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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF SAN DIEGO**
13 **(UNLIMITED JURISDICTION)**

13 MIKE DENNIS,
14 Plaintiff,
15 v.
16 MONSANTO COMPANY, a corporation;
17 DENAULT'S HARDWARE-HOME CENTERS,
INC. d/b/a DENAULT'S ACE HARDWARE, a
18 corporation; and DOES 1 through 100 inclusive,
19 Defendants.
20

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Superior Court of California,
County of San Diego
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Clerk of the Superior Court
By Amy Woolf, Deputy Clerk

Case No. 37-2021-00047326-CU-PO-NC
**COMPLAINT FOR DAMAGES AND
DEMAND FOR JURY TRIAL**
1. Strict Liability – Design Defect
2. Strict Liability – Failure to Warn
3. Negligence
4. Fraud
5. Breach of Express Warranties
6. Breach of Implied Warranties
7. Exemplary Damages
JURY TRIAL DEMANDED

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1 Plaintiff Mike Dennis, by and through his attorneys, alleges upon information and belief:

2 **STATEMENT OF THE CASE**

3 1. In 1970, Defendant Monsanto Company discovered the herbicidal properties of
4 glyphosate and began marketing it in products in 1974 under the brand name Roundup®. Roundup®
5 is a non-selective herbicide used to kill weeds that commonly compete with the growing of crops.
6 By 2001, glyphosate had become the most-used active ingredient in American agriculture with 85–
7 90millions of pounds used annually. That number grew to 185 million pounds by 2007. As of 2013,
8 glyphosate was the world’s most widely used herbicide.

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

16 3. Monsanto’s glyphosate products are registered in 130 countries and approved for use
17 on over 100 different crops. They are ubiquitous in the environment. Numerous studies confirm that
18 glyphosate is found in rivers, streams, and groundwater in agricultural areas where Roundup® is
19 used. It has been found in food, in the urine of agricultural workers, and even in the urine of urban
20 dwellers who are not in direct contact with glyphosate.

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

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

1 11. Venue is proper in this Court pursuant to California Code of Civil Procedure Section
 2 395(a) because some of the Defendants – Denault’s Ace Hardware – are residents of San Diego
 3 County. Additionally, Plaintiff Mike Dennis’ exposure to Roundup® occurred in San Diego County.

4 12. Furthermore, the Defendants have purposefully availed themselves of the benefits
 5 and the protections of the laws within the State of California. Monsanto has had sufficient contact
 6 such that the exercise of jurisdiction would be consistent with the traditional notions of fair play and
 7 substantial justice.

8 13. Plaintiff seeks relief that is within the jurisdictional limits of this Court.

9 **PARTIES**

10 14. Plaintiff Mike Dennis is a citizen of the State of California. Plaintiff was born on
 11 November 1, 1965, and resides in Carlsbad, County of San Diego. Plaintiff submits to the
 12 jurisdiction of this court and alleges venue in this Court is proper.

13 15. Plaintiff was exposed to Roundup® in the City of Carlsbad, located within the State
 14 of California when he applied Roundup® to his home. Plaintiff used Roundup® on a monthly basis
 15 throughout the year, every year from 2000 until 2020.

16 16. On June 22, 2020, Plaintiff was diagnosed with Mycosis Fungoides (“MF”) in
 17 Duarte, California at City of Hope Cancer Center by Dr. Jasmine M. Zain, and suffered the effects
 18 attendant thereto, as a direct and proximate result of the unreasonably dangerous and defective
 19 nature of Roundup® and Defendants’ wrongful and negligent conduct in the research, development,
 20 testing, manufacture, production, promotion, distribution, marketing, and sale of Roundup®.

21 17. Plaintiff is informed and believe and based thereon allege that as a direct and
 22 proximate result of Plaintiff’s exposure to Roundup® and/or other Monsanto and/or Monsanto
 23 glyphosate-containing products (“Roundup”), supplied, marketed, and/or distributed by Defendants
 24 herein, Plaintiff suffered significant harm, conscious pain and suffering, physical injury and bodily
 25 impairment including, but not limited to Mycosis Fungoides and other cancers, other permanent
 26 physical deficits, permanent bodily impairment and other injury sequelae. Plaintiff’s injuries
 27 required medical intervention to address the adverse physical effects and damage caused by
 28

1 Plaintiff's exposure to Roundup® and/or other Monsanto glyphosate-containing products
2 ("Roundup").

3 18. As a direct and proximate result of the wrongful conduct, acts, omissions, fraudulent
4 concealments, fraudulent misrepresentations, and fraudulent business practices by Defendants and
5 DOES 1 through 100, inclusive, Plaintiff used and/or was exposed to Roundup® and was diagnosed
6 with serious health injuries including Mycosis Fungoides.

7 19. As a further direct and proximate result of defects in Roundup® and the wrongful
8 conduct, acts, omissions, and fraudulent misrepresentations of Defendants, Plaintiff suffered severe
9 mental and physical pain and has and will sustain permanent injuries and emotional distress, along
10 with economic loss due to medical expenses and living-related expenses as a result of lifestyle
11 changes.

12 20. As a further direct and proximate result of defects in Roundup® and the wrongful
13 conduct, acts, omissions, and fraudulent misrepresentations of Defendants, Plaintiff required
14 medical intervention in efforts to maintain and/or save Plaintiff.

15 21. Plaintiff is an individual who suffered damages as a result of injuries resulting from
16 Plaintiff's use and/or exposure to Roundup® and is authorized to bring an action for the causes of
17 actions alleged herein including, but not limited to, injuries and damages sustained by Plaintiff
18 resulting from Plaintiff's use of and exposure to Roundup®. Said injuries and damages sustained
19 by Plaintiff were caused or substantially contributed to by the wrongful conduct of Defendants and
20 DOES 1 through 100, inclusive.

21 22. The product warnings for Roundup® in effect during the time period Plaintiff used
22 and/or was exposed to Roundup® were vague, incomplete, or otherwise inadequate, both
23 substantively and graphically, to alert consumers to the severe health risks associated with
24 Roundup® use and/or exposure.

25 23. The Defendants and DOES 1 through 100, and each of them, inclusive, did not
26 provide adequate warnings to consumers including Plaintiff and the general public about the
27 increased risk of the serious adverse events described herein.

28

1 24. Had Plaintiff been adequately warned by the Defendants and DOES 1 through 100,
2 and each of them, inclusive, of the potential life-threatening side effects of Roundup®, Plaintiff
3 would not have purchased, used, or been exposed to Roundup®.

4 25. By reason of the foregoing, Plaintiff developed serious and dangerous side effects
5 including Mycosis Fungoides, related injury sequelae, physical pain and suffering, mental anguish,
6 and loss of enjoyment of life. By reason of the foregoing, Plaintiff suffered economic losses and
7 special damages including, but not limited to, loss of earning and medical expenses. Plaintiff's
8 general and special damages exceed the jurisdictional limits of this Court.

9 26. Plaintiff has reviewed potential legal claims and causes of action against the
10 Defendants and has intentionally chosen only to pursue claims based on state law. Any reference to
11 any federal agency, regulation or rule is stated solely as background information, and Plaintiff is not
12 making any claims which raise federal questions. Thus, California state jurisdiction and venue is
13 proper.

14 **DEFENDANTS**

15 27. Defendant Monsanto Company ("Monsanto") is a Delaware corporation with its
16 headquarters in St. Louis, Missouri, and multiple principal places of business throughout the world,
17 including in St. Louis, Missouri, Oxnard, California, Woodland, California, and, at all relevant times
18 to this complaint, San Ramon, California. At all times relevant to this complaint, Monsanto was the
19 entity that discovered the herbicidal properties of glyphosate and manufactured Roundup®.
20 Monsanto has regularly transacted and conducted business within the State of California and has
21 derived substantial revenue from goods and products, including Roundup®, used in the State of
22 California and employs sales representatives in the State of California. Specifically, Monsanto
23 operated a residential products division known as the Solaris Group of Monsanto Company
24 (hereinafter "Solaris Group"), headquartered in San Ramon, California. Moreover, upon
25 information and belief, Solaris Group manufactured, registered, distributed, marketed, advertised,
26 and sold Roundup® products to California consumers. At all relevant times, Monsanto has
27 conducted testing, research, and analyses on its Roundup® and other glyphosate-based formulations
28 within California and manufactured said products in California, utilizing principal laboratories and

1 manufacturing sites throughout the State of California in locations such as San Ramon, Oxnard, and
2 Woodland. Monsanto expected or should have expected its acts to have consequences within the
3 State of California because it derived substantial revenue from interstate commerce and invoked the
4 benefits and protection of the State of California's laws.

