



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

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Jan-28-2016 12:47 pm

Case Number: CGC-16-550128

Filing Date: Jan-28-2016 12:40

Filed by: RONNIE OTERO

Juke Box: 001 Image: 05252004

COMPLAINT

DEWAYNE JOHNSON VS. MONSANTO COMPANY ET AL

001C05252004

Instructions:

Please place this sheet on top of the document to be scanned.

SUMMONS (CITACION JUDICIAL)

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

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

Monsanto Company; Steven D. Gould; Wilbur-Ellis Company, LLC;
Wilbur Ellis Feed, LLC

YOU ARE BEING SUED BY PLAINTIFF: (LO ESTÁ DEMANDANDO EL DEMANDANTE):

Dewayne Johnson

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

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

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

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

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

The name and address of the court is:

(El nombre y dirección de la corte es): San Francisco Superior Court
400 McAllister Street, San Francisco, CA

CASE NUMBER:
(Número del Caso):

CGC-16-550128

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

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Curtis Hoke, 108 Railroad Ave, Orange VA 22960 540-672-4224

DATE:
(Fecha)

JAN 28 2016

Clerk, by
(Secretario)

CLERK OF THE COURT

Deputy
(Adjunto)

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

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

Ronnie Otero

NOTICE TO THE PERSON SERVED: You are served

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

3. ☐ on behalf of (specify):

- | | |
|--|---|
| under: <input type="checkbox"/> CCP 416.10 (corporation) | <input type="checkbox"/> CCP 416.80 (minor) |
| <input type="checkbox"/> CCP 416.20 (defunct corporation) | <input type="checkbox"/> CCP 416.70 (conservatee) |
| <input type="checkbox"/> CCP 416.40 (association or partnership) | <input type="checkbox"/> CCP 416.90 (authorized person) |

☐ other (specify):

4. ☐ by personal delivery on (date):



ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Curtis G. Hoke (SB# 282465) The Miller Firm, LLC 108 Railroad Ave. Orange, VA 22960 TELEPHONE NO.: 540-672-4224 FAX NO.: 540-672-3055		FOR COURT USE ONLY <div style="transform: rotate(-15deg);"> FILED SAN FRANCISCO COUNTY SUPERIOR COURT 16 JAN 28 PM 12:50 BY: CLERK OF THE COURT DEPUTY </div>
ATTORNEY FOR (Name): Dewayne Johnson (Plaintiff)		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco STREET ADDRESS: 400 McAllister St. MAILING ADDRESS: 400 McAllister St. CITY AND ZIP CODE: San Francisco CA 94102 BRANCH NAME: Civic Center		
CASE NAME: Johnson v. Monsanto, et al		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)
		CASE NUMBER: CGC-16-550128 JUDGE: DEPT:

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

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

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

Date: 1/27/2016
 Curtis G. Hoke

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

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

Page 1 of 2

1 Curtis G. Hoke (SBN 282465)
2 **THE MILLER FIRM, LLC**
3 108 Railroad Ave.
4 Orange, VA 22960
5 Telephone: (540) 672-4224
6 Facsimile: (540) 672-3055
7 choke@millerfirmllc.com
8 *Attorneys for Plaintiffs*

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **IN AND FOR THE COUNTY OF SAN FRANCISCO**
11 **(UNLIMITED JURISDICTION)**

12 DEWAYNE JOHNSON,

13 Plaintiff,

14 vs.

15 MONSANTO COMPANY;
16 STEVEN D. GOULD;
17 WILBUR-ELLIS COMPANY, LLC; and
18 WILBUR-ELLIS FEED, LLC,

19 Defendants.

Case No.:

CGC-16-550128

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

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

JURY TRIAL DEMANDED

20 **COMPLAINT AND DEMAND FOR JURY TRIAL**

21 Plaintiff, by attorneys, THE MILLER FIRM, LLC, as and for the Complaint herein
22 alleges upon information and belief the following:
23

24 **STATEMENT OF THE CASE**

- 25
26 1. In 1970, Defendants Monsanto Company, Inc. discovered the herbicidal properties of
27

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

FILE
SAN FRANCISCO
SUPERIOR COURT
16 JAN 28 PM 12
BY: CLERK OF THE COURT
DEPUTY

ORIGINAL BY FACSIMILE

1 glyphosate and began marketing it in products in 1974 under the brand name Roundup®.

2 Roundup® is a non-selective herbicide used to kill weeds that commonly compete with the
3 growing of crops. By 2001, glyphosate had become the most-used active ingredient in American
4 agriculture with 85–90 millions of pounds used annually. That number grew to 185 million
5 pounds by 2007. As of 2013, glyphosate was the world's most widely used herbicide.
6

7
8 2. Monsanto is a multinational agricultural biotechnology corporation based in St. Louis,
9 Missouri. It is the world's leading producer of glyphosate. As of 2009, Monsanto was the world's
10 leading producer of seeds, accounting for 27% of the world seed market. The majority of these
11 seeds are of the Roundup Ready® brand. The stated advantage of Roundup Ready® crops is that
12 they substantially improve a farmer's ability to control weeds, since glyphosate can be sprayed in
13 the fields during the growing season without harming their crops. In 2010, an estimated 70% of
14 corn and cotton, and 90% of soybean fields in the United States were Roundup Ready®.
15
16

17
18 3. Monsanto's glyphosate products are registered in 130 countries and approved for use on
19 over 100 different crops. They are ubiquitous in the environment. Numerous studies confirm that
20 glyphosate is found in rivers, streams, and groundwater in agricultural areas where Roundup® is
21 used. It has been found in food, in the urine of agricultural workers, and even in the urine of
22 urban dwellers who are not in direct contact with glyphosate.
23
24

25 4. On March 20, 2015, the International Agency for Research on Cancer ("IARC"), an
26 agency of the World Health Organization ("WHO"), issued an evaluation of several herbicides,
27
28

1 including glyphosate. That evaluation was based, in part, on studies of exposures to glyphosate
2 in several countries around the world, and it traces the health implications from exposure to
3 glyphosate since 2001.
4

5
6 5. On July 29, 2015, IARC issued the formal monograph relating to glyphosate. In that
7 monograph, the IARC Working Group provides a thorough review of the numerous studies and
8 data relating to glyphosate exposure in humans.
9

