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13
14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15
16 **IN AND FOR THE COUNTY OF ALAMEDA**
17
18 **(UNLIMITED JURISDICTION)**

19 ALVA AND ALBERTA PILLIOD,

20 Plaintiffs,

21 vs.

22 MONSANTO COMPANY;
23 WILBUR-ELLIS COMPANY, LLC; and
24 WILBUR-ELLIS FEED, LLC,

25 Defendants.

JCCP No.: 4953

Case No.: RG17862702

**PLAINTIFFS' FIRST AMENDED
COMPLAINT FOR DAMAGES AND
DEMAND FOR JURY TRIAL**

BY FAX

1. **Strict Liability – Design Defect**
2. **Strict Liability – Failure to Warn**
3. **Negligence**
4. **Breach of Implied Warranty**
5. **Punitive Damage**
6. **Loss of Consortium**

JURY TRIAL DEMANDED

26
27
28 FIRST AMENDED COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL

1 used. It has been found in food, in the urine of agricultural workers, and even in the urine of
2 urban dwellers who are not in direct contact with glyphosate.

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

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

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16
17 6. The IARC Working Group classified glyphosate as a Group 2A herbicide, which means
18 that it is probably carcinogenic to humans. The IARC Working Group concluded that the cancers
19 most associated with glyphosate exposure are non-Hodgkin lymphoma and other haematopoietic
20 cancers, including lymphocytic lymphoma/chronic lymphocytic leukemia, B-cell lymphoma, and
21 multiple myeloma.

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23
24 7. The IARC evaluation is significant. It confirms what has been believed for years: that
25 glyphosate is toxic to humans.

26
27 8. Nevertheless, Monsanto, since it began selling Roundup®, has represented it as safe to

1 humans and the environment. Indeed, Monsanto has repeatedly proclaimed and continues to
2 proclaim to the world, and particularly to United States consumers, that glyphosate-based
3 herbicides, including Roundup®, create no unreasonable risks to human health or to the
4 environment.
5

6
7 **JURISDICTION AND VENUE**

8 9. The California Superior Court has jurisdiction over this action pursuant to California
9 Constitution Article VI, Section 10, which grants the Superior Court “original jurisdiction in all
10 causes except those given by statute to other trial courts.” The Statutes under which this action is
11 brought do not specify any other basis for jurisdiction.
12

13
14 10. The California Superior Court has jurisdiction over the Defendants because, based on
15 information and belief, each is a California resident, a corporation and/or entity organized under
16 the laws of the State of California, a foreign corporation or association authorized to do business
17 in California and registered with the California Secretary of State or has sufficient minimum
18 contacts in California, or otherwise intentionally avails itself of the California market so as to
19 render the exercise of jurisdiction over it by the California courts consistent with traditional
20 notions of fair play and substantial justice.
21

22
23
24 11. Venue is proper in this Court pursuant to California Code of Civil Procedure Section 395
25 in that the subject injury occurred in Alameda County.
26

1 12. Furthermore the Defendants have purposefully availed themselves of the benefits and the
2 protections of the laws within the State of California. Monsanto has had sufficient contact such
3 that the exercise of jurisdiction would be consistent with the traditional notions of fair play and
4 substantial justice.
5

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7 13. Plaintiffs seek relief that is within the jurisdictional limits of this Court.
8

9
10 **THE PARTIES**

11 **Plaintiffs**

12 14. Plaintiff ALVA PILLIOD is a competent individual over the age of 18, a resident and
13 citizen of the United States, and hereby submits to the jurisdiction of the Court and alleges that
14 jurisdiction and venue in this court is proper. Mr. Pilliod currently resides in Livermore, County
15 of Alameda, California. Mr. Pilliod used Monsanto's glyphosate-containing Roundup® product
16 and suffered from severe physical, economy, and emotional injuries as a result of his use of
17 Roundup® between 1975 and 2011, including but not limited to non-Hodgkin lymphoma,
18 diagnosed in 2011 in California. Plaintiff ALBERTA PILLIOD is a competent individual over
19 the age of 18, a resident and citizen of the United States, and hereby submits to the jurisdiction of
20 the Court and alleges that jurisdiction and venue in this court is proper. Mrs. Pilliod currently
21 resides in Livermore, County of Alameda, California. Mrs. Pilliod used the same Monsanto
22 manufactured glyphosate-containing Roundup® products as Mr. Pilliod and suffered from severe
23 physical, economic, and emotional injuries as a result of her use of Roundup® between 1975 and
24 2011, including but not limited to non-Hodgkin lymphoma, diagnosed in April, 2015 in
25
26
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1 California. Mr. and Mrs. Pilliod are lawfully married spouses and each seek damages for loss of
2 consortium herein.

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4
5 **Defendants**

6 15. Defendant Monsanto Company (“Monsanto”) is a Delaware corporation with its
7 headquarters and principal place of business in St. Louis, Missouri. At all times relevant to this
8 complaint, Monsanto was the entity that discovered the herbicidal properties of glyphosate and
9 the manufacturer of Roundup®. Monsanto has regularly transacted and conducted business
10 within the state of California, and has derived substantial revenue from goods and products,
11 including Roundup, used in the State of California. Monsanto expected or should have expected
12 their acts to have consequences within the State of California, and derived substantial revenue
13 from interstate commerce.
14

15
16 16. Defendants Wilbur-Ellis Company LLC is a California limited liability corporation with
17 its headquarters and principal place of business in San Francisco, California. At all times
18 relevant to this complaint, Wilbur-Ellis Company, LLC sold and distributed Monsanto products
19 including Roundup, within the State of California.
20

21
22 17. Defendants Wilbur-Ellis Feed LLC (with Wilbur-Ellis Company LLC, hereinafter
23 “Wilbur-Ellis”) is a California limited liability corporation with its headquarters and principal
24 place of business in San Francisco, California. At all times relevant to this complaint, Wilbur-
25 Ellis Feed, LLC sold and distributed Monsanto products including Roundup, within the State of
26 California.
27

1 18. Defendants Monsanto Company, Wilbur-Ellis Company, LLC, and Wilbur-Ellis Feed,
2 LLC are collectively referred to throughout this Complaint as “Defendants.”
3

4
5 19. Plaintiffs are informed and believe, and based thereon allege, that in committing the acts
6 alleged herein, each and every managing agent, agent, representative and/or employee of the
7 Defendants was working within the course and scope of said agency, representation and/or
8 employment with the knowledge, consent, ratification, and authorization of the Defendants and
9 their directors, officers and/or managing agents.
10

11
12 **CASE FACTS**

13 20. Glyphosate is a broad-spectrum, non-selective herbicide used in a wide variety of
14 herbicidal products around the world.
15

16
17 21. Plants treated with glyphosate translocate the systemic herbicide to their roots, shoot
18 regions and fruit, where it interferes with the plant’s ability to form aromatic amino acids
19 necessary for protein synthesis.
20

21
22 22. Treated plants generally die within two to three days. Because plants absorb glyphosate,
23 it cannot be completely removed by washing or peeling produce or by milling, baking, or
24 brewing grains.
25