5 28. Defendant Denault's Hardware-Home Centers, Inc. d/b/a Denault's Ace Hardware
6 is a California corporation with its principal place of business in Carlsbad, California. At relevant
7 times to this complaint, Denault's Ace Hardware sold Roundup® to Plaintiff from its storefront in
8 Carlsbad, California, and this constituted some of the Roundup® to which Plaintiff was exposed.

9 29. Plaintiff is informed and believes, and based thereon alleges, that in committing the
10 acts alleged herein, each and every managing agent, agent, representative, and/or employee of the
11 Defendants was working within the course and scope of said agency, representation and/or
12 employment with the knowledge, consent, ratification, and authorization of the Defendants and their
13 directors, officers, and/or managing agents.

14 30. At all relevant times alleged herein, one or more of the corporate Defendants was,
15 and now is, a corporation with its principal place of business in the State of California and, therefore,
16 is a citizen of the State of California.

17 31. The true names and/or capacities, whether individual, corporate, partnership,
18 associate, governmental, or otherwise, of Defendant DOES 1 through 100, inclusive, and each of
19 them, are unknown to Plaintiff at this time, who therefore sues said Defendants by such fictitious
20 names. Plaintiff is informed and believes, and thereon alleges, that each Defendant designated herein
21 as a DOE caused injuries and damages proximately thereby to Plaintiff as hereinafter alleged; and
22 that each DOE Defendant is liable to the Plaintiff for the acts and omissions alleged herein below,
23 and the resulting injuries to Plaintiff, and damages sustained by the Plaintiff. Plaintiff will amend
24 this Complaint to allege the true names and capacities of said DOE Defendants when the same are
25 ascertained.

26 32. Plaintiff is informed and believes, and thereon alleges, that at all times herein
27 mentioned, each of the named Defendants and each of the DOE Defendants was the agent, servant,
28 employee, and/or joint venturer of the other co-Defendants and other DOE Defendants, and each of

1 them, and at all said times, each named Defendant and each DOE Defendant was acting in the full
2 course, scope and authority of said agency, service, employment, and/or joint venture.

3 33. Plaintiff is informed and believes and alleges that at all times mentioned herein,
4 Defendants and DOES 1 through 100, inclusive, and each of them, were also known as, formerly
5 known as and/or were the successors and/or predecessors in interest/business/product line/or a
6 portion thereof, assigns, a parent, a subsidiary (wholly or partially owned by, or the whole or partial
7 owner), affiliate, partner, co-venturer, merged company, alter egos, agents, equitable trustees, and/or
8 fiduciaries of and/or were members in an entity or entities engaged in the funding, researching,
9 studying, manufacturing, fabricating, designing, developing, labeling, assembling, distributing,
10 supplying, leasing, buying, offering for sale, selling, inspecting, servicing, contracting others for
11 marketing, warranting, rebranding, manufacturing for others, packaging, and advertising of
12 Roundup® and/or other Monsanto glyphosate-containing products. Defendants and DOES 1
13 through 100, inclusive, and each of them, are liable for the acts, omissions and tortious conduct of
14 their successors and/or predecessors in interest/business/product line/or a portion thereof, assigns,
15 parents, subsidiaries, affiliates, partners, co-venturers, merged companies, alter egos, agents,
16 equitable trustees, fiduciaries, and/or their alternate entities in that Defendants and DOES 1 through
17 100, inclusive, and each of them, enjoy the goodwill originally attached to each such alternate entity,
18 acquired the assets or product line (or portion thereof), and in that there has been a virtual destruction
19 of Plaintiff's remedy against each such alternate entity, and that each such Defendant has the ability
20 to assume the risk spreading role of each such alternate entity.

21 34. Plaintiff is informed and believes, and thereon alleges, that at all times herein
22 mentioned, Defendants and DOES 1 through 100, inclusive, and each of them, were and are
23 corporations organized and existing under the laws of the State of California or the laws of some
24 state or foreign jurisdiction; that each of the said Defendants and DOE Defendants were and are
25 authorized to do and are doing business in the State of California and regularly conducted business
26 in California, including in San Diego County.

27 35. Upon information and belief, at all relevant times, Defendants and DOES 1 through
28 100, and each of them, inclusive, were engaged in the business of researching, developing,

1 designing, licensing, manufacturing, distributing, selling, marketing, and/or introducing into
2 interstate commerce and into the State of California, including in San Diego County, either directly
3 or indirectly through third parties or related entities, Roundup® and/or other Monsanto glyphosate-
4 containing products.

5 36. At all relevant times, Defendants and DOES 1 through 100, inclusive, and each of
6 them, conducted regular and sustained business and engaged in substantial commerce and business
7 activity in the State of California, which included but was not limited to selling, marketing and
8 distributing Roundup® and/or other Monsanto glyphosate-containing products in the State of
9 California, including in San Diego County.

10 37. At all relevant times, Defendants and DOES 1 through 100, inclusive, and each of
11 them, expected or should have expected that their acts would have consequences within the United
12 States of America including the State of California, including San Diego County, and said
13 Defendants derived and derive substantial revenue therefrom.

14 **EQUITABLE TOLLING**

15 38. Plaintiff has suffered an illness that has a latency period and does not arise until years
16 after exposure. Plaintiff had no way of knowing about the risk of serious illness associated with the
17 use of and/or exposure to Roundup® and glyphosate until made aware that Plaintiff's illness,
18 including Mycosis Fungoides could be caused by use and/or exposure to Roundup®. The discovery
19 rule applies, and the statute of limitations was tolled until the day Plaintiff knew or had reason to
20 know that Plaintiff's illnesses, including Mycosis Fungoides, were linked to Plaintiff's use and/or
21 exposure to Roundup®.

22 39. Within the time period of any applicable statute of limitations, Plaintiff could not
23 have discovered through the exercise of reasonable diligence that exposure to Roundup® and
24 glyphosate is injurious to human health.

25 40. Plaintiff did not discover and did not know of facts that would cause a reasonable
26 person to suspect the risk associated with the use of and/or exposure to Roundup® and glyphosate
27 nor would a reasonable and diligent investigation by Plaintiff have disclosed that Roundup® and
28 glyphosate would cause Plaintiff's illnesses.

1 41. The expiration of any applicable statute of limitations has been equitably tolled by
2 reason of Monsanto's fraudulent misrepresentations and fraudulent concealment and fraudulent
3 conduct. Through affirmative misrepresentations and omissions, Defendants actively concealed
4 from Plaintiff the true risks associated with use of and/or exposure to Roundup®.

5 42. As a result of Defendants' actions, Plaintiff could not reasonably have known or
6 learned through reasonable diligence that Plaintiff had been exposed to the risks alleged herein and
7 that those risks were the direct and proximate result of Defendants' acts and omissions.

8 43. Defendants are estopped from relying on any statute of limitations because of their
9 concealment of the truth regarding the safety of Roundup®. Defendants had a duty to disclose the
10 true character, quality and nature of Roundup® because this was non-public information over which
11 Defendants continue to have exclusive control. Defendants knew that this information was not
12 available to Plaintiff, Plaintiff's medical providers and/or health facilities, yet Defendants failed to
13 disclose the information to the public, including Plaintiff.

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

19
20 **FACTS**

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

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

1 47. For nearly 40 years, farms across the world have used Roundup® without knowing
2 of the dangers its use poses.

3 48. That is because when Monsanto first introduced Roundup®, it touted glyphosate as
4 a technological breakthrough: it could kill almost every weed without causing harm either to people
5 or to the environment. Of course, history has shown that not to be true. According to the WHO, the
6 main chemical ingredient of Roundup®—glyphosate—is a probable cause of cancer. Those most at
7 risk are farm workers and other individuals with workplace exposure to Roundup®, such as workers
8 in garden centers, nurseries, and landscapers. Agricultural workers are, once again, victims of
9 corporate greed. Monsanto assured the public that Roundup® was harmless. In order to prove this,
10 Monsanto championed falsified data and attacked legitimate studies that revealed its dangers.
11 Monsanto led a prolonged campaign of misinformation to convince government agencies, farmers
12 and the general population that Roundup® was safe.

