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12 **UNITED STATES DISTRICT COURT**
13 **SOUTHERN DISTRICT OF CALIFORNIA**

14 EMANUEL RICHARD GIGLIO,

15 Plaintiff

16 v.

17 MONSANTO COMPANY and JOHN
18 DOES 1-50.

19 Defendant.

Civil Action No.: '15CV2279 BTM NLS

COMPLAINT

JURY TRIAL DEMANDED

20
21 **COMPLAINT**

22
23 Plaintiff, Emanuel Richard Giglio (“Plaintiff”), by and through his undersigned attorneys,
24 hereby brings this Complaint for damages against Defendants Monsanto Company and John Does 1-
25 50, and alleges the following:
26
27
28

NATURE OF THE CASE

1
2 1. This is an action for damages suffered by Plaintiff as a direct and proximate result of
3 Defendants' negligent and wrongful conduct in connection with the design, development,
4 manufacture, testing, packaging, promoting, marketing, advertising, distribution, labeling, and/or sale
5 of the herbicide Roundup[®], containing the active ingredient glyphosate.

6 2. Plaintiff maintains that Roundup[®] and/or glyphosate is defective, dangerous to human
7 health, unfit and unsuitable to be marketed and sold in commerce, and lacked proper warnings and
8 directions as to the dangers associated with its use.

9 3. Plaintiff's injuries, like those striking thousands of similarly situated victims across the
10 country, were avoidable.

11 **JURISDICTION AND VENUE**

12 4. This Court has jurisdiction over Defendants and this action pursuant to 28 U.S.C. §
13 1332 because there is complete diversity of citizenship between Plaintiff and Defendants. Defendants
14 are all either incorporated and/or have their principal place of business outside of the state in which the
15 Plaintiff resides.

16 5. The amount in controversy between Plaintiff and Defendants exceeds \$75,000,
17 exclusive of interest and cost.

18 6. The Court also has supplemental jurisdiction pursuant to 28 U.S.C. § 1367.

19 7. Venue is proper within this district pursuant to 28 U.S.C. § 1391 in that Defendants
20 conduct business here and are subject to personal jurisdiction in this district. Furthermore, Defendants
21 sell, market, and/or distribute Roundup[®] within the District of California. Also, a substantial part of
22 the acts and/or omissions giving rise to these claims occurred within this district.

23 **PARTIES**

24 8. Plaintiff, Emanuel Richard Giglio, is a natural person and at all relevant times a resident
25 and citizen of San Diego County, California. Plaintiff brings this action for personal injuries sustained
26 by exposure to Roundup[®] ("Roundup") containing the active ingredient glyphosate and the surfactant
27 POEA. As a direct and proximate result of being exposed to Roundup, Plaintiff developed non-
28

1 Hodgkin's Lymphoma.

2 9. "Roundup" refers to all formulations of Defendants' roundup products, including, but
3 not limited to, Roundup Concentrate Poison Ivy and Tough Brush Killer 1, Roundup Custom
4 Herbicide, Roundup D-Pak herbicide, Roundup Dry Concentrate, Roundup Export Herbicide, Roundup
5 Fence & Hard Edger 1, Roundup Garden Foam Weed & Grass Killer, Roundup Grass and Weed Killer,
6 Roundup Herbicide, Roundup Original 2k herbicide, Roundup Original II Herbicide, Roundup Pro
7 Concentrate, Roundup Prodry Herbicide, Roundup Promax, Roundup Quik Stik Grass and Weed
8 Killer, Roundup Quikpro Herbicide, Roundup Rainfast Concentrate Weed & Grass Killer, Roundup
9 Rainfast Super Concentrate Weed & Grass Killer, Roundup Ready-to-Use Extended Control Weed &
10 Grass Killer 1 Plus Weed Preventer, Roundup Ready-to-Use Weed & Grass Killer, Roundup Ready-to-
11 Use Weed and Grass Killer 2, Roundup Ultra Dry, Roundup Ultra Herbicide, Roundup Ultramax,
12 Roundup VM Herbicide, Roundup Weed & Grass Killer Concentrate, Roundup Weed & Grass Killer
13 Concentrate Plus, Roundup Weed & Grass killer Ready-to-Use Plus, Roundup Weed & Grass Killer
14 Super Concentrate, Roundup Weed & Grass Killer1 Ready-to-Use, Roundup WSD Water Soluble Dry
15 Herbicide Deploy Dry Herbicide, or any other formulation of containing the active ingredient
16 glyphosate.

17 10. Defendant MONSANTO COMPANY is a Delaware corporation, Calif. Secretary of
18 State Entity No. C2362863, in "active" status, with a principle place of business in St. Louis,
19 Missouri.

20 11. Upon best information and belief, Defendants JOHN DOES 1-50 are subsidiaries,
21 partners, or other entities that were involved in the design, development, manufacture, testing,
22 packaging, promoting, marketing, advertising, distribution, labeling, and/or sale of the herbicide
23 Roundup, containing the active ingredient glyphosate. The identities of JOHN DOES 1-50 are
24 unknown to Plaintiff at this time. Plaintiff will move the Court to specifically name JOHN DOES 1-
25 50 as their identities becomes known to Plaintiff through discovery.

26 12. Defendant MONSANTO COMPANY and JOHN DOES 1-50 are collectively referred
27 to as "Monsanto Defendants" or "Defendants."

28 13. Defendants advertise and sell goods, specifically Roundup, in San Diego County,

1 California.

2 14. Defendants transacted and conducted business within the State of California that relates
3 to the allegations in this Complaint.

4 15. Defendants derived substantial revenue from goods and products used in the State of
5 California.

6 16. Defendants expected or should have expected their acts to have consequences within
7 the State of California, and derived substantial revenue from interstate commerce.

8 17. Defendants engaged in the business of designing, developing, manufacturing, testing,
9 packaging, marketing, distributing, labeling, and/or selling Roundup.

10 18. Defendants are authorized to do business in California and derive substantial income
11 from doing business in this state.

12 19. Upon information and belief, Defendants purposefully availed themselves of the
13 privilege of conducting activities with the State of California, thus invoking the benefits and
14 protections of its laws.

15 20. Upon information and belief, Defendants did act together to design, sell, advertise,
16 manufacture and/or distribute Roundup, with full knowledge of its dangerous and defective nature.

17 **FACTUAL ALLEGATIONS**

18 21. At all relevant times, Defendants were in the business of, and did, design, research,
19 manufacture, test, advertise, promote, market, sell, distribute, and/or have acquired and are responsible
20 for Defendants who have designed, researched, manufactured, tested, advertised, promoted, marketed,
21 sold, and distributed the commercial herbicide Roundup.

22 22. Monsanto is a multinational agricultural biotechnology corporation based in St. Louis,
23 Missouri. It is the world's leading producer of glyphosate.

24 23. Defendants discovered the herbicidal properties of glyphosate during the 1970's and
25 subsequently began to design, research, manufacture, sell and distribute glyphosate based "Roundup"
26 as a broad spectrum herbicide.

27 24. Glyphosate is the active ingredient in Roundup.

28

1 25. Glyphosate is a broad-spectrum herbicide used to kill weeds and grasses known to
2 compete with commercial crops grown around the globe.

3 26. Glyphosate is a “non-selective” herbicide, meaning it kills indiscriminately based only
4 on whether a given organism produces a specific enzyme, 5-enolpyruvylshikimic acid-3-phosphate
5 synthase, known as EPSP synthase.

