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18 Attorneys for Defendants
19 MONSANTO COMPANY and
20 STEVEN D. GOULD

21 SUPERIOR COURT OF THE STATE OF CALIFORNIA
22 FOR THE COUNTY OF SAN FRANCISCO

23 DEWAYNE JOHNSON,

24 Plaintiff,

25 v.

26 MONSANTO COMPANY, STEVEN D.
27 GOULD, WILBUR- ELLIS COMPANY,
28 LLC, and WILBUR-ELLIS FEED, LLC,

Defendants.

CGC-16-550128

**ANSWER OF MONSANTO COMPANY
AND STEVEN D. GOULD TO PLAINTIFF'S
UNVERIFIED COMPLAINT; DEMAND
FOR JURY TRIAL**

Complaint filed: January 28, 2016

Receipt of Remanded Case: May 6, 2016

Trial Date: Not assigned

**ELECTRONICALLY
FILED**
*Superior Court of California,
County of San Francisco*
06/06/2016
Clerk of the Court
BY: MADONNA CARANTO
Deputy Clerk

1 Come now defendants MONSANTO COMPANY and STEVEN D. GOULD (collectively
2 “Monsanto”) and answer the Complaint of plaintiff Dewayne Johnson (“plaintiff”):

3 1. Pursuant to Code of Civil Procedure Section 431.30(d), Monsanto files its general
4 denial to said complaint and denies, generally and specifically, each and every allegation of said
5 complaint, and the whole thereof, and denies that plaintiff has sustained or will sustain damage
6 in the sum or sums alleged, or in any sum or amount whatsoever or at all.

7 2. Further answering the Complaint, Monsanto denies that plaintiff sustained or will
8 sustain any injury, damage or loss by reason of any act or omission of Monsanto.

9 Monsanto is informed and believes, and therefore alleges the following separate and
10 affirmative defenses:

11 FIRST DEFENSE

12 (FAILURE TO STATE A CAUSE OF ACTION – ALL CAUSES OF ACTION)

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

15 SECOND DEFENSE

16 (PRODUCT NOT DEFECTIVE OR UNREASONABLY

17 DANGEROUS – ALL CAUSES OF ACTION)

18 4. Plaintiff’s claims are barred in whole because he cannot proffer any scientifically
19 reliable evidence that the products at issue were defective or unreasonably dangerous.

20 THIRD DEFENSE

21 (LACK OF PROXIMATE CAUSE – ALL CAUSES OF ACTION)

22 5. Any alleged negligent or culpable conduct of Monsanto, none being admitted, was
23 so insubstantial as to be insufficient to be a proximate or substantial contributing cause of
24 plaintiff’s alleged injuries.

25 FOURTH DEFENSE

26 (ADEQUATE WARNINGS – ALL CAUSES OF ACTION)

27 6. Plaintiff’s claims are barred, in whole or in part, because the products at issue were
28 designed, manufactured, marketed and labeled with proper warnings, information, cautions and

1 instructions, in accordance with the state of the art and the state of scientific and technological
2 knowledge.

3 FIFTH DEFENSE

4 (STATUTORY AND REGULATORY
5 COMPLIANCE – ALL CAUSES OF ACTION)

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

9 SIXTH DEFENSE

10 (FIFRA STATUTORY PREEMPTION – ALL CAUSES OF ACTION)

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

14 SEVENTH DEFENSE

15 (PREEMPTION – CONTINUED EPA APPROVAL – ALL
16 CAUSES OF ACTION)

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

20 EIGHTH DEFENSE

21 (PRIMARY JURISDICTION – ALL CAUSES OF ACTION)

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

24 NINTH DEFENSE

25 (INDEPENDENT/INTERVENING/SUPERSEDING CAUSES – ALL CAUSES
26 OF ACTION)

27 11. Plaintiff's claims are barred, in whole or in part, because plaintiff's injuries, if any,
28 were the result of conduct of plaintiff, independent third parties, and/or events that were

1 extraordinary under the circumstances, not foreseeable in the normal course of events, and/or
2 independent, intervening and superseding causes of the alleged injuries, including but not limited
3 to plaintiff's pre-existing medical conditions.

4 TENTH DEFENSE

5 (RESTATEMENT (SECOND) OF TORTS § 402A, COMMENTS J AND K – ALL
6 CAUSES OF ACTION)

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

9 ELEVENTH DEFENSE

10 (STATUTE OF LIMITATIONS – ALL CAUSES OF ACTION)

11 13. Applicable statutes of limitations bar plaintiff's claims in whole or in part.

12 TWELTH DEFENSE

13 (MISUSE OR FAILURE TO FOLLOW INSTRUCTIONS – ALL CAUSES
14 OF ACTION)

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

17 THIRTEENTH DEFENSE

18 (ALTERNATIVE CAUSES – ALL CAUSES OF ACTION)

19 15. If plaintiff suffered injury or damages as alleged, which is denied, such injury or
20 damage resulted from acts or omissions of persons or entities for which Monsanto is neither liable
21 nor responsible or resulted from diseases and/or causes that are not related or connected with any
22 product sold, distributed, or manufactured by Monsanto. Such acts or omissions on the part of
23 others or diseases or causes constitute an independent, intervening and sole proximate cause of
24 plaintiff's alleged injury or damages.

25 FOURTEENTH DEFENSE

26 (LACK OF PRIVITY; NO DUTY – ALL CAUSES OF ACTION)

27 16. Monsanto has no legal relationship or privity with plaintiff and owes no duty to
28 plaintiff by which liability could be attributed to it.

