

EXHIBIT 2

SERVICE OTHER THAN BY VIRGINIA SHERIFF

COMMONWEALTH OF VIRGINIA

VA. CODE §§ 8.01-293, 8.01-320, 8.01-325

Case No. CL20004770-00

Service No. 1 (Clerk's use only)

RICHMOND CITY

Circuit Court

COFFMAN, KEVIN; EST

v.

MONSANTO COMPANY

MONSANTO COMPANY, CORPORATION SERVICE COMPANY, 100 SHOCKOE SLIP, FL 2, RICHMOND, VA 23219

is the name and address of the person upon whom service of the following is to be made:

☐ Summons and Complaint

☒ COMPLAINT

I, the undersigned, swear/affirm that

1. ☐ I am an official or an employee of an official who is authorized to serve process of the type described in the attached Proof of Service and my title and bailiwick are as follows:

or,

- ☐ I am a private process server (list name, address and telephone number below).

or,

- ☐ I am an investigator employed by an attorney for the Commonwealth or the Indigent Defense Commission and have retired or resigned from my prior position as a law-enforcement officer in good standing. I affirm that the sheriff for the jurisdiction where process was served has agreed that such investigators may serve process. (List name, title and agency below.)

2. I am not a party to, or otherwise interested in, the subject matter in controversy in this case.
3. I am 18 years of age or older.
4. I served, as shown below, the above-named person upon whom service of process was to be made with copies described above.

- Date and time of service: _____
— Place of service: _____
— Method of service: _____

STREET ADDRESS, CITY AND STATE

<input type="checkbox"/> Personal Service	<input type="checkbox"/> Not Found
<input type="checkbox"/> Being unable to make personal service, a copy was delivered in the following manner: <input type="checkbox"/> Delivery to family member (not temporary sojourner or guest) age 16 or older at usual place of abode of person to be served after giving information of its purport. List name, age of recipient, and relation of recipient to party _____ <input type="checkbox"/> Posted on front door or such other door as appears to be the main entrance of usual place of abode (other authorized recipient not found). <input type="checkbox"/> (Garnishment Summons Only, § 8.01-511) Copy mailed to judgment debtor after serving the garnishee on date of service below unless a different date of mailing is shown. _____ DATE OF MAILING	

DATE

SIGNATURE

State/Commonwealth of _____, ☐ City ☐ County of _____

Subscribed and sworn to/affirmed before me this _____ day of _____, 20 _____

by _____
PRINT NAME OF SIGNATORY TITLE

DATE

NOTARY PUBLIC (My commission expires _____)
Registration No. _____

COMMONWEALTH OF VIRGINIA



SUMMONS – CIVIL ACTION RULE 3:5; VA. CODE § 8.01-2

Case No. CL20004770-00

RICHMOND CITY Circuit Court
400 NORTH 9TH STREET, RICHMOND 23219
ADDRESS

TO:

MONSANTO COMPANY, CORPORATION SERVICE COMPANY
100 SHOCKOE SLIP
FL 2
RICHMOND, VA 23219

The party upon whom this summons and the attached complaint are served is hereby notified that unless within 21 days after such service, response is made by filing in the clerk's office of this court a pleading in writing, in proper legal form, the allegations and charges may be taken as admitted and the court may enter an order, judgment or decree against such party either by default or after hearing evidence.

Appearance in person is not required by this summons.

Done in the name of the Commonwealth of Virginia.

SEPTEMBER 29, 2020 JEWETT, EDWARD F Clerk
DATE

by /S/ CRIGGER, JOHN
DEPUTY CLERK

Instructions:

Hearing Official:

IN THE CIRCUIT COURT FOR THE CITY OF RICHMOND

**SUE COFFMAN, as Personal Representative
of the Estate of Kevin Coffman, deceased**

13285 Turleytown Road
Broadway VA 22815

Plaintiff,

v.

MONSANTO COMPANY

800 Lindbergh Boulevard
St. Louis MO 63167

SERVE Registered Agent:
Corporation Service Company
100 Shockoe Slip Fl 2
Richmond, VA 23219

AND

**THE VALLEY FERTILIZER AND
CHEMICAL COMPANY, INC.**

201 Valley Road
Mount Jackson, VA 22842

SERVE Registered Agent:
Thomas Rea
201 Valley Road
Mount Jackson, VA 22842

AND

COSTCO WHOLESALE CORPORATION

999 Lake Drive
Issaquah, WA 98027

SERVE Registered Agent:
CT Corporation System
4701 Cox Road, Suite 285
Glen Allen, VA 23060

Defendants.

Case No. _____

Division No. _____

JURY TRIAL DEMANDED

COMPLAINT

COMES NOW Plaintiff Sue Coffman as personal representative of the Estate of Kevin Coffman, by and through undersigned counsel, and for her causes of action against Defendants Monsanto Company, The Valley Fertilizer and Chemical Company and Costco Wholesale Corporation alleging the following upon information and belief, except those allegations that pertain to Plaintiff, which are based on personal knowledge:

INTRODUCTION

Plaintiff brings this cause of action against all Defendants individually and collectively, jointly and severally. All claims in this action are a direct and proximate result of Defendants' negligent, willful, and wrongful conduct in connection with the design, development, manufacture, testing, packaging, promoting, marketing, distribution, and/or sale of the products as Roundup®. Plaintiff seeks recovery for damages as a result of Kevin Coffman developing Non-Hodgkin's Lymphoma ("NHL"), which was directly and proximately caused by such wrongful conduct by Defendants, the unreasonably dangerous and defective nature of Roundup®, and its active ingredient, glyphosate, and the attendant effects of developing NHL. Plaintiff did not know of an association between exposure to Roundup® and the increased risk of developing NHL until well after July 29, 2015, when the International Agency for Research on Cancer ("IARC"), an agency of the World Health Organization ("WHO"), first published its evaluation of glyphosate. All of the claims involve common questions of law and fact and share legal and medical issues that arise out of Plaintiff's exposure to Roundup®.

THE PARTIES

PLAINTIFF AND DECEDENT

Sue Coffman and Kevin Coffman

1. Plaintiff Sue Coffman is a citizen of Commonwealth of Virginia and the personal representative of the Estate of her deceased husband Kevin Coffman. She brings this action as the surviving spouse, and personal and legal representative of Mr. Coffman, having so qualified in the Circuit Court of Rockingham County on June 16, 2020. A copy of the Certificate/Letter of Qualification is attached hereto as **Exhibit 1**.

2. Decedent Kevin Coffman was a citizen of the Commonwealth of Virginia and is survived by his wife Sue and his son Aaron Coffman, thirty-eight years old.

3. Decedent was first exposed to Roundup® in Virginia as early as 1986. He was exposed until approximately 2018 while working on his apple orchard which produced approximately 6,000 to 7,000 apples per year and would be sold for commercial purposes. He sprayed Roundup® on a routine basis. He also used at his own residence spraying for weeds on his residential property. Kevin Coffman purchased Roundup® at Valley Fertilizer and Chemical Company in Mount Jackson, VA and other local distributors as well as at Costco Wholesaler Stores.

4. On or about April, 18, 2018, Kevin Coffman was diagnosed with Diffuse Large B-Cell Lymphoma (Non-Hodkins Lymphoma) in Fishersville, VA, and suffered the effects attendant thereto ultimately succumbing to December 11, 2019, as a direct and proximate result of the unreasonably dangerous and defective nature of Roundup® and Defendant's wrongful and negligent conduct in the research, development, testing, manufacture, production, promotion, distribution, marketing, and sale of Roundup®.

5. As a direct and proximate result of these injuries, Plaintiff has incurred medical expenses and has endured and will endure pain and suffering and loss of enjoyment of life, and Plaintiff has otherwise been damaged in a personal and pecuniary nature.

6. During the entire time that Decedent was exposed to Roundup[®], he did not know that exposure to Roundup[®] was injurious to his health or the health of others.

DEFENDANTS

7. Defendant Monsanto is a Delaware corporation with its headquarters and principal place of business in St. Louis, Missouri. At all relevant times, Monsanto also regularly conducted, transacted, and solicited business in St. Louis, Missouri, as well as in all States of the United States. Monsanto's world headquarters are located at 800 Lindbergh Boulevard in St. Louis County, Missouri.

8. At all times relevant to this complaint, Monsanto was the entity that discovered the herbicidal properties of glyphosate and the manufacturer of Roundup[®], which contains the active ingredient glyphosate and the surfactant POEA, as well as adjuvants and other "inert" ingredients. On information and belief, important scientific, manufacturing, marketing, sales, and other business decisions regarding Roundup[®] were made from and in the State of Missouri.

9. At all times relevant to this complaint, Monsanto was engaged in the business of manufacturing, marketing, testing, promoting, selling, and/or distributing Roundup[®] in the State of Missouri.

10. At all relevant times, Monsanto had, and continues to have, regular and systematic contact with and conducts business in and from the Commonwealth of Virginia, such that it has purposefully availed itself of the laws of the Commonwealth and expects to both sue and be sued in Virginia. In the alternative, Monsanto's presence in the Commonwealth of Virginia satisfies the due process requirements for Virginia courts to exercise jurisdiction over it.

11. Defendant The Valley Fertilizer and Chemical Company, Inc. (hereinafter “Valley”) is a citizen of and is domiciled in the Commonwealth of Virginia.

12. Valley is a distributor of Roundup® and specifically sold Roundup® to the decedent Kevin Coffman on numerous occasions which became the imps to the decedent’s death. *See* Exhibit 2.

13. Costco Wholesale Corporation (hereinafter “Costco”) is a citizen of the State of Washington where it is incorporated and in which it maintains its principal place of business. Costco has numerous stores in the Commonwealth of Virginia in which it sells a variety of products, including Roundup®. *See* Exhibit 3.

14. Costco is a distributor of Roundup® and Mr. Coffman purchased Roundup® from a Costco owned and operated store in Harrisonburg, VA.

JURISDICTION AND VENUE

15. At all times relevant hereto, Monsanto maintains a registered agent in the City of Richmond where it accepts service of process and seeks redress for its grievances.

16. Venue is proper in the Circuit Court for Richmond pursuant to Va. Code § 8.01-262(2).

17. This Court has personal jurisdiction over all Defendants pursuant to Va. Code § 8.01-328.1.A in that each caused tortious injury by an act or omission in the Commonwealth of Virginia, each transacts business in the Commonwealth of Virginia; each supplies services and things in the Commonwealth of Virginia; and are otherwise subject to service of process in the Commonwealth.

18. This Court has subject matter jurisdiction pursuant to VA Code § 17.1-513.

19. No federal court has subject matter jurisdiction pursuant to 28 USC § 1332 as complete diversity is lacking in that Plaintiff and Defendant The Valley is a citizen of the

Commonwealth of Virginia for the purpose of attempting to establish federal court diversity jurisdiction. Any attempt to remove the matter pursuant to 28 U.S.C. § 1332 alleging complete diversity of the parties would be frivolous and dilatory.

ALLEGATIONS COMMON TO ALL COUNTS

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

21. Monsanto is a multinational agricultural biotechnology corporation based in St. Louis, Missouri, and incorporated in Delaware. It is the world's leading producer of glyphosate. As of 2009, Monsanto was the world’s leading producer of seeds, accounting for 27% of the world seed market.² The majority of these seeds are of the Roundup Ready® brand. The stated advantage of Roundup Ready® crops is that they substantially improve a farmer’s ability to control weeds, because glyphosate can be sprayed in the fields during the growing season without harming the crops. In

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

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

2010, an estimated 70% of corn and cotton and 90% of soybean fields in the United States were Roundup Ready[®].³

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

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

³ William Neuman & Andrew Pollack, *Farmers Cope With Roundup-Resistant Weeds*, N.Y. 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), http://www.monsanto.com/products/documents/glyphosate-background-materials/back_history.pdf.

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

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

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 (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 [http://dx.doi.org/10.1016/S1470-2045\(15\)70134-8](http://dx.doi.org/10.1016/S1470-2045(15)70134-8).

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

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

25. The IARC Working Group classified glyphosate as a Group 2A herbicide, which means that it is *probably carcinogenic to humans*. The IARC Working Group concluded that the cancers most associated with glyphosate exposure are NHL and other haematopoietic cancers, including lymphocytic lymphoma / chronic lymphocytic leukemia, B-cell lymphoma, and multiple myeloma.⁹

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

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

FACTS

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

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

⁹ See Guyton et al., *Carcinogenicity of Tetrachlorvinphos, Parathion, Malathion, Diazinon & Glyphosate*, *supra*.

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

The Discovery of Glyphosate and Development of Roundup[®]

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

32. In addition to the active ingredient glyphosate, Roundup[®] formulations also contain adjuvants and other chemicals, such as the surfactant POEA, which are considered “inert” and therefore protected as “trade secrets” in manufacturing. Growing evidence suggests that these

¹⁰ Monsanto, *Backgrounder, History of Monsanto's Glyphosate Herbicide* (Sep. 2, 2015), http://www.monsanto.com/products/documents/glyphosate-background-materials/back_history.pdf.

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

adjuvants and additional components of Roundup[®] formulations are not, in fact, inert and are toxic in their own right.

Registration of Herbicides under Federal Law

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

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

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

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

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

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

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

Scientific Fraud Underlying the Marketing and Sale of Glyphosate/Roundup®

40. Based on early studies showing that glyphosate could cause cancer in laboratory animals, the EPA originally classified glyphosate as *possibly carcinogenic to humans* (Group C) in 1985. After pressure from Monsanto, including contrary studies it provided to the EPA, the EPA changed its classification to *evidence of non-carcinogenicity in humans* (Group E) in 1991. In so classifying glyphosate, however, the EPA made clear that the designation did not mean the chemical does not cause cancer: “It should be emphasized, however, that designation of an agent in Group E is based

on the available evidence at the time of evaluation and should not be interpreted as a definitive conclusion that the agent will not be a carcinogen under any circumstances.”¹²

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

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

43. In 1976, the United States Food and Drug Administration (“FDA”) performed an inspection of IBT that revealed discrepancies between the raw data and the final report relating to the toxicological impacts of glyphosate. The EPA subsequently audited IBT; it too found the toxicology studies conducted for the Roundup[®] herbicide to be invalid.¹⁴ An EPA reviewer stated, after finding “routine falsification of data” at IBT, that it was “hard to believe the scientific integrity of the studies when they said they took specimens of the uterus from male rabbits.”¹⁵

¹² U.S. Env’tl. Prot. Agency, *Memorandum, Subject: SECOND Peer Review of Glyphosate 1* (1991), available at http://www.epa.gov/pesticides/chem_search/cleared_reviews/csr_PC-103601_30-Oct-91_265.pdf.

¹³ Monsanto, *Backgrounder, Testing Fraud: IBT and Craven Laboratories* (Sep. 2, 2015), http://www.monsanto.com/products/documents/glyphosate-background-materials/ibt_craven_bkg.pdf.

¹⁴ U.S. Env’tl. Prot. Agency, *Summary of the IBT Review Program Office of Pesticide Programs* (1983), available at <http://nepis.epa.gov/Exe/ZyNET.exe/91014ULV.TXT?ZyActionD=ZyDocument&Client=EPA&Index=1981+Thru+1985&Docs=&Query=&Time=&EndTime=&SearchMethod=1&TocRestrict=n&Toc=&To cEntry=&QField=&QFieldYear=&QFieldMonth=&QFieldDay=&IntQFieldOp=0&ExtQFieldOp=0&X mlQuery=&File=D%3A%5Czyfiles%5CIndex%20Data%5C81thru85%5CTxt%5C00000022%5C9101 4ULV.txt&User=ANONYMOUS&Password=anonymous&SortMethod=h%7C- &MaximumDocuments=1&FuzzyDegree=0&ImageQuality=r75g8/r75g8/x150y150g16/i425&Display= p%7Cf&DefSeekPage=x&SearchBack=ZyActionL&Back=ZyActionS&BackDesc=Results%20page& MaximumPages=1&ZyEntry=1&SeekPage=x&ZyPURL>.

¹⁵ Marie-Monique Robin, *The World According to Monsanto: Pollution, Corruption and the Control of the World’s Food Supply* (2011) (citing U.S. Env’tl. Prot. Agency, *Data Validation, Memo*

44. Three top executives of IBT were convicted of fraud in 1983.

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

46. Despite the falsity of the tests that underlie its registration, within a few years of its launch, Monsanto was marketing Roundup® in 115 countries.

The Importance of Roundup® to Monsanto's Market Dominance Profits

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

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

from K. Locke, Toxicology Branch, to R. Taylor, Registration Branch. Washington, D.C. (August 9, 1978)).

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

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

Monsanto has known for decades that it falsely advertises the safety of Roundup®

50. In 1996, the New York Attorney General ("NYAG") filed a lawsuit against Monsanto based on its false and misleading advertising of Roundup® products. Specifically, the lawsuit challenged Monsanto's general representations that its spray-on glyphosate-based herbicides, including Roundup®, were "**safer than table salt**" and "**practically non-toxic**" to mammals, birds, and fish. Among the representations the NYAG found deceptive and misleading about the human and environmental safety of glyphosate and/or Roundup® are the following:

a) "Remember that environmentally friendly Roundup herbicide is biodegradable. It won't build up in the soil so you can use Roundup with confidence along customers' driveways, sidewalks and fences ..."

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

c) "Roundup biodegrades into naturally occurring elements."

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

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

¹⁷ David Barboza, *The Power of Roundup; A Weed Killer Is A Block for Monsanto to Build On*, N.Y. TIMES, Aug. 2, 2001, available at <http://www.nytimes.com/2001/08/02/business/the-power-of-roundup-a-weed-killer-is-a-block-for-monsanto-to-build-on.html>.

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

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

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

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

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

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

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

* * *

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

* * *

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

* * *

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).

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

* * *

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

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

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

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

Classifications and Assessments of Glyphosate

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

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

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

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

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

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

59. On July 29, 2015, IARC issued its Monograph for glyphosate, Monograph Volume 112. For Volume 112, a Working Group of 17 experts from 11 countries met at IARC from March 3–10, 2015 to assess the carcinogenicity of certain herbicides, including glyphosate. The March meeting culminated a nearly one-year review and preparation by the IARC Secretariat and the

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>.

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

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

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

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

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

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

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

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

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

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

69. The IARC Working Group also noted genotoxic, hormonal, and enzymatic effects in mammals exposed to glyphosate.²¹ Essentially, glyphosate inhibits the biosynthesis of aromatic amino acids, which leads to several metabolic disturbances, including the inhibition of protein and secondary product biosynthesis and general metabolic disruption.

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

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

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

Other Earlier Findings About Glyphosate's Dangers to Human Health

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

Release Patterns

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

It may also be released to the environment during its manufacture, formulation, transport, storage, disposal and cleanup, and from spills. Since glyphosate is not a listed chemical in the Toxics Release Inventory, data on releases during its manufacture and handling are not available.

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

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

The Toxicity of Other Ingredients in Roundup®

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

²⁴ Caroline Cox, *Glyphosate, Part 2: Human Exposure and Ecological Effects*, 15 J. 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).

