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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LORETTA PENNIE, *et al.*, Plaintiffs, v. MONSANTO COMPANY, WILBUR-ELLIS COMPANY, LLC, WILBUR-ELLIS FEED, LLC and DOES 1 through 100 inclusive, Defendants.	Case No. 17-cv-1711 NOTICE OF REMOVAL

NOTICE OF REMOVAL

PLEASE TAKE NOTICE that Defendant Monsanto Company ("Monsanto"), with the consent of Wilbur-Ellis Company, LLC and Wilbur-Ellis Feed, LLC, respectfully removes this case to the United States District Court for the Northern District of California, from the Superior Court of the State of California for the County of Alameda, pursuant to 28 U.S.C. §§ 1331, 1441(a), 1442(a)(1) and 1367(a).

This Court has original federal question jurisdiction under 28 U.S.C. § 1331, because the Complaint asserts violations of federal law and presents substantial federal questions. As this Court has original federal question jurisdiction under § 1331, the action is removable under 28 U.S.C. § 1441(a). For a separate, alternative and independent reason, this lawsuit is removable based on the federal officer removal statute, 28 U.S.C. § 1442(a)(1), because Plaintiffs' claims invite state court jurors to evaluate whether the federal agency that is required by federal law to regulate Monsanto colluded with Monsanto to maintain federal regulatory approval for the products at issue in this case. In addition, this Court has supplemental jurisdiction, under 28 U.S.C. § 1367(a), over any claim over which it does not have original federal question jurisdiction, because it forms part of the same case or controversy as those claims over which the Court has original federal question jurisdiction. In support of removal, Monsanto states:

INTRODUCTION

This lawsuit belongs in federal court. Plaintiffs' Complaint presents a collateral attack on the federal regulatory scheme governing the registration of pesticides and herbicides for use in the United States, as well as the federal officials who administer it. The Complaint alleges that Monsanto and officials from the U.S. Environmental Protection Agency ("EPA") illegally colluded to falsely classify glyphosate – the active ingredient in Monsanto's Roundup®-branded herbicides – as non-carcinogenic and wrongfully maintain federal regulatory approval for these herbicide products. The Complaint also expressly defines the scope of Plaintiffs' state law claims according to the duties and obligations imposed by federal law. Finally, the Complaint directly alleges, on its face, that Monsanto violated federal statutes and federal regulations, and asserts those alleged violations as a predicate for Plaintiffs' state law claims. As a result, every count in the Complaint raises substantial, disputed federal questions within the original jurisdiction of the district courts.

Plaintiffs allege that they (or their decedents) developed Non-Hodgkin's Lymphoma ("NHL") or other cancers as a result of their exposure to glyphosate contained in Roundup® herbicide, an EPA-registered herbicide manufactured and sold by Monsanto. Plaintiffs directly

challenge EPA's registration of Roundup®, contending that Monsanto secured the initial registration by defrauding and exerting improper influence over EPA and that, more recently, Monsanto and EPA together illegally have "colluded" to maintain that registration by quashing investigations into the carcinogenicity of glyphosate by other federal agencies, including the Agency for Toxic Substances and Disease Registry ("ATSDR"). This alleged more recent collusive activity purportedly involved the federal officer in EPA's Office of Pesticide Programs, Jess Rowland, who chaired EPA's Cancer Assessment Review Committee, which was the committee of EPA scientists who recently assessed the carcinogenicity of glyphosate and endorsed EPA's existing classification of glyphosate as not likely to be carcinogenic to humans. Plaintiffs incorporate these allegations of collusion and fraud into every count of their Complaint. In addition, Plaintiffs expressly predicate their state law claims on Monsanto's alleged violation of federal statutes and regulations. Plaintiffs affirmatively limit all of their state law claims to the assertion of duties and obligations that are imposed by federal law. They also specifically allege several violations of federal law as a basis for their claims.

Although the Complaint purports to plead only state common law and statutory claims, those claims raise substantial federal questions over which this Court has original federal question jurisdiction, under 28 U.S.C. § 1331, for three separate reasons. First, Plaintiffs' claims raise substantial federal questions because they directly challenge the actions of a federal agency and the conduct of federal agency officials. Plaintiffs allege that EPA's initial registration of Roundup® was based on fraudulent test results, omissions, and misrepresentations, and that EPA officials actively colluded with Monsanto to maintain that registration in exchange for their own personal financial gain. These allegations present substantial federal questions regarding not only the validity of a federal agency's regulatory decision, but also the propriety of actions taken by EPA, and the propriety of actions taken by Monsanto in obtaining federal regulatory approval of its Roundup® products. Those questions are governed entirely by federal law.

Second, every count in the Complaint presents substantial federal questions, because Plaintiffs have defined the scope of their state law claims according to federal law. With respect

to all counts asserted, Plaintiffs' Complaint alleges: "To the extent California law imposes a duty or obligation on the Defendants that exceeds those required by federal law, Plaintiffs do not assert such claims." Compl. at ¶ 144. As a result, even though the claims are nominally state law claims, it is federal, not state, law that determines the scope of each and every count of the Complaint, and it is federal law that defines all of the duties and obligations Plaintiffs seek to assert in this lawsuit. Indeed, the only way to determine the scope of the state law duties and obligations Plaintiffs seek to assert in each count is to resolve disputed questions of federal law regarding the nature and scope of the duties and obligations imposed by federal law. By limiting their state causes of action to assert *only duties and obligations arising under federal law*, Plaintiffs have made the case thoroughly and almost entirely federal.[1]

Finally, Plaintiffs' claims raise substantial federal questions because Plaintiffs allege multiple violations of federal law on the face of the Complaint. Where violations of federal law are alleged as the basis for the asserted state law claims, the claims "arise under" federal law and fall within the original jurisdiction of the district courts. For each of these reasons, Monsanto is entitled to remove this case to federal court under 28 U.S.C. § 1331.

Monsanto is also entitled to remove this action for the separate and alternative reason that this Court has jurisdiction under the federal officer removal statute, 28 U.S.C. § 1442(a)(1). When a state court lawsuit satisfies § 1442(a)(1), the case can be removed "despite the nonfederal cast of the complaint; the federal-question element is met if the defense depends on federal law." *Jefferson County v. Acker*, 527 U.S. 423, 431 (1999). Here, as required by § 1442(a)(1), Monsanto has colorable federal defenses (based on the Supremacy Clause and federal preemption principles). The other § 1442(a)(1) requirements are satisfied as well. Plaintiffs' allegations regarding illegal collusion between federal officers and Monsanto with respect to Monsanto's glyphosate-based herbicides show that Plaintiffs contend that Monsanto

[1] Monsanto does not concede that all of the federal duties and obligations that Plaintiffs purport to assert have an identical state law counterpart under the common law of the states whose laws apply to Plaintiffs' claims. Nor does Monsanto concede that all duties and obligations arising under federal law are duties that are owed to, or enforceable by private litigants. Thus, Monsanto does not concede that all of the federal duties and obligations Plaintiffs purport to assert can be asserted as a basis for liability in an action, such as this, brought under state law.

has had a special relationship with EPA – namely, Monsanto allegedly acted under the direction of federal officers and a causal connection allegedly existed between that official authority and the Monsanto conduct challenged by Plaintiffs in this lawsuit. Due to Plaintiffs' novel allegations of illegal collusion between federal officers at EPA and the company that the agency was supposed to regulate, this lawsuit should be resolved in federal court to ensure, in accordance with the purposes of the federal officer removal statute, that claims asserted in state courts cannot be used to interfere with a federal agency's efforts to carry out its regulatory responsibilities.

FACTUAL BACKGROUND

I. Roundup® Litigation

1. The Complaint purports to join the claims of forty-one (41) Plaintiffs from various counties in California.

2. This lawsuit is one of several filed against Monsanto after the International Agency for Research on Cancer ("IARC") published a report in 2015 classifying glyphosate in Category 2A, which IARC explains "is used when there is limited evidence of carcinogenicity in humans and sufficient evidence of carcinogenicity in experimental animals. *Limited evidence* means that a positive association has been observed between exposure to the agent and cancer *but that other explanations for the observations (called chance, bias, or confounding) could not be ruled out.*" IARC Monographs Volume 112: evaluation of five organophosphate insecticides and herbicides (March 20, 2015) (second emphasis added).[2]

3. In the past month alone, Plaintiffs' counsel in this lawsuit and other plaintiffs' attorneys have filed thirteen (13) multi-plaintiff lawsuits against Monsanto in Missouri state court (St. Louis City) that are very similar to this lawsuit. Those complaints include the claims of over one-thousand (1000) plaintiffs, but all individual complaints (except one) include fewer than 100 plaintiffs.

[2] Available at: https://www.iarc.fr/en/media-centre/iarcnews/pdf/MonographVolume112.pdf (last visited 3/22/17).

4. Federal lawsuits alleging that Monsanto's Roundup®-branded herbicides cause cancer have been transferred for coordinated multidistrict litigation ("MDL") proceedings to Judge Vince Chhabria of this Court. *See In re Roundup Prods. Liab. Litig.*, No. 3:16-md-02741-VC (N.D. Cal.). Over 65 plaintiffs are part of those MDL proceedings. Judge Chhabria has limited the first phase of those proceedings to determining whether scientifically reliable, admissible evidence exists to establish that glyphosate can cause NHL (*i.e.*, general causation).

II. The Federal Regulatory Framework

A. Registration of Pesticides

5. The manufacture, formulation, labeling and distribution of pesticides, such as Monsanto's Roundup®-branded herbicide, are regulated by EPA under the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"), 7 U.S.C. § 136 *et seq*. Federal law prohibits the sale of pesticides that have not been registered by the EPA, except as permitted by FIFRA. 7 U.S.C. § 136a; 40 C.F.R. § 152.42 ("An application for new registration must be approved by the Agency before the product may legally be distributed or sold, except as provided by § 152.30.").

6. EPA is permitted to register a pesticide only "if the Administrator determines that, when considered with any restrictions imposed under subsection (d) of this section –

a. its composition is such as to warrant the proposed claims for it;

b. its labeling and other material required to be submitted comply with the requirements of this subchapter;

c. it will perform its intended function without unreasonable adverse effects on the environment; and

d. when used in accordance with widespread and commonly recognized practice it will not generally cause unreasonable adverse effects on the environment.

7 U.S.C. § 136a(c)(5). The statute defines "unreasonable adverse effects on the environment" to mean: "(1) any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide, or (2) a human dietary risk from residues that result from a use of pesticide in or on any food inconsistent with the standard under section 346a of Title 21." 7 U.S.C. § 136(bb).

7. Applicants for registration of a pesticide must complete an application and submit to EPA materials and data specified by FIFRA and its implementing regulations. *See* 7 U.S.C. § 136a(c); 40 C.F.R. § 152.50; 40 C.F.R. § 152.80, *et seq*. The "Administrator shall publish guidelines specifying the kinds of information which will be required to support the registration of a pesticide and shall revise such guidelines from time to time." 7 U.S.C. § 136a(c)(2)(A).

8. The federal data submission requirements for registration of a pesticide are set out in federal regulations, which "specify the kinds of data and information EPA requires in order to make regulatory judgments under FIFRA secs. 3, 4, and 5 about the risks and benefits of pesticide products." 40 C.F.R. § 158.1, *et seq*. In addition, "EPA has the authority to establish or modify data needs for individual pesticide chemicals." 40 C.F.R. § 158.30(a).

9. Before registering a pesticide, EPA may require the submission of data relating to, *inter alia*, product chemistry, product performance, toxicology (humans and domestic animals), hazards to nontarget organisms, applicator and post-application exposure, pesticide spray drift evaluation, environmental fate, and residue chemistry. *See* 40 C.F.R. § 158.130, *et seq*. Ultimately, "[t]he Agency will determine whether the data submitted or cited to fulfill the data requirements specified in this part are acceptable." 40 C.F.R. § 158.70. "The data requirements for registration are intended to generate data and information necessary to address concerns pertaining to the identity, composition, potential adverse effects and environmental fate of each pesticide." 40 C.F.R. § 158.130(a).

10. EPA has registered Roundup®-branded pesticides for distribution, sale and manufacture in the United States. *See* Compl. at ¶ 85.

11. Under FIFRA, EPA periodically must re-register previously registered pesticide products to ensure that they continue to meet the standards in FIFRA, 7 U.S.C. § 136a(c)(5). 7 U.S.C. § 136a-1. "EPA accomplishes this reevaluation through its Registration Standards process." Pesticide Registration Standards, 50 FR 48998-01 (Nov. 27, 1985).

B. Pesticide Labeling

12. Federal law also governs pesticide labeling. FIFRA defines "label" as "the

written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers," and defines "labeling" as "all labels and all other written, printed or graphic matter (A) accompanying the pesticide or device at any time; or (B) to which reference is made on the label or in literature accompanying the pesticide or device…." 7 U.S.C. § 136(p).

13. "In 40 C.F.R. Part 156, EPA has regulated almost every aspect of pesticide labeling." *Papas v. Upjohn Co.*, 926 F.2d 1019, 1024 (11th Cir. 1991), *rev'd on other grounds*, 505 U.S. 1215 (1992). 40 C.F.R. § 156.10(a)(1) requires that "[e]very pesticide product shall bear a label containing the information specified by the Act and the regulations in this part." Under 7 U.S.C. § 136v(b), "State[s] shall not impose or continue in effect any requirements for labeling or packaging in addition to or different from those required under this subchapter."

III. Allegations of the Complaint

14. In this lawsuit, Plaintiffs allege that they or their decedents developed NHL and other cancers as a result of exposure to Roundup® herbicides manufactured and sold by Monsanto. Compl. at ¶¶ 56-57.

15. The gravamen of Plaintiffs' Complaint is their allegation that Monsanto secured and maintained EPA's registration of Roundup®-branded products through acts of scientific fraud, the falsification of test results submitted to EPA, and illegal collusion between EPA officials and Monsanto. *See, e.g.*, Compl. at ¶¶ 97-103; *id*. at ¶ 103 (citing the alleged "falsity of the tests that underlie [Roundup®'s] registration"); *id*. at ¶ 105 (alleging "collusion" between EPA and Monsanto).

16. Plaintiffs contend that "[o]n two occasions, the EPA found that the laboratories hired by Monsanto to test the toxicity of its Roundup® products for registration purposes committed fraud." Compl. at ¶ 98.

17. Plaintiffs also contend that, "in assessing the safety of glyphosate," EPA relied on studies that were ghostwritten by Monsanto and that "minimize any safety concerns about the use of glyphosate." Compl. at ¶ 104. According to the Complaint, "[t]hrough these means Monsanto has fraudulently represented that independent scientists have concluded that

Glyphosate is safe." *Id.* Similarly, Plaintiffs allege that "Monsanto has also ghostwritten letters by supposed independent scientists submitted to regulatory agencies who are reviewing the safety of glyphosate." *Id.*

18. Plaintiffs claim that "Monsanto has also violated federal regulations in holding secret ex parte meetings and conversations with certain EPA employees to collude in a strategy to re-register glyphosate and to quash investigations into the carcinogenicity of glyphosate by other federal agencies such as the Agency for Toxic Substances and Disease Registry." Compl. at ¶ 105. Plaintiffs also allege that Monsanto improperly influenced EPA through the "offering of lucrative consulting gigs to retiring EPA officials." *Id.* Plaintiffs' allegations of illegal collusion include Jess Rowland, the EPA Office of Pesticide Programs ("OPP") employee who chaired EPA's Cancer Assessment Review Committee ("CARC") – the committee of EPA scientists who recently assessed whether glyphosate is a carcinogen and endorsed EPA's existing classification of glyphosate as not likely to be carcinogenic to humans. According to a motion to compel Rowland's deposition, there was "a concerted effort by Monsanto and the OPP, Jess Rowland, and his CARC committee to 'kill' the glyphosate/lymphoma issue for the company." Plaintiffs' Motion to Compel the Deposition of Jess Rowland at 2, *In re: Roundup Prods. Liab. Litig.*, MDL No. 2741 (N.D. Cal. Mar. 14, 2017), ECF No. 189.

19. Plaintiffs allege that, by pressuring EPA, Monsanto secured a change in EPA's classification of glyphosate, from "possibly carcinogenic to humans" to "evidence of non-carcinogenicity in humans." Compl. at ¶ 97. In broad terms, Plaintiffs claim that "Monsanto championed falsified data and attacked legitimate studies that revealed [Roundup®'s] dangers [and] … led a prolonged campaign of misinformation to convince government agencies, farmers and the general population that Roundup® was safe." Compl. at ¶ 88.

20. The Complaint asserts the following counts: (1) strict liability (design defect); (2) strict liability (failure to warn); (3) negligence; (4) fraud; (5) breach of express warranties; and (6) breach of implied warranties.

21. Under the heading "Limitation on Allegations," the Complaint states: "The

allegations in this pleading are made pursuant to California law. To the extent California law imposes a duty or obligation on the Defendants that exceeds those required by federal law, Plaintiffs do not assert such claims. All claims asserted herein run parallel to federal law…." Compl. at ¶ 144.

SUBSTANTIVE REQUIREMENTS FOR REMOVAL

I. THIS ACTION IS REMOVABLE UNDER 28 U.S.C. §1441(a), AS THIS COURT HAS ORIGINAL FEDERAL QUESTION JURISDICTION OVER PLAINTIFFS' CLAIMS.

22. This action is removable to federal court under 28 U.S.C. § 1441(a), because this Court has original federal question jurisdiction under 28 U.S.C. §1331, and supplemental jurisdiction under 28 U.S.C. § 1367(a).

23. 28 U.S.C. § 1441(a) provides, in relevant part, that "any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants" to federal court.

24. Under 28 U.S.C. § 1331, federal district courts "have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."

25. A case can be removed on federal question ("arising under") grounds even if the complaint asserts only state law causes of action. *See Grable & Sons Metal Prods., Inc. v. Darue Eng'g & Mfg.*, 545 U.S. 308, 312 (2005) (distinguishing between two different kinds of federal question removal).

26. As the *Grable* Court held, federal question removal is available when "a state-law claim necessarily raise[s] a stated federal issue, actually disputed and substantial, which a federal forum may entertain without disturbing any congressionally approved balance of federal and state judicial responsibilities." *Grable*, 545 U.S. at 314. *See also Pet Quarters, Inc. v. Depository Trust & Clearing Corp.*, 559 F.3d 772, 779 (8th Cir. 2009) (district courts have jurisdiction under 28 U.S.C. § 1331 where "(1) the right to relief under state law depends on the resolution of a substantial, disputed federal question, and (2) the exercise of jurisdiction will not disrupt the balance between federal and state jurisdiction adopted by Congress.").

27. Courts repeatedly have applied *Grable* to allow defendants to remove lawsuits where substantial, disputed federal questions are necessarily raised by state-law claims. *See, e.g.*, *Pet Quarters, Inc*. 559 F.3d at 779; *Rhode Island Fisherman's Alliance, Inc. v. Rhode Island Dept. of Envtl. Mgmt.*, 585 F.3d 42, 48-52 (1st Cir. 2009); *Broder v. Cablevision Sys. Corp*., 418 F.3d 187, 195-96 (2d Cir. 2005); *Bd. of Comm'rs of Se. Louisiana Flood Protect. Auth.-E. v. Tennessee Gas Pipeline Co., L.L.C.*, --F.3d--, 2017 WL 874999 (5th Cir. Mar. 3, 2017); *Hughes v. Chevron Phillips Chem. Co. LP*, 478 Fed. App'x 167 (5th Cir. 2012); *Los Angeles Police Protective League v. City of Los Angeles*, 314 Fed. App'x 72, 72-75 (9th Cir. 2009); *Davis v. J.P. Morgan Chase, N.A.*, 2013 WL 6708765, at *2-3 (E.D. Mo. Dec. 18, 2013) (noting that cases that include challenges to federal agency action support a finding of substantial federal question jurisdiction); *Bader Farms, Inc. v. Monsanto Co.*, 2017 WL 633815 (E.D. Mo. Feb. 16, 2017).

28. "If even one claim in the complaint involves a substantial federal question, the entire matter may be removed." *Pet Quarters, Inc.*, 559 F.3d at 779 (citing *Beneficial Nat'l Bank v. Anderson*, 539 U.S. 1, 9 (2003)).

29. In addition, "in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution." 28 U.S.C. § 1367(a).

30. Monsanto is entitled to remove this case to federal court, because Plaintiffs' Complaint raises substantial, disputed questions of federal law for three separate reasons:

a. First, this Court has original federal question jurisdiction over this action, because Plaintiffs allege that Monsanto secured federal regulatory approval for its Roundup®-branded products by defrauding, improperly influencing, and illegally colluding with EPA officials. Those allegations raise disputed questions of federal law – *e.g.*, whether EPA officials illegally colluded with Monsanto in violation of federal law, whether Monsanto's interactions with EPA officials complied with federal requirements, whether EPA failed to fulfill its regulatory duties with respect to the registration of

Roundup®, and whether EPA's regulatory decisions regarding Roundup® were the result of improper influence or federal regulatory fraud. These questions are "actually disputed" and "substantial," and their resolution in a federal forum will not disturb the congressionally approved balance of federal and state judicial responsibilities. Challenges to federal agency action present "substantial" federal questions; Congress has granted federal courts jurisdiction over challenges to federal agency action; and a sufficiently small number of state claims are predicated on allegations of illegal collusion between federal regulators and regulated companies that asserting jurisdiction would not materially change the balance of federal and state litigation.

b. Second, this Court has original federal question jurisdiction, because Plaintiffs have defined the scope of each of their state law claims according to the scope of the duties and obligations imposed by federal law. As a result, every count necessarily raises questions regarding the scope of the relevant federal duties and obligations. Those federal questions are "actually disputed" and "substantial." The federal interest in these questions is "substantial," because their resolution will guide current and future applicants for pesticide registrations in their interactions with EPA. Resolution of these questions in federal court will not disrupt the congressionally approved balance of state and federal judicial responsibility, because Congress specifically vested the federal district courts with jurisdiction specifically to enforce, and prevent and restrain violations of FIFRA, and to review EPA decisionmaking. And, exercising jurisdiction will not change the balance of federal and state court litigation because it is based on Plaintiffs' unusual decision to limit all of their state claims to the assertion of federal duties.

c. Third, this Court has original federal question jurisdiction, because multiple violations of federal law are alleged on the face of the Complaint as a predicate for Plaintiffs' state law claims, and those allegations raise federal questions that are "actually disputed" and "substantial," and their resolution in a federal forum will not disturb the congressionally approved balance of federal and state judicial responsibilities.

For example, Plaintiffs allege that Monsanto violated federal law by submitting third-party testing data to EPA that was later determined to be false. That allegation raises disputed federal questions – *e.g.*, whether applicants for pesticide registrations have a duty under federal law to guarantee the accuracy of third-party testing data they submit to EPA – that are substantial, as their answers may impact the scope of even valid testing data that applicants will make available to the agency going forward. Similarly, Plaintiffs' allegation that Monsanto violated federal regulations by communicating with EPA employees raises substantial federal questions regarding the extent to which applicants may communicate with the agency. The federal interest in that question is substantial, because EPA relies on direct communications with applicants to perform its regulatory function. The fact that Congress gave federal courts jurisdiction over FIFRA enforcement demonstrates that the exercise of jurisdiction over this lawsuit will not disturb the congressionally approved balance of federal and state judicial responsibilities.

31. Finally, this Court has supplemental jurisdiction, under 28 U.S.C. § 1367(a), over any claim over which it does not have original federal question jurisdiction, because all of the claims asserted form part of the same case or controversy.

A. Plaintiffs' Allegations that Federal Regulators Colluded with Monsanto in Misrepresenting and Concealing the Health Risks of Glyphosate Raise Substantial Federal Questions within the Court's Original Jurisdiction

32. This Court has original federal question jurisdiction over Plaintiffs' allegations that federal regulators colluded with Monsanto in misrepresenting and concealing the health risks of glyphosate, because they necessarily raise substantial, disputed federal questions for two separate reasons.

33. First, Plaintiffs' allegations necessarily raise substantial, disputed federal questions because they are predicated on allegations that federal regulators illegally colluded with Monsanto to undermine the regulatory process in exchange for their own personal financial gain. The propriety of interactions between EPA and the entities it regulates is inherently federal, and the federal interest in challenges to federal regulatory conduct is substantial.

34. Second, Plaintiffs' claims necessarily raise substantial, disputed federal questions because they are predicated on allegations that Monsanto's fraudulent acts prevented EPA from properly performing its regulatory function in registering Roundup®. Allegations that regulatory fraud prevented federal regulators from fulfilling their regulatory duties raise substantial federal questions within the original jurisdiction of the district courts.

1. Plaintiffs' Allegations of Illegal Collusion Between Federal Regulators and Monsanto Raise Substantial Federal Questions.

35. Plaintiffs' Complaint alleges: "Monsanto … violated federal regulations in holding secret ex parte meetings and conversations with certain EPA employees to collude in a strategy to re-register glyphosate and to quash investigations into the carcinogenicity of glyphosate by other federal agencies such as the Agency for Toxic Substances and Disease Registry. Monsanto's close connection with the EPA arises in part from its offering of lucrative consulting gigs to retiring EPA officials." Compl. at ¶ 105. These allegations are incorporated into every cause of action asserted into the Complaint. *See* Compl. at ¶ 147 (incorporating all preceding paragraphs into Count I); *id*. at ¶ 170 (same for Count II); *id*. at ¶ 195 (same for Count III); *id*. at ¶ 215 (same for Count IV); *id*. at ¶ 227 (same for Count V); *id*. at ¶ 246 (same for Count VI); *id*. at ¶ 263 (same for exemplary damages allegations).

36. Plaintiffs' allegations that EPA officials colluded with Monsanto in an unlawful scheme to prevent proper safety evaluations of glyphosate-based herbicides, in exchange for their personal financial gain, necessarily raises questions of federal law for several reasons:

a. First, the Complaint directly alleges violations of federal regulations. *See* Compl. at ¶ 105 ("Monsanto has also violated federal regulations in holding secret ex parte meetings and conversations with certain EPA employees….").

b. Second, the relationship between a federal regulatory agency and those it regulates is governed exclusively by federal law. *See Buckman Co. v. Plaintiffs' Legal Comm.*, 531 U.S. 341, 347 (2001) ("[T]he relationship between a federal agency and the entity it regulates is inherently federal in character because the relationship originates from, is governed by, and terminates according to federal law.").

c. Third, the Complaint itself requires that any analysis of these allegations begin with a determination of the duties and obligations imposed by federal law. *See* Compl. at ¶ 144 ("To the extent California law imposes a duty or obligation on the Defendants that exceeds those required by federal law, Plaintiffs do not assert such claims."); *see also* Section I.B., *infra*. Plaintiffs' claims and allegations, therefore, require determination of the relevant federal law standards that might be enforceable via private common law claims.

37. Thus, Plaintiffs' allegations of unlawful collusion between federal regulators at EPA and Monsanto require a determination of the duties and obligations federal law imposes with respect to interactions between EPA and those it regulates. They also require a determination of the federal duties and obligations relevant to assessing the propriety of any post-employment consulting work by federal regulators. Plaintiffs have not identified the specific federal regulations they allege Monsanto violated in meeting with EPA, but various federal regulations and statutes may be relevant to their collusion allegations. For example:

a. Various federal regulations address the propriety of interactions between EPA and applicants for pesticide registration, as they relate to obtaining registrations. *See, e.g.*, 40 C.F.R. § 158.30(a) ("The Agency encourages each applicant to consult with EPA to discuss the data requirements particular to its product prior to and during the registration process."); 40 C.F.R. § 158.45(b)(1) ("Applicants are encouraged to discuss a data waiver request with the Agency before developing and submitting supporting data, information, or other materials."); 40 C.F.R. § 158.70 ("Registrants and applicants, however, must consult with the EPA before initiating combined studies."); 40 C.F.R. § 158.80(b) ("Consultation with the Agency should be arranged if applicants are unsure about suitability of such data.").

b. Various federal regulations also address the propriety of meetings between EPA and pesticide registrants relating to the creation of Registration Standards for pesticide re-registrations. *See, e.g.*, 40 C.F.R. § 155.27 ("The Agency may, however,

meet with registrants to discuss its pending reviews, decisions, or documents, in accordance with the meeting procedures in § 155.30, and the docketing procedures in § 155.32."); 40 C.F.R. § 155.30 ("EPA personnel may, upon their own initiative or upon request by any interested person or party, meet or communicate with persons or parties outside of government concerning a Registration Standard under development. Such meetings or communications will conform to the following policies and procedures…").

c. Federal law also provides standards that may be relevant to Plaintiffs' allegation that Monsanto gained improper influence over EPA by "offering…lucrative consulting gigs to retiring EPA officials," Compl. at ¶ 105. *See, e.g.*, 18 U.S.C. § 201 *et seq*.

