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8
9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 ANTHONY HARRIS and JULIE
12 HARRIS,
13 *Plaintiffs,*
14 v.
15 MONSANTO COMPANY and DOES 1-
16 50,
17 *Defendants.*

Case No.: '16CV2275 LAB RBB
[Case No.]

COMPLAINT FOR DAMAGES
JURY TRIAL DEMANDED

18
19 **COMPLAINT**

20 Plaintiffs, Anthony Harris and Julie Harris (“Plaintiffs”) by and through their
21 undersigned attorneys, hereby bring this Complaint for damages against Defendants
22 Monsanto Company and John Does 1-50, and allege the following:
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1
2 **INTRODUCTION**

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

8 2. Plaintiffs maintain that Roundup® and/or glyphosate is defective, dangerous
9 to human health, unfit and unsuitable to be marketed and sold in commerce, and lacked
10 proper warnings and directions as to the dangers associated with its use. Plaintiffs'
11 injuries were avoidable.

12
13 **JURISDICTION AND VENUE**

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

19 2. The amount in controversy between Plaintiffs and Defendants exceeds
20 \$75,000, exclusive of interest and cost.

21 3. This Court also has supplemental jurisdiction pursuant to 28 U.S.C. § 1367.

22 4. Venue is proper within this district pursuant to 28 U.S.C. §1391 because a
23 substantial part of the events or omissions giving rise to this claim occurred within this
24 district. The Defendants conduct business here and are subject to personal jurisdiction in
25 this district. Defendant's sell, market, and/or distribute Roundup® within the District of
26 California.

1 5. Monsanto maintains sufficient contacts with the State of California such that
2 this Court’s exercise of personal jurisdiction over it does not offend traditional notions of
3 fair play and substantial justice. Additionally, Monsanto caused the Plaintiff’s tortious
4 injury by acts and omissions in this judicial district and caused tortious injury in this
5 district by acts and omissions outside this district while regularly doing and soliciting
6 business, engaging in a persistent course of conduct, and deriving substantial revenue
7 from goods used or consumed and services rendered in this judicial district.

8
9 **PARTIES**

10 6. Plaintiff, Anthony Harris, is a natural person and at all relevant times a
11 resident of San Diego County, California. Plaintiff, Julie Harris was at all relevant times
12 the lawful spouse of Anthony Harris. Plaintiffs bring this action for personal injuries
13 sustained by exposure to Roundup® (“Roundup”) containing the active ingredient
14 glyphosate and the surfactant POEA. As a direct and proximate result of being exposed to
15 Roundup, Plaintiff developed non-Hodgkin’s lymphoma.

16 7. Defendant Monsanto Company (“Monsanto”) is a Delaware corporation
17 with its headquarters and principal place of business in St. Louis, Missouri.

18 8. At all times relevant to this complaint, Monsanto was the entity that
19 discovered the herbicidal properties of glyphosate and the manufacturer of Roundup®.

20 9. “Roundup” refers to all formulations of Defendants’ roundup products,
21 including, but not limited to, Roundup Concentrate Poison Ivy and Tough Brush Killer 1,
22 Roundup Custom Herbicide, Roundup D-Pak herbicide, Roundup Dry Concentrate,
23 Roundup Export Herbicide, Roundup Fence & Hard Edger 1, Roundup Garden Foam
24 Weed & Grass Killer, Roundup Grass and Weed Killer, Roundup Herbicide, Roundup
25 Original 2k herbicide, Roundup Original II Herbicide, Roundup Pro Concentrate,
26 Roundup Prodry Herbicide, Roundup Promax, Roundup Quik Stik Grass and Weed
27 Killer, Roundup Quikpro Herbicide, Roundup Rainfast Concentrate Weed & Grass
28 Killer, Roundup Rainfast Super Concentrate Weed & Grass Killer, Roundup Ready-to-

1 Use Extended Control Weed & Grass Killer 1 Plus Weed Preventer, Roundup Ready-to-
2 Use Weed & Grass Killer, Roundup Ready-to-Use Weed and Grass Killer 2, Roundup
3 Ultra Dry, Roundup Ultra Herbicide, Roundup Ultramax, Roundup VM Herbicide,
4 Roundup Weed & Grass Killer Concentrate, Roundup Weed & Grass Killer Concentrate
5 Plus, Roundup Weed & Grass killer Ready-to-Use Plus, Roundup Weed & Grass Killer
6 Super Concentrate, Roundup Weed & Grass Killer1 Ready-to-Use, Roundup WSD Water
7 Soluble Dry Herbicide Deploy Dry Herbicide, or any other formulation of containing the
8 active ingredient glyphosate.

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

16 11. Defendant Monsanto Company and JOHN DOES 1-50 are collectively
17 referred to as “Monsanto” or “Defendants.”

18 12. Defendants advertise and sell goods, specifically Roundup, in San Diego
19 County, California.

20 13. Defendants transacted and conducted business within the State of California
21 that relates to the allegations in this Complaint.

