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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SAN DIEGO**

10 FRANK J. JOHNSON,) Case No. 37-2019-00033645-CU-MT-CTL
11)
Plaintiff,) **COMPLAINT FOR DAMAGES**
12)
vs.) **1. Strict Liability – Design Defect**
13) **2. Strict Liability – Failure to Warn**
MONSANTO COMPANY, a Delaware) **3. Negligence**
14 corporation; BAYER CORPORATION, an) **4. Fraud**
Indiana corporation; WILBUR ELLIS) **5. Breach of Express Warranties**
15 COMPANY, LLC, a California limited liability) **6. Breach of Implied Warranties**
company; WILBUR-ELLIS FEED, LLC, a)
16 California limited liability company; and DOES)
1-100, inclusive,)
17) **JURY TRIAL DEMANDED**
Defendants.)
18)

1 Plaintiff, Frank J. Johnson (“Plaintiff”), an individual, alleges against Defendants Bayer
2 Corporation (“Bayer”), Monsanto Company (“Monsanto”), Wilbur-Ellis Company, LLC, and
3 Wilbur-Ellis Feed, LLC (with Wilbur-Ellis Company, LLC collectively “Wilbur-Ellis”) (all
4 defendants are collectively referred to hereinafter as “Defendants”), upon information and belief,
5 except for his own acts and knowledge, which are based on personal knowledge, as follows:

6 **I. STATEMENT OF CASE**

7 1. This case arises from Plaintiff’s use of and exposure to Roundup® within the State of
8 California over a period of about six years and subsequent diagnosis of non-Hodgkin lymphoma as a
9 result.

10 2. In or about 1970, Defendant Monsanto discovered the herbicidal properties of
11 glyphosate and began marketing glyphosate in its products in 1974 under the brand name Roundup®.

12 3. Roundup® is a non-selective herbicide used to kill weeds that commonly compete
13 with the growing of crops. By 2001, glyphosate had become the most-used active ingredient in
14 American agriculture with approximately 85 to 90 million pounds used annually. By 2007, those
15 numbers grew to about 185 million pounds. As of 2013, glyphosate was the world’s most widely used
16 herbicide.

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

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

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

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

9 8. The IARC Working Group classified glyphosate as a Group 2A herbicide, meaning it
10 is probably carcinogenic to humans. The IARC Working Group concluded that the cancers most
11 associated with glyphosate exposure are non-Hodgkin lymphoma and other hematopoietic cancers,
12 including lymphocytic lymphoma/chronic lymphocytic leukemia, B-cell lymphoma, and multiple
13 myeloma.

14 9. The IARC evaluation is significant. It confirms what has been believed for years: that
15 glyphosate is toxic to humans. Nevertheless, Monsanto, since it began selling Roundup®, has
16 represented the product as safe to humans and the environment. Indeed, Monsanto has repeatedly
17 proclaimed and continues to proclaim to the world, and particularly to United States consumers, that
18 glyphosate-based herbicides, including Roundup®, create no unreasonable risks to human health or
19 to the environment.

20 10. Upon information and belief Wilbur-Ellis was responsible for marketing Roundup®
21 and related Monsanto products during the relevant time period.

22 **II. JURISDICTION AND VENUE**

23 11. The California Superior Court has jurisdiction over this action pursuant to California
24 Constitution Article VI Section 10, which grants the Superior Court “original jurisdiction in all causes
25 except those given by statute to other trial courts.”

26 12. The California Superior Court has jurisdiction over Defendants because, based on
27 information and belief, each is a California resident, a corporation and/or entity organized under the
28 laws of the State of California, a foreign corporation or association authorized to do business in

1 California and registered with the California Secretary of State or that has sufficient minimum
2 contacts in California, or otherwise intentionally avails itself of the California market so as to render
3 the exercise of jurisdiction over it by the California courts consistent with traditional notions of fair
4 play and substantial justice.

5 13. Venue is proper in this County pursuant to California Code of Civil Procedure § 395(a)
6 because the events, claims, and damages giving rise to this action occurred in this County.
7 Furthermore, Defendants have purposefully availed themselves of the benefits and protections of the
8 laws of the State of California and within this County specifically through its marketing and sales of
9 Roundup®.

10 14. Plaintiff seeks relief within the jurisdictional limits of this Court.

11 **III. PARTIES**

12 15. Plaintiff Frank J. Johnson is and always has been a resident and citizen of the State of
13 California, County of San Diego. As a result of Plaintiff's exposure to Roundup® within the State of
14 California from approximately 2009 to and including 2015, Plaintiff was diagnosed with non-
15 Hodgkin lymphoma in October 2014.

16 16. Plaintiff is informed and believes and based thereon alleges that as a direct and
17 proximate result of Plaintiff's use of Roundup® supplied and/or distributed by Defendants herein,
18 Plaintiff suffered significant physical and economic harm, including, but not limited to, conscious
19 pain and suffering, physical injury, and bodily impairment, including non-Hodgkin lymphoma, and
20 other physical deficits and bodily impairment. Plaintiff's injuries required medical intervention to
21 address the adverse physical effects and damage caused by Plaintiff's use of Roundup®.