38. The federal questions raised by Plaintiffs' allegations that EPA officials colluded with Monsanto in an unlawful scheme to prevent proper safety evaluations of glyphosate-based herbicides, for their own personal financial gain, are also "actually disputed" in the litigation. Monsanto denies any illegal collusion, denies that any alleged meetings between EPA and Monsanto were prohibited by federal law, and denies that any consulting work performed by former EPA officials for Monsanto was improper under federal law.

39. The federal questions raised by Plaintiffs' allegations that EPA officials colluded with Monsanto in an unlawful scheme to prevent proper safety evaluations of glyphosate-based herbicides, in exchange for their personal financial gain, are also substantial:

a. The federal questions raised are substantial because Plaintiffs directly challenge the propriety *and legality* of actions taken by a federal regulatory agency. *See Pet Quarters, Inc.*, 559 F.3d at 779 ("Claim 12 presents a substantial federal question because it directly implicates actions taken by the Commission in approving the creation of the Stock Borrow Program and the rules governing it."). Indeed, "the [Supreme] Court has repeatedly suggested that a federal issue is more likely to be substantial where a claim between two private parties, though based in state law, directly challenges the propriety of an action taken by 'a federal department, agency, or service.'" *Municipality*

of Mayaguez v. Corporacion Para el Desarrollo del Oeste, Inc., 726 F.3d 8, 14 (1st Cir. 2013) (quoting *Empire Healthchoice Assurance*, 547 U.S. 677, 700 (2006)); *see also Lafoy v. Volkswagen Group of Am., Inc.*, 2016 WL 2733161, at *4 (E.D. Mo. May 11, 2016) (substantial federal question jurisdiction exists, not only where a state law claim may turn on an interpretation of federal law, but also "where the resolution of the issue has broader significance for the federal government, such as where there is a direct interest of the government for the availability of a federal forum to vindicate its own administrative action.") (citing *Municipality of Mayaguez*, 726 F.3d at 14).

b. State law claims challenging federal agency actions raise substantial federal questions and fall within the original jurisdiction of the federal courts. *See, e.g., Grable*, 545 U.S. at 314-15 (state law claim challenging the compatibility of federal agency's action with federal statute supported removal); *Pet Quarters, Inc.*, 559 F.3d at 779 (claim presents a substantial federal question if it directly implicates actions taken by federal regulators and would control resolution of other cases).

40. Finally, resolution of these disputed questions of federal law by this Court will not upset the balance of judicial power approved by Congress. Challenges to federal agency action are routinely decided in federal court. *See, e.g., Hamilton v. Gonzales*, 485 F.3d 564, 569 (10th Cir. 2007) ("Moreover, the general jurisdiction statutes confer original jurisdiction over challenges to agency actions to the district courts, or to the Federal Circuit."); *Gallo Cattle Co., v. U.S. Dept. of Agriculture*, 159 F.3d 1194, 1198 (9th Cir. 1998) ("a federal court has jurisdiction pursuant to 28 U.S.C. § 1331 over challenges to agency action as claims arising under federal law, unless a statute expressly precludes review."). The federal interest in the availability of a federal forum to resolve disputes regarding the actions of federal regulators is strong. *See Bender v. Jordan*, 623 F.3d 1128, 1130-31 (D.C. Cir. 2010). Moreover, state-law claims alleging illegal collusion between a federal regulatory agency and a company regulated by the agency are rare, so asserting federal question jurisdiction over this lawsuit "would not materially affect, or threaten to affect, the normal currents of litigation." *Grable*, 545 U.S. at 319.

2. Plaintiffs' Allegations that EPA Decisionmaking Was Impaired by Regulatory Fraud Raise Substantial Federal Questions.

41. Plaintiffs' challenges to EPA's regulatory actions with respect to Roundup®-branded herbicides also raise substantial, disputed federal questions, for the additional reason that Plaintiffs allege that EPA's decision to register Roundup® was based on falsified testing results submitted to EPA in support of the registration, undue influence, and EPA's reliance on studies ghostwritten by Monsanto "which minimize[d] any safety concerns about the use of glyphosate." Compl. at ¶ 104.

42. The Complaint specifically alleges that Monsanto submitted to EPA falsified test results prepared by third-party researchers in support of glyphosate's registration. Compl. at ¶¶ 98-103. The Complaint also alleges that Monsanto "fraudulently represented [to EPA] that independent scientists have concluded that Glyphosate is safe" by "ghostwriting" "[m]ultiple studies" that "minimize any safety concerns about the use of glyphosate" and that were "submitted to and relied upon [by] … EPA in assessing the safety of glyphosate." *Id*. at ¶ 104. Plaintiffs also allege that Monsanto has "ghostwritten letters by supposed independent scientists submitted to regulatory agencies who are reviewing the safety of glyphosate." *Id*. These allegations are incorporated into every cause of action asserted into the Complaint. *See* Compl. at ¶ 147 (incorporating all preceding paragraphs into Count I); *id*. at ¶ 170 (same for Count II); *id*. at ¶ 195 (same for Count III); *id*. at ¶ 215 (same for Count IV); *id*. at ¶ 227 (same for Count V); *id*. at ¶ 246 (same for Count VI); *id*. at ¶ 263 (same for exemplary damages allegations).

43. Plaintiffs' allegations that EPA failed to fulfill its regulatory duties because of Monsanto's alleged regulatory fraud necessarily raise substantial questions of federal law for several reasons:

a. The Complaint itself asserts that Monsanto's alleged deceptions, misrepresentations, and omissions were prohibited by federal law. Compl. at ¶¶ 146, 218.

b. Second, the relationship between a federal regulatory agency and those it regulates is governed exclusively by federal law. *Buckman*, 531 U.S. 347. *See also*

Bader Farms, 2017 WL 633815, at *3 ("whether federal regulatory bodies fulfilled their duties with respect to entities they regulate is 'inherently federal in character.'") (quoting *Buckman Co.*, 531 U.S. at 347).

c. Third, the Complaint itself requires that any analysis of these allegations begin with a determination of the duties and obligations imposed by federal law. *See* Compl. at ¶ 144 ("To the extent California law imposes a duty or obligation on the Defendants that exceeds those required by federal law, Plaintiffs do not assert such claims."); *see also* Section I.B., *infra*. Plaintiffs' claims and allegations, therefore, require determination of the relevant federal law standards that might be enforceable via private common law claims.

44. Thus, Plaintiffs' allegations that EPA's registration and other regulatory actions taken with respect to Roundup®-branded herbicides were predicated on fraud require a determination of the duties and obligations federal law imposes with respect to applications for pesticide registration and re-registration. Plaintiffs have not identified federal statutory or regulatory sources for all of the duties and obligations they seek to impose, but various federal statutes and regulations may be relevant to their regulatory fraud claims. For example:

a. Various federal regulations address the information to be included in an application for pesticide registration. *See, e.g.*, 40 C.F.R. § 152.80 *et seq.*, and 40 C.F.R. § 158.1 *et seq.*; § 152.80 ("This subpart E describes the information that an applicant must submit with his application for registration or amended registration to comply… with the provisions of FIFRA sec 3(c)(1)(F)."); § 158.1 ("The purpose of this part is to specify the kinds of data and information EPA requires in order to make regulatory judgments under FIFRA secs. 3, 4, and 5 about the risks and benefits of pesticide products.").

b. Various federal statutes and regulations also address the falsification of information relating to the testing of any pesticide, and the falsification of all or part of any application for registration of a pesticide. *See* 7 U.S.C. § 136j(a)(2)(Q) ("It shall be

unlawful for any person…to falsify all or part of any information relating to the testing of any pesticide…"); 7 U.S.C. § 136j(a)(2)(M) ("It shall be unlawful for any person…to knowingly falsify all or part of any application for registration….").

45. The federal questions raised by Plaintiffs' allegations that the registration of Roundup®-branded herbicides was secured through regulatory fraud are "actually disputed" in the litigation, as Monsanto denies that it omitted material information from EPA relating to the registration of glyphosate, denies that it is responsible for submitting falsified testing results to EPA, and denies that it deceived EPA or violated federal law in any of the other particulars alleged.

46. The federal questions raised by Plaintiffs' allegations of regulatory fraud are also "substantial," as their resolution will affect the interactions between current and future applicants for pesticide registration and EPA, and may adversely impact future data submissions to EPA. *See Nathan Kimmel, Inc. v. DowElanco*, 275 F.3d 1199, 1206 (9th Cir. 2002). In addition:

a. Allegations of fraud on federal regulators (even without allegations of collusion) are substantial and permit removal. *See Bader Farms, Inc.*, 2017 WL 633815, at *2-3. In *Bader*, Judge Limbaugh denied the plaintiffs' motion for remand, finding that plaintiffs' claim for fraudulent concealment "presents a substantial federal question." *Id.* at *2. The court explained that, because Plaintiffs accused Monsanto of concealing material facts from federal regulators – the U.S. Department of Agriculture's Animal and Plant Health Inspection Service ("APHIS") – it was "[i]mplicit in plaintiffs' claim … that APHIS would not have deregulated the new seeds had they known of the true risks involved, and that the seeds would not have been approved for sale." *Id.* Relying on *Grable*, Judge Limbaugh stated that "the outcome of the fraudulent concealment claim necessarily depends on the interpretation and application of the federal regulatory process under APHIS." *Id.* at *3. Focusing on plaintiffs' allegation that Monsanto's concealment of material facts caused APHIS to be unable to perform its task to protect the public, the court stated that, "whether federal regulatory bodies fulfilled their duties with respect to

the entities they regulate is 'inherently federal in character.'" *Id.* (quoting *Buckman Co.*, 531 U.S. at 347).

b. Here, Plaintiffs allege that Monsanto illegally concealed important safety information about glyphosate from EPA and otherwise misled EPA such that it failed to fulfill its federal regulatory duties. Indeed, Plaintiffs directly allege that glyphosate was registered by EPA even though it does not meet the risk/benefit test EPA is required to apply. *See, e.g.*, Compl. at ¶¶ 153, 155(e), 159. To prove their claims, Plaintiffs must show that Monsanto committed federal regulatory fraud and that the alleged fraud prevented EPA from performing its federal regulatory duties with respect to glyphosate and Roundup®-branded herbicides. These allegations raise substantial federal questions because they challenge the validity of decisions made by federal regulators. *See Grable*, 545 U.S. at 315 ("The Government thus has a direct interest in the availability of a federal forum to vindicate its own administrative action….").

47. Finally, the disputed and substantial federal questions presented by Plaintiffs' accusations against EPA and Monsanto can be resolved in a federal court "without disturbing any congressionally approved balance of federal and state judicial responsibilities." *Grable*, 545 U.S. at 314. Federal courts routinely resolve challenges to actions of federal agencies. *See, e.g., Hamilton*, 485 F.3d at 569; *Gallo Cattle Co.*, 159 F.3d at 1198. And Congress specifically vested the federal courts with substantial jurisdiction over challenges to EPA decisionmaking and the enforcement of FIFRA. *See, e.g.*, 7 U.S.C. 136n.

B. Every Count in the Complaint Raises Substantial Federal Questions, Because Every Count Requires Determination of the Duties and Obligations Imposed by Federal Law.

48. Every count in the Complaint necessarily raises substantial, disputed federal questions, because Plaintiffs have limited every count to the assertion of duties and obligations that are imposed by federal law. Under the heading "Limitation on Allegations," Plaintiffs' Complaint alleges, for each cause of action, that Plaintiffs are asserting only those state law duties and obligations that are the same as those imposed under federal law. Compl. at ¶ 144

("To the extent California law imposes a duty or obligation on the Defendants that exceeds those required by federal law, Plaintiffs do not assert such claims.").

49. As a result, the only way to determine the scope of the duties and obligations Plaintiffs seek to impose is to resolve questions of federal law – *i.e.*, determine the scope of the duties and obligations federal law imposes relative to each count that might be enforceable via private common law claims. Thus, Plaintiffs' right to relief under state law necessarily depends on the resolution of questions of federal law. Plaintiffs have not identified federal statutory or regulatory sources for all of the duties and obligations they seek to impose, but various federal statutes and regulations may be relevant to their claims. For example:

a. Plaintiffs' Negligence Count alleges that Monsanto was negligent in "[f]ailing to undertake sufficient studies and conduct necessary tests to determine whether or not Roundup® products and glyphosate-containing products were safe for their intended use…." Compl. at ¶ 205(c). In light of the "Limitation on Allegations," to resolve this claim the Court must determine what duties and obligations federal law imposes with respect to product testing. Various federal statutes and regulations address the federal requirements for product testing. *See, e.g.*, 7 U.S.C. § 136a; 40 C.F.R. § 158.1 *et seq*., and 40 C.F.R. §152.80 *et seq*.

b. Similarly, Plaintiffs' Negligence Count alleges that Monsanto was negligent in "[f]ailing to provide adequate instructions, guidelines, and safety precautions to those persons who [Monsanto] could reasonably foresee would use and be exposed to Roundup® products." Compl. at ¶ 205(f). In light of the "Limitation on Allegations, " to resolve this claim the Court must determine what duties and obligations federal law imposes with respect to providing "instructions, guidelines, and safety precautions" for pesticide products. Various federal statutes and regulations address those issues, including 40 C.F.R. § 156.10, which provides federal requirements for pesticide labeling.

c. Likewise, Plaintiffs' Strict Liability (Design Defect) count asserts that Monsanto's Roundup® products were defective because "the foreseeable risks exceeded

the alleged benefits associated with their design and formulation." Compl. at ¶ 153.[3] In light of the "Limitation on Allegations," to resolve this claim the Court must determine the scope of the risk/benefit calculus applicable under federal law. The risks and benefits federal law requires EPA to consider in making registration decisions are set out in 7 U.S.C. § 136a(c)(5) and 7 U.S.C. § 136(bb). *See also* 40 C.F.R. § 158.1 ("The purpose of this part is to specify the kinds of data and information EPA requires in order to make regulatory judgments under FIFRA secs. 3, 4, and 5 *about the risks and benefits* of pesticide products.") (emphasis added).

d. A similar analysis applies with respect to each and every count asserted in the Complaint. The only way to determine the scope of the duties and obligations Plaintiffs seek to impose for each count is to resolve questions of federal law regarding the nature and scope of the duties and obligations imposed by federal law.

50. The federal questions necessarily raised by each count of the Complaint are actually disputed and substantial:

a. The scope of the duties and obligations imposed by federal law is actually disputed in this litigation, as Monsanto contends that it satisfied all requirements of federal law in securing EPA's registration of glyphosate, while Plaintiffs allege that it did not. For example, Monsanto contends that federal law did not require Monsanto to perform additional testing, or to provide different or additional instructions or labeling for its Roundup®-branded herbicide products, while Plaintiffs contend that it did.

b. The scope of the duties and obligations imposed by federal law relating to the registration, labeling and sale of pesticides is a "substantial" federal question for three reasons: (1) it defines the federal regulatory burdens that apply to all current and future pesticide registrants, and will necessarily guide their future interactions with EPA; (2) the federal government and EPA have a substantial interest in development of a

[3] *See also* Compl. at ¶ 159 ("harm caused by . . . Roundup® products far outweighed their benefit"); *id.* at ¶ 155(e) (Roundup® herbicides "present[] a risk of harmful side effects that outweigh any potential utility").

uniform body of federal law relative to pesticide registrations; and (3) it will affect not only the instant action, but numerous other pending cases involving nearly identical claims brought by more than 1000 plaintiffs.

51. Finally, resolution of the alleged violations of federal law in federal court will not disrupt the congressionally approved balance of federal and state judicial responsibility. First, because federal law defines all of the duties and obligations Plaintiffs seek to impose, the resolution of Plaintiffs' claims in federal court is consistent with the congressionally approved balance of judicial power. Indeed, resolving alleged violations of federal law is well within the scope of traditional federal jurisdiction. Second, because Congress specifically vested the federal courts with substantial jurisdiction over challenges to EPA decisionmaking and the enforcement of FIFRA, the exercise of federal jurisdiction over this lawsuit would not disrupt the congressionally approved balance of federal and state judicial responsibility. *See, e.g.*, 7 U.S.C. 136n. Finally, because "it will be the rare state [tort] case" that is predicated exclusively on alleged violations of federal duties and obligations, as is the case here, exercising federal jurisdiction over this lawsuit "will portend only a microscopic effect on the federal-state division of labor." *See Grable*, 545 U.S. at 315. Plaintiffs' claims are predicated entirely on alleged violations of federal duties and obligations. Such a lawsuit belongs in federal court. Allowing Plaintiffs to evade federal jurisdiction simply by alleging (without support) that private litigants may assert those federal duties under the common law of California would undermine the balance of state and federal judicial responsibility approved by Congress.

C. This Court Has Federal Question Jurisdiction, because Plaintiffs Allege Violations of Federal Law as a Predicate for Their State Law Claims.

52. This Court has original federal question jurisdiction for the additional reason that Plaintiffs' state law claims are expressly predicated on purported violations of federal law, which are directly alleged on the face of the Complaint. For example:

a. The Complaint asserts that Roundup®-branded herbicides were "misbranded pursuant to 7 U.S.C. § 136[(q)(1)(G)], and that "[f]ederal law specifically prohibits the distribution of a misbranded herbicide." Compl. at ¶ 146. 7 U.S.C. §

136(q)(1)(G) provides: "A pesticide is misbranded if – … (G) the label does not contain a warning or caution statement which may be necessary and if complied with, together with any requirements imposed under section 136a(d) of this title, is adequate to protect health and the environment."

b. Plaintiffs also allege that Monsanto submitted false testing data to EPA to support the registration of Roundup® -branded herbicides, Compl. at ¶¶ 99-103, and in doing so violated federal law, Compl. at ¶¶ 146, 218. Specifically, Plaintiffs allege that "Monsanto violated [7] U.S.C. § 136j," which defines "unlawful acts" under FIFRA. Compl. at ¶ 146. That section provides, in relevant part, that "It shall be unlawful for any person … (Q) to falsify all or part of any information relating to the testing of any pesticide…submitted to the Administrator, or that the person knows will be furnished to the Administrator or will become a part of any records required to be maintained by this subchapter; [or] (R) to submit to the Administrator data known to be false in support of a registration." 7 U.S.C. § 136j(a)(2).

c. Plaintiffs also allege that Monsanto violated 40 C.F.R. § 156.10(a)(5), which defines "false or misleading statements" on pesticide labels. Compl. at ¶ 146.

d. Finally, Plaintiffs allege that "Monsanto has also violated federal regulations in holding secret ex parte meetings and conversations with certain EPA employees to collude in a strategy to re-register glyphosate…." Compl. at ¶ 105.

53. Where, as here, the plaintiff's state law claims are expressly predicated, even in part, on violations of federal law, the district courts have original jurisdiction. As the Eighth Circuit has explained:

> The complaint quite clearly alleges a violation of the federal Constitution at several points. In particular, paragraph 14, JA 16-17, makes the following assertion:
>
> > The Court order [referring to an order of the County Commission of Newton County, Missouri, purporting to establish the Town of Loma Linda] is further invalid because Relators were not given proper notice of the hearing as required by the Statutes and Constitution of Missouri and the Constitution of the United States of America, including those provisions which prohibit the taking of

> property without due process of law, which process requires proper notice.
>
> The reference to the Constitution of the United States is unequivocal. If the Due Process Clause of the Fourteenth Amendment is given one construction, the claim will prevail; if it is given another, the claim will fail. This is a paradigm case for arising-under jurisdiction.

Country Club Estates, L.L.C. v. Town of Loma Linda, 213 F.3d 1001, 1003 (8th Cir. 2000). *See also Williams v. Ragnone*, 147 F.3d 700, 702 (8th Cir. 1998) ("When a federal question is present on the face of the complaint, the district court has original jurisdiction and the action may be removed to federal court."); *New York ex rel. Jacobson v. Wells Fargo Nat'l Bank, N.A.*, 824 F.3d 308, 315 (2d Cir. 2016) ("A state-law claim 'necessarily' raises federal questions where the claim is affirmatively 'premised' on a violation of federal law."); *Shaw v. Prudential Ins. Co. of Am.*, 2011 WL 1050004, at *1-2 (W.D. Mo. Mar. 21, 2011) (case asserting only state law breach of contract claim was properly removed on federal question grounds where petition invoked ERISA on its face).[4]

54. The same analysis applies here. Plaintiffs have alleged multiple violations of federal law in support of all of their state law claims. *See* Compl. at ¶ 147 (incorporating all preceding paragraphs into Count I); *id*. at ¶ 170 (same for Count II); *id*. at ¶ 195 (same for Count III); *id*. at ¶ 215 (same for Count IV); *id*. at ¶ 227 (same for Count V); *id*. at ¶ 246 (same for Count VI); *see also id*. at ¶ 146 (identifying certain federal law violations "alleged in this pleading").

55. Removal is proper where, as here, "the federal question arises not by way of defense, but on the face of the complaint" and "is part of the plaintiffs' cause of action, as demonstrated by the words they themselves selected." *Country Club Estates*, 213 F.3d at 1003-04 ("A complaint that pleads violations of both state and federal law is within the original jurisdiction of a federal district court.").

56. To the extent the *Grable* requirements must be met to support removal even where violations of federal law are alleged on the face of the Complaint, they are here. The

[4] The petition at issue in *Shaw* is available at 2010 WL 4362984 (W.D. Mo., July 27, 2010).

questions raised by the alleged violations are actually disputed, as Monsanto denies each and every violation of federal law asserted in the Complaint.

57. The federal questions raised by those alleged violations are also substantial, because their resolution will impact the way applicants for pesticide registrations interact with EPA. For example:

a. Plaintiffs allege that Monsanto violated federal law by submitting third party testing results to EPA that were later determined to be false. *See* Compl. at ¶¶ 98-103, 146. Whether the alleged conduct violates federal law is a "substantial" federal question, because its resolution may significantly increase federal regulatory burdens on applicants, and may lead applicants to limit the scope of testing data they submit to EPA to only that which they can independently verify. Such limitation on the data provided to EPA may adversely impact its ability to make informed regulatory decisions.

b. Plaintiffs' allegation that Monsanto violated federal regulations by communicating with EPA employees also raises substantial federal questions. The questions are substantial because resolving them may lead those applying for pesticide registrations to limit their communications with EPA in a manner that impairs the effective functioning of the regulatory process. EPA relies on and encourages direct communications with applicants in performing its regulatory functions. *See, e.g.*, 40 C.F.R. § 158.30(a) ("The Agency encourages each applicant to consult with EPA to discuss the data requirements particular to its product prior to and during the registration process."); *see also* 40 C.F.R. § 158.45(b)(1); 40 C.F.R. § 158.70; 40 C.F.R. § 158.80(b).

58. Finally, resolution of these disputed questions of federal law in federal court will not disrupt the balance between federal and state jurisdiction adopted by Congress. Resolving alleged violations of federal law is well within the scope of traditional federal jurisdiction. And, because Congress specifically vested the federal courts with jurisdiction over the enforcement of FIFRA, the exercise of federal jurisdiction over this lawsuit will not disrupt the congressionally approved balance of federal and state judicial responsibility. *See, e.g.*, 7 U.S.C. 136n.

II. THIS ACTION IS REMOVABLE UNDER 28 U.S.C. § 1441(a), BECAUSE PLAINTIFFS' CLAIMS INVITE STATE COURT JURORS TO EVALUATE WHETHER THE FEDERAL AGENCY THAT IS OBLIGATED BY FEDERAL LAW TO REGULATE MONSANTO COLLUDED WITH MONSANTO TO MAINTAIN FEDERAL REGULATORY APPROVAL FOR MONSANTO'S GLYPHOSATE-BASED HERBICIDES.

59. A separate, alternative, basis for removal exists in this case – namely, federal officer removal. A statute authorizes removal of a civil action that is "against or directed to" the "United States or any agency thereof or any officer (***or any person acting under that officer***) of the United States or of any agency thereof, in an official or individual capacity, for ***or relating to*** any act under color of such office." 28 U.S.C. § 1442(a)(1) (emphasis added). In these circumstances, a lawsuit can be removed from state court "despite the nonfederal cast of the complaint; the federal-question element is met if the defense depends on federal law." *Jefferson County*, 527 U.S. at 431.

60. Courts are required to construe § 1442(a)(1) broadly. "The words 'acting under' are broad, and this Court has made clear that the statute must be 'liberally construed.'" *Watson v. Philip Morris Cos., Inc.*, 551 U.S. 142, 147 (2007) (quoting § 1442(a)(1); *Colorado v. Symes*, 286 U.S. 510, 517 (1932)); *see Arizona v. Manypenny*, 451 U.S. 232, 242 (1981) ("the policy favoring removal 'should not be frustrated by a narrow, grudging interpretation of § 1442(a)(1)'" (quoting *Willingham v. Morgan*, 395 U.S. 402, 407 (1969)); *see also Jacks v. Meridian Resource Co.*, 701 F.3d 1224, 1230 (8th Cir. 2012) (quoting *Watson*, 551 U.S. at 147); *Durham v. Lockheed Martin Corp.*, 445 F.3d 1247, 1252 (9th Cir. 2006) (quoting *Manypenny*, 451 U.S. at 242). Moreover, the statute was amended in 2011 by adding "or relating to" after "for," thereby broadening the reach of the statute. *See In re Commonwealth's Motion to Appoint Counsel Against or Directed to Defender Assoc. of Philadelphia*, 790 F.3d 457, 467 (3d Cir. 2015).

61. Courts generally require the following elements for federal officer removal based on § 1442(a)(1): "(1) a defendant has acted under the direction of a federal officer, (2) there was a causal connection between the defendant's actions [at issue in the plaintiff's lawsuit] and the official authority, (3) the defendant has a colorable federal defense to the plaintiff's claims, and (4) the defendant is a 'person' within the meaning of the statute." *Jacks*, 701 F.3d at 1230; *see*

also In re Commonwealth's Motion, 790 F.3d at 467. As discussed below, these requirements are satisfied in this case.

62. ***First***, according to Plaintiffs' allegations, Monsanto acted under the direction of a federal officer by illegally colluding with EPA officials to maintain federal regulatory approval for Monsanto's glyphosate-based herbicides. Plaintiffs allege that a special relationship existed between EPA officers and Monsanto (which allegations are incorporated by reference into each cause of action): "Monsanto has also violated federal regulations in holding secret ex parte meetings and conversations with certain EPA employees to collude in a strategy to re-register glyphosate and to quash investigations into the carcinogenicity of glyphosate by other federal agencies such as the Agency for Toxic Substances and Disease Registry. Monsanto's close connection with the EPA arises in part from its offering of lucrative consulting gigs to retiring EPA officials." Compl. at ¶ 105; *see also id.* at ¶¶ 147, 170, 195, 215, 227, 246, 263. "Collusion" is defined as a "secret agreement or cooperation esp[ecially] for an illegal or deceitful purpose," Merriam Webster's Collegiate Dictionary at 226 (10th ed.), so collusion necessarily requires an agreement between two parties. Thus, Plaintiffs contend that EPA agency power was delegated to Monsanto, so that it could direct agency employees to maintain federal regulatory approval for Monsanto's glyphosate-based herbicides, with lucrative consulting positions paid by Monsanto as the alleged *quid pro quo* for this delegation of agency power.[5]

63. In the Roundup® Products Liability MDL currently pending before Judge Chhabria in this Court, the plaintiffs are vigorously pursuing discovery regarding the same allegations of collusion between EPA officials and Monsanto. For example, plaintiffs' attorneys

[5] Although Monsanto disputes Plaintiffs' allegations, Monsanto is permitted to rely on the allegations to show that removal of this lawsuit is proper based on § 1442(a)(1) – and then present Monsanto's version of the events at issue later in the federal court proceeding. *See, e.g.*, *Willingham*, 395 U.S. at 407-09 (explaining that defendants need not admit allegations to remove lawsuits based on § 1442(a)(1)). Moreover, the fact that Plaintiffs accuse Monsanto and EPA of illegal conduct does not mean that the alleged conduct at issue here falls outside the scope of the § 1442(a)(1) "color of office" requirement. *See Sun v. Tucker*, 946 F.2d 901, at *1 (10th Cir. 1991) (unpublished op.) (stating that "[w]hether an act was performed under 'color of office' is not dependent on the propriety of the alleged act itself" (citing *Willingham*, 395 U.S. at 409)).

have moved to compel the deposition of Jess Rowland (a former EPA officer at OPP and the former chair of EPA's CARC), who allegedly colluded with Monsanto. *See* Plaintiffs' Motion to Compel the Deposition of Jess Rowland, *In re: Roundup Prods. Liab. Litig.*, MDL No. 2741 (N.D. Cal., Mar. 14, 2017), ECF No. 189. According to the motion to compel, there was "a concerted effort by Monsanto and the OPP, Jess Rowland, and his CARC committee to 'kill' the glyphosate/lymphoma issue for the company." *Id.* at 2. The motion also asserts that the CARC report was "leaked" and then retracted by EPA because it was not final, *id.* at 2; that "Rowland wanted to help Monsanto stop an investigation concerning the carcinogenicity of glyphosate being conducted by [another federal agency,] [t]he Agency for Toxic Substances and Disease Registry (ATSDR)," *id*. at 3; and that "Rowland bragged: 'If I can kill this [the ATSDR investigation,] I should get a medal,'" *id*. Plaintiffs' allegations of illegal collusion between Monsanto and federal officers employed by EPA have received significant attention in the press.