22 14. Defendants derived substantial revenue from goods and products used in the
23 State of California.

24 15. Defendants expected or should have expected their acts to have
25 consequences within the State of California, and derived substantial revenue from
26 interstate commerce.

1 16. Defendants engaged in the business of designing, developing,
2 manufacturing, testing, packaging, marketing, distributing, labeling, and/or selling
3 Roundup.

4 17. Defendants are authorized to do business in California and derive substantial
5 income from doing business in this state.

6 18. Upon information and belief, Defendants purposefully availed themselves of
7 the privilege of conducting activities with the State of California, thus invoking the
8 benefits and protections of its laws.

9 19. Upon information and belief, Defendants did act together to design, sell,
10 advertise, manufacture and/or distribute Roundup, with full knowledge of its dangerous
11 and defective nature.

12
13 **FACTUAL ALLEGATIONS**

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

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

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

26 23. By 2001, glyphosate had become the most-used active ingredient in American
27 agriculture with 85–90 millions of pounds used annually. That number grew to 185 million
28 pounds by 2007. As of 2013, glyphosate was the world’s most widely used herbicide.

1 24. Glyphosate is a “non-selective” herbicide that kills indiscriminately based
2 only on whether a given organism produces a specific enzyme, 5-enolpyruvylshikimic
3 acid-3-phosphate synthase, known as EPSP synthase.

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

7 26. Sprayed as a liquid, plants absorb glyphosate directly through their leaves,
8 stems, and roots, and detectable quantities accumulate in the plant tissues.

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

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

21 29. Monsanto’s glyphosate products are registered in 130 countries and
22 approved for use on over 100 different crops. They are ubiquitous in the environment.
23 Numerous studies confirm that glyphosate is found in rivers, streams, and groundwater in
24 agricultural areas where Roundup® is used. It has been found in food, in the urine of
25 agricultural workers, and even in the urine of urban dwellers who are not in direct contact
26 with glyphosate.

27 30. On March 20, 2015, the International Agency for Research on Cancer
28 (“IARC”), an agency of the World Health Organization (“WHO”), issued an evaluation

1 of several herbicides, including glyphosate. That evaluation was based, in part, on studies
2 of exposures to glyphosate in several countries around the world, and it traces the health
3 implications from exposure to glyphosate since 2001.

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

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

12 33. The IARC evaluation is significant. It confirms what has been believed for
13 years: that glyphosate is toxic to humans.

14 34. Nevertheless, Monsanto, since it began selling Roundup®, has represented it
15 as safe to humans and the environment. Indeed, Monsanto has repeatedly proclaimed and
16 continues to proclaim to the world, and particularly to United States consumers, that
17 glyphosate-based herbicides, including Roundup®, create no unreasonable risks to
18 human health or to the environment.

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

24 36. For nearly 40 years, farms across the world have used Roundup® without
25 knowing of the dangers its use poses. That is because when Monsanto first introduced
26 Roundup®, it touted glyphosate as a technological breakthrough: it could kill almost
27 every weed without causing harm either to people or to the environment. Of course,
28 history has shown that not to be true. According to the WHO, the main chemical

1 ingredient of Roundup®—glyphosate—is a probable cause of cancer. Those most at risk
2 are farm workers and other individuals with workplace exposure to Roundup®, such as
3 workers in garden centers, nurseries, and landscapers. Monsanto assured the public that
4 Roundup® was harmless. In order to prove this, Monsanto championed falsified data and
5 attacked legitimate studies that revealed its dangers. Monsanto led a prolonged campaign
6 of misinformation to convince government agencies, farmers and the general population
7 that Roundup® was safe.

8 9 **REGISTRATION OF HERBICIDES UNDER FEDERAL LAW**

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

15 38. The EPA requires as part of the registration process, among other
16 requirements, a variety of tests to evaluate the potential for exposure to pesticides,
17 toxicity to people and other potential non-target organisms, and other adverse effects on
18 the environment. Registration by the EPA, however, is not an assurance or finding of
19 safety. The determination the Agency must make in registering or re-registering a product
20 is not that the product is “safe,” but rather that use of the product in accordance with its
21 label directions “will not generally cause unreasonable adverse effects on the
22 environment.” 7 U.S.C. § 136a(c)(5)(D).

23 39. FIFRA defines “unreasonable adverse effects on the environment” to mean
24 “any unreasonable risk to man or the environment, taking into account the economic,
25 social, and environmental costs and benefits of the use of any pesticide.” 7 U.S.C. §
26 136(bb). FIFRA thus requires EPA to make a risk/benefit analysis in determining
27 whether a registration should be granted or allowed to continue to be sold in commerce.
28

1 40. The EPA and the State of California registered Roundup® for distribution,
2 sale, and manufacture in the United States and the State of California.