10
11 6. The IARC Working Group classified glyphosate as a Group 2A herbicide, which means
12 that it is probably carcinogenic to humans. The IARC Working Group concluded that the cancers
13 most associated with glyphosate exposure are non-Hodgkin lymphoma and other haematopoietic
14 cancers, including lymphocytic lymphoma/chronic lymphocytic leukemia, B-cell lymphoma, and
15 multiple myeloma.
16

17
18 7. The IARC evaluation is significant. It confirms what has been believed for years: that
19 glyphosate is toxic to humans.
20

21
22 8. Nevertheless, Monsanto, since it began selling Roundup®, has represented it as safe to
23 humans and the environment. Indeed, Monsanto has repeatedly proclaimed and continues to
24 proclaim to the world, and particularly to United States consumers, that glyphosate-based
25 herbicides, including Roundup®, create no unreasonable risks to human health or to the
26 environment.
27

JURISDICTION AND VENUE

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

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

11. Venue is proper in this Court pursuant to California Code of Civil Procedure Section 395 in that the Defendants Wilbur-Ellis Company, LLC and Wilbur-Ellis Feed, LLC are headquartered and maintain their principal place of business in San Francisco.

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

1 13. Plaintiff seeks relief that is within the jurisdictional limits of the Court.
2
3

4 THE PARTIES

5 Plaintiff

6 14. Plaintiff Dewayne Johnson is a competent individual over the age of 18, a resident and
7 citizen of the United States, and hereby submits to the jurisdiction of the Court and alleges that
8 venue in this court is proper. He currently resides in Vallejo, California.
9
10

11 Defendants

12 15. Defendants Monsanto Company ("Monsanto") is a Delaware corporation with its
13 headquarters and principal place of business in St. Louis, Missouri. At all times relevant to this
14 complaint, Monsanto was the entity that discovered the herbicidal properties of glyphosate and
15 the manufacturer of Roundup®. Monsanto has regularly transacted and conducted business
16 within the state of California, and has derived substantial revenue from goods and products,
17 including Roundup, used in the State of California. Monsanto expected or should have expected
18 their acts to have consequences within the State of California, and derived substantial revenue
19 from interstate commerce.
20
21

22
23 16. Defendants Wilbur-Ellis Company LLC is a California limited liability corporation with
24 its headquarters and principal place of business in San Francisco, California. At all times
25 relevant to this complaint, Wilbur-Ellis Company, LLC sold and distributed Monsanto products
26 including Roundup, within the State of California.
27
28

1 17. Defendants Wilbur-Ellis Feed LLC (with Wilbur-Ellis Company LLC, hereinafter
2 "Wilbur-Ellis") is a California limited liability corporation with its headquarters and principal
3 place of business in San Francisco, California. At all times relevant to this complaint, Wilbur-
4 Ellis Feed, LLC sold and distributed Monsanto products including Roundup, within the State of
5 California.
6

7
8 18. Defendants Steven Gould is employed by Monsanto as its national industrial, turf and
9 ornamental herbicide National Account Manager, and is a competent individual over the age of
10 18 and a resident of Riverside County, California.
11

12
13 19. Plaintiff is informed and believes, and based thereon alleges, that in committing the acts
14 alleged herein, each and every managing agent, agent, representative and/or employee of the
15 Defendants was working within the course and scope of said agency, representation and/or
16 employment with the knowledge, consent, ratification, and authorization of the Defendants and
17 their directors, officers and/or managing agents.
18

19
20 **FACTS**

21 20. Glyphosate is a broad-spectrum, non-selective herbicide used in a wide variety of
22 herbicidal products around the world.
23

24
25 21. Plants treated with glyphosate translocate the systemic herbicide to their roots, shoot
26 regions and fruit, where it interferes with the plant's ability to form aromatic amino acids
27

1 necessary for protein synthesis. Treated plants generally die within two to three days. Because
2 plants absorb glyphosate, it cannot be completely removed by washing or peeling produce or by
3 milling, baking, or brewing grains.
4

5
6 22. For nearly 40 years, farms across the world have used Roundup® without knowing of the
7 dangers its use poses. That is because when Monsanto first introduced Roundup®, it touted
8 glyphosate as a technological breakthrough: it could kill almost every weed without causing
9 harm either to people or to the environment. Of course, history has shown that not to be true.
10 According to the WHO, the main chemical ingredient of Roundup®—glyphosate—is a probable
11 cause of cancer. Those most at risk are farm workers and other individuals with workplace
12 exposure to Roundup®, such as workers in garden centers, nurseries, and landscapers.
13 Agricultural workers are, once again, victims of corporate greed.
14
15

16
17 23. Monsanto assured the public that Roundup® was harmless. In order to prove this,
18 Monsanto championed falsified data and attacked legitimate studies that revealed its dangers.
19 Monsanto led a prolonged campaign of misinformation to convince government agencies,
20 farmers and the general population that Roundup® was safe.
21
22

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

24 24. The herbicidal properties of glyphosate were discovered in 1970 by Monsanto chemist
25 John Franz. The first glyphosate-based herbicide was introduced to the market in the mid-1970s
26 under the brand name Roundup®. From the outset, Monsanto marketed Roundup® as a “safe”
27
28

1 general-purpose herbicide for widespread commercial and consumer use. It still markets
2 Roundup® as safe today.

3 4 5 *Registration of Herbicides under Federal Law*

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

12
13 26. Because pesticides are toxic to plants, animals, and humans, at least to some degree, the
14 EPA requires as part of the registration process, among other things, a variety of tests to evaluate
15 the potential for exposure to pesticides, toxicity to people and other potential non-target
16 organisms, and other adverse effects on the environment. Registration by the EPA, however, is
17 not an assurance or finding of safety. The determination the Agency must make in registering or
18 re-registering a product is not that the product is "safe," but rather that use of the product in
19 accordance with its label directions "will not generally cause unreasonable adverse effects on the
20 environment." 7 U.S.C. § 136a(c)(5)(D).
21
22

23
24 27. FIFRA defines "unreasonable adverse effects on the environment" to mean "any
25 unreasonable risk to man or the environment, taking into account the economic, social, and
26 environmental costs and benefits of the use of any pesticide." 7 U.S.C. § 136(bb). FIFRA thus
27

