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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**FOR THE COUNTY OF ALAMEDA**

COORDINATION PROCEEDING SPECIAL  
TITLE (RULE 3.550)  
**ROUNDUP PRODUCTS CASES**

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THIS DOCUMENT RELATES TO:

*Pilliod, et al. v. Monsanto Company, et al.*  
Case No.: RG17862702

JCCP NO. 4953

ASSIGNED FOR ALL PURPOSES TO  
JUDGE WINIFRED SMITH

DEPARTMENT 21

**JURY INSTRUCTIONS**

Trial Date: March 18, 2019

1 **INSTRUCTION NO. 1**

2 Members of the jury, you have now heard all the evidence. The attorneys will have one last  
3 chance to talk to you in closing argument. But before they do, it is my duty to instruct you on the law  
4 that applies to this case. You must follow these instructions as well as those that I previously gave  
5 you. You will have a copy of my instructions with you when you go to the jury room to deliberate. I  
6 have provided each of you with your own copy of the instructions.

7 You must decide what the facts are. You must consider all the evidence and then decide what  
8 you think happened. You must decide the facts based on the evidence admitted in this trial.

9 Do not allow anything that happens outside this courtroom to affect your decision. Do not  
10 talk about this case or the people involved in it with anyone, including family and persons living in  
11 your household, friends and coworkers, spiritual leaders, advisors, or therapists. Do not do any  
12 research on your own or as a group. Do not use dictionaries or other reference materials.

13 These prohibitions on communications and research extend to all forms of electronic  
14 communications. Do not use any electronic devices or media, such as a cell phone or smart phone,  
15 PDA, computer, tablet device, the Internet, any Internet service, any text or instant-messaging  
16 service, any Internet chat room, blog, or website, including social networking websites or online  
17 diaries, to send or receive any information to or from anyone about this case or your experience as a  
18 juror until after you have been discharged from your jury duty.

19 Do not investigate the case or conduct any experiments. Do not contact anyone to assist you,  
20 such as a family accountant, doctor, or lawyer. Do not visit or view the scene of any event involved  
21 in this case. If you happen to pass by the scene, do not stop or investigate. All jurors must see or hear  
22 the same evidence at the same time. Do not read, listen to, or watch any news accounts of this trial.  
23 You must not let bias, sympathy, prejudice, or public opinion influence your decision.

24 If you violate any of these prohibitions on communications and research, including  
25 prohibitions on electronic communications and research, you may be held in contempt of court or  
26 face other sanctions. That means that you may have to serve time in jail, pay a fine, or face other  
27 punishment for that violation.  
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1 I will now tell you the law that you must follow to reach your verdict. You must follow the  
2 law exactly as I give it to you, even if you disagree with it. If the attorneys have said anything  
3 different about what the law means, you must follow what I say.

4 In reaching your verdict, do not guess what I think your verdict should be from something I  
5 may have said or done.

6 Pay careful attention to all the instructions that I give you. All the instructions are important  
7 because together they state the law that you will use in this case. You must consider all of the  
8 instructions together.

9 After you have decided what the facts are, you may find that some instructions do not apply.  
10 In that case, follow the instructions that do apply and use them together with the facts to reach your  
11 verdict.

12 If I repeat any ideas or rules of law during my instructions that does not mean that these ideas  
13 or rules are more important than the others. In addition, the order in which the instructions are given  
14 does not make any difference.

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**INSTRUCTION NO. 2**

You must not consider whether any of the parties in this case has insurance. The presence or absence of insurance is totally irrelevant. You must decide this case based only on the law and the evidence.

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**INSTRUCTION NO. 3**

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2           You must decide what the facts are in this case only from the evidence you have seen or  
3 heard during the trial, including any exhibits that I admit into evidence. Sworn testimony,  
4 documents, or anything else may be admitted into evidence. You may not consider as evidence  
5 anything that you saw or heard when court was not in session, even something done or said by one  
6 of the parties, attorneys, or witnesses.