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

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

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

22
23 **SCIENTIFIC FRAUD UNDERLYING THE MARKETING AND SALE OF**
24 **GLYPHOSATE/ROUNDUP**

25 44. Based on early studies that glyphosate could cause cancer in laboratory
26 animals, the EPA originally classified glyphosate as *possibly carcinogenic to humans*
27 (Group C) in 1985. After pressure from Monsanto, including contrary studies it provided
28

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

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

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

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

22 48. Three top executives of IBT were convicted of fraud in 1983.

23 49. In the second incident of data falsification, Monsanto hired Craven
24 Laboratories in 1991 to perform pesticide and herbicide studies, including their product,
25 Roundup®. In that same year, the owner of Craven Laboratories and three of its
26 employees were indicted, and later convicted, of fraudulent laboratory practices in the
27 testing of pesticides and herbicides.

28

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

3
4 **THE IMPORTANCE OF ROUNDUP® TO MONSANTO'S MARKET**

5 **DOMINANCE PROFITS**

6 51. The success of Roundup® was key to Monsanto's continued reputation and
7 dominance in the marketplace. Largely due to the success of Roundup® sales,
8 Monsanto's agriculture division was out-performing its chemicals division's operating
9 income, and that gap increased yearly. But with its patent for glyphosate expiring in the
10 United States in the year 2000, Monsanto needed a strategy to maintain its Roundup®
11 market dominance and to ward off impending competition.

12 52. In response, Monsanto began the development and sale of genetically
13 engineered Roundup Ready® seeds in 1996. Since Roundup Ready® crops are resistant
14 to glyphosate; farmers can spray Roundup® onto their fields during the growing season
15 without harming the crop. This allowed Monsanto to expand its market for Roundup®
16 even further; by 2000, Monsanto's biotechnology seeds were planted on more than 80
17 million acres worldwide and nearly 70% of American soybeans were planted from
18 Roundup Ready® seeds. It also secured Monsanto's dominant share of the
19 glyphosate/Roundup® market through a marketing strategy that coupled proprietary
20 Roundup Ready® seeds with continued sales of its Roundup® herbicide.

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

1 **MONSANTO'S FALSE REPRESENTATIONS REGARDING THE SAFETY OF**
2 **ROUNDUP®**

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

- 10 a) Remember that environmentally friendly Roundup herbicide is
11 biodegradable. It won't build up in the soil so you can use Roundup with
12 confidence along customers' driveways, sidewalks and fences ...
- 13 b) And remember that Roundup is biodegradable and won't build up in the soil.
14 That will give you the environmental confidence you need to use Roundup
15 everywhere you've got a weed, brush, edging or trimming problem.
- 16 c) Roundup biodegrades into naturally occurring elements.
- 17 d) Remember that versatile Roundup herbicide stays where you put it. That
18 means there's no washing or leaching to harm customers' shrubs or other
19 desirable vegetation.
- 20 e) This non-residual herbicide will not wash or leach in the soil. It ... stays
21 where you apply it.
- 22 f) You can apply Accord with “confidence because it will stay where you put
23 it” it bonds tightly to soil particles, preventing leaching. Then, soon after
24 application, soil microorganisms biodegrade Accord into natural products.
- 25 g) Glyphosate is less toxic to rats than table salt following acute oral ingestion.
- 26 h) Glyphosate's safety margin is much greater than required. It has over a
27 1,000-fold safety margin in food and over a 700-fold safety margin for
28 workers who manufacture it or use it.

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

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

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

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

13 * * *

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

17 * * *

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

21 * * *

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

25 * * *

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

28 * * *

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

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

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

9
10 **CLASSIFICATIONS AND ASSESSMENTS OF GLYPHOSATE**

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

17 59. The established procedure for IARC Monograph evaluations is described in
18 the IARC Programs Preamble. Evaluations are performed by panels of international
19 experts, selected on the basis of their expertise and the absence of actual or apparent
20 conflicts of interest.

21 60. One year before the Monograph meeting, the meeting is announced and
22 there is a call both for data and for experts. Eight months before the Monograph meeting,
23 the Working Group membership is selected and the sections of the Monograph are
24 developed by the Working Group members. One month prior to the Monograph meeting,
25 the call for data is closed and the various draft sections are distributed among Working
26 Group members for review and comment. Finally, at the Monograph meeting, the
27 Working Group finalizes review of all literature, evaluates the evidence in each category,
28 and completes the overall evaluation. Within two weeks after the Monograph meeting,

1 the summary of the Working Group findings are published in *Lancet Oncology*, and
2 within a year after the meeting, the final Monograph is finalized and published.

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

8 62. In March 2015, IARC reassessed glyphosate. The summary published in *The*
9 *Lancet Oncology* reported that glyphosate is a Group 2A agent and probably carcinogenic
10 in humans.

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

20 64. The studies considered the following exposure groups: occupational
21 exposure of farmers and tree nursery workers in the United States, forestry workers in
22 Canada and Finland and municipal weed-control workers in the United Kingdom; and
23 para-occupational exposure in farming families.