22 17. As a direct and proximate result of the wrongful conduct, acts, omissions, fraudulent
23 concealment, fraudulent misrepresentations, and/or fraudulent business practices engaged in by
24 Defendants and DOES 1 through 100, inclusive, Plaintiff used and was exposed to Roundup® and
25 subsequently diagnosed with non-Hodgkin lymphoma.

26 18. As a further direct and proximate result of the wrongful conduct, acts, omissions,
27 fraudulent concealment, fraudulent misrepresentations, and/or fraudulent business practices engaged
28 in by Defendants and DOES 1 through 100, inclusive, Plaintiff suffered severe mental and physical

1 distress, injury, and pain, as well as economic injury as a result of having to incur and pay medical
2 expenses, loss of earnings, and costs associated with lifestyle-related changes.

3 19. As a further direct and proximate result of the wrongful conduct, acts, omissions,
4 fraudulent concealment, fraudulent misrepresentations, and/or fraudulent business practices engaged
5 in by Defendants and DOES 1 through 100, inclusive, Plaintiff required severe medical intervention
6 in order to treat, cure, and/or save the life of Plaintiff.

7 20. The product warnings provided by Defendants and DOES 1 through 100 for
8 Roundup® in effect during the relevant time period Plaintiff used and/or was exposed to Roundup®
9 were vague, ambiguous, incomplete, misleading, or otherwise inadequate, both substantively and
10 graphically, to alert consumers, including Plaintiff, to the severe health risks associated with
11 Roundup® use and/or exposure.

12 21. Had Plaintiff been adequately warned by Defendants and DOES 1 through 100, and
13 each of them, inclusive, of the potential life-threatening side effects of use of and/or exposure to
14 Roundup®, Plaintiff would not have purchased, used, and/or been exposed to Roundup®.

15 22. By reason of the foregoing, Plaintiff developed serious, life-threatening side effects
16 from Plaintiff's use of and/or exposure to Roundup®, including non-Hodgkin lymphoma and related
17 physical and economic damage, including physical pain and suffering, mental anguish, loss of
18 enjoyment of life, medical expenses, and loss of earnings. Plaintiff's general and special damages
19 exceed the jurisdictional limits of this Court.

20 23. Plaintiff has reviewed potential legal claims against Defendants and has intentionally
21 elected to pursue only those claims against Defendants based on state law. Any reference to any
22 federal agency, regulation, statute, or rule is stated solely as background information, and Plaintiff
23 hereby does not bring any claims which raise federal questions. Thus, California state jurisdiction and
24 venue are proper.

25 24. Defendant Bayer is an Indiana corporation with its U.S. headquarters and principal
26 place of business in Pittsburgh, Pennsylvania. Bayer is, and at all times relevant herein was, a
27 company regularly doing business in the State of California, whose business includes the manufacture
28 and sale of chemicals, including glyphosate-based Roundup® products.

1 25. Defendant Monsanto is a Delaware corporation with its headquarters and principal
2 place of business located in St. Louis, Missouri. At all times relevant to this action, Monsanto was
3 the entity that discovered the herbicidal properties of glyphosate and manufactured Roundup®.
4 Monsanto has regularly transacted and conducted business within the State of California and has
5 derived substantial revenue from goods and products, including Roundup®, used in the State of
6 California, and employs sales representatives in the State of California to market and sell its goods
7 and products, including Roundup®. Monsanto expected or should have expected its acts to have
8 consequences within the State of California because it derived substantial revenue from interstate
9 commerce and invoked the benefits and protection of the laws of the State of California.

10 26. Upon information and belief, Defendant Bayer acquired Monsanto and all of its assets
11 and liabilities in June of 2018.

12 27. Defendant Wilbur-Ellis Company, LLC is a California limited liability company with
13 its headquarters and principal place of business located in San Francisco, California. At all times
14 relevant to this action, Wilbur-Ellis Company, LLC sold and distributed Bayer/Monsanto products,
15 including Roundup®, within the State of California.

16 28. Defendant Wilbur-Ellis Feed, LLC is a California limited liability company with its
17 headquarters and principal place of business located in San Francisco, California. At all times relevant
18 to this action, Wilbur-Ellis Feed, LLC sold and distributed Monsanto products, including Roundup®,
19 within the State of California. Wilbur-Ellis Feed, LLC is a main distributor of Roundup® and, upon
20 information and belief, distributed Roundup® used by Plaintiff and/or to which Plaintiff was exposed.

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

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

1 31. The true names and/or capacities, whether individual, corporate, partnership,
2 associate, governmental, or otherwise, of Defendants DOES 1 through 100, inclusive, and each of
3 them, are unknown to Plaintiff at this time, who therefore sues said Defendants by such fictitious
4 names. Plaintiff is informed and believes and thereon alleges that each Defendant designated herein
5 as a DOE proximately caused injuries and damages to Plaintiff and that each DOE Defendant is liable
6 to Plaintiff for the acts and/or omissions alleged herein, and the resulting injuries and damages to
7 Plaintiff. Plaintiff will amend this complaint to allege the true names and capacities of said DOE
8 Defendants when the same are ascertained.

