defendant knew or should have known that the minimal warnings disseminated with its
17 Roundup® products were inadequate, but it failed to communicate adequate information on the
18 dangers and safe use/exposure and failed to communicate warnings and instructions that were
19 appropriate and adequate to render the products safe for their ordinary, intended, and reasonably
20 foreseeable uses, including agricultural and horticultural applications.
21

22 158. The information that Defendant did provide or communicate failed to contain relevant
23 warnings, hazards, and precautions that would have enabled agricultural workers, horticultural
24

1 workers and/or at-home users to utilize the products safely and with adequate protection. Instead,
2 Defendant disseminated information that was inaccurate, false, and misleading and which failed
3 to communicate accurately or adequately the comparative severity, duration, and extent of the risk
4 of injuries associated with use of and/or exposure of Roundup® and glyphosate; continued to
5 aggressively promote the efficacy of its products, even after it knew or should have known of the
6 unreasonable risks from use or exposure; an concealed, downplayed, or otherwise suppressed,
7 through aggressive marketing and promotion, any information or research about the risks and
8 dangers of exposure to Roundup® and glyphosate.
9

10 159. To this day, Defendant has failed to adequately and accurately warn of the true risks of
11 Plaintiff Ruben Hernandez's injuries associated with the use of and exposure to Roundup® and its
12 active ingredient glyphosate, a probable carcinogen.

13 160. As a result of their inadequate warnings, Defendant's Roundup® products were defective
14 and unreasonably dangerous when they left the possession and/or control of Defendant, were
15 distributed by Defendant, and used by Plaintiff Ruben Hernandez.
16

17 161. Defendant is liable to Plaintiffs for injuries caused by its failure, as described above, to
18 provide adequate warnings or other clinically relevant information and data regarding the
19 appropriate use of its Roundup® products and the risks associated with the use of or exposure to
20 Roundup® and glyphosate.

21 162. The defects in Defendant's Roundup® products were substantial and contributing factors
22 in causing Plaintiff Ruben Hernandez's injuries, and, but for Defendant's misconduct and
23 omissions, Plaintiff Ruben Hernandez would not have sustained his injuries.
24
25

1 163. Had Defendant provided adequate warnings and instructions and properly disclosed and
2 disseminated the risks associated with its Roundup® products, Plaintiff Ruben Hernandez could
3 have avoided the risk of developing injuries as alleged herein and Plaintiff Ruben Hernandez and
4 his employers could have obtained alternative herbicides.

5 164. As a direct and proximate result of Defendant placing its defective Roundup® products into
6 the stream of commerce, Plaintiff Ruben Hernandez has suffered and continues to suffer severe
7 injuries, and has endured physical pain and discomfort, as well as economic hardship, including
8 considerable financial expenses for medical care and treatment. Plaintiff Ruben Hernandez will
9 continue to incur these expenses in the future.
10

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

16 **COUNT THREE**
NEGLIGENCE

17 165. Plaintiffs incorporate by reference all other paragraphs of this Complaint as if fully set forth
18 herein, and further allege:

19 166. Defendant, directly or indirectly, caused Roundup® products to be sold, distributed,
20 packaged, labeled, marketed, and/or promoted.
21

22 167. Defendant, directly or indirectly, caused Roundup® products to be purchased and/or used
23 by Plaintiff Ruben Hernandez.
24
25

1 168. At all times relevant to this litigation, Defendant had a duty to exercise reasonable care in
2 the design, research, manufacture, marketing, advertisement, supply, promotion, packaging, sale,
3 and distribution of its Roundup® products, including the duty to take all reasonable steps necessary
4 to manufacture, promote, and/or sell a product that was not unreasonably dangerous to consumers,
5 users, and other persons coming into contact with the product.

6 169. At all times relevant to this litigation, Defendant had a duty to exercise reasonable care in
7 the marketing, advertising, and sale of its Roundup® products. Defendant's duty of care owed to
8 consumers and the general public included providing accurate, true, and correct information
9 concerning the risks of using Roundup® and appropriate, complete, and accurate warnings
10 concerning the potential adverse effects of exposure to Roundup® and, in particular, its active
11 ingredient glyphosate.
12

13 170. At all times relevant to this litigation, Defendant knew or, in the exercise of reasonable
14 care, should have known of the hazards and dangers of Roundup® and specifically, the
15 carcinogenic properties of the chemical glyphosate.
16

17 171. Accordingly, at all times relevant to this litigation, Defendant knew or, in the exercise of
18 reasonable care, should have known that use of or exposure to its Roundup® products could cause
19 Plaintiff Ruben Hernandez's injuries and thus created a dangerous and unreasonable risk of injury
20 to the users of these products, including Plaintiff Ruben Hernandez.

