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13 **UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**

15 ROBERT RAMIREZ, individually and on
16 behalf of all others similarly situated
17 individuals,

18 Plaintiff,

19 v.

20 MONSANTO COMPANY,

21 Defendant.

22 Case No.:

23 **CLASS ACTION COMPLAINT UNDER**
24 **FED. R. CIV. P. 23 (c)(4) AND FED. R. CIV.**
25 **P. 23 (b)(2)**

26 **JURY DEMAND**

27 **Related to: MDL No: 2471**

1 ROBERT RAMIREZ (“Plaintiff or Plaintiff Ramirez”), individually on behalf of all others
2 similarly situated, by and through undersigned class counsel, allege as follows.

3 **INTRODUCTION**

4 1. By and through the filing of this class action complaint, the Plaintiff seeks to obtain, in
5 one proceeding, before one trier of fact, a ruling on the issue of the relationship between the active
6 chemical glyphosate, contained in Monsanto Company’s (“Monsanto” or “Defendant”) Roundup®
7 weed killer products (collectively, “Roundup”), and the carcinogenic effects on humans. In seeking to
8 resolve this common question in one forum, the Plaintiff expects to save millions of dollars for the class
9 members and hundreds of thousands of hours of judicial time and resources. The Plaintiff believes that
10 the facts outlined below and the facts discovered to date establish, beyond dispute, that human exposure
11 to glyphosate is a direct link to human cancer, specifically, the deadly cancer virus known as Non-
12 Hodgkin’s Lymphoma (“NHL”). Under Fed. R. Civ. P. 23(c)(4) and Fed. R. Civ. P. 23 (b)(2), the
13 Plaintiff intends to present facts, studies and evidence to the jury for it to conclude that glyphosate causes
14 NHL.

15 2. Applying Rule 23(c)(4) as well as Rule 23(b)(2), Plaintiff will focus on the general issue
16 of the link between NHL and Roundup’s active ingredient, glyphosate. In so seeking resolution of this
17 narrow issue, the Plaintiff and the counsel in this case intend to obtain a general causation verdict that
18 would apply to each and every class member.

19 3. In seeking resolution of the general causation component contained in almost every
20 state’s product liability laws, the only remaining issue that all class members and the Plaintiff will need
21 to show is that they have NHL due to exposure to Roundup and the amount of damages due to that
22 plaintiff. Under the Plaintiff’s plan, the only issue that those with NHL and proof of exposure to
23 Roundup will have to prove is the specific link and the specific damages suffered by the class member.
24 If allowed to proceed in this fashion, the Plaintiff will have provided significant and meaningful benefit
25 to the class members in one proceeding.

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1 **JURISDICTION AND VENUE**

2 4. This Court has subject-matter jurisdiction over this action pursuant to the Class Action
3 Fairness Act of 2005, 28 U.S.C. §§ 1332 (a) and (d), because the amount in controversy exceeds
4 \$5,000,000.00 exclusive of interest and costs, and more than two-thirds of the members of the proposed
5 class (hereinafter “Class”) are citizens of states different from that of Defendant.

6 5. Venue is proper in this District under 28 U.S.C. § 1391(b) because Defendant’s improper
7 conduct alleged in this Complaint occurred in, was directed from, and/or emanated from this judicial
8 district. Defendant is a Missouri corporation with sales of the product at issue in all states of the United
9 States. The Judicial Panel of Multidistrict Litigation panel transferred similar complaints pending in
10 other jurisdictions to this Court for pretrial adjudication.

11 **PARTIES**

12 6. Plaintiff ROBERT RAMIREZ is a natural person currently residing in Soledad,
13 California. Plaintiff ROBERT RAMIREZ worked for Roto-Rooter in Salinas, California from 1999
14 to 2013 where he utilized a concentrated mix of Roundup in the maintenance yard. In 2018, Plaintiff
15 was diagnosed with Double Expressor Large B-Cell non-Hodgkin’s Lymphomas (NHL) at the Salinas
16 Valley Memorial Hospital in Salinas and underwent chemo treatment at Stanford University Hospital.
17 Plaintiff was found to be in remission in 2018, but continues to require a colostomy bag and cancer
18 screening. Plaintiff ROBERT RAMIREZ only became aware that his injuries were caused by
19 Roundup, a Monsanto’s product, within the applicable limitations period of filing this complaint.

20 7. Defendant Monsanto Company (“Monsanto”) is a Delaware corporation, with its
21 headquarters and principal place of business in St. Louis, Missouri. At all times relevant to this
22 complaint, Monsanto was the entity that discovered and sold the herbicidal properties of glyphosate
23 and the manufacturer of Roundup. Monsanto has regularly transacted and conducted business within
24 this District, and has derived substantial revenue from its goods and products sold in this District. By
25 regularly marketing and selling their products within this District, Monsanto expected its acts to have
26 consequences within this District and derived substantial revenue from interstate commerce.

27 **UNDERLYING FACTS**

28 **(Roundup and Roundup Ready)**

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

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

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

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

21 16. Based on early studies showing that glyphosate could cause cancer in laboratory
22 animals, the EPA originally classified glyphosate as *possibly carcinogenic to humans* (Group C). After
23 pressure from Monsanto, which includes contrary studies it provided to the EPA, the EPA changed the
24 classification of glyphosate to a finding of *evidence of non-carcinogenicity in humans* (Group E) in
25 1991.

26 17. The EPA made clear that the designation did not equate to a finding that the product
27 was cancer free; “It should be emphasized, however, that designation of an agent in Group E is based
28 on the available evidence at the time of evaluation and should not be interpreted as a definitive

1 conclusion that the agent will not be a carcinogen under any circumstances.”

2 18. On two occasions, the EPA found that the laboratories hired by Monsanto to test the
3 toxicity of its Roundup products for registration purposes had committed fraud, by falsifying results.

4 19. In the first occasion, Monsanto was seeking initial registration of Roundup by EPA and
5 hired Industrial Bio-Test Laboratories (“IBT”) to perform and evaluate pesticide toxicology studies
6 relating to Roundup. IBT performed about 30 tests on glyphosate and glyphosate-containing products,
7 including 9 of the 15 residue studies needed to register Roundup.

8 20. Then in 1976, the United States Food and Drug Administration (“FDA”) performed an
9 inspection of IBT that revealed discrepancies between the raw data and the final report relating to the
10 toxicological impacts of glyphosate. The EPA subsequently audited IBT and found the toxicology
11 studies conducted for the Roundup herbicide were invalid. An EPA reviewer stated, after finding
12 “routine falsification of data” at IBT, that it was “hard to believe the scientific integrity of the studies
13 when they said they took specimens of the uterus from male rabbits.” Three top executives of IBT were
14 convicted of fraud in 1983.

15 21. In the second incident of data falsification, Monsanto hired Craven Laboratories in 1991
16 to perform pesticide and herbicide studies, including studies for Roundup. In that same year, the owner
17 of Craven Laboratories and three of its employees were indicted, and later convicted, of fraudulent
18 laboratory practices in the testing of pesticides and herbicides.

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

25 23. In the case of glyphosate, and therefore Roundup, the EPA had planned on releasing its
26 preliminary risk assessment—in relation to the reregistration process—no later than July 2015. The
27 EPA completed its review of glyphosate in early 2015, but it delayed releasing the risk assessment
28 pending further review in light of the World Health Organization (“WHO”) health-related findings.