6 27. Glyphosate inhibits the enzyme 5-enolpyruvylshikimic acid-3-phosphate synthase that
7 interferes with the shikimic pathway in plants, resulting in the accumulation of shikimic acid in plant
8 tissue and ultimately plant death.

9 28. Sprayed as a liquid, plants absorb glyphosate directly through their leaves, stems, and
10 roots, and detectable quantities accumulate in the plant tissues.

11 29. Each year, approximately 250 million pounds of glyphosate are sprayed on crops,
12 commercial nurseries, suburban lawns, parks, and golf courses. This increase in use has been driven
13 largely by the proliferation of genetically engineered crops, crops specifically tailored to resist the
14 activity of glyphosate.

15 30. Defendants are intimately involved in the development, design, manufacture,
16 marketing, sale, and/or distribution of genetically modified (“GMO”) crops, many of which are
17 marketed as being resistant to Roundup *i.e.*, “Roundup Ready[®].” As of 2009, Defendants were the
18 world’s leading producer of seeds designed to be Roundup Ready[®]. In 2010, an estimated 70% of corn
19 and cotton, and 90% of soybean fields in the United States contained Roundup Ready[®] seeds.

20 31. The original Roundup, containing the active ingredient glyphosate, was introduced in
21 1974. Today, glyphosate products are among the world’s most widely used herbicides. Monsanto’s
22 glyphosate products are registered in more than 130 countries and are approved for weed control in
23 more than 100 crops. No other herbicide active ingredient compares in terms of number of approved
24 uses.¹

25 32. For nearly 40 years, farmers across the globe have used Roundup, unaware of its
26 carcinogenic properties.

27
28 ¹ *Backgrounder*, History of Monsanto’s Glyphosate Herbicides, June 2005.

REGISTRATION OF HERBICIDES UNDER FEDERAL LAW

1
2 33. The manufacture, formulation and distribution of herbicides, such as Roundup, are
3 regulated under the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), 7. U.S.C. § 136 *et*
4 *seq.* FIFRA requires that all pesticides be registered with the Environmental Protection Agency
5 (“EPA) prior to their distribution, sale, or use, except as described by FIFRA 7 U.S.C. 136a(a).

6 34. The EPA requires as part of the registration process, among other requirements, a
7 variety of tests to evaluate the potential for exposure to pesticides, toxicity to people and other
8 potential non-target organisms, and other adverse effects on the environment. Registration by the EPA,
9 however, is not an assurance or finding of safety. The determination the EPA makes 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. § 136(a)(c)(5)(D).

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

18 36. The EPA and the State of California registered Roundup for distribution, sale, and
19 manufacture in the United States and the State of California.

20 37. FIFRA generally requires that the registrant, Monsanto, conduct health and safety
21 testing of pesticide products. The government is not required, nor is it able, to perform the product
22 tests that are required of the manufacturer.

23 38. The evaluation of each pesticide product distributed, sold, or manufactured is
24 completed at the time the product is initially registered. The data necessary for registration of a
25 pesticide has changed over time. The EPA is now in the process of re-evaluating all pesticide products
26 through a Congressionally-mandated process called “re-registration.” 7 U.S.C. § 136a-1. In order to
27 reevaluate these pesticides, the EPA demands the completion of additional tests and the submission of
28 data for the EPA’s review and evaluation.

1 39. In the case of glyphosate and Roundup, the EPA had planned on releasing its
2 preliminary risk assessment – in relation to the registration process – no later than July 2015. The EPA
3 completed its review of glyphosate in early 2015, but delayed releasing the assessment pending further
4 review in light of the World Health Organization’s findings.

5
6 **MONSANTO’S FALSE REPRESENTATIONS REGARDING THE SAFETY OF ROUNDUP®**

7
8 40. In 1996, the New York Attorney General (“NYAG”) filed a lawsuit against Monsanto
9 based on its false and misleading advertising of Roundup products. Specifically, the lawsuit challenged
10 Monsanto’s general representations that its spray-on glyphosate-based herbicides, including Roundup,
11 were “safer **than table salt**” and “practically **non-toxic**” to mammals, birds, and fish. Among the
12 representations the NYAG found deceptive and misleading about the human and environmental safety
13 of Roundup are the following:

- 14 a) Remember that environmentally friendly Roundup herbicide is
15 biodegradable. It won't build up in the soil so you can use Roundup
16 with confidence along customers' driveways, sidewalks and fences ...
- 17 b) And remember that Roundup is biodegradable and won't build up in the
18 soil. That will give you the environmental confidence you need to use
19 Roundup everywhere you've got a weed, brush, edging or trimming
20 problem.
- 21 b) Roundup biodegrades into naturally occurring elements.
- 22 d) Remember that versatile Roundup herbicide stays where you put it.
23 That means there's no washing or leaching to harm customers' shrubs or
24 other desirable vegetation.
- 25 e) This non-residual herbicide will not wash or leach in the soil. It ... stays
26 where you apply it.
- 27 f) You can apply Accord with “ confidence because it will stay where you
28 put it” it bonds tightly to soil particles, preventing leaching. Then, soon
after application, soil microorganisms biodegrade Accord into natural
products.
- g) Glyphosate is less toxic to rats than table salt following acute oral

1 ingestion.

2 h) Glyphosate's safety margin is much greater than required. It has over a
3 1,000-fold safety margin in food and over a 700-fold safety margin for
workers who manufacture it or use it.

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

6 j) "Roundup can be used where kids and pets will play and breaks down
7 into natural material." This ad depicts a person with his head in the ground
8 and a pet dog standing in an area which has been treated with Roundup.²

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

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

14 ***

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

17 ***

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

21 ***

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

24 ***

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

28 ² Attorney General of the State of New York, In the Matter of Monsanto Company, Assurance of Discontinuance Pursuant
to Executive Law § 63(15) (Nov. 1996).

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

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

5 43. In 2009, France's highest court ruled that Monsanto had not told the truth about the
6 safety of Roundup. The French court affirmed an earlier judgment that Monsanto had falsely
7 advertised its herbicide Roundup as "biodegradable" and that it "left the soil clean."³
8

9 **EVIDENCE OF CARCINOGENICITY IN ROUNDUP**

10 44. As early as the 1980's Monsanto was aware of glyphosate's carcinogenic properties.

11 45. On March 4, 1985, a group of the Environmental Protection Agency's ("EPA")
12 Toxicology Branch published a memorandum classifying glyphosate as a Category C oncogene.⁴
13 Category C oncogenes are possible human carcinogens with limited evidence of carcinogenicity.

14 46. In 1986, the EPA issued a Registration Standard for glyphosate (NTIS PB87-103214).
15 The Registration standard required additional phytotoxicity, environmental fate, toxicology, product
16 chemistry, and residue chemistry studies. All of the data required was submitted and reviewed and/or
17 waived.⁵

18 47. In October 1991 the EPA published a Memorandum entitled "Second Peer Review of
19 Glyphosate." The memorandum changed glyphosate's classification to Group E (evidence of non-
20 carcinogenicity for humans). Two peer review committee members did not concur with the
21 conclusions of the committee and one member refused to sign.⁶

22 48. In addition to the toxicity of the active molecule, many studies support the hypothesis
23 that glyphosate formulations found in Defendants' Roundup products are more dangerous and toxic
24 than glyphosate alone.⁷ As early as 1991 evidence existed demonstrating that glyphosate formulations

25 ³ *Monsanto Guilty in 'False Ad' Row*, BBC, Oct. 15, 2009, available at <http://news.bbc.co.uk/2/hi/europe/8308903.stm>.