9 32. Plaintiff is informed and believes and based thereon alleges that at all times herein
10 mentioned, each of the named Defendants and each of the DOE Defendants was the agent, servant,
11 employee, and/or joint venturer of the other co-Defendants and other DOE Defendants, and each of
12 them, and at all said times, each named Defendant and each DOE Defendant was acting in the full
13 course, scope, and authority of said agency, service, employment, and/or joint venture.

14 33. Plaintiff is informed and believes and based thereon alleges that at all times mentioned
15 herein, Defendants and DOES 1 through 100, inclusive, and each of them, were also known as,
16 formerly known as and/or were the successors and/or predecessors in interest/business/product line/or
17 a portion thereof, assigns, a parent, a subsidiary (wholly or partially owned by, or the whole or partial
18 owner), affiliate, partner, co-venturer, merged company, alter egos, agents, equitable trustees, and/or
19 fiduciaries of and/or were members in an entity or entities engaged in the funding, researching,
20 studying, manufacturing, fabricating, designing, developing, labeling, assembling, distributing,
21 supplying, leasing, buying, offering for sale, selling, inspecting, servicing, contracting others for
22 marketing, warranting, rebranding, manufacturing for others, packaging, and advertising of
23 Roundup® and/or other Bayer/Monsanto glyphosate-containing products. Defendants and DOES 1
24 through 100, inclusive, and each of them, are liable for the acts, omissions and tortious conduct of
25 their successors and/or predecessors in interest/business/product line/or a portion thereof, assigns,
26 parents, subsidiaries, affiliates, partners, co-venturers, merged companies, alter egos, agents,
27 equitable trustees, fiduciaries, and/or their alternate entities in that Defendants and DOES 1 through
28 100, inclusive, and each of them, enjoy the goodwill originally attached to each such alternate entity,

1 acquired the assets or product line (or portion thereof), and in that there has been a virtual destruction
2 of Plaintiff's remedy against each such alternate entity, and that each such Defendant has the ability
3 to assume the risk spreading role of each such alternate entity.

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

10 35. Upon information and belief, at all relevant times, Defendants and DOES 1 through
11 100, and each of them, inclusive, were engaged in the business of researching, developing, designing,
12 licensing, manufacturing, distributing, selling, marketing, and/or introducing into interstate
13 commerce and into the State of California, including in San Diego County, either directly or indirectly
14 through third parties or related entities, Roundup® and/or other Bayer/Monsanto glyphosate-
15 containing products.

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

21 37. At all relevant times, Defendants and DOES 1 through 100, inclusive, and each of
22 them, expected or should have expected that their acts would have consequences within the State of
23 California, including San Diego County, and said Defendants derived and continue to derive
24 substantial revenue therefrom.

25 **IV. EQUITABLE TOLLING**

26 38. Plaintiff has suffered an illness that has a latency period and does not arise until years
27 after exposure. Plaintiff had no way of knowing about the risk of serious illness associated with the
28 use of and/or exposure to Roundup® and glyphosate until made aware that Plaintiff's illness,

1 including non-Hodgkin lymphoma, could be caused by use of and/or exposure to Roundup®. Any
2 such statute of limitations applicable to Plaintiff's claims was therefore tolled until the day Plaintiff
3 knew or had reason to know that Plaintiff's illness, including non-Hodgkin lymphoma, was linked to
4 Plaintiff's use of and/or exposure to Roundup®.

5 39. Within the time period of any applicable statute of limitations, Plaintiff could not have
6 discovered through the exercise of reasonable diligence that use of and/or exposure to Roundup® and
7 glyphosate was and is injurious to human health.

8 40. Plaintiff did not discover and did not know of facts that would cause a reasonable
9 person to suspect the risk associated with the use of and/or exposure to Roundup® and glyphosate
10 nor would a reasonable and diligent investigation by Plaintiff have disclosed that Roundup® and
11 glyphosate would or could cause Plaintiff's illness, including non-Hodgkin lymphoma, until Plaintiff
12 was put on actual notice of the causal connection within months of the filing of this complaint.

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

17 42. As a result of Defendants' actions, Plaintiff could not reasonably have known or
18 learned through the exercise of reasonable diligence that he had been exposed to the risks alleged
19 herein and that those risks were the direct and proximate result of Defendants' acts and omissions,
20 until Plaintiff was put on actual notice of the causal connection between Roundup® and Plaintiff's
21 illness, including non-Hodgkin lymphoma.

22 43. Defendants are estopped from relying on any statute of limitations because of their
23 concealment of the truth regarding the risks of use of and/or exposure to Roundup®. Defendants had
24 a duty to disclose the true character, quality, and nature of Roundup® because this was non-public
25 information over which Defendants continue to have exclusive control. Defendants knew that this
26 information was not available to Plaintiff or the general public (until recently), including Plaintiff's
27 medical providers and/or health facilities, at the time Plaintiff used and/or was exposed to Roundup®,
28 yet Defendants still failed to disclose the information to Plaintiff and the general public.

1 44. Defendants had the ability to and did spend significant amounts of money in
2 furtherance of marketing and promoting a profitable product, notwithstanding the known or
3 reasonably knowable risks of said product. It was and is not economically feasible or reasonable for
4 Plaintiff or any medical provider to have conducted studies to determine the nature, extent, and
5 identity of health risks associated with use of and/or exposure to Roundup®, and therefore they were
6 forced to rely on Defendants’ representations about the product.

