

IN THE CIRCUIT COURT OF DREW COUNTY, ARKANSAS

CORNELIUS KILGORE and)
LABOMMIE KILGORE,)

Plaintiffs,)

v.)

MONSANTO COMPANY, WALMART)
INC., WAL-MART STORES)
ARKANSAS, LLC)

Defendants.)

Civil Action No.
22CV-21-138

JURY TRIAL DEMANDED
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Drew County, AR
Beverly Brink, Circuit Clerk
By [Signature]

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COMPLAINT

AM 1/2/3/4/5/6/7/8/9/10/11/12PM

TO THE HONORABLE JUDGE OF THIS COURT:

COMES NOW Plaintiffs Cornelius Kilgore ("Mr. Kilgore") and Labommie Kilgore ("Mrs. Kilgore") (together, "the Kilgores") by and through their undersigned counsel, and for their causes of action against Defendants Monsanto Company ("Monsanto"), Walmart Inc., and Wal-Mart Stores Arkansas, LLC, (together, "Defendants"), state the following:

INTRODUCTION

1. For over two decades, Mr. Kilgore worked in agriculture and maintenance landscaping. As a young man, Mr. Kilgore followed his family's tradition of farming approximately 10,000 acres of soybeans, cotton, and rice. Later in life, Mr. Kilgore worked as a maintenance landscaper for the Arkansas Highway Transportation Department ("Highway Department") where he maintained the property, guardrails, road signs, and medians along the State's public roads. After working for the Highway Department for several years, Mr. Kilgore worked as a skilled laborer for the Drew County Developmental Disabilities Services ("Disability Services Center") where he landscaped and maintained approximately 120 acres.

2. Arkansas has a humid, sub-tropical climate that accelerates weed growth. Therefore, one of Mr. Kilgore's primary tasks in each of these positions was killing and controlling weeds and grass during the growing season, which typically lasted from April through September. For this task, Mr. Kilgore used Roundup® Products.¹

3. Throughout this time, Mr. Kilgore also used Roundup® Products residentially. Mr. Kilgore regularly maintained and landscaped his one-acre property, his mother's property, and his grandmother's property. On each of these properties, Mr. Kilgore used Roundup® Products that he purchased from Walmart² to kill weeds.

4. For approximately two decades, Mr. Kilgore regularly mixed Roundup® Products with water, loaded that Roundup® Product mixture into a hand-sprayer or backpack sprayer, and applied the Roundup® Products throughout fields, along highways, and/or around fence lines and buildings. In doing so, Mr. Kilgore frequently came into direct contact with Roundup® Products, and they would cover his clothes and skin. But Mr. Kilgore did not know that his consistent, direct exposure to Roundup® Products was dangerous to his health.

5. In or around November 2018, at the age of just forty-three, Mr. Kilgore was diagnosed with non-Hodgkin lymphoma ("NHL").

6. Mr. Kilgore has endured surgical and chemotherapy cancer treatments since the date of his diagnosis and is still in treatment today. As a result, Mr. Kilgore suffers from persistent fatigue, exhaustion, and nausea.

¹"Roundup®" or "Roundup® Products" as used in this complaint means any glyphosate-containing product developed, manufactured, distributed, sold, and/or marketed by Monsanto (or any of its direct or indirect subsidiaries) or by any person to the extent such product contains glyphosate exclusively supplied by Monsanto (or any of its direct or indirect subsidiaries), under any name or brand.

²"Walmart" herein collectively includes Walmart, Inc. and Wal-Mart Stores Arkansas, LLC.

7. Mr. Kilgore's deteriorating health and debilitating treatments make performing manual labor impracticable, if not impossible. Still, Mr. Kilgore has been unable to take any meaningful reprieve from his work. With seven children, a wife, and a mother depending on him, Mr. Kilgore cannot financially afford to lose the income or health insurance that his job supplies.

8. Faced with the catch-22 of needing his job to afford his medical treatments yet being unable to work because of those treatments, Mr. Kilgore was forced to arrange his treatment plan to accommodate his work schedule. After more than a year of cancer treatments, Mr. Kilgore has exhausted all his paid leave, and now cannot afford to take any more time off from work, despite his continued treatment regimen.

9. With nothing in his personal or family history that would suggest an NHL diagnosis, especially at his young age, Mr. Kilgore was at a loss as to what could have caused his cancer. It was only after his diagnosis that Mr. Kilgore learned that Roundup® Products were to blame for his injuries—a fact that Monsanto was well aware of.

10. Monsanto began to market and sell Roundup® Products in approximately 1974. The primary active ingredient in Roundup® Products has at all relevant times been a highly toxic chemical known as glyphosate. Indicative of its carcinogenic effects, in the years since introducing Roundup® Products to the world, Monsanto has, upon information and belief, spent tens if not hundreds of millions of dollars in public relations and advertising dollars trying to convince the public that Roundup® Products are safe. In truth, Monsanto's own scientists have acknowledged the falsity of that position.

11. In recent years, numerous credible studies have established what Monsanto has long since known, Roundup® Products and their active ingredients are carcinogenic to humans. For example, in 2015, the International Agency for Research on Cancer ("IARC"), an agency of

the World Health Organization (“WHO”), classified glyphosate as a Group 2A herbicide, which means that it is probably carcinogenic to humans. The IARC’s conclusion was reached after over twelve months of study by a community of diverse and unbiased scientific experts. Those results have been consistently supported in the scientific community. In fact, countries across the globe have now banned the use of Roundup® Products because of their undeniable harmful effects.

12. Since the IARC’s study was published, Monsanto, desperate to protect its cash cow, has litigated through jury trial the issue of whether Roundup® Products caused cancer in humans who used the products. In each case, the jury found that Roundup® Products did in fact cause cancer, and that Monsanto was in fact to blame.

13. Such results caused the CEO of Monsanto’s German parent company to state publicly that there is a “need to take the assessment of glyphosate and the safety of the product out of the hands of [American] juries.”

14. In keeping with the cavalier attitude of its parent’s CEO, Monsanto—to this day—refuses to even warn consumers of the dangers lurking in the bottles of Roundup® Products.

15. Monsanto recently announced that it will continue to sell its dangerous Roundup® Products to farmers and agricultural workers like Mr. Kilgore without warning, but it intends to replace glyphosate as an active ingredient in all lawn and garden products by 2023. But Monsanto will only pull its glyphosate-containing products after it sells all the existing supply without warning to customers. In other words, Monsanto will not offer a safer alternative, which it acknowledges exists, to a portion of its customer base until Monsanto has squeezed every last penny out of American consumers, irrespective of the grave health risks.

16. At bottom, and as a direct and proximate result of the defective design of Roundup® Products and Monsanto's failure to warn, Mr. Kilgore's health, career, and emotional wellbeing have suffered irreparable damage.

17. Therefore, Mr. Kilgore seeks recovery for damages suffered as a result of developing NHL, which was directly and proximately caused by Monsanto through the unreasonably dangerous and defective design of Roundup® Products and Monsanto's failure to warn of their dangerous and defective nature.

18. Additionally, Mrs. Kilgore seeks recovery of damages for the loss suffered as a result of her husband, Mr. Kilgore's, injuries.

JURISDICTION AND VENUE

19. This Court has jurisdiction over the subject matter of this action pursuant to Amendment 80 section 6 of the Arkansas Constitution.

20. This Court has personal jurisdiction over Monsanto because Monsanto had sufficient minimum contacts with the State of Arkansas such that this Court's exercise of jurisdiction would not offend traditional notions of fair play and substantial justice. At all relevant times, Monsanto was in the business of researching, testing, developing, manufacturing, selling, distributing, marketing, designing, packaging, promoting, formulating, compounding, producing, processing, assembling, and inspecting Roundup® Products. At all relevant times, Monsanto sold, distributed, marketed, advertised, and promoted Roundup® Products in Arkansas, including in Monticello, Arkansas.

21. This Court has personal jurisdiction over Walmart, Inc. because it is a Delaware corporation with its headquarters and principal place of business in Bentonville, Arkansas. At all relevant times, Walmart, Inc. was engaged in the business of selling, distributing, marketing, and promoting Roundup® Products in the State of Arkansas and the city of Monticello.

22. This Court has personal jurisdiction over Wal-Mart Stores Arkansas, LLC because it is an Arkansas limited liability corporation with its headquarters and principal place of business in Bentonville, Arkansas. At all relevant times, Wal-Mart Stores Arkansas, LLC was engaged in the business of selling, distributing, marketing, and promoting Roundup® Products in the State of Arkansas and the city of Monticello.

23. Because Plaintiffs reside in this county and a substantial part of the events giving rise to the cause of action occurred in this county, venue is proper under Ark. Code Ann. § 16-60-101(a)(1), (a)(3)(A).

PARTIES

Plaintiffs

24. Plaintiff Cornelius Kilgore is an individual residing in Drew County in the State of Arkansas.

25. Plaintiff Labommie Kilgore is an individual residing in Drew County in the State of Arkansas.

Defendants

26. Defendant Monsanto is a Delaware corporation with its headquarters in St. Louis, Missouri.

27. Monsanto is a multinational agrochemical and agricultural biotechnology corporation that conducts business throughout the United States, including Arkansas.

28. At all pertinent times, Monsanto has used the herbicidal properties of glyphosate in the manufacture and sale of Roundup® Products. At all pertinent times, Monsanto has sold Roundup® Products in Arkansas and has advertised and marketed Roundup® Products to the general consuming public in Arkansas.

29. Defendant Walmart, Inc. is a Delaware corporation with its headquarters in Bentonville, Arkansas. Defendant Wal-Mart Stores Arkansas, LLC is an Arkansas limited liability corporation with its headquarters in Bentonville, Arkansas. At all relevant times, Walmart Inc. and Wal-Mart Stores Arkansas, LLC (hereinafter collectively “Walmart”) were operating entities for Sam’s Clubs, Sam’s Wholesale Clubs, Walmarts, Walmart Fuel Centers, Walmart Neighborhood Markets, Walmart Pharmacies, and Walmart Supercenters in Arkansas and throughout the United States.

30. Walmart is a multinational retail company and is America’s largest retailer by sales. Walmart operates over 10,500 stores and has storefronts in all fifty states in the United States of America.

31. At all pertinent times, Walmart sold, advertised, and marketed Roundup® Products and various glyphosate-based products directly to consumers throughout the world, including Arkansas.

FACTS

As a young man, Mr. Kilgore regularly applied Roundup® Products while working on the Borgognoni Farm.

32. Mr. Kilgore is an Arkansas-native who has worked in agriculture and landscaping for most of his life. Farming was a family tradition for the Kilgore men. From a young age, Mr. Kilgore helped his father, grandfather, uncles, and cousins every summer as they planted and harvested approximately 10,000 acres of soybeans, cotton, and rice on the Borgognoni Farm. In his senior year of high school, Mr. Kilgore elected to participate in a work-study program that

allowed him to farm part time during the school year. When Mr. Kilgore graduated high school, he began working at the Borgognoni Farm full time.

33. Because weeds reduce crop yields, one of Mr. Kilgore's primary tasks was killing weeds that grew throughout the Borgognoni Farm's 10,000 acres. For this task, Mr. Kilgore used a concentrated version of Roundup® Products, which required him to mix potent, undiluted chemicals with water in a 250-gallon tank attached to a sprayer that was positioned on a tractor. Mr. Kilgore drove the tractor throughout the fields and sprayed Roundup® Products. Covering the expansive acreage with Roundup® Products required approximately three full working days, and Mr. Kilgore repeated this process several times throughout the months of the growing season.