7           What the attorneys say during the trial is not evidence. In their opening statements and  
8 closing arguments, the attorneys talk to you about the law and the evidence. What the lawyers say  
9 may help you understand the law and the evidence, but their statements and arguments are not  
10 evidence.

11           The attorneys' questions are not evidence. Only the witnesses' answers are evidence. You  
12 should not think that something is true just because an attorney's question suggested that it was true.  
13 However, the attorneys for both sides have agreed that certain facts are true. This agreement is called  
14 a stipulation. No other proof is needed and you must accept those facts as true in this trial.

15           Each side had the right to object to evidence offered by the other side. If I sustained an  
16 objection to a question, ignore the question and do not guess as to why I sustained the objection. If  
17 the witness did not answer, you must not guess what he or she might have said. If the witness  
18 already answered, you must ignore the answer.

19           During the trial I granted a motion to strike testimony that you heard. You must totally  
20 disregard that testimony. You must treat it as though it did not exist.  
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1 **INSTRUCTION NO. 4**

2 A witness is a person who has knowledge related to this case. You will have to decide  
3 whether you believe each witness and how important each witness's testimony is to the case. You  
4 may believe all, part, or none of a witness's testimony.

5 In deciding whether to believe a witness's testimony, you may consider, among other factors,  
6 the following:

- 7 (a) How well did the witness see, hear, or otherwise sense what he or she described in  
8 court?
- 9 (b) How well did the witness remember and describe what happened?
- 10 (c) How did the witness look, act, and speak while testifying?
- 11 (d) Did the witness have any reason to say something that was not true? For example, did  
12 the witness show any bias or prejudice or have a personal relationship with any of the  
13 parties involved in the case or have a personal stake in how this case is decided?
- 14 (e) What was the witness's attitude toward this case or about giving testimony?

15 Sometimes a witness may say something that is not consistent with something else he or she  
16 said. Sometimes different witnesses will give different versions of what happened. People often  
17 forget things or make mistakes in what they remember. Also, two people may see the same event but  
18 remember it differently. You may consider these differences, but do not decide that testimony is  
19 untrue just because it differs from other testimony.

20 However, if you decide that a witness did not tell the truth about something important, you  
21 may choose not to believe anything that witness said. On the other hand, if you think the witness did  
22 not tell the truth about some things but told the truth about others, you may accept the part you think  
23 is true and ignore the rest.

24 Do not make any decision simply because there were more witnesses on one side than on the  
25 other. If you believe it is true, the testimony of a single witness is enough to prove a fact.

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1           You must not be biased in favor of or against any witness because of his or her disability,  
2 gender, race, religion, ethnicity, sexual orientation, age, national origin, or socioeconomic status.

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**INSTRUCTION NO. 5**

There are two plaintiffs in this trial. You should decide the case of each plaintiff separately as if it were a separate lawsuit. Each plaintiff is entitled to separate consideration of his or her own claims.

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**INSTRUCTION NO. 6**

A corporation, Monsanto, is a party in this lawsuit. Monsanto is entitled to the same fair and impartial treatment that you would give to an individual. You must decide this case with the same fairness that you would use if you were deciding the case between individuals.

When I use words like “person” or “he” or “she” in these instructions to refer to a party, those instructions also apply to Monsanto.

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**INSTRUCTION NO. 7**

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2           You have heard testimony that Plaintiffs Alberta and Alva Pilliod were exposed to various  
3 glyphosate-containing herbicides that were manufactured by Monsanto. For purposes of these  
4 instructions and the verdict form, these glyphosate-containing herbicides will be collectively  
5 referred to as “Roundup.”  
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**INSTRUCTION NO. 8**

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2 Although their claims were presented together in a single trial, Mr. Pilliod and Mrs. Pilliod  
3 are separate plaintiffs who assert separate claims against Monsanto. Although some of the evidence  
4 you heard is applicable to both Mr. Pilliod and Mrs. Pilliod, other evidence you heard is applicable  
5 only to one of them individually.