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

14 49. The herbicidal properties of glyphosate were discovered in 1970 by Monsanto
15 chemist John Franz. The first glyphosate-based herbicide was introduced to the market in the mid-
16 1970s under the brand name Roundup®. From the outset, Monsanto marketed Roundup® as a “safe”
17 general-purpose herbicide for widespread commercial and consumer use. Monsanto still markets
18 Roundup® as safe today.

19 ***Registration of Herbicides under Federal Law***

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

25 51. Because herbicides are toxic to plants, animals, and humans, at least to some degree,
26 the EPA requires as part of the registration process, among other things, a variety of tests to evaluate
27 the potential for exposure to herbicides, toxicity to people and other potential non-target organisms,
28 and other adverse effects on the environment. Registration by the EPA, however, is not an assurance

1 or finding of safety. The determination the Agency must make in registering or re-registering a
2 product is not that the product is “safe,” but rather that use of the product in accordance with its
3 label directions “will not generally cause unreasonable adverse effects on the environment.” 7
4 U.S.C. § 136a(c) (5) (D).

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

10 53. The EPA registered Roundup® for distribution, sale, and manufacture in the United
11 States including the State of California. However, the EPA’s decision to register Roundup was
12 based on studies on the active chemical, glyphosate, and not the formulated Roundup product which
13 contains a cocktail of other ingredients such as surfactants, adjuvants, and inert compounds, all of
14 which, as discussed in greater detail below, contribute to the health risks associated with Roundup
15 exposure.¹

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

22 55. The evaluation of each herbicide product distributed, sold, or manufactured is
23 completed at the time the product is initially registered. The data necessary for registration of an
24 herbicide has changed over time. The EPA is now in the process of re-evaluating all herbicide
25

26 ¹ Surfactants are compounds which contribute to the even and effective spread of glyphosate
27 across the surface of a leaf and increase the rate of penetration through the plant. It has been
28 shown that surfactants also greatly increase the amount and rate of Roundup® absorbed by human
skin.

1 products through a Congressionally-mandated process called “re-registration.” 7 U.S.C. § 136a-1.
2 In order to reevaluate these herbicides, the EPA is demanding the completion of additional tests and
3 the submission of data for the EPA’s review and evaluation.

4 56. The EPA completed its review of glyphosate in early 2015 but delayed releasing the risk
5 assessment pending further review in light of the WHO’s health-related findings. On September
6 12, 2016, the EPA’s office of Pesticide Programs released an interim report, titled “Glyphosate Issue
7 Paper: Evaluation of Carcinogenic Potential,” (“2016 Issue Paper”) detailing the agency’s review
8 of a small portion of the existing literature on Roundup. The 2016 Issue Paper contains a review of
9 studies submitted to the agency by Monsanto, as well as the general independent scientific literature
10 on glyphosate carcinogenicity.

11 57. Immediately following the publication of the 2016 Issue Paper, the FIFRA Scientific
12 Advisory Panel (“SAP”) issued a report which reviewed the EPA’s 2016 Issue Paper, and the
13 conclusions therein. The SAP strongly criticized the EPA’s conclusions and questioned the
14 scientific approach of the agency, noting that that agency had failed to follow its own guidelines.

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

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

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

26 60. In the first instance, Monsanto, in seeking initial registration of Roundup® by EPA,
27 hired Industrial Bio-Test Laboratories (“IBT”) to perform and evaluate herbicide toxicology studies

28

1 relating to Roundup®. IBT performed about 30 tests on glyphosate and glyphosate-containing
2 products, including nine of the 15 residue studies needed to register Roundup®.

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

10 62. Three top executives of IBT were convicted of fraud in 1983.

11 63. In the second incident of data falsification, Monsanto hired Craven Laboratories in
12 1991 to perform pesticide and herbicide studies, including for Roundup®. In that same year, the
13 owner of Craven Laboratories and three of its employees were indicted, and later convicted, of
14 fraudulent laboratory practices in the testing of pesticides and herbicides.

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

17 65. Multiple studies have been ghostwritten in part and/or published by Monsanto
18 through companies such as Intertek, from 2000 through the present which minimize any safety
19 concerns about the use of glyphosate. The studies are used to convince regulators to allow the sale
20 of Roundup® and customers to use Roundup®. Such studies include, but are not limited to,
21 Williams (2000); Williams (2012); Kier & Kirkland (2013); Kier (2015); Bus (2016); Chang (2016);
22 and the Intertek Expert Panel Manuscripts. All of these studies have been submitted to and relied
23 upon by the public and the EPA in assessing the safety of glyphosate. Through these means,
24 Monsanto has fraudulently represented that independent scientists have concluded that Glyphosate
25 is safe. In fact, Monsanto paid these so-called “independent experts,” and Monsanto failed to
26 disclose the significant role Monsanto had in creating the manuscripts produced by the
27 “independent” experts. Further, Monsanto has ghostwritten editorials to advocate for the safety of
28 glyphosate in newspapers and magazines for scientists such as Robert Tarone and Henry Miller.

1 Monsanto has also ghostwritten letters by supposedly independent scientists which have been
2 submitted to regulatory agencies who are reviewing the safety of glyphosate.

3 66. Monsanto has also violated federal regulations in holding secret ex parte meetings
4 and conversations with certain EPA employees to collude in a strategy to re-register glyphosate and
5 to quash investigations into the carcinogenicity of glyphosate by other federal agencies such as the
6 Agency for Toxic Substances and Disease Registry. Monsanto’s close connection with the EPA
7 arises in part from its offering of lucrative consulting gigs to retiring EPA officials. In March 2015,
8 The Joint Glyphosate Task Force, at Monsanto’s behest, issued a press release sharply criticizing
9 IARC, stating that IARC’s conclusion was “baffling” and falsely claiming that “IARC did not
10 consider any new or unique research findings when making its decision. It appears that only by
11 deciding to exclude certain available scientific information and by adopting a different approach to
12 interpreting the studies was this possible.”

13 67. Beginning in 2011, the Federal Institute for Risk Assessment (BfR) in Germany
14 began preparing a study on the safety of glyphosate. Through the Glyphosate Task Force,
15 Defendants were able to co-opt this study, becoming the sole providers of data and ultimately
16 writing the report, which was rubber-stamped by the BfR. The Glyphosate Task Force was solely
17 responsible for preparing and submitting a summary of studies relied upon by the BfR. Defendants
18 have used this self-serving report (which they, in fact, wrote) to falsely proclaim the safety of
19 glyphosate. In October 2015, the Defendants, as members of the Joint Glyphosate Task Force, wrote
20 to the state of California to try to stop California from warning the public about the carcinogenicity
21 of glyphosate, arguing that the IARC classification was mistaken. In January of 2016, Monsanto
22 filed a lawsuit to stop California from warning the public about the carcinogenicity of glyphosate.

23 ***The Importance of Roundup® to Monsanto’s Market Dominance Profits***

24 68. The success of Roundup® was key to Monsanto’s continued reputation and
25 dominance in the marketplace. Largely due to the success of Roundup® sales, Monsanto’s
26 agriculture division was out-performing its chemicals division’s operating income, and that gap
27 increased yearly. But with its patent for glyphosate expiring in the United States in the year 2000,
28

1 Monsanto needed a strategy to maintain its Roundup® market dominance and to ward off impending
2 competition.

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

11 70. Through a three-pronged strategy of increased production, decreased prices, and by
12 coupling Roundup Ready® seeds with Roundup® herbicide, Roundup® became Monsanto’s most
13 profitable product. In 2000, Roundup® accounted for almost \$2.8 billion in sales, outselling other
14 herbicides by a margin of five to one and accounting for close to half of Monsanto’s revenue. Today,
15 glyphosate remains one of the world's largest herbicides by sales volume.