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

74. In 2002, a study by Julie Marc, entitled "Pesticide Roundup Provokes Cell Division Dysfunction at the Level of CDK1/Cyclin B Activation,"²⁶ revealed that Roundup[®] causes delays in the cell cycles of sea urchins but that the same concentrations of glyphosate alone were ineffective and did not alter cell cycles.²⁶

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

76. In 2005, a study by Francisco Peixoto, entitled "Comparative effects of the Roundup and glyphosate on mitochondrial oxidative phosphorylation," demonstrated that Roundup[®]'s effects on rat liver mitochondria are far more toxic than equal concentrations of glyphosate alone. The Peixoto study further suggested that the harmful effects of Roundup[®] on mitochondrial

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).

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 <http://pubs.acs.org/doi/full/10.1021/tx015543g>.

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

bioenergetics could not be exclusively attributed to glyphosate but could be the result of other chemicals, such as the surfactant POEA, or in the alternative, due to a potential synergic effect between glyphosate and other ingredients in the Roundup® formulation.²⁸

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

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

79. Despite its knowledge that Roundup® is considerably more dangerous than glyphosate alone, Defendant continued to promote Roundup® as safe.

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

²⁹ Nora Benachour, et al., *Glyphosate Formulations Induce Apoptosis and Necrosis in Human Umbilical, Embryonic, and Placental Cells*, 22 CHEM. RES. TOXICOL. 97-105 (2008), available at <http://big.assets.huffingtonpost.com/france.pdf>.

Recent Worldwide Bans on Roundup®/Glyphosate

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

81. The Netherlands issued a ban on non-commercial use of all glyphosate-based herbicides in April 2014, including Roundup®. In issuing the ban, the Dutch Parliament member who introduced the successful legislation stated: “Agricultural pesticides in user-friendly packaging are sold in abundance to private persons. In garden centers, Roundup® is promoted as harmless, but unsuspecting customers have no idea what the risks of this product are. Especially children are sensitive to toxic substances and should therefore not be exposed to it.”³⁰

82. The Brazilian Public Prosecutor in the Federal District requested that the Brazilian Justice Department suspend the use of glyphosate.³¹

83. France banned the private sale of Roundup® and glyphosate following the IARC assessment for Glyphosate.³²

³⁰ *Holland’s Parliament Bans Glyphosate Herbicides*, The Real Agenda, April 14, 2014, available at <http://real-agenda.com/hollands-parliament-bans-glyphosate-herbicides/>.

³¹ Christina Sarich, *Brazil’s Public Prosecutor Wants to Ban Monsanto’s Chemicals Following Recent Glyphosate-Cancer Link*, GLOBAL RESEARCH, May 14, 2015, available at <http://www.globalresearch.ca/brazils-public-prosecutor-wants-to-ban-monsantos-chemicals-following-recent-glyphosate-cancer-link/5449440>; see Ministério Público Federal, *MPF/DF reforça pedido para que glifosato seja banido do mercado nacional*, April, 14, 2015, available at 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.

³² Zoe Schlanger, *France Bans Sales of Monsanto’s Roundup in Garden Centers, 3 Months After U.N. Calls it ‘Probable Carcinogen’*, NEWSWEEK, June 15, 2015, available at <http://www.newsweek.com/france-bans-sale-monsantos-roundup-garden-centers-after-un-names-it-probable-343311>.

84. Bermuda banned both the private and commercial sale of glyphosates, including Roundup®. The Bermuda government explained its ban as follows: “Following a recent scientific study carried out by a leading cancer agency, the importation of weed spray ‘Roundup’ has been suspended.”³³

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

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

Statement of Concern Regarding Glyphosate-Based Herbicides

87. On February 17, 2016, a consensus statement published in the journal *Environmental Health*, entitled “Concerns over use of glyphosate-based herbicides and risks associated with exposures: a consensus statement,” assessed the safety of glyphosate-based herbicides (GBHs).³⁶ The paper’s “focus is on the unanticipated effects arising from the worldwide increase in use of

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

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

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

³⁶ 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 <http://ehjournal.biomedcentral.com/articles/10.1186/s12940-016-0117-0>.

GBHs, coupled with recent discoveries about the toxicity and human health risks stemming from use of GBHs.”³⁷ The researchers drew seven factual conclusions about GBHs:

1. GBHs are the most heavily applied herbicide in the world and usage continues to rise;
2. Worldwide, GBHs often contaminate drinking water sources, precipitation, and air, especially in agricultural regions;
3. The half-life of glyphosate in water and soil is longer than previously recognized;
4. Glyphosate and its metabolites are widely present in the global soybean supply;
5. Human exposures to GBHs are rising;
6. Glyphosate is now authoritatively classified as a probable human carcinogen; and
7. Regulatory estimates of tolerable daily intakes for glyphosate in the United States and European Union are based on outdated science.³⁸

88. The researchers noted that GBH use has increased approximately 100-fold since the 1970s. Further, far from posing a limited hazard to vertebrates, as previously believed, two decades of evidence demonstrated that “several vertebrate pathways are likely targets of action, including hepatorenal damage, effects on nutrient balance through glyphosate chelating action and endocrine disruption.”³⁹

89. The paper attributes uncertainties in current assessments of glyphosate formulations to the fact that “[t]he full list of chemicals in most commercial GBHs is protected as ‘commercial business information,’ despite the universally accepted relevance of such information to scientists

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

hoping to conduct an accurate risk assessment of these herbicide formulations.” Further, the researchers argue, “[t]he distinction in regulatory review and decision processes between ‘active’ and ‘inert’ ingredients has no toxicological justification, given increasing evidence that several so-called ‘inert’ adjuvants are toxic in their own right.”⁴⁰

90. Among various implications, the researchers conclude that “existing toxicological data and risk assessments are not sufficient to infer that GBHs, as currently used, are safe.” Further, “GBH-product formulations are more potent, or toxic, than glyphosate alone to a wide array of non-target organisms including mammals, aquatic insects, and fish.” Accordingly, “risk assessments of GBHs that are based on studies quantifying the impacts of glyphosate alone underestimate both toxicity and exposure, and thus risk.” The paper concludes that this “shortcoming has repeatedly led regulators to set inappropriately high exposure thresholds.”⁴¹

91. The researchers also critique the current practice of regulators who largely rely on “unpublished, non-peer reviewed data generated by the registrants” but ignore “published research because it often uses standards and procedures to assess quality that are different from those codified in regulatory agency data requirements, which largely focus on avoiding fraud.” In the researchers’ view, “[s]cientists independent of the registrants should conduct regulatory tests of GBHs that include glyphosate alone, as well as GBH-product formulations.”⁴²

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

[A] fresh and independent examination of GBH toxicity should be undertaken, and . . . this re-examination be accompanied by systematic efforts by relevant agencies to monitor GBH levels in people and in the food supply, none of which are occurring today. The U.S. National

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

Toxicology Program should prioritize a thorough toxicological assessment of the multiple pathways now identified as potentially vulnerable to GBHs.⁴³

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

“[W]e recommend that a system be put in place through which manufacturers of GBHs provide funds to the appropriate regulatory body as part of routine registration actions and fees. Such funds should then be transferred to appropriate government research institutes, or to an agency experienced in the award of competitive grants. In either case, funds would be made available to independent scientists to conduct the appropriate long-term (minimum 2 years) safety studies in recognized animal model systems. A thorough and modern assessment of GBH toxicity will encompass potential endocrine disruption, impacts on the gut microbiome, carcinogenicity, and multigenerational effects looking at reproductive capability and frequency of birth defects.”⁴⁴

FDA Announces Testing of Glyphosate Residue in Foods

94. On February 17, 2016, the U.S. Food and Drug Administration (“FDA”) announced that, for the first time in its history, the agency planned to start testing certain foods for glyphosate residues. FDA spokeswoman Lauren Sucher explained: “The agency is now considering assignments for Fiscal Year 2016 to measure glyphosate in soybeans, corn, milk, and eggs, among other potential foods.”⁴⁵

95. In 2014, the U.S. Government Accountability Office (GAO) had severely rebuked the FDA for its failures to both monitor for pesticide residue, including that of glyphosate, and to

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ Carey Gillam, *FDA to Start Testing for Glyphosate in Food*, TIME, Feb. 17, 2016, available at <http://time.com/4227500/fda-glyphosate-testing/?xid=tcshare>.

disclose the limitations of its monitoring and testing efforts to the public.⁴⁶ The GAO had cited numerous undisclosed deficiencies in the FDA's process, specifically highlighting its omission of glyphosate testing.

96. Indeed, in the past, both the FDA and the U.S. Department of Agriculture (USDA) had routinely excluded glyphosate from their testing for the residues of hundreds of other pesticides, on the rationale that it was too expensive and unnecessary to protect public health. Ms. Sucher, the FDA spokeswoman, however, now states that "the agency has developed 'streamlined methods' for testing for the weed killer."⁴⁷

97. The FDA's move is significant as the agency possesses enforcement authority and can seek action if pesticide residues exceed enforcement guidelines.⁴⁸

European Union Vote on Glyphosate Renewal

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

99. Without an extension of the license, Monsanto's Roundup[®] and other glyphosate-based herbicides faced a general phase out in EU markets.⁴⁹

⁴⁶ U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-15-38, FDA AND USDA SHOULD STRENGTHEN PESTICIDE RESIDUE MONITORING PROGRAMS AND FURTHER DISCLOSE MONITORING LIMITATIONS (2014), *available at* <http://www.gao.gov/products/GAO-15-38>.

⁴⁷ Gillam, *supra* note 46.

⁴⁸ *Id.*; Pesticide Q&A, U.S. FOOD AND DRUG ADMINISTRATION, <http://www.fda.gov/Food/FoodborneIllnessContaminants/Pesticides/ucm114958.htm> (last visited April 19, 2016).

⁴⁹ 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>.

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

101. For instance, on March 4, 2016, *The Guardian* reported that France, the Netherlands, and Sweden disagreed glyphosate was harmless.⁵⁰ The paper quoted the Swedish environment minister, Åsa Romson, as stating: “We won’t take risks with glyphosate and we don’t think that the analysis done so far is good enough. We will propose that no decision is taken until further analysis has been done . . .”⁵¹

102. The Netherlands argued that relicensing should be placed on hold until after a separate evaluation of glyphosate’s toxicity can be completed.⁵² Leading up to the vote, Italy joined the other EU states in opposing the license renewal, citing health concerns.⁵³

103. On June 6, 2016, Member States voted but failed to reach a qualified majority in favor or against the re-authorization of glyphosate.⁵⁴

104. On June 29, 2016, the EU Commission extended the European license for glyphosate for 18 months to allow the European Chemical Agency to rule on the safety of the chemical.⁵⁵

⁵⁰ Arthur Neslen, *EU states rebel against plans to relicense weedkiller glyphosate*, THE GUARDIAN, Mar. 4, 2016, available at <http://www.theguardian.com/environment/2016/mar/04/eu-states-rebel-against-plans-to-relicense-weedkiller-glyphosate>.

⁵¹ *Id.*

⁵² Arthur Neslen, *Vote on Controversial weedkiller’s European licence postponed*, THE GUARDIAN, Mar. 8, 2016, available at <http://www.theguardian.com/environment/2016/mar/08/eu-vote-on-controversial-weedkiller-licence-postponed-glyphosate>.

⁵³ *Id.*

⁵⁴ Manon Flausch, *Commission prolongs glyphosate license by 18 months*, EURACTIV, June 29, 2016, available at <http://www.euractiv.com/section/agriculture-food/news/commission-prolongs-glyphosate-licence-by-18-months/>

⁵⁵ Arthur Neslen, *Controversial chemical in Roundup weedkiller escapes immediate ban*, THE GUARDIAN, June 29, 2016, available at

105. On July 11, 2016, the EU voted in favor of a proposal to restrict the conditions of use of glyphosate in the EU, including a ban on common co-formulant POE-tallowamine (POEA) from all glyphosate-based herbicides, including Roundup®.⁵⁶

106. These restrictions, which are non-binding on the EU states, are expected to apply until the European Chemicals Agency issues an opinion on the chemical's safety.⁵⁷

TOLLING OF THE STATUTE OF LIMITATIONS

Discovery Rule Tolling

107. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

108. Plaintiff's decedent has suffered an illness that has a latency period and does not arise until years after exposure. Plaintiff nor decedent had no way of knowing about the risk of serious illness associated with the use of and/or exposure to Roundup® and glyphosate until he were made aware that his metastatic cancer could be caused by their use and/or exposure to Roundup®. Consequently, the discovery rule applies to these cases, and the statute of limitations has been tolled until the day that Plaintiff knew or had reason to know that decedent's metastatic cancer was linked to his use of and/or exposure to Roundup®.

109. Within the time period of any applicable statutes of limitations, Plaintiff nor decedent could not have discovered, through the exercise of reasonable diligence, that exposure to Roundup® and glyphosate is injurious to human health.

<https://www.theguardian.com/business/2016/jun/29/controversial-chemical-roundup-weedkiller-escapes-immediate-ban>

⁵⁶ 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-co-formulant/?nl_ref=16562829

⁵⁷ See Arthur Neslen, *Controversial chemical in Roundup weedkiller escapes immediate ban*, THE GUARDIAN, June 29, 2016.

110. Plaintiff nor decedent did not discover, and did not know of facts that would cause a reasonable person to suspect, the risks associated with the use of and/or exposure to Roundup® and glyphosate; nor would a reasonable and diligent investigation by him have disclosed that Roundup® and glyphosate would cause his metastatic cancer.

111. Furthermore, the running of the statute of limitations has been equitably tolled by reason of Defendant's fraudulent concealment and conduct. Through its affirmative misrepresentations and omissions, Defendant actively concealed from Plaintiff the true risks associated with use of or exposure to Roundup®.

112. As a result of Defendant's actions, neither Plaintiff nor decedent were aware, and could not reasonably know or have learned through reasonable diligence, that decedent had been exposed to the risks alleged herein and that those risks were the direct and proximate result of Defendant's acts and omissions.

113. Furthermore, Defendant is estopped from relying on any statute of limitations because of its concealment of the truth regarding the safety of Roundup®. Defendant was under a duty to disclose the true character, quality and nature of Roundup® because this was non-public information over which it continues to have exclusive control. Defendant knew that this information was not available to Plaintiff, his medical providers and/or their health facilities, yet it failed to disclose the information to the public.

114. Defendant had the ability to and did spend enormous amounts of money in furtherance of their purposes of marketing and promoting a profitable product, notwithstanding the known or reasonably knowable risks. Plaintiff and medical professionals could not have afforded to and could not have possibly conducted studies to determine the nature, extent and identity of related health risks, and they were forced to rely on Defendant's representations.

115. For these reasons, all applicable statutes of limitations have been tolled by operation of the discovery rule with respect to Plaintiff's claims.

Estoppel

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

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

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

**WRONGFUL DEATH-STRICT LIABILITY FOR
DEFECTIVE MANUFACTURE AND DESIGN**
COUNT I

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

120. Plaintiff Ms. Coffman brings this claim for wrongful death in her capacity as personal and legal representative of decedent Mr. Coffman, pursuant to Va. Code §§ 8.01-50 et seq.

121. Plaintiff brings this strict liability claim against Defendants for defective manufacture and design.

122. At all relevant times, Defendants each engaged in the business of testing, developing, designing, manufacturing, marketing, selling, distributing, and promoting Roundup® products, which are defective and unreasonably dangerous to consumers, users, and other persons coming into

contact with them, including Plaintiff, thereby placing Roundup® products into the stream of commerce. These actions were under the ultimate control and supervision of Defendants.

123. At all times relevant to this litigation, Defendants designed, researched, developed, formulated, manufactured, produced, tested, assembled, labeled, advertised, promoted, marketed, sold, and distributed the Roundup® products used by Plaintiff, and/or to which Plaintiff was exposed, as described above.

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

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

126. Monsanto's Roundup® products, as researched, tested, developed, designed, licensed, formulated, manufactured, packaged, labeled, distributed, sold, and marketed by Defendant, were defectively manufactured and designed by Defendant in that when they left the hands of the Defendant's manufacturers and/or suppliers, they were unreasonably dangerous because they were not as safe as an ordinary consumer would expect when used in an intended or reasonably foreseeable manner.

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

128. At all relevant times, Monsanto's Roundup® products created significant risks to the health and safety of consumers and others who were exposed to the products that far outweigh the risks posed by other products on the market used for the same or similar purpose.

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

- a. When placed in the stream of commerce, Roundup® products were defective in design and formulation, and, consequently, dangerous to an extent beyond that which an ordinary consumer would expect.
- b. When placed in the stream of commerce, Roundup® products were unreasonably dangerous in that they were hazardous and posed a grave risk of cancer and other serious illnesses when used in a reasonably anticipated manner.
- c. When placed in the stream of commerce, Roundup® products contained unreasonably dangerous design defects and were not reasonably safe when used in a reasonably anticipated or intended manner.
- d. Defendants did not sufficiently test, investigate, or study its Roundup® products and, specifically, the active ingredient glyphosate.
- e. Exposure to Roundup® and glyphosate-containing products presents a risk of harmful side effects that outweighs any potential utility stemming from the use of the herbicide.
- f. Defendants knew or should have known at the time of marketing its Roundup® products that exposure to Roundup® and specifically, its active ingredient glyphosate, could result in cancer and other severe illnesses and injuries.
- g. Defendants did not conduct adequate post-marketing surveillance of its Roundup® products.
- h. Defendants could have employed safer alternative designs and formulations.

130. At all times relevant to this litigation, decedent used and/or was exposed to Roundup® products in an intended or reasonably foreseeable manner without knowledge of their dangerous characteristics.

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

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

133. Defendants' defective design of Roundup® amounts to willful, wanton, and/or reckless conduct by Defendant.

134. As a direct and proximate result of the defective design and manufacture of Roundup® products, Plaintiff developed NHL and has been injured catastrophically and has been caused severe and permanent pain, suffering, disability, impairment, loss of enjoyment of life, loss of care, comfort and economic damages.

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

136. The defects in Defendants' Roundup® products were substantial and contributing factors in causing Plaintiff's grave injuries, and, but for Defendants' misconduct and omissions, decedent Kevin Coffman would not have passed away.

137. As a direct and proximate result of Defendants placing the defective Roundup® products into the stream of commerce, Plaintiff has suffered and continue to suffers grave injuries, and he has endured pain and discomfort, as well as economic hardship, including considerable financial expenses for medical care and treatment. Plaintiff will continue to incur these expenses in the future.

138. As a direct and proximate result of Defendants' sale and distribution of Roundup®, as aforesaid, Mr. Coffman suffered serious bodily injury and wrongful death.

139. At the time of Mr. Coffman's death, he was 59 years old. He is survived by his spouse, Plaintiff, Sue Coffman, and his son, Aaron Coffman.

140. As a further direct and proximate result of Defendants' sale and distribution of Roundup®, the beneficiaries of Plaintiff's decedent were caused to suffer great sorrow and mental anguish, and were deprived of the solace, society, and companionship, as well as comfort, guidance, kindly offices, and advice of Mr. Coffman.