24 65. Glyphosate was identified as the second-most used household herbicide in
25 the United States for weed control between 2001 and 2007 and the most heavily used
26 herbicide in the world in 2012.

1 66. Exposure pathways are identified as air (especially during spraying), water,
2 and food. Community exposure to glyphosate is widespread and found in soil, air, surface
3 water, and groundwater, as well as in food.

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

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

11 69. The IARC Working Group also found that glyphosate caused DNA and
12 chromosomal damage in human cells. One study in community residents reported
13 increases in blood markers of chromosomal damage (micronuclei) after glyphosate
14 formulations were sprayed.

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

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

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

27 73. The IARC Working Group also noted genotoxic, hormonal, and enzymatic
28 effects in mammals exposed to glyphosate. Essentially, glyphosate inhibits the

1 biosynthesis of aromatic amino acids, which leads to several metabolic disturbances,
2 including the inhibition of protein and secondary product biosynthesis and general
3 metabolic disruption.

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

10
11 **EARLIER EVIDENCE OF GLYPHOSATE'S DANGERS TO HUMAN HEALTH**

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

- 16 a) Glyphosate is released to the environment in its use as a herbicide for
17 controlling woody and herbaceous weeds on forestry, right-of-way, cropped
18 and non-cropped sites. These sites may be around water and in wetlands.
- 19 b) It may also be released to the environment during its manufacture,
20 formulation, transport, storage, disposal and cleanup, and from spills. Since
21 glyphosate is not a listed chemical in the Toxics Release Inventory, data on
22 releases during its manufacture and handling are not available.
- 23 c) Occupational workers and home gardeners may be exposed to glyphosate by
24 inhalation and dermal contact during spraying, mixing, and cleanup. They
25 may also be exposed by touching soil and plants to which glyphosate was
26 applied. Occupational exposure may also occur during glyphosate's
27 manufacture, transport storage, and disposal.
- 28

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

5
6 **RECENT WORLDWIDE BANS ON ROUNDUP®/GLYPHOSATE**

7 77. Several countries around the world have instituted bans on the sale of
8 Roundup® and other glyphosate-containing herbicides, both before and since IARC first
9 announced its assessment for glyphosate in March 2015, and more countries undoubtedly
10 will follow suit in light of the as the dangers of the use of Roundup® are more widely
11 known. The Netherlands issued a ban on all glyphosate-based herbicides in April 2014,
12 including Roundup®, which takes effect by the end of 2015. In issuing the ban, the Dutch
13 Parliament member who introduced the successful legislation stated: “Agricultural
14 pesticides in user-friendly packaging are sold in abundance to private persons. In garden
15 centers, Roundup® is promoted as harmless, but unsuspecting customers have no idea
16 what the risks of this product are. Especially children are sensitive to toxic substances
17 and should therefore not be exposed to it.”

18 78. The Brazilian Public Prosecutor in the Federal District requested that the
19 Brazilian Justice Department suspend the use of glyphosate.

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

22 80. Bermuda banned both the private and commercial sale of glyphosates,
23 including Roundup®. The Bermuda government explained its ban as follows: “Following
24 a recent scientific study carried out by a leading cancer agency, the importation of weed
25 spray ‘Roundup’ has been suspended.”

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

1 82. The government of Columbia announced its ban on using Roundup® and
2 glyphosate to destroy illegal plantations of coca, the raw ingredient for cocaine, because
3 of the WHO's finding that glyphosate is probably carcinogenic.
4

5 **PLAINTIFF'S EXPOSURE TO ROUNDUP®**

6 83. Plaintiff, Anthony Harris used Roundup extensively in his home garden in
7 San Diego from 2008-2010. Plaintiff followed all safety and precautionary warnings
8 during the course of use.

9 84. Following his exposure to Roundup, Plaintiff, Anthony Harris was
10 diagnosed with NHL in January 2015.

11 85. As a result of his injury, Plaintiff has incurred significant economic and non-
12 economic damages, including but not limited to, over 20 rounds of chemotherapy and
13 stem cell replacement.
14

15 **EQUITABLE TOLLING OF APPLICABLE STATUTE OF LIMITATIONS**

16 86. Plaintiffs incorporate by reference all prior paragraphs of this Complaint as
17 if fully set forth herein.

18 87. The running of any statute of limitations has been tolled by reason of
19 Defendants' fraudulent concealment. Defendants, through their affirmative
20 misrepresentations and omissions, actively concealed from Plaintiffs the true risks
21 associated with Roundup and glyphosate. As of August 2016, Defendants continue to
22 represent to the public that glyphosate does not cause cancer.