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

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

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

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

- 1 (c) Roundup® biodegrades into naturally occurring elements.
- 2 (d) Remember that versatile Roundup® herbicide stays where you put it. That means
- 3 there's no washing or leaching to harm customers' shrubs or other desirable
- 4 vegetation.
- 5 (e) This non-residual herbicide will not wash or leach in the soil. It . . . stays where you
- 6 apply it.
- 7 (f) You can apply Accord (glyphosate-containing herbicide) with "confidence because
- 8 it will stay where you put it;" it bonds tightly to soil particles, preventing leaching.
- 9 Then, soon after application, soil microorganisms biodegrade Accord into natural
- 10 products.
- 11 (g) Glyphosate is less toxic to rats than table salt following acute oral ingestion.
- 12 (h) Glyphosate's safety margin is much greater than required. It has over a 1,000-fold
- 13 safety margin in food and over a 700-fold safety margin for workers who
- 14 manufacture or use it.
- 15 (i) You can feel good about using herbicides by Monsanto. They carry a toxicity
- 16 category rating of 'practically non-toxic' as it pertains to mammals, birds and fish.
- 17 (j) "Roundup can be used where kids and pets will play and breaks down into natural
- 18 material." This ad depicts a person with his head in the ground and a pet dog standing
- 19 in an area which has been treated with Roundup.

20 72. On November 19, 1996, Monsanto entered into an Assurance of Discontinuance with

21 NYAG, in which Monsanto agreed, among other things, "to cease and desist from publishing or

22 broadcasting any advertisements [in New York] that represent, directly or by implication" that:

- 23 (a) its glyphosate-containing herbicide products or any component thereof are safe, non-
- 24 toxic, harmless or free from risk. * * *
- 25 (b) its glyphosate-containing herbicide products or any component thereof
- 26 manufactured, formulated, distributed or sold by Monsanto are biodegradable * * *
- 27 (c) its glyphosate-containing herbicide products or any component thereof stay where
- 28 they are applied under all circumstances and will not move through the environment

1 by any means.

2 * * *

3 (d) its glyphosate-containing herbicide products or any component thereof are “good”
4 for the environment or are “known for their environmental characteristics.” * * *

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

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

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

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

14 *Classifications and Assessments of Glyphosate*

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

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

24 77. One year before the Monograph meeting, the meeting is announced and there is a
25 call both for data and for experts. Eight months before the Monograph meeting, the Working Group
26 membership is selected, and the sections of the Monograph are developed by the Working Group
27 members. One month prior to the Monograph meeting, the call for data is closed, and the various
28 draft sections are distributed among Working Group members for review and comment. Finally, at

1 the Monograph meeting, the Working Group finalizes review of all literature, evaluates the evidence
2 in each category, and completes the overall evaluation. Within two weeks after the Monograph
3 meeting, the summary of the Working Group findings is published in *Lancet Oncology*, and within
4 a year after the meeting, the final Monograph is finalized and published.

5 78. In assessing a chemical agent, the IARC Working Group reviews the following
6 information:

- 7 (a) human, experimental, and mechanistic data;
- 8 (b) all pertinent epidemiological studies and cancer bioassays; and
- 9 (c) representative mechanistic data.

10 The studies must be publicly available and have sufficient detail for meaningful review, and
11 reviewers cannot be associated with the underlying study.

12 79. In March of 2015, IARC reassessed glyphosate. The summary published in *The*
13 *Lancet Oncology* reported that glyphosate is a Group 2A agent, that is, glyphosate is probably
14 carcinogenic in humans.

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

23 81. The studies considered the following exposure groups: occupational exposure of
24 farmers and tree nursery workers in the United States, forestry workers in Canada and Finland and
25 municipal weed-control workers in the United Kingdom; and para-occupational exposure in farming
26 families.

27
28

1 82. Glyphosate was identified as the second-most used household herbicide in the United
2 States for weed control between 2001 and 2007 and the most heavily used herbicide in the world in
3 2012.

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

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

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

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

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

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

24 89. The IARC Working Group further found that glyphosate and glyphosate
25 formulations induced DNA, oxidative stress, and chromosomal damage in mammals and in human
26 and animal cells in utero.

27 90. In addition to DNA damage and oxidative stress, scientists have suggested that
28 Roundup®'s association with various serious health conditions is linked to the effect Roundup®

1 has on the digestive system. Specifically, scientists believe the same mechanism that makes
2 Roundup® toxic to weeds also makes it toxic to the microbes within the human gut and mucous
3 membranes. When humans are exposed to Roundup®, this exposure leads to a chronic inflammatory
4 state in the gut, as well an impaired gut barrier, which can lead to many long-term health effects,
5 including an increased risk of cancer. Monsanto has deliberately refused to conduct tests on this
6 aspect of Roundup®’s mechanism of action.

7 91. Many Roundup® products bear a label which either reads: “glyphosate targets an
8 enzyme found in plants but not in people or pets” or “this Roundup formula targets an enzyme in
9 plants but not in people or pets.” These statements are false because it has been established that the
10 human body is host to microorganisms which contain the enzyme Monsanto asserts is not found in
11 humans. Thus, glyphosate targets microbes within the human body which have the enzyme, leading
12 to a variety of adverse health effects.

13 92. Thus, glyphosate targets microbes within the human body which contain the enzyme
14 affected by glyphosate, leading to a variety of adverse health effects. The IARC Working Group
15 also noted genotoxic, hormonal, and enzymatic effects in mammals exposed to glyphosate.
16 Essentially, glyphosate inhibits the biosynthesis of aromatic amino acids, which leads to several
17 metabolic disturbances, including the inhibition of protein and secondary product biosynthesis and
18 general metabolic disruption.

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

24 ***Other Earlier Findings about Glyphosate’s Dangers to Human Health***

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

1 *Release Patterns*

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

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

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

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

17 *Recent Worldwide Bans on Roundup®/Glyphosate*

18 99. Several countries around the world have instituted bans on the sale of Roundup® and
19 other glyphosate-containing herbicides, both before and since IARC first announced its assessment
20 for glyphosate in March 2015, and more countries undoubtedly will follow suit in light of this
21 assessment as the dangers of the use of Roundup® are more widely known. The Netherlands issued
22 a ban on all glyphosate-based herbicides in April 2014, including Roundup®, which takes effect by
23 the end of 2015. In issuing the ban, the Dutch Parliament member who introduced the successful
24 legislation stated: “Agricultural pesticides in user-friendly packaging are sold in abundance to
25 private persons. In garden centers, Roundup® is promoted as harmless, but unsuspecting customers
26 have no idea what the risks of this product are. Especially children are sensitive to toxic substances
27 and should therefore not be exposed to it.”

1 100. The Brazilian Public Prosecutor in the Federal District requested that the Brazilian
2 Justice Department suspend the use of glyphosate.

3 101. France banned the private sale of Roundup® and glyphosate following the IARC
4 assessment for Glyphosate.

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

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

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

15 105. On information and belief, Denault’s Ace Hardware was, at relevant times, engaged
16 in the marketing and retailing of Roundup®, Roundup-ready® crops and other glyphosate-
17 containing products from Monsanto to customers in California, including Plaintiff.

18 106. Denault’s Ace Hardware had superior knowledge compared to Roundup® users and
19 consumers, including regarding the carcinogenic properties of the product, yet failed to accompany
20 its sales and or marketing of Roundup® with any warnings or precautions for that grave danger. On
21 information and belief, Denault’s Ace Hardware was a retailer providing Roundup® and other
22 glyphosate-containing products to Plaintiff, resulting in the exposure of Plaintiff.

23 **LIMITATION ON ALLEGATIONS**

24 107. Plaintiff incorporates by reference each allegation set forth in preceding paragraphs
25 as if fully stated herein.

26 108. The allegations in this pleading are made pursuant to California law. To the extent
27 California law imposes a duty or obligation on Defendants that exceeds those required by federal
28 law, Plaintiff does not assert such claims. All claims asserted herein run parallel to federal law, *i.e.*,

1 the Defendants' violations of California law were also violations of federal law. Had Defendants
2 honestly complied with California law, they would also have complied with federal law.

3 109. Additionally, Plaintiff's claims do not seek to enforce federal law. These claims are
4 brought under California law, notwithstanding that such claims run parallel to federal law.

5 110. As alleged herein, Defendants violated U.S.C. § 136j and 40 C.F.R. § 156.10(a)(5)
6 by distributing Roundup®, which was misbranded pursuant to 7 U.S.C. § 136(g). Federal law
7 specifically prohibits the distribution of a misbranded herbicide.

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

9 111. Plaintiff incorporates by reference each allegation set forth in preceding paragraphs
10 as if fully stated herein.