7 **V. FACTUAL BACKGROUND**

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

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

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

17 48. That is because when Monsanto first introduced Roundup®, it touted glyphosate as a
18 technological breakthrough: it could kill almost every weed without causing harm either to people or
19 the environment. Of course, history has proven otherwise. According to the WHO, the main chemical
20 ingredient of Roundup®-glyphosate is a probable cause of cancer. Those most at risk are farm
21 workers and other individuals with workplace exposure to Roundup®, such as workers in garden
22 centers, nurseries, and landscapers. Agricultural workers are, once again, victims of corporate greed.
23 Bayer/Monsanto assured the public that Roundup® was harmless. In order to prove this,
24 Bayer/Monsanto championed falsified data and attacked legitimate studies that revealed its dangers.
25 Bayer/Monsanto led a prolonged campaign of misinformation to convince government agencies,
26 farmers, and the general population that Roundup® was safe.

27
28

1 **A. The Discovery of Glyphosate and Development of Roundup®**

2 49. The herbicidal properties of glyphosate were discovered in 1970 by Monsanto chemist
3 John Franz. The first glyphosate-based herbicide was introduced to the market in the mid-1970s under
4 the brand name Roundup®. From the outset, Monsanto marketed Roundup® as a “safe” general-
5 purpose herbicide for widespread commercial and consumer use; Osborn & Barr joined or took over
6 these misleading marketing efforts in the early 1990s and continued through 2012. Bayer/Monsanto
7 still markets Roundup® as safe today.

8 **B. Registration of Herbicides under Federal Law**

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

14 51. Because herbicides are toxic to plants, animals, and humans, at least to some degree,
15 the EPA requires as part of the registration process, among other things, a variety of tests to evaluate
16 the potential for exposure to herbicides, toxicity to people and other potential non-target organisms,
17 and other adverse effects on the environment. Registration by the EPA, however, is not an assurance
18 or finding of safety. The determination the Agency must make in registering or re-registering a
19 product is not that the product is “safe,” but rather that use of the product in accordance with its label
20 directions “will not generally cause unreasonable adverse effects on the environment.” 7 U.S.C.
21 § 136a(c)(5)(D).

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

27 53. The EPA registered Roundup® for distribution, sale, and manufacture in the United
28 States including the State of California.

1 54. FIFRA generally requires the registrant, Bayer/Monsanto in the case of Roundup®, to
2 conduct health and safety testing of herbicide products. The EPA has protocols governing the conduct
3 of tests required for registration and the laboratory practices that must be followed in conducting these
4 tests. The government is not required, nor is it able, however, to perform the product tests that are
5 required of the manufacturer.

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

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

16 **C. Scientific Fraud Underlying the Marketing and Sale of Glyphosate/Roundup®**

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

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

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

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 60. 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 data
5 and the final report relating to the toxicological impacts of glyphosate. The EPA subsequently audited
6 IBT; it too found the toxicology studies conducted for the Roundup® herbicide to be invalid. An EPA
7 reviewer stated, after finding “routine falsification of data” at IBT, that it was “hard to believe the
8 scientific integrity of the studies when they said they took specimens of the uterus from male rabbits.”

9 61. Three top executives of IBT were convicted of fraud in 1983.

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

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

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

1 independent scientists which have been submitted to regulatory agencies who are reviewing the safety
2 of glyphosate.

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

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

23 **D. The Importance of Roundup® to Monsanto's Market Dominance Profits**

24 67. 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 agriculture
26 division was out-performing its chemicals division's operating income, and that gap increased yearly.
27 But with its patent for glyphosate expiring in the United States in the year 2000, Monsanto needed a
28 strategy to maintain its Roundup® market dominance and to ward off impending competition.

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

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

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

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

- 22 a. Remember that environmentally friendly Roundup® herbicide is
23 biodegradable. It won’t build up in the soil so you can use Roundup® with
24 confidence along customers’ driveways, sidewalks and fences...
- 25 b. And remember that Roundup® is biodegradable and won’t build up in the soil.
26 That will give you the environmental confidence you need to use Roundup®
27 everywhere you’ve got a weed, brush, edging or trimming problem.
- 28 c. Roundup® biodegrades into naturally occurring elements.

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

20 71. 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
24 safe, non-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 * * * its glyphosate-containing herbicide products or any component thereof
28 stay where

1 c. they are applied under all circumstances and will not move through the
2 environment by any means.

3 * * *

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

7 e. glyphosate-containing herbicide products or any component thereof are safer
8 or less toxic than common consumer products other than herbicides;

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

11 72. Monsanto did not alter its advertising in the same manner in any state other than New
12 York, and, on information and belief, Bayer/Monsanto still has not done so today.

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

16 **F. Classifications and Assessments of Glyphosate**

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

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

26 76. One year before the Monograph meeting, the meeting is announced and there is a call
27 both for data and for experts. Eight months before the Monograph meeting, the Working Group
28 membership is selected, and the sections of the Monograph are developed by the Working Group

1 members. One month prior to the Monograph meeting, the call for data is closed, and the various draft
2 sections are distributed among Working Group members for review and comment. Finally, at the
3 Monograph meeting, the Working Group finalizes review of all literature, evaluates the evidence in
4 each category, and completes the overall evaluation. Within two weeks after the Monograph meeting,
5 the summary of the Working Group findings is published in Lancet Oncology, and within a year after
6 the meeting, the final Monograph is finalized and published.

