

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Steven J. Brady 116651 Brady Law Group 1015 Irwin Street San Rafael, CA 94901 TELEPHONE NO.: (415) 459-7300 FAX NO.: (415) 459-7303 ATTORNEY FOR (Name): Plaintiffs, Victor Berliant and Linda Berliant		FOR COURT USE ONLY	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Marin STREET ADDRESS: 3501 Civic Center Drive MAILING ADDRESS: P.O. Box 4988 CITY AND ZIP CODE: San Rafael, CA 94903 BRANCH NAME:			
CASE NAME: Berliant vs. Monsanto Company, et al.			
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	
		CASE NUMBER:	
		JUDGE:	
		DEPT.:	

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:		
Auto Tort <input checked="" type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)

2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|---|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☒ punitive
4. Number of causes of action (specify): **Eight**
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: September 13, 2019

Steven J. Brady, Esq.

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)-Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) *(if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)*

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability *(not asbestos or toxic/environmental)* (24)
Medical Malpractice (45)
Medical Malpractice-Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) *(not civil harassment)* (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice *(not medical or legal)*
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract *(not unlawful detainer or wrongful eviction)*
Contract/Warranty Breach-Seller Plaintiff *(not fraud or negligence)*
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case-Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage *(not provisionally complex)* (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property *(not eminent domain, landlord/tenant, or foreclosure)*

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) *(if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)*

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ-Administrative Mandamus
Writ-Mandamus on Limited Court Case Matter
Writ-Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal-Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400-3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims *(arising from provisionally complex case type listed above)* (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment *(non-domestic relations)*
Sister State Judgment
Administrative Agency Award *(not unpaid taxes)*
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint *(not specified above)* (42)
Declaratory Relief Only
Injunctive Relief Only *(non-harassment)*
Mechanics Lien
Other Commercial Complaint Case *(non-tort/non-complex)*
Other Civil Complaint *(non-tort/non-complex)*

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition *(not specified above)* (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief from Late Claim
Other Civil Petition

SUMMONS

(CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

Monsanto Company; Wilbur-Ellis Company, LLC; Wilbur-Ellis Nutrition, LLC (formerly Wilbur-Ellis Feed, LLC); D & D Venture Group, Inc., d/b/a Chase Ace Hardware Garden & Gift Emporium; and DOES 1 through 100 Inclusive

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

Victor Berliant and Linda Berliant

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):

Marin County Superior Court
3501 Civic Center Drive
San Rafael, CA 94903

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Steven J. Brady 116651 Brady Law Group
1015 Irwin Street (415) 459-7300
San Rafael, CA 94901

CASE NUMBER
(Número del Caso):

DATE:

(Fecha)

Clerk, by

(Secretario)

, Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

under:

- ☐ CCP 416.10 (corporation)
☐ CCP 416.20 (defunct corporation)
☐ CCP 416.40 (association or partnership)
☐ other (specify):

- ☐ CCP 416.60 (minor)
☐ CCP 416.70 (conservatee)
☐ CCP 416.90 (authorized person)

4. ☐ by personal delivery on (date):

1 Steven J. Brady (SBN 116651)
2 **BRADY LAW GROUP**
3 1015 Irwin Street
4 San Rafael, California 94901
5 Tel: (415) 459-7300
6 Fax: (415) 459-7303
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8 Curtis G. Hoke (SBN 282465)
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10 108 Railroad Avenue
11 Orange, Virginia 22960
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15 *Attorneys for Plaintiffs*

16
17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
18 **FOR THE COUNTY OF MARIN**
19

20 VICTOR BERLIANT and LINDA BERLIANT,
21
22 Plaintiffs,
23
24 v.

25 MONSANTO COMPANY; WILBUR-ELLIS
26 COMPANY, LLC; WILBUR-ELLIS
27 NUTRITION, LLC (formerly WILBUR-ELLIS
28 FEED, LLC); D & D VENTURE GROUP, INC.
d/b/a Chase Ace Hardware Garden & Gift
Emporium; and DOES 1 through 100 inclusive

Defendants.

CASE No.:

**COMPLAINT FOR DAMAGES AND
DEMAND FOR JURY TRIAL**

1. **Strict Liability – Design Defect**
2. **Strict Liability – Failure to Warn**
3. **Negligence**
4. **Fraud**
5. **Breach of Express Warranties**
6. **Breach of Implied Warranties**
7. **Loss of Consortium**
8. **Punitive Damages**

JURY TRIAL DEMANDED

Plaintiffs VICTOR BERLIANT (hereinafter, “Mr. Berliant” or “Plaintiff”) and LINDA BERLIANT (collectively referred to as “Plaintiffs”), by and through counsel Curtis G. Hoke of The Miller Firm, LLC and Steven J. Brady of Brady Law Group allege upon information and belief:

STATEMENT OF THE CASE

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

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

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

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

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

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

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

8. Upon information and belief, Wilbur-Ellis Company, LLC and Wilbur-Ellis Nutrition, LLC were responsible for marketing Roundup® and related Monsanto products during the time period in question.