11 112. Plaintiff brings this strict liability claim against Defendants for defective design.

12 113. At all relevant times, Defendants engaged in the business of testing, developing,
13 designing, manufacturing, marketing, selling, distributing, and promoting Roundup® products,
14 which are defective and unreasonably dangerous to consumers, including Plaintiff, thereby placing
15 Roundup® products into the stream of commerce. These actions were under the ultimate control
16 and supervision of Defendants. At all relevant times, Defendants designed, researched, developed,
17 manufactured, produced, tested, assembled, labeled, advertised, promoted, marketed, sold, and
18 distributed the Roundup® products used by Plaintiff, as described herein.

19 114. At all relevant times, Defendants' Roundup® products were manufactured,
20 designed, and labeled in an unsafe, defective, and inherently dangerous manner that was dangerous
21 for use by or exposure to the public, including Plaintiff.

22 115. At all relevant times, Defendants' Roundup® products reached the intended
23 consumers, handlers, and users or other persons coming into contact with these products in
24 California and throughout the United States, including Plaintiff, without substantial change in their
25 condition as designed, manufactured, sold, distributed, labeled, and marketed by Defendants. At all
26 relevant times, Defendants registered, researched, manufactured, distributed, marketed, and sold
27 Roundup® and other glyphosate-based formulations within California and aimed at a California
28

1 consumer and industrial market. Ace Hardware was at relevant times involved in the marketing and
2 sale of Roundup® and glyphosate-based formulations marketed and sold in California to Plaintiff.

3 116. Defendants' Roundup® products, as researched, tested, developed, designed,
4 licensed, manufactured, packaged, labeled, distributed, sold, and marketed by Defendants were
5 defective in design and formulation in that, when they left the control of Defendants' manufacturers
6 and/or suppliers, they were unreasonably dangerous and dangerous to an extent beyond that which
7 an ordinary consumer would contemplate.

8 117. Defendants' Roundup® products, as researched, tested, developed, designed,
9 licensed, manufactured, packaged, labeled, distributed, sold, and marketed by Defendants were
10 defective in design and formulation in that, when they left the hands of Defendants' manufacturers
11 and/or suppliers, the foreseeable risks exceeded the alleged benefits associated with their design and
12 formulation.

13 118. At all relevant times, Defendants knew or had reason to know that Roundup®
14 products were defective and were inherently dangerous and unsafe when used in the manner
15 instructed and provided by Defendants.

16 119. Therefore, at all relevant times, Defendants' Roundup® products, as researched,
17 tested, developed, designed, registered, licensed, manufactured, packaged, labeled, distributed, sold,
18 and marketed by Defendants were defective in design and formulation, in one or more of the
19 following ways:

- 20 a. When placed in the stream of commerce, Defendants' Roundup® products were
21 defective in design and formulation, and, consequently, dangerous to an extent
22 beyond that which an ordinary consumer would contemplate;
- 23 b. When placed in the stream of commerce, Defendants' Roundup® products were
24 unreasonably dangerous in that they were hazardous and posed a grave risk of cancer
25 and other serious illnesses when used in a reasonably anticipated manner;
- 26 c. When placed in the stream of commerce, Defendants' Roundup® products contained
27 unreasonably dangerous design defects and were not reasonably safe when used in a
28 reasonably anticipated or intended manner;

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

12 120. Plaintiff was exposed to Defendants' Roundup® products without knowledge of
13 Roundup®'s dangerous characteristics.

14 121. At all times relevant to this litigation, Plaintiff used and/or was exposed to the use of
15 Defendants' Roundup® products in an intended or reasonably foreseeable manner without
16 knowledge of Roundup®'s dangerous characteristics.

17 122. Plaintiff could not reasonably have discovered the defects and risks associated with
18 Roundup® or glyphosate-containing products before or at the time of exposure due to the
19 Defendants' suppression of scientific information linking glyphosate to cancer.

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

26 124. At the time Roundup® products left Defendants' control, there was a practical,
27 technically feasible and safer alternative design that would have prevented the harm without
28 substantially impairing the reasonably anticipated or intended function of Defendants' herbicides.

1 125. Defendants' defective design of Roundup® products was willful, wanton, fraudulent,
2 malicious, and conducted with reckless disregard for the health and safety of users of the Roundup®
3 products, including Plaintiff.

4 126. Therefore, as a result of the unreasonably dangerous condition of their Roundup®
5 products, Defendants are strictly liable to Plaintiff.

6 127. The defects in Defendants' Roundup® products were substantial and contributing
7 factors in causing Plaintiff's injuries, and, but for Defendants' misconduct and omissions, Plaintiff
8 would not have sustained injuries.

9 128. Defendants' conduct, as described above, was reckless. Defendants risked the lives
10 of consumers and users of its products, including Plaintiff, with knowledge of the safety problems
11 associated with Roundup® and glyphosate-containing products, and suppressed this knowledge
12 from the general public. Defendants made conscious decisions not to redesign, warn or inform the
13 unsuspecting public. Defendants' reckless conduct warrants an award of punitive damages.

14 129. As a direct and proximate result of Defendants placing its defective Roundup®
15 products into the stream of commerce, and the resulting injuries, Plaintiff has sustained pecuniary
16 loss including general damages in a sum which exceeds the jurisdictional minimum of this Court.

17 130. As a proximate result of Defendants placing its defective Roundup® products into
18 the stream of commerce, as alleged herein, there was a measurable and significant interval of time
19 during which Plaintiff has suffered great mental anguish and other personal injury and damages.

20 131. As a proximate result of the Defendants placing its defective Roundup® products
21 into the stream of commerce, as alleged herein, Plaintiff sustained loss of income, loss of earning
22 capacity and/or property damage.

23 132. WHEREFORE, Plaintiff respectfully requests this Court to enter judgment in
24 Plaintiff's favor for compensatory and punitive damages, together with interest, costs herein
25 incurred, attorneys' fees and all such other and further relief as this Court deems just and proper.

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

27 133. Plaintiff incorporates by reference each allegation set forth in preceding paragraphs
28 as if fully stated herein.

1 134. Plaintiff brings this strict liability claim against Defendants for failure to warn.

2 135. At all relevant times, Defendants engaged in the business of testing, developing,
3 designing, manufacturing, marketing, selling, distributing, and promoting Roundup® products which
4 are defective and unreasonably dangerous to consumers, including Plaintiff, because they do not
5 contain adequate warnings or instructions concerning the dangerous characteristics of Roundup® and
6 specifically, the active ingredient glyphosate. These actions were under the ultimate control and
7 supervision of Defendants. At all relevant times, Defendants registered, researched, manufactured,
8 distributed, marketed and sold Roundup® and other glyphosate-based formulations within California
9 and aimed at a California consumer and industrial market. Ace Hardware was at relevant times
10 involved in the marketing and sale of Roundup® and glyphosate-based formulations marketed and
11 sold in California to Plaintiff.

12 136. Defendants researched, developed, designed, tested, manufactured, inspected,
13 labeled, distributed, marketed, promoted, sold, and otherwise released into the stream of commerce
14 its Roundup® products, and in the course of same, directly advertised or marketed the products to
15 consumers and end users, including Plaintiff, and therefore had a duty to warn of the risks associated
16 with the use of Roundup® and glyphosate-containing products.

17 137. At all relevant times, Defendants had a duty to properly test, develop, design,
18 manufacture, inspect, package, label, market, promote, sell, distribute, maintain, supply, provide
19 proper warnings, and take such steps as necessary to ensure its Roundup® products did not cause
20 users and consumers to suffer from unreasonable and dangerous risks. Defendants had a continuing
21 duty to warn Plaintiff of dangers associated with Roundup use and exposure. Defendants, as
22 manufacturer, seller, or distributor of chemical herbicides are held to the knowledge of an expert in
23 the field.

24 138. At the time of manufacture, Defendants could have provided the warnings or
25 instructions regarding the full and complete risks of Roundup® and glyphosate-containing products
26 because they knew or should have known of the unreasonable risks of harm associated with the use
27 of and/or exposure to such products.

28

1 139. At all relevant times, Defendants failed and deliberately refused to investigate, study,
2 test, or promote the safety or to minimize the dangers to users and consumers of their product and
3 to those who would foreseeably use or be harmed by Defendants' herbicides, including Plaintiff.