64. As shown above, Plaintiffs' allegations about Monsanto's "close connection" with EPA and about collusion between EPA and Monsanto regarding Monsanto's glyphosate-based herbicides are very different than "the usual regulator/regulated relationship," *Watson*, 551 U.S. at 157, which the *Watson* Court held did not suffice to satisfy the acting-under-the-direction-of-a-federal-officer requirement of § 1442(a)(1). In *Watson*, the Court held that "a highly regulated firm cannot find a statutory basis for removal in the fact of federal regulation alone." 551 U.S. at 153. Thus, Monsanto does not contend that the federal regulatory environment in which it has operated for many years under close EPA supervision regarding glyphosate-based herbicides gives rise to removal based on § 1442(a)(1). Unlike in *Watson*, where the Supreme Court explained its conclusion that removal was not proper by pointing out the lack of a "special relationship" between the regulated company and the federal regulatory agency, 551 U.S. at 157, in this case Plaintiffs do allege a special relationship between the regulated company (Monsanto) and the federal regulatory agency (EPA). Plaintiffs' allegations – that Monsanto and EPA colluded to maintain federal regulatory approval for Monsanto's glyphosate-based herbicides and that Monsanto has a "close connection" with EPA by "offering lucrative consulting gigs to

retiring EPA officials," Compl. at ¶ 105 – are materially different than the usual relationship between a federal regulator and a regulated company addressed in *Watson*. In sum, Plaintiffs' allegations about a collusive scheme between Monsanto and EPA satisfy the first element of § 1442(a)(1) in this case.

65. ***Second***, the causal nexus requirement, which is a "low" hurdle, *Isaacson v. Dow Chem. Co.*, 517 F.3d 129, 137 (2d Cir. 2008), is satisfied here as well. Plaintiffs' allegations of illegal collusion between Monsanto and EPA show that a causal connection exists between the Monsanto conduct that is challenged in this case and "the official authority," *Jacks*, 701 F.3d at 1230, because Plaintiffs assert claims "for ***or relating to***," § 1442(a)(1) (emphasis added), Monsanto's alleged collusion with EPA to maintain federal regulatory approval for Monsanto's glyphosate-based herbicides, *see* Compl. at ¶ 105; *see also id*. at ¶¶ 147, 170, 195, 215, 227, 246, 263. Plaintiffs' entire lawsuit is based on the theory that the herbicides are carcinogenic; that Monsanto is liable for covering up, and failing to warn about, the risk of cancer; that this cover-up scheme was perpetrated through illegal collusion between Monsanto and specific EPA officers; and that Plaintiffs would not have developed cancer if EPA had fulfilled its federal regulatory obligations by not allowing Monsanto to sell its glyphosate-based herbicides at all – or by precluding Monsanto from selling these herbicides without a cancer warning. In these circumstances, the causal nexus requirement of § 1442(a)(1) is satisfied.

66. ***Third***, the Supremacy Clause of the United States Constitution and preemption principles based on the Supremacy Clause give Monsanto at least two colorable federal defenses that it will raise in a motion for summary judgment at the appropriate time. "For a defense to be considered colorable, it need only be plausible; § 1442(a)(1) does not require a court to hold that a defense will be successful before removal is appropriate." *U.S. v. Todd*, 245 F.3d 691, 693 (8th Cir. 2001); *see Jefferson County*, 527 U.S. at 431 (stating that removing defendant is not required "virtually to win his case before he can have it removed" (quotation marks and citation omitted)); *Bennett v. MIS Corp.*, 607 F.3d 1076, 1089 (6th Cir. 2010) (stating that "a colorable federal defense need only be plausible, . . . and that a district court is not required to determine

its validity at the time of removal" (citations omitted)). Monsanto's federal defenses easily meet this requirement.

67. Monsanto's first federal defense is based on the well-established principle that a state-law claim alleging that a regulated company defrauded or misled a federal regulatory agency conflicts with, and therefore is ***impliedly preempted***, by federal law. *See, e.g.*, *Buckman Co. v. Plaintiffs' Legal Comm.*, 531 U.S. 341 (2001) (claims alleging that defendant misled federal Food and Drug Administration are impliedly preempted by federal law); *Nathan Kimmel*, 275 F.3d 1199 (9th Cir. 2002) (same; EPA); *Giglio v. Monsanto Co.*, Case No.: 15cv2279 BTM(NLS), 2016 WL 1722859, at *3 (S.D. Cal. Apr. 29, 2016) (claims alleging that Monsanto "negligently failed to adequately warn the EPA of the dangers of Roundup and concealed information from and/or misrepresented information to the EPA concerning the severity of the risks and dangers of Roundup," which are "directly based on the propriety of disclosures made by [Monsanto] to the EPA, are preempted by FIFRA" (citing *Nathan Kimmel*, 275 F.3d at 1207)). Like the *Giglio* plaintiff, Plaintiffs here repeatedly allege that Monsanto, when dealing with EPA regarding Roundup®-branded herbicides, concealed information from EPA, made misrepresentations to EPA, and failed to provide adequate warnings to EPA regarding the risks and dangers of those products. *See, e.g.*, Compl. at ¶¶ 98-105, 147, 155,170, 176-77, 183, 195, 205, 215, 218, 221, 227, 229, 235, 246, 263. In these circumstances, Monsanto's federal defense that these claims are impliedly preempted is far more than colorable.

68. Monsanto's second federal defense is based on the ***express preemption*** provision set forth in FIFRA, which preempts state-law claims based on allegedly inadequate herbicide warnings that would "impose or continue in effect any requirements for labeling or packaging in addition to or different from those required under [FIFRA]," 7 U.S.C. § 136v(b). In this case, it is plausible that Plaintiffs' state-law claims based on Monsanto's alleged failure to warn that glyphosate poses a cancer risk satisfy both parts of § 136v(b) and therefore are preempted by FIFRA. The claims at issue here satisfy the "requirements for labeling or packaging" part of § 136v(b). *See Bates v. Dow Agrosciences LLC*, 544 U.S. 431, 446 (2005) (holding that "fraud

and negligent-failure-to-warn claims are premised on common-law rules that qualify as 'requirements for labeling or packaging'" (citing § 136v)).

69. Moreover, it is plausible that the other part of § 136v(b) is satisfied because Plaintiffs' state-law warnings-based claims revolve around the contention that Monsanto's glyphosate-based herbicides should have included a cancer warning, which means that Plaintiffs' claims would impose requirements "in addition to or different from those required under [FIFRA]," § 136v(b), because EPA repeatedly made FIFRA-based regulatory determinations that glyphosate does not pose a cancer risk,[6] which have informed EPA's repeated FIFRA approvals of labeling for Roundup®-branded herbicides without any cancer warning for many years, including as recently as March 2016.[7] In these circumstances, FIFRA's express preemption provision gives Monsanto a colorable federal defense to Plaintiffs' warnings-based claims. *See, e.g.*, 7 U.S.C. § 136v(b); *Bates*, 544 U.S. 431; *Mirzaie v. Monsanto Co.*, No. 15-cv-04361-DDP, 2016 WL 146421 (C.D. Cal. Jan. 12, 2016).[8]

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[6] *See* EPA's Office of Pesticide Programs, *Glyphosate Issue Paper: Evaluation of Carcinogenic Potential* at 141 (Sept. 12, 2016), https://www.regulations.gov/document?D=EPA-HQ-OPP-2016-0385-0094 ("[t]he strongest support is for [the descriptor] 'not likely to be carcinogenic to humans' at doses relevant to human health risk assessment.") (attached as Exhibit 2); Cancer Assessment Review Committee, Health Effects Division, Office of Pesticide Programs, U.S. EPA, *Cancer Assessment Document – Evaluation of the Carcinogenic Potential of Glyphosate* at 10, 77 (Final Report, Oct. 1, 2015), https://www.regulations.gov/document?D=EPA-HQ-OPP-2016-0385-0014 (endorsing EPA's existing classification of glyphosate as "Not Likely to be Carcinogenic to Humans") (attached as Exhibit 3); Glyphosate; Pesticide Tolerances, 78 Fed. Reg. 25,396, 25,398 (May 1, 2013) (to be codified at 40 C.F.R. pt. 180) ("EPA has concluded that glyphosate does not pose a cancer risk to humans."); Glyphosate; Pesticide Tolerances, 73 Fed. Reg. 73,586, 73,589 (Dec. 3, 2008) (to be codified at 40 C.F.R. pt. 180) ("There is [an] extensive database available on glyphosate, which indicate[s] that glyphosate is not mutagenic, not a carcinogen, and not a developmental or reproductive toxicant."); Glyphosate; Pesticide Tolerance, 69 Fed. Reg. 65,081, 65,086 (Nov. 10, 2004) (to be codified at 40 C.F.R. pt. 180) ("Glyphosate has no carcinogenic potential."); Glyphosate; Pesticide Tolerances, 67 Fed. Reg. 60,934, 60,943 (Sept. 27, 2002) (to be codified at 40 C.F.R. pt. 180) ("No evidence of carcinogenicity."); EPA, *Reregistration Eligibility Decision Document: Glyphosate*, 14 (Sept. 1993), https://www3.epa.gov/pesticides/chem_search/reg_actions/reregistration/red_PC-417300_1-Sep-93.pdf ("On June 26, 1991, the Agency classified glyphosate in Group E (evidence of non-carcinogenicity for humans), based on a lack of convincing evidence of carcinogenicity in adequate studies with two animal species.") (attached as Exhibit 4).

[7] *See* March 10, 2016 EPA Letter (with approved labeling for Roundup®-branded herbicide), https://www3.epa.gov/pesticides/chem_search/ppls/071995-00051-20160310.pdf (attached as Exhibit 5); March 10, 1992 EPA Letter (with approved labeling for Roundup®-branded herbicide), https://www3.epa.gov/pesticides/chem_search/ppls/000524-00452-19920310.pdf (attached as Exhibit 6).

[8] Although courts have denied Monsanto's motions to dismiss based upon express preemption in other Roundup® lawsuits, *see, e.g.*, *Giglio*, 2016 WL 1722859, at *1-3; *Hernandez v. Monsanto Co.*, Case No. CV 16-1988-DMG

(Footnote continued)

70. ***Fourth***, the "person" element is satisfied. Monsanto is a corporation, so it is a "person" for purposes of § 1442(a)(1). *See Jacks*, 701 F.3d at 1230 n.3; *Winters v. Diamond Shamrock Chem. Co.*, 149 F.3d 387, 398 (5th Cir. 1998); *see also* 1 U.S.C. § 1.

71. In addition to satisfying the elements discussed above, removal is appropriate in this case because it would comport with the purpose of the federal officer removal statute by ensuring that claims asserted in state courts cannot be used to interfere with a federal agency's efforts to carry out its regulatory responsibilities. As the Supreme Court has recognized, one of the primary purposes of the federal officer removal statute was to have federal defenses litigated in federal courts. *See Willingham*, 395 U.S. at 407; *Kinetic Sys., Inc. v. Federal Financing Bank*, 895 F. Supp. 2d 983, 991 (N.D. Cal. 2012) (citing *Willingham*, 395 U.S. at 406-07). In other words, "Congress has decided that federal officers, and indeed the Federal Government itself, require the protection of a federal forum." *Willingham*, 395 U.S. at 407; *see Durham*, 445 F.3d at 1252 (stating that "Congress passed the federal officer removal statute to protect the federal government from South Carolina's attempt to nullify federal tariff laws in the 1830s" and that

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(Ex), 2016 WL 6822311 (C.D. Cal. July 12, 2016), that does not mean that Monsanto's express preemption defense is not colorable for purposes of federal officer removal. Determining whether a defense is colorable (or plausible) for purposes of federal officer removal is different than determining whether the defense requires a court to grant a motion to dismiss. Prior motion-to-dismiss rulings regarding Monsanto's express preemption defense do not mean that is not plausible that the defense will prevail at a later stage of the litigation when presented in a different context – for example, by motion for summary judgment, based on a different factual and legal record than the record before the courts that issued prior motion-to-dismiss rulings. In *Giglio* and *Hernandez*, both courts acknowledged the limitations imposed by ruling on a motion to dismiss. *Giglio*, 2016 WL 1722859, at *3 ("[Monsanto] argues that Roundup in fact is not carcinogenic and that the EPA has made determinations that this is the case. However, a motion to dismiss is not the proper vehicle to delve into the import of EPA classifications or what EPA representatives have said in the past, what information they were relying on, and what effect their statements have on the issues before the Court."); *Hernandez*, 2016 WL 6822311,, at *8 ("Monsanto's argument could also be construed as an offer of proof that the EPA's factual findings are evidence that Roundup is not, in fact, carcinogenic. Such arguments, which require the Court to weigh evidence and make factual determinations, are not appropriate at the motion to dismiss stage."). The difference between evaluating a defense for purposes of determining removability and evaluating the defense for other purposes is illustrated by the Supreme Court's *Jefferson County* opinion, where the Court held that the federal defense was colorable for purposes of making the case removable, but then proceeded to reject the defense. *See Jefferson County*, 527 U.S. at 431 (holding that federal officer removal was proper because defendants presented "a colorable federal defense" – "although we ultimately reject [the defense]"); *see also Kinetic Sys., Inc.*, 895 F. Supp. 2d at 987 (denying plaintiff's remand motion and denying defendant's motion to dismiss; holding that, although defendant's federal defenses are "'colorable' for purposes of removal, they are not meritorious").

"the Supreme Court has mandated a generous interpretation of the federal officer removal statute ever since" (citation omitted)).[9]

72. In light of Plaintiffs' novel allegations of illegal collusion between a federal regulatory agency and a company it was supposed to regulate, this lawsuit belongs in federal court. For the foregoing reasons, § 1442(a)(1) federal officer removal is proper in this case.

ALL PROCEDURAL REQUIREMENTS FOR REMOVAL ARE MET

73. Monsanto has satisfied all procedural requirements for removal.

74. On March 17, 2017, Plaintiffs filed their Complaint captioned *Loretta Pennie, et al. v. Monsanto Company, et al.*, in the Superior Court of the State of California for the County of Alameda, Case Number RG17853420 ("State Court Action"), which is attached hereto as part of composite Exhibit 1.

75. Defendant Monsanto was served on March 20, 2017. Because this Notice of Removal is filed within 30 days of the date of service, this Notice of Removal is timely under 28 U.S.C. § 1446(b).

76. Venue is proper in this Court pursuant to 28 U.S.C. § 1446(a). The Superior Court of the State of California for the County of Alameda is located within the Northern District of California, *see* 28 U.S.C. § 84(a), and venue is proper in this Court under 28 U.S.C. § 1441(a).

77. The complete state file is attached as composite Exhibit 1.

78. A copy of this Notice of Removal is being served upon counsel for Plaintiffs, and a copy is being contemporaneously filed in the State Court Action.

79. Defendants Wilbur-Ellis Company, LLC and Wilbur-Ellis Feed, LLC consent to this removal and will file their consent contemporaneously herewith and within 30 days of being served with process. By requesting and/or providing this consent, no Defendant concedes that

[9] Although plaintiffs contend that EPA's and Monsanto's collusive conduct was illegal, that does not preclude federal officer removal because that issue should be resolved by a federal court, not a state court. *See Isaacson*, 517 F.3d at 138 ("Indeed, whether the challenged act was outside the scope of Defendants' official duties, or whether it was specifically directed by the federal Government, is one for the federal – not state – courts to answer." (citing *Willingham*, 395 U.S. at 409)); *Bennett*, 607 F.3d at 1088 (citing *Isaacson*, 517 F.3d at 138).

either Wilbur-Ellis Company, LLC or Wilbur-Ellis Feed, LLC is properly joined as a defendant in this action.

WHEREFORE, Defendant Monsanto respectfully removes this action from the Superior Court of the State of California for the County of Alameda, Case Number RG17853420, to this Court pursuant to 28 U.S.C. §§ 1331, 1441(a), 1442(a)(1), and 1367(a).

DATED: March 28, 2017

Respectfully submitted,

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LORETTA PENNIE, *et al.*, Plaintiffs, v. MONSANTO COMPANY, WILBUR-ELLIS COMPANY, LLC, WILBUR-ELLIS FEED, LLC and DOES 1 through 100 inclusive, Defendants.	Case No. 17-cv-1711 NOTICE OF REMOVAL

NOTICE OF REMOVAL

PLEASE TAKE NOTICE that Defendant Monsanto Company ("Monsanto"), with the consent of Wilbur-Ellis Company, LLC and Wilbur-Ellis Feed, LLC, respectfully removes this case to the United States District Court for the Northern District of California, from the Superior Court of the State of California for the County of Alameda, pursuant to 28 U.S.C. §§ 1331, 1441(a), 1442(a)(1) and 1367(a).

This Court has original federal question jurisdiction under 28 U.S.C. § 1331, because the Complaint asserts violations of federal law and presents substantial federal questions. As this Court has original federal question jurisdiction under § 1331, the action is removable under 28 U.S.C. § 1441(a). For a separate, alternative and independent reason, this lawsuit is removable based on the federal officer removal statute, 28 U.S.C. § 1442(a)(1), because Plaintiffs' claims invite state court jurors to evaluate whether the federal agency that is required by federal law to regulate Monsanto colluded with Monsanto to maintain federal regulatory approval for the products at issue in this case. In addition, this Court has supplemental jurisdiction, under 28 U.S.C. § 1367(a), over any claim over which it does not have original federal question jurisdiction, because it forms part of the same case or controversy as those claims over which the Court has original federal question jurisdiction. In support of removal, Monsanto states:

INTRODUCTION

This lawsuit belongs in federal court. Plaintiffs' Complaint presents a collateral attack on the federal regulatory scheme governing the registration of pesticides and herbicides for use in the United States, as well as the federal officials who administer it. The Complaint alleges that Monsanto and officials from the U.S. Environmental Protection Agency ("EPA") illegally colluded to falsely classify glyphosate – the active ingredient in Monsanto's Roundup®-branded herbicides – as non-carcinogenic and wrongfully maintain federal regulatory approval for these herbicide products. The Complaint also expressly defines the scope of Plaintiffs' state law claims according to the duties and obligations imposed by federal law. Finally, the Complaint directly alleges, on its face, that Monsanto violated federal statutes and federal regulations, and asserts those alleged violations as a predicate for Plaintiffs' state law claims. As a result, every count in the Complaint raises substantial, disputed federal questions within the original jurisdiction of the district courts.

Plaintiffs allege that they (or their decedents) developed Non-Hodgkin's Lymphoma ("NHL") or other cancers as a result of their exposure to glyphosate contained in Roundup® herbicide, an EPA-registered herbicide manufactured and sold by Monsanto. Plaintiffs directly

challenge EPA's registration of Roundup®, contending that Monsanto secured the initial registration by defrauding and exerting improper influence over EPA and that, more recently, Monsanto and EPA together illegally have "colluded" to maintain that registration by quashing investigations into the carcinogenicity of glyphosate by other federal agencies, including the Agency for Toxic Substances and Disease Registry ("ATSDR"). This alleged more recent collusive activity purportedly involved the federal officer in EPA's Office of Pesticide Programs, Jess Rowland, who chaired EPA's Cancer Assessment Review Committee, which was the committee of EPA scientists who recently assessed the carcinogenicity of glyphosate and endorsed EPA's existing classification of glyphosate as not likely to be carcinogenic to humans. Plaintiffs incorporate these allegations of collusion and fraud into every count of their Complaint. In addition, Plaintiffs expressly predicate their state law claims on Monsanto's alleged violation of federal statutes and regulations. Plaintiffs affirmatively limit all of their state law claims to the assertion of duties and obligations that are imposed by federal law. They also specifically allege several violations of federal law as a basis for their claims.

Although the Complaint purports to plead only state common law and statutory claims, those claims raise substantial federal questions over which this Court has original federal question jurisdiction, under 28 U.S.C. § 1331, for three separate reasons. First, Plaintiffs' claims raise substantial federal questions because they directly challenge the actions of a federal agency and the conduct of federal agency officials. Plaintiffs allege that EPA's initial registration of Roundup® was based on fraudulent test results, omissions, and misrepresentations, and that EPA officials actively colluded with Monsanto to maintain that registration in exchange for their own personal financial gain. These allegations present substantial federal questions regarding not only the validity of a federal agency's regulatory decision, but also the propriety of actions taken by EPA, and the propriety of actions taken by Monsanto in obtaining federal regulatory approval of its Roundup® products. Those questions are governed entirely by federal law.

Second, every count in the Complaint presents substantial federal questions, because Plaintiffs have defined the scope of their state law claims according to federal law. With respect

to all counts asserted, Plaintiffs' Complaint alleges: "To the extent California law imposes a duty or obligation on the Defendants that exceeds those required by federal law, Plaintiffs do not assert such claims." Compl. at ¶ 144. As a result, even though the claims are nominally state law claims, it is federal, not state, law that determines the scope of each and every count of the Complaint, and it is federal law that defines all of the duties and obligations Plaintiffs seek to assert in this lawsuit. Indeed, the only way to determine the scope of the state law duties and obligations Plaintiffs seek to assert in each count is to resolve disputed questions of federal law regarding the nature and scope of the duties and obligations imposed by federal law. By limiting their state causes of action to assert *only duties and obligations arising under federal law*, Plaintiffs have made the case thoroughly and almost entirely federal.[1]

Finally, Plaintiffs' claims raise substantial federal questions because Plaintiffs allege multiple violations of federal law on the face of the Complaint. Where violations of federal law are alleged as the basis for the asserted state law claims, the claims "arise under" federal law and fall within the original jurisdiction of the district courts. For each of these reasons, Monsanto is entitled to remove this case to federal court under 28 U.S.C. § 1331.

Monsanto is also entitled to remove this action for the separate and alternative reason that this Court has jurisdiction under the federal officer removal statute, 28 U.S.C. § 1442(a)(1). When a state court lawsuit satisfies § 1442(a)(1), the case can be removed "despite the nonfederal cast of the complaint; the federal-question element is met if the defense depends on federal law." *Jefferson County v. Acker*, 527 U.S. 423, 431 (1999). Here, as required by § 1442(a)(1), Monsanto has colorable federal defenses (based on the Supremacy Clause and federal preemption principles). The other § 1442(a)(1) requirements are satisfied as well. Plaintiffs' allegations regarding illegal collusion between federal officers and Monsanto with respect to Monsanto's glyphosate-based herbicides show that Plaintiffs contend that Monsanto

[1] Monsanto does not concede that all of the federal duties and obligations that Plaintiffs purport to assert have an identical state law counterpart under the common law of the states whose laws apply to Plaintiffs' claims. Nor does Monsanto concede that all duties and obligations arising under federal law are duties that are owed to, or enforceable by private litigants. Thus, Monsanto does not concede that all of the federal duties and obligations Plaintiffs purport to assert can be asserted as a basis for liability in an action, such as this, brought under state law.

has had a special relationship with EPA – namely, Monsanto allegedly acted under the direction of federal officers and a causal connection allegedly existed between that official authority and the Monsanto conduct challenged by Plaintiffs in this lawsuit. Due to Plaintiffs' novel allegations of illegal collusion between federal officers at EPA and the company that the agency was supposed to regulate, this lawsuit should be resolved in federal court to ensure, in accordance with the purposes of the federal officer removal statute, that claims asserted in state courts cannot be used to interfere with a federal agency's efforts to carry out its regulatory responsibilities.

FACTUAL BACKGROUND

I. Roundup® Litigation

1. The Complaint purports to join the claims of forty-one (41) Plaintiffs from various counties in California.

2. This lawsuit is one of several filed against Monsanto after the International Agency for Research on Cancer ("IARC") published a report in 2015 classifying glyphosate in Category 2A, which IARC explains "is used when there is limited evidence of carcinogenicity in humans and sufficient evidence of carcinogenicity in experimental animals. *Limited evidence* means that a positive association has been observed between exposure to the agent and cancer *but that other explanations for the observations (called chance, bias, or confounding) could not be ruled out.*" IARC Monographs Volume 112: evaluation of five organophosphate insecticides and herbicides (March 20, 2015) (second emphasis added).[2]

3. In the past month alone, Plaintiffs' counsel in this lawsuit and other plaintiffs' attorneys have filed thirteen (13) multi-plaintiff lawsuits against Monsanto in Missouri state court (St. Louis City) that are very similar to this lawsuit. Those complaints include the claims of over one-thousand (1000) plaintiffs, but all individual complaints (except one) include fewer than 100 plaintiffs.

[2] Available at: https://www.iarc.fr/en/media-centre/iarcnews/pdf/MonographVolume112.pdf (last visited 3/22/17).

4. Federal lawsuits alleging that Monsanto's Roundup®-branded herbicides cause cancer have been transferred for coordinated multidistrict litigation ("MDL") proceedings to Judge Vince Chhabria of this Court. *See In re Roundup Prods. Liab. Litig.*, No. 3:16-md-02741-VC (N.D. Cal.). Over 65 plaintiffs are part of those MDL proceedings. Judge Chhabria has limited the first phase of those proceedings to determining whether scientifically reliable, admissible evidence exists to establish that glyphosate can cause NHL (*i.e.*, general causation).

II. The Federal Regulatory Framework

A. Registration of Pesticides

5. The manufacture, formulation, labeling and distribution of pesticides, such as Monsanto's Roundup®-branded herbicide, are regulated by EPA under the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"), 7 U.S.C. § 136 *et seq*. Federal law prohibits the sale of pesticides that have not been registered by the EPA, except as permitted by FIFRA. 7 U.S.C. § 136a; 40 C.F.R. § 152.42 ("An application for new registration must be approved by the Agency before the product may legally be distributed or sold, except as provided by § 152.30.").

6. EPA is permitted to register a pesticide only "if the Administrator determines that, when considered with any restrictions imposed under subsection (d) of this section –

a. its composition is such as to warrant the proposed claims for it;

b. its labeling and other material required to be submitted comply with the requirements of this subchapter;

c. it will perform its intended function without unreasonable adverse effects on the environment; and

d. when used in accordance with widespread and commonly recognized practice it will not generally cause unreasonable adverse effects on the environment.

7 U.S.C. § 136a(c)(5). The statute defines "unreasonable adverse effects on the environment" to mean: "(1) any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide, or (2) a human dietary risk from residues that result from a use of pesticide in or on any food inconsistent with the standard under section 346a of Title 21." 7 U.S.C. § 136(bb).

7. Applicants for registration of a pesticide must complete an application and submit to EPA materials and data specified by FIFRA and its implementing regulations. *See* 7 U.S.C. § 136a(c); 40 C.F.R. § 152.50; 40 C.F.R. § 152.80, *et seq*. The "Administrator shall publish guidelines specifying the kinds of information which will be required to support the registration of a pesticide and shall revise such guidelines from time to time." 7 U.S.C. § 136a(c)(2)(A).

8. The federal data submission requirements for registration of a pesticide are set out in federal regulations, which "specify the kinds of data and information EPA requires in order to make regulatory judgments under FIFRA secs. 3, 4, and 5 about the risks and benefits of pesticide products." 40 C.F.R. § 158.1, *et seq*. In addition, "EPA has the authority to establish or modify data needs for individual pesticide chemicals." 40 C.F.R. § 158.30(a).