34. By the very nature of spraying Roundup® Products outside, Mr. Kilgore came into direct contact with Roundup® Products, and they often covered his clothes, seeped to his skin, and came into direct contact with his skin during the act of spraying.

***Mr. Kilgore continued to use Roundup® Products
while working for the Highway Department.***

35. In or around 2004, Mr. Kilgore began working as a maintenance landscaper for the Highway Department. Mr. Kilgore's responsibilities included maintaining the land around the State's public highways, service roads, and Highway Department facilities.

36. Again, in the summer months, one of Mr. Kilgore's principal tasks was killing and controlling grass and weeds. For this task, Mr. Kilgore used Roundup® Products. The Highway Department provided a concentrated form of Roundup® Products, which required Mr. Kilgore to mix potent, undiluted chemicals with water, load that mixture into a backpack sprayer or a sprayer mounted on an open-air tractor, and dispense the Roundup® Products around the sides of the highways, guardrails, road signs, and Highway Department facilities.

37. During the process of mixing and spraying Roundup® Products, Mr. Kilgore came into direct contact with Roundup® Products. Often, when mixing the products and handling the sprayers, Roundup® Products covered Mr. Kilgore's hands. Additionally, the backpack sprayers often leaked and covered Mr. Kilgore's body with Roundup® Products. And by the very nature of spraying Roundup® Products along gusty roadways, the chemicals often covered Mr. Kilgore's clothes, seeped to his skin, and came into direct contact with his skin during the act of spraying.

***In 2011, Mr. Kilgore began working as a skilled tradesman
for the Disabilities Services Center.***

38. In or around 2011, Mr. Kilgore transitioned into a similar role for the Disability Services Center, where Mr. Kilgore was responsible for maintaining the Disability Services Center's 120-acre property. To that end, Mr. Kilgore was required to control weeds throughout the property, including around the buildings, facilities, and fences.

39. Again, Mr. Kilgore used a concentrated version of Roundup® Products, which required him to mix potent, undiluted chemicals with water, load that mixture into a hand sprayer or backpack sprayer, and apply the Roundup® Products throughout the property while riding a golf cart or other similar utility vehicle.

40. While working at the Disability Services Center, Mr. Kilgore was again continually exposed to Roundup® Products, and they often covered his hands and clothes and came into direct contact with his skin.

Throughout the time that Mr. Kilgore used Roundup® Products professionally, he also used them residentially.

41. In addition to regularly using Roundup® Products at work, Mr. Kilgore also used Roundup® Products at home. Mr. Kilgore handled the bulk of the yardwork around his one-acre property and also assisted his mother and his grandmother in maintaining their properties.

42. Being in the Arkansas countryside, weeds were a continual problem. To control the weeds around his property, his mother's property, and his grandmother's property, Mr. Kilgore used Roundup® Products that he purchased from his local Walmart.

43. Mr. Kilgore regularly used a hand sprayer to apply Roundup® Products around these properties, and the products often covered his hands and directly contacted his clothes and skin.

44. In total, Mr. Kilgore spent approximately twenty years spraying Roundup® Products for days, if not weeks, from April through September. During that time, Mr. Kilgore was continually exposed to the harmful chemicals that constitute Roundup® Products and, in particular, glyphosate. Roundup® Products often covered his hands while he handled the sprayers, leaked through the backpack sprayers and onto his skin and clothing, and contacted his clothes and skin during the spraying process. For nearly two decades, the chemicals that constitute Roundup® Products and, in particular, glyphosate seeped through Mr. Kilgore's clothes and directly contacted his skin.

45. Of course, during the time that Mr. Kilgore used Roundup® Products, he did not know that his consistent use of and exposure to Roundup® Products jeopardized his health and increased his risk of developing cancer.

***At the age of forty-three,
Mr. Kilgore was diagnosed with stage three NHL.***

46. In or around November 2018, at age forty-three, Mr. Kilgore was diagnosed with stage three NHL. Mr. Kilgore was devastated to learn that he had cancerous lymph nodes throughout his body, including behind his ears, under his arms, and in his stomach.

47. Since the date of his diagnosis, Mr. Kilgore has battled cancer. For over a year, Mr. Kilgore has endured regular chemotherapy treatments. Although Mr. Kilgore has done his best to remain positive, the side effects of chemotherapy have been debilitating, and Mr. Kilgore has suffered from weakness, nausea, and fatigue.

48. Mr. Kilgore also underwent several traumatic surgical procedures. Mr. Kilgore had emotional breakdowns when he was being taken into surgery, fearing that he would not wake up.

49. Mr. Kilgore's physically taxing occupation made working while receiving cancer treatments incredibly difficult. Still, Mr. Kilgore could not financially afford to lose his job or the health insurance it supplied. Therefore, Mr. Kilgore scheduled his chemotherapy treatments on Wednesdays and Thursdays, used sick leave or vacation time on Fridays and Mondays, and mustered up the strength to return to work by Tuesday. Mrs. Kilgore often missed work to care for Mr. Kilgore as he recovered.

50. After over a year of enduring surgeries and chemotherapy, and exhausting all his paid leave time, Mr. Kilgore was placed on a different cancer treatment that he still endures today.

***Mr. Kilgore's NHL diagnosis and treatment
have caused unimaginable physical, financial, and emotional harm.***

51. Mr. Kilgore's NHL diagnosis—which was directly and proximately caused by his exposure to Monsanto's defective Roundup® Products—has caused Mr. Kilgore and his family physical, financial, and emotional damage.

52. Defendants stole Mr. Kilgore's health. For more than a year, Mr. Kilgore has endured surgical and chemotherapy cancer treatments, and he has suffered from fatigue, weakness, and nausea. This stands in stark contrast to Mr. Kilgore's life before his diagnosis. Before the consequences of his exposure to Roundup® Products took their toll, Mr. Kilgore was active and strong. Indeed, for his entire professional life, he performed manual labor.

53. Defendants also robbed Mr. Kilgore of his financial stability. The Kilgores have faced an incessant influx of medical bills and reduced wages due to time off, and Mr. Kilgore has depleted his paid leave.

54. Further, Defendants have caused Mr. Kilgore mental anguish and emotional distress. While enduring cancer treatments, Mr. Kilgore did his best to stay positive and strong for his seven children, wife, and mother—who all depend on him. Internally, however, Mr. Kilgore struggled with fear and anxiety. Still today, Mr. Kilgore lives with a constant worry about what will happen to his family if he does not survive his NHL diagnosis.

55. Mrs. Kilgore has similarly suffered. Since the time of Mr. Kilgore's diagnosis, Mrs. Kilgore has served as Mr. Kilgore's primary caretaker. Often, Mrs. Kilgore was unable to work so that she could care for him. Mrs. Kilgore continues to worry about Mr. Kilgore's deteriorated physical and mental health. Mrs. Kilgore has lost, and will continue to suffer the loss of, Mr. Kilgore's support, companionship, services, society, love, and affection.

56. Mr. Kilgore did not know that Roundup® Products were dangerous. Indeed, it was not until after he was diagnosed with NHL that Mr. Kilgore became aware that Roundup® Products could cause cancer.

***Monsanto discovered glyphosate
and has greatly profited from its manufacture and sale.***

57. The herbicidal properties of glyphosate were discovered in 1970 by Monsanto chemist John Franz. After that discovery, Monsanto developed Roundup® Products, using glyphosate as its primary active ingredient. In addition to the active ingredient glyphosate, the formulations of Roundup® Products developed by Monsanto also contain adjuvants and other chemicals, such as the surfactant POEA, which studies have shown to be toxic in their own right.

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

59. In addition to infecting plants and crops that are sprayed with Roundup® Products, the toxic chemicals in Roundup® Products are released into the environment in a variety of ways when Roundup® Products are applied to control weeds in many different commercial, residential, and agricultural settings. These sites may be near bodies of water or wetlands into which the chemicals are released through runoff or otherwise. The same toxic chemicals may also be released into the environment when Roundup® Products are manufactured, formulated, transported, stored, disposed of and cleaned up, and spilled. Since glyphosate is not a listed chemical in the Toxics Release Inventory, data on releases during its manufacture and handling are not available. Occupational workers and home gardeners may be exposed to glyphosate by inhalation and dermal contact during spraying, mixing, and cleanup. They may also be exposed by touching soil and plants to which glyphosate was applied. Occupational exposure may also occur during glyphosate's manufacture, transport storage, and disposal.

60. Monsanto first began selling Roundup® Products in approximately 1974. Today Monsanto is the world's leading producer of the chemical glyphosate. From the outset, Monsanto marketed Roundup® Products as a "safe" general-purpose herbicide for widespread commercial and consumer use. Monsanto still markets Roundup® Products as safe today.

61. In the intervening decades since Monsanto first developed, manufactured, and sold Roundup® Products, Roundup® Products have been key to Monsanto's dominance in the marketplace. The success of Roundup® Products caused Monsanto's agriculture division to outperform its chemicals division, and that gap increased yearly. To protect the financial success of Roundup® Products, Monsanto devised a scheme to increase its market dominance, even after its patent for glyphosate was set to expire in the year 2000.

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

63. Through a three-pronged strategy of increasing production, decreasing prices, and by coupling Roundup® Products with Roundup Ready® seeds, Roundup® Products became Monsanto's most profitable creation. In 2000, Roundup® Products accounted for almost \$2.8 billion in sales, outselling other herbicides by a margin of five to one, and accounting for close to

half of Monsanto's revenue. Today, glyphosate remains one of the world's largest herbicides by sales volume.

64. Monsanto's exorbitant profits from the sale of Roundup® Products have come at the expense of the health of the very consumers that purchased and used Roundup® Products without any warning that they are carcinogenic.

Monsanto engaged in scientific fraud in the marketing and sale of glyphosate/Roundup® Products.

65. Motivated by dollar signs and corporate greed, Monsanto has put the health and lives of its own customers at risk through the marketing and sale of Roundup® Products. From the outset, Monsanto has spent inordinate amounts of money trying to convince the world that Roundup® Products are safe. Monsanto's efforts have included paying for, authoring, and distributing falsified and biased studies.

66. For example, Monsanto, in seeking initial registration of Roundup® Products by the Environmental Protection Agency ("EPA"), hired Industrial Bio-Test Laboratories ("IBT") to perform and evaluate pesticide toxicology studies relating to Roundup® Products. IBT performed about thirty tests on glyphosate and glyphosate-containing products, including nine of the fifteen residue studies needed to register Roundup® Products.

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

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

69. Indeed, contrary to Monsanto's biased efforts, early studies showed that glyphosate could cause cancer in laboratory animals, the EPA originally classified glyphosate as *possibly carcinogenic to humans* (Group C) in 1985.

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

71. Despite the falsity of the tests underlying its registration, within a few years of its launch, Monsanto was marketing Roundup® Products in 115 countries.