6 For example, you heard evidence that Mr. Pilliod and Mrs. Pilliod each used different  
7 amounts of Roundup and were diagnosed with cancer at different times. When considering Mr.  
8 Pilliod's and Mrs. Pilliod's claims, you should separately consider the evidence for each Plaintiff  
9 regarding what Monsanto knew or reasonably should have known in light of the science that existed  
10 at the time of Mr. Pilliod and/or Mrs. Pilliod's use of Roundup that allegedly caused their harm.

11 When considering Mr. Pilliod's claims you may not consider evidence that is applicable only  
12 to Mrs. Pilliod's claims. Similarly, when considering Mrs. Pilliod's claims you may not consider  
13 evidence that is applicable only to Mr. Pilliod's claims.

**INSTRUCTION NO. 9**

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2 A party must persuade you, by the evidence presented in court, that what he or she is  
3 required to prove is more likely to be true than not true. This is referred to as “the burden of proof.”

4 After weighing all of the evidence, if you cannot decide that something is more likely to be  
5 true than not true, you must conclude that the party did not prove it. You should consider all the  
6 evidence, no matter which party produced the evidence.

7 In criminal trials, the prosecution must prove that the defendant is guilty beyond a reasonable  
8 doubt. But in civil trials, such as this one, the party who is required to prove something need prove  
9 only that it is more likely to be true than not true.  
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**INSTRUCTION NO. 10**

Certain facts must be proved by clear and convincing evidence, which is a higher burden of proof. This means the party must persuade you that it is highly probable that the fact is true. I will tell you specifically which facts must be proved by clear and convincing evidence.

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**INSTRUCTION NO. 11**

Evidence can come in many forms. It can be testimony about what someone saw or heard or smelled. It can be an exhibit admitted into evidence. It can be someone’s opinion.

Direct evidence can prove a fact by itself. For example, if a witness testifies she saw a jet plane flying across the sky, that testimony is direct evidence that a plane flew across the sky. Some evidence proves a fact indirectly. For example, a witness testifies that he saw only the white trail that jet planes often leave. This indirect evidence is sometimes referred to as “circumstantial evidence.” In either instance, the witness’s testimony is evidence that a jet plane flew across the sky.

As far as the law is concerned, it makes no difference whether evidence is direct or indirect. You may choose to believe or disbelieve either kind. Whether it is direct or indirect, you should give every piece of evidence whatever weight you think it deserves.

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**INSTRUCTION NO. 12**

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2           During the trial, I explained that certain evidence could be considered as to only one party.  
3 You may not consider that evidence as to any other party.  
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**INSTRUCTION NO. 13**

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2           During the trial, you received deposition testimony that was read from the deposition  
3 transcript or shown by video. A deposition is the testimony of a person taken before trial. At a  
4 deposition the person is sworn to tell the truth and is questioned by the attorneys. You must consider  
5 the deposition testimony that was presented to you in the same way as you consider testimony given  
6 in court.  
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**INSTRUCTION NO. 14**

Before trial, each party has the right to ask another party to admit in writing that certain matters are true. If the other party admits those matters, you must accept them as true. No further evidence is required to prove them.

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1 **INSTRUCTIONS NO. 15**

2 A party may offer into evidence any oral or written statement made by an opposing party  
3 outside the courtroom. When you evaluate evidence of such a statement, you must consider these  
4 questions:

5 1. Do you believe that the party actually made the statement? If you do not believe that the  
6 party made the statement, you may not consider the statement at all.

7 2. If you believe that the statement was made, do you believe it was reported accurately?

8 You should view testimony about an oral statement made by a party outside the courtroom  
9 with caution.

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**INSTRUCTION NO. 16**

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2           During the trial you heard testimony from expert witnesses. The law allows an expert to state  
3 opinions about matters in his or her field of expertise even if he or she has not witnessed any of the  
4 events involved in the trial.

5           You do not have to accept an expert’s opinion. As with any other witness, it is up to you to  
6 decide whether you believe the expert’s testimony and choose to use it as a basis for your decision.  
7 You may believe all, part, or none of an expert’s testimony. In deciding whether to believe an  
8 expert’s testimony, you should consider:

- 9                   a.     The expert’s training and experience;  
10                  b.     The facts the expert relied on; and  
11                  c.     The reasons for the expert’s opinion.  
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**INSTRUCTION NO. 17**

The law allows expert witnesses to be asked questions that are based on assumed facts. These are sometimes called “hypothetical questions.” In determining the weight to give to the expert’s opinion that is based on the assumed facts, you should consider whether the assumed facts are true.