23 88. As a result of Defendants' actions, Plaintiffs were unaware, and could not
24 reasonably know or have learned through reasonable diligence that Roundup and/or
25 glyphosate contact, exposed Plaintiff, Anthony Harris to the risks alleged herein and that
26 those risks were the direct and proximate result of Defendants' acts and omissions.
27
28

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

9 90. Plaintiffs had no knowledge that Defendants were engaged in the
10 wrongdoing alleged herein. Because of the fraudulent acts of concealment of wrongdoing
11 by Defendants, Plaintiffs could not have reasonably discovered the wrongdoing at any
12 time prior. Also, the economics of this fraud should be considered. Defendants had the
13 ability to and did spend enormous amounts of money in furtherance of their purpose of
14 marketing, promoting and/or distributing a profitable herbicide, notwithstanding the
15 known or reasonably known risks. Plaintiffs and medical professionals could not have
16 afforded and could not have possibly conducted studies to determine the nature, extent,
17 and identity of related health risks, and were forced to rely on only the Defendants'
18 representations. Accordingly, Defendants are precluded by the discovery rule and/or the
19 doctrine of fraudulent concealment from relying upon any statute of limitations.
20

21 **FIRST CAUSE OF ACTION**
22 **(STRICT LIABILITY – DESIGN DEFECT)**

23 91. Plaintiffs incorporate by reference each and every allegation set forth in the
24 preceding paragraphs as if fully stated herein.

25 92. Plaintiffs bring this strict liability claim against Defendant for defective
26 design.

27 93. At all times relevant to this litigation, Defendant engaged in the business of
28 testing, developing, designing, manufacturing, marketing, selling, distributing, and

1 promoting Roundup® products, which are defective and unreasonably dangerous to
2 consumers, including Plaintiffs, thereby placing Roundup® products into the stream of
3 commerce. These actions were under the ultimate control and supervision of Defendant.
4 At all times relevant to this litigation, Defendant designed, researched, developed,
5 manufactured, produced, tested, assembled, labeled, advertised, promoted, marketed,
6 sold, and distributed the Roundup® products used by the Plaintiff, as described above.

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

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

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

21 97. Defendant's Roundup® products, as researched, tested, developed,
22 designed, licensed, manufactured, packaged, labeled, distributed, sold, and marketed by
23 Defendant were defective in design and formulation in that when they left the hands of
24 Defendant's manufacturers and/or suppliers, the foreseeable risks exceeded the alleged
25 benefits associated with their design and formulation.

26 98. At all times relevant to this action, Defendant knew or had reason to know
27 that its Roundup® products were defective and were inherently dangerous and unsafe
28 when used in the manner instructed and provided by Defendant.

1 99. Therefore, at all times relevant to this litigation, Defendant's Roundup®
2 products, as researched, tested, developed, designed, licensed, manufactured, packaged,
3 labeled, distributed, sold and marketed by Defendant were defective in design and
4 formulation, in one or more of the following ways:

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

1 100. Plaintiff was exposed to Defendant's Roundup® products by purchasing and
2 using them in his garden, as described above, without knowledge of their dangerous
3 characteristics.

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

7 102. Plaintiff could not have reasonably discovered the defects and risks
8 associated with Roundup® or glyphosate-containing products before or at the time of
9 exposure.

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

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

21 105. Defendant's defective design of its Roundup® products was willful, wanton,
22 fraudulent, malicious, and conducted with reckless disregard for the health and safety of
23 users of the Roundup® products, including the Plaintiffs herein.

24 106. Therefore, as a result of the unreasonably dangerous condition of its
25 Roundup® products, Defendant is strictly liable to Plaintiffs.

26 107. The defects in Defendant's Roundup® products were substantial and
27 contributing factors in causing Plaintiff's grave injuries, and, but for Defendant's
28 misconduct and omissions, Plaintiff would not have sustained his injuries.

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

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

12 110. WHEREFORE, Plaintiffs respectfully request that this Court enter judgment
13 in Plaintiffs' favor for compensatory and punitive damages, together with interest, costs
14 herein incurred, attorneys' fees and all such other and further relief as this Court deems
15 just and proper. Plaintiffs demand a jury trial on all issues contained herein.

16
17 **SECOND CAUSE OF ACTION**

18 **(STRICT LIABILITY – FAILURE TO WARN)**

19 111. Plaintiff incorporates by reference each and every allegation set forth in the
20 preceding paragraphs as if fully stated herein.

21 112. Plaintiff brings this strict liability claim against Defendant for failure to
22 warn.

23 113. At all times relevant to this litigation, Defendant engaged in the business of
24 testing, developing, designing, manufacturing, marketing, selling, distributing, and
25 promoting Roundup® products, which are defective and unreasonably dangerous to
26 consumers, including Plaintiff, because they do not contain adequate warnings or
27 instructions concerning the dangerous characteristics of Roundup® and specifically, the
28

1 active ingredient glyphosate. These actions were under the ultimate control and
2 supervision of Defendant.

3 114. Defendant researched, developed, designed, tested, manufactured, inspected,
4 distributed, marketed, promoted, sold, and otherwise released into the stream of
5 commerce its Roundup® products, and in the course of same, directly advertised or
6 marketed the products to consumers and end users, including the Plaintiff, and persons
7 responsible for consumers (such as employers), and therefore had a duty to warn of the
8 risks associated with the use of Roundup® and glyphosate-containing products.