26 ⁴ Consensus Review of Glyphosate, Casewell No. 661A. March 4, 1985. United States Environmental Protection Agency.

27 ⁵ <http://www.epa.gov/oppsrrd1/reregistration/REDS/factsheets/0178fact.pdf>

28 ⁶ Second Peer Review of Glyphosate, CAS No. 1071-83-6. October 30, 1991. United States Environmental Protection Agency.

⁷ Martinez et al. 2007; Benachour 2009; Gasnier et al. 2010; Peixoto 2005; Marc 2004

1 were significantly more toxic than glyphosate alone.⁸

2 49. In 2002, Julie Marc published a study entitled “Pesticide Roundup Provokes Cell
3 Division Dysfunction at the Level of CDK1/Cyclin B Activation.”

4 50. The study found that Defendants’ Roundup caused delays in the cell cycles of sea
5 urchins, while the same concentrations of glyphosate alone proved ineffective and did not alter cell
6 cycles.

7 51. In 2004, Julie Marc published a study entitled “Glyphosate-based pesticides affect cell
8 cycle regulation.” The study demonstrated a molecular link between glyphosate-based products and
9 cell cycle dysregulation.

10 52. The study noted that “cell-cycle dysregulation is a hallmark of tumor cells and human
11 cancer. Failure in the cell-cycle checkpoints leads to genomic instability and subsequent development
12 of cancers from the initial affected cell.” Further, “[s]ince cell cycle disorders such as cancer result
13 from dysfunction of unique cell, it was of interest to evaluate the threshold dose of glyphosate
14 affecting cells.”⁹

15 53. In 2005, Francisco Peixoto published a study showing that Roundup’s effects on rat
16 liver mitochondria are much more toxic and harmful than the same concentrations of glyphosate alone.

17 54. The Peixoto study suggested that the harmful effects of Roundup on mitochondrial
18 bioenergetics could not be exclusively attributed to glyphosate and could be the result of other
19 chemicals, namely the surfactant POEA, or alternatively due to the possible synergy between
20 glyphosate and Roundup formulation products.

21 55. In 2009, Nora Benachour and Gilles-Eric Serallini published a study examining the
22 effects of Roundup and glyphosate on human umbilical, embryonic, and placental cells.

23 56. The study used dilution levels of Roundup and glyphosate far below agricultural
24 recommendations, corresponding with low levels of residues in food. The study concluded that
25 supposed “inert” ingredients, and possibly POEA, change human cell permeability and amplify
26 toxicity of glyphosate alone. The study further suggested that determinations of glyphosate toxicity

27 _____
28 ⁸ Martinez et al 1991

⁹ (Molinari, 2000; Stewart et al., 2003)

1 should take into account the presence of adjuvants, or those chemicals used in the formulation of the
2 complete pesticide. The study confirmed that the adjuvants in roundup are not inert and that Roundup
3 is always more toxic than its active ingredient glyphosate.

4 57. The results of these studies were confirmed in recently published peer-reviewed studies
5 and were at all times available and/or known to Defendants.

6 58. Defendants knew or should have known that Roundup is more toxic than glyphosate
7 alone and that safety studies on Roundup, Roundup's adjuvants and "inert" ingredients, and/or the
8 surfactant POEA were necessary to protect Plaintiff from Roundup.

9 59. Defendants knew or should have known that tests limited to Roundup's active
10 ingredient glyphosate were insufficient to prove the safety of Roundup.

11 60. Defendants failed to appropriately and adequately test Roundup, Roundup's adjuvants
12 and "inert" ingredients, and/or the surfactant POEA to protect Plaintiff from Roundup.

13 61. Rather than performing appropriate tests, Defendants relied upon flawed industry-
14 supported studies designed to protect Defendants' economic interests rather than Plaintiff and the
15 consuming public.

16 62. Despite their knowledge that Roundup was considerably more dangerous than
17 glyphosate alone, Defendants continued to promote Roundup as safe.

18 **IARC Classification of Glyphosate**

19 63. The International Agency for Research on Cancer ("IARC") is the specialized
20 intergovernmental cancer agency the World Health Organization ("WHO") of the United Nations
21 tasked with conducting and coordinating research into the causes of cancer.

22 64. An IARC Advisory Group to Recommend Priorities for IARC Monographs during
23 2015–2019 met in April 2014. Though nominations for the review were solicited, a substance must
24 meet two criteria to be eligible for review by the IARC Monographs: there must already be some
25 evidence of carcinogenicity of the substance, and there must be evidence that humans are exposed to
26 the substance.

27 65. IARC set glyphosate for review in 2015-2016. IARC uses five criteria for determining
28 priority in reviewing chemicals. The substance must have a potential for direct impact on public health;

1 scientific literature to support suspicion of carcinogenicity; evidence of significant human exposure;
2 high public interest and/or potential to bring clarity to a controversial area and/or reduce public anxiety
3 or concern; related agents similar to one given high priority by the above considerations. Data
4 reviewed is sourced preferably from publicly accessible, peer-reviewed data.

5 66. On March 24, 2015, after its cumulative review of human, animal, and DNA studies for
6 more than one (1) year, many of which have been in Defendants' possession since as early as 1985, the
7 IARC's working group published its conclusion that the glyphosate contained in Defendants' Roundup
8 herbicide, is a Class 2A "probable carcinogen" as demonstrated by the mechanistic evidence of
9 carcinogenicity in humans and sufficient evidence of carcinogenicity in animals.

10 67. The IARC's full Monograph was published on July 29, 2015 and established glyphosate
11 as a class 2A *probable* carcinogen to humans. According to the authors glyphosate demonstrated
12 sufficient mechanistic evidence (genotoxicity and oxidative stress) to warrant a 2A classification based
13 on evidence of carcinogenicity in humans and animals.

14 68. The IARC Working Group found an increased risk between exposure to glyphosate and
15 non-Hodgkin's lymphoma ("NHL") and several subtypes of NHL, and the increased risk continued
16 after adjustment for other pesticides.

17 69. The IARC also found that glyphosate caused DNA and chromosomal damage in human
18 cells.

19 **EARLIER EVIDENCE OF GLYPHOSATE'S DANGER**

20 70. Despite the new classification by the IARC, Defendants have had ample evidence of
21 glyphosate and Roundup's genotoxic properties for decades.

22 71. Genotoxicity refers to chemical agents that are capable of damaging the DNA within a
23 cell through genetic mutations, which is a process that is believed to lead to cancer.

24 72. In 1997, Chris Clements published "Genotoxicity of select herbicides in *Rana*
25 *catesbeiana* tadpoles using the alkaline single-cell gel DNA electrophoresis (comet) assay."

26 73. The study found that tadpoles exposed to Roundup showed significant DNA damage
27 when compared with unexposed control animals.

28 74. Both human and animal studies have shown that glyphosate and glyphosate-based

1 formulations such as Roundup can induce oxidative stress.

2 75. Oxidative stress and associated chronic inflammation are believed to be involved in
3 carcinogenesis.

4 76. The IARC Monograph notes that “[s]trong evidence exists that glyphosate, AMPA and
5 glyphosate-based formulations can induce oxidative stress.”

6 77. In 2006 César Paz-y-Miño published a study examining DNA damage in human
7 subjects exposed to glyphosate.

8 78. The study produced evidence of chromosomal damage in blood cells showing
9 significantly greater damage after exposure to glyphosate than before in the same individuals,
10 suggesting that the glyphosate formulation used during aerial spraying had a genotoxic effect on
11 exposed individuals.