1 23. For nearly 40 years, farms across the world have used Roundup® without knowing of the
2 dangers its use poses. That is because when Monsanto first introduced Roundup®, it touted
3 glyphosate as a technological breakthrough: it could kill almost every weed without causing
4 harm either to people or to the environment. Of course, history has shown that not to be true.
5 According to the WHO, the main chemical ingredient of Roundup®—glyphosate—is a probable
6 cause of cancer. Those most at risk are farm workers and other individuals with workplace
7 exposure to Roundup®, such as workers in garden centers, nurseries, and landscapers.
8 Agricultural workers are, once again, victims of corporate greed.
9

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11
12 24. Monsanto assured the public that Roundup® was harmless. In order to prove this,
13 Monsanto championed falsified data and attacked legitimate studies that revealed its dangers.
14 Monsanto led a prolonged campaign of misinformation to convince government agencies,
15 farmers and the general population that Roundup® was safe.
16

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

18 25. The herbicidal properties of glyphosate were discovered in 1970 by Monsanto chemist
19 John Franz. The first glyphosate-based herbicide was introduced to the market in the mid-1970s
20 under the brand name Roundup®. From the outset, Monsanto marketed Roundup® as a “safe”
21 general-purpose herbicide for widespread commercial and consumer use. It still markets
22 Roundup® as safe today.
23

24 **Registration of Herbicides under Federal Law**

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

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
4

5 27. Because pesticides are toxic to plants, animals, and humans, at least to some degree, the
6 EPA requires as part of the registration process, among other things, a variety of tests to evaluate
7 the potential for exposure to pesticides, toxicity to people and other potential non-target
8 organisms, and other adverse effects on the environment. Registration by the EPA, however, is
9 not an assurance or finding of safety. The determination the Agency must make in registering or
10 re-registering a product is not that the product is “safe,” but rather that use of the product in
11 accordance with its label directions “will not generally cause unreasonable adverse effects on the
12 environment.” 7 U.S.C. § 136a(c)(5)(D).
13
14

15
16 28. FIFRA defines “unreasonable adverse effects on the environment” to mean “any
17 unreasonable risk to man or the environment, taking into account the economic, social, and
18 environmental costs and benefits of the use of any pesticide.” 7 U.S.C. § 136(bb). FIFRA thus
19 requires EPA to make a risk/benefit analysis in determining whether a registration should be
20 granted or allowed to continue to be sold in commerce.
21
22

23 29. The EPA and the State of California registered Roundup® for distribution, sale, and
24 manufacture in the United States and the State of California.
25
26
27

1 30. FIFRA generally requires that the registrant, Monsanto in the case of Roundup®,
2 conducts the health and safety testing of pesticide products. The EPA has protocols governing
3 the conduct of tests required for registration and the laboratory practices that must be followed in
4 conducting these tests. The data produced by the registrant must be submitted to the EPA for
5 review and evaluation. The government is not required, nor is it able, however, to perform the
6 product tests that are required of the manufacturer.
7

8
9
10 31. The evaluation of each pesticide product distributed, sold, or manufactured is completed
11 at the time the product is initially registered. The data necessary for registration of a pesticide has
12 changed over time. The EPA is now in the process of re-evaluating all pesticide products through
13 a Congressionally-mandated process called “re-registration.” 7 U.S.C. § 136a-1. In order to
14 reevaluate these pesticides, the EPA is demanding the completion of additional tests and the
15 submission of data for the EPA’s review and evaluation.
16

17
18 32. In the case of glyphosate, and therefore Roundup®, the EPA had planned on releasing its
19 preliminary risk assessment—in relation to the reregistration process—no later than July 2015.
20 The EPA completed its review of glyphosate in early 2015, but it delayed releasing the risk
21 assessment pending further review in light of the WHO’s health-related findings.
22
23

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

25 33. Based on early studies that glyphosate could cause cancer in laboratory animals, the EPA
26 originally classified glyphosate as *possibly carcinogenic to humans* (Group C) in 1985. After
27

1 pressure from Monsanto, including contrary studies it provided to the EPA, the EPA changed its
2 classification to *evidence of non-carcinogenicity in humans* (Group E) in 1991. In so classifying
3 glyphosate, however, the EPA made clear that the designation did not mean the chemical does
4 not cause cancer: “It should be emphasized, however, that designation of an agent in Group E is
5 based on the available evidence at the time of evaluation and should not be interpreted as a
6 definitive conclusion that the agent will not be a carcinogen under any circumstances.”
7

8
9
10 34. On two occasions, the EPA found that the laboratories hired by Monsanto to test the
11 toxicity of its Roundup® products for registration purposes committed fraud.
12

13
14 35. In the first instance, Monsanto, in seeking initial registration of Roundup® by EPA, hired
15 Industrial Bio-Test Laboratories (“IBT”) to perform and evaluate pesticide toxicology studies
16 relating to Roundup®. IBT performed about 30 tests on glyphosate and glyphosate-containing
17 products, including nine of the 15 residue studies needed to register Roundup®.
18

19
20 36. In 1976, the United States Food and Drug Administration (“FDA”) performed an
21 inspection of Industrial Bio-Test Industries (“IBT”) that revealed discrepancies between the raw
22 data and the final report relating to the toxicological impacts of glyphosate. The EPA
23 subsequently audited IBT; it too found the toxicology studies conducted for the Roundup®
24 herbicide to be invalid. An EPA reviewer stated, after finding “routine falsification of data” at
25 IBT, that it was “hard to believe the scientific integrity of the studies when they said they took
26 specimens of the uterus from male rabbits.”
27

1 37. Three top executives of IBT were convicted of fraud in 1983.

2
3
4 38. In the second incident of data falsification, Monsanto hired Craven Laboratories in 1991
5 to perform pesticide and herbicide studies, including for Roundup®. In that same year, the owner
6 of Craven Laboratories and three of its employees were indicted, and later convicted, of
7 fraudulent laboratory practices in the testing of pesticides and herbicides.
8

9
10 39. Despite the falsity of the tests that underlie its registration, within a few years of its
11 launch, Monsanto was marketing Roundup® in 115 countries.
12

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

14
15 40. The success of Roundup® was key to Monsanto's continued reputation and dominance in
16 the marketplace. Largely due to the success of Roundup® sales, Monsanto's agriculture division
17 was out-performing its chemicals division's operating income, and that gap increased yearly. But
18 with its patent for glyphosate expiring in the United States in the year 2000, Monsanto needed a
19 strategy to maintain its Roundup® market dominance and to ward off impending competition.
20

21
22 41. In response, Monsanto began the development and sale of genetically engineered
23 Roundup Ready® seeds in 1996. Since Roundup Ready® crops are resistant to glyphosate;
24 farmers can spray Roundup® onto their fields during the growing season without harming the
25 crop. This allowed Monsanto to expand its market for Roundup® even further; by 2000,
26 Monsanto's biotechnology seeds were planted on more than 80 million acres worldwide and
27