ACTION BY GOVERNMENTAL ENTITIES

1
2 24. In 1996, the New York Attorney General (“NYAG”) filed a lawsuit against Monsanto
3 based on its false and misleading advertising of Roundup products. Specifically, the lawsuit challenged
4 Monsanto’s general representations that its spray-on glyphosate-based herbicides, including Roundup,
5 were “**safer than table salt**” and “**practically non-toxic**” to mammals, birds, and fish. The NYAG
6 found that Monsanto had made the following deceptive and misleading claims about Roundup:

7 i. Remember that environmentally friendly Roundup herbicide is
8 biodegradable. It won't build up in the soil so you can use Roundup with confidence
9 along customers' driveways, sidewalks and fences;

10 ii. And remember that Roundup is biodegradable and won't build up in the
11 soil. That will give you the environmental confidence you need to use Roundup
12 everywhere you've got a weed, brush, edging or trimming problem;

13 iii. Roundup biodegrades into naturally occurring elements;

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

17 v. This non-residual herbicide will not wash or leach in the soil. It ... stays
18 where you apply it;

19 vi. You can apply Roundup with “confidence because it will stay where you
20 put it” it bonds tightly to soil particles, preventing leaching. Then, soon after application,
21 soil micro-organisms biodegrade Roundup into natural products;

22 vii. Glyphosate is less toxic to rats than table salt following acute oral
23 ingestion;

24 viii. Glyphosate's safety margin is much greater than required. It has over a
25 1,000-fold safety margin in food and over a 700-fold safety margin for workers who
26 manufacture it or use it;

1 ix. You can feel good about using herbicides by Monsanto. They carry a
2 toxicity category rating of 'practically non-toxic' as it pertains to mammals, birds and
3 fish;

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

7 25. On November 19, 1996, Monsanto entered into an Assurance of Discontinuance with
8 NYAG. Monsanto agreed, *interalia* “to cease and desist from publishing or broadcasting any
9 advertisements [in New York] that represent, directly or by implication” that:

10 (a) Monsanto’s glyphosate-containing pesticide products or any component thereof
11 are safe, non-toxic, harmless or free from risk;

12 (b) Monsanto’s glyphosate-containing pesticide products or any component thereof
13 stay where they are applied under all circumstances and will not move through the environment
14 by any means;

15 (c) Monsanto’s glyphosate-containing pesticide products or any component thereof
16 are "good" for the environment or are "known for their environmental characteristics.";

17 (d) Monsanto’s glyphosate-containing pesticide products or any component thereof
18 are safer or less toxic than common consumer products other than herbicides;

19 (e) Monsanto’s glyphosate-containing products or any component thereof might be
20 classified as "practically non-toxic.

21 26. Several countries around the world have instituted bans on the sale and use of Roundup
22 and other glyphosate-containing herbicides.

23 27. The Netherlands issued a ban on all glyphosate-based herbicides in April 2014,
24 including Roundup, which was in effect by the end of 2015.

25 28. The Brazilian Public Prosecutor in the Federal District requested that the Brazilian
26 Justice Department suspend the use of glyphosate. France banned the private sale of Roundup and
27 glyphosate following the International Agency for Research on Cancer’s (“IARC”) assessment for
28 Glyphosate. Bermuda banned both the private and commercial sale of glyphosates, including Roundup.

1 The Bermuda government explained its ban as follows: “Following a recent scientific study carried out
2 by a leading cancer agency, the importation of weed spray ‘Roundup’ has been suspended.” The Sri
3 Lankan government banned the private and commercial use of glyphosates, particularly out of concern
4 that Glyphosate has been linked to fatal kidney disease in agricultural workers. Columbia announced
5 its ban on using Roundup and glyphosate to destroy illegal plantations of coca, the raw ingredient for
6 cocaine, because of the WHO’s finding that glyphosate is probably carcinogenic.

7 IARC FINDINGS

8 29. The IARC process for the classification of glyphosate followed the stringent procedures
9 for the evaluation of a chemical agent. Over time, the IARC Monograph program has reviewed 980
10 agents. Of those reviewed, it has determined that 116 agents to be Group 1 (Known Human
11 Carcinogens); 73 agents to be Group 2A (Probable Human Carcinogens); 287 agents to be Group 2B
12 (Possible Human Carcinogens); 503 agents to be Group 3 (Not Classified); and one agent to be
13 Probably Not Carcinogenic. The established procedure for IARC Monograph evaluations is described
14 in the IARC Programme’s Preamble. Evaluations are performed by panels of international experts,
15 selected on the basis of their expertise and the absence of actual or apparent conflicts of interest.

16 30. In assessing an agent, the IARC Working Group reviews the following information: (a)
17 human, experimental, and mechanistic data; (b) all pertinent epidemiological studies and cancer
18 bioassays; and (c) representative mechanistic data. The studies must be publicly available and have
19 sufficient detail for meaningful review, and reviewers cannot be associated with the underlying study.
20 In March 2015, IARC reassessed glyphosate. The summary published in *The Lancet Oncology* reported
21 that glyphosate is a Group 2A agent (Probable Human Carcinogens).

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

1 governmental reports that are publicly available.”

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

6 33. Glyphosate was identified as the second-most used household herbicide in the United
7 States for weed control between 2001 and 2007 and the most heavily used herbicide in the world in
8 2012. Exposure pathways are identified as air (especially during spraying), water, and food.
9 Community exposure to glyphosate is widespread and found in soil, air, surface water, and
10 groundwater, as well as in food.

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

14 35. The IARC Working Group found an increased risk between exposure to glyphosate and
15 non-Hodgkin’s lymphoma and several subtypes of NHL, and the increased risk persisted after
16 adjustment for other pesticides. The IARC Working Group also found that glyphosate caused DNA
17 and chromosomal damage in human cells. One study in community residents reported increases in
18 blood markers of chromosomal damage (micronuclei) after glyphosate formulations were sprayed.

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

23 37. The IARC Working Group noted that glyphosate has been detected in the urine of
24 agricultural workers, indicating absorption. Soil microbes degrade glyphosate to
25 aminomethylphosphoric acid (AMPA). Blood AMPA detection after exposure suggests intestinal
26 microbial metabolism in humans. The IARC Working Group further found that glyphosate and
27 glyphosate formulations induced DNA and chromosomal damage in mammals, and in human and
28 animal cells in utero. The IARC Working Group noted genotoxic, hormonal, and enzymatic effects in

1 mammals exposed to glyphosate. Essentially, glyphosate inhibits the biosynthesis of aromatic amino
2 acids, which leads to several metabolic disturbances, including the inhibition of protein and secondary
3 product biosynthesis and general metabolic disruption.

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

9 **ESTOPPEL FROM PLEADING AND**
10 **TOLLING OF APPLICABLE STATUTES OF LIMITATIONS**

11 39. Plaintiff and members of the Class are within the applicable statute of limitation for the
12 claims presented here. Defendant had non-public information (e.g., internal audits, field test results,
13 and other evidence) relating the NHL and Roundup for many years, but failed to release this to the
14 public.

15 **CLASS ACTION ALLEGATIONS**

16 40. This action is brought and may be maintained under Fed. R. Civ. P. 23 as a class action.
17 Plaintiff seeks nationwide and multi-state certification under Fed R. Civ. P. 23(c)(4) and Fed R. Civ.
18 P. 23(b)(2).

19 41. Consistent with the underlying purpose and goals of Fed R. Civ. P. 23(c)(4), the Plaintiff
20 for the Class seeks to certify an ‘issue’ only class. Once certification is granted by the Court, the
21 Plaintiff intends to convene a trial to advance the litigation for all class members by way of issue
22 resolution, with focus on establishing for all class members the link between exposure to Roundup
23 (glyphosate) and NHL. The findings on this issue by the Jury and/or the Court will significantly reduce
24 the cost of litigation for the class members and significantly increase judicial efficiency by reducing
25 the need for each and every case to prove the ‘link’ between Roundup and NHL

26 42. At this juncture, subject to modification prior to class proceedings to trial, the named
27 Plaintiff seeks the following Class under Fed R. Civ. P. 23(c)(4):

28 “All residents of the United States and its Territories who have been

1 exposed to Roundup and have been diagnosed with NHL”

2 43. The issues for the trier of fact to consider include, but are not limited to, the following:

3 (a) Whether exposure to Roundup causes NHL;

4 (b) Whether Monsanto knew that exposure to Roundup causes cancer/NHL;

5 (c) What minimal level of exposure to Roundup causes NHL; and/or

6 (d) Whether Monsanto made material misstatements regarding the link

7 between Roundup and NHL.