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

16 116. At the time of manufacture, Defendant could have provided the warnings or
17 instructions regarding the full and complete risks of Roundup® and glyphosate-
18 containing products because it knew or should have known of the unreasonable risks of
19 harm associated with the use of and/or exposure to such products.

20 117. At all times relevant to this litigation, Defendant failed to investigate, study,
21 test, or promote the safety or to minimize the dangers to users and consumers of its
22 product and to those who would foreseeably use or be harmed by Defendant's herbicides,
23 including Plaintiff.

24 118. Despite the fact that Defendant knew or should have known that Roundup®
25 posed a grave risk of harm, it failed to exercise reasonable care to warn of the dangerous
26 risks associated with use and exposure. The dangerous propensities of its products and
27 the carcinogenic characteristics of glyphosate, as described above, were known to
28 Defendant, or scientifically knowable to Defendant through appropriate research and

1 testing by known methods, at the time it distributed, supplied or sold the product, and not
2 known to end users and consumers, such as Plaintiff.

3 119. Defendant knew or should have known that its products created significant
4 risks of serious bodily harm to consumers, as alleged herein, and Defendant failed to
5 adequately warn consumers and reasonably foreseeable users of the risks of exposure to
6 its products. Defendant has wrongfully concealed information concerning the dangerous
7 nature of Roundup® and its active ingredient glyphosate, and further made false and/or
8 misleading statements concerning the safety of Roundup® and glyphosate.

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

14 121. Plaintiff was exposed to Defendant's Roundup® products by purchasing and
15 using them in his garden, as described above, without knowledge of their dangerous
16 characteristics.

17 122. At all times relevant to this litigation, Plaintiff used and/or was exposed to
18 the use of Defendant's Roundup® products in their intended or reasonably foreseeable
19 manner without knowledge of their dangerous characteristics.

20 123. Plaintiff could not have reasonably discovered the defects and risks
21 associated with Roundup® or glyphosate-containing products prior to or at the time of
22 Plaintiff's exposure. Plaintiff relied upon the skill, superior knowledge, and judgment of
23 Defendant.

24 124. Defendant knew or should have known that the minimal warnings
25 disseminated with its Roundup® products were inadequate, but they failed to
26 communicate adequate information on the dangers and safe use/exposure and failed to
27 communicate warnings and instructions that were appropriate and adequate to render the
28

1 products safe for their ordinary, intended and reasonably foreseeable uses, including
2 agricultural and landscaping applications.

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

13 126. To this day, Defendant has failed to adequately and accurately warn of the
14 true risks of Plaintiff's injuries associated with the use of and exposure to Roundup® and
15 its active ingredient glyphosate, a probable carcinogen.

16 127. As a result of their inadequate warnings, Defendant's Roundup® products
17 were defective and unreasonably dangerous when they left the possession and/or control
18 of Defendant, were distributed by Defendant, and used by Plaintiff.

19 128. Defendant is liable to Plaintiff for injuries caused by its negligent or willful
20 failure, as described above, to provide adequate warnings or other clinically relevant
21 information and data regarding the appropriate use of its products and the risks associated
22 with the use of or exposure to Roundup® and glyphosate.

23 129. The defects in Defendant's Roundup® products were substantial and
24 contributing factors in causing Plaintiff's injuries, and, but for Defendant's misconduct
25 and omissions, Plaintiff would not have sustained his injuries.

26 130. Had Defendant provided adequate warnings and instructions and properly
27 disclosed and disseminated the risks associated with its Roundup® products, Plaintiff
28

1 could have avoided the risk of developing injuries as alleged herein obtained alternative
2 herbicides.

3 131. As a direct and proximate result of Defendant placing its defective
4 Roundup® products into the stream of commerce, Plaintiff has suffered and continues to
5 suffer severe injuries, and has endured physical pain and discomfort, as well as economic
6 hardship, including considerable financial expenses for medical care and treatment.
7 Plaintiff will continue to incur these expenses in the future.

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

12
13 **THIRD CAUSE OF ACTION**

14 **(NEGLIGENCE)**

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

17 134. Defendant, directly or indirectly, caused Roundup® products to be sold,
18 distributed, packaged, labeled, marketed, promoted, and/or used by Plaintiff, Anthony
19 Harris.

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

25 136. At all times relevant to this litigation, Defendant had a duty to exercise
26 reasonable care in the marketing, advertisement, and sale of the Roundup® products.
27 Defendant's duty of care owed to consumers and the general public included providing
28

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

4 137. At all times relevant to this litigation, Defendant knew or, in the exercise of
5 reasonable care, should have known of the hazards and dangers of Roundup® and
6 specifically, the carcinogenic properties of the chemical glyphosate.

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

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

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

24 141. Despite its ability and means to investigate, study, and test its products and
25 to provide adequate warnings, Defendant has failed to do so. Indeed, Defendant has
26 wrongfully concealed information and has further made false and/or misleading
27 statements concerning the safety and/or exposure to Roundup® and glyphosate.