72. Monsanto has continued to flood the literature with its own slanted views regarding the purported safety of glyphosate. For instance, multiple studies have been ghostwritten in part and/or published by Monsanto through companies such as Intertek, from 2000 through the present, that minimize any safety concerns about the use of glyphosate. Those studies are used to convince regulators to allow the sale of Roundup® Products and are used to convince customers to use Roundup® Products.³ These studies have been published, submitted to, and relied upon by the

³Such studies include but are not limited to Gary M. Williams et. al, *Safety Evaluation and Risk Assessment of the Herbicide Roundup and Its Active Ingredient Glyphosate, for Humans*, 31 *Regulatory Toxicology and Pharmacology* at 117–65 (2000); Amy Lavin Williams et. al, *Developmental and Reproductive Outcomes in Humans and Animals After Glyphosate Exposure: A Critical Analysis*, 15 *Journal of Toxicology and Environmental Health* at 39-96 (2012); Larry D. Kier & David J. Kirkland, *Review of Genotoxicity Studies of Glyphosate and Glyphosate-Based Formulations*, 43 *Critical Reviews in Toxicology* at 283–315 (2013); Larry D. Kier, *Review of Genotoxicity Biomonitoring Studies of Glyphosate-Based Formulations*, 45 *Critical Reviews in Toxicology*, 209–18 (2015); James S. Bus, *Analysis of Moms Across America report suggesting bioaccumulation of glyphosate in U.S. mother's breast milk: Implausibility based on inconsistency with available body of glyphosate animal toxicokinetic, human biomonitoring, and physico-chemical data*, 73 *Regulatory Toxicology and Pharmacology*, 758–64, (2015); Ellen T. Chang & Elizabeth Delzell, *Systematic Review and Meta-analysis of Glyphosate Exposure and Risk of*

public and the EPA in assessing the safety of glyphosate. Through these and other means, Monsanto has fraudulently represented that independent scientists have concluded that glyphosate is safe. In fact, Monsanto paid these so-called “independent experts,” and Monsanto failed to disclose the significant role it had in creating the manuscripts produced by these purported “independent” experts. Further, Monsanto has ghostwritten editorials for scientists such as Robert Tarone and Henry Miller to advocate for the safety of glyphosate in newspapers and magazines. Monsanto has also ghostwritten letters by supposedly independent scientists that have been submitted to regulatory agencies who are reviewing the safety of glyphosate.

73. Monsanto has also violated federal regulations in holding secret ex parte meetings and conversations with certain EPA employees to collude in a strategy to re-register glyphosate and to quash investigations into the carcinogenicity of glyphosate by other federal agencies such as the Agency for Toxic Substances and Disease Registry. Monsanto’s close connection with the EPA arises in part from its offering of lucrative consulting positions to retiring EPA officials.

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

74. In contrast to Monsanto’s false public proclamations regarding the safety of Roundup® Products, Monsanto has known for years that its products were defectively manufactured and harmful to consumers. Numerous unbiased third parties have brought that fact to Monsanto’s attention many times. In 1995, the Northwest Coalition for Alternatives to Pesticides reported that in California, the state with the most comprehensive program for reporting

lymphohematopoietic cancers, 51 Journal of Environmental Science and Health, 402–34, (2016); and the Intertek Expert Panel Manuscripts, see Gary M. Williams et. al, *A review of the carcinogenic potential of glyphosate by four independent expert panels and comparison to the IARC assessment*, 46 Critical Reviews in Toxicology, 3–20. (2016).

of pesticide-caused illness, glyphosate was the third most commonly reported cause of pesticide illness among agricultural workers.

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

- a. “Remember that environmentally friendly Roundup herbicide is biodegradable. It won’t build up in the soil so you can use Roundup with confidence along customers’ driveways, sidewalks and fences”
- b. “And remember that Roundup is biodegradable and won’t build up in the soil. That will give you the environmental confidence you need to use Roundup everywhere you’ve got a weed, brush, edging or trimming problem.”
- c. “Roundup biodegrades into naturally occurring elements.”
- d. “Remember that versatile Roundup herbicide stays where you put it. That means there’s no washing or leaching to harm customers’ shrubs or other desirable vegetation.”
- e. “This non-residual herbicide will not wash or leach in the soil. It . . . stays where you apply it.”
- f. “You can apply Accord with ‘confidence because it will stay where you put it’ it bonds tightly to soil particles, preventing leaching. Then, soon after application, soil microorganisms biodegrade Accord into natural products.”
- g. “Glyphosate is less toxic to rats than table salt following acute oral ingestion.”
- h. “Glyphosate’s safety margin is much greater than required. It has over a 1,000-fold safety margin in food and over a 700-fold safety margin for workers who manufacture it or use it.”
- i. “You can feel good about using herbicides by Monsanto. They carry a toxicity category rating of ‘practically non-toxic’ as it pertains to mammals, birds and fish.”
- j. “Roundup can be used where kids and pets will play and breaks down into natural material.”

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

- a. Its glyphosate-containing pesticide products or any component thereof are safe, non-toxic, harmless or free from risk.
- b. Its glyphosate-containing pesticide products or any component thereof manufactured, formulated, distributed or sold by Monsanto are biodegradable.
- c. Its glyphosate-containing pesticide products or any component thereof stay where they are applied under all circumstances and will not move through the environment by any means.
- d. Its glyphosate-containing pesticide products or any component thereof are “good” for the environment or are “known for their environmental characteristics.”
- e. Glyphosate-containing pesticide products or any component thereof are safer or less toxic than common consumer products other than herbicides.
- f. Its glyphosate-containing products or any component thereof might be classified as “practically non-toxic.”

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

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

The IARC has classified glyphosate as a probable human carcinogen.

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

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

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

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

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

84. On July 29, 2015, IARC issued its Monograph for glyphosate, Monograph Volume 112. For Volume 112, a Working Group of 17 experts from 11 countries met at IARC from March 3–10, 2015 to assess the carcinogenicity of certain herbicides, including glyphosate. The March

meeting culminated a nearly one-year review and preparation by the IARC Secretariat and the Working Group, including a comprehensive review of the latest available scientific evidence. According to published procedures, the Working Group considered “reports that have been published or accepted for publication in the openly available scientific literature” as well as “data from governmental reports that are publicly available.”

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

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

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

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

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

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

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

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

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

94. In addition to DNA damage and oxidative stress, scientists have suggested that Roundup® Products' association with various serious health conditions is linked to the effect Roundup® Products have on the digestive system. Specifically, scientists believe the same mechanism that makes Roundup® Products toxic to weeds also makes them toxic to the microbes within the human gut and mucous membranes. When humans are exposed to Roundup® Products, this exposure leads to a chronic inflammatory state in the gut, as well an impaired gut barrier, which can lead to many long-term health effects, including an increased risk of cancer. Monsanto has deliberately refused to conduct tests on this aspect of Roundup® Products' mechanism of action.

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

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

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

Countries around the world have banned, and continue to ban, Roundup® Products and glyphosate.

98. Several countries around the world have instituted bans on the sale of Roundup® Products and other glyphosate-containing herbicides, both before and since the IARC first announced its assessment of glyphosate in March 2015, and more countries undoubtedly will follow suit as the dangers of the use of Roundup® Products become more widely known. The Netherlands issued a ban on all glyphosate-based herbicides in April 2014, including Roundup® Products. In issuing the ban, the Dutch Parliament member who introduced the successful legislation stated: “Agricultural pesticides in user-friendly packaging are sold in abundance to

private persons. In garden centers, Roundup® is promoted as harmless, but unsuspecting customers have no idea what the risks of this product are. Especially children are sensitive to toxic substances and should therefore not be exposed to it.”

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

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

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

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

103. Germany has passed draft legislation that will require farmers to gradually stop using glyphosate, and completely stop glyphosate use by 2024.

104. Mexican president Andres Manuel Lopez Obrador has issued a decree that bans glyphosate completely by 2024. The decree has withstood Monsanto’s legal challenges.

105. Luxembourg became the first EU country to ban glyphosate.

106. The Austrian Parliament recently passed a partial ban on glyphosate that prohibits its use on public spaces like playgrounds, as well as private residences.

107. The mounting evidence makes clear that Roundup® Products have at all times been defectively designed and manufactured. Monsanto's continued sale and refusal to warn consumers, such as Mr. Kilgore, has greatly harmed Mr. Kilgore, among many others.

Walmart has refused to remove Roundup® Products from its shelves, despite knowing that they are dangerous to consumers.

108. Walmart was and is aware that Roundup® Products are defective and unreasonably dangerous to consumers when used in an intended and reasonably foreseeable manner. Despite the mounting evidence that Roundup® Products have, at all times, been defectively designed and manufactured, contained inadequate warnings, and cancer-causing in humans, Walmart has continued to sell Roundup® Products without warning consumers, such as Mr. Kilgore, of their dangers.

109. Customers like Mr. Kilgore rely on Walmart to offer quality products from trusted brands. Rather than prioritizing customer safety, Walmart prioritized its relationship with Monsanto and its corporate parent, as well as Walmart's bottom line.

110. Other worldwide retailers, such as Costco Wholesale Corporation, have permanently removed Roundup® Products from their shelves. Yet Walmart has chosen to continue selling Roundup® Products without providing consumers with any additional information about their potential health risks.

111. Walmart's continued sale and refusal to warn consumers, such as Mr. Kilgore, has greatly harmed Mr. Kilgore, among many others.

TOLLING OF THE STATUTE OF LIMITATIONS

Tolling Agreement

112. The expiration of any applicable statute of limitations was tolled effective August 26, 2019, by an agreement between Mr. Kilgore, among others, and Monsanto.

Discovery Rule Tolling

113. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

114. Mr. Kilgore has suffered an illness that has a latency period and did not arise until years after his first exposure. Mr. Kilgore did not know and had no way of knowing about the risks of serious illness associated with the use of and/or exposure to Roundup® Products and glyphosate while he was using Roundup® Products. It was not until after he was diagnosed with NHL that Mr. Kilgore became aware that his cancer could be caused by his use of and exposure to Roundup® Products.

115. Consequently, the discovery rule applies to this case, and any applicable statute of limitations was tolled and did not begin to run until the day that Mr. Kilgore knew or had reason to know that his cancer diagnosis is linked to his use of and exposure to Roundup® Products.

Fraudulent Concealment Tolling

116. Moreover, the expiration of any applicable statute of limitations has been equitably tolled by reason of Defendants' fraudulent misrepresentations, fraudulent concealment, and fraudulent conduct.

117. Monsanto is estopped from relying on any statute of limitations because it concealed the truth regarding the safety of Roundup® Products to induce consumers like Mr. Kilgore to delay filing suit and to continue to trust, purchase, and utilize Roundup® Products.

118. Monsanto knew that Roundup® Products are dangerous to humans and may cause injuries like Mr. Kilgore's. Monsanto had a duty to disclose the true character, quality, and nature of Roundup® Products because this was non-public information over which it had and continues to have exclusive control. Monsanto knew that this information was not available to Mr. Kilgore, his medical providers, and/or their health facilities, yet it affirmatively concealed facts related to Roundup® Products' safety to the public.

119. Through affirmative misrepresentations and omissions, Monsanto furtively planned and secretly concealed from consumers, including Mr. Kilgore, the true risks associated with use of and/or exposure to Roundup® Products. Monsanto had the ability to and did spend enormous amounts of money in furtherance of the purposes of marketing and promoting profitable Roundup® Products, notwithstanding the known or reasonably knowable risks.

120. Monsanto perpetrated deliberate acts of deception calculated to conceal the harmful nature of Roundup® Products to induce consumers, including Mr. Kilgore, to purchase Roundup® Products. Moreover, Monsanto perpetrated deliberate acts of deception to conceal the harmful nature of Roundup® Products so that users and consumers, including Mr. Kilgore, would not make the connection between their health conditions and Roundup® Products, and would not file suit for damages suffered as a result of their injuries.