9. Upon information and belief, Defendant D & D VENTURE GROUP, INC. d/b/a Chase Ace Hardware Garden & Gift Emporium (hereinafter, “D&D”) promoted and retailed Roundup® and related Monsanto products during the relevant time period and supplied Plaintiff with the Roundup® products at its retail location Chase Ace Hardware Garden & Gift Emporium that caused Plaintiff’s harm. Exposure to the Roundup® products supplied by D&D to Plaintiff was a direct and proximate cause of the harms sustained by Plaintiff.

JURISDICTION AND VENUE

10. The California Superior Court has jurisdiction over this action pursuant to California Constitution Article VI, Section 10, which grants the Superior Court “original jurisdiction in all causes except those given by statute to other trial courts.” The Statutes under which this action is brought do not specify any other basis for jurisdiction.

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

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

5 12. Venue is proper in this Court pursuant to California Code of Civil Procedure
6 Section 395(a) because defendant D & D VENTURE GROUP, INC. d/b/a Chase Ace Hardware
7 Garden & Gift Emporium is a resident of Marin County. Further, Plaintiffs are residents of Marin
8 County.

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

13 PARTIES

14 14. Plaintiff VICTOR BERLIANT is a competent individual over the age of 18,
15 resident and citizen of the State of California, County of Marin, who submits to the jurisdiction of
16 this court and alleges venue in this Court is proper. As a result of Plaintiff's exposure to Roundup,
17 which he purchased and used in the state of California from approximately 1989 to 2017, he
18 suffered from severe physical, economic, and emotional injuries resulting from his use of
19 Roundup, including but not limited to non-Hodgkin's lymphoma, diagnosed in 2016. LINDA
20 BERLIANT is Mr. Berliant's lawfully married spouse and asserts a loss of consortium claim
21 herein for damages and losses caused by Roundup.

22 15. Plaintiffs are informed and believe and based thereon allege that as a direct and
23 proximate result of Plaintiff's use of Roundup® and/or other Monsanto glyphosate-containing
24 products ("Roundup"), supplied and/or distributed by Defendants herein, Plaintiff suffered
25 significant harm, conscious pain and suffering, physical injury and bodily impairment including,
26 but not limited to non-Hodgkin lymphoma and other cancers, other permanent physical deficits,
27 permanent bodily impairment and other injury sequelae. Plaintiff's injuries required medical
28 intervention to address the adverse physical effects and damage caused by Plaintiff's use of

1 Roundup® and/or other Monsanto glyphosate-containing products (“Roundup”).

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

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

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

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

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

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

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

23. By reason of the foregoing, Plaintiff developed serious and dangerous side effects including non-Hodgkin lymphoma and other cancers, related injury sequelae, physical pain and suffering, mental anguish, loss of enjoyment of life, and death. By reason of the foregoing, Plaintiff suffered economic losses and special damages including, but not limited to, loss of earning and medical expenses. Plaintiff's general and special damages exceed the jurisdictional limits of this Court.

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

Defendants

25. Defendant Monsanto Company (“Monsanto”) is a Delaware corporation with its headquarters and principal place of business in St. Louis, Missouri. At all times relevant to this complaint, Monsanto was the entity that discovered the herbicidal properties of glyphosate and manufactured Roundup®. Monsanto has regularly transacted and conducted business within the State of California and has derived substantial revenue from goods and products, including Roundup®, used in the State of California and employs sales representatives in the State of California. Monsanto expected or should have expected its acts to have consequences within the State of California because it derived substantial revenue from interstate commerce and invoked the benefits and protection of the State of California’s laws.

26. Defendant Wilbur-Ellis Company LLC is a California limited liability corporation with its headquarters and principal place of business in San Francisco, California. At all times relevant to this complaint, Wilbur-Ellis Company, LLC sold and distributed Monsanto products, including Roundup®, within the State of California.

1 27. Defendant Wilbur-Ellis Nutrition LLC (with Wilbur-Ellis Company LLC,
2 hereinafter "Wilbur-Ellis") is a California limited liability corporation with its headquarters and
3 principal place of business in San Francisco, California. At all times relevant to this complaint,
4 Wilbur-Ellis Nutrition LLC sold and distributed Monsanto products, including Roundup®, within
5 the State of California. Wilbur-Ellis is a main distributor of Roundup®, and, upon information and
6 belief, distributed Roundup® used by Plaintiff.

7 28. Defendant D&D is a California company with its headquarters and principal place
8 of business in Marin County, California. At all times relevant to this complaint, D&D sold and
9 distributed Monsanto products, including Roundup®, within the State of California. At all times
10 relevant to this Complaint, D&D owned and operated Chase Ace Hardware Garden & Gift
11 Emporium in Marin County, located at 1826 4th St, San Rafael, California 94901, which retailed
12 Monsanto products, including Roundup. D&D, at its Chase Ace Hardware location, supplied
13 Plaintiff with the Roundup® products which caused Plaintiff's NHL. D&D never warned Plaintiff
14 of the carcinogenic potential of Roundup®, and still retails Roundup today.