7 77. In assessing a chemical agent, the IARC Working Group reviews the following
8 information:

- 9 a. human, experimental, and mechanistic data;
- 10 b. all pertinent epidemiological studies and cancer bioassays; and
- 11 c. representative mechanistic data.

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

15 79. 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 scientific
20 evidence. According to published procedures, the Working Group considered “reports that have been
21 published or accepted for publication in the openly available scientific literature” as well as “data
22 from governmental reports that are publicly available.”

23 80. 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.

1 81. 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
3 in 2012.

4 82. 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 83. The assessment of the IARC Working Group identified several case control studies of
8 occupational exposure in the United States, Canada, and Sweden. These studies show a human health
9 concern from agricultural and other work-related exposure to glyphosate.

10 84. The IARC Working Group found an increased risk between exposure to glyphosate
11 and non-Hodgkin lymphoma (“NHL”) and several subtypes of NHL, and the increased risk persisted
12 after adjustment for other pesticides.

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

16 86. 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 hemangiosarcoma in male
18 mice. Glyphosate increased pancreatic islet-cell adenoma in male rats in two studies. A glyphosate
19 formulation promoted skin tumors in an initiation-promotion study in mice.

20 87. 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 aminomethylphosphonic acid (AMPA). Blood AMPA detection after exposure suggests intestinal
23 microbial metabolism in humans.

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

27 89. 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® has

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

7 90. 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.

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

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

23 93. In January of 2018, IARC issued a follow-up response to its March 2015 evaluation
24 in which the IARC reaffirmed its findings and methodology.

25 **G. Recent Worldwide Bans on Roundup®/Glyphosate**

26 94. Several countries around the world have instituted bans on the sale of Roundup® and
27 other glyphosate-containing herbicides, both before and since IARC first announced its assessment
28 for glyphosate in March 2015, and more countries undoubtedly will follow suit in light of this

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

8 95. Brazilian Public Prosecutor in the Federal District requested that the Brazilian Justice
9 Department suspend the use of glyphosate.

10 96. France banned the private sale of Roundup® and glyphosate following the IARC
11 assessment for Glyphosate.

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

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

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

22 100. On information and belief, Wilbur-Ellis was, at all relevant times, engaged in the
23 distribution of Roundup®, Roundup-ready® crops and other glyphosate-containing products from
24 Bayer/Monsanto to retailers and commercial/agricultural users in California.

25 101. Wilbur-Ellis had superior knowledge compared to Roundup® users and consumers,
26 including regarding the carcinogenic properties of the product, yet failed to accompany its sales and
27 or marketing of Roundup® with any warnings or precautions for that grave danger. On information
28

1 and belief, Wilbur-Ellis was one of the distributors providing Roundup® and other glyphosate-
2 containing products actually used by Plaintiff.

3 **VI. LIMITATIONS ON ALLEGATIONS**

4 102. Plaintiff incorporates by reference each allegation set forth in the preceding paragraphs
5 as those fully stated herein.

6 103. The allegations in this pleading are made pursuant to California law. To the extent
7 California law imposes a duty or obligation on Defendants that exceeds those required by federal law,
8 Plaintiff does not assert such claims. All claims asserted herein run parallel to federal law, *i.e.*,
9 Defendants' violations of California law were also violations of federal law. Had Defendants
10 complied with California law, they would also have complied with federal law.

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

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

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

17 106. Plaintiff incorporates by reference each allegation set forth in the preceding paragraphs
18 as though fully stated herein.

19 107. Plaintiff brings this strict liability claim against Defendants for defective design.

20 108. At all relevant times, Defendants engaged in the business of testing, developing,
21 designing, manufacturing, marketing, selling, distributing, and promoting Roundup® products, which
22 are defective and unreasonably dangerous to consumers, including Plaintiff, thereby placing
23 Roundup® products into the stream of commerce. These actions were under the ultimate control and
24 supervision of Defendants. At all relevant times, Defendants designed, researched, developed,
25 manufactured, produced, tested, assembled, labeled, advertised, promoted, marketed, sold, and
26 distributed the Roundup® products used by Plaintiff, as described herein.

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

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

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

13 112. Defendants' Roundup® products, as researched, tested, developed, designed, licensed,
14 manufactured, packaged, labeled, distributed, sold, and marketed by Defendants were defective in
15 design and formulation in that, when they left the hands of Defendants' manufacturers and/or
16 suppliers, the foreseeable risks exceeded the alleged benefits associated with their design and
17 formulation.

18 113. At all relevant times, Defendants knew or had reason to know that Roundup® products
19 were defective and were inherently dangerous and unsafe when used in the manner instructed and
20 provided by Defendants.