1 nearly 70% of American soybeans were planted from Roundup Ready® seeds. It also secured
2 Monsanto’s dominant share of the glyphosate/Roundup® market through a marketing strategy
3 that coupled proprietary Roundup Ready® seeds with continued sales of its Roundup®
4 herbicide.
5

6
7 42. Through a three-pronged strategy of increased production, decreased prices and by
8 coupling with Roundup Ready® seeds, Roundup® became Monsanto’s most profitable product.
9 In 2000, Roundup® accounted for almost \$2.8 billion in sales, outselling other herbicides by a
10 margin of five to one, and accounting for close to half of Monsanto’s revenue. Today, glyphosate
11 remains one of the world's largest herbicides by sales volume.
12

13
14 **Monsanto has known for decades that it falsely advertises the safety of Roundup®**

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

- 22 a) Remember that environmentally friendly Roundup herbicide is biodegradable.
23

24 It won't build up in the soil so you can use Roundup with confidence along customers'
25 driveways, sidewalks and fences ...
26

1 b) And remember that Roundup is biodegradable and won't build up in the soil.
2 That will give you the environmental confidence you need to use Roundup everywhere you've
3 got a weed, brush, edging or trimming problem.

4 c) Roundup biodegrades into naturally occurring elements.

5 d) Remember that versatile Roundup herbicide stays where you put it. That
6 means there's no washing or leaching to harm customers' shrubs or other desirable vegetation.
7

8 e) This non-residual herbicide will not wash or leach in the soil. It ... stays where
9 you apply it.

10 f) You can apply Accord with "confidence because it will stay where you put it" it
11 bonds tightly to soil particles, preventing leaching. Then, soon after application, soil
12 microorganisms biodegrade Accord into natural products.

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

14 h) Glyphosate's safety margin is much greater than required. It has over a 1,000-
15 fold safety margin in food and over a 700-fold safety margin for workers who manufacture it or
16 use it.
17

18 i) You can feel good about using herbicides by Monsanto. They carry a toxicity
19 category rating of 'practically non-toxic' as it pertains to mammals, birds and fish.
20

21 j) "Roundup can be used where kids and pets will play and breaks down into
22 natural material." This ad depicts a person with his head in the ground and a pet dog standing in
23 an area which has been treated with Roundup.
24

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

4 a) its glyphosate-containing pesticide products or any component thereof are safe,
5 non-toxic, harmless or free from risk.
6

7 * * *

8 b) its glyphosate-containing pesticide products or any component thereof
9 manufactured, formulated, distributed or sold by Monsanto are biodegradable
10

11 * * *

12 c) its glyphosate-containing pesticide products or any component thereof stay
13 where they are applied under all circumstances and will not move through the environment by
14 any means.
15

16 * * *

17 d) its glyphosate-containing pesticide products or any component thereof are
18 "good" for the environment or are "known for their environmental characteristics."
19

20 * * *

21 e) glyphosate-containing pesticide products or any component thereof are safer or
22 less toxic than common consumer products other than herbicides;

23 f) its glyphosate-containing products or any component thereof might be
24 classified as "practically non-toxic."
25

26 45. Monsanto did not alter its advertising in the same manner in any state other than New
27 York, and on information and belief still has not done so today.
28

1
2 46. In 2009, France’s highest court ruled that Monsanto had not told the truth about the safety
3 of Roundup®. The French court affirmed an earlier judgement that Monsanto had falsely
4 advertised its herbicide Roundup® as “biodegradable” and that it “left the soil clean.”
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8 **Classifications and Assessments of Glyphosate**

9 47. The IARC process for the classification of glyphosate followed the stringent procedures
10 for the evaluation of a chemical agent. Over time, the IARC Monograph program has reviewed
11 980 agents. Of those reviewed, it has determined 116 agents to be Group 1 (Known Human
12 Carcinogens); 73 agents to be Group 2A (Probable Human Carcinogens); 287 agents to be Group
13 2B (Possible Human Carcinogens); 503 agents to be Group 3 (Not Classified); and one agent to
14 be Probably Not Carcinogenic.
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18 48. The established procedure for IARC Monograph evaluations is described in the IARC
19 Programme’s Preamble. Evaluations are performed by panels of international experts, selected
20 on the basis of their expertise and the absence of actual or apparent conflicts of interest.
21
22

23 49. One year before the Monograph meeting, the meeting is announced and there is a call
24 both for data and for experts. Eight months before the Monograph meeting, the Working Group
25 membership is selected and the sections of the Monograph are developed by the Working Group
26 members. One month prior to the Monograph meeting, the call for data is closed and the various
27

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

6
7
8 50. In assessing an agent, the IARC Working Group reviews the following information: (a)
9 human, experimental, and mechanistic data; (b) all pertinent epidemiological studies and cancer
10 bioassays; and (c) representative mechanistic data. The studies must be publicly available and
11 have sufficient detail for meaningful review, and reviewers cannot be associated with the
12 underlying study.
13

14
15
16 51. In March 2015, IARC reassessed glyphosate. The summary published in *The Lancet*
17 *Oncology* reported that glyphosate is a Group 2A agent and probably carcinogenic in humans.
18

19
20 52. On July 29, 2015, IARC issued its Monograph for glyphosate, Monograph 112. For
21 Volume 112, the volume that assessed glyphosate, a Working Group of 17 experts from 11
22 countries met at IARC from March 3–10, 2015, to assess the carcinogenicity of certain
23 herbicides, including glyphosate. The March meeting culminated nearly a one-year review and
24 preparation by the IARC Secretariat and the Working Group, including a comprehensive review
25 of the latest available scientific evidence. According to published procedures, the Working
26 Group considered “reports that have been published or accepted for publication in the openly
27

1 available scientific literature” as well as “data from governmental reports that are publicly
2 available.”

3
4
5 53. The studies considered the following exposure groups: occupational exposure of farmers
6 and tree nursery workers in the United States, forestry workers in Canada and Finland and
7 municipal weed-control workers in the United Kingdom; and para-occupational exposure in
8 farming families.

9
10
11 54. Glyphosate was identified as the second-most used household herbicide in the United
12 States for weed control between 2001 and 2007 and the most heavily used herbicide in the world
13 in 2012.

14
15
16 55. Exposure pathways are identified as air (especially during spraying), water, and food.
17 Community exposure to glyphosate is widespread and found in soil, air, surface water, and
18 groundwater, as well as in food.