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

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

23 31. The true names and/or capacities, whether individual, corporate, partnership,
24 associate, governmental, or otherwise, of Defendant DOES 1 through 100, inclusive, and each of
25 them, are unknown to Plaintiff at this time, who therefore sue said Defendants by such fictitious
26 names. Plaintiff is informed and believes, and thereon alleges, that each Defendant designated
27 herein as a DOE caused injuries and damages proximately thereby to Plaintiff as hereinafter
28 alleged; and that each DOE Defendant is liable to the Plaintiff for the acts and omissions alleged

1 herein below, and the resulting injuries to Plaintiff, and damages sustained by the Plaintiff.
2 Plaintiff will amend this Complaint to allege the true names and capacities of said DOE
3 Defendants when the same are ascertained.

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

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

27 34. Plaintiff is informed and believes, and thereon alleges, that at all times herein
28 mentioned, Defendants and DOES 1 through 100, inclusive, and each of them, were and are

1 corporations organized and existing under the laws of the State of California or the laws of some
2 state or foreign jurisdiction; that each of the said Defendants and DOE Defendants were and are
3 authorized to do and are doing business in the State of California and regularly conducted business
4 in California, including in Marin County.

5 35. Upon information and belief, at all relevant times, Defendants and DOES 1 through
6 100, and each of them, inclusive, were engaged in the business of researching, developing,
7 designing, licensing, manufacturing, distributing, selling, marketing, and/or introducing into
8 interstate commerce and into the State of California, including in Marin County, either directly or
9 indirectly through third parties or related entities, Roundup® and/or other Monsanto glyphosate-
10 containing products.

11 36. At all relevant times, Defendants and DOES 1 through 100, inclusive, and each of
12 them, conducted regular and sustained business and engaged in substantial commerce and business
13 activity in the State of California, which included but was not limited to selling, marketing and
14 distributing Roundup® and/or other Monsanto glyphosate-containing products in the State of
15 California, including Marin County.

16 37. At all relevant times, Defendants and DOES 1 through 100, inclusive, and each of
17 them, expected or should have expected that their acts would have consequences within the United
18 States of America including the State of California, including Marin County, and said Defendants
19 derived and derive substantial revenue therefrom.

20 **EQUITABLE TOLLING**

21 38. Plaintiff has suffered an illness that has a latency period and does not arise until
22 years after exposure. Plaintiff had no way of knowing about the risk of serious illness associated
23 with the use of and/or exposure to Roundup® and glyphosate until made aware that Plaintiff's
24 illness, including non-Hodgkin lymphoma could be caused by use and/or exposure to Roundup®.
25 The discovery rule applies, and the statute of limitations was tolled until the day Plaintiff knew or
26 had reason to know that Plaintiff's illnesses, including non-Hodgkin lymphoma, were linked to
27 Plaintiff's use and/or exposure to Roundup®.

28 39. Within the time period of any applicable statute of limitations, Plaintiff could not

1 have discovered through the exercise of reasonable diligence that exposure to Roundup® and
2 glyphosate is injurious to human health.

3 40. Plaintiff did not discover and did not know of facts that would cause a reasonable
4 person to suspect the risk associated with the use of and/or exposure to Roundup® and glyphosate
5 nor would a reasonable and diligent investigation by Plaintiff has disclosed that Roundup® and
6 glyphosate would cause Plaintiff's illnesses.

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

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

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

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

25 **FACTS**

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

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

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

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

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

19 49. The herbicidal properties of glyphosate were discovered in 1970 by Monsanto
20 chemist John Franz. The first glyphosate-based herbicide was introduced to the market in the mid-
21 1970s under the brand name Roundup®. From the outset, Monsanto marketed Roundup® as a
22 “safe” general-purpose herbicide for widespread commercial and consumer use; Osborn & Barr
23 joined or took over these misleading marketing efforts in the early 1990s and continued through
24 2012. Monsanto still markets Roundup® as safe today.

25 ***Registration of Herbicides under Federal Law***

26 50. The manufacture, formulation and distribution of herbicides, such as Roundup®,
27 are regulated under the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA” or “Act”), 7
28 U.S.C. § 136 *et seq.* FIFRA requires that all herbicides be registered with the Environmental

1 Protection Agency (“EPA” or “Agency”) prior to their distribution, sale, or use, except as
2 described by the Act. 7 U.S.C. § 136a (a).

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

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

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

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

24 55. The evaluation of each herbicide product distributed, sold, or manufactured is
25 completed at the time the product is initially registered. The data necessary for registration of a
26 herbicide has changed over time. The EPA is now in the process of re-evaluating all herbicide
27 products through a Congressionally-mandated process called “re-registration.” 7 U.S.C. § 136a-1.
28

1 In order to reevaluate these herbicides, the EPA is demanding the completion of additional tests
2 and the submission of data for the EPA's review and evaluation.

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

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

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

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

19 59. In the first instance, Monsanto, in seeking initial registration of Roundup® by EPA,
20 hired Industrial Bio-Test Laboratories ("IBT") to perform and evaluate herbicide toxicology
21 studies relating to Roundup®. IBT performed about 30 tests on glyphosate and glyphosate-
22 containing products, including nine of the 15 residue studies needed to register Roundup®.