1 requires EPA to make a risk/benefit analysis in determining whether a registration should be
2 granted or allowed to continue to be sold in commerce.
3
4

5 28. The EPA and the State of California registered Roundup® for distribution, sale, and
6 manufacture in the United States and the State of California.
7
8

9 29. FIFRA generally requires that the registrant, Monsanto in the case of Roundup®,
10 conducts the health and safety testing of pesticide products. The EPA has protocols governing
11 the conduct of tests required for registration and the laboratory practices that must be followed in
12 conducting these tests. The data produced by the registrant must be submitted to the EPA for
13 review and evaluation. The government is not required, nor is it able, however, to perform the
14 product tests that are required of the manufacturer.
15
16
17

18 30. The evaluation of each pesticide product distributed, sold, or manufactured is completed
19 at the time the product is initially registered. The data necessary for registration of a pesticide has
20 changed over time. The EPA is now in the process of re-evaluating all pesticide products through
21 a Congressionally-mandated process called "re-registration." 7 U.S.C. § 136a-1. In order to
22 reevaluate these pesticides, the EPA is demanding the completion of additional tests and the
23 submission of data for the EPA's review and evaluation.
24
25

26 31. In the case of glyphosate, and therefore Roundup®, the EPA had planned on releasing its
27 preliminary risk assessment—in relation to the reregistration process—no later than July 2015.
28

1 The EPA completed its review of glyphosate in early 2015, but it delayed releasing the risk
2 assessment pending further review in light of the WHO's health-related findings.
3

4
5 ***Scientific Fraud Underlying the Marketing and Sale of Glyphosate/Roundup***

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

16
17 33. On two occasions, the EPA found that the laboratories hired by Monsanto to test the
18 toxicity of its Roundup® products for registration purposes committed fraud.
19

20
21 34. In the first instance, Monsanto, in seeking initial registration of Roundup® by EPA, hired
22 Industrial Bio-Test Laboratories ("IBT") to perform and evaluate pesticide toxicology studies
23 relating to Roundup®. IBT performed about 30 tests on glyphosate and glyphosate-containing
24 products, including nine of the 15 residue studies needed to register Roundup®.
25
26
27
28

1 35. In 1976, the United States Food and Drug Administration ("FDA") performed an
2 inspection of Industrial Bio-Test Industries ("IBT") that revealed discrepancies between the raw
3 data and the final report relating to the toxicological impacts of glyphosate. The EPA
4 subsequently audited IBT; it too found the toxicology studies conducted for the Roundup®
5 herbicide to be invalid. An EPA reviewer stated, after finding "routine falsification of data" at
6 IBT, that it was "hard to believe the scientific integrity of the studies when they said they took
7 specimens of the uterus from male rabbits."
8

9
10
11 36. Three top executives of IBT were convicted of fraud in 1983.
12

13
14 37. In the second incident of data falsification, Monsanto hired Craven Laboratories in 1991
15 to perform pesticide and herbicide studies, including for Roundup®. In that same year, the owner
16 of Craven Laboratories and three of its employees were indicted, and later convicted, of
17 fraudulent laboratory practices in the testing of pesticides and herbicides.
18

19
20 38. Despite the falsity of the tests that underlie its registration, within a few years of its
21 launch, Monsanto was marketing Roundup® in 115 countries.
22

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

24 39. The success of Roundup® was key to Monsanto's continued reputation and dominance in
25 the marketplace. Largely due to the success of Roundup® sales, Monsanto's agriculture division
26 was out-performing its chemicals division's operating income, and that gap increased yearly. But
27

1 with its patent for glyphosate expiring in the United States in the year 2000, Monsanto needed a
2 strategy to maintain its Roundup® market dominance and to ward off impending competition.
3
4

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

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

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

24 42. In 1996, the New York Attorney General ("NYAG") filed a lawsuit against Monsanto
25 based on its false and misleading advertising of Roundup ® products. Specifically, the lawsuit
26 challenged Monsanto's general representations that its spray-on glyphosate-based herbicides,
27
28

1 including Roundup®, were "safer than table salt" and "practically non-toxic" to mammals,
2 birds, and fish. Among the representations the NYAG found deceptive and misleading about the
3 human and environmental safety of Roundup® are the following:
4

5
6 a) Remember that environmentally friendly Roundup herbicide is biodegradable.
7 It won't build up in the soil so you can use Roundup with confidence along customers'
8 driveways, sidewalks and fences ...
9

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

13 c) Roundup biodegrades into naturally occurring elements.

14 d) Remember that versatile Roundup herbicide stays where you put it. That
15 means there's no washing or leaching to harm customers' shrubs or other desirable vegetation.
16

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

19 f) You can apply Accord with "confidence because it will stay where you put it" it
20 bonds tightly to soil particles, preventing leaching. Then, soon after application, soil
21 microorganisms biodegrade Accord into natural products.
22

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

24 h) Glyphosate's safety margin is much greater than required. It has over a 1,000-
25 fold safety margin in food and over a 700-fold safety margin for workers who manufacture it or
26 use it.
27

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

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

7
8 43. On November 19, 1996, Monsanto entered into an Assurance of Discontinuance with
9 NYAG, in which Monsanto agreed, among other things, "to cease and desist from publishing or
10 broadcasting any advertisements [in New York] that represent, directly or by implication" that:
11

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

14 * * *

15 b) its glyphosate-containing pesticide products or any component thereof
16 manufactured, formulated, distributed or sold by Monsanto are biodegradable
17

18 * * *

19 c) its glyphosate-containing pesticide products or any component thereof stay
20 where they are applied under all circumstances and will not move through the environment by
21 any means.
22

23 * * *

24 d) its glyphosate-containing pesticide products or any component thereof are
25 "good" for the environment or are "known for their environmental characteristics."
26

27 * * *

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

3 f) its glyphosate-containing products or any component thereof might be
4 classified as "practically non-toxic."
5

6
7 44. Monsanto did not alter its advertising in the same manner in any state other than New
8 York, and on information and belief still has not done so today.
9

10 45. In 2009, France's highest court ruled that Monsanto had not told the truth about the safety
11 of Roundup®. The French court affirmed an earlier judgement that Monsanto had falsely
12 advertised its herbicide Roundup® as "biodegradable" and that it "left the soil clean."
13
14