21 114. Therefore, at all relevant times, Defendants' Roundup® products, as researched,
22 tested, developed, designed, licensed, manufactured, packaged, labeled, distributed, sold, and
23 marketed by Defendants were defective in design and formulation, in one or more of the following
24 ways:

- 25 a. When placed in the stream of commerce, Defendants' Roundup® products
26 were defective in design and formulation, and, consequently, dangerous to an
27 extent beyond that which an ordinary consumer would contemplate;
28

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

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

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

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

118. The harm caused by Defendants' Roundup® products far outweighed their benefit, rendering Defendants' product dangerous to an extent beyond that which an ordinary consumer would

1 contemplate. Defendants' Roundup® products were and are more dangerous than alternative
2 products, and Defendants could have designed Roundup® products to make them less dangerous.
3 Indeed, at the time Defendants designed Roundup® products, the state of the industry's scientific
4 knowledge was such that a less risky design or formulation was attainable.

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

8 120. Defendants' defective design of Roundup® products was willful, wanton, fraudulent,
9 malicious, and conducted with reckless disregard for the health and safety of users of the Roundup®
10 products, including Plaintiff herein.

11 121. Therefore, as a result of the unreasonably dangerous condition of its Roundup®
12 products, Defendants are strictly liable to Plaintiff.

13 122. The defects in Defendants' Roundup® products were substantial and contributing
14 factors in causing Plaintiff's injuries and, but for Defendants' misconduct and omissions, Plaintiff
15 would not have sustained injuries.

16 123. Defendants' conduct, as described above, was reckless. Defendants risked the lives of
17 consumers and users of its products, including Plaintiff, with knowledge of the safety problems
18 associated with Roundup® and glyphosate-containing products, and suppressed this knowledge from
19 the general public. Defendants made conscious decisions not to redesign, warn or inform the
20 unsuspecting public. Defendants' reckless and fraudulent conduct warrants an award of punitive
21 damages.

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

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

28

1 133. At the time of manufacture, Defendants could have provided the warnings or
2 instructions regarding the full and complete risks of Roundup® and glyphosate-containing products
3 because they knew or should have known of the unreasonable risks of harm associated with the use
4 of and/or exposure to such products.

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

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

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

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

25 138. Plaintiff was exposed to Defendants' Roundup® products without knowledge of their
26 dangerous characteristics.

27
28

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

4 140. Plaintiff could not have reasonably discovered the defects and risks associated with
5 Roundup® or glyphosate-containing products prior to or at the time of Plaintiff's exposure. Plaintiff
6 relied upon the skill, superior knowledge, and judgment of Defendants to know about and disclose
7 serious health risks associated with using Defendants' products.

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

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

22 143. This alleged failure to warn is not limited to the information contained on Roundup®'s
23 labeling. Defendants were able, in accord with federal law, to comply with California law by
24 disclosing the known risks associated with Roundup® through other non-labeling mediums,
25 *i.e.*, promotion, advertisements, public service announcements, and/or public information sources.
26 However, Defendants did not disclose these known risks through any medium.

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

1 145. As a result of their inadequate warnings, Defendants' Roundup® products were
2 defective and unreasonably dangerous when they left the possession and/or control of Defendants,
3 were distributed by Defendants, and used by Plaintiff.

4 146. Defendants are liable to Plaintiff for injuries caused by their negligent or willful
5 failure, as described above, to provide adequate warnings or other clinically relevant information and
6 data regarding the appropriate use of their products and the risks associated with the use of or exposure
7 to Roundup® and glyphosate.

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

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

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

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

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

23 **COUNT III: NEGLIGENCE**

24 152. Plaintiff incorporates by reference each allegation set forth in the preceding paragraphs
25 as though fully stated herein.

26 153. Defendants, directly or indirectly, caused Roundup® products to be sold, distributed,
27 packaged, labeled, marketed, promoted, and/or used by Plaintiff.

28

1 154. At all relevant times, Defendants had a duty to exercise reasonable care in the design,
2 research, manufacture, marketing, advertisement, supply, promotion, packaging, sale, and
3 distribution of Roundup® products, including the duty to take all reasonable steps necessary to
4 manufacture, promote, and/or sell a product that was not unreasonably dangerous to consumers and
5 users of the product.

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

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

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

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

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

1 Defendants deliberately refused to test Roundup® products because they knew that the chemical
2 posed serious health risks to humans.

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

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

13 162. Defendants' negligence included:

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

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

1 n. Continuing the manufacture and sale of their products with the knowledge that
2 the products were unreasonably unsafe and dangerous.

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

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

8 165. Defendants' negligence was the proximate cause of Plaintiff's injuries, *i.e.*, absent
9 Defendants' negligence, Plaintiff would not have developed cancer.

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

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

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

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

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

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COUNT IV: FRAUD
(BAYER/MONSANTO)

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3 171. Plaintiff incorporates by reference each allegation set forth in preceding paragraphs as
4 though fully stated herein.

5 172. Defendant Bayer/Monsanto has defrauded the agricultural community in general and
6 Plaintiff in particular by misrepresenting the true safety of its Roundup® products and by failing to
7 disclose the known risks of cancer associated therewith.

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

17 174. Due to these misrepresentations and omissions, at all times relevant to this litigation,
18 Defendant's Roundup® was misbranded under 7 U.S.C. § 136(g) and its distribution within
19 California and around the United States was a violation of 7 U.S.C. § 136j and 40 C.F.R.
20 § 156.10(a)(5).