9. Before registering a pesticide, EPA may require the submission of data relating to, *inter alia*, product chemistry, product performance, toxicology (humans and domestic animals), hazards to nontarget organisms, applicator and post-application exposure, pesticide spray drift evaluation, environmental fate, and residue chemistry. *See* 40 C.F.R. § 158.130, *et seq*. Ultimately, "[t]he Agency will determine whether the data submitted or cited to fulfill the data requirements specified in this part are acceptable." 40 C.F.R. § 158.70. "The data requirements for registration are intended to generate data and information necessary to address concerns pertaining to the identity, composition, potential adverse effects and environmental fate of each pesticide." 40 C.F.R. § 158.130(a).

10. EPA has registered Roundup®-branded pesticides for distribution, sale and manufacture in the United States. *See* Compl. at ¶ 85.

11. Under FIFRA, EPA periodically must re-register previously registered pesticide products to ensure that they continue to meet the standards in FIFRA, 7 U.S.C. § 136a(c)(5). 7 U.S.C. § 136a-1. "EPA accomplishes this reevaluation through its Registration Standards process." Pesticide Registration Standards, 50 FR 48998-01 (Nov. 27, 1985).

B. Pesticide Labeling

12. Federal law also governs pesticide labeling. FIFRA defines "label" as "the

written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers," and defines "labeling" as "all labels and all other written, printed or graphic matter (A) accompanying the pesticide or device at any time; or (B) to which reference is made on the label or in literature accompanying the pesticide or device…." 7 U.S.C. § 136(p).

13. "In 40 C.F.R. Part 156, EPA has regulated almost every aspect of pesticide labeling." *Papas v. Upjohn Co.*, 926 F.2d 1019, 1024 (11th Cir. 1991), *rev'd on other grounds*, 505 U.S. 1215 (1992). 40 C.F.R. § 156.10(a)(1) requires that "[e]very pesticide product shall bear a label containing the information specified by the Act and the regulations in this part." Under 7 U.S.C. § 136v(b), "State[s] shall not impose or continue in effect any requirements for labeling or packaging in addition to or different from those required under this subchapter."

III. Allegations of the Complaint

14. In this lawsuit, Plaintiffs allege that they or their decedents developed NHL and other cancers as a result of exposure to Roundup® herbicides manufactured and sold by Monsanto. Compl. at ¶¶ 56-57.

15. The gravamen of Plaintiffs' Complaint is their allegation that Monsanto secured and maintained EPA's registration of Roundup®-branded products through acts of scientific fraud, the falsification of test results submitted to EPA, and illegal collusion between EPA officials and Monsanto. *See, e.g.*, Compl. at ¶¶ 97-103; *id*. at ¶ 103 (citing the alleged "falsity of the tests that underlie [Roundup®'s] registration"); *id*. at ¶ 105 (alleging "collusion" between EPA and Monsanto).

16. Plaintiffs contend that "[o]n two occasions, the EPA found that the laboratories hired by Monsanto to test the toxicity of its Roundup® products for registration purposes committed fraud." Compl. at ¶ 98.

17. Plaintiffs also contend that, "in assessing the safety of glyphosate," EPA relied on studies that were ghostwritten by Monsanto and that "minimize any safety concerns about the use of glyphosate." Compl. at ¶ 104. According to the Complaint, "[t]hrough these means Monsanto has fraudulently represented that independent scientists have concluded that

Glyphosate is safe." *Id.* Similarly, Plaintiffs allege that "Monsanto has also ghostwritten letters by supposed independent scientists submitted to regulatory agencies who are reviewing the safety of glyphosate." *Id.*

18. Plaintiffs claim that "Monsanto has also violated federal regulations in holding secret ex parte meetings and conversations with certain EPA employees to collude in a strategy to re-register glyphosate and to quash investigations into the carcinogenicity of glyphosate by other federal agencies such as the Agency for Toxic Substances and Disease Registry." Compl. at ¶ 105. Plaintiffs also allege that Monsanto improperly influenced EPA through the "offering of lucrative consulting gigs to retiring EPA officials." *Id.* Plaintiffs' allegations of illegal collusion include Jess Rowland, the EPA Office of Pesticide Programs ("OPP") employee who chaired EPA's Cancer Assessment Review Committee ("CARC") – the committee of EPA scientists who recently assessed whether glyphosate is a carcinogen and endorsed EPA's existing classification of glyphosate as not likely to be carcinogenic to humans. According to a motion to compel Rowland's deposition, there was "a concerted effort by Monsanto and the OPP, Jess Rowland, and his CARC committee to 'kill' the glyphosate/lymphoma issue for the company." Plaintiffs' Motion to Compel the Deposition of Jess Rowland at 2, *In re: Roundup Prods. Liab. Litig.*, MDL No. 2741 (N.D. Cal. Mar. 14, 2017), ECF No. 189.

19. Plaintiffs allege that, by pressuring EPA, Monsanto secured a change in EPA's classification of glyphosate, from "possibly carcinogenic to humans" to "evidence of non-carcinogenicity in humans." Compl. at ¶ 97. In broad terms, Plaintiffs claim that "Monsanto championed falsified data and attacked legitimate studies that revealed [Roundup®'s] dangers [and] … led a prolonged campaign of misinformation to convince government agencies, farmers and the general population that Roundup® was safe." Compl. at ¶ 88.

20. The Complaint asserts the following counts: (1) strict liability (design defect); (2) strict liability (failure to warn); (3) negligence; (4) fraud; (5) breach of express warranties; and (6) breach of implied warranties.

21. Under the heading "Limitation on Allegations," the Complaint states: "The

allegations in this pleading are made pursuant to California law. To the extent California law imposes a duty or obligation on the Defendants that exceeds those required by federal law, Plaintiffs do not assert such claims. All claims asserted herein run parallel to federal law…." Compl. at ¶ 144.

SUBSTANTIVE REQUIREMENTS FOR REMOVAL

I. THIS ACTION IS REMOVABLE UNDER 28 U.S.C. §1441(a), AS THIS COURT HAS ORIGINAL FEDERAL QUESTION JURISDICTION OVER PLAINTIFFS' CLAIMS.

22. This action is removable to federal court under 28 U.S.C. § 1441(a), because this Court has original federal question jurisdiction under 28 U.S.C. §1331, and supplemental jurisdiction under 28 U.S.C. § 1367(a).

23. 28 U.S.C. § 1441(a) provides, in relevant part, that "any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants" to federal court.

24. Under 28 U.S.C. § 1331, federal district courts "have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."

25. A case can be removed on federal question ("arising under") grounds even if the complaint asserts only state law causes of action. *See Grable & Sons Metal Prods., Inc. v. Darue Eng'g & Mfg.*, 545 U.S. 308, 312 (2005) (distinguishing between two different kinds of federal question removal).

26. As the *Grable* Court held, federal question removal is available when "a state-law claim necessarily raise[s] a stated federal issue, actually disputed and substantial, which a federal forum may entertain without disturbing any congressionally approved balance of federal and state judicial responsibilities." *Grable*, 545 U.S. at 314. *See also Pet Quarters, Inc. v. Depository Trust & Clearing Corp.*, 559 F.3d 772, 779 (8th Cir. 2009) (district courts have jurisdiction under 28 U.S.C. § 1331 where "(1) the right to relief under state law depends on the resolution of a substantial, disputed federal question, and (2) the exercise of jurisdiction will not disrupt the balance between federal and state jurisdiction adopted by Congress.").

27. Courts repeatedly have applied *Grable* to allow defendants to remove lawsuits where substantial, disputed federal questions are necessarily raised by state-law claims. *See, e.g.*, *Pet Quarters, Inc*. 559 F.3d at 779; *Rhode Island Fisherman's Alliance, Inc. v. Rhode Island Dept. of Envtl. Mgmt.*, 585 F.3d 42, 48-52 (1st Cir. 2009); *Broder v. Cablevision Sys. Corp*., 418 F.3d 187, 195-96 (2d Cir. 2005); *Bd. of Comm'rs of Se. Louisiana Flood Protect. Auth.-E. v. Tennessee Gas Pipeline Co., L.L.C.*, --F.3d--, 2017 WL 874999 (5th Cir. Mar. 3, 2017); *Hughes v. Chevron Phillips Chem. Co. LP*, 478 Fed. App'x 167 (5th Cir. 2012); *Los Angeles Police Protective League v. City of Los Angeles*, 314 Fed. App'x 72, 72-75 (9th Cir. 2009); *Davis v. J.P. Morgan Chase, N.A.*, 2013 WL 6708765, at *2-3 (E.D. Mo. Dec. 18, 2013) (noting that cases that include challenges to federal agency action support a finding of substantial federal question jurisdiction); *Bader Farms, Inc. v. Monsanto Co.*, 2017 WL 633815 (E.D. Mo. Feb. 16, 2017).

28. "If even one claim in the complaint involves a substantial federal question, the entire matter may be removed." *Pet Quarters, Inc.*, 559 F.3d at 779 (citing *Beneficial Nat'l Bank v. Anderson*, 539 U.S. 1, 9 (2003)).

29. In addition, "in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution." 28 U.S.C. § 1367(a).

30. Monsanto is entitled to remove this case to federal court, because Plaintiffs' Complaint raises substantial, disputed questions of federal law for three separate reasons:

a. First, this Court has original federal question jurisdiction over this action, because Plaintiffs allege that Monsanto secured federal regulatory approval for its Roundup®-branded products by defrauding, improperly influencing, and illegally colluding with EPA officials. Those allegations raise disputed questions of federal law – *e.g.*, whether EPA officials illegally colluded with Monsanto in violation of federal law, whether Monsanto's interactions with EPA officials complied with federal requirements, whether EPA failed to fulfill its regulatory duties with respect to the registration of

Roundup®, and whether EPA's regulatory decisions regarding Roundup® were the result of improper influence or federal regulatory fraud. These questions are "actually disputed" and "substantial," and their resolution in a federal forum will not disturb the congressionally approved balance of federal and state judicial responsibilities. Challenges to federal agency action present "substantial" federal questions; Congress has granted federal courts jurisdiction over challenges to federal agency action; and a sufficiently small number of state claims are predicated on allegations of illegal collusion between federal regulators and regulated companies that asserting jurisdiction would not materially change the balance of federal and state litigation.

b. Second, this Court has original federal question jurisdiction, because Plaintiffs have defined the scope of each of their state law claims according to the scope of the duties and obligations imposed by federal law. As a result, every count necessarily raises questions regarding the scope of the relevant federal duties and obligations. Those federal questions are "actually disputed" and "substantial." The federal interest in these questions is "substantial," because their resolution will guide current and future applicants for pesticide registrations in their interactions with EPA. Resolution of these questions in federal court will not disrupt the congressionally approved balance of state and federal judicial responsibility, because Congress specifically vested the federal district courts with jurisdiction specifically to enforce, and prevent and restrain violations of FIFRA, and to review EPA decisionmaking. And, exercising jurisdiction will not change the balance of federal and state court litigation because it is based on Plaintiffs' unusual decision to limit all of their state claims to the assertion of federal duties.

c. Third, this Court has original federal question jurisdiction, because multiple violations of federal law are alleged on the face of the Complaint as a predicate for Plaintiffs' state law claims, and those allegations raise federal questions that are "actually disputed" and "substantial," and their resolution in a federal forum will not disturb the congressionally approved balance of federal and state judicial responsibilities.

For example, Plaintiffs allege that Monsanto violated federal law by submitting third-party testing data to EPA that was later determined to be false. That allegation raises disputed federal questions – *e.g.*, whether applicants for pesticide registrations have a duty under federal law to guarantee the accuracy of third-party testing data they submit to EPA – that are substantial, as their answers may impact the scope of even valid testing data that applicants will make available to the agency going forward. Similarly, Plaintiffs' allegation that Monsanto violated federal regulations by communicating with EPA employees raises substantial federal questions regarding the extent to which applicants may communicate with the agency. The federal interest in that question is substantial, because EPA relies on direct communications with applicants to perform its regulatory function. The fact that Congress gave federal courts jurisdiction over FIFRA enforcement demonstrates that the exercise of jurisdiction over this lawsuit will not disturb the congressionally approved balance of federal and state judicial responsibilities.

31. Finally, this Court has supplemental jurisdiction, under 28 U.S.C. § 1367(a), over any claim over which it does not have original federal question jurisdiction, because all of the claims asserted form part of the same case or controversy.

A. Plaintiffs' Allegations that Federal Regulators Colluded with Monsanto in Misrepresenting and Concealing the Health Risks of Glyphosate Raise Substantial Federal Questions within the Court's Original Jurisdiction

32. This Court has original federal question jurisdiction over Plaintiffs' allegations that federal regulators colluded with Monsanto in misrepresenting and concealing the health risks of glyphosate, because they necessarily raise substantial, disputed federal questions for two separate reasons.

33. First, Plaintiffs' allegations necessarily raise substantial, disputed federal questions because they are predicated on allegations that federal regulators illegally colluded with Monsanto to undermine the regulatory process in exchange for their own personal financial gain. The propriety of interactions between EPA and the entities it regulates is inherently federal, and the federal interest in challenges to federal regulatory conduct is substantial.

34. Second, Plaintiffs' claims necessarily raise substantial, disputed federal questions because they are predicated on allegations that Monsanto's fraudulent acts prevented EPA from properly performing its regulatory function in registering Roundup®. Allegations that regulatory fraud prevented federal regulators from fulfilling their regulatory duties raise substantial federal questions within the original jurisdiction of the district courts.

1. Plaintiffs' Allegations of Illegal Collusion Between Federal Regulators and Monsanto Raise Substantial Federal Questions.

35. Plaintiffs' Complaint alleges: "Monsanto … violated federal regulations in holding secret ex parte meetings and conversations with certain EPA employees to collude in a strategy to re-register glyphosate and to quash investigations into the carcinogenicity of glyphosate by other federal agencies such as the Agency for Toxic Substances and Disease Registry. Monsanto's close connection with the EPA arises in part from its offering of lucrative consulting gigs to retiring EPA officials." Compl. at ¶ 105. These allegations are incorporated into every cause of action asserted into the Complaint. *See* Compl. at ¶ 147 (incorporating all preceding paragraphs into Count I); *id*. at ¶ 170 (same for Count II); *id*. at ¶ 195 (same for Count III); *id*. at ¶ 215 (same for Count IV); *id*. at ¶ 227 (same for Count V); *id*. at ¶ 246 (same for Count VI); *id*. at ¶ 263 (same for exemplary damages allegations).

36. Plaintiffs' allegations that EPA officials colluded with Monsanto in an unlawful scheme to prevent proper safety evaluations of glyphosate-based herbicides, in exchange for their personal financial gain, necessarily raises questions of federal law for several reasons:

a. First, the Complaint directly alleges violations of federal regulations. *See* Compl. at ¶ 105 ("Monsanto has also violated federal regulations in holding secret ex parte meetings and conversations with certain EPA employees….").

b. Second, the relationship between a federal regulatory agency and those it regulates is governed exclusively by federal law. *See Buckman Co. v. Plaintiffs' Legal Comm.*, 531 U.S. 341, 347 (2001) ("[T]he relationship between a federal agency and the entity it regulates is inherently federal in character because the relationship originates from, is governed by, and terminates according to federal law.").

c. Third, the Complaint itself requires that any analysis of these allegations begin with a determination of the duties and obligations imposed by federal law. *See* Compl. at ¶ 144 ("To the extent California law imposes a duty or obligation on the Defendants that exceeds those required by federal law, Plaintiffs do not assert such claims."); *see also* Section I.B., *infra*. Plaintiffs' claims and allegations, therefore, require determination of the relevant federal law standards that might be enforceable via private common law claims.

37. Thus, Plaintiffs' allegations of unlawful collusion between federal regulators at EPA and Monsanto require a determination of the duties and obligations federal law imposes with respect to interactions between EPA and those it regulates. They also require a determination of the federal duties and obligations relevant to assessing the propriety of any post-employment consulting work by federal regulators. Plaintiffs have not identified the specific federal regulations they allege Monsanto violated in meeting with EPA, but various federal regulations and statutes may be relevant to their collusion allegations. For example:

a. Various federal regulations address the propriety of interactions between EPA and applicants for pesticide registration, as they relate to obtaining registrations. *See, e.g.*, 40 C.F.R. § 158.30(a) ("The Agency encourages each applicant to consult with EPA to discuss the data requirements particular to its product prior to and during the registration process."); 40 C.F.R. § 158.45(b)(1) ("Applicants are encouraged to discuss a data waiver request with the Agency before developing and submitting supporting data, information, or other materials."); 40 C.F.R. § 158.70 ("Registrants and applicants, however, must consult with the EPA before initiating combined studies."); 40 C.F.R. § 158.80(b) ("Consultation with the Agency should be arranged if applicants are unsure about suitability of such data.").

b. Various federal regulations also address the propriety of meetings between EPA and pesticide registrants relating to the creation of Registration Standards for pesticide re-registrations. *See, e.g.*, 40 C.F.R. § 155.27 ("The Agency may, however,

meet with registrants to discuss its pending reviews, decisions, or documents, in accordance with the meeting procedures in § 155.30, and the docketing procedures in § 155.32."); 40 C.F.R. § 155.30 ("EPA personnel may, upon their own initiative or upon request by any interested person or party, meet or communicate with persons or parties outside of government concerning a Registration Standard under development. Such meetings or communications will conform to the following policies and procedures…").

c. Federal law also provides standards that may be relevant to Plaintiffs' allegation that Monsanto gained improper influence over EPA by "offering…lucrative consulting gigs to retiring EPA officials," Compl. at ¶ 105. *See, e.g.*, 18 U.S.C. § 201 *et seq*.

38. The federal questions raised by Plaintiffs' allegations that EPA officials colluded with Monsanto in an unlawful scheme to prevent proper safety evaluations of glyphosate-based herbicides, for their own personal financial gain, are also "actually disputed" in the litigation. Monsanto denies any illegal collusion, denies that any alleged meetings between EPA and Monsanto were prohibited by federal law, and denies that any consulting work performed by former EPA officials for Monsanto was improper under federal law.

39. The federal questions raised by Plaintiffs' allegations that EPA officials colluded with Monsanto in an unlawful scheme to prevent proper safety evaluations of glyphosate-based herbicides, in exchange for their personal financial gain, are also substantial:

a. The federal questions raised are substantial because Plaintiffs directly challenge the propriety *and legality* of actions taken by a federal regulatory agency. *See Pet Quarters, Inc.*, 559 F.3d at 779 ("Claim 12 presents a substantial federal question because it directly implicates actions taken by the Commission in approving the creation of the Stock Borrow Program and the rules governing it."). Indeed, "the [Supreme] Court has repeatedly suggested that a federal issue is more likely to be substantial where a claim between two private parties, though based in state law, directly challenges the propriety of an action taken by 'a federal department, agency, or service.'" *Municipality*

of Mayaguez v. Corporacion Para el Desarrollo del Oeste, Inc., 726 F.3d 8, 14 (1st Cir. 2013) (quoting *Empire Healthchoice Assurance*, 547 U.S. 677, 700 (2006)); *see also Lafoy v. Volkswagen Group of Am., Inc.*, 2016 WL 2733161, at *4 (E.D. Mo. May 11, 2016) (substantial federal question jurisdiction exists, not only where a state law claim may turn on an interpretation of federal law, but also "where the resolution of the issue has broader significance for the federal government, such as where there is a direct interest of the government for the availability of a federal forum to vindicate its own administrative action.") (citing *Municipality of Mayaguez*, 726 F.3d at 14).

b. State law claims challenging federal agency actions raise substantial federal questions and fall within the original jurisdiction of the federal courts. *See, e.g., Grable*, 545 U.S. at 314-15 (state law claim challenging the compatibility of federal agency's action with federal statute supported removal); *Pet Quarters, Inc.*, 559 F.3d at 779 (claim presents a substantial federal question if it directly implicates actions taken by federal regulators and would control resolution of other cases).

40. Finally, resolution of these disputed questions of federal law by this Court will not upset the balance of judicial power approved by Congress. Challenges to federal agency action are routinely decided in federal court. *See, e.g., Hamilton v. Gonzales*, 485 F.3d 564, 569 (10th Cir. 2007) ("Moreover, the general jurisdiction statutes confer original jurisdiction over challenges to agency actions to the district courts, or to the Federal Circuit."); *Gallo Cattle Co., v. U.S. Dept. of Agriculture*, 159 F.3d 1194, 1198 (9th Cir. 1998) ("a federal court has jurisdiction pursuant to 28 U.S.C. § 1331 over challenges to agency action as claims arising under federal law, unless a statute expressly precludes review."). The federal interest in the availability of a federal forum to resolve disputes regarding the actions of federal regulators is strong. *See Bender v. Jordan*, 623 F.3d 1128, 1130-31 (D.C. Cir. 2010). Moreover, state-law claims alleging illegal collusion between a federal regulatory agency and a company regulated by the agency are rare, so asserting federal question jurisdiction over this lawsuit "would not materially affect, or threaten to affect, the normal currents of litigation." *Grable*, 545 U.S. at 319.

2. Plaintiffs' Allegations that EPA Decisionmaking Was Impaired by Regulatory Fraud Raise Substantial Federal Questions.

41. Plaintiffs' challenges to EPA's regulatory actions with respect to Roundup®-branded herbicides also raise substantial, disputed federal questions, for the additional reason that Plaintiffs allege that EPA's decision to register Roundup® was based on falsified testing results submitted to EPA in support of the registration, undue influence, and EPA's reliance on studies ghostwritten by Monsanto "which minimize[d] any safety concerns about the use of glyphosate." Compl. at ¶ 104.

42. The Complaint specifically alleges that Monsanto submitted to EPA falsified test results prepared by third-party researchers in support of glyphosate's registration. Compl. at ¶¶ 98-103. The Complaint also alleges that Monsanto "fraudulently represented [to EPA] that independent scientists have concluded that Glyphosate is safe" by "ghostwriting" "[m]ultiple studies" that "minimize any safety concerns about the use of glyphosate" and that were "submitted to and relied upon [by] … EPA in assessing the safety of glyphosate." *Id*. at ¶ 104. Plaintiffs also allege that Monsanto has "ghostwritten letters by supposed independent scientists submitted to regulatory agencies who are reviewing the safety of glyphosate." *Id*. These allegations are incorporated into every cause of action asserted into the Complaint. *See* Compl. at ¶ 147 (incorporating all preceding paragraphs into Count I); *id*. at ¶ 170 (same for Count II); *id*. at ¶ 195 (same for Count III); *id*. at ¶ 215 (same for Count IV); *id*. at ¶ 227 (same for Count V); *id*. at ¶ 246 (same for Count VI); *id*. at ¶ 263 (same for exemplary damages allegations).

43. Plaintiffs' allegations that EPA failed to fulfill its regulatory duties because of Monsanto's alleged regulatory fraud necessarily raise substantial questions of federal law for several reasons:

a. The Complaint itself asserts that Monsanto's alleged deceptions, misrepresentations, and omissions were prohibited by federal law. Compl. at ¶¶ 146, 218.

b. Second, the relationship between a federal regulatory agency and those it regulates is governed exclusively by federal law. *Buckman*, 531 U.S. 347. *See also*

Bader Farms, 2017 WL 633815, at *3 ("whether federal regulatory bodies fulfilled their duties with respect to entities they regulate is 'inherently federal in character.'") (quoting *Buckman Co.*, 531 U.S. at 347).

c. Third, the Complaint itself requires that any analysis of these allegations begin with a determination of the duties and obligations imposed by federal law. *See* Compl. at ¶ 144 ("To the extent California law imposes a duty or obligation on the Defendants that exceeds those required by federal law, Plaintiffs do not assert such claims."); *see also* Section I.B., *infra*. Plaintiffs' claims and allegations, therefore, require determination of the relevant federal law standards that might be enforceable via private common law claims.

44. Thus, Plaintiffs' allegations that EPA's registration and other regulatory actions taken with respect to Roundup®-branded herbicides were predicated on fraud require a determination of the duties and obligations federal law imposes with respect to applications for pesticide registration and re-registration. Plaintiffs have not identified federal statutory or regulatory sources for all of the duties and obligations they seek to impose, but various federal statutes and regulations may be relevant to their regulatory fraud claims. For example:

a. Various federal regulations address the information to be included in an application for pesticide registration. *See, e.g.*, 40 C.F.R. § 152.80 *et seq.*, and 40 C.F.R. § 158.1 *et seq.*; § 152.80 ("This subpart E describes the information that an applicant must submit with his application for registration or amended registration to comply… with the provisions of FIFRA sec 3(c)(1)(F)."); § 158.1 ("The purpose of this part is to specify the kinds of data and information EPA requires in order to make regulatory judgments under FIFRA secs. 3, 4, and 5 about the risks and benefits of pesticide products.").

b. Various federal statutes and regulations also address the falsification of information relating to the testing of any pesticide, and the falsification of all or part of any application for registration of a pesticide. *See* 7 U.S.C. § 136j(a)(2)(Q) ("It shall be

unlawful for any person…to falsify all or part of any information relating to the testing of any pesticide…"); 7 U.S.C. § 136j(a)(2)(M) ("It shall be unlawful for any person…to knowingly falsify all or part of any application for registration….").

45. The federal questions raised by Plaintiffs' allegations that the registration of Roundup®-branded herbicides was secured through regulatory fraud are "actually disputed" in the litigation, as Monsanto denies that it omitted material information from EPA relating to the registration of glyphosate, denies that it is responsible for submitting falsified testing results to EPA, and denies that it deceived EPA or violated federal law in any of the other particulars alleged.

46. The federal questions raised by Plaintiffs' allegations of regulatory fraud are also "substantial," as their resolution will affect the interactions between current and future applicants for pesticide registration and EPA, and may adversely impact future data submissions to EPA. *See Nathan Kimmel, Inc. v. DowElanco*, 275 F.3d 1199, 1206 (9th Cir. 2002). In addition:

a. Allegations of fraud on federal regulators (even without allegations of collusion) are substantial and permit removal. *See Bader Farms, Inc.*, 2017 WL 633815, at *2-3. In *Bader*, Judge Limbaugh denied the plaintiffs' motion for remand, finding that plaintiffs' claim for fraudulent concealment "presents a substantial federal question." *Id.* at *2. The court explained that, because Plaintiffs accused Monsanto of concealing material facts from federal regulators – the U.S. Department of Agriculture's Animal and Plant Health Inspection Service ("APHIS") – it was "[i]mplicit in plaintiffs' claim … that APHIS would not have deregulated the new seeds had they known of the true risks involved, and that the seeds would not have been approved for sale." *Id.* Relying on *Grable*, Judge Limbaugh stated that "the outcome of the fraudulent concealment claim necessarily depends on the interpretation and application of the federal regulatory process under APHIS." *Id.* at *3. Focusing on plaintiffs' allegation that Monsanto's concealment of material facts caused APHIS to be unable to perform its task to protect the public, the court stated that, "whether federal regulatory bodies fulfilled their duties with respect to

the entities they regulate is 'inherently federal in character.'" *Id*. (quoting *Buckman Co.*, 531 U.S. at 347).

b. Here, Plaintiffs allege that Monsanto illegally concealed important safety information about glyphosate from EPA and otherwise misled EPA such that it failed to fulfill its federal regulatory duties. Indeed, Plaintiffs directly allege that glyphosate was registered by EPA even though it does not meet the risk/benefit test EPA is required to apply. *See, e.g.*, Compl. at ¶¶ 153, 155(e), 159. To prove their claims, Plaintiffs must show that Monsanto committed federal regulatory fraud and that the alleged fraud prevented EPA from performing its federal regulatory duties with respect to glyphosate and Roundup®-branded herbicides. These allegations raise substantial federal questions because they challenge the validity of decisions made by federal regulators. *See Grable*, 545 U.S. at 315 ("The Government thus has a direct interest in the availability of a federal forum to vindicate its own administrative action….").

47. Finally, the disputed and substantial federal questions presented by Plaintiffs' accusations against EPA and Monsanto can be resolved in a federal court "without disturbing any congressionally approved balance of federal and state judicial responsibilities." *Grable*, 545 U.S. at 314. Federal courts routinely resolve challenges to actions of federal agencies. *See, e.g., Hamilton*, 485 F.3d at 569; *Gallo Cattle Co.*, 159 F.3d at 1198. And Congress specifically vested the federal courts with substantial jurisdiction over challenges to EPA decisionmaking and the enforcement of FIFRA. *See, e.g.*, 7 U.S.C. 136n.

B. Every Count in the Complaint Raises Substantial Federal Questions, Because Every Count Requires Determination of the Duties and Obligations Imposed by Federal Law.