141. As a further direct and proximate result of Defendants' sale and distribution of Roundup®, the beneficiaries of Plaintiff's decedent have suffered the reasonably expected loss of the income of the decedent, as well as the reasonably expected services, protection, care, financial support, and assistance of Mr. Coffman, and have incurred medical, funeral, and other related expenses.

142. WHEREFORE, Plaintiff prays for judgment against Defendants Monsanto and Valley in a fair and reasonable sum in excess of \$10,000,000, together with costs expended herein and such further and other relief as the Court deems just and appropriate.

WRONGFUL DEATH-FAILURE TO WARN
COUNT II

143. Plaintiff incorporates by reference every other paragraph of this Complaint as if each were set forth fully and completely herein.

144. Plaintiff Ms. Coffman brings this claim for wrongful death in her capacity as personal and legal representative of decedent Mr. Coffman, pursuant to Va. Code §§ 8.01-50 et seq.

145. Plaintiff brings this strict liability claim against Defendant for failure to warn.

146. At all relevant times, Defendants engaged in the business of testing, developing, designing, manufacturing, marketing, selling, distributing, and promoting Roundup® products, which are defective and unreasonably dangerous to consumers, including Plaintiff, because they do not contain adequate warnings or instructions concerning the dangerous characteristics of Roundup®

and specifically, the active ingredient glyphosate. These actions were under the ultimate control and supervision of Defendants.

147. Defendants researched, developed, designed, tested, manufactured, inspected, labeled, distributed, marketed, promoted, sold, and otherwise released into the stream of commerce its Roundup® products, and in the course of same, directly advertised or marketed the products to consumers and end users, including Plaintiff, and persons responsible for consumers (such as employers), and Defendants therefore had a duty to warn of the risks associated with the reasonably foreseeable uses (and misuses) of Roundup® and glyphosate-containing products and a duty to instruct on the proper, safe use of these products.

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

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

150. At all times relevant to this litigation, Defendants failed to investigate, study, test, or promote the safety of its Roundup® products. Defendants also failed to minimize the dangers to

users and consumers of its Roundup® products and to those who would foreseeably use or be harmed by Defendants' herbicides, including Plaintiff.

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

152. Defendants knew or should have known that its Roundup® and glyphosate-containing products created significant risks of serious bodily harm to consumers, as alleged herein, and Defendants failed to adequately warn consumers and reasonably foreseeable users of the risks of exposure to these products. Defendants have wrongfully concealed information concerning the dangerous nature of Roundup® and its active ingredient glyphosate, and further made false and/or misleading statements concerning the safety of Roundup® and glyphosate.

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

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

155. Plaintiff could not have reasonably discovered the defects and risks associated with Roundup® or glyphosate-containing products before or at the time of Plaintiff's exposure. Plaintiff relied upon the skill, superior knowledge, and judgment of Defendant.

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

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

158. To this day, Defendants have failed to adequately and accurately warn of the true risks of Plaintiff's injuries and death caused by the use of and exposure to Roundup® and its active ingredient glyphosate, a probable carcinogen.

159. As a result of their inadequate warnings, Defendants' Roundup® products were defective and unreasonably dangerous when they left the possession and/or control of Defendants, were distributed by Defendants, and used by Kevin Coffman.

160. Defendants are liable to Plaintiff for injuries caused by its failure and Kevin Coffman's wrongful death, as described above, to provide adequate warnings or other clinically relevant information and data regarding the appropriate use of its Roundup® products and the risks associated with the use of or exposure to Roundup® and glyphosate.

161. The defects in Defendant's Roundup® products were substantial and contributing factors in causing Plaintiff's injuries, and, but for Defendants' misconduct and omissions, Plaintiff would not have sustained injuries including Kevin Coffman's wrongful death.

162. Had Defendants provided adequate warnings and instructions and properly disclosed and disseminated the risks associated with its Roundup® products, Plaintiff could have avoided the risk of developing injuries as alleged herein and Plaintiff could have obtained alternative herbicides.

163. As a direct and proximate result of Defendant placing its defective Roundup® products into the stream of commerce and failing to warn Plaintiff of the increased risk of NHL associated with the use of and/or exposure to Roundup® products as described herein, Plaintiff has developed NHL and has been injured catastrophically and has been caused severe and permanent pain, suffering, disability, impairment, loss of enjoyment of life, loss of care, comfort and economic damages, including for medical care and treatment. Plaintiff will continue to incur these expenses in the future.

164. As a direct and proximate result of Defendants' failure to warn, as aforesaid, Mr. Coffman suffered serious bodily injury and wrongful death.

165. At the time of Mr. Coffman's death, he was 59 years old. He is survived by his spouse, Plaintiff, Sue Coffman, and his son, Aaron Coffman.

166. As a further direct and proximate result of Defendants' failure to warn, the beneficiaries of Plaintiff's decedent were caused to suffer great sorrow and mental anguish, and were

deprived of the solace, society, and companionship, as well as comfort, guidance, kindly offices, and advice of Mr. Coffman.

167. As a further direct and proximate result of Defendants' failure to warn, the beneficiaries of Plaintiff's decedent have suffered the reasonably expected loss of the income of the decedent, as well as the reasonably expected services, protection, care, financial support, and assistance of Mr. Coffman, and have incurred medical, funeral, and other related expenses.

168. WHEREFORE, Plaintiff prays for judgment against Defendant Monsanto in a fair and reasonable sum in excess of \$10,000,000, together with costs expended herein and such further and other relief as the Court deems just and appropriate.

WRONGFUL DEATH-NEGLIGENCE
COUNT III

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

170. Plaintiff Ms. Coffman brings this claim for wrongful death in her capacity as personal and legal representative of decedent Mr. Coffman, pursuant to Va. Code §§ 8.01-50 et seq.

171. At all relevant times, Defendants breached their duties to Plaintiff and were otherwise negligent in marketing, designing, manufacturing, producing, supplying, inspecting, testing, selling and/or distributing Roundup® products.

172. Defendants, directly or indirectly, caused Roundup® products to be purchased and/or used by Plaintiff.

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

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

175. At all times relevant to this litigation, Defendants knew or, in the exercise of reasonable care, should have known of the hazards and dangers of Roundup® and specifically, the carcinogenic properties of the chemical glyphosate.

176. Accordingly, at all times relevant to this litigation, Defendants knew or, in the exercise of reasonable care, should have known that use of or exposure to its Roundup® products could cause Plaintiff's injuries and wrongful death and thus created a dangerous and unreasonable risk of injury to the users of these products, including Plaintiff.

177. Defendants knew or, in the exercise of reasonable care, should have known that Roundup® is more toxic than glyphosate alone and that safety studies on Roundup®, Roundup®'s adjuvants and "inert" ingredients, and/or the surfactant POEA were necessary to protect Plaintiff from Roundup®.

178. Defendants knew or, in the exercise of reasonable care, should have known that tests limited to Roundup®'s active ingredient glyphosate were insufficient to prove the safety of Roundup®.

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

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

181. Defendants failed to appropriately and adequately test Roundup®, Roundup®'s adjuvants and "inert" ingredients, and/or the surfactant POEA to protect Plaintiff from Roundup®.

182. Despite its ability and means to investigate, study, and test its products and to provide adequate warnings, Defendants failed to do so.

183. Defendants' negligence included:

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

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

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

d. Failing to undertake sufficient studies and conduct necessary tests to determine the safety of "inert" ingredients and/or adjuvants contained within Roundup®, and the propensity of these ingredients to render Roundup® toxic, increase the toxicity of Roundup®, whether these ingredients are carcinogenic, magnify the carcinogenic properties of Roundup®, and whether or not "inert" ingredients and/or adjuvants were safe for use;

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

- f. Failing to design and manufacture Roundup[®] products so as to ensure they were at least as safe and effective as other herbicides on the market;
- g. Failing to provide adequate instructions, guidelines, and safety precautions to those persons who Defendant could reasonably foresee would use and/or be exposed to its Roundup[®] products;
- h. Failing to disclose to Plaintiff, users, consumers, and the general public that the use of and exposure to Roundup[®] presented severe risks of cancer and other grave illnesses;
- i. Failing to warn Plaintiff, users, consumers, and the general public that the product's risk of harm was unreasonable and that there were safer and effective alternative herbicides available to Plaintiff and other users or consumers;
- j. Systematically suppressing or downplaying contrary evidence about the risks, incidence, and prevalence of the side effects of Roundup[®] and glyphosate-containing products;
- k. Representing that its Roundup[®] products were safe for their intended use when, in fact, Defendants knew or should have known that the products were not safe for their intended use;
- l. Declining to make or propose any changes to Roundup[®] products' labeling or other promotional materials that would alert the consumers and the general public of the risks of Roundup[®] and glyphosate;
- m. Advertising, marketing, and recommending the use of Roundup[®] products, while concealing and failing to disclose or warn of the dangers known by Defendants to be associated with or caused by the use of or exposure to Roundup[®] and glyphosate;
- n. Continuing to disseminate information to its consumers, which indicate or imply that Defendant's Roundup[®] products are not unsafe for use in the agricultural, horticultural industries, and/or home use; and
- o. Continuing the manufacture and sale of its products with the knowledge that the products were unreasonably unsafe and dangerous.

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

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

186. As a direct and proximate result of Defendants' negligence, Plaintiff developed the injuries, harm, and economic losses that Plaintiff suffered, and will continue to suffer, as described herein.

187. Defendants' conduct, as described above, was reckless. Defendants regularly risk the lives of consumers and users of its products, including Plaintiff, with full knowledge of the dangers of its products. Defendants made conscious decisions not to redesign, re-label, warn, or inform the unsuspecting public, including Plaintiff. Defendants' reckless conduct therefore warrants an award of punitive damages.

188. As a proximate result of Defendants' wrongful acts and omissions in placing its defective Roundup® products into the stream of commerce without adequate warnings of the hazardous and carcinogenic nature of glyphosate, Plaintiff developed NHL and has been injured catastrophically and has been caused severe and permanent pain, suffering, disability, impairment, loss of enjoyment of life, loss of care, comfort and economic damages, including significant expenses for medical care and treatment, and will continue to incur these expenses in the future.

189. As a direct and proximate result of Defendants' negligent acts and omissions, as aforesaid, Mr. Coffman suffered serious bodily injury and wrongful death.

190. At the time of Mr. Coffman's death, he was 59 years old. He is survived by his spouse, Plaintiff, Sue Coffman, and his son, Aaron Coffman.

191. As a further direct and proximate result of Defendants' negligent acts and omissions, the beneficiaries of Plaintiff's decedent were caused to suffer great sorrow and mental anguish, and were deprived of the solace, society, and companionship, as well as comfort, guidance, kindly offices, and advice of Mr. Coffman.

192. As a further direct and proximate result of Defendants' negligent acts and omissions, the beneficiaries of Plaintiff's decedent have suffered the sonably expected loss of the income of the decedent, as well as the reasonably expected services, protection, care, financial support, and assistance of Mr. Coffman, and have incurred medical, funeral, and other related expenses.

193. WHEREFORE, Plaintiff prays for judgment against Defendant Monsanto in a fair and reasonable sum in excess of \$10,000,000, together with costs expended herein and such further and other relief as the Court deems just and appropriate.

WRONGFUL DEATH-BREACH OF IMPLIED WARRANTIES
COUNT IV

194. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

195. Plaintiff Ms. Coffman brings this claim for wrongful death in her capacity as personal and legal representative of decedent Mr. Coffman, pursuant to Va. Code §§ 8.01-50 et seq.

196. At all relevant times, Defendants engaged in the business of testing, developing, designing, formulating, manufacturing, marketing, selling, distributing, and promoting its Roundup® products, which are defective and unreasonably dangerous to users, consumers and those in proximity to users, including decedent, thereby placing Roundup® products into the stream of commerce. These actions were under the ultimate control and supervision of Defendants.

197. Before the time that Plaintiff was exposed to the use of the aforementioned Roundup® products, Defendants impliedly warranted to its consumers and users—including Kevin Coffman—that its Roundup® products were of merchantable quality and safe and fit for the use for which they were intended; specifically, as horticultural herbicides.

198. Defendants, however, failed to disclose that Roundup® has dangerous propensities when used as intended and that the use of and/or exposure to Roundup® and glyphosate-containing products carries an increased risk of developing severe injuries, including Plaintiff's injuries and Kevin Coffman's wrongful death.

199. Upon information and belief, Plaintiff reasonably relied upon the skill, superior knowledge and judgment of Defendants and upon its implied warranties that the Roundup® products were of merchantable quality and fit for their intended purpose or use.

200. The Roundup® products were expected to reach and did in fact reach consumers, users and those in proximity to users, including Plaintiff, without substantial change in the condition in which they were manufactured and sold by Defendant.

201. At all relevant times, Defendant was aware that consumers, users, and those in proximity of users of its products, including Plaintiff, would use Roundup® products as marketed by Defendant, which is to say that Plaintiff were the foreseeable users of Roundup®.

202. Defendants intended that its Roundup® products be used in the manner in which Plaintiff in fact used or were exposed to them and Defendants impliedly warranted each product to be of merchantable quality, safe, and fit for this use, despite the fact that Roundup® was not adequately tested or researched.

203. In reliance upon Defendants' implied warranty, Plaintiff used or was in proximity to the use of Roundup® as instructed and labeled and in the foreseeable manner intended, recommended, promoted and marketed by Defendants.

204. Plaintiff could not have reasonably discovered or known of the risks of serious injury associated with Roundup® or glyphosate.

205. The harm caused by Defendants' Roundup® products far outweighed their benefit, rendering the products more dangerous than an ordinary consumer or user would expect and more dangerous than alternative products.

206. As a direct and proximate result of Defendant's wrongful acts and omissions Plaintiff has suffered severe and permanent physical and emotional injuries. Plaintiff has endured pain and suffering, has suffered economic loss, including significant expenses for medical care and treatment, and will continue to incur these expenses in the future.

207. As a direct and proximate result of Defendants' breach, as aforesaid, Mr. Coffman suffered serious bodily injury and wrongful death.

208. At the time of Mr. Coffman's death, he was 59 years old. He is survived by his spouse, Plaintiff, Sue Coffman, and his son, Aaron Coffman.

209. As a further direct and proximate result of Defendants' breach, the beneficiaries of Plaintiff's decedent were caused to suffer great sorrow and mental anguish, and were deprived of the solace, society, and companionship, as well as comfort, guidance, kindly offices, and advice of Mr. Coffman.

210. As a further direct and proximate result of Defendants' breach, the beneficiaries of Plaintiff's decedent have suffered the reasonably expected loss of the income of the decedent, as well as the reasonably expected services, protection, care, financial support, and assistance of Mr. Coffman, and have incurred medical, funeral, and other related expenses.

211. WHEREFORE, Plaintiff prays for judgment against Defendant Monsanto in a fair and reasonable sum in excess of \$10,000,000, together with costs expended herein and such further and other relief as the Court deems just and appropriate.

PUNITIVE DAMAGES
COUNT V

212. Plaintiff incorporates by reference every other paragraph of this Complaint as if each were set forth herein.

213. Plaintiff Ms. Coffman brings this claim for wrongful death in her capacity as personal and legal representative of decedent Mr. Coffman, pursuant to Va. Code §§ 8.01-50 et seq.

214. Defendants have acted willfully, wantonly, intentionally, and recklessly in one or more of the following ways:

a. Defendants knew of the unreasonably high risk of NHL posed by the Roundup[®] products before manufacturing, marketing, distributing and/or selling the Roundup[®] products, yet purposefully proceeded with such action;

b. Despite knowledge of the high risk of NHL associated with use and/or exposure to Roundup® products, Defendants affirmatively minimized this risk through marketing and promotional efforts and product labeling;

c. Through the actions outlined above, Defendants expressed a reckless indifference to the safety of users of Roundup® products, including Plaintiff.

215. Defendants knew of the dangers and risks of Roundup® products, yet it concealed and/or omitted this information from labels and warnings contained on Roundup® products in furtherance of its knowing and willful actions.

216. These actions were outrageous because of Defendants' reckless indifference to the safety of users of Roundup® products and/or those who became exposed to it.

217. As a direct and proximate result of the willful, wanton, malicious, intentionally and/or reckless conduct of Defendants, Plaintiff has sustained damages and wrongfully died.

218. WHEREFORE, Plaintiff prays for a judgment for punitive damages against Defendant, jointly and severally, in a fair and reasonable amount sufficient to punish Defendant and deter it and others from engaging in similar conduct in the future, costs expended herein, and such further and other relief as the Court deems just and appropriate.

JURY DEMAND

Plaintiff demands a trial by jury on all issues allowed and each of the claims alleged herein.

**SUE COFFMAN, as Personal
Representative of the Estate of Kevin
Coffman, deceased**

By: /s/ Ryan C. Posey
Ryan C. Posey (VA Bar # 85109)
POSEY LEBOWITZ PLLC
3221 M Street, NW
Washington, DC 20007
Telephone: (202) 524-0123
Facsimile: (202) 810-9009
E-mail: rposey@poseylebowitz.com

Virginia Counsel for Plaintiff

**LEAD COUNSEL FOR PLAINTIFF TO
BE ADMITTED *PRO HAC VICE*:**

Jonathan Nace, Esq.
NIDEL & NACE, P.L.L.C.
One Church Street
Suite 802
Rockville, MD 20850
(202) 780-5153
jon@nidellaw.com
Counsel for Plaintiff

COSTCO WHOLESALE
***HARRISONBURG #238**

BUSINESS MEMBER 316603809090 7

153316	CAMP CHAIR	15.99	T
153316	CAMP CHAIR	15.99	T
92489	PICNIC TABLE	139.99	T
64507	ROUNDUP 41%	146.99	T

**** 4.50TAX RATE 14.35

TOTAL 333.31

Discover 333.31

XXXXXXXXXXXXXXXXX9175 9905 SWIPED

Seq #: 000074 Ref #: 022625

Discover Resp: 00A

00APPROVED

AMOUNT: \$333.31

0238 008 0000000051 0190

CHANGE .00

TOTAL NUMBER OF ITEMS SOLD = 4

CASHIER: JEROME REG#8

6/22/98 16:54 0238 08 0190 51

1-800-774-2678 Member Service

Thank You!

Please Come Again

Exhibit 1

CERTIFICATE/LETTER OF QUALIFICATION

Will File No. **200110**

COMMONWEALTH OF VIRGINIA

VA. CODE §§ 6.2-893, 6.2-1171, 6.2-1365, 6.2-1367, 6.2-2011, 6.2-506, 6.2-607

Rockingham County Circuit Court

I, Cindy Cline, the duly qualified deputy clerk of this Court, **CERTIFY** that on **June 16, 2020**
DATE

Sue Ellen Coffman,

NAME(S) OF PERSON(S) QUALIFYING

duly qualified in this court, under applicable provisions of law, as **Executor** of the estate of

KEVIN L. COFFMAN

☒ DECEASED

The powers of the fiduciary(ies) named above continue in full force and effect.

\$100.00 bond has been posted.