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**INSTRUCTION NO. 18**

If the expert witnesses disagreed with one another, you should weigh each opinion against the others. You should examine the reasons given for each opinion and the facts or other matters that each witness relied on. You may also compare the experts' qualifications.

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**INSTRUCTION NO. 19**

A substantial factor in causing harm is a factor that a reasonable person would consider to have contributed to the harm. It must be more than a remote or trivial factor. It does not have to be the only cause of the harm.

Conduct is not a substantial factor in causing harm if the same harm would have occurred without that conduct.

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**INSTRUCTION NO. 20**

Mr. Pilliod and Mrs. Pilliod claim that Roundup’s design was defective because Roundup did not perform as safely as an ordinary consumer would have expected it to perform. To establish that claim, Mr. Pilliod and Mrs. Pilliod must prove the following:

1. That Monsanto manufactured, distributed or sold Roundup;
2. That the Roundup used by Mr. Pilliod and/or Mrs. Pilliod did not perform as safely as an ordinary consumer would have expected it to perform when used or misused in an intended or reasonably foreseeably way;
3. That Mr. Pilliod or Mrs. Pilliod or both were harmed; and
4. That Roundup’s failure to perform safely was a substantial factor in causing Mr. Pilliod’s and/or Mrs. Pilliod’s harm.

**INSTRUCTION NO. 21**

Mr. Pilliod and Mrs. Pilliod claim that Roundup lacked sufficient warnings of potential risks.

To establish this claim, Mr. Pilliod and Mrs. Pilliod must prove all of the following:

1. That Monsanto manufactured, distributed or sold Roundup;
2. That Roundup had potential risks that were known or knowable in light of the scientific knowledge that was generally accepted in the scientific community at the time of manufacture, distribution, and sale;
3. That the potential risks presented a substantial danger when Roundup was used in accordance with widespread and commonly recognized practice;
4. That ordinary consumers would not have recognized the potential risks;
5. That Monsanto failed to adequately warn of the potential risks;
6. That Mr. Pilliod or Mrs. Pilliod or both were harmed; and
7. That the lack of sufficient warnings was a substantial factor in causing Mr. Pilliod's or Mrs. Pilliod's or both's harm.



**INSTRUCTION NO. 22**

1  
2 Mr. Pilliod and Mrs. Pilliod also claim that they were harmed by Monsanto's negligence and  
3 that Monsanto should be held responsible for that harm. To establish that claim, Mr. Pilliod and  
4 Mrs. Pilliod must prove all of the following:

- 5 1. That Monsanto designed, manufactured and supplied Roundup;
- 6 2. That Monsanto was negligent in designing, manufacturing and supplying Roundup;
- 7 3. That Mr. Pilliod or Mrs. Pilliod or both were harmed; and
- 8 4. That Monsanto's negligence was a substantial factor in causing Mr. Pilliod's or Mrs.  
9 Pilliod's or both's harm.

**INSTRUCTION NO. 23**

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2 Negligence is the failure to use reasonable care to prevent harm to others. A designer,  
3 manufacturer, or supplier can be negligent by acting or failing to act. A designer, manufacturer, or  
4 supplier is negligent if it fails to use the amount of care in designing or manufacturing the product  
5 that a reasonably careful designer or manufacturer would use in similar circumstances to avoid  
6 exposing others to a foreseeable risk of harm.

7 In determining whether Monsanto used reasonable care, you should balance what Monsanto  
8 knew or should have known about the likelihood and severity of potential harm from the product  
9 against the burden of taking safety measures to reduce or avoid the harm.