8 44. Upon resolution of the above issues by the trier of fact, the class members only need to
9 prove ‘specific’ causation and damages suffered as a result of the exposure to Roundup. This “second
10 phase” of the Class Member’s case could be conducted by Special Masters and/or Magistrate Judge’s
11 assigned to this matter. The Plaintiff shall present to the Court a constitutionally sound methodology
12 for consideration of Phase 2 in a manner that significantly reduces the burden on all parties and
13 increases the efficiency of the judicial resources necessary to proceed under Fed R. Civ. P. 23(c)(4).

14 45. The proposed nationwide declaratory and injunctive relief Class under Fed R. Civ. P.
15 23(b)(2) is defined as follows: “All individuals and entities that have been exposed to Roundup
16 products in the states and the territories of the United States”.

17 46. Under Fed R. Civ. P. 23(b)(2), in addition to the nationwide class, Plaintiff also seek to
18 represent the following multistate Class as defined as follows:

19 All individuals and entities that have been exposed to Roundup products
20 in the territories of the United States are residents of the following states:
21 Alabama, Alaska, Arizona, Arkansas, California, Colorado,
22 Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois,
23 Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland,
24 Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana,
25 Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New
26 York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon,
27 Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee,
28 Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin,
Wyoming, and the District of Columbia.

27 47. Excluded from the Class are: (1) Defendant, and any entity in which Defendant has a
28 controlling interest in or which has a controlling interest in Defendant; (2) Defendant’s legal

1 representatives, assigns and successors; and (3) the judge(s) or magistrate judge to whom this case is
2 assigned and any member of the judge's immediate family.

3 48. Plaintiff and the Class reserves the right to redefine the Class(es), and/or requests for
4 relief.

5 49. The members of the proposed Class are so numerous that joinder of all members is
6 impracticable.

7 50. The exact number of Class members is unknown.

8 51. A common relief by way of trial under Fed R. Civ. P. 23(b)(2) and Fed R. Civ. P. 23(c)(4)
9 is sought for Plaintiff and Class members.

10 52. Numerous common questions of law and fact impact all of the class members.

11 53. The claims and defenses of the Plaintiff are typical of the claims and defenses of the
12 Class. Plaintiff and the Class have been exposed to Roundup and have been or shall be injured as a
13 result.

14 54. Plaintiff, like all Class members, have been damaged by Defendant's conduct in
15 distributing and marketing a product that Defendant knew or should have known would cause NHL.
16 Additionally, the factual basis of Defendant's conduct is common to all Class members and represents
17 a common thread of deliberate and negligent misconduct resulting in injury and damages to all
18 members of the Class.

19 55. The Plaintiff will fairly and adequately assert and protect the interests of the Class.
20 Specifically, they have retained attorneys, including William M. Audet and the firm of Audet &
21 Partners, LLP, that are experienced in prosecuting class action claims and will adequately represent the
22 interests of the Class. Neither the Plaintiff, nor the Attorneys, have any conflict of interests that will
23 interfere with the maintenance of this class action.

24 56. A class action provides a fair, efficient, and superior method for the adjudication of this
25 controversy.

26 57. Alternatively, the Class satisfies all applicable factors under Rule 23(b)(3), and as such,
27 the Class may be certified as a 'damage' based class action.
28

CAUSES OF ACTION

COUNT I

Claim for Declaratory and Injunctive and Equitable Relief

(On Behalf of Residents of the United States and its Territories)

58. Plaintiff and the Class incorporate by reference each and every allegation set forth in the preceding paragraphs as if fully stated herein.

59. An actual controversy exists between Defendant and Plaintiff concerning:

- a. Whether Defendant marketed Roundup but omitted material health information regarding use of the products;
- b. Whether Defendant's marketing of Roundup was false, deceptive, and/or misleading;
- c. Whether Roundup is unfit for its ordinary purpose;
- d. Whether Roundup is unfit for its particular purpose of providing weed control;
- e. When did Defendant discover that Roundup was linked to NHL;
- f. Whether Defendant had obligation to disclose the link between NHL and Roundup;
- g. Whether Defendant was unjustly enriched by the sale of Roundup;
- h. Whether Defendant breached its express and implied warranties;
- i. Whether Defendant engaged in fraudulent, unfair, or deceptive conduct that should subject Defendant to punitive damages; and
- j. Whether Defendant should be declared financially responsible for notifying all Class members about Roundup's link to NHL.

60. Under the Declaratory Judgment Act, 28 U.S.C. § 2201, this Court may "declare the rights and legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought." The declaratory relief sought here does not fall within any of the exemptions set forth in that Act.

61. Accordingly, Plaintiff and the Class pray this Court declare that:

- a. Roundup can cause NHL if the Class Member is exposed to Roundup;

1 manufactured, packaged, labeled, distributed, sold, and marketed by Defendant were defective in
2 design and formulation in that when they left the hands of the Defendant's manufacturers and/or
3 suppliers, they were unreasonably dangerous and dangerous to an extent beyond that which an ordinary
4 consumer would contemplate.

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

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

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

- 16 a. When placed in the stream of commerce, Defendant's Roundup products
17 were defective in design and formulation, and, consequently, dangerous to
18 an extent beyond that which an ordinary consumer would contemplate.
- 19 b. When placed in the stream of commerce, Defendant's Roundup products
20 were unreasonably dangerous in that they were hazardous and posed a grave
21 risk of cancer and other serious illnesses when used in a reasonably
22 anticipated manner.
- 23 c. When placed in the stream of commerce, Defendant's Roundup products
24 contained unreasonably dangerous design defects and were not reasonably
25 safe when used in a reasonably anticipated or intended manner.
- 26 d. Defendant did not sufficiently test, investigate, or study its Roundup
27 products and, specifically, the active ingredient glyphosate.

1 e. Exposure to Roundup and glyphosate-containing products presents a risk of
2 harmful side effects that outweigh any potential utility stemming from the
3 use of the herbicide.

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

7 g. Defendant did not conduct adequate post-marketing surveillance of its
8 Roundup products.

9 h. Defendant could have employed safer alternative designs and formulations.

10 72. Plaintiff was exposed to Defendant's Roundup products without knowledge of its
11 dangerous characteristics.

12 73. At all times relevant to this litigation, Plaintiff were exposed to Defendant's Roundup
13 products in an intended or reasonably foreseeable manner without knowledge of their dangerous
14 characteristics.

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

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

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

26 77. Defendant's defective design of its Roundup products was willful, wanton, fraudulent,
27 malicious, and conducted with reckless disregard for the health and safety of users of the Roundup
28 products, including the Plaintiff and the Class herein.

1 78. Therefore, as a result of the unreasonably dangerous condition of its Roundup products,
2 Defendant are strictly liable to Plaintiff and the Class.

3 79. The defects in Defendant's Roundup products were substantial and contributing factors
4 in causing Plaintiff and the Class grave injuries, specifically NHL, and, but for Defendant' misconduct
5 and omissions, Plaintiff and the Class would not have sustained their injuries.

6 80. Defendant's conduct, as described above, was reckless. Defendant risked the lives of
7 consumers and users of its products, including Plaintiff and the Class with knowledge of the safety
8 problems associated with Roundup and glyphosate-containing products, and suppressed this
9 knowledge from the general public. Defendant made conscious decisions not to redesign, warn or
10 inform the unsuspecting public. Defendant's reckless conduct warrants an award of punitive damages.

11 81. As a direct and proximate result of Defendant placing defective Roundup products into
12 the stream of commerce, Plaintiff and the Class suffered damages and continue to suffer grave injuries,
13 and has endured physical pain and discomfort, as well as economic hardship, including considerable
14 financial expenses for medical care and treatment. Plaintiff and the Class will continue to incur these
15 expenses in the future.

16 82. WHEREFORE, Plaintiff and the Class respectfully request that this Court enter judgment
17 in Plaintiff' and the Class favor and all such other and further relief as this Court deems just and proper.