12 79. The IARC Monograph reflects the volume of evidence of glyphosate pesticides’
13 genotoxicity noting “[t]he evidence for genotoxicity caused by glyphosate-based formulations is
14 strong.”

15 80. Despite knowledge to the contrary, Defendants maintain that there is no evidence that
16 Roundup is genotoxic, that regulatory authorities and independent experts are in agreement that
17 Roundup is not genotoxic, and that there is no evidence that Roundup is genotoxic.

18 81. In addition to glyphosate and Roundup’s genotoxic properties, Defendants have long
19 been aware of glyphosate’s carcinogenic properties.

20 82. Glyphosate and Roundup in particular have long been associated with carcinogenicity
21 and the development of numerous forms of cancer, including, but not limited to, non-Hodgkin’s
22 lymphoma, Hodgkin’s lymphoma, multiple myeloma, and soft tissue sarcoma.

23 83. Defendants have known of this association since the early to mid-1980s and numerous
24 human and animal studies have evidenced the carcinogenicity of glyphosate and/or Roundup.

25 84. In 1985 the EPA studied the effects of glyphosate in mice finding a dose related
26 response in male mice linked to renal tubal adenomas, a rare tumor. The study concluded the
27 glyphosate was oncogenic.

28 85. In 2003 Lennart Hardell and Mikael Eriksson published the results of two case

1 controlled studies on pesticides as a risk factor for NHL and hairy cell leukemia.

2 86. The study concluded that glyphosate had the most significant relationship to NHL
3 among all herbicides studies with an increased odds ratio of 3.11.

4 87. In 2003 AJ De Roos published a study examining the pooled data of mid-western
5 farmers, examining pesticides and herbicides as risk factors for NHL.

6 88. The study, which controlled for potential confounders, found a relationship between
7 increased NHL incidence and glyphosate.

8 89. In 2008 Mikael Eriksson published a study a population based case-control study of
9 exposure to various pesticides as a risk factor for NHL.

10 90. This strengthened previous associations between glyphosate and NHL.

11 91. In spite of this knowledge, Defendants continued to issue broad and sweeping
12 statements suggesting that Roundup was, and is, safer than ordinary household items such as table salt,
13 despite a lack of scientific support for the accuracy and validity of these statements and, in fact,
14 voluminous evidence to the contrary.

15 92. Upon information and belief, these statements and representations have been made with
16 the intent of inducing Plaintiff, the agricultural community, and the public at large to purchase, and
17 increase the use of, Defendants' roundup for Defendants' pecuniary gain, and in fact did induce
18 Plaintiff to use Roundup.

19 93. Defendants made these statements with complete disregard and reckless indifference to
20 the safety of Plaintiff and the general public.

21 94. Notwithstanding Defendants' representations, scientific evidence has established a
22 clear association between glyphosate and genotoxicity, inflammation, and an increased risk of many
23 cancers, including, but not limited to, NHL, Multiple Myeloma, and soft tissue sarcoma.

24 95. Defendants knew or should have known that glyphosate is associated with an increased
25 risk of developing cancer, including, but not limited to, NHL, Multiple Myeloma, and soft tissue
26 sarcomas.

27 96. Defendants failed to appropriately and adequately inform and warn Plaintiff of the
28 serious and dangerous risks associated with the use of and exposure to glyphosate and/or Roundup,

1 including, but not limited to, the risk of developing NHL, as well as other severe and personal injuries,
2 which are permanent and/or long-lasting in nature, cause significant physical pain and mental anguish,
3 diminished enjoyment of life, and the need for medical treatment, monitoring and/or medications.

4 97. Despite the IARC's classification of glyphosate as a class 2A probable carcinogen,
5 Defendants continue to maintain that glyphosate and/or Roundup is safe, non-carcinogenic, non-
6 genotoxic, and falsely warrant to users and the general public that independent experts and regulatory
7 agencies agree that there is no evidence of carcinogenicity or genotoxicity in glyphosate and Roundup.

8 98. Defendants have claimed and continue to claim that Roundup is safe, non-carcinogenic,
9 and non-genotoxic.

10 99. Monsanto claims on its website that "[r]egulatory authorities and independent experts
11 around the world have reviewed numerous long-term/carcinogenicity and genotoxicity studies and
12 agree that there is no evidence that glyphosate, the active ingredient in Roundup brand herbicides and
13 other glyphosate-based herbicides, causes cancer, even at very high doses, and that it is not
14 genotoxic".¹⁰

15 100. Ironically, the primary source for this statement is a 1986 report by the WHO, the same
16 organization that now considers glyphosate to be a probable carcinogen.

17 101. Glyphosate, and Defendants' Roundup products in particular, have long been
18 associated with serious side effects and many regulatory agencies around the globe have banned or are
19 currently banning the use of glyphosate herbicide products.

20 102. Defendants' statements proclaiming the safety of Roundup and disregarding its dangers
21 misled Plaintiff.

22 103. Despite Defendants' knowledge that Roundup was associated with an elevated risk of
23 developing cancer, Defendants' promotional campaigns focused on Roundup's purported "safety
24 profile."

25 104. Defendants' failure to adequately warn Plaintiff resulted in (1) Plaintiff using and being
26 exposed to glyphosate instead of using another acceptable and safe method of controlling unwanted
27

28 ¹⁰ [Backgrounder - Glyphosate: No Evidence of Carcinogenicity](#). Updated November 2014. (downloaded October 9 2015)

1 weeds and pests; and (2) scientists and physicians failing to warn and instruct consumers about the risk
2 of cancer, including NHL, and other injuries associated with Roundup.

3 105. Defendants failed to seek modification of the labeling of Roundup to include relevant
4 information regarding the risks and dangers associated with roundup exposure.

5 106. The failure of Defendants to appropriately warn and inform the EPA has resulted in
6 inadequate warnings in safety information presented directly to users and consumers.

7 107. The failure of Defendants to appropriately warn and inform the EPA has resulted in the
8 absence of warning or caution statements that are adequate to protect health and the environment.

9 108. The failure of Defendants to appropriately warn and inform the EPA has resulted in the
10 directions for use that are not adequate to protect health and the environment.

11 109. By reason of the foregoing acts and omissions, Plaintiff seeks compensatory damages
12 as a result of Plaintiff's use of, and exposure to, Roundup which caused or was a substantial
13 contributing factor in causing Plaintiff to suffer from cancer, specifically NHL, and Plaintiff suffered
14 severe and personal injuries which are permanent and lasting in nature, physical pain and mental
15 anguish, including diminished enjoyment of life.

16 110. By reason of the foregoing, Plaintiff is severely and permanently injured.

17 111. By reason of the foregoing acts and omissions, Plaintiff has endured and, in some
18 categories continues to suffer, emotional and mental anguish, medical expenses, and other economic
19 and non-economic damages, as a result of the actions and inactions of the Defendants.

20 **PLAINTIFF'S EXPOSURE TO ROUNDUP**

21 112. Plaintiff owned and operated a turf installation business.

22 113. During Plaintiff's employment, Plaintiff sprayed Roundup on a regular basis. Plaintiff
23 followed all safety and precautionary warnings during the course of use.

24 114. Following a year of declining health, Plaintiff was diagnosed with stage three NHL in
25 2014.

26 115. As a result of his injury, Plaintiff has incurred significant economic and non-economic
27 damages.