48. Every count in the Complaint necessarily raises substantial, disputed federal questions, because Plaintiffs have limited every count to the assertion of duties and obligations that are imposed by federal law. Under the heading "Limitation on Allegations," Plaintiffs' Complaint alleges, for each cause of action, that Plaintiffs are asserting only those state law duties and obligations that are the same as those imposed under federal law. Compl. at ¶ 144

("To the extent California law imposes a duty or obligation on the Defendants that exceeds those required by federal law, Plaintiffs do not assert such claims.").

49. As a result, the only way to determine the scope of the duties and obligations Plaintiffs seek to impose is to resolve questions of federal law – *i.e.*, determine the scope of the duties and obligations federal law imposes relative to each count that might be enforceable via private common law claims. Thus, Plaintiffs' right to relief under state law necessarily depends on the resolution of questions of federal law. Plaintiffs have not identified federal statutory or regulatory sources for all of the duties and obligations they seek to impose, but various federal statutes and regulations may be relevant to their claims. For example:

a. Plaintiffs' Negligence Count alleges that Monsanto was negligent in "[f]ailing to undertake sufficient studies and conduct necessary tests to determine whether or not Roundup® products and glyphosate-containing products were safe for their intended use…." Compl. at ¶ 205(c). In light of the "Limitation on Allegations," to resolve this claim the Court must determine what duties and obligations federal law imposes with respect to product testing. Various federal statutes and regulations address the federal requirements for product testing. *See, e.g.*, 7 U.S.C. § 136a; 40 C.F.R. § 158.1 *et seq*., and 40 C.F.R. §152.80 *et seq*.

b. Similarly, Plaintiffs' Negligence Count alleges that Monsanto was negligent in "[f]ailing to provide adequate instructions, guidelines, and safety precautions to those persons who [Monsanto] could reasonably foresee would use and be exposed to Roundup® products." Compl. at ¶ 205(f). In light of the "Limitation on Allegations, " to resolve this claim the Court must determine what duties and obligations federal law imposes with respect to providing "instructions, guidelines, and safety precautions" for pesticide products. Various federal statutes and regulations address those issues, including 40 C.F.R. § 156.10, which provides federal requirements for pesticide labeling.

c. Likewise, Plaintiffs' Strict Liability (Design Defect) count asserts that Monsanto's Roundup® products were defective because "the foreseeable risks exceeded

the alleged benefits associated with their design and formulation." Compl. at ¶ 153.[3] In light of the "Limitation on Allegations," to resolve this claim the Court must determine the scope of the risk/benefit calculus applicable under federal law. The risks and benefits federal law requires EPA to consider in making registration decisions are set out in 7 U.S.C. § 136a(c)(5) and 7 U.S.C. § 136(bb). *See also* 40 C.F.R. § 158.1 ("The purpose of this part is to specify the kinds of data and information EPA requires in order to make regulatory judgments under FIFRA secs. 3, 4, and 5 *about the risks and benefits* of pesticide products.") (emphasis added).

d. A similar analysis applies with respect to each and every count asserted in the Complaint. The only way to determine the scope of the duties and obligations Plaintiffs seek to impose for each count is to resolve questions of federal law regarding the nature and scope of the duties and obligations imposed by federal law.

50. The federal questions necessarily raised by each count of the Complaint are actually disputed and substantial:

a. The scope of the duties and obligations imposed by federal law is actually disputed in this litigation, as Monsanto contends that it satisfied all requirements of federal law in securing EPA's registration of glyphosate, while Plaintiffs allege that it did not. For example, Monsanto contends that federal law did not require Monsanto to perform additional testing, or to provide different or additional instructions or labeling for its Roundup®-branded herbicide products, while Plaintiffs contend that it did.

b. The scope of the duties and obligations imposed by federal law relating to the registration, labeling and sale of pesticides is a "substantial" federal question for three reasons: (1) it defines the federal regulatory burdens that apply to all current and future pesticide registrants, and will necessarily guide their future interactions with EPA; (2) the federal government and EPA have a substantial interest in development of a

[3] *See also* Compl. at ¶ 159 ("harm caused by . . . Roundup® products far outweighed their benefit"); *id.* at ¶ 155(e) (Roundup® herbicides "present[] a risk of harmful side effects that outweigh any potential utility").

uniform body of federal law relative to pesticide registrations; and (3) it will affect not only the instant action, but numerous other pending cases involving nearly identical claims brought by more than 1000 plaintiffs.

51. Finally, resolution of the alleged violations of federal law in federal court will not disrupt the congressionally approved balance of federal and state judicial responsibility. First, because federal law defines all of the duties and obligations Plaintiffs seek to impose, the resolution of Plaintiffs' claims in federal court is consistent with the congressionally approved balance of judicial power. Indeed, resolving alleged violations of federal law is well within the scope of traditional federal jurisdiction. Second, because Congress specifically vested the federal courts with substantial jurisdiction over challenges to EPA decisionmaking and the enforcement of FIFRA, the exercise of federal jurisdiction over this lawsuit would not disrupt the congressionally approved balance of federal and state judicial responsibility. *See, e.g.*, 7 U.S.C. 136n. Finally, because "it will be the rare state [tort] case" that is predicated exclusively on alleged violations of federal duties and obligations, as is the case here, exercising federal jurisdiction over this lawsuit "will portend only a microscopic effect on the federal-state division of labor." *See Grable*, 545 U.S. at 315. Plaintiffs' claims are predicated entirely on alleged violations of federal duties and obligations. Such a lawsuit belongs in federal court. Allowing Plaintiffs to evade federal jurisdiction simply by alleging (without support) that private litigants may assert those federal duties under the common law of California would undermine the balance of state and federal judicial responsibility approved by Congress.

C. This Court Has Federal Question Jurisdiction, because Plaintiffs Allege Violations of Federal Law as a Predicate for Their State Law Claims.

52. This Court has original federal question jurisdiction for the additional reason that Plaintiffs' state law claims are expressly predicated on purported violations of federal law, which are directly alleged on the face of the Complaint. For example:

a. The Complaint asserts that Roundup®-branded herbicides were "misbranded pursuant to 7 U.S.C. § 136[(q)(1)(G)], and that "[f]ederal law specifically prohibits the distribution of a misbranded herbicide." Compl. at ¶ 146. 7 U.S.C. §

136(q)(1)(G) provides: "A pesticide is misbranded if – … (G) the label does not contain a warning or caution statement which may be necessary and if complied with, together with any requirements imposed under section 136a(d) of this title, is adequate to protect health and the environment."

b. Plaintiffs also allege that Monsanto submitted false testing data to EPA to support the registration of Roundup® -branded herbicides, Compl. at ¶¶ 99-103, and in doing so violated federal law, Compl. at ¶¶ 146, 218. Specifically, Plaintiffs allege that "Monsanto violated [7] U.S.C. § 136j," which defines "unlawful acts" under FIFRA. Compl. at ¶ 146. That section provides, in relevant part, that "It shall be unlawful for any person … (Q) to falsify all or part of any information relating to the testing of any pesticide…submitted to the Administrator, or that the person knows will be furnished to the Administrator or will become a part of any records required to be maintained by this subchapter; [or] (R) to submit to the Administrator data known to be false in support of a registration." 7 U.S.C. § 136j(a)(2).

c. Plaintiffs also allege that Monsanto violated 40 C.F.R. § 156.10(a)(5), which defines "false or misleading statements" on pesticide labels. Compl. at ¶ 146.

d. Finally, Plaintiffs allege that "Monsanto has also violated federal regulations in holding secret ex parte meetings and conversations with certain EPA employees to collude in a strategy to re-register glyphosate…." Compl. at ¶ 105.

53. Where, as here, the plaintiff's state law claims are expressly predicated, even in part, on violations of federal law, the district courts have original jurisdiction. As the Eighth Circuit has explained:

> The complaint quite clearly alleges a violation of the federal Constitution at several points. In particular, paragraph 14, JA 16-17, makes the following assertion:
>
> > The Court order [referring to an order of the County Commission of Newton County, Missouri, purporting to establish the Town of Loma Linda] is further invalid because Relators were not given proper notice of the hearing as required by the Statutes and Constitution of Missouri and the Constitution of the United States of America, including those provisions which prohibit the taking of

> property without due process of law, which process requires proper notice.
>
> The reference to the Constitution of the United States is unequivocal. If the Due Process Clause of the Fourteenth Amendment is given one construction, the claim will prevail; if it is given another, the claim will fail. This is a paradigm case for arising-under jurisdiction.

Country Club Estates, L.L.C. v. Town of Loma Linda, 213 F.3d 1001, 1003 (8th Cir. 2000). *See also Williams v. Ragnone*, 147 F.3d 700, 702 (8th Cir. 1998) ("When a federal question is present on the face of the complaint, the district court has original jurisdiction and the action may be removed to federal court."); *New York ex rel. Jacobson v. Wells Fargo Nat'l Bank, N.A.*, 824 F.3d 308, 315 (2d Cir. 2016) ("A state-law claim 'necessarily' raises federal questions where the claim is affirmatively 'premised' on a violation of federal law."); *Shaw v. Prudential Ins. Co. of Am.*, 2011 WL 1050004, at *1-2 (W.D. Mo. Mar. 21, 2011) (case asserting only state law breach of contract claim was properly removed on federal question grounds where petition invoked ERISA on its face).[4]

54. The same analysis applies here. Plaintiffs have alleged multiple violations of federal law in support of all of their state law claims. *See* Compl. at ¶ 147 (incorporating all preceding paragraphs into Count I); *id*. at ¶ 170 (same for Count II); *id*. at ¶ 195 (same for Count III); *id*. at ¶ 215 (same for Count IV); *id*. at ¶ 227 (same for Count V); *id*. at ¶ 246 (same for Count VI); *see also id*. at ¶ 146 (identifying certain federal law violations "alleged in this pleading").

55. Removal is proper where, as here, "the federal question arises not by way of defense, but on the face of the complaint" and "is part of the plaintiffs' cause of action, as demonstrated by the words they themselves selected." *Country Club Estates*, 213 F.3d at 1003-04 ("A complaint that pleads violations of both state and federal law is within the original jurisdiction of a federal district court.").

56. To the extent the *Grable* requirements must be met to support removal even where violations of federal law are alleged on the face of the Complaint, they are here. The

[4] The petition at issue in *Shaw* is available at 2010 WL 4362984 (W.D. Mo., July 27, 2010).

questions raised by the alleged violations are actually disputed, as Monsanto denies each and every violation of federal law asserted in the Complaint.

57. The federal questions raised by those alleged violations are also substantial, because their resolution will impact the way applicants for pesticide registrations interact with EPA. For example:

a. Plaintiffs allege that Monsanto violated federal law by submitting third party testing results to EPA that were later determined to be false. *See* Compl. at ¶¶ 98-103, 146. Whether the alleged conduct violates federal law is a "substantial" federal question, because its resolution may significantly increase federal regulatory burdens on applicants, and may lead applicants to limit the scope of testing data they submit to EPA to only that which they can independently verify. Such limitation on the data provided to EPA may adversely impact its ability to make informed regulatory decisions.

b. Plaintiffs' allegation that Monsanto violated federal regulations by communicating with EPA employees also raises substantial federal questions. The questions are substantial because resolving them may lead those applying for pesticide registrations to limit their communications with EPA in a manner that impairs the effective functioning of the regulatory process. EPA relies on and encourages direct communications with applicants in performing its regulatory functions. *See, e.g.,* 40 C.F.R. § 158.30(a) ("The Agency encourages each applicant to consult with EPA to discuss the data requirements particular to its product prior to and during the registration process."); *see also* 40 C.F.R. § 158.45(b)(1); 40 C.F.R. § 158.70; 40 C.F.R. § 158.80(b).

58. Finally, resolution of these disputed questions of federal law in federal court will not disrupt the balance between federal and state jurisdiction adopted by Congress. Resolving alleged violations of federal law is well within the scope of traditional federal jurisdiction. And, because Congress specifically vested the federal courts with jurisdiction over the enforcement of FIFRA, the exercise of federal jurisdiction over this lawsuit will not disrupt the congressionally approved balance of federal and state judicial responsibility. *See, e.g.*, 7 U.S.C. 136n.

II. THIS ACTION IS REMOVABLE UNDER 28 U.S.C. § 1441(a), BECAUSE PLAINTIFFS' CLAIMS INVITE STATE COURT JURORS TO EVALUATE WHETHER THE FEDERAL AGENCY THAT IS OBLIGATED BY FEDERAL LAW TO REGULATE MONSANTO COLLUDED WITH MONSANTO TO MAINTAIN FEDERAL REGULATORY APPROVAL FOR MONSANTO'S GLYPHOSATE-BASED HERBICIDES.

59. A separate, alternative, basis for removal exists in this case – namely, federal officer removal. A statute authorizes removal of a civil action that is "against or directed to" the "United States or any agency thereof or any officer (***or any person acting under that officer***) of the United States or of any agency thereof, in an official or individual capacity, for ***or relating to*** any act under color of such office." 28 U.S.C. § 1442(a)(1) (emphasis added). In these circumstances, a lawsuit can be removed from state court "despite the nonfederal cast of the complaint; the federal-question element is met if the defense depends on federal law." *Jefferson County*, 527 U.S. at 431.

60. Courts are required to construe § 1442(a)(1) broadly. "The words 'acting under' are broad, and this Court has made clear that the statute must be 'liberally construed.'" *Watson v. Philip Morris Cos., Inc.*, 551 U.S. 142, 147 (2007) (quoting § 1442(a)(1); *Colorado v. Symes*, 286 U.S. 510, 517 (1932)); *see Arizona v. Manypenny*, 451 U.S. 232, 242 (1981) ("the policy favoring removal 'should not be frustrated by a narrow, grudging interpretation of § 1442(a)(1)'" (quoting *Willingham v. Morgan*, 395 U.S. 402, 407 (1969)); *see also Jacks v. Meridian Resource Co.*, 701 F.3d 1224, 1230 (8th Cir. 2012) (quoting *Watson*, 551 U.S. at 147); *Durham v. Lockheed Martin Corp.*, 445 F.3d 1247, 1252 (9th Cir. 2006) (quoting *Manypenny*, 451 U.S. at 242). Moreover, the statute was amended in 2011 by adding "or relating to" after "for," thereby broadening the reach of the statute. *See In re Commonwealth's Motion to Appoint Counsel Against or Directed to Defender Assoc. of Philadelphia*, 790 F.3d 457, 467 (3d Cir. 2015).

61. Courts generally require the following elements for federal officer removal based on § 1442(a)(1): "(1) a defendant has acted under the direction of a federal officer, (2) there was a causal connection between the defendant's actions [at issue in the plaintiff's lawsuit] and the official authority, (3) the defendant has a colorable federal defense to the plaintiff's claims, and (4) the defendant is a 'person' within the meaning of the statute." *Jacks*, 701 F.3d at 1230; *see*

also In re Commonwealth's Motion, 790 F.3d at 467. As discussed below, these requirements are satisfied in this case.

62. ***First***, according to Plaintiffs' allegations, Monsanto acted under the direction of a federal officer by illegally colluding with EPA officials to maintain federal regulatory approval for Monsanto's glyphosate-based herbicides. Plaintiffs allege that a special relationship existed between EPA officers and Monsanto (which allegations are incorporated by reference into each cause of action): "Monsanto has also violated federal regulations in holding secret ex parte meetings and conversations with certain EPA employees to collude in a strategy to re-register glyphosate and to quash investigations into the carcinogenicity of glyphosate by other federal agencies such as the Agency for Toxic Substances and Disease Registry. Monsanto's close connection with the EPA arises in part from its offering of lucrative consulting gigs to retiring EPA officials." Compl. at ¶ 105; *see also id.* at ¶¶ 147, 170, 195, 215, 227, 246, 263. "Collusion" is defined as a "secret agreement or cooperation esp[ecially] for an illegal or deceitful purpose," Merriam Webster's Collegiate Dictionary at 226 (10th ed.), so collusion necessarily requires an agreement between two parties. Thus, Plaintiffs contend that EPA agency power was delegated to Monsanto, so that it could direct agency employees to maintain federal regulatory approval for Monsanto's glyphosate-based herbicides, with lucrative consulting positions paid by Monsanto as the alleged *quid pro quo* for this delegation of agency power.[5]

63. In the Roundup® Products Liability MDL currently pending before Judge Chhabria in this Court, the plaintiffs are vigorously pursuing discovery regarding the same allegations of collusion between EPA officials and Monsanto. For example, plaintiffs' attorneys

[5] Although Monsanto disputes Plaintiffs' allegations, Monsanto is permitted to rely on the allegations to show that removal of this lawsuit is proper based on § 1442(a)(1) – and then present Monsanto's version of the events at issue later in the federal court proceeding. *See, e.g.*, *Willingham*, 395 U.S. at 407-09 (explaining that defendants need not admit allegations to remove lawsuits based on § 1442(a)(1)). Moreover, the fact that Plaintiffs accuse Monsanto and EPA of illegal conduct does not mean that the alleged conduct at issue here falls outside the scope of the § 1442(a)(1) "color of office" requirement. *See Sun v. Tucker*, 946 F.2d 901, at *1 (10th Cir. 1991) (unpublished op.) (stating that "[w]hether an act was performed under 'color of office' is not dependent on the propriety of the alleged act itself" (citing *Willingham*, 395 U.S. at 409)).

have moved to compel the deposition of Jess Rowland (a former EPA officer at OPP and the former chair of EPA's CARC), who allegedly colluded with Monsanto. *See* Plaintiffs' Motion to Compel the Deposition of Jess Rowland, *In re: Roundup Prods. Liab. Litig.*, MDL No. 2741 (N.D. Cal., Mar. 14, 2017), ECF No. 189. According to the motion to compel, there was "a concerted effort by Monsanto and the OPP, Jess Rowland, and his CARC committee to 'kill' the glyphosate/lymphoma issue for the company." *Id.* at 2. The motion also asserts that the CARC report was "leaked" and then retracted by EPA because it was not final, *id.* at 2; that "Rowland wanted to help Monsanto stop an investigation concerning the carcinogenicity of glyphosate being conducted by [another federal agency,] [t]he Agency for Toxic Substances and Disease Registry (ATSDR)," *id*. at 3; and that "Rowland bragged: 'If I can kill this [the ATSDR investigation,] I should get a medal,'" *id*. Plaintiffs' allegations of illegal collusion between Monsanto and federal officers employed by EPA have received significant attention in the press.

64. As shown above, Plaintiffs' allegations about Monsanto's "close connection" with EPA and about collusion between EPA and Monsanto regarding Monsanto's glyphosate-based herbicides are very different than "the usual regulator/regulated relationship," *Watson*, 551 U.S. at 157, which the *Watson* Court held did not suffice to satisfy the acting-under-the-direction-of-a-federal-officer requirement of § 1442(a)(1). In *Watson*, the Court held that "a highly regulated firm cannot find a statutory basis for removal in the fact of federal regulation alone." 551 U.S. at 153. Thus, Monsanto does not contend that the federal regulatory environment in which it has operated for many years under close EPA supervision regarding glyphosate-based herbicides gives rise to removal based on § 1442(a)(1). Unlike in *Watson*, where the Supreme Court explained its conclusion that removal was not proper by pointing out the lack of a "special relationship" between the regulated company and the federal regulatory agency, 551 U.S. at 157, in this case Plaintiffs do allege a special relationship between the regulated company (Monsanto) and the federal regulatory agency (EPA). Plaintiffs' allegations – that Monsanto and EPA colluded to maintain federal regulatory approval for Monsanto's glyphosate-based herbicides and that Monsanto has a "close connection" with EPA by "offering lucrative consulting gigs to

retiring EPA officials," Compl. at ¶ 105 – are materially different than the usual relationship between a federal regulator and a regulated company addressed in *Watson*. In sum, Plaintiffs' allegations about a collusive scheme between Monsanto and EPA satisfy the first element of § 1442(a)(1) in this case.

65. ***Second***, the causal nexus requirement, which is a "low" hurdle, *Isaacson v. Dow Chem. Co.*, 517 F.3d 129, 137 (2d Cir. 2008), is satisfied here as well. Plaintiffs' allegations of illegal collusion between Monsanto and EPA show that a causal connection exists between the Monsanto conduct that is challenged in this case and "the official authority," *Jacks*, 701 F.3d at 1230, because Plaintiffs assert claims "for ***or relating to***," § 1442(a)(1) (emphasis added), Monsanto's alleged collusion with EPA to maintain federal regulatory approval for Monsanto's glyphosate-based herbicides, *see* Compl. at ¶ 105; *see also id*. at ¶¶ 147, 170, 195, 215, 227, 246, 263. Plaintiffs' entire lawsuit is based on the theory that the herbicides are carcinogenic; that Monsanto is liable for covering up, and failing to warn about, the risk of cancer; that this cover-up scheme was perpetrated through illegal collusion between Monsanto and specific EPA officers; and that Plaintiffs would not have developed cancer if EPA had fulfilled its federal regulatory obligations by not allowing Monsanto to sell its glyphosate-based herbicides at all – or by precluding Monsanto from selling these herbicides without a cancer warning. In these circumstances, the causal nexus requirement of § 1442(a)(1) is satisfied.

66. ***Third***, the Supremacy Clause of the United States Constitution and preemption principles based on the Supremacy Clause give Monsanto at least two colorable federal defenses that it will raise in a motion for summary judgment at the appropriate time. "For a defense to be considered colorable, it need only be plausible; § 1442(a)(1) does not require a court to hold that a defense will be successful before removal is appropriate." *U.S. v. Todd*, 245 F.3d 691, 693 (8th Cir. 2001); *see Jefferson County*, 527 U.S. at 431 (stating that removing defendant is not required "virtually to win his case before he can have it removed" (quotation marks and citation omitted)); *Bennett v. MIS Corp.*, 607 F.3d 1076, 1089 (6th Cir. 2010) (stating that "a colorable federal defense need only be plausible, . . . and that a district court is not required to determine

its validity at the time of removal" (citations omitted)). Monsanto's federal defenses easily meet this requirement.

67. Monsanto's first federal defense is based on the well-established principle that a state-law claim alleging that a regulated company defrauded or misled a federal regulatory agency conflicts with, and therefore is ***impliedly preempted***, by federal law. *See, e.g.*, *Buckman Co. v. Plaintiffs' Legal Comm.*, 531 U.S. 341 (2001) (claims alleging that defendant misled federal Food and Drug Administration are impliedly preempted by federal law); *Nathan Kimmel*, 275 F.3d 1199 (9th Cir. 2002) (same; EPA); *Giglio v. Monsanto Co.*, Case No.: 15cv2279 BTM(NLS), 2016 WL 1722859, at *3 (S.D. Cal. Apr. 29, 2016) (claims alleging that Monsanto "negligently failed to adequately warn the EPA of the dangers of Roundup and concealed information from and/or misrepresented information to the EPA concerning the severity of the risks and dangers of Roundup," which are "directly based on the propriety of disclosures made by [Monsanto] to the EPA, are preempted by FIFRA" (citing *Nathan Kimmel*, 275 F.3d at 1207)). Like the *Giglio* plaintiff, Plaintiffs here repeatedly allege that Monsanto, when dealing with EPA regarding Roundup®-branded herbicides, concealed information from EPA, made misrepresentations to EPA, and failed to provide adequate warnings to EPA regarding the risks and dangers of those products. *See, e.g.*, Compl. at ¶¶ 98-105, 147, 155,170, 176-77, 183, 195, 205, 215, 218, 221, 227, 229, 235, 246, 263. In these circumstances, Monsanto's federal defense that these claims are impliedly preempted is far more than colorable.

68. Monsanto's second federal defense is based on the ***express preemption*** provision set forth in FIFRA, which preempts state-law claims based on allegedly inadequate herbicide warnings that would "impose or continue in effect any requirements for labeling or packaging in addition to or different from those required under [FIFRA]," 7 U.S.C. § 136v(b). In this case, it is plausible that Plaintiffs' state-law claims based on Monsanto's alleged failure to warn that glyphosate poses a cancer risk satisfy both parts of § 136v(b) and therefore are preempted by FIFRA. The claims at issue here satisfy the "requirements for labeling or packaging" part of § 136v(b). *See Bates v. Dow Agrosciences LLC*, 544 U.S. 431, 446 (2005) (holding that "fraud

and negligent-failure-to-warn claims are premised on common-law rules that qualify as 'requirements for labeling or packaging'" (citing § 136v)).

69. Moreover, it is plausible that the other part of § 136v(b) is satisfied because Plaintiffs' state-law warnings-based claims revolve around the contention that Monsanto's glyphosate-based herbicides should have included a cancer warning, which means that Plaintiffs' claims would impose requirements "in addition to or different from those required under [FIFRA]," § 136v(b), because EPA repeatedly made FIFRA-based regulatory determinations that glyphosate does not pose a cancer risk,[6] which have informed EPA's repeated FIFRA approvals of labeling for Roundup®-branded herbicides without any cancer warning for many years, including as recently as March 2016.[7] In these circumstances, FIFRA's express preemption provision gives Monsanto a colorable federal defense to Plaintiffs' warnings-based claims. *See, e.g.*, 7 U.S.C. § 136v(b); *Bates*, 544 U.S. 431; *Mirzaie v. Monsanto Co.*, No. 15-cv-04361-DDP, 2016 WL 146421 (C.D. Cal. Jan. 12, 2016).[8]

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[6] *See* EPA's Office of Pesticide Programs, *Glyphosate Issue Paper: Evaluation of Carcinogenic Potential* at 141 (Sept. 12, 2016), https://www.regulations.gov/document?D=EPA-HQ-OPP-2016-0385-0094 ("[t]he strongest support is for [the descriptor] 'not likely to be carcinogenic to humans' at doses relevant to human health risk assessment.") (attached as Exhibit 2); Cancer Assessment Review Committee, Health Effects Division, Office of Pesticide Programs, U.S. EPA, *Cancer Assessment Document – Evaluation of the Carcinogenic Potential of Glyphosate* at 10, 77 (Final Report, Oct. 1, 2015), https://www.regulations.gov/document?D=EPA-HQ-OPP-2016-0385-0014 (endorsing EPA's existing classification of glyphosate as "Not Likely to be Carcinogenic to Humans") (attached as Exhibit 3); Glyphosate; Pesticide Tolerances, 78 Fed. Reg. 25,396, 25,398 (May 1, 2013) (to be codified at 40 C.F.R. pt. 180) ("EPA has concluded that glyphosate does not pose a cancer risk to humans."); Glyphosate; Pesticide Tolerances, 73 Fed. Reg. 73,586, 73,589 (Dec. 3, 2008) (to be codified at 40 C.F.R. pt. 180) ("There is [an] extensive database available on glyphosate, which indicate[s] that glyphosate is not mutagenic, not a carcinogen, and not a developmental or reproductive toxicant."); Glyphosate; Pesticide Tolerance, 69 Fed. Reg. 65,081, 65,086 (Nov. 10, 2004) (to be codified at 40 C.F.R. pt. 180) ("Glyphosate has no carcinogenic potential."); Glyphosate; Pesticide Tolerances, 67 Fed. Reg. 60,934, 60,943 (Sept. 27, 2002) (to be codified at 40 C.F.R. pt. 180) ("No evidence of carcinogenicity."); EPA, *Reregistration Eligibility Decision Document: Glyphosate*, 14 (Sept. 1993), https://www3.epa.gov/pesticides/chem_search/reg_actions/reregistration/red_PC-417300_1-Sep-93.pdf ("On June 26, 1991, the Agency classified glyphosate in Group E (evidence of non-carcinogenicity for humans), based on a lack of convincing evidence of carcinogenicity in adequate studies with two animal species.") (attached as Exhibit 4).

[7] *See* March 10, 2016 EPA Letter (with approved labeling for Roundup®-branded herbicide), https://www3.epa.gov/pesticides/chem_search/ppls/071995-00051-20160310.pdf (attached as Exhibit 5); March 10, 1992 EPA Letter (with approved labeling for Roundup®-branded herbicide), https://www3.epa.gov/pesticides/chem_search/ppls/000524-00452-19920310.pdf (attached as Exhibit 6).

[8] Although courts have denied Monsanto's motions to dismiss based upon express preemption in other Roundup® lawsuits, *see, e.g.*, *Giglio*, 2016 WL 1722859, at *1-3; *Hernandez v. Monsanto Co.*, Case No. CV 16-1988-DMG

(Footnote continued)

70. ***Fourth***, the "person" element is satisfied. Monsanto is a corporation, so it is a "person" for purposes of § 1442(a)(1). *See Jacks*, 701 F.3d at 1230 n.3; *Winters v. Diamond Shamrock Chem. Co.*, 149 F.3d 387, 398 (5th Cir. 1998); *see also* 1 U.S.C. § 1.