28 142. Defendant's negligence included:

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

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

19 143. Defendant knew and/or should have known that it was foreseeable that
20 consumers such as Plaintiff would suffer injuries as a result of Defendant’s failure to
21 exercise ordinary care in the manufacturing, marketing, labeling, distribution, and sale of
22 Roundup®.

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

26 145. Defendant’s negligence was the proximate cause of the injuries, harm, and
27 economic losses that Plaintiffs suffered, and will continue to suffer, as described herein.
28

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

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

12 148. WHEREFORE, Plaintiffs respectfully requests that this Court enter
13 judgment in Plaintiffs' favor for compensatory and punitive damages, together with
14 interest, costs herein incurred, attorneys' fees and all such other and further relief as this
15 Court deems just and proper. Plaintiffs also demand a jury trial on the issues contained
16 herein.

17
18 **FOURTH CAUSE OF ACTION**
19 **(BREACH OF IMPLIED WARRANTIES)**

20 149. Plaintiffs incorporate by reference each and every allegation set forth in the
21 preceding paragraphs as if fully stated herein.

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

27 151. Before the time that Plaintiff was exposed to the use of the aforementioned
28 Roundup® products, Defendant impliedly warranted to its consumers—including

1 Plaintiff—that its Roundup® products were of merchantable quality and safe and fit for
2 the use for which they were intended; specifically, as horticultural herbicides.

3 152. Defendant, however, failed to disclose that Roundup® has dangerous
4 propensities when used as intended and that the use of and/or exposure to Roundup® and
5 glyphosate-containing products carries an increased risk of developing severe injuries,
6 including Plaintiff’s injuries.

7 153. Plaintiff reasonably relied upon the skill, superior knowledge, and judgment
8 of Defendant and upon its implied warranties that the Roundup® products were of
9 merchantable quality and fit for their intended purpose or use.

10 154. Upon information and belief, Plaintiff was at all relevant times in privity
11 with Defendant.

12 155. Plaintiff is the intended third-party beneficiary of implied warranties made
13 by Defendant to the purchasers of its horticultural herbicides, and as such Plaintiff is
14 entitled to assert this claim.

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

18 157. At all times relevant to this litigation, Defendant was aware that consumers
19 and users of its products, including Plaintiff, would use Roundup® products as marketed
20 by Defendant, which is to say that Plaintiff was a foreseeable user of Roundup®.

21 158. Defendant intended that its Roundup® products be used in the manner in
22 which Plaintiff in fact used them and Defendant impliedly warranted each product to be
23 of merchantable quality, safe, and fit for this use, despite the fact that Roundup® was not
24 adequately tested or researched.

25 159. In reliance upon Defendant’s implied warranty, Plaintiff used Roundup® as
26 instructed and labeled and in the foreseeable manner intended, recommended, promoted
27 and marketed by Defendant.

28

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

3 161. Defendant breached its implied warranty to Plaintiff in that its Roundup®
4 products were not of merchantable quality, safe, or fit for their intended use, or
5 adequately tested. Roundup® has dangerous propensities when used as intended and can
6 cause serious injuries, including those injuries complained of herein.

7 162. The harm caused by Defendant's Roundup® products far outweighed their
8 benefit, rendering the products more dangerous than an ordinary consumer or user would
9 expect and more dangerous than alternative products.

10 163. As a direct and proximate result of Defendant's wrongful acts and omissions
11 Plaintiff has suffered severe and permanent physical and emotional injuries. Plaintiff has
12 endured pain and suffering, have suffered economic loss (including significant expenses
13 for medical care and treatment) and will continue to incur these expenses in the future.

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

18
19 **FIFTH CAUSE OF ACTION**
20 **(BREACH OF EXPRESS WARRANTIES)**

21 165. Plaintiff incorporates by reference each and every allegation set forth in the
22 preceding paragraphs as if fully stated herein.

23 166. The law imposes a duty on Monsanto to be responsible in the event the product
24 sold is fit for the use and purposes intended.

25 167. Defendant breached its contractually assumed implied warranty by supplying
26 a product that caused Plaintiff's non-Hodgkin's lymphoma and related injuries.
27
28

1 168. Any warranty disclaimer or limitation of liability clause offered by Defendant
2 for a product as dangerous as Roundup would be unconscionable and unenforceable by
3 law.

4 169. As a result of the foregoing acts and omissions, Plaintiff suffered and incurred
5 damages, including medical expenses and other economic and non-economic damages.

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

10
11 **SIXTH CAUSE OF ACTION**

12 **(LOSS OF CONSORTIUM)**

13 171. Plaintiff incorporates by reference each and every allegation set forth in the
14 preceding paragraphs as if fully stated herein.

15 172. Plaintiffs were married at the time of Mr. Harris' injuries. Mrs. Harris is
16 entitled to Mr. Harris' comfort, care, affection, companionship, services, society, advice,
17 guidance, counsel, and consortium.