23 60. In 1976, the United States Food and Drug Administration ("FDA") performed an
24 inspection of Industrial Bio-Test Industries ("IBT") that revealed discrepancies between the raw
25 data and the final report relating to the toxicological impacts of glyphosate. The EPA subsequently
26 audited IBT; it too found the toxicology studies conducted for the Roundup® herbicide to be
27 invalid. An EPA reviewer stated, after finding "routine falsification of data" at IBT, that it was
28 "hard to believe the scientific integrity of the studies when they said they took specimens of the

1 uterus from male rabbits.”

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

3 62. In the second incident of data falsification, Monsanto hired Craven Laboratories in
4 1991 to perform pesticide and herbicide studies, including for Roundup®. In that same year, the
5 owner of Craven Laboratories and three of its employees were indicted, and later convicted, of
6 fraudulent laboratory practices in the testing of pesticides and herbicides.

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

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

23 65. Monsanto has also violated federal regulations in holding secret *ex parte* meetings
24 and conversations with certain EPA employees to collude in a strategy to re-register glyphosate
25 and to quash investigations into the carcinogenicity of glyphosate by other federal agencies such
26 as the Agency for Toxic Substances and Disease Registry. Monsanto’s close connection with the
27 EPA arises in part from its offering of lucrative consulting gigs to retiring EPA officials. In March
28 2015, The Joint Glyphosate Task Force, at Monsanto’s behest, issued a press release sharply

1 criticizing IARC, stating that IARC's conclusion was "baffling" and falsely claiming that "IARC
2 did not consider any new or unique research findings when making its decision. It appears that
3 only by deciding to exclude certain available scientific information and by adopting a different
4 approach to interpreting the studies was this possible."

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

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

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

23 68. In response, Monsanto began the development and sale of genetically engineered
24 Roundup Ready® seeds in 1996. Since Roundup Ready® crops are resistant to glyphosate,
25 farmers can spray Roundup® onto their fields during the growing season without harming the
26 crop. This allowed Monsanto to expand its market for Roundup® even further. By 2000,
27 Monsanto's biotechnology seeds were planted on more than 80 million acres worldwide, and
28 nearly 70% of American soybeans were planted from Roundup Ready® seeds. It also secured

1 Monsanto's dominant share of the glyphosate/Roundup® market through a marketing strategy that
2 coupled proprietary Roundup Ready® seeds with continued sales of its Roundup® herbicide.

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

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

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

- 15 (a) Remember that environmentally friendly Roundup® herbicide is biodegradable. It
16 won't build up in the soil so you can use Roundup® with confidence along
17 customers' driveways, sidewalks and fences...
- 18 (b) And remember that Roundup® is biodegradable and won't build up in the soil. That
19 will give you the environmental confidence you need to use Roundup® everywhere
20 you've got a weed, brush, edging or trimming problem.
- 21 (c) Roundup® biodegrades into naturally occurring elements.
- 22 (d) Remember that versatile Roundup® herbicide stays where you put it. That means
23 there's no washing or leaching to harm customers' shrubs or other desirable
24 vegetation.
- 25 (e) This non-residual herbicide will not wash or leach in the soil. It ... stays where you
26 apply it.
- 27 (f) You can apply Accord (glyphosate-containing herbicide) with "confidence because
28 it will stay where you put it;" it bonds tightly to soil particles, preventing leaching.

1 Then, soon after application, soil microorganisms biodegrade Accord into natural
2 products.

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

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

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

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

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

15 (a) its glyphosate-containing herbicide products or any component thereof are safe,
16 non-toxic, harmless or free from risk. * * *

17 (b) its glyphosate-containing herbicide products or any component thereof
18 manufactured, formulated, distributed or sold by Monsanto are biodegradable * * *

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

22 * * *

23 (d) its glyphosate-containing herbicide products or any component thereof are "good"
24 for the environment or are "known for their environmental characteristics." * * *

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

27 (f) its glyphosate-containing products or any component thereof might be classified as
28 "practically non-toxic."

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

3 73. In 2009, France's highest court ruled that Monsanto had not told the truth about the
4 safety of Roundup®. The French court affirmed an earlier judgement that Monsanto had falsely
5 advertised its herbicide Roundup® as "biodegradable" and that it "left the soil clean."

6 *Classifications and Assessments of Glyphosate*

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

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

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

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

- 27 (a) human, experimental, and mechanistic data;
28 (b) all pertinent epidemiological studies and cancer bioassays; and

1 (c) representative mechanistic data.

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

4 78. In March of 2015, IARC reassessed glyphosate. The summary published in *The*
5 *Lancet Oncology* reported that glyphosate is a Group 2A agent, that is, glyphosate is probably
6 carcinogenic in humans.

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

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

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

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

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

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

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

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

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

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

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

26 90. Many Roundup® products bear a label which either reads: “glyphosate targets an
27 enzyme found in plants but not in people or pets” or “this Roundup formula targets an enzyme in
28 plants but not in people or pets.” These statements are false because it has been established that the

1 human body is host to microorganisms which contain the enzyme Monsanto asserts is not found in
2 humans.