19
20
21 56. The assessment of the IARC Working Group identified several case control studies of
22 occupational exposure in the United States, Canada, and Sweden. These studies show a human
23 health concern from agricultural and other work-related exposure to glyphosate.
24

1 57. The IARC Working Group found an increased risk between exposure to glyphosate and
2 non-Hodgkin lymphoma (“NHL”) and several subtypes of NHL, and the increased risk persisted
3 after adjustment for other pesticides.
4

5
6 58. The IARC Working Group also found that glyphosate caused DNA and chromosomal
7 damage in human cells. One study in community residents reported increases in blood markers
8 of chromosomal damage (micronuclei) after glyphosate formulations were sprayed.
9

10
11 59. In male CD-1 mice, glyphosate induced a positive trend in the incidence of a rare tumor,
12 renal tubule carcinoma. A second study reported a positive trend for haemangiosarcoma in male
13 mice. Glyphosate increased pancreatic islet-cell adenoma in male rats in two studies. A
14 glyphosate formulation promoted skin tumors in an initiation-promotion study in mice.
15

16
17 60. The IARC Working Group also noted that glyphosate has been detected in the urine of
18 agricultural workers, indicating absorption. Soil microbes degrade glyphosate to
19 aminomethylphosphoric acid (AMPA). Blood AMPA detection after exposure suggests intestinal
20 microbial metabolism in humans.
21

22
23 61. The IARC Working Group further found that glyphosate and glyphosate formulations
24 induced DNA and chromosomal damage in mammals, and in human and animal cells in utero.
25
26
27

1 62. The IARC Working Group also noted genotoxic, hormonal, and enzymatic effects in
2 mammals exposed to glyphosate. Essentially, glyphosate inhibits the biosynthesis of aromatic
3 amino acids, which leads to several metabolic disturbances, including the inhibition of protein
4 and secondary product biosynthesis and general metabolic disruption.
5

6
7 63. The IARC Working Group also reviewed an Agricultural Health Study, consisting of a
8 prospective cohort of 57,311 licensed pesticide applicators in Iowa and North Carolina. While
9 this study differed from others in that it was based on a self-administered questionnaire, the
10 results support an association between glyphosate exposure and Multiple Myeloma, Hairy Cell
11 Leukemia (HCL), and Chronic Lymphocytic Leukemia (CLL), in addition to several other
12 cancers.
13
14

15 **Other Earlier Findings About Glyphosate's Dangers to Human Health**

16
17 64. The EPA has a technical fact sheet, as part of its Drinking Water and Health, National
18 Primary Drinking Water Regulations publication, relating to glyphosate. This technical fact sheet
19 predates the IARC March 20, 2015, evaluation. The fact sheet describes the release patterns for
20 glyphosate as follows:
21

22 **Release Patterns**

23
24 65. Glyphosate is released to the environment in its use as a herbicide for controlling woody
25 and herbaceous weeds on forestry, right-of-way, cropped and non-cropped sites. These sites may
26 be around water and in wetlands.
27

1 66. It may also be released to the environment during its manufacture, formulation, transport,
2 storage, disposal and cleanup, and from spills. Since glyphosate is not a listed chemical in the
3 Toxics Release Inventory, data on releases during its manufacture and handling are not available.
4

5
6 67. Occupational workers and home gardeners may be exposed to glyphosate by inhalation
7 and dermal contact during spraying, mixing, and cleanup. They may also be exposed by touching
8 soil and plants to which glyphosate was applied. Occupational exposure may also occur during
9 glyphosate's manufacture, transport storage, and disposal.
10

11
12 68. In 1995, the Northwest Coalition for Alternatives to Pesticides reported that in California,
13 the state with the most comprehensive program for reporting of pesticide-caused illness,
14 glyphosate was the third most commonly-reported cause of pesticide illness among agricultural
15 workers.
16

17 18 **Recent Worldwide Bans on Roundup®/Glyphosate**

19 69. Several countries around the world have instituted bans on the sale of Roundup® and
20 other glyphosate-containing herbicides, both before and since IARC first announced its
21 assessment for glyphosate in March 2015, and more countries undoubtedly will follow suit in
22 light of the as the dangers of the use of Roundup® are more widely known. The Netherlands
23 issued a ban on all glyphosate-based herbicides in April 2014, including Roundup®, which takes
24 effect by the end of 2015. In issuing the ban, the Dutch Parliament member who introduced the
25 successful legislation stated: “Agricultural pesticides in user-friendly packaging are sold in
26 abundance to private persons. In garden centers, Roundup® is promoted as harmless, but
27

1 unsuspecting customers have no idea what the risks of this product are. Especially children are
2 sensitive to toxic substances and should therefore not be exposed to it.”
3
4

5 70. The Brazilian Public Prosecutor in the Federal District requested that the Brazilian Justice
6 Department suspend the use of glyphosate.
7
8

9 71. France banned the private sale of Roundup® and glyphosate following the IARC
10 assessment for Glyphosate.
11
12

13 72. Bermuda banned both the private and commercial sale of glyphosates, including
14 Roundup®. The Bermuda government explained its ban as follows: “Following a recent
15 scientific study carried out by a leading cancer agency, the importation of weed spray ‘Roundup’
16 has been suspended.”
17
18

19 73. The Sri Lankan government banned the private and commercial use of glyphosates,
20 particularly out of concern that Glyphosate has been linked to fatal kidney disease in agricultural
21 workers.
22
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24 74. The government of Columbia announced its ban on using Roundup® and glyphosate to
25 destroy illegal plantations of coca, the raw ingredient for cocaine, because of the WHO’s finding
26 that glyphosate is probably carcinogenic.
27
28

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

5
6 76. Wilbur-Ellis had superior knowledge compared to Roundup users and consumers,
7 including regarding the carcinogenic properties of the product, yet failed to accompany its sales
8 and/or marketing of Roundup with any warnings or precautions for that grave danger. On
9 information and belief, Wilbur-Ellis was one of the distributors providing Roundup and other
10 glyphosate-containing products actually used by the Plaintiffs.
11

12
13 **CLAIM ONE**

14 **STRICT LIABILITY - DESIGN DEFECT**

15 **(Against All Defendants)**

16
17 77. Plaintiffs incorporate by reference each and every allegation set forth in the preceding
18 paragraphs as if fully stated herein.
19

20
21 78. Plaintiffs brings this strict liability claim against Defendants for defective design.
22

23 79. At all times relevant to this litigation, Defendants engaged in the business of testing,
24 developing, designing, manufacturing, marketing, selling, distributing, and promoting
25 Roundup® products, which are defective and unreasonably dangerous to consumers, including
26 Plaintiffs, thereby placing Roundup® products into the stream of commerce. These actions were
27

1 under the ultimate control and supervision of Defendants. At all times relevant to this litigation,
2 Defendants designed, researched, developed, manufactured, produced, tested, assembled,
3 labeled, advertised, promoted, marketed, sold, and distributed the Roundup® products that
4 Plaintiffs were exposed to, as described above.
5

6 80. At all times relevant to this litigation, Defendants' Roundup® products were
7 manufactured, designed, and labeled in an unsafe, defective, and inherently dangerous manner
8 that was dangerous for use by or exposure to the public, and, in particular, the Plaintiffs.
9

10
11 81. At all times relevant to this litigation, Defendants' Roundup® products reached the
12 intended consumers, handlers, and users or other persons coming into contact with these
13 products in California and throughout the United States, including Plaintiffs, without substantial
14 change in their condition as designed, manufactured, sold, distributed, labeled, and marketed by
15 Defendants.
16

17
18 82. Defendants' Roundup® products, as researched, tested, developed, designed, licensed,
19 manufactured, packaged, labeled, distributed, sold, and marketed by Defendants were defective
20 in design and formulation in that when they left the hands of the Defendants' manufacturers
21 and/or suppliers, they were unreasonably dangerous and dangerous to an extent beyond that
22 which an ordinary consumer would contemplate.
23

24
25
26 83. Defendants' Roundup® products, as researched, tested, developed, designed, licensed,
27 manufactured, packaged, labeled, distributed, sold, and marketed by Defendants were defective
28

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

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

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

14
15 a. When placed in the stream of commerce, Defendants' Roundup® products were
16 defective in design and formulation, and, consequently, dangerous to an extent beyond that
17 which an ordinary consumer would contemplate.