71. In addition to satisfying the elements discussed above, removal is appropriate in this case because it would comport with the purpose of the federal officer removal statute by ensuring that claims asserted in state courts cannot be used to interfere with a federal agency's efforts to carry out its regulatory responsibilities. As the Supreme Court has recognized, one of the primary purposes of the federal officer removal statute was to have federal defenses litigated in federal courts. *See Willingham*, 395 U.S. at 407; *Kinetic Sys., Inc. v. Federal Financing Bank*, 895 F. Supp. 2d 983, 991 (N.D. Cal. 2012) (citing *Willingham*, 395 U.S. at 406-07). In other words, "Congress has decided that federal officers, and indeed the Federal Government itself, require the protection of a federal forum." *Willingham*, 395 U.S. at 407; *see Durham*, 445 F.3d at 1252 (stating that "Congress passed the federal officer removal statute to protect the federal government from South Carolina's attempt to nullify federal tariff laws in the 1830s" and that

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(Ex), 2016 WL 6822311 (C.D. Cal. July 12, 2016), that does not mean that Monsanto's express preemption defense is not colorable for purposes of federal officer removal. Determining whether a defense is colorable (or plausible) for purposes of federal officer removal is different than determining whether the defense requires a court to grant a motion to dismiss. Prior motion-to-dismiss rulings regarding Monsanto's express preemption defense do not mean that is not plausible that the defense will prevail at a later stage of the litigation when presented in a different context – for example, by motion for summary judgment, based on a different factual and legal record than the record before the courts that issued prior motion-to-dismiss rulings. In *Giglio* and *Hernandez*, both courts acknowledged the limitations imposed by ruling on a motion to dismiss. *Giglio*, 2016 WL 1722859, at *3 ("[Monsanto] argues that Roundup in fact is not carcinogenic and that the EPA has made determinations that this is the case. However, a motion to dismiss is not the proper vehicle to delve into the import of EPA classifications or what EPA representatives have said in the past, what information they were relying on, and what effect their statements have on the issues before the Court."); *Hernandez*, 2016 WL 6822311,, at *8 ("Monsanto's argument could also be construed as an offer of proof that the EPA's factual findings are evidence that Roundup is not, in fact, carcinogenic. Such arguments, which require the Court to weigh evidence and make factual determinations, are not appropriate at the motion to dismiss stage."). The difference between evaluating a defense for purposes of determining removability and evaluating the defense for other purposes is illustrated by the Supreme Court's *Jefferson County* opinion, where the Court held that the federal defense was colorable for purposes of making the case removable, but then proceeded to reject the defense. *See Jefferson County*, 527 U.S. at 431 (holding that federal officer removal was proper because defendants presented "a colorable federal defense" – "although we ultimately reject [the defense]"); *see also Kinetic Sys., Inc.*, 895 F. Supp. 2d at 987 (denying plaintiff's remand motion and denying defendant's motion to dismiss; holding that, although defendant's federal defenses are "'colorable' for purposes of removal, they are not meritorious").

"the Supreme Court has mandated a generous interpretation of the federal officer removal statute ever since" (citation omitted)).[9]

72. In light of Plaintiffs' novel allegations of illegal collusion between a federal regulatory agency and a company it was supposed to regulate, this lawsuit belongs in federal court. For the foregoing reasons, § 1442(a)(1) federal officer removal is proper in this case.

ALL PROCEDURAL REQUIREMENTS FOR REMOVAL ARE MET

73. Monsanto has satisfied all procedural requirements for removal.

74. On March 17, 2017, Plaintiffs filed their Complaint captioned *Loretta Pennie, et al. v. Monsanto Company, et al.*, in the Superior Court of the State of California for the County of Alameda, Case Number RG17853420 ("State Court Action"), which is attached hereto as part of composite Exhibit 1.

75. Defendant Monsanto was served on March 20, 2017. Because this Notice of Removal is filed within 30 days of the date of service, this Notice of Removal is timely under 28 U.S.C. § 1446(b).

76. Venue is proper in this Court pursuant to 28 U.S.C. § 1446(a). The Superior Court of the State of California for the County of Alameda is located within the Northern District of California, *see* 28 U.S.C. § 84(a), and venue is proper in this Court under 28 U.S.C. § 1441(a).

77. The complete state file is attached as composite Exhibit 1.

78. A copy of this Notice of Removal is being served upon counsel for Plaintiffs, and a copy is being contemporaneously filed in the State Court Action.

79. Defendants Wilbur-Ellis Company, LLC and Wilbur-Ellis Feed, LLC consent to this removal and will file their consent contemporaneously herewith and within 30 days of being served with process. By requesting and/or providing this consent, no Defendant concedes that

[9] Although plaintiffs contend that EPA's and Monsanto's collusive conduct was illegal, that does not preclude federal officer removal because that issue should be resolved by a federal court, not a state court. *See Isaacson*, 517 F.3d at 138 ("Indeed, whether the challenged act was outside the scope of Defendants' official duties, or whether it was specifically directed by the federal Government, is one for the federal – not state – courts to answer." (citing *Willingham*, 395 U.S. at 409)); *Bennett*, 607 F.3d at 1088 (citing *Isaacson*, 517 F.3d at 138).

either Wilbur-Ellis Company, LLC or Wilbur-Ellis Feed, LLC is properly joined as a defendant in this action.

WHEREFORE, Defendant Monsanto respectfully removes this action from the Superior Court of the State of California for the County of Alameda, Case Number RG17853420, to this Court pursuant to 28 U.S.C. §§ 1331, 1441(a), 1442(a)(1), and 1367(a).

DATED: March 28, 2017

Respectfully submitted,

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PROOF OF SERVICE

Pennie, et al. vs. Monsanto Company, et al.

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 555 South Flower Street, 30th Floor, Los Angeles, California 90071.

On March 28, 2017 I served the documents described as **NOTICE OF REMOVAL; EXHIBITS 1-6; CIVIL COVER SHEET** as follows:

SEE ATTACHED SERVICE LIST

☐ (BY HAND): By giving a true copy(ies) thereof in sealed envelope(s) to (name of service) for hand delivery to the office of the party(ies) listed on ATTACHED SERVICE LIST.

☒ (BY MAIL) By placing a true copy in envelope(s) addressed as referenced on ATTACHED SERVICE LIST. The envelope(s) were then sealed and deposited for collection and mailing in accordance with my employer's normal procedures. I am readily familiar with the firm's practice for collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service, with all postage prepaid, at Los Angeles, California, on the same day in the ordinary course of business.

☐ (BY OVERNIGHT DELIVERY) By placing a true copy in envelope(s) addressed as listed on ATTACHED SERVICE LIST. The envelopes were then sealed and deposited for collection and delivery in accordance with my employer's normal procedures. I am readily familiar with the firm's practice for collection and processing correspondence for overnight delivery. Under that practice it would be placed in a box or other facility regularly maintained by the express service carrier, or delivered to an authorized courier or driver authorized by the express service carrier to receive documents.

☒ (FEDERAL) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made. I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 28, 2017 at Los Angeles, California.

Marianne Hendrix

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Exhibit 1

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COUNTY OF ALAMEDA

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Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

(UNLIMITED JURISDICTION)

LORETTA I. PENNIE, an individual; PABLO AGUERO, an individual; MICHAEL J. ALLEN, an individual; KELLY S. BARON, an individual; JOHN BARTON, an individual; MARK BARTON, an individual; MARIA BEDOLLA, individually, and as successor in interest to the Estate of David L. Bedolla, deceased; JEAN E. BEVANMARQUEZ, an individual; MARK J. BLACKWELDER, an individual; DONALD E. BRENNER, an individual; DEBORAH BROOKS, individually and as successor in interest to the Estate of Dean D. Brooks, deceased; DENTON L. CARENDER, SR., an individual; FRANK CHAVEZ, an individual; GINA E. DAVIS, an individual; RICHARD D'SOUZA, an individual; RANDY A. FERBER, an individual; GARY W. HALL, an individual; PATRICIA HAMILTON, individually and as successor in interest to the Estate of Bruce Hamilton, deceased; JOHN S. HENDERSON, an individual; PHIL P.

CASE No. RG 17853420

COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL

1. **Strict Liability – Design Defect**
2. **Strict Liability – Failure to Warn**
3. **Negligence**
4. **Fraud**
5. **Breach of Express Warranties**
6. **Breach of Implied Warranties**
7. **Exemplary Damages**

JURY TRIAL DEMANDED

HERNANDEZ, an individual; ANN E. HINSHELWOOD, an individual; STEVEN LOUIS MCCORMICK, an individual; SHEILA MITCHELL, an individual; TAMMY MORENO, individually and as successor in interest to the Estate of Andrew D. Moreno, deceased; ANTHONY PRINCE MUNOZ, an individual; TIMOTHY J. PARKER, an individual; CAROLYN J. PIERCE, an individual; JOANNE MARIE PLUMMER, an individual; GARY C. PUCKETT, an individual; PAULETTE M. RANDALL, an individual; RHODA B. RATHKAMP, an individual; PARVIZ REZAZADEH, an individual; DOUGLAS SMITH, an individual; JOHN S. STRATTON, an individual; STEVEN M. STROHM, an individual; CHERYL Y. THRESHER, an individual; and GEORGE T. WATSON, an individual; MERCY O. SOLORIO, individually and as successor in interest to the Estate of Estanislao Solorio, deceased; JEFF INGRAM, an individual; CHARLES VANNOY, an individual; and CAROLYN MCCRAY, an individual,

Plaintiffs,

v.

MONSANTO COMPANY, a corporation; WILBUR-ELLIS COMPANY, LLC, a corporation; and WILBUR-ELLIS FEED, LLC, a corporation; and DOES 1 through 100 inclusive,

Defendants.

Plaintiffs, by and through their attorneys, Baum Hedlund Aristei & Goldman, P.C., Pendley, Baudin & Coffin, LLP, and Kennedy & Madonna, LLP, allege upon information and belief:

I. STATEMENT OF THE CASE

1. In 1970, Defendants Monsanto Company, Inc. discovered the herbicidal properties of glyphosate and began marketing it in products in 1974 under the brand name Roundup®. Roundup® is a non-selective herbicide used to kill weeds that commonly compete with the growing of crops. By 2001, glyphosate had become the most-used active ingredient in American agriculture with 85–90 millions of pounds used annually. That number grew to 185 million pounds

by 2007. As of 2013, glyphosate was the world's most widely used herbicide.

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

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

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

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

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

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

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

II. 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 a 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 subject injury occurred in Alameda County.

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.

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

III. PARTIES

Plaintiffs

14. Plaintiffs herein are competent individuals over the age of 18, residents and citizens of the United States, California and Missouri, and hereby submit to the jurisdiction of this court

and allege that Venue in this Court is proper. All Decedents were residents of California. Plaintiffs and/or Decedents are hereinafter referred to as "Plaintiffs".

15. Plaintiff Loretta I. Pennie currently resides in Alameda County.

16. Plaintiff Pablo Aguero currently resides in Kern County.

17. Plaintiff Michael Allen currently resides in Kern County.

18. Plaintiff Kelly S. Baron currently resides in Santa Cruz County.

19. Plaintiff John Barton currently resides in Kern County.

20. Plaintiff Mark Barton currently resides in Kern County.

21. Plaintiff Maria Bedolla, Individually, and as Successor in Interest to the Estate of David L. Bedolla, is and was at all relevant times a resident of California and currently resides in San Diego County. David L. Bedolla was exposed to Roundup® and/or other Monsanto glyphosate-containing products ("Roundup") through approximately 2000 and was diagnosed with non-Hodgkin lymphoma. David L. Bedolla died as a result of Roundup® exposure on February 4, 2010. As a direct and proximate result of these injuries, Plaintiff Maria Bedolla has sustained the following damages: pecuniary losses and mental anguish and pain suffered by reason of Decedent David L. Bedolla's death, medical expenses, funeral expenses, and the loss of the benefit of David L. Bedolla's services, care, maintenance, and support which David L. Bedolla would have furnished his wife had he lived; and, in addition, damages suffered by Decedent David L. Bedolla between the time of his injury and death for which he might have maintained an action but for his death, the medical expenses, prolonged physical pain, physical impairment, mental anguish and suffering, and the loss of enjoyment of life endured by Decedent David L. Bedolla between the time of his injury and death.

22. Plaintiff Jean E. Bevanmarquez currently resides in Sacramento County.

23. Plaintiff Mark J. Blackwelder currently resides in Solano County.

24. Plaintiff Donald E. Brenner currently resides in Calaveras County.

25. Plaintiff Deborah Brooks, Individually, and as Successor in Interest to the Estate of Dean D. Brooks, is and was at all relevant times a resident of California and currently resides in Orange County. Dean D. Brooks was exposed to Roundup® and/or other Monsanto glyphosate-

containing products ("Roundup") through approximately 2002 and was diagnosed with non-Hodgkin lymphoma. Dean D. Brooks died as a result of Roundup® exposure on July 11, 2016. As a direct and proximate result of these injuries, Plaintiff Deborah Brooks has sustained the following damages: pecuniary losses and mental anguish and pain suffered by reason of Decedent Dean D. Brooks' death, medical expenses, funeral expenses, and the loss of the benefit of Dean D. Brooks' services, care, maintenance, and support which Dean D. Brooks would have furnished his wife had he lived; and, in addition, damages suffered by Decedent Dean D. Brooks between the time of his injury and death for which he might have maintained an action but for his death, the medical expenses, prolonged physical pain, physical impairment, mental anguish and suffering, and the loss of enjoyment of life endured by Decedent Dean D. Brooks between the time of his injury and death.

26. Plaintiff Denton L. Carender, Sr., currently resides in Kern County.

27. Plaintiff Frank Chavez currently resides in Sacramento County.

28. Plaintiff Gina E. Davis currently resides in Kern County.

29. Plaintiff Richard D'Souza currently resides in Riverside County.

30. Plaintiff Randy A. Ferber currently resides in Kern County.

31. Plaintiff Gary W. Hall currently resides in Kern County.

32. Plaintiff Patricia Hamilton Individually, and as Successor in Interest to the Estate of Bruce Hamilton, is and was at all relevant times a resident of California and currently resides in San Luis Obispo County. Bruce Hamilton was exposed to Roundup® and/or other Monsanto glyphosate-containing products ("Roundup") through approximately 2015 and was diagnosed with non-Hodgkin lymphoma. Bruce Hamilton died as a result of Roundup® exposure on September 2, 2015. As a direct and proximate result of these injuries, Plaintiff Patricia Hamilton has sustained the following damages: pecuniary losses and mental anguish and pain suffered by reason of Decedent Bruce Hamilton's death, medical expenses, funeral expenses, and the loss of the benefit of Bruce Hamilton's services, care, maintenance, and support which Bruce Hamilton would have furnished his wife had he lived; and, in addition, damages suffered by Decedent Bruce Hamilton between the time of his injury and death for which he might have maintained an action

but for his death, the medical expenses, prolonged physical pain, physical impairment, mental anguish and suffering, and the loss of enjoyment of life endured by Decedent Bruce Hamilton between the time of his injury and death.

33. Plaintiff John S. Henderson currently resides in Kern County.

34. Plaintiff Phil P. Hernandez currently resides in Kern County.

35. Plaintiff Ann E. Hinshelwood currently resides in Nevada County.

36. Plaintiff Steven Louis McCormick currently resides in Kern County.

37. Plaintiff Sheila Mitchell currently resides in Los Angeles County.

38. Plaintiff Tammy Moreno, Individually, and as Successor in Interest to the Estate of Andrew D. Moreno, is and was at all relevant times a resident of California and currently resides in Ventura County. Andrew D. Moreno was exposed to Roundup® and/or other Monsanto glyphosate-containing products ("Roundup") through approximately 2015 and was diagnosed with non-Hodgkin lymphoma. David L. Bedolla died as a result of Roundup® exposure on January 2, 2017. As a direct and proximate result of these injuries, Plaintiff Tammy Moreno has sustained the following damages: pecuniary losses and mental anguish and pain suffered by reason of Decedent Andrew D. Moreno's death, medical expenses, funeral expenses, and the loss of the benefit of Andrew D. Moreno's services, care, maintenance, and support which Andrew D. Moreno would have furnished his wife had he lived; and, in addition, damages suffered by Decedent Andrew D. Moreno between the time of his injury and death for which he might have maintained an action but for his death, the medical expenses, prolonged physical pain, physical impairment, mental anguish and suffering, and the loss of enjoyment of life endured by Decedent Andrew D. Moreno between the time of his injury and death.

39. Plaintiff Anthony Prince Munoz currently resides in Fresno County.

40. Plaintiff Timothy J. Parker currently resides in Mariposa County.

41. Plaintiff Carolyn J. Pierce currently resides in Kern County.

42. Plaintiff Joanne Marie Plummer currently resides in Contra Costa County.

43. Plaintiff Gary C. Puckett currently resides in San Joaquin County.

44. Plaintiff Paulette M. Randall currently resides in Santa Cruz County.

45. Plaintiff Rhoda B. Rathkamp currently resides in Kern County.

46. Plaintiff Parviz Rezazadeh currently resides in Riverside County.

47. Plaintiff Douglas Smith currently resides in Placer County.

48. Plaintiff John S. Stratton currently resides in San Diego County.

49. Plaintiff Steven M. Strohm currently resides in Riverside County.

50. Plaintiff Cheryl Y. Thresher currently resides in Kern County.

51. Plaintiff George T. Watson currently resides in Kern County.

52. Plaintiff Mercy O. Solorio, Individually, and as Successor in Interest to the Estate of Estanislao Solorio, is and was at all relevant times a resident of California and currently resides in Riverside County. Estanislao Solorio was first exposed to Roundup® and/or other Monsanto glyphosate-containing products ("Roundup") through approximately 2013 and was diagnosed with non-Hodgkin lymphoma. Estanislao Solorio died as a result of Roundup® exposure on February 8, 2014. As a direct and proximate result of these injuries, Plaintiff Mercy O. Solorio has sustained the following damages: pecuniary losses and mental anguish and pain suffered by reason of Decedent Estanislao Solorio's death, medical expenses, funeral expenses, and the loss of the benefit of Estanislao Solorio's services, care, maintenance, and support which Estanislao Solorio would have furnished his wife had he lived; and, in addition, damages suffered by Decedent Estanislao Solorio between the time of his injury and death for which he might have maintained an action but for his death, the medical expenses, prolonged physical pain, physical impairment, mental anguish and suffering, and the loss of enjoyment of life endured by Decedent Estanislao Solorio between the time of his injury and death.

53. Plaintiff Jeff Ingram currently resides in Sacramento County.

54. Plaintiff Charles Vannoy currently resides in Riverside County.

55. Plaintiff Carolyn McCray is a resident of St. Louis, Missouri.

56. Plaintiffs are informed and believe and based thereon allege that as a direct and proximate result of Plaintiffs' use of Roundup® and/or other Monsanto glyphosate-containing products ("Roundup"), supplied and distributed by Defendants herein, Plaintiffs suffered significant harm, conscious pain and suffering, physical injury and bodily impairment including,

but not limited to non-Hodgkin lymphoma and other cancers, other permanent physical deficits, permanent bodily impairment and other sequelae. Plaintiffs' injuries required hospitalizations, in-patient surgeries, medication treatments, and other therapies to address the adverse physical effects and damage caused by Plaintiffs' use of Roundup® and/or other Monsanto glyphosate-containing products ("Roundup") from approximately 1974 through 2016.

57. As a direct and proximate result of the wrongful conduct, acts, omissions, fraudulent concealments, fraudulent misrepresentations, and fraudulent business practices by Defendants and DOES 1 through 100, inclusive, Plaintiffs used and/or were exposed to Roundup® and were diagnosed with serious health injuries including non-Hodgkin lymphoma and other cancers.

58. As a result of using and/or being exposed to Defendants' Roundup®, Plaintiffs have been permanently and severely injured, having suffered serious consequences from Roundup®.

59. As a further direct and proximate result of defects in Roundup® and the wrongful conduct, acts, omissions, and fraudulent misrepresentations of Defendants, Plaintiffs suffered severe mental and physical pain and have and will sustain permanent injuries and emotional distress, along with economic loss due to medical expenses and living-related expenses as a result of lifestyle changes.

60. As a further direct and proximate result of defects in Roundup® and the wrongful conduct, acts, omissions, and fraudulent misrepresentations of Defendants, Plaintiffs required extensive emergency medical treatment, health care, attention and services, thereby incurring medical, incidental, and service expenses pertaining to emergency medical treatments and procedures undertaken in efforts to maintain and/or save Plaintiffs.

61. Plaintiffs are individuals who suffered damages as a result of their injuries resulting from Plaintiffs' use and/or exposure to Roundup® and are authorized to bring an action for the causes of actions alleged herein including, but not limited to, injuries and damages sustained by Plaintiffs, resulting from Plaintiffs' use of Roundup®. Said injuries and damages sustained by Plaintiffs were caused or substantially contributed to by the wrongful conduct of Defendants and

DOES 1 through 100, inclusive.

62. The product warnings for Roundup® in effect during the time period Plaintiffs used and/or were exposed to Roundup® were vague, incomplete or otherwise inadequate, both substantively and graphically, to alert consumers to the severe health risks associated with Roundup® use and/or exposure.

63. The Defendants and DOES 1 through 100, and each of them, inclusive, did not provide adequate warnings to consumers including Plaintiffs and the general public about the increased risk of serious adverse events that are described herein.

64. Had Plaintiffs been adequately warned of the potential life-threatening side effects of the Defendants' and DOES 1 through 100, and each of them, inclusive, of Roundup®, Plaintiffs would not have purchased, used or been exposed to Roundup®.

65. By reason of the foregoing, Plaintiffs developed serious and dangerous side effects including non-Hodgkin lymphoma and other cancers, related sequelae, physical pain and suffering, mental anguish, and loss of enjoyment of life. By reason of the foregoing, Plaintiffs suffered economic losses and special damages including, but not limited to, loss of earning and medical expenses. All to the Plaintiffs' general and special damages in excess of the jurisdictional limits of the Court.

66. Plaintiffs have reviewed their potential legal claims and causes of action against the Defendants and have intentionally chosen only to pursue claims based on state law. Any reference to any federal agency, regulation or rule is stated solely as background information and does not raise a federal question. Plaintiffs have chosen to only pursue claims based on state law and are not making any claims which raise federal questions. Accordingly, Plaintiffs contend that California State jurisdiction and venue is proper.

Defendants

67. Defendant Monsanto Company ("Monsanto") is a Delaware corporation with its headquarters and principal place of business in St. Louis, Missouri. At all times relevant to this complaint, Monsanto was the entity that discovered the herbicidal properties of glyphosate and the manufacturer of Roundup®. Monsanto has regularly transacted and conducted business within the

State of California, and has derived substantial revenue from goods and products, including Roundup®, used in the State of California and employs sales representatives in the State of California. Monsanto expected or should have expected their acts to have consequences within the State of California, and derived substantial revenue from interstate commerce and invoking the benefits and protection of its laws. At all times relevant to this complaint, Monsanto was the entity that discovered the herbicidal properties of glyphosate and the manufacturer of Roundup®.

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

69. Defendant Wilbur-Ellis Feed LLC (with Wilbur-Ellis Company LLC, hereinafter "Wilbur-Ellis") is a California limited liability corporation with its headquarters and principal place of business in San Francisco, California. At all times relevant to this complaint, Wilbur-Ellis Feed, LLC sold and distributed Monsanto products including Roundup® within the State of California. Wilbur-Ellis is a main distributor of Roundup, and, upon information and belief, distributed Roundup used by the Plaintiffs.

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

71. At all relevant times alleged herein, one or more of the corporate Defendants was, and now is, a corporation with its principal place of business in the State of California and, therefore, is a citizen of the State of California.

72. The true names and/or capacities, whether individual, corporate, partnership, associate, governmental, or otherwise, of Defendants DOES 1 through 100, inclusive, and each of them, are unknown to Plaintiffs at this time, who therefore sue said Defendants by such fictitious names. Plaintiffs are informed and believe, and thereon allege, that each Defendant designated

herein as a DOE caused injuries and damages proximately thereby to Plaintiffs as hereinafter alleged; and that each DOE Defendant is liable to the Plaintiffs for the acts and omissions alleged herein below, and the resulting injuries to Plaintiffs, and damages sustained by the Plaintiffs. Plaintiffs will amend this Complaint to allege the true names and capacities of said DOE Defendants when that same is ascertained.

73. Plaintiffs are informed and believe, and thereon allege, that at all times herein mentioned, each of the Defendants and each of the DOE Defendants was the agent, servant, employee and/or joint venturer of the other co-Defendants and other DOE Defendants, and each of them, and at all said times, each Defendants and each DOE Defendant was acting in the full course, scope and authority of said agency, service, employment and/or joint venture.

74. Plaintiffs are informed and believe and allege that at all times mentioned herein, Defendants and DOES 1 through 100, inclusive, and each of them, were also known as, formerly known as and/or were the successors and/or predecessors in interest/business/product line/or a portion thereof, assigns, a parent, a subsidiary (wholly or partially owned by, or the whole or partial owner), affiliate, partner, co-venturer, merged company, alter egos, agents, equitable trustees and/or fiduciaries of and/or were members in an entity or entities engaged in the funding, researching, studying, manufacturing, fabricating, designing, developing, labeling, assembling, distributing, supplying, leasing, buying, offering for sale, selling, inspecting, servicing, contracting others for marketing, warranting, rebranding, manufacturing for others, packaging and advertising of Roundup® and/or other Monsanto glyphosate-containing products. Defendants and DOES 1 through 100, inclusive, and each of them, are liable for the acts, omissions and tortious conduct of its successors and/or predecessors in interest/business/product line/or a portion thereof, assigns, parent, subsidiary, affiliate, partner, co-venturer, merged company, alter ego, agent, equitable trustee, fiduciary and/or its alternate entities in that Defendants and DOES 1 through 100, inclusive, and each of them, enjoy the goodwill originally attached to each such alternate entity, acquired the assets or product line (or portion thereof), and in that there has been a virtual destruction of Plaintiffs' remedy against each such alternate entity, and that each such Defendants has the ability to assume the risk spreading role of each such alternate entity.

75. Plaintiffs are informed and believe, and thereon allege, that at all times herein mentioned, that Defendants and DOES 1 through 100, inclusive, and each of them, were and are corporations organized and existing under the laws of the State of California or the laws of some state or foreign jurisdiction; that each of the said Defendants and DOE Defendants were and are authorized to do and are doing business in the States of California and Missouri and regularly conducted business in these States and in Alameda County.

76. Upon information and belief, at relevant times, Defendants and DOES 1 through 100, and each of them, inclusive, were engaged in the business of researching, developing, designing, licensing, manufacturing, distributing, selling, marketing, and/or introducing into interstate commerce and into the State of California, including in Alameda County, and in Missouri, either directly or indirectly through third parties or related entities, Roundup® and/or other Monsanto glyphosate-containing products.

77. At relevant times, Defendants and DOES 1 through 100, inclusive, and each of them, conducted regular and sustained business and engaged in substantial commerce and business activity in the States of California and Missouri, which included but was not limited to selling, marketing and distributing Roundup® and/or other Monsanto glyphosate-containing products in the State of California and Alameda County.

78. At all relevant times, Defendants and DOES 1 through 100, inclusive, and each of them, expected or should have expected that their acts would have consequences within the United States of America including the State of California and including Alameda County, and the State of Missouri, said Defendants derived and derive substantial revenue therefrom.

IV. EQUITABLE TOLLING

79. Plaintiffs have suffered an illness that has a latency period and does not arise until years after exposure. Plaintiffs had no way of knowing about the risk of serious illness associated with the use of and/or exposure to Roundup® and glyphosate until they were made aware that their illness, including non-Hodgkin lymphoma could be caused by their use and/or exposure to Roundup®. The discovery rule applies to these cases, and the statute of limitations has been tolled until the day the Plaintiffs knew or had reason to know that their illnesses, including non-Hodgkin

lymphoma, were linked to their use and/or exposure to Roundup®.

80. Within the time period of any applicable statute of limitations, Plaintiffs could not have discovered through the exercise of reasonable diligence that exposure to Roundup® and glyphosate is injurious to human health.

81. Plaintiffs did not discover and did not know of facts that would cause a reasonable person to suspect the risk associated with the use of and/or exposure to Roundup® and glyphosate nor would a reasonable and diligent investigation by them have disclosed that Roundup® and glyphosate would cause their illnesses.