15 *Classifications and Assessments of Glyphosate*

16 46. The IARC process for the classification of glyphosate followed the stringent procedures
17 for the evaluation of a chemical agent. Over time, the IARC Monograph program has reviewed
18 980 agents. Of those reviewed, it has determined 116 agents to be Group 1 (Known Human
19 Carcinogens); 73 agents to be Group 2A (Probable Human Carcinogens); 287 agents to be Group
20 2B (Possible Human Carcinogens); 503 agents to be Group 3 (Not Classified); and one agent to
21 be Probably Not Carcinogenic.
22
23
24
25
26
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28

1 47. The established procedure for IARC Monograph evaluations is described in the IARC
2 Programme's Preamble. Evaluations are performed by panels of international experts, selected
3 on the basis of their expertise and the absence of actual or apparent conflicts of interest.
4

5
6 48. One year before the Monograph meeting, the meeting is announced and there is a call
7 both for data and for experts. Eight months before the Monograph meeting, the Working Group
8 membership is selected and the sections of the Monograph are developed by the Working Group
9 members. One month prior to the Monograph meeting, the call for data is closed and the various
10 draft sections are distributed among Working Group members for review and comment. Finally,
11 at the Monograph meeting, the Working Group finalizes review of all literature, evaluates the
12 evidence in each category, and completes the overall evaluation. Within two weeks after the
13 Monograph meeting, the summary of the Working Group findings are published in *Lancet*
14 *Oncology*, and within a year after the meeting, the final Monograph is finalized and published.
15
16

17
18 49. In assessing an agent, the IARC Working Group reviews the following information: (a)
19 human, experimental, and mechanistic data; (b) all pertinent epidemiological studies and cancer
20 bioassays; and (c) representative mechanistic data. The studies must be publicly available and
21 have sufficient detail for meaningful review, and reviewers cannot be associated with the
22 underlying study.
23
24

25
26 50. In March 2015, IARC reassessed glyphosate. The summary published in *The Lancet*
27 *Oncology* reported that glyphosate is a Group 2A agent and probably carcinogenic in humans.
28

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

12
13 52. The studies considered the following exposure groups: occupational exposure of farmers
14 and tree nursery workers in the United States, forestry workers in Canada and Finland and
15 municipal weed-control workers in the United Kingdom; and para-occupational exposure in
16 farming families.
17
18

19 53. Glyphosate was identified as the second-most used household herbicide in the United
20 States for weed control between 2001 and 2007 and the most heavily used herbicide in the world
21 in 2012.
22
23

24 54. Exposure pathways are identified as air (especially during spraying), water, and food.
25 Community exposure to glyphosate is widespread and found in soil, air, surface water, and
26 groundwater, as well as in food.
27
28

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

5
6 56. The IARC Working Group found an increased risk between exposure to glyphosate and
7 non-Hodgkin lymphoma ("NHL") and several subtypes of NHL, and the increased risk persisted
8 after adjustment for other pesticides.
9

10
11 57. The IARC Working Group also found that glyphosate caused DNA and chromosomal
12 damage in human cells. One study in community residents reported increases in blood markers
13 of chromosomal damage (micronuclei) after glyphosate formulations were sprayed.
14

15
16 58. In male CD-1 mice, glyphosate induced a positive trend in the incidence of a rare tumor,
17 renal tubule carcinoma. A second study reported a positive trend for haemangiosarcoma in male
18 mice. Glyphosate increased pancreatic islet-cell adenoma in male rats in two studies. A
19 glyphosate formulation promoted skin tumors in an initiation-promotion study in mice.
20
21

22
23 59. The IARC Working Group also noted that glyphosate has been detected in the urine of
24 agricultural workers, indicating absorption. Soil microbes degrade glyphosate to
25 aminomethylphosphoric acid (AMPA). Blood AMPA detection after exposure suggests intestinal
26 microbial metabolism in humans.
27

1 60. The IARC Working Group further found that glyphosate and glyphosate formulations
2 induced DNA and chromosomal damage in mammals, and in human and animal cells in utero.
3
4

5 61. The IARC Working Group also noted genotoxic, hormonal, and enzymatic effects in
6 mammals exposed to glyphosate. Essentially, glyphosate inhibits the biosynthesis of aromatic
7 amino acids, which leads to several metabolic disturbances, including the inhibition of protein
8 and secondary product biosynthesis and general metabolic disruption.
9

10
11 62. The IARC Working Group also reviewed an Agricultural Health Study, consisting of a
12 prospective cohort of 57,311 licensed pesticide applicators in Iowa and North Carolina. While
13 this study differed from others in that it was based on a self-administered questionnaire, the
14 results support an association between glyphosate exposure and Multiple Myeloma, Hairy Cell
15 Leukemia (HCL), and Chronic Lymphocytic Leukemia (CLL), in addition to several other
16 cancers.
17
18

19
20 ***Other Earlier Findings About Glyphosate's Dangers to Human Health***

21 63. The EPA has a technical fact sheet, as part of its Drinking Water and Health, National
22 Primary Drinking Water Regulations publication, relating to glyphosate. This technical fact sheet
23 predates the IARC March 20, 2015, evaluation. The fact sheet describes the release patterns for
24 glyphosate as follows:
25
26
27
28

Release Patterns

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

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

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

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

Recent Worldwide Bans on Roundup®/Glyphosate

65. Several countries around the world have instituted bans on the sale of Roundup® and other glyphosate-containing herbicides, both before and since IARC first announced its assessment for glyphosate in March 2015, and more countries undoubtedly will follow suit in light of the as the dangers of the use of Roundup® are more widely known. The Netherlands

1 issued a ban on all glyphosate-based herbicides in April 2014, including Roundup®, which takes
2 effect by the end of 2015. In issuing the ban, the Dutch Parliament member who introduced the
3 successful legislation stated: "Agricultural pesticides in user-friendly packaging are sold in
4 abundance to private persons. In garden centers, Roundup® is promoted as harmless, but
5 unsuspecting customers have no idea what the risks of this product are. Especially children are
6 sensitive to toxic substances and should therefore not be exposed to it."

8
9
10 66. The Brazilian Public Prosecutor in the Federal District requested that the Brazilian Justice
11 Department suspend the use of glyphosate.