18
19 b. When placed in the stream of commerce, Defendants' Roundup® products were
20 unreasonably dangerous in that they were hazardous and posed a grave risk of cancer and other
21 serious illnesses when used in a reasonably anticipated manner.

22
23 c. When placed in the stream of commerce, Defendants' Roundup® products contained
24 unreasonably dangerous design defects and were not reasonably safe when used in a reasonably
25 anticipated or intended manner.

26
27 d. Defendants did not sufficiently test, investigate, or study its Roundup® products and,
28 specifically, the active ingredient glyphosate.

1 e. Exposure to Roundup® and glyphosate-containing products presents a risk of harmful
2 side effects that outweigh any potential utility stemming from the use of the herbicide.

3
4
5 f. Defendants knew or should have known at the time of marketing its Roundup®
6 products that exposure to Roundup® and specifically, its active ingredient glyphosate, could
7 result in cancer and other severe illnesses and injuries.

8
9 g. Defendants did not conduct adequate post-marketing surveillance of its Roundup®
10 products.

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

12
13 86. Plaintiffs were exposed to Defendants' Roundup® products without knowledge of its
14 dangerous characteristics.

15
16
17 87. At all times relevant to this litigation, Plaintiffs were exposed to the use of Defendants'
18 Roundup® products in an intended or reasonably foreseeable manner without knowledge of their
19 dangerous characteristics.

20
21
22 88. Plaintiffs could not have reasonably discovered the defects and risks associated with
23 Roundup® or glyphosate-containing products before or at the time of exposure.

24
25
26 89. The harm caused by Defendants' Roundup® products far outweighed their benefit,
27 rendering Defendants' products dangerous to an extent beyond that which an ordinary consumer

1 would contemplate. Defendants' Roundup® products were and are more dangerous than
2 alternative products and Defendants could have designed its Roundup® products to make them
3 less dangerous. Indeed, at the time that Defendants designed its Roundup® products, the state of
4 the industry's scientific knowledge was such that a less risky design or formulation was
5 attainable.
6

7
8 90. At the time Roundup® products left Defendants' control, there was a practical,
9 technically feasible and safer alternative design that would have prevented the harm without
10 substantially impairing the reasonably anticipated or intended function of Defendants'
11 herbicides.
12

13
14 91. Defendants' defective design of its Roundup® products was willful, wanton, fraudulent,
15 malicious, and conducted with reckless disregard for the health and safety of users of the
16 Roundup® products, including the Plaintiffs herein.
17

18
19 92. Therefore, as a result of the unreasonably dangerous condition of its Roundup® products,
20 Defendants are strictly liable to Plaintiffs.
21

22
23 93. The defects in Defendants' Roundup® products were substantial and contributing factors
24 in causing Plaintiffs' grave injuries, and, but for Defendants' misconduct and omissions,
25 Plaintiffs would not have sustained their injuries.
26

1 94. Defendants' conduct, as described above, was reckless. Defendants risked the lives of
2 consumers and users of its products, including Plaintiffs, with knowledge of the safety problems
3 associated with Roundup® and glyphosate-containing products, and suppressed this knowledge
4 from the general public. Defendants made conscious decisions not to redesign, warn or inform
5 the unsuspecting public. Defendants' reckless conduct warrants an award of punitive damages.
6

7
8 95. As a direct and proximate result of Defendants placing defective Roundup® products into
9 the stream of commerce, Plaintiffs have suffered and continue to suffer grave injuries, and has
10 endured physical pain and discomfort, as well as economic hardship, including considerable
11 financial expenses for medical care and treatment. Plaintiffs will continue to incur these expenses
12 in the future.
13

14
15 96. WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in Plaintiffs'
16 favor for compensatory and punitive damages, together with interest, costs herein incurred,
17 attorneys' fees and all such other and further relief as this Court deems just and proper. Plaintiffs
18 also demands a jury trial on the issues contained herein.
19
20

21
22 **CLAIM TWO**

23 **STRICT LIABILITY - FAILURE TO WARN**

24 **(Against All Defendants)**

25 97. Plaintiffs incorporate by reference each and every allegation set forth in the preceding
26 paragraphs as if fully stated herein.
27

1
2 98. Plaintiffs bring this strict liability claim against Defendants for failure to warn.
3
4

5 99. At all times relevant to this litigation, Defendants engaged in the business of testing,
6 developing, designing, manufacturing, marketing, selling, distributing, promoting and applying
7 Roundup® products, which are defective and unreasonably dangerous to consumers, including
8 Plaintiffs, because they do not contain adequate warnings or instructions concerning the
9 dangerous characteristics of Roundup® and specifically, the active ingredient glyphosate. These
10 actions were under the ultimate control and supervision of Defendants.
11
12

13
14 100. Monsanto researched, developed, designed, tested, manufactured, inspected, labeled,
15 distributed, marketed, promoted, sold, and otherwise released into the stream of commerce its
16 Roundup® products, and in the course of same, directly advertised or marketed the products to
17 consumers and end users, including the Plaintiffs, and persons responsible for consumers (such
18 as employers), and therefore had a duty to warn of the risks associated with the use of Roundup®
19 and glyphosate-containing products.
20
21

22 101. At all times relevant to this litigation, Defendants had a duty to properly test, develop,
23 design, manufacture, inspect, package, label, market, promote, sell, distribute, maintain supply,
24 provide proper warnings, and take such steps as necessary to ensure that Roundup® products
25 did not cause users and consumers to suffer from unreasonable and dangerous risks. Defendants
26 had a continuing duty to warn the Plaintiffs of the dangers associated with Roundup® use and
27

1 exposure. Defendants, as manufacturer, seller, or distributor of chemical herbicides, are held to
2 the knowledge of an expert in the field.

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

9
10
11 103. At all times relevant to this litigation, Defendants failed to investigate, study, test, or
12 promote the safety or to minimize the dangers to users and consumers of this product and to
13 those who would foreseeably use or be harmed by Roundup, including Plaintiffs.