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**INSTRUCTION NO. 24**

Mr. Pilliod and Mrs. Pilliod claim that Monsanto was negligent by not using reasonable care to warn about the dangerous condition of Roundup or about facts that made Roundup likely to be dangerous. To establish this claim, Mr. Pilliod and Mrs. Pilliod must prove all of the following:

1. That Monsanto manufactured, distributed, or sold Roundup;
2. That Monsanto knew or reasonably should have known that Roundup were dangerous or were likely to be dangerous when used in accordance with widespread and commonly recognized practice;
3. That Monsanto knew or reasonably should have known that users would not realize the danger when used in accordance with widespread and commonly recognized practice;
4. That Monsanto failed to adequately warn of the danger of Roundup;
5. That a reasonable manufacturer, distributor, or seller under the same or similar circumstances would have warned of the danger of Roundup;
6. That Mrs. Pilliod or Mr. Pilliod or both were harmed; and
7. That Monsanto's failure to warn was a substantial factor in causing Mrs. Pilliod's or Mr. Pilliod's or both's harm.

**INSTRUCTION NO. 25**

If you decide that Mr. Pilliod and/or Mrs. Pilliod have proved their claims against Monsanto, you also must decide how much money will reasonably compensate Mr. Pilliod and/or Mrs. Pilliod for their individual harm. This compensation is called “damages.”

The amount of damages must include an award for each item of harm that was caused by Monsanto’s wrongful conduct, even if the particular harm could not have been anticipated.

Mr. Pilliod and/or Mrs. Pilliod do not have to prove the exact amount of damages that will provide reasonable compensation for the harm. However, you must not speculate or guess in awarding damages.

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**INSTRUCTION NO. 26**

The damages claimed by Mr. Pilliod and Mrs. Pilliod for the harm caused by Monsanto fall into two categories called economic damages and noneconomic damages. You will be asked on the verdict form to state the two categories of damages separately.

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**INSTRUCTION NO. 27**

The following are the specific items of economic damages claimed by Mr. Pilliod:

1. Past Medical Expenses

To recover damages for past medical expenses, Mr. Pilliod must prove the reasonable cost of reasonably necessary medical care that he has received.

The following are the specific items of economic damages claimed by Mrs. Pilliod:

1. Past and Future Medical Expenses

To recover damages for past medical expenses, Mrs. Pilliod must prove the reasonable cost of reasonably necessary medical care that he has received.

To recover damages for future medical expenses, Mrs. Pilliod must prove the reasonable cost of reasonably necessary medical care that she is reasonably certain to need in the future.

**INSTRUCTION NO. 28**

The following are the specific items of noneconomic damages claimed by Mrs. Pilliod and Mr. Pilliod:

1. Past and future physical pain, mental suffering, loss of enjoyment of life, disfigurement, physical impairment, inconvenience, grief, anxiety, humiliation, emotional distress and any other similar damages.

No fixed standard exists for deciding the amount of these noneconomic damages. You must use your judgment to decide a reasonable amount based on the evidence and your common sense.

To recover for future pain, mental suffering, loss of enjoyment of life, disfigurement, physical impairment, inconvenience, grief, anxiety, humiliation, and emotional distress, Plaintiffs must prove that they are reasonably certain to suffer that harm.

For future noneconomic damages, determine the amount in current dollars paid at the time of judgment that will compensate Plaintiffs for future noneconomic damages.

**INSTRUCTION NO. 29**

The arguments of the attorneys are not evidence of damages. Your award must be based on your reasoned judgment applied to the testimony of the witnesses and the other evidence that has been admitted during trial.

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**INSTRUCTION NO. 30**

If you decide Mr. Pilliod and/or Mrs. Pilliod have suffered damages that will continue for the rest of their life, you must determine how long they will probably live. According to the National Vital Statistics Report published by the National Center for Health Statistics:

1. A 77-year-old male is expected to live another 10 years; and
2. A 75-year-old female is expected to live another 13 years.

This is the average life expectancy. Some people live longer and others die sooner.

This published information is evidence of how long a person is likely to live but is not conclusive.

In deciding a person's life expectancy, you should also consider, among other factors, that person's health, habits, activities, lifestyle, and occupation.