Given under my hand and the seal of this Court on

June 16, 2020

DATE

Chaz W. Haywood, Clerk

by , Deputy Clerk

THE VALLEY FERTILIZER & CHEMICAL CO., INC.

REMIT TO:
 POST OFFICE BOX 816
 MT. JACKSON, VIRGINIA 22842
 PHONE 703-477-3121

INVOICE NO. **22820**

INVOICE DATE **05/27/94**

SOLD TO
 KEVIN COFFMAN
 P.O. BOX 323
 BROADWAY, VA 22815

SHIP TO
 KEVIN COFFMAN
 P.O. BOX 323
 BROADWAY, VA 22815

REFERENCE NO.	DATE SHIPPED	SHIPPED VIA	FOB	BY	TERMS	CD
SM 0001	05/23/94	PICK-UP	MT. JACKSON	TEM	REGULAR	R

ORDERED	SHIPPED	ITEM NO.	UNITS	DESCRIPTION	UNIT PRICE	TOTAL
	2.5	ROUND 2.5 C*	GL	ROUNDUP 2/2.5 GAL 524-445	52.7400	131.85
		C*		WEED KILLING COMPOUND, LIQ		
		C*		NOIBN		
	1	HBSR 1 C*	GL	SPREADER HARVEST BRAND 4/1 PICK-UP ALLOWANCE	13.2500	13.25
						-7.25

*Del 6/10/94
 LK# 22820*

SERVICE CHARGES AT THE RATE OF 2% PER MONTH (26.82% APR) WILL BE ADDED TO ALL PAST DUE INVOICES. NO DISCOUNT WILL BE ALLOWED ON ACCOUNTS WITH PAST DUE BALANCES. PRICES SUBJECT TO CHANGE WITHOUT NOTICE.	SUB-TOTAL	137.85
	SALES TAX	0.00
	FREIGHT	0.00
	TOTAL	137.85

REC'D/DEL'D BY

If paid by: 06/20/94 06/30/94
 Deduct: \$4.14 NET DUE

133.71

INVOICE

THE VALLEY FERTILIZER & CHEMICAL CO., INC.

REMIT TO:
POST OFFICE BOX 816
MT. JACKSON, VIRGINIA 22842
PHONE 540-477-3121

INVOICE NO. 077073

INVOICE DATE 04/24/2003

SOLD
TO

KEVIN COFFMAN
P.O. BOX 323
BROADWAY, VA 22815

SHIP
TO

KEVIN COFFMAN
P.O. BOX 323
BROADWAY, VA 22815

REFERENCE NO.	DATE SHIPPED	SHIPPED VIA	FOB	BY	TERMS	CD
WD 51471	04/23/03	PICK-UP	MT. JACKSON	TEM	REGULAR	R
ORDERED	SHIPPED	ITEM NO.	UNITS	DESCRIPTION	UNIT PRICE	TOTAL
	2.5	ROUNDMAX2.	5GL	ROUNDUP ULTRA MAX 2/2.5 GL	64.5200	161.30
	2.5	HBSPR 2.5	GL	SPREADER SURFACT 820 2/2.5	13.0000	32.50
		C*		PICK-UP ALLOWANCE	5%	-9.70
<p> $\begin{array}{r} 161.30 \\ - 38.07 \\ \hline 123.23 \\ - 4.60 \\ \hline 118.63 \end{array}$ $\begin{array}{r} 193.80 \\ - 9.70 \\ \hline 184.10 \\ - 5.52 \\ \hline 178.58 \end{array}$ $\begin{array}{r} 320 \text{ app} \\ - 16 \\ \hline 304 \text{ pts} \\ - 20 \\ \hline 284 \end{array}$ $\begin{array}{r} 7.43 \text{ pt} \\ \times 30 \\ \hline 222.9 \text{ Round-up} \\ + .75 \\ \hline 223.65 \end{array}$ $\begin{array}{r} 32.50 \\ - 1.637 \\ \hline 30.863 \\ - 1.2994 \\ \hline 29.5636 \\ - 1.20 \\ \hline 28.3636 \end{array}$ </p> <p>pay 178.52 before 5/20/03</p> <p>PAID-5/10/03 Ck#10231</p>						
SERVICE CHARGES AT THE RATE OF 2% PER MONTH (26.82% APR) WILL BE ADDED TO ALL PAST DUE INVOICES. NO DISCOUNT WILL BE ALLOWED ON ACCOUNTS WITH PAST DUE BALANCES. PRICES SUBJECT TO CHANGE WITHOUT NOTICE.					SUB-TOTAL	184.10
					SALES TAX	0.00
					FREIGHT	0.00
REC'D/DEL'D BY <i>30/0</i>					TOTAL	184.10

If paid by: 05/20/2003 05/31/2003

Deduct: \$5.52 NET DUE

Intentionally Left Blank

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF RICHMOND

SUE COFFMAN, as Personal)	
Representative of the Estate of Kevin)	
Coffman, Deceased,)	
)	
Plaintiff,)	
)	
v.)	Case No. CL20004770-00
)	
MONSANTO COMPANY, <i>et al.</i> ,)	
)	JURY TRIAL DEMANDED
Defendants.)	
_____)	

DEFENDANT MONSANTO COMPANY’S ANSWER TO PLAINTIFF’S COMPLAINT

Defendant Monsanto Company (“Monsanto”), by and through its counsel, respectfully responds by generally denying all allegations contained in plaintiff’s Complaint, except as set forth below. As defined in the Complaint and as used in this Answer, Monsanto refers to Monsanto Company, a United States based company incorporated in Delaware, and not to other Monsanto-affiliated companies. Monsanto denies – and objects to – allegations by plaintiff that purport to lump Monsanto together with other defendants. Monsanto responds to this Complaint only on behalf of Monsanto and not on behalf of any other defendant. Although many paragraphs in the Complaint allege exposure or use of Monsanto products by “Plaintiff,” Monsanto nevertheless responds to the allegations in those paragraphs as if they refer to decedent Kevin Coffman. Silence as to any allegations shall constitute a denial. By filing this answer, Monsanto preserves – and does not waive – the argument set forth in its Motion to Transfer Venue (filed January 11, 2021).

In response to the allegations in the fourth sentence of the section titled “INTRODUCTION,” Monsanto denies that any exposure to Roundup®-branded products can cause non-Hodgkin’s lymphoma (“NHL”) and states that the scientific studies upon which the

International Agency for Research on Cancer (“IARC”) purported to base its evaluation of glyphosate were all publicly available before March 2015. Monsanto denies the remaining allegations in the section titled “INTRODUCTION.”

1. Monsanto lacks information or knowledge sufficient to form a belief as to the truth of the allegation in the first sentence of paragraph 1 and therefore denies that allegation. In response to the allegations in the second sentence of paragraph 1, Monsanto admits that plaintiff purports to bring an action for damages allegedly related to exposure to Roundup®-branded products but denies any liability to plaintiff. Monsanto lacks information or knowledge sufficient to form a belief as to the truth of the remaining allegations in the second sentence of paragraph 1. In response to the remaining allegations in paragraph 1, Monsanto states that the cited document speaks for itself and does not require a response.

2. Monsanto lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 2 and therefore denies those allegations.

3. Monsanto lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 3 and therefore denies those allegations.

4. Monsanto denies the allegations in paragraph 4.

5. Monsanto lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 5 and therefore denies those allegations.

6. Monsanto denies that any exposure to Roundup®-branded products can cause NHL and other serious illnesses and therefore denies those allegations in paragraph 6. Monsanto states, however, that the scientific studies upon which IARC purported to base its evaluation of glyphosate were all publicly available before March 2015. Monsanto lacks information or

knowledge sufficient to form a belief as to the truth of the remaining allegations in paragraph 6 and therefore denies those allegations.

7. Monsanto admits the allegations in the first and last sentences of paragraph 7. The allegations in the second sentence of paragraph 7 are vague and conclusory and comprise attorney characterizations, and are accordingly denied.

8. In response to the allegations in the first sentence in paragraph 8, Monsanto admits that it discovered the herbicidal properties of glyphosate; that it has manufactured Roundup[®]-branded herbicides; that certain Roundup[®]-branded herbicides contain POEA and adjuvants; and that the Environmental Protection Agency (“EPA”) has classified surfactants and adjuvants as inert. Monsanto notes that EPA has determined that the surfactants used in Roundup[®]-branded herbicides do not pose an unreasonable risk to human health. Monsanto denies the remaining allegations in the first sentence of paragraph 8. In response to the final sentence of paragraph 8, Monsanto admits that certain scientific, manufacturing, marketing, and sales decisions regarding Roundup[®]-branded products were made in the State of Missouri, but states that the terms “important” and “business decisions” are vague and ambiguous, and therefore Monsanto denies the same.

9. Monsanto denies the allegations in paragraph 9.

10. The allegations in paragraph 10 set forth conclusions of law for which no response is required.

11. The allegations in paragraph 11 are directed at a defendant other than Monsanto, so no response from Monsanto is required for these allegations.

12. The allegations in paragraph 12 are directed at a defendant other than Monsanto, so no response from Monsanto is required for these allegations.

13. The allegations in paragraph 13 are directed at a defendant other than Monsanto, so no response from Monsanto is required for these allegations.

14. The allegations in paragraph 14 are directed at a defendant other than Monsanto, so no response from Monsanto is required for these allegations.

15. The allegation in paragraph 15 regarding Monsanto seeking redress for its grievance is vague and conclusory, comprises attorney characterizations, and is accordingly denied. The remaining allegations in paragraph 15 set forth conclusions of law for which no response is required.

16. The allegations in paragraph 16 set forth conclusions of law for which no response is required.

17. In response to the allegations in paragraph 17, Monsanto denies that it has caused tortious injury to plaintiff and/or decedent. The remaining allegations in paragraph 17 set forth conclusions of law for which no response is required.

18. The allegations in paragraph 18 set forth conclusions of law for which no response is required.

19. The allegations in paragraph 19 set forth conclusions of law for which no response is required.

20. Monsanto admits the allegations in the first two sentences of paragraph 20. In response to the third sentence of paragraph 20, Monsanto admits that certain Roundup[®]-branded herbicides contain POEA and adjuvants and that EPA has classified surfactants and adjuvants as inert. In response to the last sentence of paragraph 20, Monsanto admits that glyphosate was one of the world's most widely used herbicides in 2013, but notes that Monsanto has not been the only manufacturer of glyphosate-based herbicides. Monsanto lacks information or knowledge

sufficient to form a belief as to the accuracy of the specific numbers and statistics cited in the remaining sentences of paragraph 20 and therefore denies those allegations.

21. In response to the allegations in paragraph 21, Monsanto admits that its headquarters are in St. Louis County, Missouri, and that it is incorporated in Delaware. Monsanto admits that it and its affiliated companies have operations and offices in countries around the world. Monsanto admits that it has been a producer of glyphosate-based herbicides but lacks sufficient information regarding the business of other glyphosate producers to admit or deny the allegation as written in the second sentence of paragraph 21. Monsanto admits that it has been the leading producer of seeds that contain the Roundup Ready® trait and that use of crops with the Roundup Ready® trait substantially improve a farmer's ability to control weeds. Monsanto lacks information or knowledge sufficient to form a belief as to the accuracy of the specific numbers and statistics provided in the remaining sentences of paragraph 21 and therefore denies those allegations.

22. Monsanto admits the allegations in the first sentence of paragraph 22. Monsanto admits that certain studies have reported that glyphosate is found at *de minimis* levels significantly below regulatory safety limits in various locations and media. Monsanto otherwise denies the remaining allegations in paragraph 22.

23. Monsanto admits the allegations in the first sentence of paragraph 23. Monsanto denies the allegations in the second sentence of paragraph 23 to the extent they suggest that IARC based its evaluation on a complete or accurate assessment of the scientific research regarding glyphosate.

24. Monsanto admits the allegations in the first sentence of paragraph 24. Monsanto denies the allegations in the second sentence of paragraph 24.

25. In response to the allegations in paragraph 25, Monsanto admits that the IARC working group classified glyphosate under Group 2A. Monsanto denies the remaining allegations in paragraph 25.

26. Monsanto denies the allegations in paragraph 26.

27. In response to paragraph 27, Monsanto admits that glyphosate repeatedly has been found to be safe to humans and the environment by regulators in the United States and around the world and further admits that it has labeled glyphosate products as approved by regulatory bodies consistent with those findings. Monsanto also admits that the EPA repeatedly has concluded pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”) that glyphosate-based herbicides create no unreasonable risk to human health or to the environment when used in accordance with the label. To the extent that paragraph 27 alleges that Monsanto has labeled glyphosate-based or Roundup[®]-branded herbicides in any manner different or in addition to such regulatory approval, Monsanto denies such allegations.

28. In response to the allegations in paragraph 28, Monsanto admits that glyphosate is an herbicide that is used to kill invasive plants and weeds. The remaining allegations in paragraph 28 are vague and ambiguous and Monsanto lacks information or knowledge sufficient to form a belief as to the truth of the remaining allegations in paragraph 28 and therefore denies those allegations.

29. Monsanto admits the allegations in the first sentence of paragraph 29. Monsanto denies the allegations in the second sentence of paragraph 29 because the impact of glyphosate on treated plants varies depending upon the amount of glyphosate applied and the type of plant. Monsanto denies the allegations in the third sentence of paragraph 29 to the extent that it

suggests that glyphosate is present in any plants at anything other than *de minimis* amounts well within regulatory safety levels, as determined by EPA.

30. In response to the allegations in paragraph 30, Monsanto admits that farmers have safely used Roundup®-branded products since the 1970s. Monsanto denies the remaining allegations in paragraph 30.

31. Monsanto admits the allegations in the first two sentences of paragraph 31 and admits that it has marketed Roundup®-branded products in accord with EPA's regulatory determinations under FIFRA. Monsanto otherwise denies the remaining allegations in paragraph 31.

32. In response to the allegations in paragraph 32, Monsanto admits that certain Roundup®-branded herbicides contain POEA and adjuvants, that EPA has classified surfactants and adjuvants as inert, and that the specific surfactants and adjuvants used in Roundup®-branded herbicides – like those in other manufacturers' herbicide products – are protected by EPA as “trade secrets.” Monsanto notes that EPA has determined that the surfactants used in Roundup®-branded herbicides do not pose an unreasonable risk to human health. Monsanto denies the remaining allegations in paragraph 32.

33. Monsanto admits the allegations in paragraph 33.

34. In response to the allegations in paragraph 34, Monsanto admits that EPA requires registrants of herbicides to submit extensive data in support of the human health and environmental safety of their products and further admits that EPA will not register or approve the labeling of herbicides that do not satisfy the requirements set forth in FIFRA. The remaining allegations in paragraph 34 set forth conclusions of law for which no response is required.

35. The allegations in paragraph 35 set forth conclusions of law for which no response is required.

36. In response to the allegations in paragraph 36, Monsanto admits that Roundup®-branded products are registered by EPA for manufacture, sale, and distribution in the United States and are registered by the State of California for sale and distribution.

37. In response to the allegations in paragraph 37, Monsanto admits that EPA requires registrants of herbicides to submit extensive data in support of the human health and environmental safety of their products and further admits that EPA will not register or approve the labeling of herbicides that do not satisfy the requirements set forth in FIFRA. Monsanto states that the term “the product tests” in the last sentence of paragraph 37 is vague and ambiguous, and Monsanto therefore denies the same. The remaining allegations in paragraph 37 set forth conclusions of law for which no response is required.

38. Monsanto denies the allegations in paragraph 38 to the extent they suggest that EPA only evaluates the safety of pesticide products on the date of their initial registration. Monsanto admits that EPA is in the process of conducting regulatory review of various pesticide products, but Monsanto lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 38 regarding such pesticide products generally. The remaining allegations in paragraph 38 set forth conclusions of law for which no response is required.

39. In response to the allegations in paragraph 39, Monsanto admits that EPA has undertaken a regulatory review of glyphosate and further admits that EPA has not released its findings. Monsanto states, however, that: (a) in September 2016, EPA’s Office of Pesticide Programs (“OPP”) issued a 227-page evaluation of glyphosate’s carcinogenic potential, concluding that “[t]he strongest support is for [the descriptor] ‘not likely to be carcinogenic to

humans’ at doses relevant to human health risk assessment”¹; and (b) at the same time, EPA posted an October 2015 final report by its standing Cancer Assessment Review Committee (“CARC”), in which CARC endorsed EPA’s existing classification of glyphosate as “Not Likely to be Carcinogenic to Humans.”² Monsanto further states that, in December 2017, EPA’s OPP issued a detailed, lengthy revised evaluation of glyphosate’s carcinogenic potential that reiterated the conclusion that “[t]he strongest support is for [the descriptor] ‘not likely to be carcinogenic to humans’.”³ Monsanto lacks information or knowledge sufficient to form a belief as to the truth of the remaining allegations in paragraph 39 and therefore denies these allegations.

40. In response to the allegations in paragraph 40, Monsanto admits that an EPA review committee classified glyphosate as Class C in 1985 based on limited data and that EPA changed its classification of glyphosate to Group E based upon a full evaluation of the scientific evidence, including but not limited to three animal carcinogenicity studies. Monsanto admits that plaintiff has accurately quoted from one passage in an EPA document in 1991 with respect to the designation of an agent as Group E, but states that EPA repeatedly has concluded that glyphosate does not pose any cancer risk to humans. In addition to the conclusions in the two

¹ EPA’s Office of Pesticide Programs, *Glyphosate Issue Paper: Evaluation of Carcinogenic Potential* at 141 (Sept. 12, 2016) (“EPA OPP Report”), <https://www.regulations.gov/document?D=EPA-HQ-OPP-2016-0385-0094>. The EPA OPP Report was prepared in anticipation of an EPA Scientific Advisory Panel meeting on glyphosate’s carcinogenic potential.

² Cancer Assessment Review Committee, Health Effects Division, Office of Pesticide Programs, U.S. Environmental Protection Agency, *Cancer Assessment Document – Evaluation of the Carcinogenic Potential of Glyphosate* at 10, 77 (Final Report, Oct. 1, 2015) (“EPA CARC Final Report”), <https://www.regulations.gov/document?D=EPA-HQ-OPP-2016-0385-0014>.

³ EPA’s Office of Pesticide Programs, *Revised Glyphosate Issue Paper: Evaluation of Carcinogenic Potential* at 143, 144 (Dec. 12, 2017), <https://www.regulations.gov/document?D=EPA-HQ-OPP-2016-0385-0528>.