14
15
16 104. Despite the fact that Defendants knew or should have known that Roundup® posed a
17 grave risk of harm, they failed to exercise reasonable care to warn of the dangerous risks
18 associated with use and exposure. The dangerous propensities of its products and the
19 carcinogenic characteristics of glyphosate, as described above, were known to Defendants, or
20 scientifically knowable to Defendants through appropriate research and testing by known
21 methods, at the time it distributed, supplied or sold the product, and not known to end users and
22 consumers, such as Plaintiffs.
23
24
25

26 105. Defendants knew or should have known that these products created significant risks of
27 serious bodily harm to consumers, as alleged herein, and Defendants failed to adequately warn
28

1 consumers and reasonably foreseeable users of the risks of exposure to its products. Defendants
2 have wrongfully concealed information concerning the dangerous nature of Roundup® and its
3 active ingredient glyphosate, and further made false and/or misleading statements concerning the
4 safety of Roundup® and glyphosate.
5

6
7 106. At all times relevant to this litigation, Defendants' Roundup® products reached the
8 intended consumers, handlers, and users or other persons coming into contact with these
9 products in California and throughout the United States, including Plaintiffs, without substantial
10 change in their condition as designed, manufactured, sold, distributed, labeled, marketed and
11 sprayed/applied by Defendants.
12

13
14 107. Plaintiffs were exposed to Roundup® products, as described above, without knowledge
15 of their dangerous characteristics.
16

17
18 108. At all times relevant to this litigation, Plaintiffs were exposed to the use of Defendants'
19 Roundup® products in their intended or reasonably foreseeable manner without knowledge of
20 their dangerous characteristics.
21

22
23 109. Plaintiffs could not have reasonably discovered the defects and risks associated with
24 Roundup® or glyphosate-containing products prior to or at the time of Plaintiffs' exposure.
25 Plaintiffs relied upon the skill, superior knowledge, and judgment of Defendants.
26
27

1 110. Defendants knew or should have known that the minimal warnings disseminated with or
2 accompanying the application of Roundup® products were inadequate, but they failed to
3 communicate adequate information on the dangers and safe use/exposure and failed to
4 communicate warnings and instructions that were appropriate and adequate to render the
5 products safe for their ordinary, intended and reasonably foreseeable uses, including agricultural
6 and horticultural applications.
7

8
9 111. The information that Defendants did provide or communicate failed to contain relevant
10 warnings, hazards, and precautions that would have enabled those exposed such as Plaintiffs to
11 utilize the products safely and with adequate protection. Instead, Defendants disseminated
12 information that was inaccurate, false, and misleading and which failed to communicate
13 accurately or adequately the comparative severity, duration, and extent of the risk of injuries with
14 use of and/or exposure to Roundup® and glyphosate; continued to aggressively promote the
15 efficacy of its products, even after it knew or should have known of the unreasonable risks from
16 use or exposure; and concealed, downplayed, or otherwise suppressed, through aggressive
17 marketing and promotion, any information or research about the risks and dangers of exposure to
18 Roundup® and glyphosate.
19
20
21
22

23 112. To this day, Defendants have failed to adequately and accurately warn of the true risks of
24 Plaintiffs' injuries associated with the use of and exposure to Roundup® and its active ingredient
25 glyphosate, a probable carcinogen.
26
27

1 113. As a result of their inadequate warnings, Roundup® products were defective and
2 unreasonably dangerous when they left the possession and/or control of Defendants, were sold or
3 distributed by Defendants, were applied by Defendants, and when Plaintiffs became exposed.
4

5
6 114. Defendants are liable to Plaintiffs for injuries caused by negligent or willful failure, as
7 described above, to provide adequate warnings or other clinically relevant information and data
8 regarding the appropriate use of their products and the risks associated with the use of or
9 exposure to Roundup® and glyphosate.
10

11
12 115. The defects in these Roundup® products were substantial and contributing factors in
13 causing Plaintiffs' injuries, and, but for Defendants' misconduct and omissions, Plaintiffs would
14 not have sustained their injuries.
15

16
17 116. Had Defendants provided adequate warnings and instructions and properly disclosed and
18 disseminated the risks associated with Roundup® products and application, Plaintiffs could have
19 avoided the risk of developing injuries as alleged herein and the company who employed
20 Plaintiffs could have obtained alternative herbicides.
21

22
23 117. As a direct and proximate result of Defendants placing defective Roundup® products into
24 the stream of commerce and exposing Plaintiffs to them, Plaintiffs have suffered and continue to
25 suffer severe injuries, and has endured physical pain and discomfort, as well as economic
26

1 hardship, including considerable financial expenses for medical care and treatment. Plaintiffs
2 will continue to incur these expenses in the future.
3

4
5 118. WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in Plaintiffs'
6 favor for compensatory and punitive damages, together with interest, costs herein incurred,
7 attorneys' fees and all such other and further relief as this Court deems just and proper. Plaintiffs
8 also demand a jury trial on the issues contained herein.
9

10
11 **CLAIM THREE**

12 **NEGLIGENCE**

13 **(Against All Defendants)**

14 119. Plaintiffs incorporate by reference each and every allegation set forth in the preceding
15 paragraphs as if fully stated herein.
16

17
18 120. Defendants, directly or indirectly, caused Roundup® products to be sold, distributed,
19 packaged, labeled, marketed, promoted, and/or used by Plaintiffs.
20

21
22 121. At all times relevant to this litigation, Defendants had a duty to exercise reasonable care
23 in the design, research, manufacture, marketing, advertisement, supply, promotion, packaging,
24 sale, and distribution of Roundup® products, including the duty to take all reasonable steps
25 necessary to manufacture, promote, and/or sell a product that was not unreasonably dangerous to
26 consumers and users of the product.
27

1
2 122. At all times relevant to this litigation, Defendants had a duty to exercise reasonable care
3 in the marketing, advertisement, and sale of the Roundup® products. Defendants' duty of care
4 owed to consumers and the general public included providing accurate, true, and correct
5 information concerning the risks of using Roundup® and appropriate, complete, and accurate
6 warnings concerning the potential adverse effects of exposure to Roundup®, and, in particular,
7 its active ingredient glyphosate.
8

9
10
11 123. At all times relevant to this litigation, Defendants knew or, in the exercise of reasonable
12 care, should have known of the hazards and dangers of Roundup® and specifically, the
13 carcinogenic properties of the chemical glyphosate.
14

15
16 124. Accordingly, at all times relevant to this litigation, Defendants knew or, in the exercise
17 of reasonable care, should have known that use of or exposure to Roundup® products could
18 cause or be associated with Plaintiffs' injuries and thus created a dangerous and unreasonable
19 risk of injury to the users of these products, including Plaintiffs.
20

21
22
23 125. Defendants also knew or, in the exercise of reasonable care, should have known that
24 users and consumers of Roundup® were unaware of the risks and the magnitude of the risks
25 associated with use of and/or exposure to Roundup® and glyphosate-containing products.
26

1 126. As such, Defendants breached their duty of reasonable care and failed to exercise
2 ordinary care in the design, research, development, manufacture, testing, marketing, supply,
3 promotion, advertisement, packaging, sale, and distribution of its Roundup® products, in that
4 Defendants manufactured and produced defective herbicides containing the chemical glyphosate,
5 knew or had reason to know of the defects inherent in its products, knew or had reason to know
6 that a user's or consumer's exposure to the products created a significant risk of harm and
7 unreasonably dangerous side effects, and failed to prevent or adequately warn of these risks and
8 injuries.
9