21 172. Defendant knew or, in the exercise of reasonable care, should have known that Roundup®
22 is more toxic than glyphosate alone and that safety studies on Roundup®, Roundup®'s adjuvants
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1 and “inert” ingredients, and/or the surfactant POEA were necessary to protect Plaintiffs from
2 Roundup®.

3 173. Defendant knew or, in the exercise of reasonable care, should have known that tests limited
4 to Roundup®’s active ingredient glyphosate were insufficient to prove the safety of Roundup®.

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

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

16 176. Defendant failed to appropriately and adequately test Roundup®, Roundup®’s adjuvants
17 and “inert” ingredients, and/or the surfactant POEA to protect Plaintiffs from Roundup®.

18 177. Despite the ability and means to investigate, study, and test its products and to provide
19 adequate warnings, Defendant has failed to do so. Indeed, Defendant has wrongfully concealed
20 information and has further made false and/or misleading statements concerning the safety and/or
21 exposure to Roundup® and glyphosate.
22

23 178. Defendant’s negligence included:
24
25

- 1 a) Manufacturing, producing, promoting, formulating, creating, developing,
2 designing, selling, and/or distributing its Roundup® products without thorough and
3 adequate pre- and post-market testing;
- 4 b) Manufacturing, producing, promoting, formulating, creating, developing,
5 designing, selling, and/or distributing Roundup® while negligently and/or
6 intentionally concealing and failing to disclose the results of trials, tests, and studies
7 of exposure to glyphosate, and, consequently, the risk of serious harm associated
8 with human use of and exposure to Roundup®;
- 9 c) Failing to undertake sufficient studies and conduct necessary tests to determine
10 whether or not Roundup® products and glyphosate-containing products were safe
11 for their intended use in agriculture, horticulture, and at-home use;
- 12 d) Failing to undertake sufficient studies and conduct necessary tests to determine the
13 safety of “inert” ingredients and/or adjuvants contained within Roundup®, and the
14 propensity of these ingredients to render Roundup® toxic, increase the toxicity of
15 Roundup®, whether these ingredients are carcinogenic, magnify the carcinogenic
16 properties of Roundup®, and whether or not “inert” ingredients and/or adjuvants
17 were safe for use;
- 18 e) Failing to use reasonable and prudent care in the design, research, manufacture,
19 formulation, and development of Roundup® products so as to avoid the risk of
20 serious harm associated with the prevalent use of Roundup®/glyphosate as an
21 herbicide;
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- 1 f) Failing to design and manufacture Roundup® products so as to ensure they were at
2 least as safe and effective as other herbicides on the market;
- 3 g) Failing to provide adequate instructions, guidelines, and safety precautions to those
4 persons who Defendant could reasonably foresee would use and/or be exposed to
5 its Roundup® products;
- 6 h) Failing to disclose to Plaintiffs, users, consumers, and the general public that the use
7 of and exposure of Roundup® presented severe risks of cancer and other grave
8 illnesses;
- 9 i) Failing to warn Plaintiffs, users, consumers, and the general public that the product's
10 risk of harm was unreasonable and that there were safer and effective alternative
11 herbicides available to Plaintiffs and other users or consumers;
- 12 j) Systemically suppressing or downplaying contrary evidence about the risks,
13 incidence, and prevalence of the side effects of Roundup® and glyphosate-
14 containing products;
- 15 k) Representing that its Roundup® products were safe for their intended use when in
16 fact, Defendant knew or should have known that the products were not safe for their
17 intended use;
- 18 l) Declining to make or propose any changes to Roundup® products' labeling or other
19 promotional materials that would alert the consumers and the general public of the
20 risks of Roundup® and glyphosate;
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- 1 m) Advertising, marketing, and recommending the use of Roundup[®] products, while
2 concealing and failing to disclose or warn of the dangers known by Defendant to be
3 associated with or caused by the use of or exposure to Roundup[®] and glyphosate;
- 4 n) Continuing to disseminate information to its consumers, which indicate or imply
5 that Defendant's Roundup[®] products are not unsafe for use in the agricultural,
6 horticultural industries, and/or home use; and
- 7 o) Continuing the manufacture and sale of its products with the knowledge that the
8 products were unreasonably unsafe and dangerous.
9

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

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

15 181. Defendant's negligence was the proximate cause of the injuries, harm, and economic losses
16 that Plaintiff Ruben Hernandez suffered, and will continue to suffer, as described herein.