18 **COUNT III**

19 **Strict Liability - Failure to Warn**

20 **(On Behalf of Residents of the United States and its Territories)**

21 83. Plaintiff and the Class incorporate by reference each and every allegation set forth in the
22 preceding paragraphs as if fully stated herein.

23 84. Plaintiff and the Class bring this strict liability claim against Defendant for failure to
24 warn.

25 85. At all times relevant to this litigation, Defendant engaged in the business of testing,
26 developing, designing, manufacturing, marketing, selling, distributing, promoting and applying
27 Roundup products, which are defective and unreasonably dangerous to consumers, including Plaintiff,
28 because they do not contain adequate warnings or instructions concerning the dangerous characteristics

1 of Roundup and specifically, the active ingredient glyphosate. These actions were under the ultimate
2 control and supervision of Defendant.

3 86. Monsanto researched, developed, designed, tested, manufactured, inspected, labeled,
4 distributed, marketed, promoted, sold, and otherwise released into the stream of commerce its Roundup
5 products, and in the course of same, directly advertised or marketed the products to consumers and end
6 users, including the Plaintiff, and persons responsible for consumers (such as employers), and therefore
7 had a duty to warn of the risks associated with the use of Roundup and glyphosate-containing products.

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

15 88. At the time of manufacture, Defendant could have provided the warnings or instructions
16 regarding the full and complete risks of Roundup and glyphosate-containing products because they
17 knew or should have known of the unreasonable risks of harm associated with the use of and/or
18 exposure to such products.

19 89. At all times relevant to this litigation, Defendant failed to investigate, study, test, or
20 promote the safety or to minimize the dangers to users and consumers of this product and to those who
21 would foreseeably use or be harmed by Roundup, including Plaintiff.

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

28 91. Defendant knew or should have known that these products created significant risks of

1 serious bodily harm to consumers, as alleged herein, and Defendant failed to adequately warn
2 consumers and reasonably foreseeable users of the risks of exposure to its products. Defendant have
3 wrongfully concealed information concerning the dangerous nature of Roundup and its active
4 ingredient glyphosate, and further made false and/or misleading statements concerning the safety of
5 Roundup and glyphosate.

6 92. At all times relevant to this litigation, Defendant' Roundup products reached the intended
7 consumers, handlers, and users or other persons coming into contact with these products in California
8 and throughout the United States, including Plaintiff, without substantial change in their condition as
9 designed, manufactured, sold, distributed, labeled, marketed and sprayed/applied by Defendant.

10 93. Plaintiff and the Class were exposed to Roundup products, as described above, without
11 knowledge of their dangerous characteristics.

12 94. At all times relevant to this litigation, Plaintiff and the Class were exposed to the use of
13 Defendant' Roundup products in their intended or reasonably foreseeable manner without knowledge
14 of their dangerous characteristics.

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

18 96. Defendant knew or should have known that the minimal warnings disseminated with or
19 accompanying the application of Roundup products were inadequate, and they failed to communicate
20 adequate information on the dangers and safe use/exposure and failed to communicate warnings and
21 instructions that were appropriate and adequate to render the products safe for their ordinary, intended
22 and reasonably foreseeable uses, including agricultural and horticultural applications.

23 97. The information that Defendant did provide or communicate failed to contain relevant
24 warnings, hazards, and precautions that would have enabled those exposed such as Plaintiff to utilize
25 the products safely and with adequate protection. Instead, Defendant disseminated information that was
26 inaccurate, false, and misleading and which failed to communicate accurately or adequately the
27 comparative severity, duration, and extent of the risk of injuries with use of and/or exposure to Roundup
28 and glyphosate; continued to aggressively promote the efficacy of its products, even after it knew or

1 should have known of the unreasonable risks from use or exposure; and concealed, downplayed, or
2 otherwise suppressed, through aggressive marketing and promotion, any information or research about
3 the risks and dangers of exposure to Roundup and glyphosate.

4 98. To this day, Defendants' have failed to adequately and accurately warn of the true risks
5 of Plaintiff's injuries associated with the use of and exposure to Roundup and its active ingredient
6 glyphosate, a probable human carcinogen.

7 99. As a result of their inadequate warnings, Roundup products were defective and
8 unreasonably dangerous when they left the possession and/or control of Defendant, were sold or
9 distributed by Defendant, were applied by Defendant, and when Plaintiff used or became exposed.

10 100. Defendant are liable to Plaintiff for injuries caused by negligent or willful failure, as
11 described above, to provide adequate warnings or other clinically relevant information and data
12 regarding the appropriate use of their products and the risks associated with the use of or exposure to
13 Roundup and glyphosate.

14 101. The defects in these Roundup products were substantial and contributing factors in
15 causing Plaintiff and the Class injuries, and, but for Defendants' misconduct and omissions, Plaintiff
16 would not have sustained their injuries.

17 102. Had Defendant provided adequate warnings and instructions and properly disclosed and
18 disseminated the risks associated with Roundup products and application, Plaintiff could have avoided
19 the risk of developing injuries as alleged herein and the company who employed Plaintiff could have
20 obtained alternative herbicides.

21 103. As a direct and proximate result of Defendants' placing defective Roundup products into
22 the stream of commerce and exposing Plaintiff to them, Plaintiff have suffered and continue to suffer
23 severe injuries, and has endured physical pain and discomfort, as well as economic hardship, including
24 considerable financial expenses for medical care and treatment. Plaintiff will continue to incur these
25 expenses in the future.

26 **COUNT IV**

27 **Negligent Misrepresentation**

28 **(On Behalf of Residents of the United States and its Territories)**

1 104. Plaintiff and the Class re-allege and incorporate by reference the allegations contained
2 in all preceding paragraphs of this Class Action Complaint, as though set forth fully herein.

3 105. Defendant manufactured, marketed, advertised, and sold, Roundup as a ‘weed killer.’

4 106. Among other things, Defendant omitted to disclose to users of material information
5 regarding the link between exposure to human relevant doses and the likelihood of NHL after minimal
6 usages and exposure per year.

7 107. Defendant knew or should have known about Roundup’s propensity to cause NHL.

8 108. Defendant also failed to disclose, concealed, suppressed and omitted material
9 information concerning Roundup and the truth regarding the various studies that Roundup would cite
10 to support its false claim that Roundup did not cause NHL.

11 109. Defendant intended that Plaintiff rely upon its material misrepresentations and omissions
12 to purchase more Roundup.

13 **COUNT V**

14 **Breach of Express Warranty**

15 **(On Behalf of Residents of the United States and its Territories)**

16 110. Plaintiff and the Class re-allege and incorporate by reference the allegations contained
17 in all preceding paragraphs of this Class Action Complaint, as though set forth fully herein.

18 111. Defendant made several express warranties regarding Roundup,

19 112. These representations and promises became part of the basis of the bargain between the
20 parties and created a collective “express warranty” that Roundup would conform to Defendant's
21 affirmations and promises.

22 113. Defendant knew or should have known that Roundup was susceptible to causing cancer
23 for those exposed to Roundup.

24 114. Defendant has breached the express warranty.