**INSTRUCTION NO. 31**

Mr. Pilliod and Mrs. Pilliod seek damages from Monsanto under more than one legal theory. However, each item of damages may be awarded only once to each Plaintiff, regardless of the number of legal theories alleged.

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**INSTRUCTION NO. 32**

If you decide that Monsanto’s conduct caused Mr. Pilliod and/or Mrs. Pilliod’s harm, you must decide whether that conduct justifies an award of punitive damages. The purposes of punitive damages are to punish a wrongdoer for the conduct that harmed the plaintiff and to discourage similar conduct in the future.

Punitive damages are not intended to compensate Mr. Pilliod or Mrs. Pilliod. If you awarded compensatory damages to Mr. Pilliod and/or Mrs. Pilliod, your award will have fully compensated Plaintiff(s) for any loss, harm, or damage that he or she has incurred or may in the future incur as a result of Monsanto’s conduct.

You may award punitive damages against Monsanto only if Mr. Pilliod and/or Mrs. Pilliod prove that Monsanto engaged in that conduct with malice, oppression, or fraud. To do this, Mr. Pilliod and/or Mrs. Pilliod must prove one of the following by clear and convincing evidence:

1. That the conduct constituting malice, oppression, or fraud was committed by one or more officers, directors, or managing agents of Monsanto, who acted on behalf of Monsanto; or
2. That the conduct constituting malice, oppression, or fraud was authorized by one or more officers, directors, or managing agents of Monsanto; or
3. That one or more officers, directors, or managing agents of Monsanto knew of the conduct constituting malice, oppression, or fraud and adopted or approved that conduct after it occurred.

“Malice” means that Monsanto acted with intent to cause injury or that Monsanto’s conduct was despicable and was done with a willful and knowing disregard of the rights or safety of another. A person acts with knowing disregard when he or she is aware of the probable dangerous consequences of his or her conduct and deliberately fails to avoid those consequences.

“Oppression” means that Monsanto’s conduct was despicable and subjected Mr. Pilliod and/or Mrs. Pilliod to cruel and unjust hardship in knowing disregard of his rights.

“Despicable conduct” is conduct that is so vile, base, or contemptible that it would be looked down on and despised by reasonable people.

1           “Fraud” means that Monsanto intentionally misrepresented or concealed a material fact and  
2 did so intending to harm to Mr. Pilliod and/or Mrs. Pilliod.

3           An employee is a “managing agent” if he or she exercises substantial independent authority  
4 and judgment in his or her corporate decision making such that his or her decisions ultimately  
5 determine corporate policy.

6           There is no fixed formula for determining the amount of punitive damages, and you are not  
7 required to award any punitive damages. If you decide to award punitive damages, you should  
8 consider all of the following factors in determining the amount:

9  
10       (a) How reprehensible was Monsanto’s conduct? In deciding how reprehensible Monsanto’s  
11       conduct was, you may consider, among other factors:

- 12           1. Whether the conduct caused physical harm;
- 13           2. Whether Monsanto’s disregarded the health or safety of others;
- 14           3. Whether Plaintiffs were financially weak or vulnerable and Monsanto knew Mr. Pilliod  
15           and/or Mrs. Pilliod were financially weak or vulnerable and took advantage of him or  
16           her;
- 17           4. Whether Monsanto’s conduct involved a pattern or practice; and
- 18           5. Whether Monsanto acted with trickery or deceit.

19       (b) Is there a reasonable relationship between the amount of punitive damages and Mr. Pilliod  
20       and/or Mrs. Pilliod’s harm or between the amount of punitive damages and potential harm to  
21       Mr. Pilliod and/or Mrs. Pilliod that Monsanto knew was likely to occur because of its  
22       conduct?

23       (c) In view of Monsanto’s financial condition, what amount is necessary to punish it and  
24       discourage future wrongful conduct? You may not increase the punitive award above an  
25       amount that is otherwise appropriate merely because Monsanto has substantial financial  
26       resources. Any award you impose may not exceed Monsanto’s ability to pay.

27           Punitive damages may not be used to punish Monsanto for the impact of its alleged  
28       misconduct on persons other than Mr. Pilliod and/or Mrs. Pilliod.