28

EQUITABLE TOLLING OF APPLICABLE STATUTE OF LIMITATIONS

116. Plaintiff incorporates by reference all prior paragraphs of this Complaint as if fully set forth herein.

117. The running of any statute of limitations has been tolled by reason of Defendants' fraudulent concealment. Defendants, through their affirmative misrepresentations and omissions, actively concealed from Plaintiff the true risks associated with Roundup and glyphosate.¹¹ Indeed, even as of October 2015, Defendants continue to represent to the public that "*Scientists are in agreement that there is no evidence glyphosate causes cancer.*" (emphasis added)¹²

118. As a result of Defendants' actions, Plaintiff was unaware, and could not reasonably know or have learned through reasonable diligence that Roundup and/or glyphosate contact, exposed Plaintiff to the risks alleged herein and that those risks were the direct and proximate result of Defendants' acts and omissions.

119. Furthermore, Defendants are estopped from relying on any statute of limitations because of their fraudulent concealment of the true character, quality and nature of Roundup. Defendants were under a duty to disclose the true character, quality, and nature of Roundup because this was non-public information over which Defendants had and continue to have exclusive control, and because Defendants knew that this information was not available to Plaintiff or to distributors of Roundup. In addition, Defendants are estopped from relying on any statute of limitations because of their intentional concealment of these facts.

120. Plaintiff had no knowledge that Defendants were engaged in the wrongdoing alleged herein. Because of the fraudulent acts of concealment of wrongdoing by Defendants, Plaintiff could not have reasonably discovered the wrongdoing at any time prior. Also, the economics of this fraud should be considered. Defendants had the ability to and did spend enormous amounts of money in furtherance of their purpose of marketing, promoting and/or distributing a profitable herbicide, notwithstanding the known or reasonably known risks. Plaintiff and medical professionals could not

¹² [Backgrounder - Glyphosate: No Evidence of Carcinogenicity](#). Updated November 2014. (downloaded October 9 2015)

1 have afforded and could not have possibly conducted studies to determine the nature, extent, and
2 identity of related health risks, and were forced to rely on only the Defendants' representations.
3 Accordingly, Defendants are precluded by the discovery rule and/or the doctrine of fraudulent
4 concealment from relying upon any statute of limitations.

5
6 **FIRST CAUSE OF ACTION**
7 **(NEGLIGENCE)**

8 121. Plaintiff repeats, reiterates, and re-alleges each and every allegation of this Complaint
9 contained in each of the foregoing paragraphs inclusive, with the same force and effect as if more fully
10 set forth herein.

11 122. Defendants had a duty to exercise reasonable care in the designing, researching, testing,
12 manufacturing, marketing, supplying, promoting, packaging, sale, and/or distribution of Roundup into
13 the stream of commerce, including a duty to assure that the product would not cause users to suffer
14 unreasonable, dangerous side effects.

15 123. Defendants failed to exercise ordinary care in the designing, researching, testing,
16 manufacturing, marketing, supplying, promoting, packaging, sale, testing, quality assurance, quality
17 control, and/or distribution of Roundup into interstate commerce in that Defendants knew or should
18 have known that using Roundup created a high risk of unreasonable, dangerous side effects, including,
19 but not limited to, the development of NHL, as well as other severe and personal injuries which are
20 permanent and lasting in nature, physical pain and mental anguish, including diminished enjoyment of
21 life, as well as need for lifelong medical treatment, monitoring, and/or medications.

22 124. The negligence by the Defendants, their agents, servants, and/or employees, included
23 but was not limited to the following acts and/or omissions:

- 24 a. Manufacturing, producing, promoting, formulating, creating, and/or designing Roundup
25 without thoroughly testing it;
- 26 b. Failing to test Roundup and/or failing to adequately, sufficiently, and properly test
27 Roundup;
- 28 c. Not conducting sufficient testing programs to determine whether or not Roundup was
unsafe and unfit for use by reason of the dangers to its users;

- 1 d. Not conducting sufficient testing programs and studies to determine Roundup's
2 carcinogenic properties even after Defendants had knowledge that Roundup is, was, or
3 could be carcinogenic;
- 4 e. Failing to conduct sufficient testing programs to determine the safety of "inert"
5 ingredients and/or adjuvants contained within Roundup, and the propensity of these
6 ingredients to render Roundup toxic, increase the toxicity of roundup, whether these
7 ingredients are carcinogenic, magnify the carcinogenic properties of Roundup, and
8 whether or not "inert" ingredients and/or adjuvants were safe for use;
- 9 f. Negligently failing to adequately and correctly warn the Plaintiff, the public, the
10 medical and agricultural professions, and the EPA of the dangers of Roundup;
- 11 g. Failing to provide adequate cautions and warnings to protect the health of users,
12 handlers, applicators, and persons who would reasonably and foreseeably come into
13 contact with Roundup;
- 14 h. Negligently marketing, advertising, and recommending the use of Roundup without
15 sufficient knowledge as to its dangerous propensities;
- 16 i. Negligently representing that Roundup was safe for use for its intended purpose, and/or
17 that Roundup was safer than ordinary and common items such as table salt, when, in
18 fact, it was unsafe;
- 19 j. Negligently representing that Roundup had equivalent safety and efficacy as other
20 forms of herbicides;
- 21 k. Negligently designing Roundup in a manner, which was dangerous to its users;
- 22 l. Negligently manufacturing Roundup in a manner, which was dangerous to its users;
- 23 m. Negligently producing Roundup in a manner, which was dangerous to its users;
- 24 n. Negligently formulating Roundup in a manner, which was dangerous to its users;
- 25 o. Concealing information from the Plaintiff while knowing that Roundup was unsafe,
26 dangerous, and/or non-conforming with EPA regulations; and
- 27 p. Improperly concealing and/or misrepresenting information from the Plaintiff, scientific
28 and medical professionals, and/or the EPA, concerning the severity of risks and dangers
of Roundup compared to other forms of herbicides.
- q. Negligently selling Roundup with a false and misleading label.
125. Defendants under-reported, underestimated, and downplayed the serious dangers of
Roundup.

1 126. Defendants negligently and deceptively compared the safety risks and/or dangers of
2 Roundup with common everyday foods such as table salt, and other forms of herbicides.

3 127. Defendants were negligent and/or violated California law in the designing, researching,
4 supplying, manufacturing, promoting, packaging, distributing, testing, advertising, warning, marketing,
5 and selling of Roundup in that they:

- 6 a. Failed to use ordinary care in designing and manufacturing Roundup so as to avoid the
7 aforementioned risks to individuals when Roundup was used as an herbicide;
- 8 b. Failed to accompany their product with proper and/or accurate warnings regarding all
9 possible adverse side effects associated with the use of Roundup;
- 10 c. Failed to accompany their product with proper warnings regarding all possible adverse
11 side effects concerning the failure and/or malfunction of Roundup;
- 12 d. Failed to accompany their product with accurate warnings regarding the risks of all
13 possible adverse side effects concerning Roundup;
- 14 e. Failed to warn Plaintiff of the severity and duration of such adverse effects, as the
15 warnings given did not accurately reflect the symptoms, or severity of the side effects
16 including, but not limited to, the development of NHL;
- 17 f. Failed to conduct adequate testing, clinical testing and post-marketing surveillance to
18 determine the safety of Roundup;
- 19 g. Failed to conduct adequate testing, clinical testing, and post-marketing surveillance to
20 determine the safety of Roundup's "inert" ingredients and/or adjuvants;
- 21 h. Negligently misrepresented the evidence of Roundup's genotoxicity and
22 carcinogenicity;
- 23 i. Were otherwise careless and/or negligent.