25 115. Defendant's conduct described in this Complaint constitutes a breach of express
26 warranties under the following state statutes:

27 a. Ala. Code § 7-2-313, *et seq.*;

28 b. Alaska Stat. § 45.02.313, *et seq.*;

- 1 c. Ariz. Rev. Stat. § 47-2313, *et seq.*;
- 2 d. Ark. Code § 4-2-313, *et seq.*;
- 3 e. Cal. Com. Code § 2313, *et seq.*;
- 4 f. Colo. Rev. Stat. § 4-2-313, *et seq.*;
- 5 g. Conn. Gen. Stat. § 42a-2-313, *et seq.*;
- 6 h. 6 Del. C. § 2-313, *et seq.*;
- 7 i. D.C. Code § 28:2-313, *et seq.*;
- 8 j. Fla. Code § 672.313, *et seq.*;
- 9 k. O.C.G.A. § 11-2-313, *et seq.*;
- 10 l. Haw. Rev. Stat. § 490:2-313, *et seq.*;
- 11 m. Idaho Code § 28-2-313, *et seq.*;
- 12 n. 810 Ill. Comp. Stat. 5/2-313, *et seq.*;
- 13 o. Ind. Code § 26-1-2-313, *et seq.*;
- 14 p. Iowa Code § 554.2313, *et seq.*;
- 15 q. Kan. Stat. § 84-2-313, *et seq.*;
- 16 r. Ky. Rev. Stat. § 355.2-313, *et seq.*;
- 17 s. La. Rev. Stat § 9:2800.53(6) , *et seq.*;
- 18 t. 11 M.R.S.A. § 2-313, *et seq.*;
- 19 u. Md. Code Ann., Com. Law § 2-313, *et seq.*;
- 20 v. Mass. Code 106, § 2-313, *et seq.*;
- 21 w. Mich. Comp. Laws 440.2313, *et seq.*;
- 22 x. Minn. Stat. § 336.2-313, *et seq.*;
- 23 y. Miss. Code § 75-2-313, *et seq.*;
- 24 z. Mo. Rev. Stat. § 400.2-313, *et seq.*;
- 25 aa. Mont. Code § 30-2-313, *et seq.*;
- 26 bb. Neb. U.C.C. § 2-313, *et seq.*;
- 27 cc. Nev. Rev. Stat. § 104.2313, *et seq.*;
- 28 dd. N.H. Rev. Stat. § 382-A:2-313, *et seq.*;

- 1 ee. N.J. Stat. § 12A:2-313, *et seq.*;
- 2 ff. N.M. Stat. § 55-2-313, *et seq.*;
- 3 gg. N.Y. U.C.C. § 2-313, *et seq.*;
- 4 hh. N.C. Gen. Stat. § 25-2-313, *et seq.*;
- 5 ii. N.D. Cent. Code § 41-02-30, *et seq.*;
- 6 jj. Ohio Rev. Code § 1302.26, *et seq.*;
- 7 kk. Okla. Stat. Tit. 12A, § 2-313, *et seq.*;
- 8 ll. Or. Rev. Stat. § 72.3130, *et seq.*;
- 9 mm. 13 Pa. Cons. Stat. § 2313, *et seq.*;
- 10 nn. R.I. Gen. Laws § 6A-2-313, *et seq.*;
- 11 oo. S.C. Code § 36-2-313, *et seq.*;
- 12 pp. S.D. Codified Laws § 57A-2-313, *et seq.*;
- 13 qq. Tenn. Code § 47-2-313, *et seq.*;
- 14 rr. V.T.C.A., Bus. & C. § 2.313, *et seq.*;
- 15 ss. Utah Code § 70A-2-313, *et seq.*;
- 16 tt. Vt. Stat. Tit. 9A, § 2-313, *et seq.*;
- 17 uu. Va. Code § 8.2-313, *et seq.*;
- 18 vv. Wash. Rev. Code § 62A.2-313, *et seq.*;
- 19 ww. W. Va. Code § 46-2-313, *et seq.*;
- 20 xx. Wis. Stat. § 402.313, *et seq.*; and
- 21 yy. Wyo. Stat. § 34.1-2-313, *et seq.*

22 116. Plaintiff and the Class have complied with the warranty terms, including application
23 instructions and maintaining residence in their homes.

24 117. As a direct and proximate result of the breach of the express warranty, Plaintiff and the
25 Class suffered damages, injury in fact and/or ascertainable loss in an amount to be determined at trial,
26 including repair and replacement costs and/or damages to other property.

COUNT VI

Breach of Implied Warranty (Non-Privity)

(On Behalf of Residents of the Following States: Alaska; Arkansas; California; Colorado; Connecticut; Delaware; District of Columbia; Florida; Hawaii; Indiana; Kansas; Louisiana; Maine; Maryland; Massachusetts; Michigan; Minnesota; Mississippi; Missouri; Montana; Nebraska; Nevada; New Hampshire; New Jersey; New Mexico; North Dakota; Ohio; Oklahoma; Pennsylvania; Rhode Island; South Carolina; South Dakota; Texas; Utah; Vermont; Virginia; Washington; West Virginia; and Wyoming)

118. Plaintiff and the class re-allege and incorporate by reference the allegations contained in all preceding paragraphs of this Class Action Complaint, as though set forth fully herein

119. Defendant is in the business of manufacturing, designing, supplying, marketing, advertising, warranting, and selling Roundup. Defendant impliedly warranted to Plaintiff and the class that Roundup was of a certain quality, was free from defects, was fit for its ordinary purpose of killing ‘weeds’ and was fit for use without causing material harm to the class..

120. Roundup was unfit for its ordinary use and was not of merchantable quality, as warranted by Defendant, because it was defective and had caused NHL. Prior to purchase, Plaintiff and the class could not have readily discovered that the product was not fit for its ordinary purpose.

121. Roundup was similarly unfit for its particular purpose. However, Defendant’s product was not suitable for this purpose at the point of sale because it had the propensity to cause cancer, specifically NHL.

122. Defendant has failed to provide adequate remedies under its written express warranty, which has caused the express warranty to fail its essential purpose, thereby permitting remedies under implied warranties.

123. Defendant has not sufficiently disclaimed the implied warranty of merchantability (specifically and conspicuously) or the implied warranty of fitness (in writing and conspicuously). Defendant knew or should have known that Roundup causes NHL to those exposed to the product.

124. Defendant’s conduct described in this Complaint constitutes a breach of implied warranties under the following state statutes:

- a. Alaska Stat. §§ 45.02.314 and 45.02.315, *et seq.*;

- 1 b. Ark. Code Ann. §§ 4-2-314 and 4-2-315, *et seq.*;
- 2 c. Cal. Com. Code §§ 2314-2315, *et seq.*, and Cal. Civ. Code § 1790, *et seq.*;
- 3 d. Colo. Rev. Stat. Ann. §§ 4-2-314 and 4-2-315, *et seq.*;
- 4 e. Conn. Gen. Stat. §§ 42a-2-314 and 42a-2-315, *et seq.*;
- 5 f. Del. Code Ann. Tit. 6, §§ 2-314 and 2-315, *et seq.*;
- 6 g. D.C. Code §§ 28:2-314 and 28:2-315, *et seq.*;
- 7 h. Fla. Stat. Ann. §§ 672.314 and 672.315, *et seq.*;
- 8 i. Haw. Rev. Stat. §§ 490:2-314 and 490:2-315, *et seq.*;
- 9 j. Ind. Code §§ 26-1-2-314 and 26-1-315, *et seq.*;
- 10 k. Kan. Stat. Ann. §§ 84-2-314 and 84-2-315, *et seq.*;
- 11 l. La. Civ. Code Ann. Art. 2520, *et seq.*;
- 12 m. Me. Rev. Stat. Ann. Tit. 11, §§ 2-314 and 2-315, *et seq.*;
- 13 n. Md. Code Ann., Com. Law §§ 2-314 and 2-315, *et seq.*;
- 14 o. Mass. Gen. Laws ch. 106, §§ 2-314 and 2-315, *et seq.*;
- 15 p. Mich. Comp. Laws Ann. §§ 440.2314 and 440.2315, *et seq.*;
- 16 q. Minn. Stat. §§ 336.2-314 and 336.2-315, *et seq.*;
- 17 r. Miss. Code Ann. §§ 75-2-314 and 75-2-315, *et seq.*;
- 18 s. Mo. Rev. Stat. §§ 400.2-314 and 400.2-315, *et seq.*;
- 19 t. Mont. Code Ann. §§ 30-2-314 and 30-2-315, *et seq.*;
- 20 u. Neb. Rev. Stat. Ann. §§ 2-314 and 2-315, *et seq.*;
- 21 v. Nev. Rev. Stat. §§ 104.2314 and 104.2315, *et seq.*;
- 22 w. N.H. Rev. Stat. Ann. §§ 382-A:2-314 and 382-A:2-315, *et seq.*;
- 23 x. N.J. Stat. Ann. §§ 12A:2-314 and 12A-315, *et seq.*;
- 24 y. N.M. Stat. Ann. §§ 55-2-314 and 55-2-315, *et seq.*;
- 25 z. N.D. Cent. Code §§ 41-02-31 and 41-02-32, *et seq.*;
- 26 aa. Ohio Rev. Code Ann. §§ 1302.27 and 1302.28, *et seq.*;
- 27 bb. Okla. Stat. Tit. 12A, §§ 2-314 and 2-315, *et seq.*;
- 28 cc. 13 Pa. Stat. Ann. §§ 2314 and 2315, *et seq.*;