17 182. Defendant's conduct, as described above, was reckless. Defendant regularly risks the lives
18 of consumers and users of its products, including Plaintiffs, with full knowledge of the dangers of
19 its products. Defendant has made conscious decisions not to redesign, re-label, warn, or inform
20 the unsuspecting public, including Plaintiffs. Defendant's reckless conduct therefore warrants an
21 award of punitive damages.
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1 183. As a proximate result of Defendant's wrongful acts and omissions in placing its defective
2 Roundup® products into the stream of commerce without adequate warnings of the hazardous and
3 carcinogenic nature of glyphosate, Plaintiff Ruben Hernandez has suffered and continues to suffer
4 severe and permanent physical and emotional injuries. Plaintiff Ruben Hernandez has endured
5 pain and suffering, has suffered economic losses (including significant expenses for medical care
6 and treatment) and will continue to incur these expenses in the future.

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

12 **COUNT FOUR**
13 **BREACH OF EXPRESS WARRANTY**

14 184. Plaintiffs incorporate by reference all other paragraphs of this Complaint as if fully set forth
15 herein, and further allege:

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

22 186. At all times relevant to this litigation, Defendant expressly represented and warranted to
23 the purchasers of its Roundup® products, by and through statements made by Defendant in labels,
24 publications, package inserts, and other written materials intended for consumers and the general
25

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

6 187. These express representations include incomplete warnings and instructions that purport,
7 but fail, to include the complete array of risks associated with use of and/or exposure to Roundup®
8 and glyphosate. Defendant knew and/or should have known that the risks expressly included in
9 Roundup® warnings and labels did not and do not accurately or adequately set forth the risks of
10 developing the serious injuries complained of herein. Nevertheless, Defendant expressly
11 represented that its Roundup® products were safe and effective, that they were safe and effective
12 for use by individuals such as Plaintiffs, and/or that they were safe and effective as agricultural
13 herbicides.
14

15 188. The representations about Roundup®, as set forth herein, contained or constituted
16 affirmations of fact or promises made by the seller to the buyer, which related to the goods and
17 became part of the basis of the bargain, creating an express warranty that the goods would conform
18 to the representations.
19

20 189. Defendant placed its Roundup® products into the stream of commerce for sale and
21 recommended their use to consumers and the public without adequately warning of the true risks
22 of developing the injuries associated with the use of and exposure to Roundup® and its active
23 ingredient glyphosate.
24

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

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

17 191. Monsanto's warranties and representations, as described herein, concerning the qualities
18 of Roundup® products, became a basis of the bargain for Plaintiff's employers' purchases of
19 Roundup® products. Therefore, vertical privity is not required.

20 192. On information and belief, Plaintiff's employers justifiably and detrimentally relied on the
21 express warranties and representations of Defendant in the purchase and use of its Roundup®
22 products. When Plaintiff's employers made the decision to purchase Roundup®, they reasonably
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1 relied upon Defendant to disclose known defects, risks, dangers, and side effects of Roundup®
2 and glyphosate.

3 193. Plaintiff Ruben Hernandez was exposed to the labels on the Roundup® products that he
4 mixed and applied as part of his job.

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

9
10 195. Plaintiffs had no knowledge of the falsity or incompleteness of Defendant's statements and
11 representations concerning Roundup®.

12 196. Plaintiff Ruben Hernandez used and/or was exposed to the use of Roundup® as researched,
13 developed, designed, tested, formulated, manufactured, inspected, labeled, distributed, packaged,
14 marketed, promoted, sold, or otherwise released into the stream of commerce by Defendant.

15 197. Had the warnings and labels for Roundup® products accurately and adequately set forth the
16 true risks associated with the use of such products, including Plaintiff Ruben Hernandez's injuries,
17 rather than expressly excluding such information and warranting that the products were safe for
18 their intended use, Plaintiff Ruben Hernandez could have avoided the injuries complained of
19 herein.
20

21 198. As a direct and proximate result of Defendant's wrongful acts and omissions, Plaintiff
22 Ruben Hernandez has suffered severe injuries. Plaintiff Ruben Hernandez has endured pain and
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1 suffering, has suffered economic losses (including significant expenses for medical care and
2 treatment), and will continue to incur these expenses in the future.