21 175. Plaintiff relied on the Defendant's misrepresentations and/or material omissions
22 regarding the safety of Roundup® and its active ingredient glyphosate in deciding whether to
23 purchase and/or use the product. Plaintiff did not know, nor could he reasonably have known, of the
24 misrepresentations and/or material omissions by Defendant Bayer/Monsanto concerning Roundup®
25 and its active ingredient glyphosate.

26 176. The misrepresentations and/or material omissions that form the basis of this fraud
27 claim are not limited to statements made on the Roundup® labeling, as defined under federal law, but
28 also involve Defendant Bayer/Monsanto's representations and omissions made as part of its

1 promotion and marketing of Roundup®, including on the internet, television, in print advertisements,
2 etc. Nothing prevented Defendant Bayer/Monsanto from disclosing the truth about the risks
3 associated with Roundup® in its promotional efforts outside of the labeling context, using the forms
4 of media and promotion Defendant Bayer/Monsanto traditionally used to promote the product's
5 efficacy and benefits.

6 177. When Defendant Bayer/Monsanto made the misrepresentations and/or omissions as
7 alleged in this pleading, it did so with the intent of defrauding and deceiving the public in general and
8 the agricultural community and with the intent of inducing the public and agricultural community to
9 purchase and use Roundup®.

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

19 179. As a proximate result of Defendant Bayer/Monsanto's fraudulent and deceitful
20 conduct and representations, Plaintiff has sustained damages and other losses in an amount to be
21 proven at trial.

22 180. As a proximate result of Defendant Bayer/Monsanto's fraud, as alleged herein,
23 Plaintiff sustained a loss of income, loss of earning capacity, and property damage, including lost
24 income.

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

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

2 **(BAYER/MONSANTO)**

3 182. Plaintiff incorporates by reference each allegation set forth in the preceding paragraphs
4 as though fully stated herein.

5 183. At all relevant times, Defendant Bayer/Monsanto engaged in the business of testing,
6 developing, designing, manufacturing, marketing, selling, distributing, and promoting Roundup®
7 products, which are defective and unreasonably dangerous to consumers, including Plaintiff, thereby
8 placing Roundup® products into the stream of commerce. These actions were under the ultimate
9 control and supervision of Defendant Bayer/Monsanto.

10 184. Defendant Bayer/Monsanto had a duty to exercise reasonable care in the research,
11 development, design, testing, packaging, manufacture, inspection, labeling, distributing, marketing,
12 promotion, sale, and release of Roundup® products, including a duty to:

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

19 185. As alleged throughout this pleading, the ability of Defendant Bayer/Monsanto to
20 properly disclose those risks associated with Roundup® is not limited to representations made on the
21 labeling.

22 186. At all relevant times, Defendant Bayer/Monsanto expressly represented and warranted
23 to the purchasers of its products, by and through statements made by Defendant Bayer/Monsanto in
24 labels, publications, package inserts, and other written materials intended for consumers and the
25 general public, that Roundup® products were safe to human health and the environment, effective,
26 fit, and proper for their intended use. Defendant Bayer/Monsanto advertised, labeled, marketed, and
27 promoted Roundup® products, representing the quality to consumers and the public in such a way as
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1 to induce their purchase or use, thereby making an express warranty that Roundup® products would
2 conform to the representations.

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

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

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

19 190. Defendant Bayer/Monsanto breached these warranties because, among other things,
20 Roundup® products were defective, dangerous, and unfit for use, did not contain labels representing
21 the true and adequate nature of the risks associated with their use, and were not merchantable or safe
22 for their intended, ordinary, and foreseeable use and purpose. Specifically, Defendant
23 Bayer/Monsanto breached the warranties in the following ways:

- 24 a. Defendant Bayer/Monsanto represented through its labeling, advertising, and
25 marketing materials that Roundup® products were safe, and fraudulently
26 withheld and concealed information about the risks of serious injury associated
27 with use of and/or exposure to Roundup® and glyphosate by expressly limiting
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1 the risks associated with use and/or exposure within its warnings and labels;
2 and

3 b. Defendant Bayer/Monsanto represented that Roundup® products were safe for
4 use and fraudulently concealed information that demonstrated that glyphosate,
5 the active ingredient in Roundup®, had carcinogenic properties, and that
6 Roundup® products, therefore, were not safer than alternatives available on
7 the market.

8 191. Plaintiff detrimentally relied on the express warranties and representations of
9 Defendant Bayer/Monsanto concerning the safety and/or risk profile of Roundup® in making a
10 decision to purchase the product. Plaintiff reasonably relied upon Defendant Bayer/Monsanto to
11 disclose known defects, risks, dangers, and side effects of Roundup® and glyphosate. Plaintiff would
12 not have purchased or used Roundup® had Defendant Bayer/Monsanto properly disclosed the risks
13 associated with the product, either through advertising, labeling, or any other form of disclosure.

14 192. Defendant Bayer/Monsanto had sole access to material facts concerning the nature of
15 the risks associated with its Roundup® products, as expressly stated within their warnings and labels,
16 and knew that consumers and users such as Plaintiff could not have reasonably discovered that the
17 risks expressly included in Roundup® warnings and labels were inadequate and inaccurate.

18 193. Plaintiff had no knowledge of the falsity or incompleteness of Defendant
19 Bayer/Monsanto's statements and representations concerning Roundup®.