- 1 dd. R.I. Gen. Laws §§ 6A-2-314 and 6A-2-315, *et seq.*;
- 2 ee. S.C. Code Ann. §§ 36-2-314 and 36-2-315, *et seq.*;
- 3 ff. S.D. Codified Laws §§ 57A-2-314 and 57A-2-315, *et seq.*;
- 4 gg. Tex. Bus. & Com. Code Ann. §§ 2.314 and 2.315, *et seq.*;
- 5 hh. Utah Code Ann. §§ 70A-2-314 and 70A-2-315, *et seq.*;
- 6 ii. Vt. Stat. Ann. Tit. 9A, §§ 2-314 and 2-315, *et seq.*;
- 7 jj. Va. Code Ann. §§ 8.2-314 and 8.2-315, *et seq.*;
- 8 kk. Wash. Rev. Code §§ 62A.2-314 and 62A.2-315, *et seq.*;
- 9 ll. W. Va. Code §§ 46-2-314 and 46-2-315, *et seq.*; and
- 10 mm. Wyo. Stat. Ann. §§ 34.1-2-314 and 34.1-2-315, *et seq.*

11 125. Constructive notice was duly given to Defendant of the breaches of these warranties, and
12 Defendant has failed to cure.

13 126. As a direct and proximate result of the breaches of these warranties, Plaintiff and the
14 Class suffered damages, injury in fact and/or ascertainable loss in an amount to be determined at trial,
15 including repair and replacement costs and/or damages to other property.

16 127. Plaintiff demand judgment against Defendant for compensatory damages for themselves
17 and each member of the Class, for the establishment of a common fund, plus additional remedies as
18 this Court deems fit.

19 **COUNT VII**

20 **Breach of Implied Warranty (Privity)**

21 **(On Behalf of Residents of the Following States: Alabama; Arizona; Georgia; Idaho; Illinois;**
22 **Iowa; Kentucky; New York; North Carolina; Oregon; Tennessee; and Wisconsin)**

23 128. Plaintiff re-allege and incorporate by reference the allegations contained in all preceding
24 paragraphs of this Class Action Complaint, as though set forth fully herein.

25 129. Defendant is in the business of manufacturing, designing, supplying, marketing,
26 advertising, warranting, and selling Roundup, which has been used as a weed killer. Defendant
27 impliedly warranted to Plaintiff (and to Plaintiff' agents) that Roundup was of a certain quality, was
28 free from defects, and was fit for its ordinary purpose.

1 130. Roundup was unfit for its ordinary use and was not of merchantable quality, as
2 warranted by Defendant, because it was defective and studies show that it causes cancer. Prior to
3 purchase, Plaintiff could not have readily discovered that the product was not fit for its ordinary purpose
4 and would potentially cause NHL.

5 131. Roundup was similarly unfit for its particular purpose.

6 132. Defendant has not sufficiently disclaimed the implied warranty of merchantability
7 (specifically and conspicuously) or the implied warranty of fitness (in writing and conspicuously).
8 Further, the purported limitations in the warranty, including limiting the “exclusive remedy” to a refund
9 or replacement, are procedurally and substantively unconscionable.

10 133. Defendant was and is in privity with each of the Plaintiff and Class members by law
11 and/or by fact. First, Plaintiff have had sufficient direct dealings with Defendant and/or its authorized
12 dealers, franchisees, representatives, and agents to establish privity of contract. Alternatively, Plaintiff
13 and Class members are intended third-party beneficiaries of contracts, including express warranties,
14 amongst Defendant and its dealers, franchisees, representatives and agents; Defendant's advertisements
15 were aimed at Plaintiff and Class members, and Defendant's warranties were expressly written for the
16 benefit of Plaintiff and Class members as end users of Roundup. Defendant's authorized dealers,
17 franchisees, representatives, and agents, on the other hand, were not intended to be the ultimate
18 consumers of Roundup and have no rights under the warranty agreements provided by Defendant; these
19 intermediary entities made no changes to Defendant's product, nor made any additions to the warranties
20 issued by Defendant. Further, Defendant is estopped from limiting claims for common law and
21 statutory violations based on a defense of lack of privity.

22 134. Defendant's conduct described in this Complaint constitutes a breach of implied
23 warranties under the following state statutes:

- 24 a. Ala. Code §§ 7-2-314, 7-2-315 and 7-2-318, *et seq.*;
- 25 b. Ariz. Rev. Stat. Ann. §§ 47-2314, 47-2315 and 47-2318, *et seq.*;
- 26 c. Ga. Code Ann. §§ 11-2-314, 11-2-315 and 11-2-318, *et seq.*;
- 27 d. Idaho Code Ann. §§ 28:2-314, 28:2-315 and 28:2-318, *et seq.*;
- 28 e. 810 Ill. Comp. Stat. 5/2-314, 5/2-315 and 5/2-318, *et seq.*;

- 1 f. Iowa Code §§ 554.2314, 554.2315 and 554.2318, *et seq.*;
- 2 g. Ky. Rev. Stat. Ann. §§ 355.2-314, 355.2-315 and 355.2-318, *et seq.*;
- 3 h. N.Y. U.C.C. Law §§ 2-314, 2-315 and 2-318, *et seq.*;
- 4 i. N.C. Gen. Stat. §§ 25-2-314, 25-2-315 and 25-2-318, *et seq.*;
- 5 j. Ore. Rev. Stat. §§ 72.3140, 72.3150 and 72.3180, *et seq.*;
- 6 k. Tenn. Code Ann. §§ 47-2-314, 47-2-315 and 47-2-318, *et seq.*; and
- 7 l. Wis. Stat. §§ 402.314, 402.315 and 402.318, *et seq.*

8 135. Actual and/or constructive notice was duly given to Defendant of the breaches of these
9 warranties, and Defendant has failed to cure.

10 136. As a direct and proximate result of the breaches of these warranties, Plaintiff have
11 suffered damages, injury in fact and/or ascertainable loss in an amount to be determined at trial.

12 137. Plaintiff demand judgment against Defendant for compensatory damages for each
13 member of the Class, for the establishment of a common fund, plus additional remedies as this Court
14 deems fit.

15 **COUNT VIII**

16 **Violation of State Consumer Laws**

17 **(On Behalf of Residents of the Following States: Alaska; Arizona; Arkansas;**
18 **California; Colorado; Connecticut; Delaware; District of Columbia; Florida;**
19 **Hawaii; Idaho; Illinois; Indiana; Iowa; Kansas; Maine; Maryland; Massachusetts;**
20 **Michigan; Minnesota; Missouri; Nebraska; Nevada; New Hampshire; New Jersey;**
21 **New Mexico; New York; North Carolina; North Dakota; Ohio; Oklahoma;**
22 **Oregon; Pennsylvania; Rhode Island; South Dakota; Texas; Utah; Vermont;**
23 **Virginia; Washington; West Virginia; Wisconsin; and Wyoming)**

24 138. Plaintiff re-allege and incorporate by reference the allegations contained in all preceding
25 paragraphs of this Class Action Complaint, as though set forth fully herein.