10
11
12 127. Despite ability and means to investigate, study, and test products and to provide adequate
13 warnings, Defendants have failed to do so. Indeed, Defendants wrongfully concealed information
14 and has further made false and/or misleading statements concerning the safety and/or exposure to
15 Roundup® and glyphosate.
16

17
18 128. Defendants' negligence included, but are not limited to:

19 a. Manufacturing, producing, promoting, formulating, creating, developing, designing,
20 selling, and/or distributing Roundup® products without thorough and adequate pre- and post-
21 market testing;
22

23 b. Manufacturing, producing, promoting, formulating, creating, developing, designing,
24 selling, and/or distributing Roundup® while negligently and/or intentionally concealing and
25 failing to disclose the results of trials, tests, and studies of exposure to glyphosate, and,
26 consequently, the risk of serious harm associated with human use of and exposure to Roundup®;
27

1 c. Failing to undertake sufficient studies and conduct necessary tests to determine
2 whether or not Roundup® products and glyphosate-containing products were safe for their
3 intended use in agriculture and horticulture;

4
5 d. Failing to use reasonable and prudent care in the design, research, manufacture, and
6 development of Roundup® products so as to avoid the risk of serious harm associated with the
7 prevalent use of Roundup®/glyphosate as an herbicide;

8
9 e. Failing to design and manufacture Roundup® products so as to ensure they were at
10 least as safe and effective as other herbicides on the market;

11 f. Failing to provide adequate instructions, guidelines, and safety precautions to those
12 persons who Defendants could reasonably foresee would use and be exposed to its Roundup®
13 products;

14
15 g. Failing to disclose to Plaintiffs, users/consumers, and the general public that use of and
16 exposure to Roundup® presented severe risks of cancer and other grave illnesses;

17 h. Failing to warn Plaintiffs, consumers, and the general public that the product's risk of
18 harm was unreasonable and that there were safer and effective alternative herbicides available to
19 Plaintiffs and other consumers;

20
21 i. Systematically suppressing or downplaying contrary evidence about the risks,
22 incidence, and prevalence of the side effects of Roundup® and glyphosate-containing products;

23
24 j. Representing that its Roundup® products were safe for their intended use when, in fact,
25 Defendants knew or should have known that the products were not safe for their intended
26 purpose;

1 k. Declining to make or propose any changes to Roundup® products' labeling or other
2 promotional materials that would alert the consumers and the general public of the risks of
3 Roundup® and glyphosate;

4 l. Advertising, marketing, and recommending the use of the Roundup® products, while
5 concealing and failing to disclose or warn of the dangers known by Defendants to be associated
6 with or caused by the use of or exposure to Roundup® and glyphosate;

7 m. Continuing to disseminate information to its consumers, which indicate or imply that
8 Defendants' Roundup® products are not unsafe for use in the agricultural and horticultural
9 industries; and
10

11 n. Continuing the manufacture and sale of its products with the knowledge that the
12 products were unreasonably unsafe and dangerous.
13

14
15
16 129. Defendants knew and/or should have known that it was foreseeable that consumers such
17 as Plaintiffs would suffer injuries as a result of Defendants' failure to exercise ordinary care in
18 the manufacturing, marketing, labeling, distribution, and sale of Roundup®.

19
20
21 130. Plaintiffs did not know the nature and extent of the injuries that could result from the
22 intended use of and/or exposure to Roundup® or its active ingredient glyphosate.

23
24 131. Defendants' negligence was the proximate cause of the injuries, harm, and economic
25 losses that Plaintiffs suffered, and will continue to suffer, as described herein.
26

1 132. Defendants' conduct, as described above, was reckless. Defendants regularly risk the
2 lives of consumers and users of their products, including Plaintiffs, with full knowledge of the
3 dangers of its products. Defendants made conscious decisions not to redesign, re-label, warn, or
4 inform the unsuspecting public, including Plaintiffs. Defendants' reckless conduct therefore
5 warrants an award of punitive damages.
6

7
8 133. As a proximate result of Defendants' wrongful acts and omissions in placing defective
9 Roundup® products into the stream of commerce without adequate warnings of the hazardous
10 and carcinogenic nature of glyphosate, Plaintiffs have suffered and continues to suffer severe and
11 permanent physical and emotional injuries. Plaintiffs have endured pain and suffering, have
12 suffered economic losses (including significant expenses for medical care and treatment) and
13 will continue to incur these expenses in the future.
14

15
16
17 134. WHEREFORE, Plaintiffs respectfully requests that this Court enter judgment in
18 Plaintiffs' favor for compensatory and punitive damages, together with interest, costs herein
19 incurred, attorneys' fees and all such other and further relief as this Court deems just and proper.
20 Plaintiffs also demands a jury trial on the issues contained herein.
21

22
23 **CLAIM FOUR**

24 **BREACH OF IMPLIED WARRANTIES**

25 **(Against All Defendants)**

26 135. Plaintiffs incorporate by reference each and every allegation set forth in the preceding
27 paragraphs as if fully stated herein.
28

1 136. At all times relevant to this litigation, Defendants engaged in the business of testing,
2 developing, designing, manufacturing, marketing, selling, distributing, and promoting
3 Roundup® products, which are defective and unreasonably dangerous to consumers, including
4 Plaintiffs, thereby placing Roundup® products into the stream of commerce. These actions were
5 under the ultimate control and supervision of Defendants.
6

7
8 137. Before the time that Plaintiffs were exposed to the use of the aforementioned Roundup®
9 products, Defendants impliedly warranted to consumers and those exposed—including
10 Plaintiffs—that Roundup® products were of merchantable quality and safe and fit for the use
11 for which they were intended; specifically, as horticultural herbicides.
12

13
14 138. Defendants, however, failed to disclose that Roundup® has dangerous propensities when
15 used as intended and that the use of and/or exposure to Roundup® and glyphosate-containing
16 products carries an increased risk of developing severe injuries, including Plaintiffs' injuries.
17

18
19 139. Plaintiffs reasonably relied upon the skill, superior knowledge and judgment of
20 Defendants and upon their implied warranties that the Roundup® products were of merchantable
21 quality and fit for their intended purpose or use.
22

23
24 140. Upon information and belief, Plaintiffs were at all relevant times in privity with
25 Defendants.
26

1 141. Plaintiffs are the intended third-party beneficiaries of implied warranties made by
2 Defendants to the purchasers and/or users of their horticultural herbicides, and as such Plaintiffs
3 are entitled to assert this claim.
4

5
6 142. The Roundup® products were expected to reach and did in fact reach consumers and/or
7 users, including Plaintiffs, without substantial change in the condition in which they were
8 manufactured and sold by Defendants.
9

10
11 143 At all times relevant to this litigation, Defendants were aware that consumers and users of
12 their products, including Plaintiffs, would use Roundup® products as marketed by Defendants,
13 which is to say that Plaintiffs were foreseeable users of Roundup®.
14

15
16 144. Defendants intended that Roundup® products be used in the manner in which Plaintiffs
17 were exposed to it and Defendants impliedly warranted each product to be of merchantable
18 quality, safe, and fit for this use, despite the fact that Roundup® was not adequately tested and/or
19 researched.
20

21
22 145. In reliance upon Defendants' implied warranty, Plaintiffs used or were exposed to
23 Roundup® as instructed and labeled and in the foreseeable manner intended, recommended,
24 promoted and marketed by Defendants.
25

1 146. Plaintiffs could not have reasonably discovered or known of the risks of serious injury
2 associated with Roundup® or glyphosate.