12
13
14 67. France banned the private sale of Roundup® and glyphosate following the IARC
15 assessment for Glyphosate.

16
17 68. Bermuda banned both the private and commercial sale of glyphosates, including
18 Roundup®. The Bermuda government explained its ban as follows: "Following a recent
19 scientific study carried out by a leading cancer agency, the importation of weed spray 'Roundup'
20 has been suspended."

21
22
23
24 69. The Sri Lankan government banned the private and commercial use of glyphosates,
25 particularly out of concern that Glyphosate has been linked to fatal kidney disease in agricultural
26 workers.

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

5
6 71. On information and belief, Wilbur-Ellis was, at all relevant times, engaged in the
7 distribution of Roundup, Roundup-ready crops and other glyphosate-containing products from
8 Monsanto to retailers and commercial/agricultural users in California.
9

10
11 72. Wilbur-Ellis had superior knowledge compared to Roundup users and consumers,
12 including regarding the carcinogenic properties of the product, yet failed to accompany its sales
13 and/or marketing of Roundup with any warnings or precautions for that grave danger. On
14 information and belief, Wilbur-Ellis was one of the distributors providing Roundup and other
15 glyphosate-containing products actually used by the Plaintiff.
16

17
18 73. Steven Gould is the National IT&O Account Manager for Monsanto, responsible for
19 sales and marketing to distributors and users of Roundup and other glyphosate-containing
20 products in California. Mr. Gould engaged in the marketing, promotion and sale of these
21 products, aware of their carcinogenic or potentially carcinogenic properties, but failed to inform
22 any of his sales targets of such danger.
23
24
25
26
27
28

Plaintiff's Exposure to Roundup®

74. Plaintiff Dewayne Johnson was at all relevant times employed by the Benicia Unified School District, where his responsibilities included direct application of Roundup and RangerPro, another Monsanto glyphosate product, to school properties.

75. Mr. Johnson was diagnosed with non-Hodgkin lymphoma in August 2014 at the age of 42.

CLAIM ONE

STRICT LIABILITY (DESIGN DEFECT)

76. Plaintiff incorporate by reference each and every allegation set forth in the preceding paragraphs as if fully stated herein.

77. Plaintiff brings this strict liability claim against Defendants for defective design.

78. At all times relevant to this litigation, Defendants engaged in the business of testing, developing, designing, manufacturing, marketing, selling, distributing, and promoting Roundup® products, which are defective and unreasonably dangerous to consumers, including Plaintiff, thereby placing Roundup® products into the stream of commerce. These actions were under the ultimate control and supervision of Defendants. At all times relevant to this litigation, Defendants designed, researched, developed, manufactured, produced, tested, assembled, labeled, advertised, promoted, marketed, sold, and distributed the Roundup® products that Plaintiff was exposed to, as described above.

1 79. At all times relevant to this litigation, Defendants' Roundup® products were
2 manufactured, designed, and labeled in an unsafe, defective, and inherently dangerous manner
3 that was dangerous for use by or exposure to the public, and, in particular, the Plaintiff.
4

5
6 80. At all times relevant to this litigation, Defendants' Roundup® products reached the
7 intended consumers, handlers, and users or other persons coming into contact with these
8 products in California and throughout the United States, including Plaintiff, without substantial
9 change in their condition as designed, manufactured, sold, distributed, labeled, and marketed by
10 Defendants.
11

12
13 81. Defendants' Roundup® products, as researched, tested, developed, designed, licensed,
14 manufactured, packaged, labeled, distributed, sold, and marketed by Defendants were defective
15 in design and formulation in that when they left the hands of the Defendants' manufacturers
16 and/or suppliers, they were unreasonably dangerous and dangerous to an extent beyond that
17 which an ordinary consumer would contemplate.
18

19
20
21 82. Defendants' Roundup® products, as researched, tested, developed, designed, licensed,
22 manufactured, packaged, labeled, distributed, sold, and marketed by Defendants were defective
23 in design and formulation in that when they left the hands of Defendants' manufacturers and/or
24 suppliers, the foreseeable risks exceeded the alleged benefits associated with their design and
25 formulation.
26

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

5
6 84. Therefore, at all times relevant to this litigation, Defendants' Roundup® products, as
7 researched, tested, developed, designed, licensed, manufactured, packaged, labeled, distributed,
8 sold and marketed by Defendants were defective in design and formulation, in one or more of the
9 following ways:
10

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

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 cancer and other
17 serious illnesses when used in a reasonably anticipated manner.
18

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

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

25 e. Exposure to Roundup® and glyphosate-containing products presents a risk of harmful
26 side effects that outweigh any potential utility stemming from the use of the herbicide.
27

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

5 g. Defendants did not conduct adequate post-marketing surveillance of its Roundup®
6 products.
7

8 h. Defendants could have employed safer alternative designs and formulations.
9

10 85. Plaintiff were exposed to Defendants' Roundup® products while living on a commercial
11 sod farm, as described above, without knowledge of its dangerous characteristics.
12

13 86. At all times relevant to this litigation, Plaintiff was exposed to the use of Defendants'
14 Roundup® products in an intended or reasonably foreseeable manner without knowledge of their
15 dangerous characteristics.
16

17
18 87. Plaintiff could not have reasonably discovered the defects and risks associated with
19 Roundup® or glyphosate-containing products before or at the time of exposure.
20

21
22 88. The harm caused by Defendants' Roundup® products far outweighed their benefit,
23 rendering Defendants' products dangerous to an extent beyond that which an ordinary consumer
24 would contemplate. Defendants' Roundup® products were and are more dangerous than
25 alternative products and Defendants could have designed its Roundup® products to make them
26 less dangerous. Indeed, at the time that Defendants designed its Roundup® products, the state of
27

1 the industry's scientific knowledge was such that a less risky design or formulation was
2 attainable.