26 139. Defendant markets and sells goods, including Roundup, to consumers throughout the
27 United States and its Territories, including to Plaintiff and the Class. Defendant's acts and omissions
28

1 regarding Roundup affect trade and commerce across all the United States and its Territories.

2 140. Plaintiff and statewide Class members are consumers who purchased and used Roundup
3 primarily for personal, family and/or household purposes.

4 141. Defendant has violated state consumer protection laws by engaging in unfair methods of
5 competition and unfair, deceptive, fraudulent, unconscionable and/or unlawful acts or practices,
6 including without limitation, by defective design and manufacture of Roundup as well as misleading
7 marketing, advertising, selling, and warranting of Roundup to consumers. In connection with these
8 sales, Defendant omitted material information about Roundup that it was legally obligated to disclose.
9 Defendant never informed Plaintiff or Class members, at the point of sale or otherwise, that Roundup
10 was linked to NHL, and failed to disclose this information in a timely manner.

11 142. Among other things, Defendant made numerous deceptive statements regarding
12 Roundup.

13 143. Through its conduct, Defendant has violated the following state consumer laws
14 prohibiting unfair methods of competition and unfair, deceptive, unconscionable, fraudulent and/or
15 unlawful acts or practices:

- 16 a. The Alaska Unfair Trade Practices and Consumer Protection Act, Alaska Stat.
17 §§ 45.50.471 through 45.50.561, *et seq.*;
 - 18 b. The Arizona Consumer Fraud Act, A.R.S. § 44-1522, *et seq.*;
 - 19 c. The Arkansas Deceptive Trade Practices Act, Ark. Code Ann. §§ 4-88-
20 107(a)(1)(10) and 4-88-108(1)(2), *et seq.*;
 - 21 d. The California Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code, §
22 17200, *et seq.* ;
 - 23 e. The Colorado Consumer Protection Act, Col. Rev. Stat. Ann. §§ 6-1-105(1)(b),
24 (c), (e) and (g), *et seq.*;
 - 25 f. The Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. § 42-110(b), *et*
26 *seq.*;
 - 27 g. The Delaware Consumer Fraud Act, Del. Code Ann. Title 6 § 2513, *et seq.*;
- 28

- 1 h. The District of Columbia Consumer Protection Act, D.C. Code §§ 28-3904(a),
2 (d), (e), (f) and (r), *et seq.*;
- 3 i. The Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. Ann. §
4 501.204(1), *et seq.*;
- 5 j. The Hawaii Deceptive Trade Practices Act, Haw. Rev. Stat. Ann. §§ 481A-
6 3(a)(5), (7) and (12), *et seq.*, and the Hawaii Consumer Protection Act, Haw.
7 Rev. Stat. Ann. § 480-2(a), *et seq.*;
- 8 k. The Idaho Consumer Protection Act, Idaho Code §§ 48-603(5), (7), (17) and
9 (18), *et seq.*, and Idaho Code § 48-603C, *et seq.*;
- 10 l. The Illinois Consumer Fraud and Deceptive Trade Practices Act, 815 Ill. Stat. §
11 505/2, *et seq.*, and the Illinois Uniform Deceptive Trades Practices Act, 815 Ill.
12 Stat. § 510/2(a)(5), (7) and (12), *et seq.*;
- 13 m. The Indiana Deceptive Consumer Sales Act, Ind. Code §§ 24-5-0.5-3(a) and
14 (b)(1) and (2), *et seq.*;
- 15 n. The Iowa Consumer Fraud Act, I.C.A. §§ 714H.3 and 714H.5, *et seq.* Plaintiff
16 have obtained the approval of the Iowa Attorney General for filing this class
17 action lawsuit as provided under I.C.A § 714H.7;
- 18 o. The Kansas Consumer Protection Act, Kan. Stat. §§ 50-626(a) and (b)(1)(A)(D)
19 and (b)(3), *et seq.*;
- 20 p. The Maine Uniform Deceptive Trade Practices Act, 10 M.R.S.A. §§ 1212(1)(E)
21 and (G), *et seq.*, and the Maine Unfair Trade Practices Act, 5 M.R.S.A. § 207,
22 *et seq.*;
- 23 q. The Maryland Consumer Protection Act, Md. Code Commercial Law, § 13-
24 301(1) and (2)(i), and (iv) and (9)(i), *et seq.*;
- 25 r. The Massachusetts Consumer Protection Act, Ma. Gen. Laws Ann. Ch. 93A §
26 2(a), *et seq.*;
- 27 s. The Michigan Consumer Protection Act, M.C.P.L.A. § 445.903(1)(c)(e), (s) and
28 (cc), *et seq.*;

- 1 t. The Minnesota Uniform Deceptive Trade Practices Act, Minn. Stat. § 325D.44,
2 subd. 1(5), (7) and (13), *et seq.*, the Minnesota Consumer Fraud Act, Minn. Stat.
3 § 325F.69, subd. 1, and Minn. Stat. § 8.31, subd. 3(a), *et seq.*;
- 4 u. The Missouri Merchandising Practices Act, Mo. Ann. Stat. § 407.020(1), *et seq.*;
- 5 v. The Nebraska Consumer Protection Act, Neb. Rev. Stat. § 59-1602, and the
6 Nebraska Uniform Deceptive Trade Practices Act, Neb. Rev. Stat. § 87-
7 302(a)(5) and (7), *et seq.*;
- 8 w. The Nevada Deceptive Trade Practices Act, Nev. Rev. Stat. Ann. § 598.0915(5)
9 and (7), *et seq.*;
- 10 x. The New Hampshire Consumer Protection Act, N.H. Rev. Stat. Ann. § 358-
11 A:2(v) and (vii), *et seq.*;
- 12 y. The New Jersey Consumer Fraud Act, N.J. Stat. Ann. § 56:8-2, *et seq.*;
- 13 z. The New Mexico Unfair Practices Act, N.M. Stat. Ann. §§ 57-12- 2(D)(5)(7)
14 and (14) and 57-12-3, *et seq.*;
- 15 aa. New York Business Law, N.Y. Gen. Bus. Law § 349(a), *et seq.*;
- 16 bb. The North Carolina Unfair Trade Practices Act, N.C.G.S.A. § 75-1.1(a), *et seq.*;
- 17 cc. The North Dakota Unlawful Sales or Advertising Practices Act, N.D. Cent. Code
18 § 51-15-02, *et seq.*;
- 19 dd. The Ohio Consumer Sales Practices Act, Ohio Rev. Code Ann. § 1345.02(A),
20 (B)(1) and (2), *et seq.* Pursuant to Ohio Rev. Code Ann. § 1345.09(B),
21 Defendant's alleged acts must have been previously declared to be deceptive or
22 unconscionable under Ohio Rev. Code Ann. §§ 1345.02 or 1345.03. Defendant
23 systematically made misrepresentations and material omissions regarding
24 Roundup. Ohio courts have previously declared such actions to be deceptive or
25 unconscionable. *See, e.g., Arales v. Furs by Weiss, Inc.*, No. 81603, 2003 WL
26 21469131, at *1-4 (Ohio Ct. App. June 26, 2003) (retailer's omission to
27 consumer was unfair or deceptive); *Lump v. Best Door & Window, Inc.*, Nos. 8-
28 01-09, 8-01-10, 2002 WL 462863, at *4-5 (Ohio Ct. App. Mar. 27, 2002) (failure