EPA OPP reports and the EPA CARC Final Report discussed above, other specific findings of safety include:

- “In June 1991, EPA classified glyphosate as a Group E [carcinogen]—one that shows evidence of non-carcinogenicity for humans—based on the lack of convincing evidence of carcinogenicity in adequate studies.” EPA, *Glyphosate: Reregistration Eligibility Decision (RED) Facts*, 2 (Sept. 1993), <http://archive.epa.gov/pesticides/reregistration/web/pdf/0178fact.pdf>.
- “No evidence of carcinogenicity.” Glyphosate; Pesticide Tolerances, 67 Fed. Reg. 60,934, 60,943 (Sept. 27, 2002) (to be codified at 40 C.F.R. pt. 180).
- “Glyphosate has no carcinogenic potential.” Glyphosate; Pesticide Tolerance, 69 Fed. Reg. 65,081, 65,086 (Nov. 10, 2004) (to be codified at 40 C.F.R. pt. 180).
- “There is [an] extensive database available on glyphosate, which indicate[s] that glyphosate is not mutagenic, not a carcinogen, and not a developmental or reproductive toxicant.” Glyphosate; Pesticide Tolerances, 73 Fed. Reg. 73,586, 73,589 (Dec. 3, 2008) (to be codified at 40 C.F.R. pt. 180).
- “EPA has concluded that glyphosate does not pose a cancer risk to humans.” 78 Fed. Reg. 25,396, 25,398 (May 1, 2013) (to be codified at 40 C.F.R. pt. 180).
- “In 2014, EPA reviewed over 55 epidemiological studies conducted on the possible cancer and non-cancer effects of [g]lyphosate. Our review concluded that this body of research does not provide evidence to show that [g]lyphosate causes cancer and does not warrant any change in the EPA’s cancer classification for [g]lyphosate.” *Agriculture Biotechnology: A Look at Federal Regulation and Stakeholder Perspectives: Hearing Before the S. Comm. on Agr., Nutrition, & Forestry*, 114th Cong. (2015) (statement of Dr. William Jordan, Deputy Director of EPA’s Office of Pesticide Programs), <http://www.ag.senate.gov/templates/watch.cfm?id=74793e67-5056-a055-64af-0e55900753b4>, at time stamp 55:05 – 56:20.

Monsanto denies the remaining allegations in paragraph 40.

41. In response to the allegations in paragraph 41, Monsanto admits that it – along with a large number of other companies and governmental agencies – was defrauded by two chemical testing laboratories, and that Monsanto had hired both of these laboratories to conduct testing on glyphosate. Monsanto states that only one of these laboratories was hired to conduct toxicity tests of glyphosate. Monsanto denies that EPA’s registration of glyphosate or any

glyphosate-based herbicides is based upon any invalid Industrial Bio-Test (“IBT”) studies. To the extent that the allegations in paragraph 41 are intended to suggest that Monsanto was anything other than a victim of this fraud, such allegations are denied.

42. In response to the allegations in paragraph 42, Monsanto admits that IBT Laboratories was hired to conduct toxicity studies in connection with the registration of a Roundup®-branded product. Monsanto denies that EPA’s regulatory approval of such product is based upon any fraudulent or false IBT studies.

43. Monsanto denies the allegations in paragraph 43 to the extent they suggest that EPA performed an inspection of IBT Laboratories solely or specifically in connection with studies conducted on glyphosate. Monsanto admits that EPA performed an audit of IBT Laboratories to investigate that laboratory’s fraudulent and/or improper testing procedures in connection with services provided to a broad number of private and governmental entities and that this inspection included a review of studies IBT conducted on glyphosate. Monsanto was one of several pesticide manufacturers who had used IBT test results. The audit found some toxicology studies conducted with the original Roundup® herbicide to be invalid. As a result, Monsanto repeated all required studies in accordance with applicable EPA testing guidelines. Monsanto denies that EPA’s registration of glyphosate or any glyphosate-based herbicides is based upon any invalid IBT studies. To the extent that the allegations in paragraph 43 are intended to suggest that Monsanto was anything other than a victim of this fraud, such allegations also are denied.

44. In response to the allegations in paragraph 44, Monsanto admits that three IBT employees were convicted of the charge of fraud, but Monsanto denies that any of the

individuals were convicted based upon studies conducted on glyphosate or glyphosate-based herbicides.

45. In response to the allegations in paragraph 45, Monsanto admits that it – along with numerous other private companies – hired Craven Laboratories as an independent laboratory to conduct residue studies for Monsanto agricultural products. Monsanto further admits that it was defrauded by Craven Laboratories and that, as a result, Monsanto repeated the studies conducted at Craven Laboratories at a substantial cost. To the extent that the allegations in paragraph 45 are intended to suggest that Monsanto was anything other than a victim of this fraud, Monsanto denies those allegations.

46. Monsanto denies the allegations in paragraph 46.

47. In response to the allegations in paragraph 47, Monsanto admits that Roundup[®]-branded products are highly valued by customers because of their efficacy and safety. Monsanto also admits that the patent for glyphosate expired in the United States in 2000. The remaining allegations in paragraph 47 are vague and conclusory, comprise attorney characterizations, and are accordingly denied.

48. In response to the allegations in paragraph 48, Monsanto admits that following the development of Roundup[®] Ready seeds, it began to sell them in the 1990s and that such seeds are now widely used by farmers in the United States and worldwide. Monsanto lacks information or knowledge sufficient to form a belief as to the accuracy of the specific numbers cited in paragraph 48 and accordingly denies those allegations. The remaining allegations in paragraph 48 are vague and conclusory and comprise attorney characterizations, and are accordingly denied.

49. In response to the allegations in paragraph 49, Monsanto admits that glyphosate is one of the world's largest herbicides by sales volume, but Monsanto denies any suggestion that it is the only company that has sold glyphosate or glyphosate-based herbicides. Monsanto lacks information or knowledge sufficient to form a belief as to the accuracy of the specific numbers cited in paragraph 49 and accordingly denies the same. The remaining allegations in paragraph 49 are vague and conclusory and comprise attorney characterizations, and are accordingly denied.

50. In response to the allegations in paragraph 50, Monsanto admits that the New York Attorney General filed a lawsuit against Monsanto in 1996 alleging false and misleading advertising of Roundup[®]-branded products. This lawsuit was subsequently resolved without any admission of wrongdoing by Monsanto. Monsanto states that none of the New York Attorney General's allegations related in any way to a purported or alleged risk of cancer. To the extent the subparts of paragraph 50 purport to quote a document, the document speaks for itself and thus does not require any further response. The remaining allegations in paragraph 50 are vague and conclusory and comprise attorney characterizations, and are accordingly denied.

51. In response to the allegations in paragraph 51, Monsanto admits it entered into an assurance of discontinuance with the New York Attorney General. The assurance speaks for itself and thus does not require any further response. The remaining allegations in paragraph 51 are vague and conclusory and comprise attorney characterizations, and are accordingly denied.

52. Monsanto denies the allegations in paragraph 52.

53. In response the allegations in paragraph 53, Monsanto admits that the French court ruled that Monsanto had falsely advertised its herbicide Roundup[®] as "biodegradable" and that it "left the soil clean," but denies the allegations to the extent they suggest that this ruling

was in any way related to plaintiff's claims here that glyphosate can cause cancer. Monsanto denies the remaining allegations in paragraph 53.

54. In response to the allegations in paragraph 54, Monsanto denies that IARC follows stringent procedures for the evaluation of a chemical agent. Monsanto lacks information or knowledge sufficient to form a belief as to the accuracy of the specific numbers cited in paragraph 54, which are not limited as of any specified date, and accordingly denies the same.

55. In response to the allegations in paragraph 55, Monsanto admits that IARC sets forth in its Preamble the procedures that it claims to follow in its carcinogenicity evaluations. Monsanto denies the remaining allegations in paragraph 55.

56. In response to the allegations in paragraph 56, Monsanto denies any suggestion that IARC reviewed the full body of scientific research in conducting its evaluation of glyphosate or that IARC reliably reviewed the studies that it cited in its glyphosate monograph. Monsanto lacks information or knowledge sufficient to form a belief as to the truth of the remaining allegations in paragraph 56 and therefore denies those allegations.

57. In response to the allegations in paragraph 57, Monsanto denies any suggestion that IARC reviewed the full body of scientific research in conducting its evaluation of glyphosate or that IARC reliably reviewed the studies that it cited in its glyphosate monograph. Monsanto lacks information or knowledge sufficient to form a belief as to the truth of the remaining allegations in paragraph 57 and therefore denies those allegations.

58. Monsanto denies the allegations in paragraph 58 to the extent that they suggest that IARC had previously assessed glyphosate. Monsanto admits that IARC classified glyphosate as a Group 2A agent in March 2015.

59. In response to the allegations in paragraph 59, Monsanto admits that IARC issued its monograph for glyphosate, Monograph 112, on July 29, 2015, and that a draft of the monograph was prepared by a “working group” of individuals selected by IARC who met over a one week period in March 2015 to consider glyphosate along with a number of other substances. Monsanto denies the allegation that all members of the working groups are “experts.” Monsanto denies that the working group or anyone at IARC conducted a one-year review of the scientific evidence related to glyphosate or that the working group’s findings reflected a comprehensive review of the latest available scientific evidence. Monsanto also denies that the working group considered all information available in the scientific literature and all data from government reports that are publicly available. Monsanto denies the remaining allegations in paragraph 59.

60. In response to the allegations in paragraph 60, Monsanto denies that the IARC working group considered all of the data in the numerous studies that have been conducted looking at the safety of glyphosate and glyphosate-containing herbicides in human populations or that it reliably considered the studies that it purports to have reviewed, which frequently reach conclusions directly contrary to those espoused by the IARC working group. To the extent the allegations purport to characterize statements made in the IARC monograph for glyphosate, the statements in that document speak for themselves, but Monsanto lacks information or knowledge sufficient to form a belief as to the accuracy of the source of said information and accordingly denies the allegations.

61. The allegations in paragraph 61 are vague and conclusory. To the extent they purport to characterize statements made in the IARC monograph for glyphosate, the statements in that document speak for themselves, but Monsanto lacks information or knowledge sufficient

to form a belief as to the accuracy of the source of said information and accordingly denies the allegations.

62. In response to the allegations in paragraph 62, to the extent the allegations purport to characterize statements made in the IARC monograph for glyphosate, the statements in that document speak for themselves, but to the extent that this paragraph means that more than *de minimis* amounts of exposure are present, the allegations in paragraph 62 are denied.

63. In response to the allegations in paragraph 63, Monsanto admits that the IARC working group identified a number of case control studies of populations with exposures to glyphosate, but Monsanto denies that any of these studies provide any evidence of a human health concern from such exposures.

64. Monsanto denies the allegations in paragraph 64. The IARC working group concluded that there was only limited evidence of carcinogenicity in epidemiologic studies, which, per IARC's guidelines, means that the working group could not rule out chance, bias or confounding so as to reach any conclusion of an increased risk.

65. In response to the allegations in paragraph 65, Monsanto admits that the working group cited to a study that it concluded provided evidence of chromosomal damage in community residents reported to be exposed to glyphosate, but Monsanto denies that the study supports such a conclusion or that the authors of the study reached such a conclusion.

66. In response to the allegations in paragraph 66, Monsanto admits that the IARC working group purported to make these findings, but denies that the animal carcinogenicity studies of glyphosate in the aggregate provide evidence of a positive trend for or increase in any of the identified tumors. Monsanto further states that regulatory agencies around the world have

reviewed the same animal studies and concluded that they do not provide evidence that glyphosate can cause cancer. Monsanto denies the remaining allegations in paragraph 66.

67. In response to the allegations in paragraph 67, Monsanto admits that the IARC working group purported to make these findings, but denies that the cited studies provide any reliable basis for a finding that any meaningful levels of glyphosate or AMPA is present or persists in human blood or urine. Monsanto denies the remaining allegations in paragraph 67.

68. In response to the allegations in paragraph 68, Monsanto admits that the IARC working group interpreted a selected number of experimental studies as evidence that glyphosate can cause genotoxicity, but Monsanto denies that the working group reliably considered the full body of scientific data on such alleged genotoxic endpoints and denies that the working group reliably interpreted the studies that it selected for consideration. Regulators around the world repeatedly have concluded that glyphosate is not genotoxic. Monsanto denies the remaining allegations in paragraph 68.

69. In response to the allegations in paragraph 69, Monsanto admits that the IARC working group purported to find such effects, but denies that there is any reliable scientific basis for such conclusion. Monsanto denies the remaining allegations in paragraph 69.

70. In response to the allegations in paragraph 70, Monsanto admits that the working group reviewed the findings of an Agricultural Health Study (“AHS”) published in 2005, but denies that the working group characterized that study as supporting an association between glyphosate and the specified cancers. The AHS cohort study did not find a positive association between glyphosate and any type of cancer. Monsanto denies all other allegations in paragraph 70.

71. In response to the allegations in paragraph 71, Monsanto admits that EPA has a technical fact sheet, as part of its Drinking Water and Health, National Primary Drinking Water Regulations, relating to glyphosate that predates the IARC March 20, 2015 evaluation, and that the Complaint accurately quotes from the identified document, which should be read in context of EPA's precautionary regulatory mandate and the EPA's consistent finding that glyphosate does not pose any cancer risk to humans.

72. In response to the allegations in paragraph 72, Monsanto admits that the Northwest Coalition for Alternatives to Pesticides made the identified claims, but denies that the Coalition provides any reliable basis for any conclusions regarding potential health risks from glyphosate. Monsanto notes that a federal district court has characterized this same publication as an "advocacy piece[] published in [a] non-peer-reviewed journal." *See Arias v. DynCorp*, 928 F. Supp. 2d 10, 24 (D.D.C. 2013).

73. Monsanto states that the term "toxic" as used in paragraph 73 is vague and ambiguous to the extent it is intended to suggest any evidence of carcinogenicity. Monsanto denies the allegations in paragraph 73.

74. In response to the allegations in paragraph 74, Monsanto admits that Julie Marc published the cited study in 2002 and states that the document speaks for itself and does not require a response. To the extent that a response is deemed required, Monsanto denies the allegations in paragraph 74.

75. In response to the allegations in the first sentence of paragraph 75, Monsanto admits that Julie Marc published a study titled "Glyphosate-based pesticides affect cell cycle regulation" in 2004. To the extent that the first sentence of paragraph 75 characterizes the meaning of the cited study, Monsanto denies the allegations in the first sentence of paragraph 75.

In response to the remaining allegations in paragraph 75, Monsanto states that the document speaks for itself and does not require a response. To the extent that a response is deemed required, Monsanto denies the remaining allegations in paragraph 75.

76. In response to the allegations in paragraph 76, Monsanto states that the cited document speaks for itself and does not require a response. To the extent that paragraph 76 characterizes the meaning of the cited study, Monsanto denies the remaining allegations in paragraph 76.

77. In response to the allegations in paragraph 77, Monsanto states that the cited document speaks for itself and does not require a response. To the extent that paragraph 77 characterizes the meaning of the cited study, Monsanto denies the allegation that the cited studies support the allegation that glyphosate or Roundup®-branded products pose any risk to human health and denies the remaining allegations in paragraph 77.

78. In response to the allegations in the first sentence of paragraph 78, Monsanto states that the terms “at all times” and “these studies” are vague and ambiguous, and therefore Monsanto denies the allegations in the first sentence of paragraph 78. Monsanto denies the remaining allegations in paragraph 78.

79. In response to the allegations in paragraph 79, Monsanto admits that it has promoted Roundup®-branded herbicides as safe when used in accordance with the products’ labeling. Monsanto denies the remaining allegations in paragraph 79.

80. In response to the allegations in paragraph 80, Monsanto admits that the IARC working group’s classification of glyphosate as a Class 2A carcinogen has resulted in ongoing discussions and/or restrictions in certain countries regarding the sale and/or use of glyphosate-

based herbicides, but denies that there is any scientific basis for the concerns raised by the improper IARC classification. Monsanto denies the remaining allegations in paragraph 80.

81. In response to the allegations in paragraph 81, Monsanto admits that the IARC working group's classification of glyphosate as a Class 2A carcinogen has resulted in ongoing discussions and/or restrictions regarding the sale and/or use of glyphosate-based herbicides, including the Netherlands, but denies that there is any scientific basis for the concerns raised by the improper IARC classification. Monsanto denies the remaining allegations in paragraph 81.

82. In response to the allegations in paragraph 82, Monsanto admits that the IARC working group classification led an individual government attorney in Brazil to write a letter to the Brazilian regulatory authorities requesting a reevaluation of glyphosate. Monsanto denies the remaining allegations in paragraph 82.

83. In response to the allegations in paragraph 83, Monsanto admits that, in France, the sale to and use by amateurs (i.e., non-professionals) of all pesticides (with certain exceptions for biocontrol pesticides) are prohibited as of January 1, 2019, with certain exceptions. Monsanto denies the remaining allegations in paragraph 83.

84. In response to the allegations in paragraph 84, Monsanto admits that some employees of Bermuda's government announced an intention to suspend the importation of glyphosate-based herbicides, but Monsanto lacks information sufficient to form a belief as to the truth of the allegations about whether this suspension took effect and accordingly denies the same. Monsanto denies the remaining allegations in paragraph 84.

85. In response to the allegations in paragraph 85, Monsanto admits that the IARC monograph appears to be the alleged basis for the Sri Lankan government's actions, including the allegation that glyphosate can cause kidney disease. Monsanto further states that the

allegations regarding kidney disease found in Sri Lanka are unrelated to plaintiff's allegations regarding claimed carcinogenicity.

86. In response to the allegations in paragraph 86, Monsanto denies the alleged basis for Colombia's suspension of aerial spraying of glyphosate. Colombia's attorney general has explained that the ban on aerial spraying of illicit coca plantations was a concession to the FARC ("Fuerzas Armadas Revolucionarias de Colombia"), and had nothing to do with alleged safety concerns. As of April 2016, the government of Colombia has resumed manual application of glyphosate on illicit coca crops. A federal district court in the United States excluded plaintiffs' expert testimony purporting to link these same aerial eradication operations with cancer as scientifically unreliable. *See Arias v. DynCorp*, 928 F. Supp. 2d 10 (D.D.C. 2013). Monsanto denies the remaining allegations in paragraph 86.

87. In response to the allegations in paragraph 87, Monsanto states that the cited document speaks for itself and does not require a response. Monsanto denies that the self-labeled "consensus statement" represents the view of any consensus of scientific opinion. To the extent that paragraph 87 characterizes the scientific evidence regarding the safety of glyphosate-based herbicides, Monsanto denies the remaining allegations in paragraph 87.

88. In response to the allegations in paragraph 88, Monsanto states that the cited document speaks for itself and does not require a response. Monsanto denies that the self-labeled "consensus statement" represents the view of any consensus of scientific opinion. To the extent that paragraph 88 characterizes the scientific evidence regarding the safety of glyphosate-based herbicides, Monsanto denies the remaining allegations in paragraph 88.

89. In response to the allegations in paragraph 89, Monsanto states that the cited document speaks for itself and does not require a response. Monsanto denies that the self-

labeled “consensus statement” represents the view of any consensus of scientific opinion. To the extent that paragraph 89 characterizes the scientific evidence regarding the safety of glyphosate-based herbicides, Monsanto denies the remaining allegations in paragraph 89.

90. In response to the allegations in paragraph 90, Monsanto states that the cited document speaks for itself and does not require a response. Monsanto denies that the self-labeled “consensus statement” represents the view of any consensus of scientific opinion. To the extent that paragraph 90 characterizes the scientific evidence regarding the safety of glyphosate-based herbicides, Monsanto denies the remaining allegations in paragraph 90.