121. Mr. Kilgore and his medical professionals could not have afforded to and could not have possibly conducted studies to determine the nature, extent, and identity of health risks related to Roundup® Products and glyphosate; therefore, they were forced to rely on Monsanto's representations. Mr. Kilgore did, in fact, rely on Monsanto's representations that Roundup® Products were safe and non-carcinogenic.

122. As a result of Monsanto's fraudulent actions, Mr. Kilgore could not reasonably have known or learned through reasonable diligence that Roundup® Products were defective, that he had been exposed to the risks alleged herein, that those risks were the direct and proximate result of Monsanto's acts and omissions, or that those risks were the direct and proximate cause of his cancer until after his diagnosis.

123. Walmart is estopped from relying on any statute of limitations because it concealed the truth regarding the safety of Roundup® Products to induce consumers like Mr. Kilgore to delay filing suit and to continue to trust, purchase, and utilize Roundup® Products.

124. Walmart knew that Roundup® Products are dangerous to humans and may cause injuries like Mr. Kilgore's. Walmart had a duty to disclose the true character, quality, and nature of Roundup® Products. Walmart knew that this information was not available to Mr. Kilgore, his medical providers, and/or their health facilities, yet it affirmatively concealed facts related to Roundup® Products' safety to the public.

125. Through affirmative misrepresentations and omissions, Walmart furtively planned and secretly concealed from consumers, including Mr. Kilgore, the true risks associated with use of and/or exposure to Roundup® Products. Walmart perpetrated deliberate acts of deception calculated to conceal the harmful nature of Roundup® Products to induce consumers, including Mr. Kilgore, to purchase Roundup® Products. Moreover, Walmart perpetrated deliberate acts of deception to conceal the harmful nature of Roundup® Products so that users and consumers, including Mr. Kilgore, would not make the connection between their health conditions and Roundup® Products, and would not file suit for damages suffered as a result of their injuries.

126. Mr. Kilgore and his medical professionals could not have afforded to and could not have possibly conducted studies to determine the nature, extent, and identity of health risks related

to Roundup® Products and glyphosate; therefore, they were forced to rely on Walmart's representations. Mr. Kilgore did, in fact, rely on Walmart's representations that Roundup® Products were safe and non-carcinogenic.

127. As a result of Walmart's fraudulent actions, Mr. Kilgore could not reasonably have known or learned through reasonable diligence that Roundup® Products were defective, that he had been exposed to the risks alleged herein, that those risks were the direct and proximate result of Walmart's acts and omissions, or that those risks were the direct and proximate cause of his cancer until after his diagnosis.

CLAIMS

COUNT I

STRICT LIABILITY (DESIGN DEFECT) (AGAINST MONSANTO)

128. Mr. Kilgore fully incorporates by reference each and every allegation set forth in the preceding paragraphs as if fully stated herein.

129. Mr. Kilgore brings this strict liability claim against Monsanto for defective design.

130. At all times relevant to this litigation, Monsanto engaged in the business of researching, testing, developing, manufacturing, selling, distributing, marketing, designing, packaging, promoting, formulating, compounding, producing, processing, assembling, and inspecting Roundup® Products as hereinabove described that was used by Mr. Kilgore. In the course of its business, Monsanto placed Roundup® Products into the stream of commerce. These actions were under the ultimate control and supervision of Monsanto.

131. At all times relevant to this litigation, Roundup® Products were manufactured, designed, and labeled in an unsafe, defective, and unreasonably dangerous manner when put to its reasonably anticipated use.

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

133. Monsanto's Roundup® Products, as researched, tested, developed, manufactured, sold, distributed, marketed, designed, packaged, promoted, formulated, compounded, produced, processed, assembled, and inspected by Monsanto, were defectively manufactured and designed by Monsanto. When Roundup® Products left the hands of Monsanto's manufacturers and/or suppliers, they were unreasonably dangerous because they were not as safe as an ordinary consumer or user would expect when used in an intended or reasonably foreseeable manner.

134. Monsanto's Roundup® Products, as researched, tested, developed, manufactured, sold, distributed, marketed, designed, packaged, promoted, formulated, compounded, produced, processed, assembled, and inspected by Monsanto, were defective in manufacture, design, and formulation in that when they left the hands of Monsanto's manufacturers and/or suppliers, the foreseeable risks associated with Roundup® Products' reasonably foreseeable uses outweighed the alleged benefits associated with their design and formulation.

135. At all times relevant to this action, Roundup® Products created significant risks to the health and safety of consumers and others who were exposed to them that far outweighed the risks posed by other products on the market used for the same or similar purpose.

136. At all times relevant to this action, Monsanto knew or had reason to know that Roundup® Products were defective and inherently dangerous and unsafe when used in the manner instructed and provided by Monsanto.

137. Therefore, at all relevant times to this litigation, Roundup® Products, as researched, tested, developed, manufactured, sold, distributed, marketed, designed, packaged, promoted, formulated, compounded, produced, processed, assembled, and inspected by Monsanto, were in a defective condition and unsafe, and Monsanto knew or had reason to know that Roundup® Products were defective and unsafe, especially when used in the form and manner as provided by Monsanto.

138. In particular, Roundup® Products were defective in design and formulation in one or more of the following ways:

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

139. Mr. Kilgore was exposed to Roundup® Products in the course of his work and in the course of his personal landscape maintenance, as described above, without knowledge of their dangerous characteristics.

140. At all times relevant to this litigation, Mr. Kilgore used and was exposed to Roundup® Products in an intended or reasonably anticipated manner without knowledge of their dangerous characteristics.

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

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

143. At the time Roundup® Products left Monsanto's control, there was a practical, technically feasible and safer alternative design that would have prevented the harm without substantially increasing costs or impairing the reasonably anticipated or intended function of those herbicides. In fact, Monsanto has recently announced that it will adopt a safer design and formulation for certain users after it has sold all of its defective products.

144. Therefore, as a result of the unreasonably dangerous condition of Roundup® Products, Monsanto is strictly liable to Mr. Kilgore.

145. The defects in Roundup® Products caused or contributed to cause Mr. Kilgore's grave injuries, and, but for Monsanto's misconduct and omissions, Mr. Kilgore would not have sustained his injuries.

146. As a direct and proximate result of Monsanto's defective design and manufacture of Roundup® Products, and Monsanto's placing defective Roundup® Products into the stream of

commerce, Mr. Kilgore developed NHL and has been caused severe and permanent pain, suffering, mental anguish, disfigurement, disability, impairment, loss of enjoyment of life, loss of care, loss of comfort, loss of function, medical expenses, lost wages, and loss of earning capacity. Mr. Kilgore will continue to suffer these damages in the future.

147. Monsanto's defective design of Roundup® Products was willful, wanton, fraudulent, and malicious, and was conducted with reckless disregard for the health and safety of users of Roundup® Products, including Mr. Kilgore.

148. Monsanto's decision to implement an unreasonably dangerous design and not redesign Roundup® Products, despite knowing of their unreasonably dangerous nature, was and still is, motivated primarily by unreasonable financial gain.

149. Monsanto's conduct, as described above, was reckless. Monsanto risked the lives of the users of its products, including Mr. Kilgore's, with knowledge of the safety problems associated with Roundup® Products and glyphosate-containing products, and concealed this knowledge from the general public. Monsanto has made conscious decisions not to redesign or re-label Roundup® Products and has made conscious decisions not to warn or inform the unsuspecting public, including Mr. Kilgore, of Roundup® Products' dangers. By concealing Roundup® Products' defective nature, Monsanto intended to harm consumers and users of its products, including Mr. Kilgore, to preserve Roundup® Products' market dominance and protect Monsanto's bottom line. Monsanto's reckless conduct warrants an award of punitive and/or exemplary damages.

WHEREFORE, Mr. Kilgore respectfully requests that this Court enter judgment in his favor for compensatory and punitive damages in an amount in excess of Seventy-Five Thousand Dollars (\$75,000.00), together with interest, costs herein incurred, and all such other and further

relief as this Court deems just and proper. Mr. Kilgore also demands a jury trial on the issues contained herein.

COUNT II
STRICT LIABILITY (FAILURE TO WARN)
(AGAINST MONSANTO AND WALMART)

150. Mr. Kilgore fully incorporates by reference each and every allegation set forth in the preceding paragraphs as if fully stated herein.

151. Mr. Kilgore brings this strict liability claim against Monsanto and Walmart for failure to warn.

152. At all times relevant to this litigation, Monsanto engaged in the business of researching, testing, developing, manufacturing, selling, distributing, marketing, designing, packaging, promoting, formulating, compounding, producing, processing, assembling, and inspecting Roundup® Products, which are defective and unreasonably dangerous to consumers, including Mr. Kilgore, because they do not contain adequate warnings or instructions concerning the dangerous characteristics of Roundup® Products and specifically, the active ingredient glyphosate, when put to a reasonably anticipated use. These actions were under the ultimate control and supervision of Monsanto.

153. Monsanto researched, tested, developed, manufactured, sold, distributed, marketed, designed, packaged, promoted, formulated, compounded, produced, processed, assembled, and inspected and otherwise released into the stream of commerce in Arkansas and around the country Roundup® Products and, in the course of doing so, directly advertised or marketed Roundup® Products to consumers and end users, including Mr. Kilgore. As a result, Monsanto had a duty to warn of the risks associated with the use of Roundup® Products and glyphosate-containing products.

154. At all times relevant to this litigation, Monsanto had a duty to properly research, test, develop, manufacture, sell, distribute, market, design, package, promote, formulate, compound, produce, process, assemble, inspect, provide proper warnings, and take such steps as necessary to ensure that Roundup® Products did not cause users and consumers to suffer from unreasonable and dangerous risks. Monsanto had a continuing duty to warn Mr. Kilgore of the dangers associated with use of and exposure to Roundup® Products. Monsanto, as manufacturer, seller, promoter, marketer, or distributor of chemical herbicides, including glyphosate, is held to the knowledge of an expert in the field.

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

156. At all times relevant to this litigation, Monsanto failed to investigate, study, test, or promote safety to minimize the dangers to users and consumers of its products and to those who would foreseeably use or be harmed by these herbicides, including Mr. Kilgore.

157. Even though Monsanto knew or should have known that Roundup® Products posed a grave risk of harm, it failed to exercise reasonable care to warn of the dangerous risks associated with use and exposure. The dangerous propensities of these products and the carcinogenic characteristics of glyphosate, as described above, were known to Monsanto, or scientifically knowable to Monsanto through appropriate research and testing by known methods, at the time it researched, tested, developed, manufactured, sold, distributed, marketed, designed, packaged, promoted, formulated, compounded, produced, processed, assembled, and inspected Roundup® Products, and not known to end users and consumers, such as Mr. Kilgore.

158. Roundup® Products created significant risks of serious bodily harm to consumers, including Mr. Kilgore, and Monsanto failed to adequately warn consumers and reasonably foreseeable users of the risks of exposure to its products. Monsanto has wrongfully concealed information concerning the dangerous nature of Roundup® Products and their active ingredient glyphosate, and further made false and/or misleading statements concerning the safety of Roundup® Products and glyphosate.

159. At all times relevant to this litigation, Roundup® Products reached the intended consumers, handlers, and users or other persons coming into contact with these products in Arkansas and throughout the United States, including Mr. Kilgore, without substantial change in their condition as researched, tested, developed, manufactured, sold, distributed, marketed, designed, packaged, promoted, formulated, compounded, produced, processed, assembled, and inspected by Monsanto.