- 1 to perform obligations to consumers in a timely and competent manner is a
2 deceptive and unconscionable);
- 3 ee. The Oklahoma Consumer Protection Act, 15 Okl. Stat. Ann. § 753(5), (7) and
4 (20), *et seq.*;
- 5 ff. The Oregon Unfair Trade Practices Act, Or. Rev. Stat. §§ 646.608(1)(e)(g) and
6 (u), *et seq.*;
- 7 gg. The Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S.
8 §§ 201-2(4)(v)(vii) and (xxi), and 201-3, *et seq.*;
- 9 hh. The Rhode Island Deceptive Trade Practices Act, R.I. Gen. Laws § 6-13.1-
10 1(6)(v), (vii), (xii), (xiii) and (xiv), *et seq.*;
- 11 ii. The South Dakota Deceptive Trade Practices Act and Consumer Protection Act,
12 S.D. Codified Laws § 37-24-6(1), *et seq.*;
- 13 jj. The Texas Deceptive Trade Practices- Consumer Protection Act, V.T.C.A., Bus.
14 & C. § 17.46(a), (b)(5) and (7), *et seq.*;
- 15 kk. The Utah Consumer Sales Practices Act, Utah Code Ann. §§ 13-11-4(1) and
16 (2)(a) and (b);
- 17 ll. The Vermont Consumer Fraud Act, 9 V.S.A. § 2453(a), *et seq.*;
- 18 mm. The Virginia Consumer Protection Act, Va. Code Ann. § 59.1- 200(A)(5)(6) and
19 (14), *et seq.*;
- 20 nn. The Washington Consumer Protection Act, Wash. Rev. Code § 19.86.020, *et*
21 *seq.*;
- 22 oo. The West Virginia Consumer Credit and Protection Act, W.V.A. Code § 46A-
23 6-104, *et seq.*;
- 24 pp. The Wisconsin Deceptive Trade Practices Act, W.S.A. §100.20(1), *et seq.*; and
- 25 qq. The Wyoming Consumer Protection Act, Wyo. Stat. Ann. § 40-12-105(a), (i),
26 (iii) and (xv), *et seq.*

27 144. As a direct and proximate result of Defendant's unfair methods of competition and
28 unfair, deceptive, fraudulent, unconscionable and/or unlawful acts or practices, Plaintiff and the Class

1 have suffered ascertainable losses and injuries

2 145. Plaintiff bring this action on behalf of themselves and all similarly situated persons for
3 the relief requested and to promote the public interests in the provision of truthful, non-deceptive
4 information to allow consumers to make informed purchasing decisions and to protect Plaintiff, the
5 Class, and the public from Defendant's unfair methods of competition and unfair, deceptive, fraudulent,
6 unconscionable and/or unlawful practices. Defendant's wrongful conduct has had widespread impact
7 on the public at large and caused serious injuries to the class members.

8 146. Defendant has long had notice of Plaintiff's allegations, claims and demands, including
9 from internal audits, field testing, online complaints, and direct complaints regarding Roundup.

10 **COUNT IX**

11 **Violation of State False Advertising Laws**

12 **(On Behalf of Residents of the those States and Territories with False Advertising Law Claims)**

13 147. Plaintiff re-allege and incorporate by reference the allegations contained in all preceding
14 paragraphs of this Class Action Complaint, as though set forth fully herein. Plaintiff has standing to
15 pursue this cause of action on behalf of the Class.

16 148. Plaintiff bring this claim pursuant to applicable False Advertising Laws which prohibit
17 deceptive, misleading and/or false advertising.

18 149. Defendant violated False Advertising Laws by advertising and representing – on product
19 labels, advertisements, and warranties – that Roundup was dependable and reliable when in fact it was
20 not. Defendant's violations include, but are not limited to, advertising and representing to Plaintiff. As
21 alleged, these representations were false, misleading, and likely to deceive Plaintiff, members of the
22 Class, and other reasonable consumers.

23 150. In connection with these sales, Defendant also omitted material information about
24 Roundup that it was legally obligated to disclose. Defendant never informed Plaintiff or the Class, at
25 the point of sale or otherwise, that Roundup would and could cause NHL if exposed to the active
26 ingredient. Defendant has also failed or refused to pay for resulting expenses and medical that
27 consumers have incurred.

28 151. At the time of sale, Defendant knew, or by the exercise of reasonable care should have

1 known – given internal data– that its representations and omissions were false and misleading.

2 152. Defendant made these representations and omissions for the purpose of inducing, and
3 did induce, Plaintiff consumers to purchase Roundup.

4 153. Plaintiff reviewed and reasonably relied on Defendant’s representations and omissions
5 regarding Roundup and incurred damages as a direct and proximate result.

6 154. As a direct and proximate result of Defendant’s violation of False Advertising Laws,
7 Plaintiff and the Class have suffered ascertainable losses and injuries.

8 **COUNT X**

9 **Fraudulent Concealment**

10 **(On Behalf of Residents of the United States and its Territories)**

11 155. Plaintiff re-allege and incorporate by reference the allegations contained in all preceding
12 paragraphs of this Class Action Complaint, as though set forth fully herein.

13 156. Defendant knowingly and intentionally concealed material facts regarding Roundup.

14 157. Defendant knew it was omitting material facts at the time it sold Roundup to Plaintiff
15 and at a time it had a duty to disclose these facts.

16 158. In omitting these facts, Defendant had the intent to defraud Plaintiff and the intent for
17 Plaintiff to rely upon its omissions to purchase more Roundup.

18 159. Plaintiff reviewed and reasonably relied on Defendant’s representations and omissions
19 regarding Roundup and incurred damages as a direct and proximate result, in an amount to be
20 determined at trial, including repair and replacement costs and/or damages to other property. Any
21 limitation on economic loss is precluded by Defendant’s fraudulent misrepresentations.

22 160. Plaintiff in reasonable reliance of those statements made by Defendant, incurred out of
23 pocket costs.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff pray that this case be certified and maintained as a class action and for
26 judgment to be entered upon Defendant as follows:

- 27 A. Enter an order certifying the proposed Class (and subclasses, if applicable), designating
28 Plaintiff ROBERT RAMIREZ as the Class Representative, and designating William M.

1 Audet as Lead Class Counsel and certification of a Rule 23(c)4 class and a Rule 23(b)2
2 class;

- 3 B. Declare that Defendant is financially responsible for notifying all Class members of the
4 link between Roundup and NHL;
- 5 C. Declare that Defendant must disgorge, for the benefit of the Class, all or part of the ill-
6 gotten profits it received from the sale of Roundup, or order Defendant to make full
7 restitution to Plaintiff and the members of the Class;
- 8 D. Present to the trier of fact the issue of ‘general causation’ and ‘liability’ to be applied to
9 all class members and present to the trier of fact the question of whether a link exists
10 with exposure to Roundup and NHL;
- 11 E. For punitive or exemplary damages;
- 12 F. For injunctive and declaratory relief as noted in the complaint;
- 13 G. For reasonable attorneys’ fees and reimbursement of all costs for the prosecution of this
14 action; and
- 15 H. For such other and further relief as this Court deems just and appropriate.

16 **JURY DEMAND**

17 Plaintiff hereby demand a trial by jury on all issues so properly triable thereby.

18

19

20 April 24, 2019

By: /s/ William M. Audet

21 William M. Audet (SBN 117456)
22 Ling Y. Kuang (SBN 296873)
23 AUDET & PARTNERS, LLP
24 711 Van Ness, Suite 500
25 San Francisco, CA 94102-3229
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lkuang@audetlaw.com

Counsel for Plaintiff and the Proposed Class

CIVIL COVER SHEET

The JS-CAND 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 in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

ROBERT RAMIREZ, individually and on behalf of all similarly situated individuals,

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

(c) Attorneys (Firm Name, Address, and Telephone Number) William M. Audet AUDET & PARTNERS, LLP, 711 Van Ness Ave., Suite 500, San Francisco, CA 94102 (415) 568-2555

DEFENDANTS

MONSANTO COMPANY, A Delaware Corporation

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

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

Attorneys (If Known)

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

- 1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party) 2 U.S. Government Defendant 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: 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, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, OTHER, 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. §§ 1332 (a)(d); 28 U.S.C. § 1391(b) Brief description of cause: Class action complaint for unlawful promotion, marketing and sale of Roundup products

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$ 300,000,000.00 CHECK YES only if demanded in complaint: JURY DEMAND: X Yes No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE Hon. Vince Chhabria DOCKET NUMBER 16-MD-2741

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) X SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE 04/23/2019

SIGNATURE OF ATTORNEY OF RECORD

s/ William M. Audet