18 173. As a direct and proximate result of one or more of the wrongful acts or
19 omissions of the Defendants described above, Julie Harris has been and will be deprived
20 of Anthony Harris' comfort, care, affection, companionship, services, society, advice,
21 guidance, counsel and consortium.

22 174. Plaintiffs demand judgment against Defendants for compensatory, treble, and
23 punitive damages, together with interest, costs of suit, attorneys' fees, and all such other
24 relief as the Court deems proper.

25
26 **SEVENTH CAUSE OF ACTION**

27 **(PUNITIVE DAMAGES)**

1 175. Plaintiffs incorporate by reference each and every allegation set forth in the
2 preceding paragraphs as if fully stated herein.

3 176. At all times material hereto, the Defendants knew or should have known that
4 the subject product was inherently dangerous with respect to its health risks.

5 177. At all times material hereto, the Defendants attempted to misrepresent and did
6 misrepresent facts concerning the safety of the subject product.

7 178. Defendants' misrepresentations included knowingly withholding material
8 information from the public, including the Plaintiffs herein, concerning the safety of the
9 subject product.

10 179. At all times material hereto, the Defendants knew and recklessly disregarded
11 the fact that human exposure to Roundup can and does cause health hazards, including
12 NHL.

13 180. Notwithstanding the foregoing, the Defendants continued to aggressively
14 market and apply the subject product without disclosing the aforesaid risks.

15 181. Defendants knew of the subject product's defective and unreasonably
16 dangerous nature, as set forth herein, but continued to design, develop, manufacture,
17 market, distribute, sell, and apply it so as to maximize sales and profits at the expense of
18 the health and safety of the public, including the Plaintiffs herein, in conscious and/or
19 negligent disregard of the foreseeable harm caused by Roundup.

20 182. The Defendants intentionally concealed and/or recklessly failed to disclose to
21 the public, including the Plaintiffs herein, the potentially life threatening hazards of
22 Roundup in order to ensure continued and increased sales.

23 183. The Defendants' intentional and/or reckless failure to disclose information
24 deprived the Plaintiffs of necessary information to enable Plaintiffs to weigh the true risks
25 of using or being exposed to the subject product against its benefits.

26 184. As a direct and proximate result of the Defendants' conscious and deliberate
27 disregard for the rights and safety of consumers such as the Plaintiff, Plaintiff suffered
28 severe and permanent physical injuries. Plaintiff has endured substantial pain and suffering

1 and undergone extensive medical and surgical procedures. Plaintiffs have incurred
2 significant expenses for medical care and treatment, and will continue to incur such
3 expenses in the future. Plaintiffs lost past earnings and suffered a loss of earning capacity.
4 Plaintiff suffered and will continue to suffer economic loss, and has otherwise been
5 physically, emotionally and economically injured. Plaintiffs' injuries and damages are
6 permanent and will continue into the future.

7 185. The aforesaid conduct of the Defendants was committed with knowing,
8 conscious, and deliberate disregard for the rights and safety of consumers, including the
9 Plaintiffs herein, thereby entitling the Plaintiffs to punitive damages in an amount
10 appropriate to punish the Defendants and deter them from similar conduct in the future.
11

12 **LIMITATION ON ALLEGATIONS**

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

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

22 188. As alleged in this pleading, the Defendant violated U.S.C. § 136j and 40
23 C.F.R. § 156.10(a)(5) by distributing Roundup, which was misbranded pursuant to 7
24 U.S.C. § 136(g). Federal law specifically prohibits the distribution of a misbranded
25 herbicide.
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PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that the Court enter judgment in their favor and against Monsanto, on each of the above-referenced claims and causes of action as follows:

1. Awarding compensatory damages in excess of the jurisdictional amount, including, but not limited to pain, suffering, emotional distress, loss of enjoyment of life, and other non-economic damages in an amount to be determined at trial of this action;
2. Awarding compensatory damages to Plaintiffs for past and future damages, including, but not limited to, Plaintiffs’ pain and suffering and for severe and permanent personal injuries sustained by the Plaintiff including health care costs and economic loss;
3. Awarding economic damages in the form of medical expenses, out of pocket expenses, lost earnings and other economic damages in an amount to be determine at trial of this action;
4. Punitive damages for the wanton, willful, fraudulent, and reckless acts of the Defendants who demonstrated complete disregard and reckless indifference for the safety and welfare of the general public and to the Plaintiffs in an amount to punish Defendants and deter future similar conduct, to the extent allowed by applicable law;
5. Pre-judgment interest;
6. Post-judgment interest;
7. Awarding Plaintiffs reasonable attorneys’ fees
8. Awarding Plaintiffs the costs of these proceedings; and
9. Any other and further relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand trial by jury as to all issues.

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Dated: September 8, 2016

Respectfully submitted,

s/ Jeremy Shafer

Jeremy C. Shafer – State Bar No. 235318

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