3
4 89. At the time Roundup® products left Defendants' control, there was a practical,
5 technically feasible and safer alternative design that would have prevented the harm without
6 substantially impairing the reasonably anticipated or intended function of Defendants'
7 herbicides.
8

9
10 90. Defendants' defective design of its Roundup® products was willful, wanton, fraudulent,
11 malicious, and conducted with reckless disregard for the health and safety of users of the
12 Roundup® products, including the Plaintiff herein.
13
14

15
16 91. Therefore, as a result of the unreasonably dangerous condition of its Roundup® products,
17 Defendants are strictly liable to Plaintiff.
18

19 92. The defects in Defendants' Roundup® products were substantial and contributing factors
20 in causing Plaintiff' grave injuries, and, but for Defendants' misconduct and omissions, Plaintiff
21 would not have sustained their injuries.
22
23

24 93. Defendants' conduct, as described above, was reckless. Defendants risked the lives of
25 consumers and users of its products, including Plaintiff, with knowledge of the safety problems
26 associated with Roundup® and glyphosate-containing products, and suppressed this knowledge
27
28

1 from the general public. Defendants made conscious decisions not to redesign, warn or inform
2 the unsuspecting public. Defendants' reckless conduct warrants an award of punitive damages.
3
4

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

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

18 CLAIM TWO

19 STRICT LIABILITY (FAILURE TO WARN)

20 96. Plaintiff incorporates by reference each and every allegation set forth in the preceding
21 paragraphs as if fully stated herein.
22
23

24 97. Plaintiff brings this strict liability claim against Defendants for failure to warn.
25
26
27

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

8
9
10 99. Monsanto researched, developed, designed, tested, manufactured, inspected, labeled,
11 distributed, marketed, promoted, sold, and otherwise released into the stream of commerce its
12 Roundup® products, and in the course of same, directly advertised or marketed the products to
13 consumers and end users, including the Plaintiff, and persons responsible for consumers (such as
14 employers), and therefore had a duty to warn of the risks associated with the use of Roundup®
15 and glyphosate-containing products.
16

17
18 100. At all times relevant to this litigation, Defendants had a duty to properly test, develop,
19 design, manufacture, inspect, package, label, market, promote, sell, distribute, maintain supply,
20 provide proper warnings, and take such steps as necessary to ensure that Roundup® products
21 did not cause users and consumers to suffer from unreasonable and dangerous risks. Defendants
22 had a continuing duty to warn the Plaintiff of the dangers associated with Roundup® use and
23 exposure. Defendants, as manufacturer, seller, or distributor of chemical herbicides, are held to
24 the knowledge of an expert in the field.
25
26
27

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

6
7 102. At all times relevant to this litigation, Defendants failed to investigate, study, test, or
8 promote the safety or to minimize the dangers to users and consumers of this product and to
9 those who would foreseeably use or be harmed by Roundup, including Plaintiff.
10

11
12 103. Despite the fact that Defendants knew or should have known that Roundup® posed a
13 grave risk of harm, they failed to exercise reasonable care to warn of the dangerous risks
14 associated with use and exposure. The dangerous propensities of its products and the
15 carcinogenic characteristics of glyphosate, as described above, were known to Defendants, or
16 scientifically knowable to Defendants through appropriate research and testing by known
17 methods, at the time it distributed, supplied or sold the product, and not known to end users and
18 consumers, such as Plaintiff.
19
20

21
22 104. Defendants knew or should have known that these products created significant risks of
23 serious bodily harm to consumers, as alleged herein, and Defendants failed to adequately warn
24 consumers and reasonably foreseeable users of the risks of exposure to its products. Defendants
25 have wrongfully concealed information concerning the dangerous nature of Roundup® and its
26
27

1 active ingredient glyphosate, and further made false and/or misleading statements concerning the
2 safety of Roundup® and glyphosate.

3
4
5 105. At all times relevant to this litigation, Defendants' Roundup® products reached the
6 intended consumers, handlers, and users or other persons coming into contact with these
7 products in California and throughout the United States, including Plaintiff, without substantial
8 change in their condition as designed, manufactured, sold, distributed, labeled, marketed and
9 sprayed/applied by Defendants.

10
11
12 106. Plaintiff was exposed to Roundup® products, as described above, without knowledge of
13 their dangerous characteristics.

14
15
16 107. At all times relevant to this litigation, Plaintiff was exposed to the use of Defendants'
17 Roundup® products in their intended or reasonably foreseeable manner without knowledge of
18 their dangerous characteristics.

19
20
21 108. Plaintiff could not have reasonably discovered the defects and risks associated with
22 Roundup® or glyphosate-containing products prior to or at the time of Plaintiff's exposure.
23 Plaintiff relied upon the skill, superior knowledge, and judgment of Defendants.

24
25
26 109. Defendants knew or should have known that the minimal warnings disseminated with or
27 accompanying the application of Roundup® products were inadequate, but they failed to

1 communicate adequate information on the dangers and safe use/exposure and failed to
2 communicate warnings and instructions that were appropriate and adequate to render the
3 products safe for their ordinary, intended and reasonably foreseeable uses, including agricultural
4 and horticultural applications.
5

6
7 110. The information that Defendants did provide or communicate failed to contain relevant
8 warnings, hazards, and precautions that would have enabled those exposed such as Plaintiff to
9 utilize the products safely and with adequate protection. Instead, Defendants disseminated
10 information that was inaccurate, false, and misleading and which failed to communicate
11 accurately or adequately the comparative severity, duration, and extent of the risk of injuries with
12 use of and/or exposure to Roundup® and glyphosate; continued to aggressively promote the
13 efficacy of its products, even after it knew or should have known of the unreasonable risks from
14 use or exposure; and concealed, downplayed, or otherwise suppressed, through aggressive
15 marketing and promotion, any information or research about the risks and dangers of exposure to
16 Roundup® and glyphosate.
17
18

19
20
21 111. To this day, Defendants have failed to adequately and accurately warn of the true risks of
22 Plaintiff's injuries associated with the use of and exposure to Roundup® and its active ingredient
23 glyphosate, a probable carcinogen.
24
25
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1 112. As a result of their inadequate warnings, Roundup® products were defective and
2 unreasonably dangerous when they left the possession and/or control of Defendants, were sold or
3 distributed by Defendants, were applied by Defendants, and when Plaintiff became exposed.
4

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

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

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

22
23 116. As a direct and proximate result of Defendants placing defective Roundup® products into
24 the stream of commerce and exposing Plaintiff to them, Plaintiff has suffered and continues to
25 suffer severe injuries, and has endured physical pain and discomfort, as well as economic
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1 hardship, including considerable financial expenses for medical care and treatment. Plaintiff will
2 continue to incur these expenses in the future.