24 128. Despite the fact that Defendants knew or should have known that Roundup caused, or
25 could cause, unreasonably dangerous side effects, Defendants continued and continue to market,
26 manufacture, distribute, and/or sell Roundup to consumers, including the Plaintiff.

27 129. Defendants knew or should have known that consumers such as the Plaintiff would
28 foreseeably suffer injury as a result of Defendants' failure to exercise ordinary care, as set forth above.

130. Defendants' violations of law and/or negligence were the proximate cause of Plaintiff's
injuries, harm and economic loss, which Plaintiff suffered and/or will continue to suffer.

1 131. As a result of the foregoing acts and omissions, the Plaintiff suffered from serious and
2 dangerous side effects including, but not limited to, NHL, as well as other severe and personal injuries
3 which are permanent and lasting in nature, physical pain and mental anguish, diminished enjoyment of
4 life, and financial expenses for hospitalization and medical care. Further, Plaintiff suffered life-
5 threatening NHL, and severe personal injuries, which are permanent and lasting in nature, physical
6 pain and mental anguish, including diminished enjoyment of life.

7 132. WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in
8 Plaintiff's favor for compensatory and punitive damages, together with interest, costs herein incurred,
9 attorneys' fees and all relief as this Court deems just and proper. Additionally, Plaintiff demands a
10 jury trial on all issues contained herein.

11
12 **SECOND CAUSE OF ACTION**
(STRICT PRODUCTS LIABILITY – DESIGN DEFECT)

13 133. Plaintiff repeats, reiterates and, re-alleges each and every allegation of this Complaint
14 contained in each of the foregoing paragraphs inclusive, with the same force and effect as if more fully
15 set forth herein.

16 134. At all times herein mentioned, the Defendants designed, researched, manufactured,
17 tested, advertised, promoted, sold, distributed, and/or have acquired the Defendants who have
18 designed, researched, tested, advertised, promoted, marketed, sold, and distributed Roundup as
19 hereinabove described that was used by the Plaintiff.

20 135. Defendants' Roundup was expected to and did reach the usual consumers, handlers, and
21 persons coming into contact with said product without substantial change in the condition in which it
22 was produced, manufactured, sold, distributed, and marketed by the Defendants.

23 136. At those times, Roundup was in an unsafe, defective, and inherently dangerous
24 condition, which was dangerous to users, and in particular, the Plaintiff herein.

25 137. The Roundup designed, researched, manufactured, tested, advertised, promoted,
26 marketed, sold, and distributed by Defendants was defective in design or formulation in that, when it
27

1 left the hands of the manufacturer and/or suppliers, the foreseeable risks exceeded the benefits
2 associated with the design or formulation of Roundup.

3 138. The Roundup designed, researched, manufactured, tested, advertised, promoted,
4 marketed, sold, and distributed by Defendants was defective in design and/or formulation, in that,
5 when it left the hands of the Defendants manufacturers and/or suppliers, it was unreasonably
6 dangerous, unreasonably dangerous in normal use, and it was more dangerous than an ordinary
7 consumer would expect.

8 139. At all times herein mentioned, Roundup was in a defective condition and unsafe, and
9 Defendants knew or had reason to know that said product was defective and unsafe, especially when
10 used in the form and manner as provided by the Defendants. In particular, Defendants' Roundup was
11 defective in the following ways:

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

140. Defendants knew, or should have known that at all times herein mentioned its Roundup
was in a defective condition, and was and is inherently dangerous and unsafe.

1 141. Plaintiff was exposed to Defendants' Roundup in the course of his employment, as
2 described above, without knowledge of Roundup's dangerous characteristics.

3 142. At the time of the Plaintiff's use of and exposure to Roundup, Roundup was being used
4 for the purposes and in a manner normally intended, as a broad-spectrum herbicide.

5 143. Defendants with this knowledge voluntarily designed its Roundup with a dangerous
6 condition for use by the public, and in particular the Plaintiff.

7 144. Defendants had a duty to create a product that was not unreasonably dangerous for its
8 normal, intended use.

9 145. Defendants created a product that was and is unreasonably dangerous for its normal,
10 intended use.

11 146. Defendants marketed and promoted a product in such a manner so as to make it
12 inherently defective as the product downplayed its suspected, probable, and established health risks
13 inherent with its normal, intended use.

14 147. The Roundup designed, researched, manufactured, tested, advertised, promoted,
15 marketed, sold, and distributed by Defendants was manufactured defectively in that Roundup left the
16 hands of Defendants in a defective condition and was unreasonably dangerous to its intended users.

17 148. The Roundup designed, researched, manufactured, tested, advertised, promoted,
18 marketed, sold, and distributed by Defendants reached their intended users in the same defective and
19 unreasonably dangerous condition in which the Defendants' Roundup was manufactured.

20 149. Defendants designed, researched, manufactured, tested, advertised, promoted, marketed,
21 sold, and distributed a defective product, which created an unreasonable risk to the health of
22 consumers and to the Plaintiff in particular, and Defendants are therefore strictly liable for the injuries
23 sustained by the Plaintiff.

24 150. The Plaintiff could not, by the exercise of reasonable care, have discovered Roundup's
25 defects herein mentioned or perceived its danger.

26 151. By reason of the foregoing, the Defendants have become strictly liable to the Plaintiff
27 for the manufacturing, marketing, promoting, distribution, and selling of a defective product, Roundup.

28

1 152. Defendants' defective design, of Roundup amounts to willful, wanton, and/or reckless
2 conduct by Defendants.

3 153. Defects in Defendants' Roundup were the cause or a substantial factor in causing
4 Plaintiff's injuries.

5 154. As a result of the foregoing acts and omission, the Plaintiff developed NHL, and
6 suffered severe and personal injuries, which are permanent and lasting in nature, physical pain and
7 mental anguish, including diminished enjoyment of life, and financial expenses for hospitalization and
8 medical care.

9 155. WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in
10 Plaintiff's favor for compensatory and punitive damages, together with interest, costs herein incurred,
11 attorneys' fees and all relief as this Court deems just and proper. Additionally, Plaintiff demands a
12 jury trial on all issues contained herein.

13
14 **THIRD CAUSE OF ACTION**
(STRICT PRODUCTS LIABILITY – FAILURE TO WARN)

15 156. Plaintiff repeats, reiterates and re-alleges each and every allegation of this Complaint
16 contained in each of the foregoing paragraphs inclusive, with the same force and effect as if more fully
17 set forth herein.

18 157. Defendants have engaged in the business of selling, testing, distributing, supplying,
19 manufacturing, marketing, and/or promoting Roundup, and through that conduct have knowingly and
20 intentionally placed Roundup into the stream of commerce with full knowledge that it reaches
21 consumers such as Plaintiff who are exposed to it through ordinary and reasonably foreseeable uses.

22 158. Defendants did in fact sell, distribute, supply, manufacture, and/or promote Roundup to
23 Plaintiff. Additionally, Defendants expected the Roundup that they were selling, distributing,
24 supplying, manufacturing, and/or promoting to reach – and Roundup did in fact reach – consumers,
25 including Plaintiff, without any substantial change in the condition of the product from when it was
26 initially distributed by Defendants.
27
28

1 159. At the time of manufacture, Defendant could have provided the warnings or instructions
2 regarding the full and complete risks of Roundup and glyphosate-containing products because it knew
3 or should have known of the unreasonable risks of harm associated with the use of and/or exposure to
4 such products.