91. In response to the allegations in paragraph 91, Monsanto states that the cited document speaks for itself and does not require a response. Monsanto denies that the self-labeled “consensus statement” represents the view of any consensus of scientific opinion. To the extent that paragraph 91 characterizes the scientific evidence regarding the safety of glyphosate-based herbicides, Monsanto denies the remaining allegations in paragraph 91.

92. In response to the allegations in paragraph 92, Monsanto states that the cited document speaks for itself and does not require a response. Monsanto denies that the self-labeled “consensus statement” represents the view of any consensus of scientific opinion. To the extent that paragraph 92 characterizes the scientific evidence regarding the safety of glyphosate-based herbicides, Monsanto denies the remaining allegations in paragraph 92.

93. In response to the allegations in paragraph 93, Monsanto states that the cited document speaks for itself and does not require a response. Monsanto denies that the self-labeled “consensus statement” represents the view of any consensus of scientific opinion. To the extent that paragraph 93 characterizes the scientific evidence regarding the safety of glyphosate-based herbicides, Monsanto denies the remaining allegations in paragraph 93.

94. In response to the allegations in paragraph 94, Monsanto admits that the United States Food and Drug Administration (“FDA”) has authority to enforce pesticide residues and that the FDA announced it would begin testing certain foods for glyphosate residues. In response to the remaining allegations in paragraph 94, Monsanto states that the cited documents speak for themselves and do not require a response.

95. In response to the allegations in paragraph 95, Monsanto admits that the U.S. Government Accountability Office (“GAO”) issued the cited report regarding pesticide residue monitoring programs, but Monsanto denies that the GAO report was limited to glyphosate. In response to the remaining allegations in paragraph 95, Monsanto states that the cited documents speak for themselves and do not require a response. To the extent that paragraph 95 characterizes the meaning of the cited documents, Monsanto denies the remaining allegations in paragraph 95.

96. In response to the allegations in paragraph 96, Monsanto admits that the FDA has authority to enforce pesticide residues and that the FDA announced it would begin testing certain foods for glyphosate residues. In response to the remaining allegations in paragraph 96, Monsanto states that the cited documents speak for themselves and do not require a response. To the extent that paragraph 96 characterizes the meaning of the cited documents, Monsanto denies the remaining allegations in paragraph 96.

97. In response to the allegations in paragraph 97, Monsanto admits that the FDA has authority to enforce pesticide residues and that the FDA announced it would begin testing certain foods for glyphosate residues. In response to the remaining allegations in paragraph 97, Monsanto states that the cited documents speak for themselves and do not require a response. To

the extent that paragraph 97 characterizes the meaning of the cited documents, Monsanto denies the remaining allegations in paragraph 97.

98. Monsanto admits the allegations in paragraph 98. Monsanto also states that the allegations are out of date and that the European Union has approved glyphosate for another five years.

99. In response to the allegations in paragraph 99, Monsanto states that the cited document speaks for itself and does not require a response. Monsanto also states that the allegations are out of date and that the European Union has approved glyphosate for another five years.

100. In response to the allegations in paragraph 100, Monsanto lacks information or knowledge sufficient to form a belief as to whether each of the individuals at the referenced meeting were “experts” and therefore denies that allegation. Monsanto admits the remaining allegations in paragraph 100. Monsanto also states that the allegations are out of date and that the European Union has approved glyphosate for another five years.

101. In response to the allegations in paragraph 101, Monsanto states that the cited document speaks for itself and does not require a response. To the extent that paragraph 101 characterizes the meaning of the cited document, Monsanto denies the remaining allegations in paragraph 101.

102. In response to the allegations in paragraph 102, Monsanto states that the cited document speaks for itself and does not require a response. To the extent that paragraph 102 characterizes the meaning of the cited document, Monsanto denies the remaining allegations in paragraph 102. Monsanto also states that the allegations are out of date and that the European Union has approved glyphosate for another five years.

103. Monsanto admits the allegations in paragraph 103. Monsanto also states that the allegations are out of date and that the European Union has approved glyphosate for another five years.

104. Monsanto admits the allegations in paragraph 104. Monsanto also states that the allegations are out of date and that the European Union has approved glyphosate for another five years.

105. Monsanto admits the allegations in paragraph 105. Monsanto also states that the allegations are out of date and that the European Union has approved glyphosate for another five years.

106. Monsanto denies the allegations in paragraph 106.

107. Monsanto incorporates by reference its responses to paragraphs 1 through 106 in response to paragraph 107 of plaintiff's Complaint.

108. Monsanto lacks information or knowledge sufficient to form a belief as to the truth of the allegations in the first sentence of paragraph 108. In response to the allegations in the second sentence of paragraph 108, Monsanto denies that there is any risk of NHL or other serious illness associated with or linked to the use of and/or exposure to Roundup[®]-branded products and glyphosate. Monsanto states, however, that the scientific studies upon which IARC purported to base its cancer classification for glyphosate were all publicly available before March 2015. The remaining allegations in paragraph 108 set forth conclusions of law for which no response is required.

109. In response to the allegations in paragraph 109, Monsanto denies that exposure to Roundup[®]-branded products or glyphosate causes cancer or other serious illnesses. Monsanto states, however, that the scientific studies upon which IARC purported to base its cancer

classification for glyphosate were all publicly available before March 2015. The remaining allegations in paragraph 109 set forth conclusions of law for which no response is required.

110. In response to the allegations in paragraph 110, Monsanto denies that there is any risk of NHL or other serious illness associated with the use of and/or exposure to Roundup[®]-branded products and glyphosate. Monsanto states, however, that the scientific studies upon which IARC purported to base its cancer classification for glyphosate were all publicly available before March 2015. Monsanto lacks information or knowledge sufficient to form a belief as to the truth of the remaining allegations in paragraph 110 and therefore denies those allegations.

111. Monsanto denies the allegations in paragraph 111.

112. Monsanto denies that exposure to Roundup[®]-branded products and glyphosate exposed decedent to risk of decedent's alleged cancer and denies the remaining allegations in paragraph 112. Monsanto states, however, that the scientific studies upon which IARC purported to base its cancer classification for glyphosate were all publicly available before March 2015.

113. Monsanto denies the allegations in the first and last sentences of paragraph 113. The remaining allegations in paragraph 113 set forth conclusions of law for which no response is required. Monsanto states, however, that the scientific studies upon which IARC purported to base its classification were all publicly available before March 2015.

114. In response to the allegations in paragraph 114, Monsanto denies that there is any risk of NHL or other serious illness associated with the use of and/or exposure to Roundup[®]-branded products and glyphosate. The remaining allegations in paragraph 114 set forth conclusions of law for which no response is required, consist of attorney characterizations and are accordingly denied, or comprise allegations for which Monsanto lacks information or

knowledge sufficient to form a belief as to the truth of the allegations asserted and therefore denies those allegations. Monsanto states that the scientific studies upon which IARC purported to base its cancer classification for glyphosate were all publicly available before March 2015.

115. The allegations in paragraph 115 set forth conclusions of law for which no response is required. To the extent that a response is deemed required, Monsanto denies the allegations in paragraph 115. Monsanto states that the scientific studies upon which IARC purported to base its cancer classification for glyphosate were all publicly available before March 2015.

116. The allegations in paragraph 116 set forth conclusions of law for which no response is required.

117. Monsanto denies the allegations in paragraph 117.

118. The allegations in paragraph 118 set forth conclusions of law for which no response is required. To the extent that a response is deemed required, Monsanto denies the allegations in paragraph 118. Monsanto states that the scientific studies upon which IARC purported to base its cancer classification for glyphosate were all publicly available before March 2015.

119. Monsanto incorporates by reference its responses to paragraphs 1 through 118 in response to paragraph 119 of plaintiff's Complaint.

120. In response to the allegations in paragraph 120, Monsanto admits that plaintiff brings a claim for wrongful death but denies any liability to plaintiff.

121. In response to the allegations in paragraph 121, Monsanto admits that plaintiff purports to bring a claim for strict liability but denies any liability to plaintiff.

122. Monsanto denies the allegations in paragraph 122.

123. Monsanto lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 123 and therefore denies those allegations.

124. In response to the allegations in paragraph 124 Monsanto lacks information or knowledge sufficient to form a belief as to the truth of the allegations that decedent used or was exposed to Roundup[®]-branded products and therefore denies those allegations. Monsanto denies the remaining allegations in paragraph 124.

125. Monsanto lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 125 and therefore denies those allegations.

126. Monsanto denies the allegations in paragraph 126.

127. Monsanto denies the allegations in paragraph 127.

128. Monsanto denies the allegations in paragraph 128.

129. Monsanto denies the allegations in paragraph 129 and each of its subparts.

130. Monsanto lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 130 regarding decedent's claimed use of or exposure to Roundup[®]-branded products and therefore denies those allegations. Monsanto denies the remaining allegations in paragraph 130, including that Roundup[®]-branded products have "dangerous characteristics."

131. Monsanto denies the allegations in paragraph 131.

132. Monsanto denies the allegations in paragraph 132.

133. Monsanto denies the allegations in paragraph 133.

134. Monsanto denies the allegations in paragraph 134.

135. Monsanto denies the allegations in paragraph 135.

136. Monsanto denies the allegations in paragraph 136.

137. Monsanto denies the allegations in paragraph 137.

138. Monsanto denies the allegations in paragraph 138.

139. Monsanto lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 139 and therefore denies those allegations.

140. Monsanto denies the allegations in paragraph 140.

141. Monsanto denies the allegations in paragraph 141.

142. In response to the allegations in paragraph 142, Monsanto demands that judgment be entered in its favor and against plaintiff and that plaintiff's Complaint be dismissed, with prejudice, and that Monsanto be awarded costs of suit and reasonable attorney's fees as allowed by law and such further and additional relief as this Court may deem just and proper.

143. Monsanto incorporates by reference its responses to paragraphs 1 through 142 in response to paragraph 143 of plaintiff's Complaint.

144. In response to the allegations in paragraph 144, Monsanto admits that plaintiff brings a claim for wrongful death but denies any liability to plaintiff.

145. In response to the allegations in paragraph 145, Monsanto admits that plaintiff purports to bring a claim for strict liability but denies any liability to plaintiff.

146. Monsanto denies the allegations in paragraph 146.

147. In response to the allegations in paragraph 147, Monsanto lacks information or knowledge sufficient to form a belief as to the truth of the allegations that decedent or other persons or entities purchased Roundup[®]-branded products and therefore denies those allegations. The allegations in paragraph 147 also set forth conclusions of law for which no response is required. Monsanto denies the remaining allegations in paragraph 147.

148. In response to the allegations in paragraph 148, Monsanto denies that there is any risk of NHL or other serious illness associated with the use of and/or exposure to Roundup®-branded products and glyphosate. The remaining allegations in paragraph 148 set forth conclusions of law for which no response is required.

149. Monsanto denies the allegations in paragraph 149. All labeling of Roundup®-branded products has been and remains EPA-approved and in compliance with all federal requirements under FIFRA.

150. Monsanto denies the allegations in paragraph 150.

151. Monsanto denies the allegations in paragraph 151.

152. Monsanto denies the allegations in paragraph 152.

153. Monsanto lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 153 and therefore denies those allegations.

154. Monsanto lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 154 regarding decedent's claimed use of and/or exposure to Roundup®-branded products and therefore denies those allegations. Monsanto denies the remaining allegations in paragraph 154, including that Roundup®-branded products have "dangerous characteristics."

155. In response to the allegations in paragraph 155, Monsanto denies that Roundup®-branded products are associated with risks of NHL or other serious illness or that Roundup®-branded products have "defects." Monsanto lacks information or knowledge sufficient to form a belief as to the truth of the allegations in the second sentence of paragraph 155 and therefore denies those allegations. Monsanto denies the remaining allegations in paragraph 155.

156. Monsanto denies the allegations in paragraph 156.

157. Monsanto denies the allegations in paragraph 157.

158. Monsanto denies the allegations in paragraph 158.

159. Monsanto denies the allegations in paragraph 159.

160. Monsanto denies the allegations in paragraph 160.

161. Monsanto denies the allegations in paragraph 161.

162. Monsanto denies the allegations in paragraph 162.

163. Monsanto denies the allegations in paragraph 163.

164. Monsanto denies the allegations in paragraph 164.

165. Monsanto lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 165 and therefore denies those allegations.

166. Monsanto denies the allegations in paragraph 166.

167. Monsanto denies the allegations in paragraph 167.

168. In response to the allegations in paragraph 168, Monsanto demands that judgment be entered in its favor and against plaintiff and that plaintiff's Complaint be dismissed, with prejudice, and that Monsanto be awarded costs of suit and reasonable attorney's fees as allowed by law and such further and additional relief as this Court may deem just and proper.

169. Monsanto incorporates by reference its responses to paragraphs 1 through 168 in response to paragraph 169 of plaintiff's Complaint.

170. In response to the allegations in paragraph 170, Monsanto admits that plaintiff brings a claim for wrongful death but denies any liability to plaintiff.

171. Monsanto denies the allegations in paragraph 171.

172. Monsanto lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 172 and therefore denies those allegations.

173. The allegations in paragraph 173 set forth conclusions of law for which no response is required.

174. The allegations in paragraph 174 set forth conclusions of law for which no response is required.

175. Monsanto denies the allegations in paragraph 175.

176. Monsanto denies the allegations in paragraph 176.

177. Monsanto denies the allegations in paragraph 177.

178. Monsanto denies the allegations in paragraph 178.

179. Monsanto denies the allegations in paragraph 179. All labeling of Roundup®-branded products has been and remains EPA-approved and in compliance with all federal requirements under FIFRA.

180. Monsanto denies the allegations in paragraph 180.

181. Monsanto denies the allegations in paragraph 181.

182. Monsanto denies the allegations in paragraph 182.

183. Monsanto denies the allegations in paragraph 183, including each of its subparts.

184. Monsanto denies the allegations in paragraph 184.

185. Monsanto lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 185 regarding plaintiff's and/or decedent's knowledge and therefore denies those allegations. Monsanto denies the remaining allegations in paragraph 185, including that intended use of and/or exposure to Roundup®-branded products causes any injuries.

186. Monsanto denies the allegations in paragraph 186.

187. Monsanto denies the allegations in paragraph 187.

188. Monsanto denies the allegations in paragraph 188. All labeling of Roundup®-branded products has been and remains EPA-approved and in compliance with all federal requirements under FIFRA.

189. Monsanto denies the allegations in paragraph 189.

190. Monsanto lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 190 and therefore denies those allegations.

191. Monsanto denies the allegations in paragraph 191.

192. Monsanto denies the allegations in paragraph 192.

193. In response to the allegations in paragraph 193, Monsanto demands that judgment be entered in its favor and against plaintiff and that plaintiff's Complaint be dismissed, with prejudice, and that Monsanto be awarded costs of suit and reasonable attorney's fees as allowed by law and such further and additional relief as this Court may deem just and proper.

194. Monsanto incorporates by references its responses to paragraphs 1 through 193 in response to paragraph 194 of plaintiff's Complaint.

195. In response to the allegations in paragraph 195, Monsanto admits that plaintiff brings a claim for wrongful death but denies any liability to plaintiff.

196. Monsanto denies the allegations in paragraph 196.

197. Monsanto lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 197 regarding decedent's claimed use of Roundup®-branded products and therefore denies those allegations. The remaining allegations in paragraph 197 set forth conclusions of law for which no response is required.

198. Monsanto denies the allegations in paragraph 198. All labeling of Roundup®-branded products has been and remains EPA-approved and in compliance with all federal requirements under FIFRA.

199. Monsanto lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 199 regarding plaintiff's and/or decedent's reliance and therefore denies those allegations. The remaining allegations in paragraph 199 set forth conclusions of law for which no response is required.

200. Monsanto lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 200 and therefore denies those allegations.

201. Monsanto lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 201 regarding the claimed use of Roundup®-branded products by decedent and others and therefore denies those allegations. The remaining allegations in paragraph 201 set forth conclusions of law for which no response is required.

202. Monsanto lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 202 regarding decedent's claimed use of or exposure to Roundup®-branded products and therefore denies those allegations. The allegation in paragraph 202 regarding Monsanto's implied warranty sets forth conclusions of law for which no response is required. Monsanto denies the remaining allegations in paragraph 202.

203. Monsanto lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 203 regarding decedent's claimed use of Roundup®-branded products or decedent's claimed reliance and therefore denies those allegations. The allegation in paragraph 203 regarding Monsanto's implied warranty sets forth conclusions of law for which no response is required.

204. In response to the allegations in paragraph 204, Monsanto denies that there is any risk of serious injury associated with the as-directed use of and/or exposure to Roundup[®]-branded products and/or glyphosate. Monsanto lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 204 regarding decedent's and/or decedent's employers' knowledge about Roundup[®]-branded products and therefore denies the remaining allegations in paragraph 204.

205. Monsanto denies the allegations in paragraph 205.

206. Monsanto denies the allegations in paragraph 206.

207. Monsanto denies the allegations in paragraph 207.

208. Monsanto lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 208 and therefore denies those allegations.

209. Monsanto denies the allegations in paragraph 209.

210. Monsanto denies the allegations in paragraph 210.

211. In response to the allegations in paragraph 211, Monsanto demands that judgment be entered in its favor and against plaintiff and that plaintiff's Complaint be dismissed, with prejudice, and that Monsanto be awarded costs of suit and reasonable attorney's fees as allowed by law and such further and additional relief as this Court may deem just and proper.

212. Monsanto incorporates by references its responses to paragraphs 1 through 211 in response to paragraph 212 of plaintiff's Complaint.

213. In response to the allegations in paragraph 213, Monsanto admits that plaintiff brings a claim for wrongful death but denies any liability to plaintiff.

214. Monsanto denies the allegations in paragraph 214, including each of its subparts.

215. Monsanto denies the allegations in paragraph 215. All labeling of Roundup®-branded products has been and remains EPA-approved and in compliance with all federal requirements under FIFRA.

216. Monsanto denies the allegations in paragraph 216.

217. Monsanto denies the allegations in paragraph 217.

218. In response to the allegations in paragraph 218, Monsanto demands that judgment be entered in its favor and against plaintiff and that plaintiff's Complaint be dismissed, with prejudice, and that Monsanto be awarded costs of suit and reasonable attorney's fees as allowed by law and such further and additional relief as this Court may deem just and proper.

Every allegation in the Complaint that is not specifically and expressly admitted in this Answer is hereby specifically and expressly denied.

SEPARATE AND AFFIRMATIVE DEFENSES

1. The Complaint, in whole or part, fails to state a claim or cause of action against Monsanto upon which relief can be granted.

2. Plaintiff's claims are misjoined and should be severed.

3. Plaintiff's claims against Monsanto are barred because plaintiff cannot proffer any scientifically reliable evidence that the products at issue were defective or unreasonably dangerous.

4. Any alleged negligent or culpable conduct of Monsanto, none being admitted, was so insubstantial as to be insufficient to be a proximate or substantial contributing cause of decedent's alleged injuries.