4 140. Despite the fact that Defendants knew or should have known that Roundup® posed a
5 grave risk of harm, they failed to exercise reasonable care to warn of the dangerous risks associated
6 with use and exposure. The dangerous propensities of their products and the carcinogenic
7 characteristics of glyphosate, as described above, were known to Defendants, or scientifically
8 knowable to Defendants through appropriate research and testing by known methods, at the time they
9 distributed, supplied or sold the product, and were not known to end users and consumers, such as
10 Plaintiff.

11 141. Defendants knew or should have known that their products created significant risks
12 of serious bodily harm to consumers, as alleged herein, and Defendants failed to adequately warn
13 consumers, *i.e.*, the reasonably foreseeable users, of the risks of exposure to its products. Defendants
14 have wrongfully concealed information concerning the dangerous nature of Roundup® and its active
15 ingredient glyphosate and, further, have made false and/or misleading statements concerning the
16 safety of Roundup® products and glyphosate.

17 142. At all relevant times, Defendants' Roundup® products reached the intended
18 consumers, handlers, and users or other persons coming into contact with these products in
19 California and throughout the United States, including Plaintiff, without substantial change in their
20 condition as designed, manufactured, sold, distributed, labeled, and marketed by Defendants.

21 143. Plaintiff was exposed to Defendants' Roundup® products without knowledge of
22 their dangerous characteristics.

23 144. At all relevant times, Plaintiff used and/or was exposed to the use of Defendants'
24 Roundup® products while using them for their intended or reasonably foreseeable purposes, without
25 knowledge of their dangerous characteristics.

26 145. Plaintiff could not have reasonably discovered the defects and risks associated with
27 Roundup® or glyphosate-containing products prior to or at the time of Plaintiff's exposure. Plaintiff
28

1 relied upon the skill, superior knowledge, and judgment of Defendants to know about and disclose
2 serious health risks associated with using Defendants' products.

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

8 147. The information that Defendants did provide or communicate failed to contain
9 relevant warnings, hazards, and precautions that would have enabled consumers such as Plaintiff to
10 utilize the products safely and with adequate protection. Instead, Defendants disseminated
11 information that was inaccurate, false and misleading, and which failed to communicate accurately
12 or adequately the comparative severity, duration, and extent of the risk of injuries with use of and/or
13 exposure to Roundup® and glyphosate; continued to aggressively promote the efficacy of its
14 products, even after they knew or should have known of the unreasonable risks from use or exposure;
15 and concealed, downplayed, or otherwise suppressed, through aggressive marketing and promotion,
16 any information or research about the risks and dangers of exposure to Roundup and glyphosate.

17 148. This alleged failure to warn is not limited to the information contained on
18 Roundup®'s labeling. The Defendants were able, in accord with federal law, to comply with
19 California law by disclosing the known risks associated with Roundup® through other non-labeling
20 mediums, *i.e.*, promotion, advertisements, public service announcements, and/or public information
21 sources. But the Defendants did not disclose these known risks through any medium.

22 149. To this day, Defendants have failed to adequately and accurately warn of the risks of
23 cancer associated with the use of and exposure to Roundup® and its active ingredient glyphosate.

24 150. As a result of their inadequate warnings, Defendants' Roundup® products were
25 defective and unreasonably dangerous when they left the possession and/or control of Defendants,
26 were distributed by Defendants, and used by Plaintiff.

27 151. Defendants are liable to Plaintiff for injuries caused by their negligent or willful
28 failure, as described above, to provide adequate warnings or other clinically relevant information

1 and data regarding the appropriate use of their products and the risks associated with the use of or
2 exposure to Roundup® and glyphosate.

3 152. Had Defendants provided adequate warnings and instructions and properly disclosed
4 and disseminated the risks associated with their Roundup® products, Plaintiff could have avoided
5 the risk of developing injuries and could have obtained or used alternative herbicides.

6 153. As a direct and proximate result of Defendants placing defective Roundup® products
7 into the stream of commerce, Plaintiff was injured and has sustained pecuniary loss resulting and
8 general damages in a sum exceeding the jurisdictional minimum of this Court.

9 154. As a proximate result of Defendants placing defective Roundup® products into the
10 stream of commerce, as alleged herein, there was a measurable and significant interval of time
11 during which Plaintiff suffered great mental anguish and other personal injury and damages.

12 155. As a proximate result of Defendants placing defective Roundup® products into the
13 stream of commerce, as alleged herein, Plaintiff sustained loss of income, loss of earning capacity
14 and property damage.

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

18 **COUNT III: NEGLIGENCE**

19 157. Plaintiff incorporate by reference each allegation set forth in preceding paragraphs
20 as if fully stated herein.

21 158. Defendants, directly or indirectly, caused Roundup® products to be sold, distributed,
22 packaged, labeled, marketed, promoted, and/or used by Plaintiff. At all relevant times, Defendants
23 registered, researched, manufactured, distributed, marketed, and sold Roundup® and other
24 glyphosate-based formulations within California and aimed at a California consumer and industrial
25 market. Denault's Ace Hardware was at relevant times involved in the marketing and sale of
26 Roundup® and glyphosate-based formulations marketed and sold in California to Plaintiff.

27 159. At all relevant times, Defendants had a duty to exercise reasonable care in the design,
28 research, manufacture, marketing, advertisement, supply, promotion, packaging, sale, and

1 distribution of Roundup products, including the duty to take all reasonable steps necessary to
2 manufacture, promote, and/or sell a product that was not unreasonably dangerous to consumers and
3 users of the product.

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

10 161. At all relevant times, Defendants knew or, in the exercise of reasonable care, should
11 have known of the hazards and dangers of Roundup® and, specifically, the carcinogenic properties
12 of the chemical glyphosate.

13 162. Accordingly, at all relevant times, Defendants knew or, in the exercise of reasonable
14 care, should have known that use of or exposure to Roundup® products could cause or be associated
15 with Plaintiff's injuries, and thus, create a dangerous and unreasonable risk of injury to the users of
16 these products, including Plaintiff.

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

20 164. As such, Defendants breached their duty of reasonable care and failed to exercise
21 ordinary care in the design, research, development, manufacture, testing, marketing, supply,
22 promotion, advertisement, packaging, sale, and distribution of Roundup® products, in that
23 Defendants manufactured and produced defective herbicides containing the chemical glyphosate;
24 knew or had reason to know of the defects inherent in its products; knew or had reason to know that
25 a user's or consumer's exposure to the products created a significant risk of harm and unreasonably
26 dangerous side effects; and failed to prevent or adequately warn of these risks and injuries. Indeed,
27 Defendants deliberately refused to test Roundup® products because they knew that the chemical
28 posed serious health risks to humans.

1 165. Defendants were negligent in their promotion of Roundup®, outside of the labeling
2 context, by failing to disclose material risk information as part of their promotion and marketing of
3 Roundup®, including the Internet, television, print advertisements, etc. Nothing prevented
4 Defendants from being honest in their promotional activities, and, in fact, Defendants had a duty to
5 disclose the truth about the risks associated with Roundup in their promotional efforts, outside of the
6 context of labeling.

7 166. Despite their ability and means to investigate, study, and test the products and to
8 provide adequate warnings, Defendants have failed to do so. Indeed, Defendants have wrongfully
9 concealed information and have further made false and/or misleading statements concerning the
10 safety and/or exposure to Roundup and glyphosate.