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

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

14 ***Other Earlier Findings about Glyphosate's Dangers to Human Health***

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

19 **Release Patterns**

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

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

27 96. Occupational workers and home gardeners may be exposed to glyphosate by
28 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.

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

Recent Worldwide Bans on Roundup®/Glyphosate

98. Several countries around the world have instituted bans on the sale of Roundup® and other glyphosate-containing herbicides, both before and since IARC first announced its assessment for glyphosate in March 2015, and more countries undoubtedly will follow suit in light of this assessment as the dangers of the use of Roundup® are more widely known. The Netherlands issued a ban on all glyphosate-based herbicides in April 2014, including Roundup®, which takes effect by the end of 2015. 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. The Brazilian Public Prosecutor in the Federal District requested that the Brazilian Justice Department suspend the use of glyphosate.

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

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

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

1 103. The government of Columbia announced its ban on using Roundup® and
2 glyphosate to destroy illegal plantations of coca, the raw ingredient for cocaine, because of the
3 WHO's finding that glyphosate is probably carcinogenic.

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

7 105. Wilbur-Ellis had superior knowledge compared to Roundup® users and consumers,
8 including regarding the carcinogenic properties of the product, yet failed to accompany its sales
9 and or marketing of Roundup® with any warnings or precautions for that grave danger. On
10 information and belief, Wilbur-Ellis was one of the distributors providing Roundup® and other
11 glyphosate-containing products actually used by the Plaintiff.

12 **LIMITATION ON ALLEGATIONS**

13 106. Plaintiffs incorporate by reference each allegation set forth in preceding paragraphs
14 as if fully stated herein.

15 107. The allegations in this pleading are made pursuant to California law. To the extent
16 California law imposes a duty or obligation on Defendants that exceeds those required by federal
17 law, Plaintiff do not assert such claims. All claims asserted herein run parallel to federal law, *i.e.*,
18 the Defendants' violations of California law were also violations of federal law. Had Defendants
19 honestly complied with California law, they would also have complied with federal law.

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

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

25 **COUNT I: STRICT LIABILITY - DESIGN DEFECT**

26 **(Against all Defendants)**

27 110. Plaintiffs incorporate by reference each allegation set forth in preceding paragraphs
28 as if fully stated herein.

1 111. Plaintiffs bring this strict liability claim against Defendants for defective design.

2 112. At all relevant times, Defendants engaged in the business of testing, developing,
3 designing, manufacturing, marketing, selling, distributing, and promoting Roundup® products,
4 which are defective and unreasonably dangerous to consumers, including Plaintiff, thereby placing
5 Roundup® products into the stream of commerce. These actions were under the ultimate control
6 and supervision of Defendants. At all relevant times, Defendants designed, researched, developed,
7 manufactured, produced, tested, assembled, labeled, advertised, promoted, marketed, sold, and
8 distributed the Roundup® products used by Plaintiff, as described herein.

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

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

16 115. At all relevant times, Defendants registered, researched, manufactured, distributed,
17 marketed and sold Roundup® and other glyphosate-based formulations within California and
18 aimed at a California consumer and industrial market. Defendant D&D was at all relevant times
19 involved in the retail and promotion of roundup® and the glyphosate-based formulations marketed
20 and sold in California. Defendant D&D supplied Plaintiff with the Roundup® products which
21 caused Plaintiff's harm.

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

27 117. Defendants' Roundup® products, as researched, tested, developed, designed,
28 licensed, manufactured, packaged, labeled, distributed, sold, and marketed by Defendants were

1 defective in design and formulation in that, when they left the hands of Defendants' manufacturers
2 and/or suppliers, the foreseeable risks exceeded the alleged benefits associated with their design
3 and formulation.

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

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

- 11 a. When placed in the stream of commerce, Defendants' Roundup® products were
12 defective in design and formulation, and, consequently, dangerous to an extent
13 beyond that which an ordinary consumer would contemplate;
- 14 b. When placed in the stream of commerce, Defendants' Roundup® products were
15 unreasonably dangerous in that they were hazardous and posed a grave risk of
16 cancer and other serious illnesses when used in a reasonably anticipated manner;
- 17 c. When placed in the stream of commerce, Defendants' Roundup® products
18 contained unreasonably dangerous design defects and were not reasonably safe
19 when used in a reasonably anticipated or intended manner;
- 20 d. Defendants did not sufficiently test, investigate, or study its Roundup® products
21 and, specifically, the active ingredient glyphosate;
- 22 e. Exposure to Roundup® and glyphosate-containing products presents a risk of
23 harmful side effects that outweigh any potential utility stemming from the use of
24 the herbicide;
- 25 f. Defendants knew or should have known at the time of marketing Roundup®
26 products that exposure to Roundup® and specifically, its active ingredient
27 glyphosate, could result in cancer and other severe illnesses and injuries;
- 28 g. Defendants did not conduct adequate post-marketing surveillance of its Roundup®

1 products; and

2 h. Defendants could have employed safer alternative designs and formulations.

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

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

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

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

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

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

23 126. Therefore, as a result of the unreasonably dangerous condition of their Roundup®
24 products, Defendants are strictly liable to Plaintiffs.