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FIFTEENTH DEFENSE

(NO WARRANTIES – ALL CAUSES OF ACTION)

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

SIXTEENTH DEFENSE

(COMMERCIAL FREE SPEECH – ALL CAUSES OF ACTION)

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

SEVENTEENTH DEFENSE

(PUNITIVE DAMAGES UNCONSTITUTIONAL – ALL CAUSES OF ACTION)

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

EIGHTEENTH DEFENSE

(CONDUCT DOES NOT WARRANT PUNITIVE DAMAGES – ALL CAUSES OF ACTION)

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

NINETEENTH DEFENSE

(PUNITIVE DAMAGES BARRED OR LIMITED BY OPERATION OF LAW – ALL CAUSES OF ACTION)

21. Plaintiff's claims for punitive damages are barred and/or limited by operation of state and/or federal law.

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TWENTIETH DEFENSE

(CONTRIBUTORY/COMPARATIVE NEGLIGENCE – ALL CAUSES OF ACTION)

22. Plaintiff's causes of action are barred in whole or in part by plaintiff's own contributory/comparative negligence.

TWENTY-FIRST DEFENSE

(FAILURE TO MITIGATE DAMAGES – ALL CAUSES OF ACTION)

23. Plaintiff's causes of action are barred in whole or in part by plaintiff's own failure to mitigate damages.

TWENTY-SECOND DEFENSE

(SOPHISTICATED USER DOCTRINE – ALL CAUSES OF ACTION)

24. Plaintiff's causes of action are barred in whole or in part by the sophisticated user doctrine.

TWENTY-THIRD DEFENSE

(COLLATERAL SOURCE – ALL CAUSES OF ACTION)

25. Plaintiff's recovery, if any, shall be reduced by those payments that plaintiff receives from collateral sources.

TWENTY-FOURTH DEFENSE

(ALLEGED INJURIES NOT CAUSED BY MONSANTO'S PRODUCT – ALL CAUSES OF ACTION)

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

TWENTY-FIFTH DEFENSE

(MISJOINDER OF PARTIES – ALL CAUSES OF ACTION)

27. Plaintiff's claims are barred, in whole or in part, because some or all of the parties have been improperly joined in this action.

1 TWENTY-SIXTH DEFENSE

2 (RESERVATION OF RIGHT TO ASSERT ADDITIONAL
3 DEFENSES – ALL CAUSES OF ACTION)

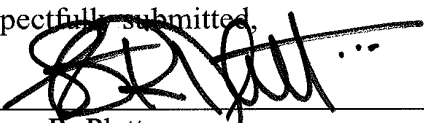
4 28. Monsanto hereby gives notice that it intends to rely upon such other defenses as
5 may become available or apparent during the course of discovery and thus reserves its right to
6 amend this Answer to assert such defenses.

7 WHEREFORE, defendant Monsanto prays as follows:

- 8 1. That plaintiff takes nothing by way of his Complaint;
9 2. That the Complaint be dismissed, in its entirety with prejudice;
10 3. That Monsanto be awarded judgment in this action;
11 4. That Monsanto be awarded costs of suit;
12 5. That Monsanto be awarded such other and further relief as the Court deems just
13 and proper.

14 DATED: June 6, 2016

Respectfully submitted,

15 
16 _____
17 Steven R. Platt
18 Richard A. Clark
19 PARKER, MILLIKEN, CLARK, O'HARA
20 & SAMUELIAN, P.C.

21 Joe G. Hollingsworth (admitted *pro hac vice*)
22 Eric G. Lasker (admitted *pro hac vice*)
23 Martin C. Calhoun (admitted *pro hac vice*)
24 HOLLINGSWORTH LLP

25 Attorneys for Defendant MONSANTO COMPANY
26 and STEVEN D. GOULD
27
28

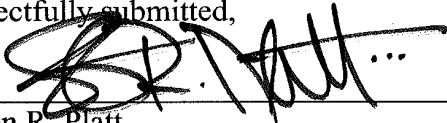
DEMAND FOR JURY TRIAL

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Defendants MONSANTO COMPANY and STEVEN D. GOULD hereby demand a jury trial in the above-entitled action.

DATED: June 6, 2016

Respectfully submitted,



Steven R. Platt
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& SAMUELIAN, P.C.

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Attorneys for Defendant MONSANTO COMPANY
and STEVEN D. GOULD

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PROOF OF SERVICE

Johnson v. Monsanto Company, CGC-16-550128


I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 555 South Flower Street, 30th Floor, Los Angeles, California 90071.

On June 6, 2016, I served the foregoing document described as **ANSWER OF MONSANTO COMPANY AND STEVEN D. GOULD TO PLAINTIFF'S UNVERIFIED COMPLAINT; DEMAND FOR JURY TRIAL** as follows:

Curtis G. Hoke
The Miller Firm LLC
The Sherman Building
108 Railroad Avenue
Orange, VA 22960
Attorneys for Plaintiff Dewayne Johnson

- (BY MAIL) By placing a true copy in envelope(s) addressed as referenced above. The envelope(s) were then sealed and deposited for collection and mailing in accordance with my employer's normal procedures. I am readily familiar with the firm's practice for collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service, with all postage prepaid, at Los Angeles, California, on the same day in the ordinary course of business.
- (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on June 6, 2016 at Los Angeles, California.


Marianne Hendrix