11 167. Defendants' negligence included:

- 12 a. Manufacturing, producing, promoting, formulating, creating, developing,
13 designing, selling, and/or distributing Roundup® products without thorough and
14 adequate pre- and post-market testing;
- 15 b. Manufacturing, producing, promoting, formulating, creating, developing,
16 designing, selling, and/or distributing Roundup® while negligently and/or
17 intentionally concealing and failing to disclose the results of trials, tests, and
18 studies of exposure to glyphosate, and, consequently, the risk of serious harm
19 associated with human use of and exposure to Roundup;
- 20 c. Failing to undertake sufficient studies and conduct necessary tests to determine
21 whether or not Roundup® products and glyphosate-containing products were
22 safe for their intended use in agriculture and horticulture;
- 23 d. Failing to use reasonable and prudent care in the design, research, manufacture,
24 and development of Roundup® products so as to avoid the risk of serious harm
25 associated with the prevalent use of Roundup/glyphosate as an herbicide;
- 26 e. Failing to design and manufacture Roundup® products so as to ensure they were
27 at least as safe and effective as other herbicides on the market;

- 1 f. Failing to provide adequate instructions, guidelines, and safety precautions to
2 those persons Defendants could reasonably foresee would use and be exposed to
3 Roundup® products;
- 4 g. Failing to disclose to Plaintiff, users/consumers, and the general public that use
5 of and exposure to Roundup® presented severe risks of cancer and other grave
6 illnesses;
- 7 h. Failing to warn Plaintiff, consumers, and the general public that the product's
8 risk of harm was unreasonable and that there were safer and effective alternative
9 herbicides available to Plaintiff and other consumers;
- 10 i. Systematically suppressing or downplaying contrary evidence about the risks,
11 incidence, and prevalence of the side effects of Roundup® and glyphosate-
12 containing products;
- 13 j. Representing that their Roundup® products were safe for their intended use
14 when, in fact, Defendants knew or should have known the products were not safe
15 for their intended purpose;
- 16 k. Declining to make or propose any changes to Roundup® products' labeling or
17 other promotional materials that would alert consumers and the general public of
18 the risks of Roundup® and glyphosate;
- 19 l. Advertising, marketing, and recommending the use of the Roundup® products,
20 while concealing and failing to disclose or warn of the dangers known (by
21 Defendants) to be associated with or caused by the use of or exposure to
22 Roundup® and glyphosate;
- 23 m. Continuing to disseminate information to its consumers, which indicate or imply
24 that Defendants' Roundup® products are not unsafe for use in the agricultural
25 and horticultural industries; and
- 26 n. Continuing the manufacture and sale of their products with the knowledge that
27 the products were unreasonably unsafe and dangerous.
- 28

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

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

6 171. Defendants' negligence was the proximate cause of Plaintiff's injuries, *i.e.*, absent
7 Defendants' negligence, Plaintiff would not have developed cancer.

8 172. Defendants' conduct, as described above, was reckless. Defendants regularly risked
9 the lives of consumers and users of their products, including Plaintiff, with full knowledge of the
10 dangers of their products. Defendants have made conscious decisions not to redesign, re-label, warn,
11 or inform the unsuspecting public, including Plaintiff. Defendants' reckless conduct therefore
12 warrants an award of punitive damages.

13 173. As a direct and proximate result of Defendants placing defective Roundup® products
14 into the stream of commerce, Plaintiff was injured and have sustained pecuniary loss and general
15 damages in a sum exceeding the jurisdictional minimum of this Court.

16 174. As a proximate result of Defendants placing defective Roundup® products into the
17 stream of commerce, as alleged herein, there was a measurable and significant interval of time
18 during which Plaintiff suffered great mental anguish and other personal injury and damages.

19 175. As a proximate result of Defendants placing defective Roundup® products into the
20 stream of commerce, as alleged herein, Plaintiff sustained a loss of income, loss of earning capacity
21 and property damage.

22 176. WHEREFORE, Plaintiff respectfully request this Court to enter judgment in
23 Plaintiff's favor for compensatory and punitive damages, together with interest, costs herein
24 incurred, attorneys' fees and all such other and further relief as this Court deems just and proper.

25 **COUNT IV: FRAUD**

26 **(MONSANTO)**

27 177. Plaintiff incorporates by reference each allegation set forth in preceding paragraphs
28 as if fully stated herein.

1 178. Defendant Monsanto has defrauded the agricultural community in general and
2 Plaintiff in particular by misrepresenting the true safety of its Roundup® and by failing to disclose
3 known risks of cancer.

4 179. Defendant Monsanto misrepresented and/or failed to disclose, *inter alia*, that:
5 glyphosate and its major metabolite aminomethylphosphonic acid (AMPA) could cause cancer;
6 glyphosate and AMPA are known to be genotoxic in humans and laboratory animals because
7 exposure is known to cause DNA strand breaks (a precursor to cancer); glyphosate and AMPA are
8 known to induce oxidative stress in humans and laboratory animals (a precursor to cancer);
9 glyphosate and AMPA interfere with the aromatic amino acids within the human gut, leading to
10 downstream health conditions including cancer; exposure to glyphosate and AMPA is causally
11 associated with non-Hodgkin lymphoma; and the laboratory tests attesting to the safety of glyphosate
12 were flawed and/or fraudulent.

13 180. Due to these misrepresentations and omissions, at all times relevant to this litigation,
14 Defendant's Roundup® was misbranded under 7 U.S.C. § 136(g) and its distribution within
15 California and around the United States was a violation of 7 U.S.C. § 136j and 40 C.F.R. §
16 156.10(a)(5).

17 181. Plaintiff relied on the Defendant's misrepresentations and/or material omissions
18 regarding the safety of Roundup® and its active ingredient glyphosate in deciding whether to
19 purchase and/or use the product. Plaintiff did not know nor could Plaintiff have reasonably known
20 of the misrepresentations and/or material omissions by Defendant concerning Roundup® and its
21 active ingredient glyphosate.

22 182. The misrepresentations and/or material omissions that form the basis of this fraud
23 claim are not limited to statements made on the Roundup® labeling, as defined under federal law,
24 but also involve Defendant Monsanto's representations and omissions made as part of its promotion
25 and marketing of Roundup®, including on the Internet, television, in print advertisements, etc.
26 Nothing prevented Defendant Monsanto from disclosing the truth about the risks associated with
27 Roundup® in its promotional efforts outside of the labeling context, using the forms of media and
28 promotion Defendant Monsanto traditionally used to promote the product's efficacy and benefits.

1 183. When Defendant Monsanto made the misrepresentations and/or omissions as alleged
2 in this pleading, it did so with the intent of defrauding and deceiving the public in general and the
3 agricultural community and with the intent of inducing the public and agricultural community to
4 purchase and use Roundup®.

5 184. Defendant Monsanto made these misrepresentations and/or material omissions with
6 malicious, fraudulent and/or oppressive intent toward Plaintiff and the public generally. Defendant’s
7 conduct was willful, wanton, and/or reckless. Defendant deliberately recommended, manufactured,
8 produced, marketed, sold, distributed, merchandized, packaged, promoted and advertised the
9 dangerous and defective herbicide Roundup®. This constitutes an utter, wanton, and conscious
10 disregard of the rights and safety of a large segment of the public, and by reason thereof, Defendant
11 is liable for reckless, willful, and wanton acts and omissions which evidence a total and conscious
12 disregard for the safety of Plaintiff and others which proximately caused the injuries as set forth
13 herein.

14 185. As a proximate result of Defendant Monsanto’s fraudulent and deceitful conduct and
15 representations, Plaintiff has sustained damages and other losses in an amount to be proven at trial.

16 186. As a proximate result of Defendant Monsanto’s fraud, as alleged herein, Plaintiff
17 sustained a loss of income, loss of earning capacity, and property damage, including lost income.

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

21 **COUNT V: BREACH OF EXPRESS WARRANTIES**

22 **(MONSANTO)**

23 188. Plaintiff incorporates by reference each allegation set forth in preceding paragraphs
24 as if fully stated herein.

25 189. At all relevant times, Defendant Monsanto engaged in the business of testing,
26 developing, designing, manufacturing, marketing, selling, distributing, and promoting Roundup®
27 products, which are defective and unreasonably dangerous to consumers, including Plaintiff, thereby
28

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

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

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

12 191. As alleged throughout this pleading, the ability of Defendant Monsanto to properly
13 disclose those risks associated with Roundup® is not limited to representations made on the
14 labeling.

15 192. At all relevant times, Defendant Monsanto expressly represented and warranted to
16 the purchasers of its products, by and through statements made by Defendant Monsanto in labels,
17 publications, package inserts, and other written materials intended for consumers and the general
18 public, that Roundup® products were safe to human health and the environment, effective, fit, and
19 proper for their intended use. Defendant Monsanto advertised, labeled, marketed, and promoted
20 Roundup® products, representing the quality to consumers and the public in such a way as to induce
21 their purchase or use, thereby making an express warranty that Roundup® products would conform
22 to the representations.