5. Plaintiff's claims against Monsanto are barred, in whole or in part, because the products at issue were designed, manufactured, marketed and labeled with proper warnings,

information, cautions and instructions, in accordance with the state of the art and the state of scientific and technological knowledge.

6. Plaintiff's claims against Monsanto are barred, in whole or in part, because the products at issue were not defective or unreasonably dangerous in that they complied with, at all relevant times, all applicable government safety standards.

7. Any claims against Monsanto based on allegations that Monsanto misled, defrauded, made misrepresentations to, or withheld information from U.S. EPA are preempted by federal law. See, e.g., *Buckman Co. v. Plaintiffs' Legal Comm.*, 531 U.S. 341 (2001); *Nathan Kimmel, Inc. v. Dowelanco*, 275 F.3d 1199 (9th Cir. 2002).

8. Plaintiff's claims against Monsanto are preempted, in whole or in part, by applicable federal law relating to the design, testing, producing, manufacturing, labeling, distributing, modeling, processing, and supply of Roundup[®]-branded products and/or glyphosate-containing products.

9. Plaintiff's claims against Monsanto are preempted, in whole or in part, because of U.S. EPA findings that glyphosate does not cause cancer in humans and/or because of U.S. EPA-approved product labeling.

10. Plaintiff's claims against Monsanto are barred, in whole or in part, by the doctrine of primary jurisdiction, including by the authority delegated by Congress to the U.S. EPA.

11. Plaintiff's claims against Monsanto are barred, in whole or in part, because decedent's injuries, if any, were the result of conduct of decedent, independent third parties, and/or events that were extraordinary under the circumstances, not foreseeable in the normal course of events, and/or independent, intervening and superseding causes of the alleged injuries, including but not limited to decedent's pre-existing medical conditions.

12. The doctrines contained in Restatement (Second) of Torts § 402A, comments j and k, bar plaintiff's claims against Monsanto in whole or in part.

13. Applicable statutes of limitations and/or repose bar plaintiff's claims in whole or in part.

14. Decedent's misuse or abnormal use of the product or failure to follow instructions bar plaintiff's claims in whole or in part.

15. If plaintiff or decedent suffered injuries or damages as alleged, which is denied, such injuries or damages resulted from: (a) acts or omissions of persons or entities for which Monsanto is neither liable nor responsible or, in the alternative, Monsanto is entitled to an assessment of the relative degree of fault of all such persons and entities; or (b) resulted from diseases and/or causes that are not related or connected with any product sold, distributed, or manufactured by Monsanto. Such acts or omissions on the part of others or diseases or causes constitute an independent, intervening and sole proximate cause of plaintiff's or decedent's alleged injuries or damages.

16. Monsanto has no current or former legal relationship or privity with plaintiff and/or decedent and owed no duty to them by which liability could be attributed to it.

17. Monsanto made no warranties of any kind or any representations of any nature whatsoever to plaintiff and/or decedent. If any such warranties were made, which Monsanto specifically denies, then plaintiff and/or decedent failed to give notice of any breach thereof.

18. Plaintiff's claims against Monsanto are preempted or otherwise barred in whole or in part by the Freedom of Speech Clause of the First Amendment of the U.S. Constitution.

19. Plaintiff's claims against Monsanto for punitive damages are barred because such an award would violate Monsanto's due process, equal protection and other rights under the United States Constitution, the Virginia Constitution, and/or other applicable state constitutions.

20. Plaintiff's claims against Monsanto for punitive damages are barred because plaintiff has failed to allege conduct warranting imposition of such damages under Virginia law and/or other applicable state laws.

21. Plaintiff's claims against Monsanto for punitive damages are barred and/or limited by operation of state and/or federal law, including Va. Code Ann. § 801-38.1.

22. Plaintiff's claims against Monsanto are barred in whole or in part by decedent's own contributory/comparative negligence.

23. Plaintiff's claims against Monsanto are barred in whole or in part by plaintiff's and/or decedent's own failure to mitigate damages.

24. Plaintiff's claims against Monsanto are barred in whole or in part by the sophisticated user doctrine.

25. To the extent that plaintiff and/or decedent recovered payments for decedent's alleged injuries from any collateral source(s) or other source(s), plaintiff's recovery in this lawsuit, if any, shall be reduced to the extent allowed by applicable law.

26. If decedent has been injured or damaged, no injuries or damages being admitted, such injuries or damages were not caused by a Monsanto product.

27. Plaintiff's claims against Monsanto are barred or limited to the extent that plaintiff asserts claims that are governed by the laws of a state that does not recognize, or limits, such claims.

28. Plaintiff's claims against Monsanto are barred to the extent that plaintiff seeks relief under the laws of states that do not govern plaintiff's claims.

29. This venue is inconvenient, and this lawsuit should be transferred to a more convenient venue (Rockingham County).

30. Plaintiff's strict liability claims are barred because Virginia does not recognize a cause of action for strict liability in tort.

31. Monsanto hereby gives notice that it intends to rely upon such other defenses as may become available or apparent during the course of discovery and thus reserves its right to amend this Answer to assert such defenses.

WHEREFORE, Defendant Monsanto demands judgment in its favor and against plaintiff, dismissing plaintiff's Complaint with prejudice, together with the costs of suit and such other relief as the Court deems equitable and just.

JURY TRIAL DEMAND

Monsanto demands a jury trial on all issues so triable.

DATED: February 1, 2021

Respectfully submitted,

/s/ Tamara Barago

Tamara Barago (Virginia Bar No. 80361)

HOLLINGSWORTH LLP

1350 I Street, N.W.

Washington, DC 20005

Telephone: (202) 898-5800

Fax: (202) 682-1639

tbarago@hollingsworthllp.com

Attorney for Defendant Monsanto Company

CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of February, 2021, I electronically filed the foregoing Answer with the Clerk of the Court using the VJEFS system and sent a copy via electronic mail to the following:

Ryan C. Posey
Posey Lebowitz PLLC
3221 M Street, NW
Washington, DC 20007
Email: rposey@poseylebowitz.com

Counsel for Plaintiff

W. Barry Montgomery
KPM Law
901 Moorefield Park Drive, Suite 200
Richmond, VA 23236
Email: Barry.Montgomery@kpmlaw.com

Counsel for Defendant The Valley Fertilizer and Chemical Company, Inc.

/s/ Tamara Barago

Tamara Barago

Intentionally Left Blank

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF RICHMOND

SUE COFFMAN, as Personal)	
Representative of the Estate of Kevin)	
Coffman, Deceased,)	
)	
Plaintiff,)	
)	
v.)	Case No. CL20004770-00
)	
MONSANTO COMPANY, <i>et al.</i> ,)	
)	JURY TRIAL DEMANDED
Defendants.)	
_____)	

**DEFENDANT COSTCO WHOLESALE
CORPORATION'S ANSWER TO PLAINTIFF'S COMPLAINT**

Defendant Costco Wholesale Corporation (“Costco”), by and through its counsel, respectfully responds by generally denying all allegations contained in plaintiff’s Complaint, except as set forth below. Costco denies – and objects to – allegations by plaintiff that purport to lump Costco together with other defendants. Costco responds to this Complaint only on behalf of Costco and not on behalf of any other defendant. Although many paragraphs in the Complaint allege exposure or use of products by “Plaintiff,” Costco nevertheless responds to the allegations in those paragraphs as if they refer to decedent Kevin Coffman. Silence as to any allegations shall constitute a denial. By filing this answer, Costco preserves – and does not waive – the argument set forth in its Motion to Transfer Change Venue (filed January 11, 2021).

In response to the allegations in the fourth sentence of the section titled “INTRODUCTION,” Costco denies that any exposure to Roundup[®]-branded products can cause non-Hodgkin’s lymphoma (“NHL”) and other serious illnesses. Costco denies the remaining allegations in the section titled “INTRODUCTION.”

1. Costco lacks information or knowledge sufficient to form a belief as to the truth of the allegations in the first sentence of paragraph 1 and therefore denies those allegations. In response to the allegations in the second sentence of paragraph 1, Costco admits that plaintiff purports to bring an action for damages allegedly related to exposure to Roundup®-branded products but denies any liability to plaintiff. Costco lacks information or knowledge sufficient to form a belief as to the truth of the remaining allegations in the second sentence of paragraph 1. In response to the remaining allegations in paragraph 1, Costco states that the cited document speaks for itself and does not require a response.

2. Costco lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 2 and therefore denies those allegations.

3. Costco lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 3 and therefore denies those allegations.

4. Costco denies the allegations in paragraph 4.

5. Costco lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 5 and therefore denies those allegations.

6. Costco denies that any exposure to Roundup®-branded products can cause NHL and other serious illnesses and therefore denies those allegations in paragraph 6. Costco lacks information or knowledge sufficient to form a belief as to the truth of the remaining allegations in paragraph 6 and therefore denies those allegations.

7. The allegations in paragraph 7 are directed at a defendant other than Costco, so no response from Costco is required for these allegations.

8. The allegations in paragraph 8 are directed at a defendant other than Costco, so no response from Costco is required for these allegations.

9. The allegations in paragraph 9 are directed at a defendant other than Costco, so no response from Costco is required for these allegations.

10. The allegations in paragraph 10 are directed at a defendant other than Costco, so no response from Costco is required for these allegations.

11. The allegations in paragraph 11 are directed at a defendant other than Costco, so no response from Costco is required for these allegations.

12. In response to the allegations in paragraph 12, Costco denies that exposure to Roundup[®]-branded products caused decedent's death. The remaining allegations in paragraph 12 are directed at a defendant other than Costco, so no response from Costco is required for these allegations.

13. Costco admits the allegations in the first sentence of paragraph 13. In response to the allegations in the last sentence of paragraph 13, Costco admits that it has stores in the Commonwealth of Virginia that sell a variety of products, including Roundup[®]-branded products.

14. In response to the allegations in paragraph 14, Costco admits that it has sold Roundup[®]-branded products. Costco lacks information or knowledge sufficient to form a belief as to the truth of the remaining allegations in paragraph 14 and therefore denies those allegations.

15. The allegations in paragraph 15 are directed at a defendant other than Costco, so no response from Costco is required for these allegations.

16. The allegations in paragraph 16 set forth conclusions of law for which no response is required.

17. In response to the allegations in paragraph 17, Costco denies that it has caused tortious injury to plaintiff and/or decedent. The remaining allegations in paragraph 17 set forth conclusions of law for which no response is required.

18. The allegations in paragraph 18 set forth conclusions of law for which no response is required.

19. The allegations in paragraph 19 set forth conclusions of law for which no response is required.

20. The allegations in the first sentence of paragraph 20 are directed at a defendant other than Costco, so no response from Costco is required for these allegations. Costco admits the allegations in the second sentence of paragraph 20. Costco lacks information or knowledge sufficient to form a belief as to the truth of the remaining allegations in paragraph 20 and therefore denies those allegations.

21. The allegations in paragraph 21 are directed at a defendant other than Costco, so no response from Costco is required for these allegations. To the extent that a response is deemed required, Costco lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 21 and therefore denies those allegations.

22. Costco lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 22 and therefore denies those allegations.

23. In response to the allegations in paragraph 23 Costco states that the referenced document speaks for itself and does not require a response. To the extent that a response is deemed required, Costco lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 23 and therefore denies those allegations.

24. In response to the allegations in paragraph 24, Costco states that the referenced document speaks for itself and does not require a response. To the extent that a response is deemed required, Costco lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 24 and therefore denies those allegations.

25. In response to the allegations in paragraph 25, Costco denies that glyphosate is a carcinogen. Costco lacks information or knowledge sufficient to form a belief as to the truth of the remaining allegations in paragraph 25 and therefore denies those allegations.

26. Costco denies the allegations in paragraph 26.

27. The allegations in paragraph 27 are directed at a defendant other than Costco, so no response from Costco is required for these allegations.

28. Costco lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 28 and therefore denies those allegations.

29. Costco lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 29 and therefore denies those allegations.

30. The allegations in the second, third, sixth, seventh, eighth, and last sentences of paragraph 30 are directed at a defendant other than Costco, so no response from Costco is required for these allegations. To the extent that those allegations may be deemed to be directed at Costco, Costco denies those allegations. Costco denies the remaining allegations in paragraph 30.

31. The allegations in paragraph 31 are directed at a defendant other than Costco, so no response from Costco is required for these allegations.

32. Costco lacks information or knowledge sufficient to form a belief as to the truth of the allegations in the first sentence of paragraph 32 and therefore denies those allegations. Costco denies the allegations in the last sentence of paragraph 32.

33. The allegations in paragraph 33 set forth conclusions of law for which no response is required.

34. The allegations in paragraph 34 set forth conclusions of law for which no response is required.

35. The allegations in paragraph 35 set forth conclusions of law for which no response is required.

36. Costco lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 36 and therefore denies those allegations.

37. The allegations in the first sentence of paragraph 37 are directed at a defendant other than Costco, so no response Costco is required for these allegations. Costco lacks information or knowledge sufficient to form a belief as to the truth of the remaining allegations in paragraph 37 and therefore denies those allegations.

38. The allegations in paragraph 38 set forth conclusions of law for which no response is required. To the extent that a response is deemed required, Costco lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 38 and therefore denies those allegations.

39. Costco lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 39 and therefore denies those allegations.

40. Certain allegations in paragraph 40 are directed at a defendant other than Costco, so no response from Costco is required for these allegations. Costco lacks information or

knowledge sufficient to form a belief as to the truth of the remaining allegations in paragraph 40 and therefore denies those allegations.

41. The allegations in paragraph 41 are directed at a defendant other than Costco, so no response from Costco is required for these allegations.

42. The allegations in paragraph 42 are directed at a defendant other than Costco, so no response from Costco is required for these allegations.

43. Costco lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 43 and therefore denies those allegations.

44. Costco lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 44 and therefore denies those allegations.

45. The allegations in the first sentence of paragraph 45 are directed at a defendant other than Costco, so no response Costco is required for these allegations. Costco lacks information or knowledge sufficient to form a belief as to the truth of the allegations in the second sentence of paragraph 45 and therefore denies those allegations.

46. The allegations in paragraph 46 are directed at a defendant other than Costco, so no response from Costco is required for these allegations.

47. The allegations in paragraph 47 are directed at a defendant other than Costco, so no response from Costco is required for these allegations.

48. The allegations in paragraph 48 are directed at a defendant other than Costco, so no response from Costco is required for these allegations.

49. The allegations in the first and second sentences of paragraph 49 are directed at a defendant other than Costco, so no response from Costco is required for these allegations.

Costco lacks information or knowledge sufficient to form a belief as to the truth of the remaining allegations in paragraph 49 and accordingly denies those allegations.

50. The allegations in paragraph 50 are directed at a defendant other than Costco, so no response from Costco is required for these allegations.

51. The allegations in paragraph 51 are directed at a defendant other than Costco, so no response from Costco is required for these allegations.

52. The allegations in paragraph 52 are directed at a defendant other than Costco, so no response from Costco is required for these allegations.

53. The allegations in paragraph 53 are directed at a defendant other than Costco, so no response from Costco is required for these allegations.

54. Costco lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 54 and therefore denies those allegations.

55. Costco lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 55 and therefore denies those allegations.

56. Costco lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 56 and therefore denies those allegations.

57. Costco lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 57 and therefore denies those allegations.

58. In response to the allegations in paragraph 58, Costco denies that glyphosate is a carcinogen. Costco lacks information or knowledge sufficient to form a belief as to the truth of the remaining allegations in paragraph 58 and therefore denies those allegations.

59. In response to the allegations in the first sentence of paragraph 59, Costco states that the document speaks for itself and does not require a response. Costco lacks information or

knowledge sufficient to form a belief as to the truth of the remaining allegations in paragraph 59 and therefore denies those allegations.

60. Costco lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 60 and therefore denies those allegations.

61. Costco lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 61 and therefore denies those allegations.

62. Costco lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 62 and therefore denies those allegations.

63. Costco lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 63 and therefore denies those allegations.

64. In response to the allegations in paragraph 64, Costco denies that glyphosate increases the risk of NHL. Costco lacks information or knowledge sufficient to form a belief as to the truth of the remaining allegations in paragraph 64 and therefore denies those allegations.

65. In response to the allegations in paragraph 65, Costco states that the document speaks for itself and does not require a response. To the extent that a response is deemed required, the allegations in paragraph 65 comprise attorney characterizations and are accordingly denied.

66. Costco lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 66 and therefore denies those allegations.

67. In response to the allegations in paragraph 67, Costco states that the document speaks for itself and does not require a response. Costco lacks information or knowledge sufficient to form a belief as to the truth of the remaining allegations in paragraph 67 and therefore denies those allegations.

68. In response to the allegations in paragraph 68, Costco states that the document speaks for itself and does not require a response. Costco lacks information or knowledge sufficient to form a belief as to the truth of the remaining allegations in paragraph 68 and therefore denies those allegations.

69. In response to the allegations in paragraph 69, Costco states that the document speaks for itself and does not require a response. Costco lacks information or knowledge sufficient to form a belief as to the truth of the remaining allegations in paragraph 69 and therefore denies those allegations.

70. In response to the allegations in paragraph 70, Costco states that the document speaks for itself and does not require a response. Costco lacks information or knowledge sufficient to form a belief as to the truth of the remaining allegations in paragraph 70 and therefore denies those allegations.

71. Costco lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 71 and therefore denies those allegations.

72. Costco lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 72 and therefore denies those allegations.

73. Costco denies the allegations in paragraph 73.

74. Costco lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 74 and therefore denies those allegations.

75. Costco lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 75 and therefore denies those allegations.

76. Costco lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 76 and therefore denies those allegations.

77. Costco lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 77 and therefore denies those allegations.

78. In response to the allegations in the first sentence of paragraph 78, Costco states that the terms “at all times” and “these studies” are vague and ambiguous, and therefore Costco denies the allegations in the first sentence of paragraph 78. Costco denies the remaining allegations in paragraph 78.

79. Costco denies the allegations in paragraph 79.

80. Costco lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 80 and therefore denies those allegations.

81. Costco lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 81 and therefore denies those allegations.

82. Costco lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 82 and therefore denies those allegations.

83. Costco lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 83 and therefore denies those allegations.

84. Costco lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 84 and therefore denies those allegations.

85. Costco lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 85 and therefore denies those allegations.

86. Costco lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 86 and therefore denies those allegations.

87. Costco lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 87 and therefore denies those allegations.

88. Costco lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 88 and therefore denies those allegations.

89. Costco lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 89 and therefore denies those allegations.

90. Costco lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 90 and therefore denies those allegations.

91. Costco lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 91 and therefore denies those allegations.

92. Costco lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 92 and therefore denies those allegations.

93. Costco lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 93 and therefore denies those allegations.

94. Costco lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 94 and therefore denies those allegations.

95. Costco lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 95 and therefore denies those allegations.

96. Costco lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 96 and therefore denies those allegations.

97. Costco lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 97 and therefore denies those allegations.

98. Costco lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 98 and therefore denies those allegations.

99. Costco lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 99 and therefore denies those allegations.

100. Costco lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 100 and therefore denies those allegations.

101. Costco lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 101 and therefore denies those allegations.

102. Costco lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 102 and therefore denies those allegations.

103. Costco lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 103 and therefore denies those allegations.

104. Costco lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 104 and therefore denies those allegations.

105. Costco lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 105 and therefore denies those allegations.

106. Costco lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 106 and therefore denies those allegations.

107. Costco incorporates by reference its responses to paragraphs 1 through 106 in response to paragraph 107 of plaintiff's Complaint.