3
4
5 117. WHEREFORE, Plaintiff respectfully request that this Court enter judgment in Plaintiff's
6 favor for compensatory and punitive damages, together with interest, costs herein incurred,
7 attorneys' fees and all such other and further relief as this Court deems just and proper. Plaintiff
8 also demands a jury trial on the issues contained herein.
9

10
11 **CLAIM THREE NEGLIGENCE**

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

15
16 119. Defendants, directly or indirectly, caused Roundup® products to be sold, distributed,
17 packaged, labeled, marketed, promoted, and/or used by Plaintiff.
18

19
20 120. At all times relevant to this litigation, Defendants had a duty to exercise reasonable care
21 in the design, research, manufacture, marketing, advertisement, supply, promotion, packaging,
22 sale, and distribution of Roundup® products, including the duty to take all reasonable steps
23 necessary to manufacture, promote, and/or sell a product that was not unreasonably dangerous to
24 consumers and users of the product.
25
26
27

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

8
9
10 122. At all times relevant to this litigation, Defendants knew or, in the exercise of reasonable
11 care, should have known of the hazards and dangers of Roundup® and specifically, the
12 carcinogenic properties of the chemical glyphosate.
13

14
15 123. Accordingly, at all times relevant to this litigation, Defendants knew or, in the exercise
16 of reasonable care, should have known that use of or exposure to Roundup® products could
17 cause or be associated with Plaintiff's injuries and thus created a dangerous and unreasonable
18 risk of injury to the users of these products, including Plaintiff.
19

20
21 124. Defendants also knew or, in the exercise of reasonable care, should have known that
22 users and consumers of Roundup® were unaware of the risks and the magnitude of the risks
23 associated with use of and/or exposure to Roundup® and glyphosate-containing products.
24
25
26
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1 125. As such, Defendants breached their duty of reasonable care and failed to exercise
2 ordinary care in the design, research, development, manufacture, testing, marketing, supply,
3 promotion, advertisement, packaging, sale, and distribution of its Roundup® products, in that
4 Defendants manufactured and produced defective herbicides containing the chemical glyphosate,
5 knew or had reason to know of the defects inherent in its products, knew or had reason to know
6 that a user's or consumer's exposure to the products created a significant risk of harm and
7 unreasonably dangerous side effects, and failed to prevent or adequately warn of these risks and
8 injuries.
9

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

17
18 127. Defendants' negligence included:

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

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

1 c. Failing to undertake sufficient studies and conduct necessary tests to determine
2 whether or not Roundup® products and glyphosate-containing products were safe for their
3 intended use in agriculture and horticulture;
4

5 d. Failing to use reasonable and prudent care in the design, research, manufacture, and
6 development of Roundup® products so as to avoid the risk of serious harm associated with the
7 prevalent use of Roundup®/glyphosate as an herbicide;
8

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

11 f. Failing to provide adequate instructions, guidelines, and safety precautions to those
12 persons who Defendants could reasonably foresee would use and be exposed to its Roundup®
13 products;
14

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

17 h. Failing to warn Plaintiff, consumers, and the general public that the product's risk of
18 harm was unreasonable and that there were safer and effective alternative herbicides available to
19 Plaintiff and other consumers;
20

21 i. Systematically suppressing or downplaying contrary evidence about the risks, incidence,
22 and prevalence of the side effects of Roundup® and glyphosate-containing products;
23

24 j. Representing that its Roundup® products were safe for their intended use when, in fact,
25 Defendants knew or should have known that the products were not safe for their intended
26 purpose;
27

1 k. Declining to make or propose any changes to Roundup® products' labeling or other
2 promotional materials that would alert the consumers and the general public of the risks of
3 Roundup® and glyphosate;
4

5 l. Advertising, marketing, and recommending the use of the Roundup® products, while
6 concealing and failing to disclose or warn of the dangers known by Defendants to be associated
7 with or caused by the use of or exposure to Roundup® and glyphosate;
8

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

12 n. Continuing the manufacture and sale of its products with the knowledge that the
13 products were unreasonably unsafe and dangerous.
14

15
16 128. Defendants knew and/or should have known that it was foreseeable that consumers such
17 as Plaintiff would suffer injuries as a result of Defendants' failure to exercise ordinary care in the
18 manufacturing, marketing, labeling, distribution, and sale of Roundup®.
19

20
21 129. Plaintiff did not know the nature and extent of the injuries that could result from the
22 intended use of and/or exposure to Roundup® or its active ingredient glyphosate.
23

24 130. Defendants' negligence was the proximate cause of the injuries, harm, and economic
25 losses that Plaintiff suffered, and will continue to suffer, as described herein.
26
27

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

7
8 132. As a proximate result of Defendants' wrongful acts and omissions in placing defective
9 Roundup® products into the stream of commerce without adequate warnings of the hazardous
10 and carcinogenic nature of glyphosate, Plaintiff has suffered and continues to suffer severe and
11 permanent physical and emotional injuries. Plaintiff has endured pain and suffering, have
12 suffered economic losses (including significant expenses for medical care and treatment) and
13 will continue to incur these expenses in the future.
14
15

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17 133. WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in Plaintiff's
18 favor for compensatory and punitive damages, together with interest, costs herein incurred,
19 attorneys' fees and all such other and further relief as this Court deems just and proper. Plaintiff
20 also demands a jury trial on the issues contained herein.
21
22

23 CLAIM FIVE

24 BREACH OF IMPLIED WARRANTIES

25 134. Plaintiff incorporates by reference each and every allegation set forth in the preceding
26 paragraphs as if fully stated herein.
27

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

7
8 136. Before the time that Plaintiff was exposed to the use of the aforementioned Roundup®
9 products, Defendants impliedly warranted to consumers and those exposed—including
10 Plaintiff—that Roundup® products were of merchantable quality and safe and fit for the use for
11 which they were intended; specifically, as horticultural herbicides.
12
13

14 137. Defendants, however, failed to disclose that Roundup® has dangerous propensities when
15 used as intended and that the use of and/or exposure to Roundup® and glyphosate-containing
16 products carries an increased risk of developing severe injuries, including Plaintiff's injuries.
17
18