5 160. At all times herein mentioned, the aforesaid product was defective and unsafe in
6 manufacture such that it was unreasonably dangerous to the user, and was so at the time it was
7 distributed by Defendants and at the time Plaintiff was exposed to and/or ingested the product. The
8 defective condition of Roundup was due in part to the fact that it was not accompanied by proper
9 warnings regarding its carcinogenic qualities and possible side effects, including, but not limited to,
10 developing non-Hodgkin's lymphoma as a result of exposure and use.

11 161. Roundup did not contain a warning or caution statement, which was necessary and, if
12 complied with, was adequate to protect health those exposed in violation of 7 U.S.C. § 136j(a)(1)(E).

13 162. Defendants' failure to include a warning or caution statement which was necessary and,
14 if complied with, was adequate to protect the health of those exposed, violated 7 U.S.C. §
15 136j(a)(1)(E) as well as the laws of the State of California.

16 163. Defendants could have amended the label of Roundup to provide additional warnings.

17 164. This defect caused serious injury to Plaintiff, who used Roundup in its intended and
18 foreseeable manner.

19 165. At all times herein mentioned, Defendants had a duty to properly design, manufacture,
20 compound, test, inspect, package, label, distribute, market, examine, maintain supply, provide proper
21 warnings, and take such steps to assure that the product did not cause users to suffer from
22 unreasonable and dangerous side effects.

23 166. Defendants labeled, distributed, and promoted the aforesaid product that it was
24 dangerous and unsafe for the use and purpose for which it was intended.

25 167. Defendants failed to warn of the nature and scope of the side effects associated with
26 Roundup, namely its carcinogenic properties and its propensity to cause or serve as a substantial
27 contributing factor in the development of NHL.

28

1 168. Defendants were aware of the probable consequences of the aforesaid conduct.
2 Despite the fact that Defendants knew or should have known that Roundup caused serious injuries,
3 Defendants failed to exercise reasonable care to warn of the dangerous carcinogenic properties and
4 side effect of developing NHL from Roundup exposure, even though these side effects were known or
5 reasonably scientifically knowable at the time of distribution. Defendants willfully and deliberately
6 failed to avoid the consequences associated with their failure to warn, and in doing so, Defendants
7 acted with a conscious disregard for the safety of Plaintiff.

8 169. At the time of exposure, Plaintiff could not have reasonably discovered any defect in
9 Roundup prior through the exercise of reasonable care.

10 170. Defendants, as the manufacturers and/or distributors of the subject product, are held to
11 the level of knowledge of an expert in the field.

12 171. Plaintiff reasonably relied upon the skill, superior knowledge, and judgment of
13 Defendants.

14 172. Had Defendants properly disclosed the risks associated with Roundup, Plaintiff
15 would have avoided the risk of NHL by not using Roundup.

16 173. The information that Defendants did provide or communicate failed to contain adequate
17 warnings and precautions that would have enabled Plaintiff, and similarly situated individuals, to
18 utilize the product safely and with adequate protection. Instead, Defendants disseminated information
19 that was inaccurate, false, and misleading and which failed to communicate accurately or adequately
20 the comparative severity, duration, and extent of the risk of injuries associated with use of and/or
21 exposure to Roundup and glyphosate; continued to promote the efficacy of Roundup, even after it
22 knew or should have known of the unreasonable risks from use or exposure; and concealed,
23 downplayed, or otherwise suppressed, through aggressive marketing and promotion, any information
24 or research about the risks and dangers of exposure to Roundup and glyphosate.

25 174. To this day, Defendants have failed to adequately warn of the true risks of Plaintiff's
26 injuries associated with the use of and exposure to Roundup.

27
28

1 175. As a result of their inadequate warnings, Defendants' Roundup products were defective
2 and unreasonably dangerous when they left the possession and/or control of Defendant, were
3 distributed by Defendant, and used by Plaintiff.

4 176. As a direct and proximate result of Defendants' actions as alleged herein, and in such
5 other ways to be later shown, the subject product caused Plaintiff to sustain injuries as herein
6 alleged.

7 177. WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in
8 Plaintiff's favor for compensatory and punitive damages, together with interest, costs herein incurred,
9 attorneys' fees and all relief as this Court deems just and proper. Additionally, Plaintiff demands a
10 jury trial on all issues contained herein.

11 **FOURTH CAUSE OF ACTION**
12 **(BREACH OF EXPRESS WARRANTY)**

13 178. Plaintiff repeats, reiterates, and re-alleges each and every allegation of this Complaint
14 contained in each of the foregoing paragraphs inclusive, with the same force and effect as if more fully
15 set forth herein.

16 179. At all relevant and material times, Defendants manufactured, distributed, advertised,
17 promoted, and sold Roundup.

18 180. At all relevant times, Defendants intended that the Defendants' Roundup be used in the
19 manner that Plaintiff used it, and Defendants expressly warranted that each Roundup product was safe
20 and fit for use by consumers, that it was of merchantable quality, that its health and side effects were
21 minimal, and that it was adequately tested and fit for tis intended use.

22 181. At all relevant times, Defendants were aware that consumers, including Plaintiff, would
23 use Roundup products; which is to say that Plaintiff was a foreseeable user of the Defendants'
24 Roundup products.

25 182. Plaintiff purchased Roundup manufactured by Defendants.

26 183. Defendants' Roundup products were expected to reach and did in fact reach consumers,
27 including Plaintiff, without any substantial change in the condition in which it was manufactured and
28 sold by Defendants.

1 184. Defendants expressly warranted that Roundup was safe and not dangerous to users.

2 185. Defendants expressly represented to Plaintiff, scientists, the agricultural community,
3 and/or the EPA that Roundup was safe and fit for use for the purposes intended, that it was of
4 merchantable quality, that it did not produce dangerous side effects in excess of those risks associated
5 with other forms of herbicides, that the side effects it did produce were accurately reflected in the
6 warnings, and that it was adequately tested and fit for its intended use.

7 186. Defendants breached various express warranties with respect to Roundup including the
8 following particulars:

9 a) Defendant Monsanto's website expressly states that "[r]egulatory authorities and
10 independent experts around the world have reviewed numerous long-
11 term/carcinogenicity and genotoxicity studies and agree that there is no evidence that
12 glyphosate, the active ingredient in Roundup brand herbicides and other glyphosate-
13 based herbicides, causes cancer, even at very high doses, and that it is not genotoxic"¹³

14 b) Defendants have expressly warranted that Roundup is "safer than table salt" and
15 "practically nontoxic."¹⁴

16 187. Roundup did not conform to these express representations because Roundup was not
17 safe and had, at all relevant times, an increased risk of serious side effects, including non-Hodgkin's
18 lymphoma, when used according to Defendants' instructions.

19 188. Defendants fraudulently concealed information from Plaintiff regarding the true
20 dangers and relative risks of Roundup.

21 189. The global scientific community is not, and was never, in agreement that Roundup is
22 non-carcinogenic.

23 190. Plaintiff did rely on the express warranties of the Defendants herein.

24 191. Plaintiff, consumers, and members of the agricultural community relied upon the
25 representation and warranties of the Defendants for use of Roundup in recommending, using,
26 purchasing, mixing, handling, applying, and/or dispensing Roundup.

27 _____
28 ¹³ <http://www.monsanto.com/glyphosate/documents/no-evidence-of-carcinogenicity.pdf> October 8, 2015.

¹⁴ Reuters, Jun 14, 2015 [UPDATE 2-French minister asks shops to stop selling Monsanto Roundup weedkiller.](#)

1 192. The Defendants herein breached the aforesaid express warranties, as their product
2 Roundup was defective.