108. In response to the allegations in paragraph 108, Costco denies that exposure to Roundup®-branded products and glyphosate causes cancer or other serious illnesses. Costco lacks information or knowledge sufficient to form a belief as to the truth of the remaining allegations in the first and second sentences of paragraph 108 and therefore denies those

allegations. The remaining allegations in paragraph 108 set forth conclusions of law for which no response is required.

109. In response to the allegations in paragraph 109, Costco denies that exposure to Roundup®-branded products or glyphosate causes cancer or other serious illnesses. The remaining allegations in paragraph 109 set forth conclusions of law for which no response is required or consist of attorney characterizations and are accordingly denied.

110. In response to the allegations in paragraph 110, Costco denies that exposure to Roundup®-branded products and glyphosate causes cancer or other serious illnesses. Costco lacks information or knowledge sufficient to form a belief as to the truth of the remaining allegations in paragraph 110 and therefore denies those allegations.

111. Costco denies the allegations in paragraph 111.

112. Costco denies that exposure to Roundup®-branded products and glyphosate exposed decedent to risk of decedent's alleged cancer and denies the remaining allegations in paragraph 112.

113. In response to the allegations in paragraph 113, Costco denies that it concealed "the truth regarding the safety of" Roundup®-branded products. To the extent that the allegations in paragraph 113 relate to defendants other than Costco, these allegations do not require a response from Costco. The remaining allegations in paragraph 113 set forth conclusions of law for which no response is required or consist of attorney characterizations and are accordingly denied. To the extent that a response is deemed required, Costco denies all of plaintiff's allegations in paragraph 113.

114. In response to the allegations in paragraph 114, Costco denies that exposure to Roundup®-branded products and glyphosate causes cancer. To the extent that the allegations in

paragraph 114 relate to defendants other than Costco, these allegations do not require a response from Costco. To the extent that a response is deemed required, Costco denies all of plaintiff's allegations in paragraph 114.

115. The allegations in paragraph 115 set forth conclusions of law for which no response is required. To the extent that a response is deemed required, Costco denies the allegations in paragraph 115.

116. The allegations in paragraph 116 are directed at a defendant other than Costco, so no response from Costco is required for these allegations.

117. In response to the allegations in paragraph 117, Costco denies that exposure to Roundup®-branded products and glyphosate causes cancer or other serious illnesses. The remaining allegations in paragraph 117 are directed at a defendant other than Costco, so no response from Costco is required for these allegations.

118. The allegations in paragraph 118 are directed at a defendant other than Costco, so no response from Costco is required for these allegations.

119. Costco incorporates by reference its responses to paragraphs 1 through 118 in response to paragraph 119 of plaintiff's Complaint.

120. In response to the allegations in paragraph 120, Costco admits that plaintiff brings a claim for wrongful death but denies any liability to plaintiff.

121. In response to the allegations in paragraph 121, Costco admits that plaintiff purports to bring a claim for strict liability, but denies any liability to plaintiff.

122. Costco denies the allegations in paragraph 122.

123. In response to the allegations in paragraph 123, Costco lacks information or knowledge sufficient to form a belief as to the truth of the allegation that decedent used

Roundup®-branded products and therefore denies that allegation. Costco denies the remaining allegations in paragraph 123.

124. In response to the allegations in paragraph 124, Costco lacks information or knowledge sufficient to form a belief as to the truth of the allegations that decedent used or was exposed to Roundup®-branded products and therefore denies those allegations. Costco denies the remaining allegations in paragraph 124.

125. Costco lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 125 and therefore denies those allegations.

126. Costco denies the allegations in paragraph 126.

127. Costco denies the allegations in paragraph 127.

128. Costco denies the allegations in paragraph 128.

129. Costco denies the allegations in paragraph 129 and each of its subparts.

130. Costco lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 130 regarding decedent's claimed use of or exposure to Roundup®-branded products and therefore denies those allegations. Costco denies the remaining allegations in paragraph 130.

131. Costco denies the allegations in paragraph 131.

132. Costco denies the allegations in paragraph 132.

133. Costco denies the allegations in paragraph 133.

134. Costco denies the allegations in paragraph 134.

135. Costco denies the allegations in paragraph 135.

136. Costco denies the allegations in paragraph 136.

137. Costco denies the allegations in paragraph 137.

138. Costco denies the allegations in paragraph 138.

139. Costco lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 139 and therefore denies those allegations.

140. Costco denies the allegations in paragraph 140.

141. Costco denies the allegations in paragraph 141.

142. In response to the allegations in paragraph 142, Costco demands that judgment be entered in its favor and against plaintiff and that plaintiff's Complaint be dismissed, with prejudice, and that Costco be awarded costs of suit and reasonable attorney's fees as allowed by law and such further and additional relief as this Court may deem just and proper.

143. Costco incorporates by reference its responses to paragraphs 1 through 142 in response to paragraph 143 of plaintiff's Complaint.

144. In response to the allegations in paragraph 144, Costco admits that plaintiff brings a claim for wrongful death but denies any liability to plaintiff.

145. In response to the allegations in paragraph 145, Costco admits that plaintiff purports to bring a claim for strict liability but denies any liability to plaintiff.

146. Costco denies the allegations in paragraph 146.

147. In response to the allegations in paragraph 147, Costco lacks information or knowledge sufficient to form a belief as to the truth of the allegations that decedent or other persons or entities purchased Roundup®-branded products and therefore denies those allegations. The allegations in paragraph 147 also set forth conclusions of law for which no response is required. Costco denies the remaining allegations in paragraph 147.

148. The allegations in paragraph 148 set forth conclusions of law for which no response is required. To the extent a response is deemed required, Costco denies the allegations in paragraph 148.

149. Costco denies the allegations in paragraph 149.

150. Costco denies the allegations in paragraph 150.

151. Costco denies the allegations in paragraph 151.

152. Costco denies the allegations in paragraph 152.

153. Costco lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 153 and therefore denies those allegations.

154. Costco lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 154 regarding decedent's claimed use of and/or exposure to Roundup[®]-branded products and therefore denies those allegations. Costco denies the remaining allegations in paragraph 154, including that Roundup[®]-branded products have "dangerous characteristics."

155. In response to the allegations in paragraph 155, Costco denies that Roundup[®]-branded products are associated with risks of NHL or other serious illness or that Roundup[®]-branded products have "defects." Costco lacks information or knowledge sufficient to form a belief as to the truth of the allegations in the second sentence of paragraph 155 and therefore denies those allegations. Costco denies the remaining allegations in paragraph 155.

156. Costco denies the allegations in paragraph 156.

157. Costco denies the allegations in paragraph 157.

158. Costco denies the allegations in paragraph 158.

159. Costco denies the allegations in paragraph 159.

160. Costco denies the allegations in paragraph 160.

161. Costco denies the allegations in paragraph 161.

162. Costco denies the allegations in paragraph 162.

163. Costco denies the allegations in paragraph 163.

164. Costco denies the allegations in paragraph 164.

165. Costco lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 165 and therefore denies those allegations.

166. Costco denies the allegations in paragraph 166.

167. Costco denies the allegations in paragraph 167.

168. In response to the allegations in paragraph 168, Costco demands that judgment be entered in its favor and against plaintiff and that plaintiff's Complaint be dismissed, with prejudice, and that Costco be awarded costs of suit and reasonable attorney's fees as allowed by law and such further and additional relief as this Court may deem just and proper.

169. Costco incorporates by reference its responses to paragraphs 1 through 168 in response to paragraph 169 of plaintiff's Complaint.

170. In response to the allegations in paragraph 170, Costco admits that plaintiff brings a claim for wrongful death but denies any liability to plaintiff.

171. Costco denies the allegations in paragraph 171.

172. Costco lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 172 and therefore denies those allegations.

173. The allegations in paragraph 173 set forth conclusions of law for which no response is required.

174. The allegations in paragraph 174 set forth conclusions of law for which no response is required.

175. Costco denies the allegations in paragraph 175.

176. Costco denies the allegations in paragraph 176.

177. Costco denies the allegations in paragraph 177.

178. Costco denies the allegations in paragraph 178.

179. Costco denies the allegations in paragraph 179.

180. Costco denies the allegations in paragraph 180.

181. Costco denies the allegations in paragraph 181.

182. Costco denies the allegations in paragraph 182.

183. Costco denies the allegations in paragraph 183, including each of its subparts.

184. Costco denies the allegations in paragraph 184.

185. Costco lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 185 regarding plaintiff's and/or decedent's knowledge and therefore denies those allegations. Costco denies the remaining allegations in paragraph 185, including that intended use of and/or exposure to Roundup[®]-branded products causes any injuries.

186. Costco denies the allegations in paragraph 186.

187. Costco denies the allegations in paragraph 187.

188. Costco denies the allegations in paragraph 188.

189. Costco denies the allegations in paragraph 189.

190. Costco lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 190 and therefore denies those allegations.

191. Costco denies the allegations in paragraph 191.

192. Costco denies the allegations in paragraph 192.

193. In response to the allegations in paragraph 193, Costco demands that judgment be entered in its favor and against plaintiff and that plaintiff's Complaint be dismissed, with prejudice, and that Costco be awarded costs of suit and reasonable attorney's fees as allowed by law and such further and additional relief as this Court may deem just and proper.

194. Costco incorporates by references its responses to paragraphs 1 through 193 in response to paragraph 194 of plaintiff's Complaint.

195. In response to the allegations in paragraph 195, Costco admits that plaintiff brings a claim for wrongful death but denies any liability to plaintiff.

196. Costco denies the allegations in paragraph 196.

197. Costco lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 197 regarding decedent's claimed use of Roundup[®]-branded products and therefore denies those allegations. The remaining allegations in paragraph 197 set forth conclusions of law for which no response is required.

198. Costco denies the allegations in paragraph 198.

199. Costco lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 199 regarding plaintiff's and/or decedent's reliance and therefore denies those allegations. The remaining allegations in paragraph 199 set forth conclusions of law for which no response is required.

200. Costco lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 200 and therefore denies those allegations.

201. Costco lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 201 regarding the claimed use of Roundup[®]-branded products by decedent and others and therefore denies those allegations. The remaining allegations in paragraph 201 set forth conclusions of law for which no response is required.

202. Costco lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 202 regarding decedent's claimed use of or exposure to Roundup[®]-branded products and therefore denies those allegations. The allegation in paragraph 202 regarding Costco's implied warranty sets forth conclusions of law for which no response is required. Costco denies the remaining allegations in paragraph 202.

203. Costco lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 203 regarding decedent's claimed use of Roundup[®]-branded products or decedent's claimed reliance and therefore denies those allegations. The allegation in paragraph 203 regarding Costco's implied warranty sets forth conclusions of law for which no response is required.

204. In response to the allegations in paragraph 204, Costco denies that there is any risk of serious injury associated with the as-directed use of and/or exposure to Roundup[®]-branded products and/or glyphosate. Costco lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 204 regarding decedent's and/or decedent's employers' knowledge about Roundup[®]-branded products and therefore denies the remaining allegations in paragraph 204.

205. Costco denies the allegations in paragraph 205.

206. Costco denies the allegations in paragraph 206.

207. Costco denies the allegations in paragraph 207.

208. Costco lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 208 and therefore denies those allegations.

209. Costco denies the allegations in paragraph 209.

210. Costco denies the allegations in paragraph 210.

211. In response to the allegations in paragraph 211, Costco demands that judgment be entered in its favor and against plaintiff and that plaintiff's Complaint be dismissed, with prejudice, and that Costco be awarded costs of suit and reasonable attorney's fees as allowed by law and such further and additional relief as this Court may deem just and proper.

212. Costco incorporates by references its responses to paragraphs 1 through 211 in response to paragraph 212 of plaintiff's Complaint.

213. In response to the allegations in paragraph 213, Costco admits that plaintiff brings a claim for wrongful death but denies any liability to plaintiff.

214. Costco denies the allegations in paragraph 214, including each of its subparts.

215. Costco denies the allegations in paragraph 215.

216. Costco denies the allegations in paragraph 216.

217. Costco denies the allegations in paragraph 217.

218. In response to the allegations in paragraph 218, Costco demands that judgment be entered in its favor and against plaintiff and that plaintiff's Complaint be dismissed, with prejudice, and that Costco be awarded costs of suit and reasonable attorney's fees as allowed by law and such further and additional relief as this Court may deem just and proper.

Every allegation in the Complaint that is not specifically and expressly admitted in this Answer is hereby specifically and expressly denied.

SEPARATE AND AFFIRMATIVE DEFENSES

1. The Complaint, in whole or part, fails to state a claim or cause of action against Costco upon which relief can be granted.

2. Plaintiff's claims are misjoined and should be severed.

3. Plaintiff's claims against Costco are barred because plaintiff cannot proffer any scientifically reliable evidence that the products at issue were defective or unreasonably dangerous.

4. Any alleged negligent or culpable conduct of Costco, none being admitted, was so insubstantial as to be insufficient to be a proximate or substantial contributing cause of decedent's alleged injuries.

5. Plaintiff's claims against Costco are barred, in whole or in part, because the products at issue were designed, manufactured, marketed and labeled with proper warnings, information, cautions and instructions, in accordance with the state of the art and the state of scientific and technological knowledge.

6. Plaintiff's claims against Costco are barred, in whole or in part, because the products at issue were not defective or unreasonably dangerous in that they complied with, at all relevant times, all applicable government safety standards.

7. Plaintiff's claims against Costco are preempted, in whole or in part, by applicable federal law relating to the design, testing, producing, manufacturing, labeling, distributing, modeling, processing, and supply of Roundup[®]-branded products and/or glyphosate-containing products.

8. Plaintiff's claims against Costco are preempted, in whole or in part, because of U.S. EPA findings that glyphosate does not cause cancer in humans and/or because of U.S. EPA-approved product labeling.

9. Plaintiff's claims against Costco are barred, in whole or in part, by the doctrine of primary jurisdiction, including by the authority delegated by Congress to the U.S. EPA.

10. Plaintiff's claims against Costco are barred, in whole or in part, because decedent's injuries, if any, were the result of conduct of decedent, independent third parties, and/or events that were extraordinary under the circumstances, not foreseeable in the normal course of events, and/or independent, intervening and superseding causes of the alleged injuries, including but not limited to decedent's pre-existing medical conditions.

11. The doctrines contained in Restatement (Second) of Torts § 402A, comments j and k, bar plaintiff's claims against Costco in whole or in part.

12. Applicable statutes of limitations and/or repose bar plaintiff's claims in whole or in part.

13. Decedent's misuse or abnormal use of the product or failure to follow instructions bar plaintiff's claims in whole or in part.

14. If plaintiff or decedent suffered injuries or damages as alleged, which is denied, such injuries or damages resulted from: (a) acts or omissions of persons or entities for which Costco is neither liable nor responsible or, in the alternative, Costco is entitled to an assessment of the relative degree of fault of all such persons and entities; or (b) resulted from diseases and/or causes that are not related or connected with any product sold, distributed, or manufactured by Costco. Such acts or omissions on the part of others or diseases or causes constitute an

independent, intervening and sole proximate cause of plaintiff's or decedent's alleged injuries or damages.

15. Costco has no current or former legal relationship or privity with plaintiff and/or decedent and owed no duty to them by which liability could be attributed to it.

16. Costco made no warranties of any kind or any representations of any nature whatsoever to plaintiff and/or decedent. If any such warranties were made, which Costco specifically denies, then plaintiff and/or decedent failed to give notice of any breach thereof.

17. Plaintiff's claims against Costco are preempted or otherwise barred in whole or in part by the Freedom of Speech Clause of the First Amendment of the U.S. Constitution.

18. Plaintiff's claims against Costco for punitive damages are barred because such an award would violate Costco's due process, equal protection and other rights under the United States Constitution, the Virginia Constitution, and/or other applicable state constitutions.

19. Plaintiff's claims against Costco for punitive damages are barred because plaintiff has failed to allege conduct warranting imposition of such damages under Virginia law and/or other applicable state laws.

20. Plaintiff's claims against Costco for punitive damages are barred and/or limited by operation of state and/or federal law, including Va. Code Ann. § 801-38.1.

21. Plaintiff's claims against Costco are barred in whole or in part by decedent's own contributory/comparative negligence.

22. Plaintiff's claims against Costco are barred in whole or in part by plaintiff's and/or decedent's own failure to mitigate damages.

23. Plaintiff's claims against Costco are barred in whole or in part by the sophisticated user doctrine.

24. To the extent that plaintiff and/or decedent recovered payments for decedent's alleged injuries from any collateral source(s) or other source(s), plaintiff's recovery in this lawsuit, if any, shall be reduced to the extent allowed by applicable law.

25. If decedent has been injured or damaged, no injuries or damages being admitted, such injuries or damages were not caused by a Costco product.

26. Plaintiff's claims against Costco are barred or limited to the extent that plaintiff asserts claims that are governed by the laws of a state that does not recognize, or limits, such claims.

27. Plaintiff's claims against Costco are barred to the extent that plaintiff seeks relief under the laws of states that do not govern plaintiff's claims.

28. This venue is inconvenient, and this lawsuit should be transferred to a more convenient venue (Rockingham County).

29. Plaintiff's strict liability claims are barred because Virginia does not recognize a cause of action for strict liability in tort.

30. Costco hereby gives notice that it intends to rely upon such other defenses as may become available or apparent during the course of discovery and thus reserves its right to amend this Answer to assert such defenses.

WHEREFORE, Defendant Costco demands judgment in its favor and against plaintiff, dismissing plaintiff's Complaint with prejudice, together with the costs of suit and such other relief as the Court deems equitable and just.

JURY TRIAL DEMAND

Costco demands a jury trial on all issues so triable.

DATED: February 1, 2021

Respectfully submitted,

/s/ Tamara Barago

Tamara Barago (Virginia Bar No. 80361)

HOLLINGSWORTH LLP

1350 I Street, N.W.

Washington, DC 20005

Telephone: (202) 898-5800

Fax: (202) 682-1639

tbarago@hollingsworthllp.com

Attorney for Defendant Costco Wholesale
Corporation

CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of February, 2021, I electronically filed the foregoing Answer with the Clerk of the Court using the VJEFS system and sent a copy via electronic mail to the following:

Ryan C. Posey
Posey Lebowitz PLLC
3221 M Street, NW
Washington, DC 20007
Email: rposey@poseylebowitz.com

Counsel for Plaintiff

W. Barry Montgomery
KPM Law
901 Moorefield Park Drive, Suite 200
Richmond, VA 23236
Email: Barry.Montgomery@kpmlaw.com

Counsel for Defendant The Valley Fertilizer and Chemical Company, Inc.

/s/ Tamara Barago

Tamara Barago