**INSTRUCTION NO. 33**

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2           You must not consider, or include as part of any award, attorneys' fees or expenses that the  
3 parties incurred in bringing or defending this lawsuit.  
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1 **INSTRUCTION NO. 34**

2 When you go to the jury room, the first thing you should do is choose a presiding juror. The  
3 presiding juror should see to it that your discussions are orderly and that everyone has a fair chance  
4 to be heard.

5 It is your duty to talk with one another in the jury room and to consider the views of all the  
6 jurors. Each of you must decide the case for yourself, but only after you have considered the  
7 evidence with the other members of the jury. Feel free to change your mind if you are convinced that  
8 your position should be different. You should all try to agree. But do not give up your honest beliefs  
9 just because the others think differently.

10 Please do not state your opinions too strongly at the beginning of your deliberations or  
11 immediately announce how you plan to vote as it may interfere with an open discussion. Keep an  
12 open mind so that you and your fellow jurors can easily share ideas about the case.

13 You should use your common sense and experience in deciding whether testimony is true  
14 and accurate. However, during your deliberations, do not make any statements or provide any  
15 information to other jurors based on any special training or unique personal experiences that you  
16 may have had related to matters involved in this case. What you may know or have learned through  
17 your training or experience is not a part of the evidence received in this case.

18 Sometimes jurors disagree or have questions about the evidence or about what the witnesses  
19 said in their testimony. If that happens, you may ask to have testimony read back to you or ask to see  
20 any exhibits admitted into evidence that have not already been provided to you. Also, jurors may  
21 need further explanation about the laws that apply to the case. If this happens during your  
22 discussions, write down your questions and give them to the [clerk/bailiff/court attendant]. I will talk  
23 with the attorneys before I answer so it may take some time. You should continue your deliberations  
24 while you wait for my answer. I will do my best to answer them. When you write me a note, do not  
25 tell me how you voted on an issue until I ask for this information in open court.

26 Your decision must be based on your personal evaluation of the evidence presented in the  
27 case. Each of you may be asked in open court how you voted on each question.  
28

1           While I know you would not do this, I am required to advise you that you must not base your  
2 decision on chance, such as a flip of a coin. If you decide to award damages, you may not agree in  
3 advance to simply add up the amounts each juror thinks is right and then, without further  
4 deliberations, make the average your verdict.

5           You may take breaks, but do not discuss this case with anyone, including each other, until all  
6 of you are back in the jury room.

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**INSTRUCTION NO. 35**

1  
2 If you have taken notes during the trial, you may take your notebooks with you into the jury  
3 room.

4 You may use your notes only to help you remember what happened during the trial. Your  
5 independent recollection of the evidence should govern your verdict. You should not allow yourself  
6 to be influenced by the notes of other jurors if those notes differ from what you remember.

7 At the end of the trial, your notes will be collected and destroyed.  
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**INSTRUCTION NO. 36**

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2           You may request in writing that trial testimony be read to you. I will have the court reporter  
3 read the testimony to you. You may request that all or a part of a witness’s testimony be read.

4           Your request should be as specific as possible. It will be helpful if you can state:

- 5           1.     The name of the witness;  
6           2.     The subject of the testimony you would like to have read; and  
7           3.     The name of the attorney or attorneys asking the questions when the testimony was  
8                 given.

9           The court reporter is not permitted to talk with you when she or he is reading the testimony  
10 you have requested.

11           While the court reporter is reading the testimony, you may not deliberate or discuss the case.

12           You may not ask the court reporter to read testimony that was not specifically mentioned in a  
13 written request. If your notes differ from the testimony, you must accept the court reporter’s record  
14 as accurate.

**INSTRUCTION NO. 37**

1  
2 I will give you verdict forms with questions you must answer. I have already instructed you  
3 on the law that you are to use in answering these questions. You must follow my instructions and the  
4 forms carefully. You must consider each question separately. Although you may discuss the  
5 evidence and the issues to be decided in any order, you must answer the questions on the verdict  
6 forms in the order they appear. After you answer a question, the form tells you what to do next. At  
7 least 9 of you must agree on an answer before you can move on to the next question. However, the  
8 same 9 or more people do not have to agree on each answer.