82. The expiration of any applicable statute of limitations has been equitably tolled by reason of Monsanto's fraudulent misrepresentations and fraudulent concealment and fraudulent conduct. Through affirmative misrepresentations and omissions, Defendants actively concealed from Plaintiffs the true risks associated with use of and/or exposure to Roundup®.

83. As a result of Defendants' actions, Plaintiffs could not reasonably have known or learned through reasonable diligence that they had been exposed to the risks alleged herein and that those risks were the direct and proximate result of Defendants' acts and omissions.

84. Defendants are estopped from relying on any statute of limitations because of their concealment of the truth regarding the safety of Roundup®. Defendants Monsanto had a duty to disclose the true character, quality and nature of Roundup® because this was non-public information over which it continues to have exclusive control. Defendants knew that this information was not available to Plaintiffs, their medical providers and/or their health facilities yet it failed to disclose the information to the public.

85. Defendants had the ability to and did spend enormous amounts of money in furtherance of the purposes of marketing and promoting a profitable product, notwithstanding the known or reasonably knowable risks. Plaintiffs and medical professional could not have afforded to and could not have possibly conducted studies to determine the nature, extent, and identity of related health risks, and they were forced to rely on Defendants' representations.

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V. FACTS

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

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

88. For nearly 40 years, farms across the world have used Roundup® without knowing of the dangers its use poses. That is because when Monsanto first introduced Roundup®, it touted glyphosate as a technological breakthrough: it could kill almost every weed without causing harm either to people or to the environment. Of course, history has shown that not to be true. According to the WHO, the main chemical ingredient of Roundup®—glyphosate—is a probable cause of cancer. Those most at risk are farm workers and other individuals with workplace exposure to Roundup®, such as workers in garden centers, nurseries, and landscapers. Agricultural workers are, once again, victims of corporate greed. Monsanto assured the public that Roundup® was harmless. In order to prove this, Monsanto championed falsified data and attacked legitimate studies that revealed its dangers. Monsanto led a prolonged campaign of misinformation to convince government agencies, farmers and the general population that Roundup® was safe.

The Discovery of Glyphosate and Development of Roundup®

89. The herbicidal properties of glyphosate were discovered in 1970 by Monsanto chemist John Franz. The first glyphosate-based herbicide was introduced to the market in the mid-1970s under the brand name Roundup®. From the outset, Monsanto marketed Roundup® as a "safe" general-purpose herbicide for widespread commercial and consumer use; Osborn & Barr joined or took over these misleading marketing efforts in the early 1990s and continued through 2012. Monsanto still markets Roundup® as safe today.

Registration of Herbicides under Federal Law

90. The manufacture, formulation and distribution of herbicides, such as Roundup®,

are regulated under the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA" or "Act"), 7 U.S.C. § 136 *et seq.* FIFRA requires that all pesticides be registered with the Environmental Protection Agency ("EPA" or "Agency") prior to their distribution, sale, or use, except as described by the Act. 7 U.S.C. § 136a (a).

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

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

93. The EPA registered Roundup® for distribution, sale, and manufacture in the United States including the State of California.

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

95. The evaluation of each pesticide product distributed, sold, or manufactured is completed at the time the product is initially registered. The data necessary for registration of a pesticide has changed over time. The EPA is now in the process of re-evaluating all pesticide

products through a Congressionally-mandated process called "re-registration." 7 U.S.C. § 136a-1. In order to reevaluate these pesticides, the EPA is demanding the completion of additional tests and the submission of data for the EPA's review and evaluation.

96. In the case of glyphosate, and therefore Roundup®, the EPA had planned on releasing its preliminary risk assessment —in relation to the re-registration process—no later than July 2015. The EPA completed its review of glyphosate in early 2015, but it delayed releasing the risk assessment pending further review in light of the WHO's health-related findings.

Scientific Fraud Underlying the Marketing and Sale of Glyphosate/Roundup®

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

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

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

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

uterus from male rabbits."

101. Three top executives of IBT were convicted of fraud in 1983.

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

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

104. Multiple studies have been ghostwritten in part and/or published by Monsanto through companies such as Intertek and Exponent, Inc. from 2000-present which minimize any safety concerns about the use of glyphosate; are used to convince regulators to allow the sale of Roundup®, and are used to convince customers to use Roundup®. Such studies include, but are not limited to Williams (2000); Williams (2012); Kier & Kirkland (2013); Kier (2015); Bus (2016); Chang (2016); and the Intertek Expert Panel Manuscripts. All of these studies have been submitted to and relied upon by the public and the EPA in assessing the safety of glyphosate. Through these means Monsanto has fraudulently represented that independent scientists have concluded that Glyphosate is safe. In fact, these independent experts have been paid by Monsanto and have failed to disclose the significant role Monsanto had in creating the manuscripts. Monsanto has further ghostwritten editorials for scientists such as Robert Tarone and Henry Miller to advocate for the safety of glyphosate in Newspapers and Magazines. Monsanto has also ghostwritten letters by supposed independent scientists submitted to regulatory agencies who are reviewing the safety of glyphosate.

105. Monsanto has also violated federal regulations in holding secret ex parte meetings and conversations with certain EPA employees to collude in a strategy to re-register glyphosate and to quash investigations into the carcinogenicity of glyphosate by other federal agencies such as the Agency for Toxic Substances and Disease Registry. Monsanto's close connection with the EPA arises in part from its offering of lucrative consulting gigs to retiring EPA officials.

106. In March 2015, The Joint Glyphosate Task Force at Monsanto's behest issued a

press release sharply criticizing IARC, stating that IARC's conclusion was "baffling" and falsely claiming that "IARC did not consider any new or unique research findings when making its decision. It appears that only by deciding to exclude certain available scientific information and by adopting a different approach to interpreting the studies was this possible."

107. Beginning in 2011, the Federal Institute for Risk Assessment (BfR) in Germany began preparing a study on the safety of glyphosate. Through the Glyphosate Task Force, Defendants were able to co-opt this study becoming the sole providers of data and ultimately wrote the report which was rubber-stamped by the BfR. The Glyphosate Task Force was solely responsible for preparing and submitting summary of studies relied upon by the by the BfR. Defendants have used this report, which they wrote, to falsely proclaim the safety of glyphosate.

108. In October 2015, the Defendants as members of the Joint Glyphosate Task Force wrote to the state of California to try to stop California from warning the public about the carcinogenicity of glyphosate arguing that the IARC classification is mistaken. In January of 2016 Monsanto filed a lawsuit to stop California from warning the public about the carcinogenicity of glyphosate.

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

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

110. In response, Monsanto began the development and sale of genetically engineered Roundup Ready® seeds in 1996. Since Roundup Ready® crops are resistant to glyphosate; farmers can spray Roundup® onto their fields during the growing season without harming the crop. This allowed Monsanto to expand its market for Roundup® even further; by 2000, Monsanto's biotechnology seeds were planted on more than 80 million acres worldwide and nearly 70% of American soybeans were planted from Roundup Ready® seeds. It also secured

Monsanto's dominant share of the glyphosate/Roundup® market through a marketing strategy that coupled proprietary Roundup Ready® seeds with continued sales of its Roundup® herbicide.

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

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

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

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

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

(c) Roundup® biodegrades into naturally occurring elements.

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

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

(f) You can apply Accord with "confidence because it will stay where you put it;" it bonds tightly to soil particles, preventing leaching. Then, soon after application,

soil microorganisms biodegrade Accord into natural products.

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

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

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

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

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

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

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

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

* * *

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

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

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

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

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

Classifications and Assessments of Glyphosate

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

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

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

119. In assessing an agent, the IARC Working Group reviews the following information:

(a) human, experimental, and mechanistic data;

(b) all pertinent epidemiological studies and cancer bioassays; and

(c) representative mechanistic data.

The studies must be publicly available and have sufficient detail for meaningful review, and reviewers cannot be associated with the underlying study.

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

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

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

123. Glyphosate was identified as the second-most used household herbicide in the United States for weed control between 2001 and 2007 and the most heavily used herbicide in the world in 2012[1].

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

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

[1] Roundup rose to the most-used herbicide in the world thanks in no small part to Osborn & Barr's marketing.

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

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

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

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

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

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

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

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Other Earlier Findings about Glyphosate's Dangers to Human Health

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

Release Patterns

Glyphosate is released to the environment in its use as an 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.

134. 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

135. 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 this as the dangers of the use of Roundup® are more widely known. The Netherlands issued a ban on all glyphosate-based herbicides in April 2014, including Roundup®, which takes effect by the end of 2015. In issuing the ban, the Dutch Parliament member who introduced the successful legislation stated: "Agricultural pesticides in user-friendly packaging are sold in abundance to

private persons. In garden centers, Roundup® is promoted as harmless, but unsuspecting customers have no idea what the risks of this product are. Especially children are sensitive to toxic substances and should therefore not be exposed to it."

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

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

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

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

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

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

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

LIMITATION ON ALLEGATIONS

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

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

145. Additionally, Plaintiffs' claims do not seek to enforce federal law. These claims are brought under California law, notwithstanding the fact that such claims run parallel to federal law.

146. As alleged in this pleading, the Defendants violated U.S.C. § 136j and 40 C.F.R. § 156.10(a)(5) by distributing Roundup®, which was misbranded pursuant to 7 U.S.C. § 136(g). Federal law specifically prohibits the distribution of a misbranded herbicide.

COUNT I: STRICT LIABILITY (DESIGN DEFECT)

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

148. Plaintiffs bring this strict liability claim against Defendants for defective design.

149. 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 Plaintiffs, 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 used by Plaintiffs, as described above.

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

151. At all times relevant to this litigation, Defendants' Roundup® products reached the intended consumers, handlers, and users or other persons coming into contact with these products

in California and throughout the United States, including Plaintiffs, without substantial change in their condition as designed, manufactured, sold, distributed, labeled, and marketed by Defendants.

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

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

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

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

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

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

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

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

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

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

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

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

156. Plaintiffs were exposed to Defendants' Roundup® products without knowledge of Roundup®'s dangerous characteristics.

157. At all times relevant to this litigation, Plaintiffs used and/or were exposed to the use of Defendants' Roundup® products in an intended or reasonably foreseeable manner, e.g., as a farmer, without knowledge of Roundup®'s dangerous characteristics.

158. Plaintiffs could not reasonably have discovered the defects and risks associated with Roundup® or glyphosate-containing products before or at the time of exposure due to the Defendants' suppression of scientific information linking glyphosate to cancer.

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

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

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

162. Therefore, as a result of the unreasonably dangerous condition of its Roundup® products, Defendants are strictly liable to Plaintiffs.

163. The defects in Defendants' Roundup® products were substantial and contributing factors in causing Plaintiffs' injuries and/or death, and, but for Defendants' misconduct and omissions, Plaintiffs would not have sustained their injuries.

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

165. As a direct and proximate result of Defendants placing its defective Roundup® products into the stream of commerce, and the resulting injuries and/or death, Plaintiffs and/or their Decedents have sustained pecuniary loss including loss of Decedents' society, comfort, attention, protection, services and support and general damages in a sum in excess of the jurisdictional minimum of this Court.

166. As a proximate result of the Defendants placing its defective Roundup® products into the stream of commerce, as alleged herein, there was a measurable and significant interval of time during which Plaintiffs and/or their Decedents have suffered great mental anguish and other personal injury and damages.

167. As a proximate result of the Defendants placing its defective Roundup® products into the stream of commerce, as alleged herein, Plaintiffs and/or their Decedents sustained loss of income, loss of earning capacity and/or property damage.

168. As a further proximate result of the conduct of Defendants, Wrongful Death Plaintiffs have incurred expenses for funeral, burial and other related costs pertaining to their Decedent's death, in amounts to be proved at trial.

169. WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in Plaintiffs' favor for compensatory and punitive damages, together with interest, costs herein incurred, attorneys' fees and all such other and further relief as this Court deems just and proper.

COUNT II: STRICT LIABILITY (FAILURE TO WARN)

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

171. Plaintiffs bring this strict liability claim against Defendants for failure to warn.

172. 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 Plaintiffs, because they do not contain adequate warnings or instructions concerning the dangerous characteristics of Roundup® and specifically, the active ingredient glyphosate. These actions were under the ultimate control and supervision of Defendants.

173. Defendants researched, developed, designed, tested, manufactured, inspected, labeled, distributed, marketed, promoted, sold, and otherwise released into the stream of commerce its Roundup® products, and in the course of same, directly advertised or marketed the products to consumers and end users, including Plaintiffs, and therefore had a duty to warn of the risks associated with the use of Roundup® and glyphosate-containing products.

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

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

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

176. At all times relevant to this litigation, Defendants failed to investigate, study, test, or promote the safety or to minimize the dangers to users and consumers of their product and to those who would foreseeably use or be harmed by Defendants' herbicides, including Plaintiffs.

177. Despite the fact that Defendants knew or should have known that Roundup® posed a grave risk of harm, they failed to exercise reasonable care to warn of the dangerous risks associated with use and exposure. The dangerous propensities of their products and the carcinogenic characteristics of glyphosate, as described above, were known to Defendants, or scientifically knowable to Defendants through appropriate research and testing by known methods, at the time they distributed, supplied or sold the product, and not known to end users and consumers, such as Plaintiffs.

178. Defendants knew or should have known that their products created significant risks of serious bodily harm to consumers, as alleged herein, and Defendants failed to adequately warn consumers, i.e., the reasonably foreseeable users, of the risks of exposure to its products. Defendants have wrongfully concealed information concerning the dangerous nature of Roundup® and its active ingredient glyphosate, and further made false and/or misleading statements concerning the safety of Roundup and glyphosate.

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

180. Plaintiffs were exposed to Defendants' Roundup® products without knowledge of their dangerous characteristics.

181. At all times relevant to this litigation, Plaintiffs used and/or were exposed to the use of Defendants' Roundup® products while using them for their intended or reasonably foreseeable purposes, without knowledge of their dangerous characteristics.

182. Plaintiffs could not have reasonably discovered the defects and risks associated with Roundup® or glyphosate-containing products prior to or at the time of their exposure. Plaintiffs relied upon the skill, superior knowledge, and judgment of Defendants to know about and disclose serious health risks associated with using the products.

183. Defendants knew or should have known that the minimal warnings disseminated with their Roundup® products were inadequate, failed to communicate adequate information on the dangers and safe use/exposure, and failed to communicate warnings and instructions that were appropriate and adequate to render the products safe for their ordinary, intended and reasonably foreseeable uses, including agricultural and horticultural applications.

184. The information that Defendants did provide or communicate failed to contain relevant warnings, hazards, and precautions that would have enabled consumers such as Plaintiffs to utilize the products safely and with adequate protection. Instead, Defendants disseminated information that was inaccurate, false and misleading, and which failed to communicate accurately or adequately the comparative severity, duration, and extent of the risk of injuries with use of and/or exposure to Roundup® and glyphosate; continued to aggressively promote the efficacy of its products, even after they knew or should have known of the unreasonable risks from use or exposure; and concealed, downplayed, or otherwise suppressed, through aggressive marketing and promotion, any information or research about the risks and dangers of exposure to Roundup and glyphosate.

185. This alleged failure to warn is not limited to the information contained on Roundup®'s labeling. The Defendants were able, in accord with federal law, to comply with

California law by disclosing the known risks associated with Roundup® through other non-labeling mediums, i.e., promotion, advertisements, public service announcements, and/or public information sources. The Defendants, however, did not disclose these known risks through any medium.

186. To this day, Defendants have failed to adequately and accurately warn of the risks of cancer associated with the use of and exposure to Roundup® and its active ingredient glyphosate.

187. As a result of their inadequate warnings, Defendants' Roundup® products were defective and unreasonably dangerous when they left the possession and/or control of Defendants, were distributed by Defendants, and used by Plaintiffs.

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

189. Had Defendants provided adequate warnings and instructions and properly disclosed and disseminated the risks associated with their Roundup® products, Plaintiffs could have avoided the risk of developing injuries and could have obtained or used alternative herbicides.

190. As a direct and proximate result of Defendants placing defective Roundup® products into the stream of commerce, Plaintiffs were injured and/or died and have sustained pecuniary loss resulting from the loss of Decedent's society, comfort, attention, protection, services and support and general damages in a sum in excess of the jurisdictional minimum of this Court.

191. As a proximate result of Defendants placing defective Roundup® products into the stream of commerce, as alleged herein, there was a measurable and significant interval of time during which Plaintiffs and/or Decedents suffered great mental anguish and other personal injury

and damages.

192. As a proximate result of Defendants placing defective Roundup® products into the stream of commerce, as alleged herein, before their death, Plaintiffs and/or Decedents sustained a loss of income, loss of earning capacity and property damage.

193. As a further proximate result of Defendants' conduct, Plaintiffs and/or Decedents have incurred expenses for funeral, burial and other related costs pertaining to Decedent's death, in amounts to be proved at trial.

194. WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in Plaintiffs' favor for compensatory and punitive damages, together with interest, costs herein incurred, attorneys' fees and all such other and further relief as this Court deems just and proper.

COUNT III: NEGLIGENCE

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

196. Defendants, directly or indirectly, caused Roundup®® products to be sold, distributed, packaged, labeled, marketed, promoted, and/or used by Plaintiffs.

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

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

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

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

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

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

203. Defendants were negligent in their promotion of Roundup®, outside of the labeling context, by failing to disclose material risk information as part of their promotion and marketing of Roundup®, including the Internet, television, print advertisements, etc. Nothing prevented Defendants from being honest in their promotional activities, and in fact, Defendants had a duty to disclose the truth about the risks associated with Roundup in their promotional efforts, outside of the of the context of labeling.

204. Despite their ability and means to investigate, study, and test its products and to provide adequate warnings, Defendants have failed to do so. Indeed, Defendants have wrongfully

concealed information and have further made false and/or misleading statements concerning the safety and/or exposure to Roundup and glyphosate.

205. Defendants' negligence included:

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

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

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

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

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

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

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

h. Failing to warn Plaintiffs, consumers, and the general public that the product's risk

of harm was unreasonable and that there were safer and effective alternative herbicides available to Plaintiffs and other consumers;

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

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

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

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

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

n. Continuing the manufacture and sale of their products with the knowledge that the products were unreasonably unsafe and dangerous.

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

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

208. Defendants' negligence was the proximate cause of Plaintiffs' injuries and/or death,

i.e., absent Defendants' negligence, Plaintiffs would not have developed cancer.

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

210. As a direct and proximate result of Defendants placing defective Roundup® products into the stream of commerce, Plaintiffs and/or Decedents were injured and/or died and have sustained pecuniary loss resulting from the loss of Decedent's society, comfort, attention, protection, services and support and general damages in a sum in excess of the jurisdictional minimum of this Court.

211. As a proximate result of Defendants placing defective Roundup® products into the stream of commerce, as alleged herein, there was a measurable and significant interval of time during which Plaintiffs and/or Decedents suffered great mental anguish and other personal injury and damages.

212. As a proximate result of Defendants placing defective Roundup® products into the stream of commerce, as alleged herein, Plaintiffs and/or Decedents sustained a loss of income, loss of earning capacity and property damage.

213. As a further proximate result of Defendants' conduct, Plaintiffs and/or Decedents have incurred expenses for funeral, burial and other related costs pertaining to Decedent's death, in amounts to be proved at trial.

214. WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in Plaintiffs' favor for compensatory and punitive damages, together with interest, costs herein incurred, attorneys' fees and all such other and further relief as this Court deems just and proper.

///

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COUNT IV: FRAUD

(MONSANTO)

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

216. Defendant Monsanto has defrauded the agricultural community in general and Plaintiffs in particular by misrepresenting the true safety of its Roundup® and by failing to disclose known risks of cancer.

217. Defendant Monsanto misrepresented and/or failed to disclose, *inter alia*, that: glyphosate and its major metabolite aminomethylphosphonic acid (AMPA) could cause cancer; glyphosate and AMPA are known to be genotoxic in humans and laboratory animals because exposure is known to cause DNA strand breaks (a precursor to cancer); glyphosate and AMPA are known to induce oxidative stress in humans and laboratory animals (a precursor to cancer); glyphosate and AMPA interfere with the aromatic amino acids within the human gut, leading to downstream health conditions including cancer; exposure to glyphosate and AMPA is causally associated with non-Hodgkin lymphoma; and the laboratory tests attesting to the safety of glyphosate were flawed and/or fraudulent.

218. Due to these misrepresentations and omissions, at all times relevant to this litigation, Defendant's Roundup® was misbranded under 7 U.S.C. § 136(g) and its distribution within California and around the United States was a violation of 7 U.S.C. § 136j and 40 C.F.R. § 156.10(a)(5).

219. Plaintiffs relied on the Defendant's misrepresentations and/or material omissions regarding the safety of Roundup® and its active ingredient glyphosate in deciding whether to purchase and/or use the product. Plaintiffs did not know nor could they reasonably have known of the misrepresentations and/or material omissions by Defendant concerning Roundup® and its active ingredient glyphosate.

220. The misrepresentations and/or material omissions that form the basis of this fraud

claim are not limited to statements made on the Roundup® labeling, as defined under federal law, but also involve Defendant Monsanto's representations and omissions made as part of its promotion and marketing of Roundup®, including on the Internet, television, in print advertisements, etc. Nothing prevented Defendant from disclosing the truth about the risks associated with Roundup® in its promotional efforts outside of the labeling context, using the forms of media and promotion Defendant traditionally used to promote the product's efficacy and benefits.

221. When Defendant Monsanto made the misrepresentations and/or omissions as alleged in this pleading, it did so with the intent of defrauding and deceiving the public in general and the agricultural community and with the intent of inducing the public and agricultural community to purchase and use Roundup®.

222. Defendant Monsanto made these misrepresentations and/or material omissions with malicious, fraudulent and/or oppressive intent toward Plaintiffs and the public generally. Defendant's conduct was willful, wanton, and/or reckless. Defendant deliberately recommended, manufactured, produced, marketed, sold, distributed, merchandized, packaged, promoted and advertised the dangerous and defective herbicide Roundup®. This constitutes an utter, wanton, and conscious disregard of the rights and safety of a large segment of the public, and by reason thereof, Defendant is liable for reckless, willful, and wanton acts and omissions which evidence a total and conscious disregard for the safety of Plaintiffs and others which proximately caused the injuries as set forth herein.

223. As a proximate result of Defendant Monsanto's fraudulent and deceitful conduct and representations, Plaintiffs have sustained damages and other losses in an amount to be proven at trial.

224. As a proximate result of Defendant Monsanto's fraud, as alleged herein, Plaintiffs and/or Decedents sustained a loss of income, loss of earning capacity and property damage, including lost income.

225. As a further proximate result of Defendant Monsanto's fraud, Plaintiffs and/or Decedents have incurred expenses for funeral, burial and other related costs pertaining to Decedents' death, in amounts to be proved at trial.

226. WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in Plaintiffs' favor for compensatory and punitive damages, together with interest, costs herein incurred, attorneys' fees and all such other and further relief as this Court deems just and proper.

COUNT V: BREACH OF EXPRESS WARRANTIES

(MONSANTO)

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

228. At all times relevant to this litigation, Defendant Monsanto 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 Plaintiffs, thereby placing Roundup® products into the stream of commerce. These actions were under the ultimate control and supervision of Defendant.

229. Defendant Monsanto had a duty to exercise reasonable care in the research, development, design, testing, packaging, manufacture, inspection, labeling, distributing, marketing, promotion, sale, and release of Roundup® products, including a duty to:

a. ensure that their products did not cause the user unreasonably dangerous side effects;

b. warn of dangerous and potentially fatal side effects; and

c. disclose adverse material facts, such as the true risks associated with the use of and exposure to Roundup® and glyphosate-containing products, when making representations to consumers and the general public, including Plaintiffs.

230. As alleged throughout this pleading, the ability of Defendant Monsanto to properly disclose those risks associated with Roundup® is not limited to representations made on the

labeling.

231. At all times relevant to this litigation, Defendant Monsanto expressly represented and warranted to the purchasers of their products, by and through statements made by Defendant in labels, publications, package inserts, and other written materials intended for consumers and the general public, that Roundup® products were safe to human health and the environment, effective, fit, and proper for their intended use. Defendant advertised, labeled, marketed, and promoted Roundup® products, representing the quality to consumers and the public in such a way as to induce their purchase or use, thereby making an express warranty that Roundup® products would conform to the representations.

232. These express representations include incomplete warnings and instructions that purport, but fail, to include the complete array of risks associated with use of and/or exposure to Roundup® and glyphosate. Defendant Monsanto knew and/or should have known that the risks expressly included in Roundup® warnings and labels did not and do not accurately or adequately set forth the risks of developing the serious injuries complained of herein. Nevertheless, Defendant expressly represented that Roundup® products were safe and effective, that they were safe and effective for use by individuals such as the Decedent, and/or that they were safe and effective as agricultural herbicides.

233. The representations about Roundup®, as set forth herein, contained or constituted affirmations of fact or promises made by the seller to the buyer, which related to the goods and became part of the basis of the bargain, creating an express warranty that the goods would conform to the representations.

234. Defendant Monsanto placed Roundup® products into the stream of commerce for sale and recommended their use to consumers and the public without adequately warning of the true risks of developing the injuries associated with the use of and exposure to Roundup and its active ingredient glyphosate.

235. Defendant Monsanto breached these warranties because, among other things,

Roundup® products were defective, dangerous, unfit for use, did not contain labels representing the true and adequate nature of the risks associated with their use, and were not merchantable or safe for their intended, ordinary, and foreseeable use and purpose. Specifically, Defendant breached the warranties in the following ways:

a. Defendant represented through their labeling, advertising, and marketing materials that Roundup® products were safe, and fraudulently withheld and concealed information about the risks of serious injury associated with use of and/or exposure to Roundup® and glyphosate by expressly limiting the risks associated with use and/or exposure within its warnings and labels; and

b. Defendant represented that Roundup® products were safe for use and fraudulently concealed information that demonstrated that glyphosate, the active ingredient in Roundup®, had carcinogenic properties, and that Roundup products, therefore, were not safer than alternatives available on the market.

236. Plaintiffs detrimentally relied on the express warranties and representations of Defendant concerning the safety and/or risk profile of Roundup® in making a decision to purchase the product. Plaintiffs reasonably relied upon Defendant to disclose known defects, risks, dangers, and side effects of Roundup® and glyphosate. Plaintiffs would not have purchased or used Roundup® had the Defendant properly disclosed the risks associated with the product, either through advertising, labeling, or any other form of disclosure.

237. Defendant Monsanto had sole access to material facts concerning the nature of the risks associated with their Roundup® products as expressly stated within their warnings and labels, and Defendant knew that consumers and users such as Plaintiffs could not have reasonably discovered that the risks expressly included in Roundup® warnings and labels were inadequate and inaccurate.

238. Plaintiffs had no knowledge of the falsity or incompleteness of Defendant's statements and representations concerning Roundup.

239. Plaintiffs used and/or were exposed to the use of Roundup® as researched, developed, designed, tested, manufactured, inspected, labeled, distributed, packaged, marketed, promoted, sold, or otherwise released into the stream of commerce by Defendant.

240. Had the warnings, labels, advertisements, or promotional material for Roundup® products accurately and adequately set forth the true risks associated with the use of such products, including Plaintiffs' injuries, rather than expressly excluding such information and warranting that the products were safe for their intended use, Plaintiffs could have avoided the injuries complained of herein.

241. As a direct and proximate result of Defendant Monsanto's breach of express warranty, Plaintiffs and/or Decedents have sustained pecuniary loss resulting from the loss of Decedents' society, comfort, attention, protection, services and support and general damages in a sum in excess of the jurisdictional minimum of this Court.

242. As a proximate result of the Defendant's breach of express warranty, as alleged herein, there was a measurable and significant interval of time during which Plaintiffs and/or Decedent suffered great mental anguish and other personal injury and damages.

243. As a proximate result of the Defendant's breach of express warranty, as alleged herein, Plaintiffs and/or Decedents sustained a loss of income, loss of earning capacity and property damage, including lost income.

244. As a proximate result of the conduct of Defendant's breach of express warranty, Plaintiffs and/or Decedents incurred expenses for funeral, burial and other related costs pertaining to Decedents' death, in amounts to be proved at trial.

245. WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in Plaintiffs' favor for compensatory and punitive damages, together with interest, costs herein incurred, attorneys' fees, and all such other and further relief as this Court deems just and proper.

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COUNT V: BREACH OF IMPLIED WARRANTIES

(MONSANTO)

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

247. At all times relevant to this litigation, Defendant Monsanto 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 Plaintiffs, thereby placing Roundup® products into the stream of commerce. These actions were under the ultimate control and supervision of Defendant.