20 194. Plaintiff used and/or was exposed to Roundup® as researched, developed, designed,
21 tested, manufactured, inspected, labeled, distributed, packaged, marketed, promoted, sold, or
22 otherwise released into the stream of commerce by Defendant Bayer/Monsanto.

23 195. Had the warnings, labels, advertisements, or promotional material for Roundup®
24 products accurately and adequately set forth the true risks associated with the use of such products,
25 including Plaintiff's injuries, rather than expressly excluding such information and warranting that
26 the products were safe for their intended use, Plaintiff could have avoided the injuries complained of
27 herein.

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1 196. As a direct and proximate result of Defendant Bayer/Monsanto's breach of express
2 warranty, Plaintiff has sustained pecuniary loss and general damages in a sum exceeding the
3 jurisdictional minimum of this Court.

4 197. As a proximate result of Defendant Bayer/Monsanto's breach of express warranty, as
5 alleged herein, there was a measurable and significant interval of time during which Plaintiff suffered
6 great mental anguish and other personal injury and damages.

7 198. As a proximate result of Defendant Bayer/Monsanto's breach of express warranty, as
8 alleged herein, Plaintiff sustained a loss of income, loss of earning capacity, and property damage.

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

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

13 **(BAYER/MONSANTO)**

14 200. Plaintiff incorporates by reference every allegation set forth in the preceding
15 paragraphs as though fully stated herein.

16 201. At all relevant times, Defendant Bayer/Monsanto engaged in the business of testing,
17 developing, designing, manufacturing, marketing, selling, distributing, and promoting Roundup®
18 products, which were and are defective and unreasonably dangerous to consumers, including Plaintiff,
19 thereby placing Roundup® products into the stream of commerce.

20 202. Before the time Plaintiff was exposed to Roundup®, Defendant Bayer/Monsanto
21 impliedly warranted to its consumers, including Plaintiff, that Roundup® products were of
22 merchantable quality and safe and fit for the use for which they were intended—specifically, as
23 agricultural herbicides.

24 203. But Defendant Bayer/Monsanto failed to disclose that Roundup® has dangerous
25 propensities when used as intended and that use of and/or exposure to Roundup® and glyphosate-
26 containing products carries an increased risk of developing severe injuries, including Plaintiff's
27 injuries.

28

1 204. Plaintiff was the intended beneficiary of the implied warranties made by Defendant
2 Bayer/Monsanto to purchasers of its herbicides.

3 205. The Roundup® products were expected to reach and did in fact reach consumers and
4 users, including Plaintiff, without substantial change in the condition in which they were
5 manufactured and sold by Defendant Bayer/Monsanto.

6 206. At all relevant times, Defendant Bayer/Monsanto was aware that consumers and users
7 of its products, including Plaintiff, would use Roundup® products as marketed by Defendant
8 Bayer/Monsanto, which is to say that Plaintiff was a foreseeable user of Roundup®.

9 207. Defendant Bayer/Monsanto intended that Roundup® products be used in the manner
10 in which Plaintiff, in fact, used them and which Defendant Bayer/Monsanto impliedly warranted to
11 be of merchantable quality, safe, and fit for this use, despite the fact that Roundup® was not
12 adequately tested or researched.

13 208. In reliance upon Defendant Bayer/Monsanto's implied warranty, Plaintiff used
14 Roundup® as instructed and labeled and in the foreseeable manner intended, recommended,
15 promoted, and marketed by Defendant Bayer/Monsanto.

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

18 210. Defendant Bayer/Monsanto breached its implied warranty to Plaintiff in that
19 Roundup® products were not of merchantable quality, safe, or fit for their intended use, or adequately
20 tested. Roundup® has dangerous propensities when used as intended and can cause serious injuries,
21 including those injuries complained of herein.

22 211. The harm caused by Defendant Bayer/Monsanto's Roundup® products far
23 outweighed their benefit, rendering the products more dangerous than an ordinary consumer or user
24 would expect and more dangerous than alternative products.

25 212. As a direct and proximate result of Defendant Bayer/Monsanto's breach of implied
26 warranty, Plaintiff has sustained pecuniary loss and general damages in a sum exceeding the
27 jurisdictional minimum of this Court.

28

1 **JURY TRIAL DEMAND**

2 220. Plaintiff demands a trial by jury on all triable issues within this pleading.

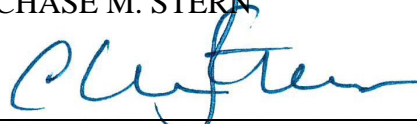
3 **PRAYER FOR RELIEF**

4 221. WHEREFORE, Plaintiff requests the Court to enter judgment in Plaintiff's favor and
5 against Defendants for:

- 6 a. actual or compensatory damages in such amount to be determined at trial and
7 as provided by applicable law;
- 8 b. exemplary and punitive damages sufficient to punish and deter Defendants and
9 others from future malicious, oppressive, and/or fraudulent practices;
- 10 c. pre-judgment and post-judgment interest;
- 11 d. costs including reasonable attorneys' fees, court costs, and other litigation
12 expenses; and
- 13 e. any other relief the Court may deem just and proper.
- 14

15 DATED: June 28, 2019

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