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

28 128. Defendants' conduct, as described above, was reckless. Defendants risked the lives

1 of consumers and users of its products, including Plaintiff, with knowledge of the safety problems
2 associated with Roundup® and glyphosate-containing products, and suppressed this knowledge
3 from the general public. Defendants made conscious decisions not to redesign, warn or inform the
4 unsuspecting public. Defendants' reckless conduct warrants an award of punitive damages.

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

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

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

14 132. WHEREFORE, Plaintiffs demand judgment against all Defendants for
15 compensatory, treble damages pursuant to California Civil Code Section 3345, and punitive
16 damages in excess of the jurisdictional minimum of this Court, together with interest, costs of suit,
17 attorneys' fees, and all such other relief, as this Court deems proper.

18 **COUNT II: STRICT LIABILITY - FAILURE TO WARN**

19 **(Against all Defendants)**

20 133. Plaintiffs incorporate by reference each allegation set forth in preceding paragraphs
21 as if fully stated herein.

22 134. Plaintiffs bring this strict liability claim against Defendants for failure to warn.

23 135. At all relevant times, Defendants engaged in the business of testing, developing,
24 designing, manufacturing, marketing, selling, distributing, and promoting Roundup® products
25 which are defective and unreasonably dangerous to consumers, including Plaintiff, because they do
26 not contain adequate warnings or instructions concerning the dangerous characteristics of
27 Roundup® and specifically, the active ingredient glyphosate. These actions were under the ultimate
28 control and supervision of Defendants.

1 136. At all relevant times, Defendants registered, researched, manufactured, distributed,
2 marketed and sold Roundup® and other glyphosate-based formulations within California and
3 aimed at a California consumer and industrial market. Defendant D&D was at all relevant times
4 involved in the retail and promotion of Roundup® and glyphosate-based formulations marketed
5 and sold in California. D&D supplied Plaintiff with the Roundup products which caused
6 Plaintiff's harm.

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

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

19 139. At the time of manufacture, Defendants could have provided the warnings or
20 instructions regarding the full and complete risks of Roundup® and glyphosate-containing
21 products because they knew or should have known of the unreasonable risks of harm associated
22 with the use of and/or exposure to such products.

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

27 141. Despite the fact that Defendants knew or should have known that Roundup® posed
28 a grave risk of harm, they failed to exercise reasonable care to warn of the dangerous risks

1 associated with use and exposure. The dangerous propensities of their products and the
2 carcinogenic characteristics of glyphosate, as described above, were known to Defendants, or
3 scientifically knowable to Defendants through appropriate research and testing by known methods,
4 at the time they distributed, supplied or sold the product, and were not known to end users and
5 consumers, such as Plaintiff.

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

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

16 144. Plaintiff was exposed to Defendants' Roundup® products without knowledge of
17 their dangerous characteristics.

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

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

25 147. Defendants knew or should have known that the minimal warnings disseminated
26 with their Roundup® products were inadequate, failed to communicate adequate information on
27 the dangers and safe use/exposure, and failed to communicate warnings and instructions that were
28 appropriate and adequate to render the products safe for their ordinary, intended and reasonably

1 foreseeable uses, including agricultural and horticultural applications.

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

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

17 150. To this day, Defendants have failed to adequately and accurately warn of the risks
18 of cancer associated with the use of and exposure to Roundup® and its active ingredient
19 glyphosate.

20 151. As a result of their inadequate warnings, Defendants' Roundup® products were
21 defective and unreasonably dangerous when they left the possession and/or control of Defendants,
22 were distributed by Defendants, and used by Plaintiff.

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

27 153. Had Defendants provided adequate warnings and instructions and properly
28 disclosed and disseminated the risks associated with their Roundup® products, Plaintiff could

1 have avoided the risk of developing injuries and could have obtained or used alternative
2 herbicides.

3 154. As a direct and proximate result of Defendants placing defective Roundup®
4 products into the stream of commerce, Plaintiff was injured and have sustained pecuniary loss
5 resulting and general damages in a sum exceeding the jurisdictional minimum of this Court.

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

9 156. As a proximate result of Defendants placing defective Roundup® products into the
10 stream of commerce, as alleged herein, Plaintiff sustained loss of income, loss of earning capacity
11 and property damage.

12 157. WHEREFORE, Plaintiffs demand judgment against all Defendants for
13 compensatory, treble damages pursuant to California Civil Code Section 3345, and punitive
14 damages in excess of the jurisdictional minimum of this Court, together with interest, costs of suit,
15 attorneys' fees, and all such other relief, as this Court deems proper.

16 **COUNT III: NEGLIGENCE**

17 **(Against all Defendants)**

18 158. Plaintiffs incorporate by reference each allegation set forth in preceding paragraphs
19 as if fully stated herein.

20 159. Defendants, directly or indirectly, caused Roundup® products to be sold,
21 distributed, packaged, labeled, marketed, promoted, and/or used by Plaintiff.

22 160. At all relevant times, Defendants had a duty to exercise reasonable care in the
23 design, research, manufacture, marketing, advertisement, supply, promotion, packaging, sale, and
24 distribution of Roundup products, including the duty to take all reasonable steps necessary to
25 manufacture, promote, and/or sell a product that was not unreasonably dangerous to consumers
26 and users of the product.