3
4
5 147. Defendants breached their implied warranty to Plaintiffs in that Roundup® products were
6 not of merchantable quality, safe, or fit for their intended use, and/or adequately tested.

7 Roundup® has dangerous propensities when used as intended and can cause serious injuries,
8 including those injuries complained of herein.
9

10
11 148. The harm caused by Roundup® products far outweighed their benefit, rendering the
12 products more dangerous than an ordinary consumer or user would expect and more dangerous
13 than alternative products.
14

15
16 149. As a direct and proximate result of Defendants' wrongful acts and omissions Plaintiffs
17 have suffered severe and permanent physical and emotional injuries, including but not limited to
18 their diagnoses of non-Hodgkin lymphoma. Plaintiffs have endured pain and suffering, have
19 suffered economic loss (including significant expenses for medical care and treatment) and will
20 continue to incur these expenses in the future.
21

22
23
24 150. WHEREFORE, Plaintiffs respectfully requests that this Court enter judgment in
25 Plaintiffs' favor for compensatory and punitive damages, together with interest, costs herein
26 incurred, attorneys' fees, and all such other and further relief as this Court deems just and proper.
27 Plaintiffs also demand a jury trial on the issues contained herein.
28

1
2 **COUNT FIVE**

3 **PUNITIVE DAMAGES**

4
5 151. Plaintiffs repeat and reiterate the allegations previously set forth herein.

6
7 152. At all times material hereto, the Defendants knew or should have known that the subject
8 product was inherently dangerous with respect to its health risks

9
10 153. At all times material hereto, the Defendants attempted to misrepresent and did
11 misrepresent facts concerning the safety of the subject product.

12
13
14 154. Defendants' misrepresentations included knowingly withholding material information
15 from the public, including the Plaintiffs herein, concerning the safety of the subject product.

16
17
18 155. At all times material hereto, the Defendants knew and recklessly disregarded the fact that
19 human exposure to Roundup can and does cause health hazard, including non Hodgkin
20 lymphoma.

21
22
23 156. Notwithstanding the foregoing, the Defendants continued to aggressively market and
24 apply the subject product without disclosing the aforesaid risks.

25
26 157. Defendants knew of the subject product's defective and unreasonably dangerous nature,
27 as set forth herein, but continued to design, develop, manufacture, market, distribute, sell, and

1 apply it so as to maximize sales and profits at the expense of the health and safety of the public,
2 including the Plaintiffs herein, in conscious and/or negligent disregard of the foreseeable harm
3 caused by Roundup.
4

5
6 158. The Defendants intentionally concealed and/or recklessly failed to disclose to the public,
7 including the Plaintiffs herein, the potentially life threatening hazards of Roundup in order to
8 ensure continued and increased sales.
9

10
11 159. The Defendants' intentional and/or reckless failure to disclose information deprived the
12 Plaintiffs of necessary information to enable Plaintiffs to weigh the true risks of using or being
13 exposed to the subject product against its benefits.
14

15
16 160. As a direct and proximate result of the Defendants' conscious and deliberate disregard for
17 the rights and safety of consumers such as the Plaintiffs, Plaintiffs suffered severe and permanent
18 physical injuries. The Plaintiffs have endured substantial pain and suffering and has undergone
19 extensive medical and surgical procedures. Plaintiffs have incurred significant expenses for
20 medical care and treatment, and will continue to incur such expenses in the future. The Plaintiffs
21 have lost past earnings and have suffered a loss of earning capacity. The Plaintiffs have suffered
22 and will continue to suffer economic loss, and has otherwise been physically, emotionally and
23 economically injured. The Plaintiffs' injuries and damages are permanent and will continue into
24 the future.
25

1 161. The aforesaid conduct of the Defendants was committed with knowing, conscious, and
2 deliberate disregard for the rights and safety of consumers, including the Plaintiffs herein,
3 thereby entitling the Plaintiffs to punitive damages in an amount appropriate to punish the
4 Defendants and deter them from similar conduct in the future.

5
6
7 162. WHEREFORE, Plaintiffs demand judgment against Defendants for compensatory, treble,
8 and punitive damages, together with interest, costs of suit, attorneys' fees, and all such other
9 relief as the Court deems proper.
10

11
12 **COUNT SIX**

13 **LOSS OF CONSORTIUM**

14
15 **(Against All Defendants)**

16
17 163. Plaintiffs repeat and reiterate the allegations previously set forth herein.
18

19 164. Plaintiffs ALVA PILLIOD and ALBERTA PILLIOD each allege causes of action for Loss
20 of Consortium herein.
21

22
23 165. Plaintiffs ALVA PILLIOD and ALBERTA PILLIOD are currently lawfully married
24 spouses and were married to one another at the time of their respective injuries. Plaintiff ALVA
25 PILLIOD was entitled to Alberta Pilliod's comfort, care, affection, companionship, services,
26 society, advice, guidance, counsel, and consortium and was deprived of such due to Defendants'
27 conduct. Likewise, Plaintiff ALBERTA PILLIOD was entitled to Alva Pilliod's comfort, care,
28

1 affection, companionship, services, society, advice, guidance, counsel, and consortium and was
2 deprived of such due to Defendants' conduct.

3
4
5 166. Plaintiffs ALVA PILLIOD and ALBERTA PILLIOD each demand judgment against all
6 Defendants for compensatory and punitive damages in excess of the jurisdictional minimum of
7 this Court, together with interest, costs of suit, attorneys' fees, and all such other relief, as this
8 Court deems proper.

9
10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiffs request that the Court enter judgment in their favor and against
12 Defendants, awarding as follows:

- 13 1. Judgment for Plaintiffs and against Defendants;
- 14 2. For compensatory damages in an amount to be proven at trial;
- 15 3. For mental and physical suffering, according to proof;
- 16 4. For lost wages according to proof;
- 17 5. For disgorgement of profits, according to proof;
- 18 6. For punitive damages;
- 19 7. For default judgment as a sanction for the bad faith destruction of evidence, if
20 any, and according to proof, if any;
- 21 8. For costs including reasonable attorneys' fees, court costs, and other litigation
22 expenses; and
- 23 9. For any other relief the Court may deem just and proper.

1 **DEMAND FOR JURY TRIAL**

2 Plaintiffs hereby demand a jury trial on all claims so triable in this action.

3
4
5 Dated: October 18, 2018

6 Respectfully submitted,

7
8 **THE MILLER FIRM, LLC**

9
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