160. Mr. Kilgore used and was exposed to Roundup® Products in the course of his employment and in the course of his personal landscape maintenance, without knowledge of their dangerous characteristics.

161. At all times relevant to this litigation, Mr. Kilgore used Roundup® Products in their intended or reasonably foreseeable manner without knowledge of their dangerous characteristics.

162. Mr. Kilgore could not have reasonably discovered the defects and risks associated with Roundup® Products or glyphosate-containing products prior to or at the time of his exposure. Mr. Kilgore relied upon the skill, superior knowledge, and judgment of Monsanto.

163. When Roundup® Products left the hands of Monsanto's manufacturers and/or suppliers, the foreseeable risks associated with their reasonably foreseeable use outweighed the alleged benefits associated with the Roundup® Products' design and formulation.

164. Roundup® Products were defective because the minimal, if any, warnings disseminated with the products were inadequate, and they failed to communicate adequate information on their dangers, and failed to communicate warnings and instructions that were appropriate and adequate to render the products safe for their ordinary, intended, and reasonably foreseeable uses, including agricultural and landscaping applications.

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

166. To this day, Monsanto has failed to adequately and accurately warn of the true risks of Mr. Kilgore's injuries associated with the use of and exposure to Roundup® Products and their active ingredient glyphosate, a probable carcinogen.

167. As a result of their inadequate warnings, Roundup® Products were defective and unreasonably dangerous when they left the possession and/or control of Monsanto, were distributed, marketed, and promoted by Monsanto, and were used by Mr. Kilgore in a reasonably anticipated manner.

168. Had Monsanto provided adequate warnings and instructions and properly disclosed and disseminated the risks associated with Roundup® Products, Mr. Kilgore would have heeded the warnings and avoided the risk of developing injuries as alleged herein.

169. Monsanto is liable to Mr. Kilgore for injuries caused by its willful failure, as described above, to provide adequate warnings or other clinically relevant information and data regarding the appropriate use of these products and the risks associated with the use of and/or exposure to Roundup® Products and/or glyphosate.

170. The defects in Roundup® Products caused or contributed to cause Mr. Kilgore's injuries, and, but for this misconduct and omissions, Mr. Kilgore would not have sustained his injuries.

171. As a direct and proximate result of Monsanto placing defective Roundup® Products into the stream of commerce without adequate warnings, Mr. Kilgore developed NHL and has been caused severe and permanent pain, suffering, mental anguish, disfigurement, disability, impairment, loss of enjoyment of life, loss of care, loss of comfort, loss of function, medical expenses, lost wages, loss of function, and loss of earning capacity. Mr. Kilgore will continue to suffer these damages in the future.

172. Monsanto's defective design of Roundup® Products and failure to warn of the risks associated with anticipated use of Roundup® Products was willful, wanton, fraudulent, malicious, and conducted with reckless disregard for the health and safety of users of the Roundup® Products, including Mr. Kilgore.

173. Monsanto's conduct, as described above, was reckless. Monsanto risked the lives of consumers and users of its products, including Mr. Kilgore's, with knowledge of the safety problems associated with Roundup® Products and glyphosate-containing products, and concealed

this knowledge from the general public. Monsanto's intentional decision to implement Roundup® Products' unreasonably dangerous design and not warn of its dangers, despite knowing of Roundup® Products' unreasonably dangerous nature was, and still is, motivated primarily by unreasonable financial gain. By concealing the defective nature of Roundup® Products, Monsanto intended to harm consumers and users of its products, including Mr. Kilgore, to preserve the market dominance of Roundup® Products and protect Monsanto's bottom line. Monsanto's reckless conduct warrants an award of punitive and/or exemplary damages.

174. At all times relevant to this litigation, Walmart engaged in the business of selling, distributing, marketing, advertising, promoting, producing, and inspecting Roundup® Products, which are defective and unreasonably dangerous to consumers, including Mr. Kilgore, because they do not contain adequate warnings or instructions concerning the dangerous characteristics of Roundup® Products and specifically, the active ingredient glyphosate, when put to a reasonably anticipated use. These actions were under the ultimate control and supervision of Walmart.

175. Walmart sold, distributed, marketed, advertised, promoted, produced, inspected and otherwise released into the stream of commerce Roundup® Products and, in the course of doing so, directly advertised or marketed the products to consumers and end users, including Mr. Kilgore. At all relevant times, Walmart knew or had reason to know that Roundup® Products were dangerous when used in the manner and/or for the purpose for which they were designed. As a result, Walmart had a duty to warn of the risks associated with the use of Roundup® Products and glyphosate-containing products.

176. At all times relevant to this litigation, Walmart had a duty to properly sell, distribute, market, advertise, promote, produce, inspect, provide proper warnings, and take such steps as necessary to ensure that Roundup® Products did not cause users and consumers to suffer

from unreasonable and dangerous risks. Walmart had a continuing duty to warn Mr. Kilgore of the dangers associated with use of and exposure to Roundup® Products. Walmart, as a seller, promoter, marketer, advertiser, and distributor of chemical herbicides, including glyphosate, is held to the knowledge of an expert in the field.

177. At the time of sale, Walmart could have provided warnings or instructions regarding the full and complete risks of Roundup® Products and glyphosate-containing products because it knew or should have known of the unreasonable risks of harm associated with the use of and exposure to Roundup® Products.

178. At all times relevant to this litigation, Walmart failed to investigate, study, test, or promote safety to minimize the dangers to users and consumers of its products and to those who would foreseeably use or be harmed by these herbicides, including Mr. Kilgore.

179. Even though Walmart knew or should have known that Roundup® Products posed a grave risk of harm, it failed to exercise reasonable care to warn of the dangerous risks associated with use and exposure. The dangerous propensities of Roundup® Products and the carcinogenic characteristics of glyphosate, as described above, were known to Walmart, or scientifically knowable to Walmart through appropriate research and testing by known methods, at the time they sold, distributed, marketed, advertised, promoted, produced, and inspected Roundup® Products, and not known to end users and consumers, such as Mr. Kilgore.

180. Roundup® Products created significant risks of serious bodily harm to consumers, including Mr. Kilgore, and Walmart failed to adequately warn consumers and reasonably foreseeable users of the risks of exposure to its products. Walmart has wrongfully concealed information concerning the dangerous nature of Roundup® Products and their active ingredient

glyphosate, and further made false and/or misleading statements concerning the safety of Roundup® Products and glyphosate.

181. At all times relevant to this litigation, Roundup® Products reached the intended consumers, handlers, and users or other persons coming into contact with these products in Arkansas and throughout the United States, including Mr. Kilgore, without substantial change in their condition as sold, distributed, marketed, advertised, promoted, produced, and inspected by Walmart.

182. Mr. Kilgore purchased Roundup® Products from Walmart and relied on Walmart to offer quality products from trusted brands. Mr. Kilgore also relied on Walmart to provide warnings on any products that were dangerous or posed a risk to the customer's health.

183. At all times relevant to this litigation, Mr. Kilgore used Roundup® Products in their intended or reasonably foreseeable manner without knowledge of their dangerous characteristics. At all relevant times, Mr. Kilgore used those Roundup® Products in the course of residential landscaping, without knowledge of their dangerous characteristics.

184. Mr. Kilgore could not have reasonably discovered the defects and risks associated with Roundup® Products or glyphosate-containing products prior to or at the time of his exposure. Mr. Kilgore relied upon the skill, superior knowledge, and judgment of Walmart.

185. When Roundup® Products left Walmart's possession, the foreseeable risks associated with their reasonably foreseeable use outweighed the alleged benefits associated with the Roundup® Products' design and formulation.

186. Roundup® Products were defective because the minimal, if any, warnings disseminated with the products were inadequate, and they failed to communicate adequate information on their dangers, and failed to communicate warnings and instructions that were

appropriate and adequate to render the products safe for their ordinary, intended, and reasonably foreseeable uses, including agricultural and landscaping applications.

187. The information that Walmart did provide or communicate failed to contain relevant warnings, hazards, and precautions that would have enabled consumers and users such as Mr. Kilgore to utilize the product safely and with adequate protection. Instead, Walmart disseminated information that was inaccurate, false, and misleading, and which failed to communicate accurately or adequately the comparative severity, duration, and extent of the risk of injuries with use of and/or exposure to Roundup® Products and glyphosate. Walmart continued to sell Roundup® Products without any warning, even after it knew or should have known of the unreasonable risks from use or exposure. And Walmart concealed, downplayed, or otherwise suppressed any information or research about the risks and dangers of exposure to Roundup® Products and glyphosate.

188. To this day, Walmart has failed to adequately and accurately warn of the true risks of Mr. Kilgore's injuries associated with the use of and exposure to Roundup® Products and their active ingredient glyphosate, a probable carcinogen. Indeed, Walmart continues to stock its shelves with Roundup® Products without any warning. Upon information and belief, Walmart will continue to sell the cancer-causing Roundup® Products until Monsanto stops manufacturing those products in 2023.

189. As a result of their inadequate warnings, Roundup® Products were defective and unreasonably dangerous when they left the possession and/or control of Walmart, were distributed, marketed, and promoted by Walmart, and were used by Mr. Kilgore in a reasonably anticipated manner.

190. Had Walmart provided adequate warnings and instructions and properly disclosed and disseminated the risks associated with Roundup® Products, Mr. Kilgore would have heeded the warnings and avoided the risk of developing injuries as alleged herein.

191. Walmart is liable to Mr. Kilgore for injuries caused by its willful failure, as described above, to provide adequate warnings or other clinically relevant information and data regarding the appropriate use of these products and the risks associated with the use of or exposure to Roundup® Products and/or glyphosate.

192. The defects in Roundup® Products caused or contributed to cause Mr. Kilgore's injuries, and, but for Walmart's misconduct and omissions, Mr. Kilgore would not have sustained his injuries.

193. As a direct and proximate result of Walmart placing defective Roundup® Products into the stream of commerce without adequate warnings, Mr. Kilgore developed NHL and has been caused severe and permanent pain, suffering, mental anguish, disfigurement, disability, impairment, loss of enjoyment of life, loss of care, loss of comfort, medical expenses, lost wages, loss of function, and loss of earning capacity. Mr. Kilgore will continue to suffer these damages in the future.

194. Walmart's failure to warn of the risks associated with anticipated use of Roundup® Products was willful, wanton, fraudulent, malicious, and conducted with reckless disregard for the health and safety of users of the Roundup® Products, including Mr. Kilgore.

195. Walmart's conduct, as described above, was reckless. Walmart risked the lives of consumers and users of its products, including Mr. Kilgore's, with knowledge of the safety problems associated with Roundup® Products and glyphosate-containing products, and concealed this knowledge from the general public. By concealing the defective nature of Roundup®

Products, Walmart intended to harm consumers and users of its products, including Mr. Kilgore, to preserve the market dominance of Roundup® Products and protect Walmart's bottom line. Walmart's reckless conduct warrants an award of punitive and/or exemplary damages.

WHEREFORE, Mr. Kilgore respectfully requests that this Court enter judgment in his favor for compensatory and punitive damages in an amount in excess of Seventy-Five Thousand Dollars (\$75,000.00), together with interest, costs herein incurred, and all such other and further relief as this Court deems just and proper. Mr. Kilgore also demands a jury trial on the issues contained herein.

COUNT III
NEGLIGENCE
(AGAINST MONSANTO AND WALMART)

196. Mr. Kilgore incorporates by reference each and every allegation set forth in the preceding paragraphs, particularly those paragraphs which detail negligence with particularity, as if fully stated herein.