23 193. These express representations include incomplete warnings and instructions that
24 purport, but fail, to include the complete array of risks associated with use of and/or exposure to
25 Roundup® and glyphosate. Defendant Monsanto knew and/or should have known that the risks
26 expressly included in Roundup® warnings and labels did not and do not accurately or adequately set
27 forth the risks of developing the serious injuries complained of herein. Nevertheless, Defendant
28 Monsanto expressly represented that Roundup® products were safe and effective, that they were safe

1 and effective for use by individuals such as the Plaintiff, and/or that they were safe and effective as
2 agricultural herbicides.

3 194. The representations about Roundup®, as set forth herein, contained or constituted
4 affirmations of fact or promises made by the seller to the buyer, which related to the goods and
5 became part of the basis of the bargain, creating an express warranty that the goods would conform
6 to the representations.

7 195. Defendant Monsanto placed Roundup® products into the stream of commerce for sale
8 and recommended their use to consumers and the public without adequately warning of the true risks
9 of developing the injuries associated with the use of and exposure to Roundup® and its active
10 ingredient glyphosate.

11 196. Defendant Monsanto breached these warranties because, among other things,
12 Roundup® products were defective, dangerous, and unfit for use, did not contain labels representing
13 the true and adequate nature of the risks associated with their use, and were not merchantable or safe
14 for their intended, ordinary, and foreseeable use and purpose. Specifically, Defendant Monsanto
15 breached the warranties in the following ways:

16 a. Defendant Monsanto represented through its labeling, advertising, and marketing
17 materials that Roundup® products were safe, and fraudulently withheld and concealed
18 information about the risks of serious injury associated with use of and/or exposure to
19 Roundup® and glyphosate by expressly limiting the risks associated with use and/or
20 exposure within its warnings and labels; and

21 b. Defendant Monsanto represented that Roundup® products were safe for use and
22 fraudulently concealed information that demonstrated that glyphosate, the active ingredient
23 in Roundup®, had carcinogenic properties, and that Roundup® products, therefore, were
24 not safer than alternatives available on the market.

25 197. Plaintiff detrimentally relied on the express warranties and representations of
26 Defendant Monsanto concerning the safety and/or risk profile of Roundup® in making a decision to
27 purchase the product. Plaintiff reasonably relied upon Defendant Monsanto to disclose known
28 defects, risks, dangers, and side effects of Roundup® and glyphosate. Plaintiff would not have

1 purchased or used Roundup® had Defendant Monsanto properly disclosed the risks associated with
2 the product, either through advertising, labeling, or any other form of disclosure.

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

7 199. Plaintiff had no knowledge of the falsity or incompleteness of Defendant Monsanto's
8 statements and representations concerning Roundup.

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

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

17 202. As a direct and proximate result of Defendant Monsanto's breach of express
18 warranty, Plaintiff has sustained pecuniary loss and general damages in a sum exceeding the
19 jurisdictional minimum of this Court.

20 203. As a proximate result of Defendant Monsanto's breach of express warranty, as alleged
21 herein, there was a measurable and significant interval of time during which Plaintiff suffered great
22 mental anguish and other personal injury and damages.

23 204. As a proximate result of Defendant Monsanto's breach of express warranty, as alleged
24 herein, Plaintiff sustained a loss of income, loss of earning capacity, and property damage.

25 205. WHEREFORE, Plaintiff respectfully requests this Court to enter judgment in
26 Plaintiff's favor for compensatory and punitive damages, together with interest, costs herein
27 incurred, attorneys' fees, and all such other and further relief as this Court deems just and proper.

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

1 (MONSANTO)

2 206. Plaintiff incorporates by reference every allegation set forth in preceding paragraphs
3 as if fully stated herein.

4 207. At all relevant times, Defendant Monsanto engaged in the business of testing,
5 developing, designing, manufacturing, marketing, selling, distributing, and promoting Roundup®
6 products, which were and are defective and unreasonably dangerous to consumers, including
7 Plaintiff, thereby placing Roundup® products into the stream of commerce.

8 208. Before the time Plaintiff was exposed to the aforementioned Roundup® products,
9 Defendant Monsanto impliedly warranted to its consumers, including Plaintiff, that Roundup®
10 products were of merchantable quality and safe and fit for the use for which they were intended;
11 specifically, as agricultural herbicides.

12 209. But Defendant Monsanto failed to disclose that Roundup® has dangerous
13 propensities when used as intended and that use of and/or exposure to Roundup® and glyphosate-
14 containing products carries an increased risk of developing severe injuries, including Plaintiff's
15 injuries.

16 210. Plaintiff was an intended beneficiary of the implied warranties made by Defendant
17 Monsanto to purchasers of its herbicides.

18 211. The Roundup® products were expected to reach and did in fact reach consumers and
19 users, including Plaintiff, without substantial change in the condition in which they were
20 manufactured and sold by Defendant Monsanto.

21 212. At all relevant times, Defendant Monsanto was aware that consumers and users of
22 its products, including Plaintiff, would use Roundup® products as marketed by Defendant
23 Monsanto, which is to say that Plaintiff was a foreseeable user of Roundup®.

24 213. Defendant Monsanto intended that Roundup® products be used in the manner in
25 which Plaintiff, in fact, used them and which Defendant Monsanto impliedly warranted to be of
26 merchantable quality, safe, and fit for this use, despite the fact that Roundup® was not adequately
27 tested or researched.

28

1 214. In reliance upon Defendant Monsanto's implied warranty, Plaintiff used Roundup®
2 as instructed and labeled and in the foreseeable manner intended, recommended, promoted, and
3 marketed by Defendant Monsanto.

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

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

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

13 218. As a direct and proximate result of Defendant's breach of implied warranty, Plaintiff
14 has sustained pecuniary loss and general damages in a sum exceeding the jurisdictional minimum
15 of this Court.

16 219. As a proximate result of the Defendant's breach of implied warranty, as alleged
17 herein, there was a measurable and significant interval of time during which Plaintiff suffered great
18 mental anguish and other personal injury and damages.

19 220. As a proximate result of Defendant's breach of implied warranty, as alleged herein,
20 Plaintiff sustained a loss of income, loss of earning capacity, and property damage.

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

24 **EXEMPLARY DAMAGES ALLEGATIONS**

25 222. Plaintiff incorporates by reference each allegation set forth in preceding paragraphs
26 as if fully stated herein.

27
28

1 223. Defendants’ conduct as alleged herein was done with oppression, fraud, and malice.
2 Defendants were fully aware of the safety risks of Roundup®. Nonetheless, Defendants deliberately
3 crafted their label, marketing, and promotion to mislead farmers and consumers.

4 224. This was not done by accident or through some justifiable negligence. Rather,
5 Defendants knew that it could turn a profit by convincing the agricultural industry that Roundup was
6 harmless to humans, and that full disclosure of the true risks of Roundup® would limit the amount
7 of money Defendants would make selling Roundup® in California. Defendants’ objection was
8 accomplished not only through its misleading labeling, but through a comprehensive scheme of
9 selective fraudulent research and testing, misleading advertising, and deceptive omissions as more
10 fully alleged throughout this pleading. Plaintiff was denied the right to make an informed decision
11 about whether to purchase, use, or be exposed to an herbicide, knowing the full risks attendant to that
12 use. Such conduct was done with conscious disregard of Plaintiff’s rights.

13 225. There is no indication that Defendants will stop their deceptive and unlawful
14 marketing practices unless they are punished and deterred. Accordingly, Plaintiff requests punitive
15 damages against the Defendants for the harms caused to Plaintiff.

16 **JURY TRIAL DEMAND**

17 226. Plaintiff demands a trial by jury on all of the triable issues within this pleading.

18 **PRAYER FOR RELIEF**

19 227. WHEREFORE, Plaintiff requests the Court to enter judgment in Plaintiff’s favor and
20 against the Defendants for:

21 a. actual or compensatory damages in such amount to be determined at trial and as
22 provided by applicable law, including medical and related expenses; loss of income, earning
23 capacity, and earning potential, in the past and future;

24 b. non-economic damages according to proof, including compensation for physical pain
25 and suffering and discomfort; compensation for fright, nervousness, anxiety, worry and
26 apprehension, in the past and in the future;

27 c. exemplary and punitive damages sufficient to punish and deter the Defendants and
28 others from future fraudulent practices;

1 d. pre-judgment and post-judgment interest;
2 costs including reasonable attorneys' fees, court costs, and other litigation expenses; and any other
3 relief the Court may deem just and proper.

4 Dated: November 5, 2021

KIESEL LAW LLP

5
6 By:  _____

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