3 193. Defendants knew or should have known that, in fact, said representations and warranties
4 were false, misleading, and untrue in that Roundup was not safe and fit for the use intended, and, in
5 fact, produced serious injuries to the users that were not accurately identified and represented by
6 Defendants.

7 194. Defendants knew or should have known that, in fact, said warranties were false,
8 misleading, and untrue in that there is evidence that Roundup is toxic, genotoxic, and carcinogenic and
9 that scientists and/or regulatory authorities around the world are not in agreement that Roundup is not
10 carcinogenic or genotoxic and that it is safe.

11 195. As a result of the foregoing acts and omissions, the Plaintiff suffered from life-
12 threatening NHL and suffered severe and personal injuries, which are permanent and lasting in nature,
13 physical pain and mental anguish, including diminished enjoyment of life, and financial expenses for
14 hospitalization and medical care.

15 196. As a result of the foregoing acts and omissions, Plaintiff has suffered and incurred
16 damages, including medical expenses and other economic and non-economic damages.

17 197. WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in
18 Plaintiff's favor for compensatory and punitive damages, together with interest, costs herein incurred,
19 attorneys' fees and all relief as this Court deems just and proper. Additionally, Plaintiff demands a
20 jury trial on all issues contained herein.

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24
25 **FIFTH CAUSE OF ACTION**
26 **(BREACH OF IMPLIED WARRANTIES)**
27
28

1 198. Plaintiff repeats, reiterates, and re-alleges each and every allegation of this Complaint
2 contained in each of the foregoing paragraphs inclusive, with the same force and effect all if more fully
3 set forth herein.

4 199. At all times herein mentioned, the Defendants manufactured, distributed, compounded,
5 recommended, merchandized, advertised, promoted, and sold Roundup and/or have recently acquired
6 the Defendants who have manufactured, compound portrayed, distributed, recommended,
7 merchandized, advertised, promoted, and sold Roundup, as a broad spectrum herbicide. These actions
8 were under the ultimate control and supervision of Defendants.

9 200. At the time Defendants marketed, sold, and distributed Roundup for use by Plaintiff,
10 Defendants knew of Roundup's intended use and impliedly warranted the product to be or
11 merchantable quality and safe and fit for this use.

12 201. The Defendants impliedly represented and warranted to Plaintiff and users of Roundup,
13 the agricultural community, and/or the EPA that Roundup was safe and of merchantable quality and fit
14 for the ordinary purpose for which it was to be used.

15 202. These representations and warranties were false, misleading, and inaccurate in that
16 Roundup was unsafe, unreasonably dangerous, not of merchantable quality, and defective.

17 203. Plaintiff and/or the EPA did rely on said implied warranty of merchantability of fitness
18 for particular use and purpose.

19 204. Plaintiff reasonably relied upon the skill and judgment of Defendants as to whether
20 Roundup was of merchantable quality and safe and fit for its intended use.

21 205. Roundup was injected into the stream of commerce by the Defendants in a defective,
22 unsafe, and inherently dangerous condition, and the products' materials were expected to and did reach
23 users, handlers, and persons coming into contact with said products without substantial change in the
24 condition in which they were sold.

25 206. The Defendants breached the aforesaid implied warranties, as their herbicide Roundup
26 was not fit for its intended purposes and uses.

27 207. As a result of the foregoing acts and omissions, Plaintiff suffered from NHL and
28 Plaintiff suffered severe and personal injuries which are permanent and lasting in nature, physical pain

1 and mental anguish, including diminished enjoyment of life, financial expenses for hospitalization and
2 medical care, including medical expenses and other economic, and non-economic damages.

3 208. WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in
4 Plaintiff's favor for compensatory and punitive damages, together with interest, costs herein incurred,
5 attorneys' fees and all relief as this Court deems just and proper. Additionally, Plaintiff demands a jury
6 trial on all issues contained herein.

7
8 **SIXTH CAUSE OF ACTION**
9 **(NEGLIGENT MISREPRESENTATION)**

10 209. Plaintiff repeats, reiterates, and re-alleges each and every allegation of this Complaint
11 contained in each of the foregoing paragraphs inclusive, with the same force and effect as if more fully
12 set forth herein.

13 210. Defendants represented to Plaintiff, the EPA, and the public in general that said product,

14 Roundup:

- 15 a) had been tested and found to be safe and effective for ordinary use as a broad spectrum
herbicide;
- 16 b) was safer than regular household items and contained no carcinogenic and/or genotoxic
17 properties;
- 18 c) that there is no evidence that glyphosate was carcinogenic and/or genotoxic;
- 19 d) that regulatory authorities and independent experts were, at all relevant times, in
20 agreement that there is and was no evidence that glyphosate is carcinogenic and/or genotoxic.

21 211. The representations made by Defendants were, in fact, false.

22 212. Defendants failed to exercise ordinary care in the representation of Roundup, while
23 involved in its manufacture, sale, testing, quality assurance, quality control, and/or distribution of said
24 product into interstate commerce, in that Defendants negligently misrepresented:

- 25 a) Roundup's high risk of unreasonable, dangerous side effects.
- 26 b) That credible evidence existed that Roundup was carcinogenic
- 27 c) That many regulatory authorities and/or independent experts did not agree that no
28 evidence of glyphosate's carcinogenicity existed.

1 213. Defendants breached their duty in representing Roundup's serious side effects, and the
2 nature of the evidence of these side effects, to the medical and healthcare community, to the Plaintiff,
3 the EPA and the public in general.

4 214. As a result of the foregoing acts and omissions, the Plaintiff developed NHL and
5 suffered severe and personal injuries which are permanent and lasting in nature, physical pain and
6 mental anguish, including diminished enjoyment of life and financial expenses for hospitalization and
7 medical care.

8 215. As a result of the foregoing acts and omissions, Plaintiff has suffered and incurred
9 damages, including medical expenses and other economic and non-economic damages.

10 216. WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in
11 Plaintiff's favor for compensatory and punitive damages, together with interest, costs herein incurred,
12 attorneys' fees and all relief as this Court deems just and proper. Additionally, Plaintiff demands a
13 jury trial on all issues contained herein.

14
15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff demands judgment against the Defendants on each of the above-referenced
17 claims and causes of action and as follows:

18 1. Awarding compensatory damages in excess of the jurisdictional amount, including, but not
19 limited to pain, suffering, emotional distress, loss of enjoyment of life, and other non-economic
20 damages in an amount to be determined at trial of this action;

21 2. Awarding compensatory damages to Plaintiff for past and future damages, including, but not
22 limited to, Plaintiff's pain and suffering and for severe and permanent personal injuries sustained by
23 the Plaintiff including health care costs and economic loss;

24 3. Awarding economic damages in the form of medical expenses, out of pocket expenses, lost
25 earnings and other economic damages in an amount to be determine at trial of this action;

26 4. Punitive and/or exemplary damages for the wanton, willful, fraudulent, and reckless acts of the
27 Defendants who demonstrated a complete disregard and reckless indifference for the safety and
28

1 welfare of the general public and to the Plaintiff in an amount sufficient to punish Defendants and
2 deter future similar conduct, to the extent allowed by applicable law;

- 3 5. Pre-judgment interest;
4 6. Post-judgment interest;
5 7. Awarding Plaintiff reasonable attorneys' fees;
6 8. Awarding Plaintiff the costs of these proceedings; and
7 9. Such other and further relief as this Court deems just and proper.

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9 **DEMAND FOR JURY TRIAL**

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11 Plaintiff hereby demands trial by jury as to all issues.

12 Dated: October 9, 2015

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14 Respectfully submitted,

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