197. Mr. Kilgore brings this negligence action against Monsanto and Walmart for negligent design, failure to provide reasonable and adequate instructions, and failure to warn.

198. Monsanto, directly or indirectly, caused Roundup® Products to be researched, tested, developed, manufactured, sold, distributed, marketed, designed, packaged, promoted, formulated, compounded, produced, processed, assembled, inspected, and used by Mr. Kilgore.

199. At all times relevant to this litigation, Monsanto had a duty to exercise reasonable care in the researching, testing, developing, manufacturing, selling, distributing, marketing, designing, packaging, promoting, formulating, compounding, producing, processing, assembling, and inspecting of Roundup® Products, including the duty to take all reasonable steps necessary to design, manufacture, promote, and/or sell products that were not unreasonably dangerous to

consumers and users of those products. Monsanto also had a duty to give reasonable and adequate instructions with respect to the conditions and methods of Roundup® Products safe use. Monsanto's duty of care owed to consumers and the general public included reasonably anticipating the environment in which Roundup® Products are normally used and designing Roundup® Products to minimize foreseeable risks of harm.

200. At all times relevant to this litigation, Monsanto had a duty to exercise reasonable care in the marketing, advertisement, and sale of Roundup® Products. Monsanto's duty of care owed to consumers and the general public included providing accurate, true, and correct information concerning the risks of using Roundup® Products and appropriate, complete, and accurate warnings concerning the potential adverse effects of exposure to Roundup® Products and, in particular, its active ingredient glyphosate. Monsanto's duty of care owed to consumers and the general public also included reasonably anticipating the environment in which Roundup® Products are normally used and designing the product to minimize foreseeable risks of harm.

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

202. Accordingly, at all times relevant to this litigation, Monsanto knew or, in the exercise of reasonable care, should have known that use of or exposure to Roundup® Products could cause or be associated with Mr. Kilgore's injuries and thus created a dangerous and unreasonable risk of injury to the users of these products, including Mr. Kilgore.

203. Monsanto also knew or, in the exercise of reasonable care, should have known that users and consumers of Roundup® Products, like Mr. Kilgore, were unaware of the concealed

risks and the magnitude of the risks associated with use of and/or exposure to Roundup® Products and glyphosate-containing products.

204. As such, Monsanto breached the duty of reasonable care and failed to exercise ordinary care in the research, testing, development, manufacture, sale, distribution, marketing, design, packaging, promotion, formulation, compounding, production, processing, assembling, and inspection of Roundup® Products, in that Monsanto researched, tested, developed, manufactured, sold, distributed, marketed, designed, packaged, promoted, formulated, compounded, produced, processed, assembled, and inspected defective herbicides containing the chemical glyphosate, knew or had reason to know of the defects inherent in these products, knew or had reason to know that a user's or consumer's exposure to or use of the products created a significant risk of harm and unreasonably dangerous side effects, and failed to prevent or adequately warn of these risks and injuries.

205. More particularly, Monsanto knew or should have known that Roundup® Products are normally used in the agricultural and farming environment and had the ability to design and sell a version of Roundup® Products that were safe for agricultural and farming use that did not create significant risk of harm and unreasonably dangerous side effects, but failed to do so. Instead, Monsanto released Roundup® Products into the stream of commerce with a risk of harm so probable that an ordinary prudent manufacturer would have pursued a different design.

206. Further, despite an ability and means to investigate, study, and test these Roundup® Products and to provide adequate warnings, Monsanto has failed to do so. Indeed, Monsanto has wrongfully concealed information and has further made false and/or misleading statements concerning the safety of Roundup® Products and glyphosate. More particularly, before and during the time that Mr. Kilgore was using Roundup® Products, Monsanto as a company, including its

scientists and corporate executives, stated to the public including Mr. Kilgore that, “using Roundup® is safe,” “that glyphosate and the use of Roundup® is less toxic to rats than table salt following acute oral ingestion,” and that Mr. Kilgore should “feel good about using Roundup® because it carries a toxicity rating of practically non-toxic as it relates to mammals, birds, and fish.” Indeed, before and during Mr. Kilgore’s usage of Roundup® Products, Monsanto published television commercials nationwide, including in Arkansas and to Mr. Kilgore, that Roundup® Products were entirely safe to use without any protective equipment. One such commercial even depicts a user sticking his uncovered head underground to observe the effects of freshly sprayed Roundup® Products first hand. These statements and representations by Monsanto to Mr. Kilgore concerning usage of Roundup® Products were false.

207. These statements breached Monsanto’s duty of care because Monsanto knew that these statements and representations made to Mr. Kilgore concerning the usage of Roundup® Products were false or were made with a reckless disregard of their truth. Indeed, while when Monsanto made these false statements and representations to Mr. Kilgore before and during his usage of Roundup® Products, Monsanto had not even conducted proper testing of the harmful effects of Roundup® Products. Monsanto, in fact, refused to conduct these tests even as studies were published showing that Roundup® Products created unreasonably dangerous and unsafe conditions for those using the product in its intended manner.

208. Monsanto was negligent in the following ways, among others:

- a. Manufacturing, producing, promoting, formulating, creating, developing, designing, selling, and/or distributing Roundup® Products without thorough and adequate pre- and post-market testing;
- b. Manufacturing, producing, promoting, formulating, creating, developing, designing, selling, advertising, and/or distributing Roundup® Products while negligently and/or intentionally concealing and failing to disclose the results of trials, tests, and studies of

exposure to glyphosate, and, consequently, the risk of serious harm associated with human use of and exposure to Roundup® Products;

- c. Failing to undertake sufficient studies and conduct necessary tests to determine whether Roundup® Products and glyphosate-containing products were safe for their intended use in agriculture and horticulture;
- d. Failing to use reasonable and prudent care in the design, research, manufacture, and development of Roundup® Products so as to avoid the risk of serious harm associated with the prevalent use of Roundup® Products/glyphosate as an herbicide;
- e. Failing to design and manufacture Roundup® Products so as to ensure that they were at least as safe and effective as other herbicides on the market;
- f. Failing to adopt a reasonable alternative design, even though a reasonable alternative design was available at the time of manufacture;
- g. Designing Roundup® Products with a risk of harm so probable that an ordinary prudent manufacturer would pursue a different available design which would substantially lessen the probability of harm;
- h. Failing to provide adequate instructions, guidelines, and safety precautions to those persons who Monsanto could reasonably foresee would use and be exposed to Roundup® Products;
- i. Failing to disclose to Mr. Kilgore, users/consumers, and the general public that Roundup® Products are inherently dangerous and that use of and exposure to Roundup® Products presents severe risks of cancer and other grave illnesses;
- j. Failing to warn Mr. Kilgore, users/consumers, and the general public that Roundup® Products' risk of harm was unreasonable and that there were safer and effective alternative herbicides available to Mr. Kilgore and other consumers;
- k. Systematically suppressing or downplaying contrary evidence about the risks, incidence, and prevalence of the side effects of Roundup® Products and glyphosate-containing products;
- l. Representing that Roundup® Products were safe for their intended use when, in fact, Monsanto knew or should have known that the products were not safe for their intended purpose;
- m. Declining to make or propose any changes to Roundup® Products' labeling or other promotional materials that would alert the users/consumers and the general public of the risks of Roundup® Products and glyphosate;
- n. Advertising, marketing, and recommending the use of the Roundup® Products, while concealing and failing to disclose or warn of the dangers known by Monsanto to be associated with or caused by the use of or exposure to Roundup® Products and glyphosate;
- o. Continuing to disseminate information to its users/consumers, which indicate or imply that Monsanto's Roundup® Products are not unsafe for use in the agricultural and horticultural industries; and/or

- p. Continuing the manufacture and sale of its products with the knowledge that Roundup® Products are unreasonably unsafe and dangerous.

209. Monsanto knew and/or should have known that it was foreseeable that consumers and users such as Mr. Kilgore would suffer injuries as a result of Monsanto's failure to exercise ordinary care in the research, testing, development, manufacture, sale, distribution, marketing, design, packaging, promotion, formulating, compounding, production, processing, assembling, and inspection of Roundup® Products.

210. Monsanto's Roundup® Products reached Mr. Kilgore without a substantial change from the time they left Monsanto's control. While using Roundup® Products, Mr. Kilgore did not know the nature and extent of the injuries that could result from the intended use of and/or exposure to Roundup® Products or their active ingredient glyphosate.

211. But for Monsanto's negligent design of Roundup® Products and failure to warn of the Roundup® Products' unreasonably unsafe and dangerous nature, Mr. Kilgore would not have sustained his injuries.

212. Monsanto's negligence was the proximate cause of the injuries, harm, and economic losses that Mr. Kilgore suffered, as described herein.

213. As a proximate result of Monsanto's wrongful acts and omissions in placing defective Roundup® Products into the stream of commerce without adequate warnings of the hazardous and carcinogenic nature of glyphosate, Mr. Kilgore has developed NHL and has been caused severe and permanent pain, suffering, mental anguish, disfigurement, disability, impairment, loss of enjoyment of life, loss of care, loss of comfort, loss of function, medical expenses, lost wages, and loss of earning capacity. Mr. Kilgore will continue to suffer these damages in the future.

214. Monsanto's conduct, as described above, was wanton, willful, and reckless. Monsanto was motivated by unreasonable financial gain and regularly risked the lives of consumers and users of its products, including Mr. Kilgore's, with full knowledge of the dangers of these products. Monsanto has made conscious decisions not to redesign or re-label Roundup® Products that are being sold today and has made conscious decisions not to warn or inform the unsuspecting public, including Mr. Kilgore, of Roundup® Products' dangers. By concealing Roundup® Products' defective nature, Monsanto intended to harm consumers and users of its products, including Mr. Kilgore, to preserve the market dominance of Roundup® Products and protect Monsanto's bottom line. Monsanto's reckless conduct therefore warrants an award of punitive and/or exemplary damages.

215. Walmart, directly or indirectly, caused Roundup® Products to be sold, distributed, marketed, advertised, promoted, produced, inspected, and used by Mr. Kilgore.

216. At all times relevant to this litigation, Walmart had a duty to exercise reasonable care in selling Roundup® Products, including the duty to give reasonable and adequate warnings with respect to the conditions and methods of its safe use when danger is reasonably foreseeable. Walmart's duty of care owed to consumers and the general public included reasonably anticipating the environment in which Roundup® Products are normally used and providing reasonable and adequate warnings that would minimize foreseeable risks of harm.

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

218. Accordingly, at all times relevant to this litigation, Walmart knew or, in the exercise of reasonable care, should have known that use of and/or exposure to Roundup® Products could

cause or be associated with Mr. Kilgore's injuries and thus created a dangerous and unreasonable risk of injury to the users of these products, including Mr. Kilgore.

219. Walmart also knew or, in the exercise of reasonable care, should have known that users and consumers of Roundup® Products, like Mr. Kilgore, were unaware of the concealed risks and the magnitude of the risks associated with use of and/or exposure to Roundup® Products and glyphosate-containing products.

220. As such, Walmart breached the duty of reasonable care and failed to exercise ordinary care in the sale, distribution, marketing, advertising, promotion, production, and inspection of Roundup® Products, in that Walmart sold, distributed, marketed, advertised, promoted, produced, and inspected defective Roundup® Products containing the chemical glyphosate, knew or had reason to know of the defects inherent in these products, knew or had reason to know that a user's or consumer's exposure to or use of the products created a significant risk of harm and unreasonably dangerous side effects, and failed to adequately warn of these risks and injuries.