9 All 12 of you must deliberate on and answer each question regardless of how you voted on  
10 any earlier question. Unless the verdict form tells all 12 jurors to stop and answer no further  
11 questions, every juror must deliberate and vote on all of the remaining questions.

12 When you have finished filling out the forms, your presiding juror must write the date and  
13 sign it at the bottom of the last page and then notify the court attendant that you are ready to present  
14 your verdict in the courtroom.

**INSTRUCTION NO. 38**

1  
2 The jury will soon begin deliberating, but you are still alternate jurors and are bound by my  
3 earlier instructions about your conduct.

4 Until the jury is discharged, do not talk about the case or about any of the people or any  
5 subject involved in it with anyone, not even your family or friends, and not even with each other. Do  
6 not have any contact with the deliberating jurors. Do not decide how you would vote if you were  
7 deliberating. Do not form or express an opinion about the issues in this case, unless you are  
8 substituted for one of the deliberating jurors.  
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**INSTRUCTION NO. 39**

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2           After your verdict is read in open court, you may be asked individually to indicate whether  
3 the verdict expresses your personal vote. This is referred to as “polling” the jury and is done to  
4 ensure that at least nine jurors have agreed to each decision.

5           The verdict forms that you will receive ask you to answer several questions. You must vote  
6 separately on each question. Although nine or more jurors must agree on each answer, it does not  
7 have to be the same nine for each answer. Therefore, it is important for each of you to remember  
8 how you voted on each question so that if the jury is polled, each of you will be able to answer  
9 accurately about how you voted.  
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**INSTRUCTION NO. 40**

1  
2 If, during the trial, any of you had a question that you believed should be asked of a witness,  
3 you were instructed to write out the question and provide it to me through my courtroom staff. I  
4 shared your questions with the attorneys, after which I decided whether the question could be asked.

5 If a question was asked and answered, you are to consider the answer as you would any other  
6 evidence received in the trial. Do not give the answer any greater or lesser weight because it was  
7 initiated by a juror question.

8 If the question was not asked, do not speculate as to what the answer might have been or why  
9 it was not asked. There are many legal reasons why a suggested question cannot be asked of a  
10 witness. Give the question no further consideration.  
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**INSTRUCTION NO. 41**

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2           During the trial, materials have been shown to you to help explain testimony or other  
3 evidence in the case. Some of these materials have been admitted into evidence, and you will be able  
4 to review them during your deliberations.

5           Other materials have also been shown to you during the trial, but they have not been admitted  
6 into evidence. You will not be able to review them during your deliberations because they are not  
7 themselves evidence or proof of any facts. You may, however, consider the testimony given in  
8 connection with those materials.  
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**INSTRUCTION NO. 42**

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2 Members of the jury, this completes your duties in this case. On behalf of the parties and  
3 their attorneys, thank you for your time and your service. It can be a great personal sacrifice to serve  
4 as a juror, but by doing so you are fulfilling an extremely important role in California's system of  
5 justice. Each of us has the right to a trial by jury, but that right would mean little unless citizens such  
6 as each of you are willing to serve when called to do so. You have been attentive and conscientious  
7 during the trial, and I am grateful for your dedication.

8 Throughout the trial, I continued to admonish you that you could not discuss the facts of the  
9 case with anyone other than your fellow jurors and then only during deliberations when all twelve  
10 jurors were present. I am now relieving you from that restriction, but I have another admonition.

11 You now have the absolute right to discuss or not to discuss your deliberations and verdict  
12 with anyone, including members of the media. It is appropriate for the parties, their attorneys, or  
13 representatives to ask you to discuss the case, but any such discussion may occur only with your  
14 consent and only if the discussion is at a reasonable time and place. You should immediately report  
15 any unreasonable contact to the court.

16 If you do choose to discuss the case with anyone, feel free to discuss it from your own  
17 perspective, but be respectful of the other jurors and their views and feelings.

18 Thank you for your time and your service; you are discharged.  
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