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

7
8 **COUNT FIVE**
9 **BREACH OF IMPLIED WARRANTY**
10 **OF MERCHANTABILITY**

11 199. Plaintiffs incorporate by reference all other paragraphs of this Complaint as if fully set forth
12 herein, and further allege:

13 200. At all times relevant to this litigation, Defendant engaged in the business of testing,
14 developing, designing, formulating, manufacturing, marketing, selling, distributing, and
15 promoting its Roundup® products, which are defective and unreasonably dangerous to users and
16 consumers, including Plaintiffs, thereby placing Roundup® products into the stream of commerce.

17 201. These actions were under the ultimate control and supervision of Defendant.

18 202. Before the time that Plaintiff Ruben Hernandez was exposed to the use of the
19 aforementioned Roundup® products, Defendant impliedly warranted to its consumers and users,
20 including Plaintiffs and Plaintiffs' employers, that its Roundup® products were of merchantable
21 quality and safe and fit for the use for which they were intended; specifically, as horticultural
22 herbicides.

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

5 204. Upon information and belief, Plaintiffs and Plaintiffs' employers reasonably relied upon
6 the skill, superior knowledge and judgment of Defendant and upon its implied warranties that the
7 Roundup® products were of merchantable quality and fit for their intended purpose or use.

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

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

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

18 208. In reliance upon Defendant's implied warranty, Plaintiff Ruben Hernandez used Roundup®
19 as instructed and labeled and in the foreseeable manner intended, recommended, promoted and
20 marketed by Defendant.
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1 209. Neither Plaintiffs nor Plaintiffs' employers could have reasonably discovered or known of
2 the risks of serious injury associated with Roundup® or glyphosate.

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

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

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

16 WHEREFORE, Plaintiffs request that the Court enter judgment in Plaintiffs' favor for
17 compensatory and punitive damages, together with interest, costs herein incurred, attorneys' fees,
18 and all such other and further relief as this Court deems just and proper. Plaintiffs also demand a
19 jury trial on the issues contained herein.
20

**COUNT SIX
LOSS OF CONSORTIUM**

1
2 213. Plaintiffs incorporate by reference all other paragraphs of this Complaint as if fully set forth
3 herein, and further allege:

4 214. Plaintiff Martha Hernandez, at all times relevant, was the lawful wife of Ruben Hernandez.

5
6 215. As a direct, legal, and proximate result of the culpability and fault of Defendant, be such
7 fault through strict liability, negligence or otherwise, Plaintiff Martha Hernandez suffered the loss
8 of support, services, love, companionship, affection, society, intimate relations, and other
9 elements of consortium, all to her general damage in an amount in excess of the jurisdictional
10 minimum of this Court.

11 216. Plaintiffs demand judgment against Defendant for compensatory and punitive damages
12 such as a jury may award, and such other relief as the Court deems just and proper in order to
13 remedy Plaintiff Martha Hernandez's loss of consortium.
14

PRAYER FOR RELIEF

15
16 WHEREFORE, Plaintiffs request that the Court enter judgment in Plaintiffs' favor and against
17 Monsanto, awarding as follows:

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

2 Dated this 29th day of September, 2017.

3 Respectfully Submitted,

4 /s/ Deborah S. Kerr

5 Deborah S. Kerr (175845)

6 915 W. Camelback Road

7 Phoenix, AZ 85013

8 Tel: (602) 808-6784

9 dkerr@1800theeagle.com

10 *Attorney for Plaintiffs Ruben Hernandez and*
11 *Martha Hernandez*

12 **CERTIFICATE OF SERVICE**

13 I, Deborah S. Kerr, hereby certify that on September 29, 2017, the foregoing document was
14 filed via the Court's CM/ECF system, which will automatically serve and send email notification
15 of such filing to all registered attorneys of record.

16 /s/ Deborah S. Kerr

17 Deborah S. Kerr

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

Ruben Hernandez and Martha Hernandez

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Deborah S. Kerr, Esq. 915 W. Camelback Rd., Phoenix, AZ 85013 (602) 808-6784

DEFENDANTS

Monsanto Company

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

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

'17CV2009 CAB JLB

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

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

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

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation).

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

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

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

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

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. § 1332pl

Brief description of cause: diversity, personal injury, product liability

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 75,000.00 CHECK YES only if demanded in complaint: JURY DEMAND: X Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE Vince Chhabria DOCKET NUMBER MDL No. 2741

DATE 09/29/2017 SIGNATURE OF ATTORNEY OF RECORD /s/ Deborah S. Kerr

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

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

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.