221. More particularly, Walmart released Roundup® Products into the stream of commerce with a risk of harm so probable that an ordinary prudent seller would have provided an adequate warning or stopped selling Roundup® Products.

222. Further, despite an ability to provide adequate warnings, Walmart has failed to do so. Indeed, Walmart continues to sell Roundup® Products without any warning, communicating to its customers that Roundup® Products and glyphosate are safe.

223. Walmart was negligent in the following ways, among others:

- a. Selling, distributing, marketing, advertising, promoting, producing and inspecting Roundup® Products without providing reasonable and adequate instructions with respect to the conditions and methods of Roundup® Products' safe use;

- b. Selling, distributing, marketing, advertising, promoting, producing and inspecting Roundup® Products without providing reasonable and adequate warnings with respect to the conditions and methods of Roundup® Products' safe use;
- c. Selling Roundup® Products with a risk of harm so probable that a reasonably careful seller would have provided a warning;
- d. Selling Roundup® Products with a risk of harm so probable that a reasonably careful seller would have stopped selling the unreasonably dangerous products;
- e. Failing to use reasonable and prudent care in the sale, distribution, marketing, advertising, promoting, producing, and inspecting of Roundup® Products so as to avoid the risk of serious harm associated with the prevalent use of Roundup® Products/glyphosate as an herbicide;
- f. Failing to provide a warning on or with Roundup® Products so as to ensure that they were at least as safe and effective as other herbicides on the market;
- g. Failing to provide adequate instructions, guidelines, and safety precautions to those persons who Walmart could reasonably foresee would use and be exposed to Roundup® Products;
- h. Failing to disclose to Mr. Kilgore, users/consumers, and the general public that Roundup® Products are inherently dangerous and that use of and exposure to Roundup® Products presents severe risks of cancer and other grave illnesses;
- i. Failing to warn Mr. Kilgore, users/consumers, and the general public that Roundup® Products' risk of harm was unreasonable and that there were safer and effective alternative herbicides available to Mr. Kilgore and other consumers;
- j. Representing that Roundup® Products were safe for their intended use when, in fact, Walmart knew or should have known that the products were not safe for their intended purpose;
- k. Advertising, marketing, and recommending the use of the Roundup® Products, while concealing and failing to disclose or warn of the dangers known by Walmart to be associated with or caused by the use of or exposure to Roundup® Products and glyphosate;
- l. Continuing to disseminate information to its users/consumers, which indicate or imply that Monsanto's Roundup® Products are not unsafe for use in the agricultural and horticultural industries; and/or
- m. Continuing the sale of Roundup® Products with the knowledge that Roundup® Products are unreasonably unsafe and dangerous.

224. Walmart knew and/or should have known that it was foreseeable that consumers and users such as Mr. Kilgore would suffer injuries as a result of Walmart's failure to exercise ordinary care in the sale, distribution, marketing, advertising, promotion, production, and inspection of Roundup® Products.

225. Roundup® Products reached Mr. Kilgore without a substantial change from the time they left Walmart's control. While using Roundup® Products, Mr. Kilgore did not know the nature and extent of the injuries that could result from the intended use of and/or exposure to Roundup® Products or its active ingredient glyphosate.

226. But for Walmart's negligent failure to warn of Roundup® Products unreasonably unsafe and dangerous nature, Mr. Kilgore would not have sustained his injuries.

227. Walmart's negligence was the proximate cause of the injuries, harm, and economic losses that Mr. Kilgore suffered, as described herein.

228. As a proximate result of Walmart's wrongful acts and omissions in placing defective Roundup® Products into the stream of commerce without adequate warnings of the hazardous and carcinogenic nature of glyphosate, Mr. Kilgore has developed NHL and has been caused severe and permanent pain, suffering, mental anguish, disfigurement, disability, impairment, loss of enjoyment of life, loss of care, loss of comfort, loss of function, medical expenses, lost wages, and loss of earning capacity. Mr. Kilgore will continue to suffer these damages in the future.

229. Walmart's conduct, as described above, was wanton, willful, and reckless. Walmart was motivated by unreasonable financial gain and regularly risked the lives of consumers and users of Roundup® Products, including Mr. Kilgore's, with full knowledge of the dangers of these products. Walmart has made conscious decisions to continue selling Roundup® Products today

and has made conscious decisions not to warn or inform the unsuspecting public, including Mr. Kilgore, of Roundup® Products' dangers. By concealing Roundup® Products' defective nature, Walmart intended to harm consumers and users of its products, including Mr. Kilgore, to preserve the market dominance of Roundup® Products and protect Walmart's bottom line. Walmart's reckless conduct therefore warrants an award of punitive and/or exemplary damages.

WHEREFORE, Mr. Kilgore respectfully requests that this Court enter judgment in Mr. Kilgore's favor for compensatory and punitive damages in an amount in excess of Seventy-Five Thousand Dollars (\$75,000.00), together with interest, costs herein incurred, and all such other and further relief as this Court deems just and proper. Mr. Kilgore also demands a jury trial on the issues contained herein.

COUNT IV
BREACH OF IMPLIED WARRANTIES
(AGAINST MONSANTO AND WALMART)

230. Mr. Kilgore incorporates by reference each and every allegation as set forth in the preceding paragraphs as if fully stated herein.

231. At all relevant times, Monsanto was engaged in the business of researching, testing, developing, manufacturing, selling, distributing, marketing, designing, packaging, promoting, formulating, compounding, producing, processing, assembling, and inspecting horticultural herbicides and specifically Roundup® Products, which are defective and unreasonably dangerous to users, consumers, and those in proximity to its users, including Mr. Kilgore, thereby placing Roundup® Products into the stream of commerce. These actions were under the ultimate control and supervision of Monsanto.

232. Before and during the time that Mr. Kilgore was exposed to and used Roundup® Products, Monsanto warranted to its consumers and users—including Mr. Kilgore—that

Roundup® Products were of merchantable quality and safe and fit for the use for which they were intended, specifically as horticultural herbicides.

233. Monsanto, however, failed to disclose that Roundup® Products have dangerous propensities when used as intended and that the use of and/or exposure to Roundup® Products and glyphosate-containing products carries an increased risk of developing severe injuries, including Mr. Kilgore's diagnosis.

234. Mr. Kilgore reasonably relied upon the skill, superior knowledge, and judgment of Monsanto and upon its implied warranties that Roundup® Products were of merchantable quality and fit for their intended purpose or use.

235. As a purchaser of Roundup® Products, Mr. Kilgore is a person who may reasonably be expected to use Roundup® Products, and Monsanto is liable for Mr. Kilgore's injuries caused by its breach of implied warranty.

236. Roundup® Products were expected to reach and did in fact reach consumers, users, and those in proximity to users, including Mr. Kilgore, without substantial change in the condition in which they were manufactured and sold by Monsanto.

237. At all relevant times, Monsanto was aware that consumers, users, and those in proximity of users of its products, including Mr. Kilgore, would use Roundup® Products as marketed by Monsanto. Therefore, Mr. Kilgore was the foreseeable user of Roundup® Products.

238. Monsanto intended that Roundup® Products be used in the manner in which Mr. Kilgore in fact used and was exposed to them. Monsanto impliedly warranted Roundup® Products to be of merchantable quality, safe, and fit for this use, despite the fact that Roundup® Products were not adequately tested or researched.

239. In reliance upon Monsanto's implied warranty, Mr. Kilgore used, was exposed to, and was in the proximity to the use of Roundup® Products as instructed and labeled and in the foreseeable manner intended, recommended, promoted, and marketed by Monsanto.

240. Mr. Kilgore could not have reasonably discovered or known of the risks of serious injury associated with Roundup® Products or glyphosate.

241. Monsanto breached its implied warranty to Mr. Kilgore in that Roundup® Products were not of merchantable quality, safe, or fit for their intended use or adequately tested. Roundup® Products have dangerous propensities when used as intended and can cause serious injuries, including those injuries complained of herein.

242. The harm caused by Roundup® Products far outweigh their benefit rendering the products more dangerous than an ordinary consumer or user would expect and more dangerous than alternative products.

243. As a direct and proximate result of Monsanto's wrongful acts and omissions Mr. Kilgore developed NHL and has been caused severe and permanent pain, suffering, mental anguish, disfigurement, disability, impairment, loss of enjoyment of life, loss of care, loss of comfort, medical expenses, lost wages, loss of function, and loss of earning capacity. Mr. Kilgore will continue to suffer these damages in the future.

244. Monsanto's conduct, as described above, was wanton, willful, and reckless. Monsanto was motivated by unreasonable financial gain and regularly risked the lives of consumers and users of its products, including Mr. Kilgore's, with full knowledge of the dangers of these products. Monsanto made conscious decisions not to redesign or re-label Roundup® Products and chose not to warn or inform the unsuspecting public, including Mr. Kilgore, of Roundup® Products' dangers. By intentionally and fraudulently concealing Roundup® Products'

defective nature, Monsanto intended to harm consumers and users of its products, including Mr. Kilgore, to preserve the market dominance of Roundup® Products and protect Monsanto's bottom line. Monsanto's reckless conduct therefore warrants an award of punitive and/or exemplary damages.

245. Monsanto has been on notice of Mr. Kilgore's claim since at least August 26, 2019. Indeed, Monsanto has been actively litigating the issues raised in this lawsuit concerning the unsafe and dangerous nature of Roundup® Products since at least the beginning of 2017.

246. At all relevant times, Walmart was engaged in the business of selling, distributing, marketing, advertising, promoting, producing, and inspecting horticultural herbicides and specifically Roundup® Products, which are defective and unreasonably dangerous to users, consumers, and those in proximity to its users, including Mr. Kilgore, thereby placing Roundup® Products into the stream of commerce. These actions were under the ultimate control and supervision of Walmart.

247. Before and during the time that Mr. Kilgore was exposed to and used Roundup® Products, Walmart warranted to its consumers and users—including Mr. Kilgore—that Roundup® Products were of merchantable quality and safe and fit for the use for which they were intended, specifically as horticultural herbicides.

248. Walmart, however, failed to disclose that Roundup® Products have dangerous propensities when used as intended and that the use of and/or exposure to Roundup® Products and glyphosate-containing products carries an increased risk of developing severe injuries, including Mr. Kilgore's diagnosis.

249. Mr. Kilgore reasonably relied upon the skill, superior knowledge, and judgment of Walmart and upon its implied warranties that Roundup® Products were of merchantable quality and fit for their intended purpose or use.

250. Because Mr. Kilgore purchased Roundup® Products directly from Walmart, Mr. Kilgore is a person who may reasonably be expected to use Roundup® Products, and Walmart is liable for Mr. Kilgore's injuries caused by its breach of implied warranty.

251. Roundup® Products were expected to reach and did in fact reach consumers, users, and those in proximity to users, including Mr. Kilgore, without substantial change in the condition in which they were sold by Walmart.

252. At all relevant times, Walmart was aware that consumers, users, and those in proximity of users of its products, including Mr. Kilgore, would use Roundup® Products as marketed and advertised—for horticultural landscaping purposes. Therefore, Mr. Kilgore was a foreseeable user of Roundup® Products.

253. Walmart impliedly warranted Roundup® Products to be of merchantable quality, safe, and fit for this use, despite the fact that Roundup® Products were unreasonably dangerous, unsafe, and unfit for this use.