27 161. At all relevant times, Defendants had a duty to exercise reasonable care in the
28 marketing, advertisement, and sale of the Roundup® products. Defendants' duty of care owed to

1 consumers and the general public included providing accurate, true, and correct information
2 concerning the risks of using Roundup and appropriate, complete, and accurate warnings
3 concerning the potential adverse effects of exposure to Roundup®, and, in particular, its active
4 ingredient glyphosate.

5 162. At all relevant times, Defendants knew or, in the exercise of reasonable care,
6 should have known of the hazards and dangers of Roundup® and, specifically, the carcinogenic
7 properties of the chemical glyphosate.

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

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

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

24 166. Defendants were negligent in their promotion of Roundup®, outside of the labeling
25 context, by failing to disclose material risk information as part of their promotion and marketing of
26 Roundup®, including the Internet, television, print advertisements, etc. Nothing prevented
27 Defendants from being honest in their promotional activities, and, in fact, Defendants had a duty to
28 disclose the truth about the risks associated with Roundup in their promotional efforts, outside of

1 the context of labeling.

2 167. Despite their ability and means to investigate, study, and test the products and to
3 provide adequate warnings, Defendants have failed to do so. Indeed, Defendants have wrongfully
4 concealed information and have further made false and/or misleading statements concerning the
5 safety and/or exposure to Roundup and glyphosate.

6 168. Defendants' negligence included:

- 7 a. Manufacturing, producing, promoting, formulating, creating, developing,
8 designing, selling, and/or distributing Roundup® products without thorough and
9 adequate pre- and post-market testing;
- 10 b. Manufacturing, producing, promoting, formulating, creating, developing,
11 designing, selling, and/or distributing Roundup® while negligently and/or
12 intentionally concealing and failing to disclose the results of trials, tests, and
13 studies of exposure to glyphosate, and, consequently, the risk of serious harm
14 associated with human use of and exposure to Roundup;
- 15 c. Failing to undertake sufficient studies and conduct necessary tests to determine
16 whether or not Roundup® products and glyphosate-containing products were safe
17 for their intended use in agriculture and horticulture;
- 18 d. Failing to use reasonable and prudent care in the design, research, manufacture, and
19 development of Roundup® products so as to avoid the risk of serious harm
20 associated with the prevalent use of Roundup/glyphosate as an herbicide;
- 21 e. Failing to design and manufacture Roundup® products so as to ensure they were at
22 least as safe and effective as other herbicides on the market;
- 23 f. Failing to provide adequate instructions, guidelines, and safety precautions to those
24 persons Defendants could reasonably foresee would use and be exposed to
25 Roundup® products;
- 26 g. Failing to disclose to Plaintiff, users/consumers, and the general public that use of
27 and exposure to Roundup® presented severe risks of cancer and other grave
28 illnesses;

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

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

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

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

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

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

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

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

176. WHEREFORE, Plaintiffs demand judgment against all Defendants for compensatory, treble damages pursuant to California Civil Code Section 3345, and punitive damages in excess of the jurisdictional minimum of this Court, together with interest, costs of suit, attorneys' fees, and all such other relief, as this Court deems proper.

COUNT IV: FRAUD

(Against Monsanto)

177. Plaintiffs incorporate by reference each allegation set forth in preceding paragraphs as if fully stated herein.

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

179. Defendant Monsanto misrepresented and/or failed to disclose, *inter alia*, that: glyphosate and its major metabolite aminomethylphosphonic acid (AMPA) could cause cancer; glyphosate and AMPA are known to be genotoxic in humans and laboratory animals because

1 exposure is known to cause DNA strand breaks (a precursor to cancer); glyphosate and AMPA are
2 known to induce oxidative stress in humans and laboratory animals (a precursor to cancer);
3 glyphosate and AMPA interfere with the aromatic amino acids within the human gut, leading to
4 downstream health conditions including cancer; exposure to glyphosate and AMPA is causally
5 associated with non-Hodgkin lymphoma; and the laboratory tests attesting to the safety of
6 glyphosate were flawed and/or fraudulent.

7 180. Due to these misrepresentations and omissions, at all times relevant to this
8 litigation, Defendant's Roundup® was misbranded under 7 U.S.C. § 136(g) and its distribution
9 within California and around the United States was a violation of 7 U.S.C. § 136j and 40 C.F.R. §
10 156.10(a)(5).

11 181. Plaintiff relied on the Defendant's misrepresentations and/or material omissions
12 regarding the safety of Roundup® and its active ingredient glyphosate in deciding whether to
13 purchase and/or use the product. Plaintiff did not know nor could they reasonably have known of
14 the misrepresentations and/or material omissions by Defendant concerning Roundup® and its
15 active ingredient glyphosate.