19 138. Plaintiff reasonably relied upon the skill, superior knowledge and judgment of
20 Defendants and upon their implied warranties that the Roundup® products were of merchantable
21 quality and fit for their intended purpose or use.
22
23

24 139. Upon information and belief, Plaintiff was at all relevant times in privity with Defendants.
25
26
27
28

1 140. Plaintiff is the intended third-party beneficiaries of implied warranties made by
2 Defendants to the purchasers of their horticultural herbicides, and as such Plaintiff is entitled to
3 assert this claim.
4

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

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

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

21
22 144. In reliance upon Defendants' implied warranty, Plaintiff used or was exposed to
23 Roundup® as instructed and labeled and in the foreseeable manner intended, recommended,
24 promoted and marketed by Defendants.
25
26
27

1 145. Plaintiff could not have reasonably discovered or known of the risks of serious injury
2 associated with Roundup® or glyphosate.
3

4
5 146. Defendants breached their implied warranty to Plaintiff in that Roundup® products were
6 not of merchantable quality, safe, or fit for their intended use, or adequately tested. Roundup®
7 has dangerous propensities when used as intended and can cause serious injuries, including those
8 injuries complained of herein.
9

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

15
16 148. As a direct and proximate result of Defendants' wrongful acts and omissions Plaintiff has
17 suffered severe and permanent physical and emotional injuries. Plaintiff has endured pain and
18 suffering, has suffered economic loss (including significant expenses for medical care and
19 treatment) and will continue to incur these expenses in the future.
20

21
22 149. WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in Plaintiff's
23 favor for compensatory and punitive damages, together with interest, costs herein incurred,
24 attorneys' fees, and all such other and further relief as this Court deems just and proper. Plaintiff
25 also demands a jury trial on the issues contained herein.
26
27

COUNT SEVEN PUNITIVE DAMAGES

150. Plaintiff repeats and reiterates the allegations previously set forth herein.

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

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

153. Defendants' misrepresentations included knowingly withholding material information from the public, including the Plaintiff herein, concerning the safety of the subject product.

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

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

156. Defendants knew of the subject product's defective and unreasonably dangerous nature, as set forth herein, but continued to design, develop, manufacture, market, distribute, sell, and apply it so as to maximize sales and profits at the expense of the health and safety of the public,

1 including the Plaintiff herein, in conscious and/or negligent disregard of the foreseeable harm
2 caused by Roundup.

3
4
5 157. The Defendants intentionally concealed and/or recklessly failed to disclose to the public,
6 including the Plaintiff herein, the potentially life threatening hazards of Roundup in order to
7 ensure continued and increased sales.

8
9
10 158. The Defendants' intentional and/or reckless failure to disclose information deprived the
11 Plaintiff of necessary information to enable Plaintiff to weigh the true risks of using or being
12 exposed to the subject product against its benefits.

13
14 159. As a direct and proximate result of the Defendants' conscious and deliberate disregard for
15 the rights and safety of consumers such as the Plaintiff, Plaintiff suffered severe and permanent
16 physical injuries. The Plaintiff has endured substantial pain and suffering and has undergone
17 extensive medical and surgical procedures. Plaintiff has incurred significant expenses for
18 medical care and treatment, and will continue to incur such expenses in the future. The Plaintiff
19 has lost past earnings and has suffered a loss of earning capacity. The Plaintiff has suffered and
20 will continue to suffer economic loss, and has otherwise been physically, emotionally and
21 economically injured. The Plaintiff's injuries and damages are permanent and will continue into
22 the future.
23
24

25
26 160. The aforesaid conduct of the Defendants was committed with knowing, conscious, and
27 deliberate disregard for the rights and safety of consumers, including the Plaintiff herein, thereby
28

1 entitling the Plaintiff to punitive damages in an amount appropriate to punish the Defendants and
2 deter them from similar conduct in the future.

3
4
5 161. WHEREFORE, Plaintiff demands judgment against Defendants for compensatory, treble,
6 and punitive damages, together with interest, costs of suit, attorneys' fees, and all such other
7 relief as the Court deems proper.

8
9
10 **PRAYER FOR RELIEF**

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

13 A. compensatory damages in an amount to be proven at trial;

14 B. punitive damages;

15 C. costs including reasonable attorneys' fees, court costs, and other litigation
16 expenses; and
17

18 D. any other relief the Court may deem just and proper.

19 Respectfully submitted this 27th day of January, 2016.

20
21 **THE MILLER FIRM, LLC**

22
23 By /s/ Curtis G. Hoke 

24 Curtis G. Hoke, Esq., SBN 282465

25 **THE MILLER FIRM LLC**

26 108 Railroad Ave.

27 Orange VA 22960

28 *Attorneys for Plaintiffs*

1
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9 *Attorneys for Plaintiffs*

10
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **IN AND FOR THE COUNTY OF SAN FRANCISCO**
13 **(UNLIMITED JURISDICTION)**

14 DEWAYNE JOHNSON,

15 Plaintiff,

16 vs.

17 MONSANTO COMPANY;
18 STEVEN D. GOULD;
19 WILBUR-ELLIS COMPANY, LLC; and
20 WILBUR-ELLIS FEED, LLC,

21 Defendants.

Case No.: 06C-16-550128

AFFIDAVIT OF VENUE

22 **AFFIDVIT OF VENUE**

23 I, Curtis Hoke, declare as follows:

24 1. I am an attorney at law licensed to practice before this Court and an associate at The
25 Miller Firm LLC, attorneys of record for Plaintiffs herein.

26 2. On information and belief, venue is proper in the Superior Court of California –
27 San Francisco for the following reasons:

28 a. At all times relevant, the Defendants above were and are doing business in the State
of California and San Francisco.

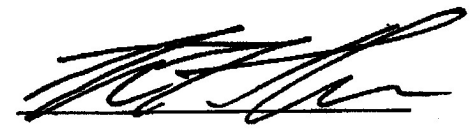
b. Defendants Wilbur-Ellis Company LLC and Wilbur-Ellis Feed, LLC are residents

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of California with a principal place of business in San Francisco.

3. Based on the foregoing and pursuant to California Civil Code section 1780(d), this action may be commenced in San Francisco.

I declare under penalty of perjury according to the law of the State of California that the foregoing is true and correct. Executed this January 27, 2016, in Orange, Virginia.



Curtis G. Hoke,

Declarant