254. In reliance upon Walmart's implied warranty, Mr. Kilgore used, was exposed to, and was in the proximity to the use of Roundup® Products as instructed and labeled and in the foreseeable manner intended, recommended, promoted, and marketed by Monsanto.

255. Mr. Kilgore could not have reasonably discovered or known of the risks of serious injury associated with Roundup® Products or glyphosate.

256. Walmart breached its implied warranty to Mr. Kilgore in that Roundup® Products were not of merchantable quality, safe, or fit for their intended use or adequately tested. Roundup®

Products have dangerous propensities when used as intended and can cause serious injuries, including those injuries complained of herein.

257. The harm caused by Roundup® Products far outweigh their benefit rendering the products more dangerous than an ordinary consumer or user would expect and more dangerous than alternative products.

258. As a direct and proximate result of Walmart's wrongful acts and omissions Mr. Kilgore developed NHL and has been caused severe and permanent pain, suffering, mental anguish, disfigurement, disability, impairment, loss of enjoyment of life, loss of care, loss of function, loss of comfort, medical expenses, lost wages, and loss of earning capacity. Mr. Kilgore will continue to suffer these damages in the future.

259. Walmart's conduct, as described above, was wanton, willful, and reckless. Walmart was motivated by unreasonable financial gain and regularly risked the lives of consumers and users of its products, including Mr. Kilgore's, with full knowledge of the dangers of these products. Walmart has made conscious decisions to continue selling Roundup® Products today and has made conscious decisions not to warn or inform the unsuspecting public, including Mr. Kilgore, of Roundup® Products' dangers. By concealing Roundup® Products' defective nature, Walmart intended to harm consumers and users of its products, including Mr. Kilgore, to preserve the market dominance of Roundup® Products and protect Walmart's bottom line. Walmart's reckless conduct therefore warrants an award of punitive and/or exemplary damages.

260. Walmart has been on notice of Mr. Kilgore's claim since at least August of 2019. Indeed, the ongoing Roundup® Products litigation has received international attention since at least the beginning of 2017, and Walmart has been actively litigating the issues raised in this lawsuit.

WHEREFORE, Mr. Kilgore respectfully requests that this Court enter judgment in Mr. Kilgore's favor for compensatory and punitive damages in an amount in excess of Seventy-Five Thousand Dollars (\$75,000.00), together with interest, costs herein incurred, and all such other and further relief as this Court deems just and proper. Mr. Kilgore also demands a jury trial on the issues contained herein.

COUNT V
VIOLATION OF THE ARKANSAS DECEPTIVE TRADE PRACTICES ACT
(AGAINST MONSANTO AND WALMART)

261. Mr. Kilgore incorporates by reference each and every allegation as set forth in the preceding paragraphs as if fully stated herein.

262. Mr. Kilgore brings this claim under the Arkansas Deceptive Trade Practices Act ("ADTPA"), against Monsanto and Walmart. *See* Ark. Code Ann. §§ 4-88-101, *et. seq.*

263. Mr. Kilgore has standing to pursue this claim because he has suffered actual financial loss as a result of his reliance on Defendants' deceptive trade practices as described herein.

264. Mr. Kilgore, Monsanto, and Walmart each meet the definition of "persons" under Arkansas Code § 4-88-102(5) and Roundup® Products are "goods" as defined by Arkansas Code § 4-88-102(4). Mr. Kilgore is a "consumer" as defined in Arkansas Code § 4-88-107.

265. At all relevant times, Monsanto engaged in the business of researching, testing, developing, manufacturing, selling, distributing, marketing, designing, packaging, promoting, formulating, compounding, producing, processing, assembling, and inspecting Roundup® Products. At all relevant times, Monsanto knew that Roundup® Products were defective, unreasonably dangerous, and posed a risk of developing serious injury.

266. At all relevant times, Monsanto failed to disclose the health risks associated with Roundup® Products, including the risk of developing NHL. Monsanto violated and continues to violate the ADTPA the following respects, among others:

- a. Knowingly making false representations as to the characteristics, ingredients, uses, and benefits of Roundup® Products by falsely representing to the general public and to Mr. Kilgore that Roundup® Products and their ingredient glyphosate are not harmful and are safe for human use;
- b. Knowingly taking advantage of consumers like Mr. Kilgore, who were reasonably unable to protect their interests because they were reasonably ignorant to Roundup® Products' dangerous and defective nature;
- c. Engaging in unconscionable, false, and deceptive acts that intentionally deceived the general public, including Mr. Kilgore, regarding the harmful nature of Roundup® Products and their active ingredient glyphosate;
- d. Utilizing deception, fraud, and false pretenses to convince the general public, including Mr. Kilgore, that Roundup® Products and their ingredients were safe for human use as a horticultural herbicide, even though Monsanto knew that Roundup® Products and their ingredients were dangerous and carcinogenic; and
- e. Concealing, suppressing, and omitting the material fact that Roundup® Products were in fact unsafe for human use and that continued exposure to Roundup® Products increases the user's likelihood of developing serious injuries, including Mr. Kilgore's injuries.

267. Monsanto's deceptive acts and practices were material in that they were a substantial factor in deciding whether to purchase and use Roundup® Products. Monsanto intentionally deceived and misled its consumers regarding the safety of Roundup® Products and the ingredient glyphosate because Monsanto wanted to preserve Roundup® Products' market dominance and protect Monsanto's bottom line. Monsanto knew that if consumers were aware of the dangers Roundup® Products posed, they would not purchase and use Roundup® Products.

268. Monsanto's unfair and deceptive acts occurred in the course of Monsanto's trade and commerce in Arkansas and were committed with willful and wanton disregard to the safety of consumers, including Mr. Kilgore.

269. As a direct and proximate result of Monsanto's unlawful violations of the ADTPA, Mr. Kilgore has suffered actual financial loss.

270. At all relevant times, Walmart engaged in the business of selling, distributing, marketing, producing, advertising, and inspecting Roundup® Products. At all relevant times, Walmart knew that Roundup® Products were defective, unreasonably dangerous, and posed a risk of developing serious injury.

271. At all relevant times, Walmart failed to disclose the health risks associated with Roundup® Products, including the risk of developing NHL. Walmart violated and continues to violate the ADTPA in at least the following respects:

- a. Knowingly making false representations as to the characteristics, ingredients, uses, and benefits of Roundup® Products by falsely representing to the general public and to Mr. Kilgore that Roundup® Products and their ingredient glyphosate are not harmful and are safe for human use;
- b. Knowingly taking advantage of consumers like Mr. Kilgore, who were reasonably unable to protect their interests because they were reasonably ignorant to Roundup® Products' dangerous and defective nature;
- c. Engaging in unconscionable, false, and deceptive acts that intentionally deceived the general public, including Mr. Kilgore, regarding the harmful nature of Roundup® Products and their active ingredient glyphosate;
- d. Knowingly facilitating, assisting, intermediating, and aiding Monsanto in the deceptive acts alleged above;
- e. Utilizing deception, fraud, and false pretenses to convince the general public, including Mr. Kilgore, that Roundup® Products and their ingredients were safe for human use as a horticultural herbicide, even though Walmart knew that Roundup® Products and their ingredients were dangerous and carcinogenic; and
- f. Concealing, suppressing, and omitting the material fact that Roundup® Products were in fact unsafe for human use and that continued exposure increases the user's likelihood of developing serious injuries, including Mr. Kilgore's injuries.

272. Walmart's deceptive acts and practices were material in that they were a substantial factor in deciding whether to purchase and use Roundup® Products. Indeed, Walmart intentionally deceived and misled its consumers regarding the safety of Roundup® Products and

the ingredient glyphosate because Walmart knew that if consumers were aware of the dangers Roundup® Products posed, they would not purchase and use Roundup® Products.

273. Walmart's unfair and deceptive acts occurred in the course of Walmart's trade and commerce in Arkansas and were committed with willful and wanton disregard to the safety of consumers, including Mr. Kilgore.

274. As a direct and proximate result of Walmart's unlawful violations of the ADTPA, Mr. Kilgore has suffered actual financial loss.

WHEREFORE, Mr. Kilgore respectfully requests that this Court enter judgment in Mr. Kilgore's favor for actual damages in an amount in excess of Seventy-Five Thousand Dollars (\$75,000.00), together with interest, costs herein incurred, and all such other and further relief as this Court deems just and proper. Mr. Kilgore also demands a jury trial on the issues contained herein.

COUNT VI
LOSS OF CONSORTIUM
(AGAINST MONSANTO AND WALMART)

275. The Kilgores incorporate by reference each and every allegation set forth in the preceding paragraphs as if fully stated herein.

276. At all relevant times, Mrs. Kilgore was the spouse of Mr. Kilgore and in that capacity has suffered injuries and losses as a result of Mr. Kilgore's emotional, physical, economic, and non-economic injuries as described herein.

277. During their marriage and after Mr. Kilgore's diagnosis, the Kilgores' relationship was altered. Mrs. Kilgore became Mr. Kilgore's primary caretaker, and Mr. Kilgore cannot care for himself or Mrs. Kilgore in the same capacity as he did before his diagnosis. Mrs. Kilgore has

lost, and will continue to suffer the loss of, Mr. Kilgore's support, aid, companionship, services, solace, sexual relations, society, love, and affection.

278. As a direct result of the injuries to Mr. Kilgore, Mr. Kilgore's personality changed and the marital relationship was impaired and depreciated, and the marital association between husband and wife was altered.

279. Mrs. Kilgore suffered great emotional pain and mental anguish, as well as lost enjoyment of life as a result of Monsanto's and Walmart's acts alleged herein.

280. As a direct and proximate result of Defendants' wrongful conduct, Mrs. Kilgore has sustained and will continue to sustain severe emotional distress and economic losses; including mental anguish, loss of enjoyment of life, loss of care, loss of comfort, and other damages for which she is entitled to recover.

WHEREFORE, the Kilgores respectfully request that this Court enter judgment in Mr. Kilgore's favor for compensatory and punitive damages in an amount in excess of Seventy-Five Thousand Dollars (\$75,000.00), together with interest, costs herein incurred, and all such other and further relief as this Court deems just and proper. Mr. Kilgore also demands a jury trial on the issues contained herein.

LIMITATION ON ALLEGATIONS

281. The Kilgores do not seek the enforcement of federal law. The allegations in this pleading are made pursuant to Arkansas and/or Missouri. To the extent Arkansas and/or Missouri law imposes a duty or obligation on Monsanto and/or Walmart that exceeds those required by federal law, the Kilgores do not assert such claims. All claims asserted herein run parallel to federal law, i.e., Defendants' violations of Arkansas and/or Missouri law were also violations of federal law. Had Defendants honestly complied with Arkansas and/or Missouri law, they would

also have complied with federal law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court enter judgment in their favor and against Defendants in an amount in excess of Seventy-Five Thousand Dollars (\$75,000.00), and award them as follows:

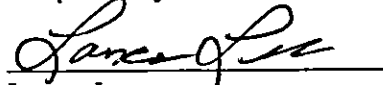
- A. damages in an amount to be proven at trial;
- B. special damages;
- C. punitive damages;
- D. costs including reasonable attorneys' fees, court costs, and other litigation expenses; and
- E. any other relief the Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiffs demands a trial by a jury on all the triable issues within this Petition.

Dated: October 7, 2021

Respectfully submitted,



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Labommie Kilgore*

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been served by means of electronic filing to counsel of record this 7th day of October, 2021.



Lance Lee