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

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

28 184. Defendant Monsanto made these misrepresentations and/or material omissions with

malicious, fraudulent and/or oppressive intent toward Plaintiff and the public generally. Defendant's conduct was willful, wanton, and/or reckless. Defendant deliberately recommended, manufactured, produced, marketed, sold, distributed, merchandized, packaged, promoted and advertised the dangerous and defective herbicide Roundup®. This constitutes an utter, wanton, and conscious disregard of the rights and safety of a large segment of the public, and by reason thereof, Defendant is liable for reckless, willful, and wanton acts and omissions which evidence a total and conscious disregard for the safety of Plaintiff and others which proximately caused the injuries as set forth herein.

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

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

187. WHEREFORE, Plaintiffs demand judgment against all Defendants for compensatory, treble damages pursuant to California Civil Code Section 3345, and punitive damages in excess of the jurisdictional minimum of this Court, together with interest, costs of suit, attorneys' fees, and all such other relief, as this Court deems proper.

COUNT V: BREACH OF EXPRESS WARRANTIES

(Against Monsanto)

188. Plaintiffs incorporate by reference each allegation set forth in preceding paragraphs as if fully stated herein.

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

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

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

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

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

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

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

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

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

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

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

19 197. Plaintiff detrimentally relied on the express warranties and representations of
20 Defendant Monsanto concerning the safety and/or risk profile of Roundup® in making a decision to
21 purchase the product. Plaintiff reasonably relied upon Defendant Monsanto to disclose known
22 defects, risks, dangers, and side effects of Roundup® and glyphosate. Plaintiff would not have
23 purchased or used Roundup® had Defendant Monsanto properly disclosed the risks associated with
24 the product, either through advertising, labeling, or any other form of disclosure.

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

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

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

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

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

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

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

19 205. WHEREFORE, Plaintiffs demand judgment against all Defendants for
20 compensatory, treble damages pursuant to California Civil Code Section 3345, and punitive
21 damages in excess of the jurisdictional minimum of this Court, together with interest, costs of suit,
22 attorneys' fees, and all such other relief, as this Court deems proper.

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

24 **(Against Monsanto)**

25 206. Plaintiffs incorporate by reference every allegation set forth in preceding
26 paragraphs as if fully stated herein.

27 207. At all relevant times, Defendant Monsanto engaged in the business of testing,
28 developing, designing, manufacturing, marketing, selling, distributing, and promoting Roundup®

1 products, which were and are defective and unreasonably dangerous to consumers, including
2 Plaintiff, thereby placing Roundup® products into the stream of commerce.

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

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

11 210. Plaintiff was intended beneficiaries of the implied warranties made by Defendant
12 Monsanto to purchasers of its herbicides.

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

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

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

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

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

28 216. Defendant Monsanto breached its implied warranty to Plaintiff in that Roundup®

1 products were not of merchantable quality, safe, or fit for their intended use, or adequately tested.
2 Roundup® has dangerous propensities when used as intended and can cause serious injuries,
3 including those injuries complained of herein.

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

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

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

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

15 221. WHEREFORE, Plaintiffs demand judgment against all Defendants for
16 compensatory, treble damages pursuant to California Civil Code Section 3345, and punitive
17 damages in excess of the jurisdictional minimum of this Court, together with interest, costs of suit,
18 attorneys' fees, and all such other relief, as this Court deems proper.

19 **VII. LOSS OF CONSORTIUM**

20 **(Against all Defendants)**

21 222. Plaintiffs hereby incorporate by reference all other paragraphs in this Complaint as
22 if set forth fully herein.

23 223. Plaintiffs are married to one another and were married at the time of the injuries
24 alleged herein. Plaintiffs are entitled to one another's comfort, care, affection, companionship,
25 services, society, advice, guidance, and consortium.

26 224. WHEREFORE, Plaintiffs demand judgment against all Defendants for
27 compensatory, treble damages pursuant to California Civil Code Section 3345, and punitive
28

1 damages in excess of the jurisdictional minimum of this Court, together with interest, costs of suit,
2 attorneys' fees, and all such other relief, as this Court deems proper.

3 4 **VIII. PUNITIVE DAMAGES**

5 **(Against all Defendants)**

6 225. Plaintiffs incorporate by reference each allegation set forth in preceding paragraphs
7 as if fully stated herein.

8 226. Defendants' conduct as alleged herein was done with oppression, fraud, and malice.
9 Defendants were fully aware of the safety risks of Roundup®. Nonetheless, Defendants
10 deliberately crafted their label, marketing, and promotion to mislead farmers and consumers.

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

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

23 229. WHEREFORE, Plaintiffs demand judgment against all Defendants for
24 compensatory, treble damages pursuant to California Civil Code Section 3345, and punitive
25 damages in excess of the jurisdictional minimum of this Court, together with interest, costs of suit,
26 attorneys' fees, and all such other relief, as this Court deems proper.

27 **JURY TRIAL DEMAND**

28 230. Plaintiffs demand a trial by jury on all of the triable issues within this pleading.

1 **PRAYER FOR RELIEF**

2 231. WHEREFORE, Plaintiffs request this Court to enter judgment in Plaintiffs' favor
3 and against the Defendants for:

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

12 Dated: September 13, 2019

13 Respectfully submitted,

14 **THE MILLER FIRM, LLC and**
15 **BRADY LAW GROUP**

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