248. Before the time Plaintiffs were exposed to the aforementioned Roundup® products, Defendant Monsanto impliedly warranted to its consumers, including Plaintiffs, that their Roundup® products were of merchantable quality and safe and fit for the use for which they were intended; specifically, as agricultural herbicides.

249. Defendant Monsanto, however, failed to disclose that Roundup® has dangerous propensities when used as intended and that use of and/or exposure to Roundup® and glyphosate-containing products carries an increased risk of developing severe injuries and death, including Plaintiffs' injuries and/or death.

250. Plaintiffs were intended beneficiaries of the implied warranties made by Defendant to the purchasers of its herbicides.

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

252. At all times relevant to this litigation, Defendant Monsanto was aware that consumers and users of its products, including Plaintiffs, would use Roundup® products as marketed by Defendant, which is to say that Plaintiffs were foreseeable users of Roundup®.

253. Defendant Monsanto intended that Roundup® products be used in the manner in

which Plaintiffs in fact used them and which Defendant impliedly warranted each product to be of merchantable quality, safe, and fit for this use, despite the fact that Roundup® was not adequately tested or researched.

254. In reliance upon Defendant Monsanto's implied warranty, Plaintiffs used Roundup® as instructed and labeled and in the foreseeable manner intended, recommended, promoted and marketed by Defendant.

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

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

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

258. As a direct and proximate result of Defendant's breach of implied warranty, Plaintiffs and/or Decedents have sustained pecuniary loss resulting from the loss of Decedents' society, comfort, attention, protection, services and support and general damages in a sum in excess of the jurisdictional minimum of this Court.

259. As a proximate result of the Defendant's breach of implied warranty, as alleged herein, there was a measurable and significant interval of time during which Plaintiffs and/or Decedents suffered great mental anguish and other personal injury and damages.

260. As a proximate result of Defendant's breach of implied warranty, as alleged herein, before their death, Plaintiffs and/or Decedents sustained a loss of income, loss of earning capacity and property damage, including lost income.

261. As a further proximate result of Defendant's breach of implied warranty, Plaintiffs

and/or Decedents incurred expenses for funeral, burial and other related costs pertaining to Decedents' death, in amounts to be proved at trial.

262. WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in Plaintiffs' favor for compensatory and punitive damages, together with interest, costs herein incurred, attorneys' fees and all such other and further relief as this Court deems just and proper.

EXEMPLARY DAMAGES ALLEGATIONS

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

264. Defendants' conduct as alleged herein was done with oppression, fraud, and malice. Defendants were fully aware of Roundup®'s safety risks. Nonetheless, Defendants deliberately crafted their label, marketing, and promotion to mislead farmers and consumers.

265. This was not done by accident or through some justifiable negligence. Rather, Defendants knew that it could turn a profit by convincing the agricultural industry that Roundup was harmless to humans, and that full disclosure of Roundup®'s true risks would limit the amount of money Defendants would make selling Roundup® in California. This was accomplished not only through its misleading labeling, but through a comprehensive scheme of selective fraudulent research and testing, misleading advertising, and deceptive omissions as more fully alleged throughout this pleading. Plaintiffs were robbed of the right to make an informed decision about whether to purchase, use, or be exposed to an herbicide, knowing the full risks attendant to that use. Such conduct was done with conscious disregard of Plaintiffs' rights.

266. There is no indication that Defendants will stop their deceptive and unlawful marketing practices unless they are punished and deterred. Accordingly, Plaintiffs request punitive damages against the Defendants for the harms caused to Plaintiffs.

JURY TRIAL DEMAND

267. Plaintiffs demand a trial by jury on all of the triable issues within this pleading.

PRAYER FOR RELIEF

268. WHEREFORE, Plaintiffs request that the Court enter judgment in their favor and against the Defendants for:

a. actual or compensatory damages in such amount to be determined at trial and as provided by applicable law;

b. exemplary and punitive damages sufficient to punish and deter the Defendants and others from future fraudulent practices;

c. pre-judgment and post-judgment interest;

d. costs including reasonable attorneys' fees, court costs, and other litigation expenses; and

e. any other relief the Court may deem just and proper.

Dated: March 17, 2017

BAUM HEDLUND ARISTEI & GOLDMAN, P.C.

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14977896

SUMMONS
(CITACION JUDICIAL)

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

FILED
ALAMEDA COUNTY
MAR 17 2017
CLERK OF THE SUPERIOR COURT
By Erica Baker
ERICA BAKER, Deputy

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

MONSANTO COMPANY, a corp; WILBUR-ELLIS COMPANY, LLC, a corp; and WILBUR-ELLIS FEED, LLC, a corp.

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

LORETTA I. PENNIE, an individual; PABLO AGUERO, an individual; MICHAEL J. ALLEN, an individual; (See Attachment A)

By Fax

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.*

CASE NUMBER: (Número del caso) RG 17853420

The name and address of the court is:
(El nombre y dirección de la corte es): Alameda Superior Court
George E. McDonald Hall of Justice
2233 Shoreline Drive, Alameda, California 94501

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):
Michael Baum, Baum Hedlund et al., 12100 Wilshire Blvd., Ste. 950, Los Angeles, CA 90025 (310) 207-3233

DATE: MAR 17 2017 (Fecha)
Chad Finke Clerk, by (Secretario) Erica Baker , Deputy (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons *(form POS-010).)*
(Para prueba de entrega de esta citatión use el formulario Proof of Service of Summons, *(POS-010)).*

[SEAL]

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: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other *(specify):*
4. ☐ by personal delivery on *(date):*

Form Adopted for Mandatory Use
Judicial Council of California
SUM-100 [Rev. July 1, 2009]

SUMMONS

Code of Civil Procedure §§ 412.20, 465
www.courtinfo.ca.gov

SUM-200(A)

SHORT TITLE:	CASE NUMBER:
Pennie, et al., v. Monsanto Corp., et al.	

INSTRUCTIONS FOR USE

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties *(Check only one box. Use a separate page for each type of party.)*:

☑ Plaintiff ☐ Defendant ☐ Cross-Complainant ☐ Cross-Defendant

1. KELLY S. BARON, an individual;
2. JOHN BARTON, an individual;
3. MARK BARTON, an individual;
4. MARIA BEDOLLA, individually, and as successor in interest to the Estate of David L. Bedolla, deceased,
5. JEAN E. BEVANMARQUEZ, an individual;
6. MARK J. BLACKWELDER, an individual;
7. DONALD E. BRENNER, an individual;
8. DEBORAH BROOKS, individually and as successor in interest to the Estate of Dean D. Brooks, deceased,
9. DENTON L. CARENDER, SR., an individual;
10. FRANK CHAVEZ, an individual;
11. GINA E. DAVIS, an individual;
12. RICHARD D'SOUZA, an individual;
13. RANDY A. FERBER, an individual;
14. GARY W. HALL, an individual;
15. PATRICIA HAMILTON, individually and as successor in interest to the Estate of Bruce Hamilton, deceased,
16. JOHN S. HENDERSON, an individual;
17. PHIL P. HERNANDEZ, an individual;
18. ANN E. HINSHELWOOD, an individual;
19. STEVEN LOUIS MCCORMICK, an individual;
20. SHEILA MITCHELL, an individual;
21. TAMMY MORENO, individually and as successor in interest to the Estate of Andrew D. Moreno, deceased,
22. ANTHONY PRINCE MUNOZ, an individual;
23. TIMOTHY J. PARKER, an individual;
24. CAROLYN J. PIERCE, an individual;
25. JOANNE MARIE PLUMMER, an individual;
26. GARY C. PUCKETT, an individual;
27. PAULETTE M. RANDALL, an individual;
28. RHODA B. RATHKAMP, an individual;
29. PARVIZ REZAZADEH, an individual;
30. DOUGLAS SMITH, an individual;
31. JOHN S. STRATTON, an individual;
32. STEVEN M. STROHM, an individual;
33. CHERYL Y. THRESHER, a an individual;

SUM-200(A)

SHORT TITLE:	CASE NUMBER:
Pennie, et al., v. Monsanto Corp., et al.	

INSTRUCTIONS FOR USE

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties *(Check only one box. Use a separate page for each type of party.)*:

☑ Plaintiff ☐ Defendant ☐ Cross-Complainant ☐ Cross-Defendant

34. GEORGE T. WATSON, an individual;
35. MERCY O. SOLORIO, individually and as successor in interest to the Estate of Estanislao Solorio, deceased,
36. JEFF INGRAM, an individual,
37. CHARLES VANNOY, an individual, and;
38. CAROLYN MCCRAY, an individual

Form Adopted for Mandatory Use
Judicial Council of California
SUM-200(A) [Rev. January 1, 2007]

ADDITIONAL PARTIES ATTACHMENT
Attachment to Summons

14977900

By Fax

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
Michael L. Baum (SNB: 119511)
Baum Hedlund Aristei & Goldman, P.C.
12100 Wilshire Blvd., Suite 950
Los Angeles, CA 90025
TELEPHONE NO.: (310) 207-3233 FAX NO.: (310) 820-7444
ATTORNEY FOR (Name): Plaintiffs

FOR CO

FILED
ALAMEDA COUNTY
MAR 17 2017
CLERK OF THE SUPERIOR COURT
By Erica Baker
ERICA BAKER, Deputy

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda
STREET ADDRESS: 2233 Shoreline Drive
MAILING ADDRESS: same
CITY AND ZIP CODE: Alameda, 94501
BRANCH NAME: Hall of Justice

CASE NAME:
Pennie, et al., v. Monsanto Co., et al.

CASE RG 17853420

JUDGE:
DEPT:

CIVIL CASE COVER SHEET

[✓] Unlimited (Amount demanded exceeds $25,000) [ ] Limited (Amount demanded is $25,000 or less)

Complex Case Designation

[ ] Counter [ ] Joinder

Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

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
- [ ] Auto (22)
- [ ] Uninsured motorist (46)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort
- [ ] Asbestos (04)
- [✓] Product liability (24)
- [ ] Medical malpractice (45)
- [ ] Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort
- [ ] Business tort/unfair business practice (07)
- [ ] Civil rights (08)
- [ ] Defamation (13)
- [ ] Fraud (16)
- [ ] Intellectual property (19)
- [ ] Professional negligence (25)
- [ ] Other non-PI/PD/WD tort (35)

Employment
- [ ] Wrongful termination (36)
- [ ] Other employment (15)

Contract
- [ ] Breach of contract/warranty (06)
- [ ] Rule 3.740 collections (09)
- [ ] Other collections (09)
- [ ] Insurance coverage (18)
- [ ] Other contract (37)

Real Property
- [ ] Eminent domain/Inverse condemnation (14)
- [ ] Wrongful eviction (33)
- [ ] Other real property (26)

Unlawful Detainer
- [ ] Commercial (31)
- [ ] Residential (32)
- [ ] Drugs (38)

Judicial Review
- [ ] Asset forfeiture (05)
- [ ] Petition re: arbitration award (11)
- [ ] Writ of mandate (02)
- [ ] Other judicial review (39)

Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400–3.403)
- [ ] Antitrust/Trade regulation (03)
- [ ] Construction defect (10)
- [ ] Mass tort (40)
- [ ] Securities litigation (28)
- [ ] Environmental/Toxic tort (30)
- [ ] Insurance coverage claims arising from the above listed provisionally complex case types (41)

Enforcement of Judgment
- [ ] Enforcement of judgment (20)

Miscellaneous Civil Complaint
- [ ] RICO (27)
- [ ] Other complaint *(not specified above)* (42)

Miscellaneous Civil Petition
- [ ] Partnership and corporate governance (21)
- [ ] 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. [✓] Large number of separately represented parties
   b. [✓] Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
   c. [✓] Substantial amount of documentary evidence
   d. [✓] Large number of witnesses
   e. [ ] Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
   f. [ ] 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)*: 7 (Seven)
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: March 17, 2017
Michael Baum
(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.

Form Adopted for Mandatory Use
Judicial Council of California
CM-010 [Rev. July 1, 2007]

CIVIL CASE COVER SHEET

Cal. Rules of Court, rules 2.30, 3.220, 3.400–3.403, 3.740;
Cal. Standards of Judicial Administration, std. 3.10
www.courtinfo.ca.gov

Baum Hedlund Aristei & Goldman, PC
Attn: Baum, Michael L
12100 Wilshire Blvd. Suite 950
Los Angeles, CA 90024

Monsato Company

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Pennie Plaintiff/Petitioner(s) VS. Monsato Company Defendant/Respondent(s) (Abbreviated Title)	No. RG17853420 NOTICE OF HEARING

To each party or to the attorney(s) of record for each party herein:

Notice is hereby given that the above-entitled action has been set for:

Complex Determination Hearing
Case Management Conference

You are hereby notified to appear at the following Court location on the date and time noted below:

Complex Determination Hearing:
DATE: 05/09/2017 TIME: 03:00 PM DEPARTMENT: 30
LOCATION: U.S. Post Office Building, Second Floor
201 13th Street, Oakland

Case Management Conference:
DATE: 06/16/2017 TIME: 09:16 AM DEPARTMENT: 30
LOCATION: U.S. Post Office Building, Second Floor
201 13th Street, Oakland

Pursuant to California Rules of Court, Rule 3.400 et seq. and Local Rule 3.250 (Unified Rules of the Superior Court, County of Alameda), the above-entitled matter is set for a Complex Litigation Determination Hearing and Initial Complex Case Management Conference.

Department 30 issues tentative rulings on DomainWeb (www.alameda.courts.ca.gov/domainweb). For parties lacking access to DomainWeb, the tentative ruling must be obtained from the clerk at (510) 268-5104. Please consult Rule 3.30(c) of the Unified Rules of the Superior Court, County of Alameda, concerning the tentative ruling procedures for Department 30.

Counsel or party requesting complex litigation designation is ordered to serve a copy of this notice on all parties omitted from this notice or brought into the action after this notice was mailed.

All counsel of record and any unrepresented parties are ordered to attend this Initial Complex Case Management Conference unless otherwise notified by the Court.

Failure to appear, comply with local rules or provide a Case Management Conference statement may result in sanctions. Case Management Statements may be filed by E-Delivery, by submitting directly to the E-Delivery Fax Number (510) 267-5732. No fee is charged for this service. For further information, go to **Direct Calendar Departments** at

http://apps.alameda.courts.ca.gov/domainweb.

All motions in this matter to be heard prior to Complex Litigation Determination Hearing must be scheduled for hearing in Department 30.

If the information contained in this notice requires change or clarification, please contact the courtroom clerk for Department 30 by e-mail at Dept.30@alameda.courts.ca.gov or by phone at (510) 268-5104.

TELEPHONIC COURT APPEARANCES at Case Management Conferences may be available by contacting CourtCall, an independent vendor, at least 3 business days prior to the scheduled conference. Parties can make arrangements by calling (888) 882-6878, or faxing a service request form to (888) 883-2946. This service is subject to charges by the vendor.

Dated: 03/22/2017

Chad Finke Executive Officer / Clerk of the Superior Court

By digital _____

Deputy Clerk

CLERK'S CERTIFICATE OF MAILING

I certify that the following is true and correct: I am the clerk of the above-named court and not a party to this cause. I served this Notice by placing copies in envelopes addressed as shown hereon and then by sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Alameda County, California, following standard court practices.

Executed on 03/23/2017.

By digital _____

Deputy Clerk

Exhibit 2

Glyphosate Issue Paper: Evaluation of Carcinogenic Potential

EPA's Office of Pesticide Programs
September 12, 2016

Overall, there is not strong support for the "suggestive evidence of carcinogenic potential" cancer classification descriptor based on the weight-of-evidence, which includes the fact that even small, non-statistically significant changes observed in animal carcinogenicity and epidemiological studies were contradicted by studies of equal or higher quality. The strongest support is for "not likely to be carcinogenic to humans" at the doses relevant to human health risk assessment for glyphosate.

6.7 Proposed Conclusions Regarding the Carcinogenic Potential of Glyphosate

Glyphosate is a non-selective, phosphonomethyl amino acid herbicide registered to control weeds in various agricultural and non-agricultural settings. Labeled uses of glyphosate include over 100 terrestrial food crops as well as other non-agricultural sites, such as greenhouses, aquatic areas, and residential areas. Following the introduction of glyphosate-resistant crops in 1996, glyphosate use increased dramatically; however, glyphosate use has stabilized in recent years due to the increasing number of glyphosate-resistant weed species.

Since its registration in 1974, numerous human and environmental health analyses have been completed for glyphosate, which consider all anticipated exposure pathways. Glyphosate is currently undergoing Registration Review. As part of this process, the hazard and exposure of glyphosate are reevaluated to determine its potential risk to human and environmental health using current practices and policies. The human carcinogenic potential of glyphosate has been evaluated by the agency several times. As part of the current evaluation for Registration Review, the agency has performed a comprehensive analysis of available data from submitted guideline studies and the open literature. This includes epidemiological, animal carcinogenicity, and genotoxicity studies.

An extensive database exists for evaluating the carcinogenic potential of glyphosate, including 23 epidemiological studies, 15 animal carcinogenicity studies, and nearly 90 genotoxicity studies for the active ingredient glyphosate. These studies were evaluated for quality and results were analyzed across studies within each line of evidence. The modified Bradford Hill criteria were then used to evaluate multiple lines of evidence using such concepts as strength, consistency, dose response, temporal concordance and biological plausibility. The available data at this time do no support a carcinogenic process for glyphosate. Overall, animal carcinogenicity and genotoxicity studies were remarkably consistent and did not demonstrate a clear association between glyphosate exposure and outcomes of interest related to carcinogenic potential. In epidemiological studies, there was no evidence of an association between glyphosate exposure and numerous cancer outcomes; however, due to conflicting results and various limitations identified in studies investigating NHL, a conclusion regarding the association between glyphosate exposure and risk of NHL cannot be determined based on the available data. Increases in tumor incidence were not considered treatment-related in any of the animal carcinogenicity studies. In 7 of these studies, no tumors were identified for detailed evaluation. In the remaining studies, tumor incidences were not increased at doses <500 mg/kg/day, except for the testicular tumors observed in a single study. Increased tumor incidences at or exceeding the limit dose (≥1000 mg/kg/day) are not considered relevant to human health. Furthermore, data from epidemiological and animal carcinogenicity studies do not reliably demonstrate expected dose-response relationships.

For cancer descriptors, the available data and weight-of-evidence clearly do not support the descriptors "carcinogenic to humans", "likely to be carcinogenic to humans", or "inadequate information to assess carcinogenic potential". For the "suggestive evidence of carcinogenic potential" descriptor, considerations could be looked at in isolation; however, following a thorough integrative weight-of-evidence evaluation of the available data, the database would not support this cancer descriptor. The strongest support is for "not likely to be carcinogenic to humans" at doses relevant to human health risk assessment.

This analysis integrating multiple lines of evidence highlights the need for mechanistic studies to elucidate the MOA/AOP of glyphosate, as well as additional epidemiology studies and updates from the AHS cohort study to further investigate the carcinogenic potential of glyphosate in humans. This evaluation focused on studies on the active ingredient glyphosate; however, additional research could also be performed to determine whether formulation components, such as surfactants, influence the toxicity of glyphosate formulations. The agency has been working on plans to initiate research given these identified data gaps and these plans are described in Section 7.0.

The agency is soliciting advice from the FIFRA SAP on the evaluation and interpretation of the available data for each line of evidence for the active ingredient glyphosate and the weight-of-evidence analysis, as well as how the available data inform cancer classification descriptors according to the agency's 2005 Guidelines for Carcinogen Risk Assessment.

7.0 Collaborative Research Plan for Glyphosate and Glyphosate Formulations

As previously mentioned, some have believed that glyphosate formulations may be more toxic than glyphosate alone. Glyphosate has been studied in a multitude of studies and there are studies that have been conducted on numerous formulations that contain glyphosate; however, there are relatively few research projects that have attempted to directly compare glyphosate and the formulations in the same experimental design. Furthermore, there are even less instances of studies comparing toxicity across formulations.

The agency has been collaborating with the NTP Division of the National Institute of Environmental Health Sciences to develop a research plan intended to evaluate the role of glyphosate in product formulations and the differences in formulation toxicity. Four objectives were identified that laid out how research by NTP might contribute to these research questions: 1) compare the toxicity of glyphosate vs. formulations, as well as compare formulations vs. formulations, 2) provide publicly available toxicology data on cancer-related endpoints, 3) provide publicly available toxicology data on non-cancer endpoints, and 4) investigate the mechanisms of how glyphosate and formulations cause toxic effects.

As part of the first objective, NTP will investigate the differential biological activity of glyphosate, glyphosate formulations, and the individual components of formulations. . The NTP Laboratory Branch generated preliminary data by exposing human hepatoma cells (HepG2) to five different glyphosate products bought off the shelf. The endpoint in the assay was cell viability, measured by ATP levels. The data, presented in Figure 7.1, demonstrate at-a-glance

Exhibit 3

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF CHEMICAL SAFETY
AND POLLUTION PREVENTION

MEMORANDUM

DATE: **October 1, 2015**

SUBJECT: **GLYPHOSATE:** Report of the Cancer Assessment Review Committee

PC Code: 417300
Decision No.: N/A
Petition No.: N/A
Risk Assessment Type: NA
TXR No.: 0057299
MRID No.: N/A

DP Barcode: N/A
Registration No.: N/A
Regulatory Action: N/A
Case No.: N/A
CAS No.: 1071-83-6
40 CFR: N/A

FROM: Jess Rowland,
Deputy Division Director
Chair, Cancer Assessment Review Committee
And
Karlyn Middleton, Co-Chair
Cancer Assessment Review Committee
Health Effects Division (7509P)

TO: Charles Smith, Chief,
Risk Assessment Branch I
Health Effects Division (7509P)
And
Khue Nguyen
Chemical Review Manager
Risk Management and Implementation Branch 1
Pesticide Re-evaluation Division

On September 16, 2015, the Cancer Assessment Review Committee (CARC) of the Health Effects Division, of the Office of Pesticide Programs evaluated the carcinogenic potential of Glyphosate in accordance with the *EPA's Final Guidelines for Carcinogen Risk Assessment* (March, 2005). Attached please find the final Cancer Assessment Document.

CANCER ASSESSMENT DOCUMENT

EVALUATION OF THE CARCINOGENIC POTENTIAL OF
Glyphosate

FINAL REPORT
October 1, 2015

CANCER **A**SSESSMENT **R**EVIEW **C**OMMITTEE
HEALTH EFFECTS DIVISION
OFFICE OF PESTICIDE PROGRAMS
U.S Environmental Protection Agency

COMMITTEE MEMBERS IN ATTENDANCE:

Jess Rowland, M.S., Chair

Karlyn Middleton, M.S., Co-Chair

Gregory Akerman, Ph.D.

Lori Brunsman, B.S.

Jonathan Chen, Ph.D.

Anwar Dunbar, Ph.D.

Ray Kent, Ph.D.

Jessica Kidwell, M.S.

John Liccione, Ph.D.

Dannelle Lobdell, Ph.D., Epidemiologist, ORD

Nancy McCarroll, M.S.

Chris Schlosser, M.S.

Charles Wood D.V.M., Ph.D., Pathologist, ORD

changes which are detected in tests for mutations and chromosomal damage (*e.g.* chromosomal aberrations or micronuclei induction). The studies that IARC cited as positive findings for chromosomal damage had deficiencies in the design and/or conduct of the studies confounding the interpretation of the results. In addition these positive findings were not reproduced in other guideline or guideline-like studies evaluating the same endpoints. Furthermore, IARC's evaluation did not include a number of negative results from studies that were reported in the review article by Kier and Kirkland (2013). The inclusion of the positive findings from studies with known limitations, the lack of reproducible positive findings and the omission of the negative findings from reliable studies may have had a significant bearing on IARC's conclusion on the genotoxic potential of glyphosate.

In accordance with the 2005 Guidelines for Carcinogen Risk Assessment, based on the weight-of-evidence, glyphosate is classified as "Not Likely to be Carcinogenic to Humans". This classification is based on the following weight-of-evidence considerations:

- The epidemiological evidence at this time does not support a causal relationship between glyphosate exposure and solid tumors. There is also no evidence to support a causal relationship between glyphosate exposure and the following non-solid tumors: leukemia, multiple myeloma, or Hodgkin lymphoma. The epidemiological evidence at this time is inconclusive for a causal or clear associative relationship between glyphosate and NHL. Multiple case-control studies and one prospective cohort study found no association; whereas, results from a small number of case-control studies (mostly in Sweden) did suggest an association. Limitations for most of these studies include small sample size, limited power, risk/odd ratios with large confidence intervals, and recall bias as well as missing data. The literature will continue to be monitored for studies related to glyphosate and risk of NHL.

- In experimental animals, there is no evidence for carcinogenicity. Dietary administration of glyphosate at doses ranging from 3.0 to 1500 mg/kg/day for up to two years produced no evidence of carcinogenic response to treatment in seven separate studies with male or female Sprague-Dawley or Wistar rats. Similarly, dietary administration of glyphosate at doses ranging from 85 to 4945 mg/kg/day for up to two years produced no evidence of carcinogenic response to treatment in four separate studies with male or female CD-1 mice. The CARC did not consider any of the observed tumors in 11 carcinogenicity studies in rats and mice to be treatment-related since the observed tumors did not exhibit a clear dose-response relationship, were not supported pre-neoplastic changes (*e.g.*, foci, hypertrophy, and hyperplasia), were not statistically significant on pairwise statistical analysis with concurrent control groups, and/or were within the range of the historical control data.

- Based on a weight of evidence approach from a wide range of assays both *in vitro* and *in vivo* including endpoints for gene mutation, chromosomal damage, DNA damage and repair, there is no *in vivo* genotoxic or mutagenic concern for glyphosate.

IARC concluded that "there is strong evidence that exposure to glyphosate or glyphosate-based formulations is genotoxic"; however, the IARC analysis included studies that tested glyphosate-formulated products as well as studies where the test material was not well-characterized (*i.e.*, no purity information was provided). The CARC did not include such studies in their evaluation. The IARC analysis also focused on DNA damage as an endpoint (*e.g.*, comet assay); however, DNA damage is often reversible and can result from events that are secondary to toxicity (cytotoxicity), as opposed to permanent DNA changes which are detected in tests for mutations and chromosomal damage (*e.g.* chromosomal aberrations or micronuclei induction). The studies that IARC cited, where positive findings were reported for chromosomal damage, had study limitations confounding the interpretation of the results. In addition, these positive findings were not reproduced in other guideline or guideline-like studies evaluating the same endpoints. This includes many negative studies cited by Kier and Kirkland (2013) that were considered by CARC, but were not included in the IARC decision.

2. Structure Activity Relationship

Sulfosate (the trimethylsulfonium salt of glyphosate) is classified as a Group E Chemical: "Not Likely to be Carcinogenic to Humans," based on the lack of evidence of carcinogenicity in mice and rats in two acceptable studies, and absence of mutagenicity concern.

VI. CLASSIFICATION OF CARCINOGENIC POTENTIAL

In accordance with the 2005 Guidelines for Carcinogen Risk Assessment, glyphosate is classified as "Not Likely to be Carcinogenic to Humans." This classification is based on the following weight-of-evidence considerations:

- The epidemiological evidence at this time does not support a causal relationship between glyphosate exposure and solid tumors. There is also no evidence to support a causal relationship between glyphosate exposure and the following non-solid tumors: leukemia, multiple myeloma, or Hodgkin lymphoma. The epidemiological evidence at this time is inconclusive for a causal or clear associative relationship between glyphosate and NHL. Multiple case-control studies and one prospective cohort study found no association; whereas, results from a small number of case-control studies (mostly in Sweden) did suggest an association. Limitations for most of these studies include small sample size, limited power, risk ratios with large confidence intervals, and recall bias as well as missing data. The literature will continue to be monitored for studies related to glyphosate and risk of NHL.

- In experimental animals, there is no evidence for carcinogenicity. Dietary administration of glyphosate at doses ranging from 3.0 to 1500 mg/kg/day for up to two years produced no evidence of carcinogenic response to treatment in seven separate studies with male or female Sprague-Dawley or Wistar rats. Similarly, dietary administration of glyphosate at

doses ranging from 85 to 4945 mg/kg/day for up to two years produced no evidence of carcinogenic response to treatment in four separate studies with male or female CD-1 mice. The CARC did not consider any of the observed tumors in 11 carcinogenicity studies in rats and mice to be treatment-related since the observed tumors did not exhibit a clear dose-response relationship, were not supported pre-neoplastic changes (*e.g*., foci, hypertrophy, and hyperplasia), were not statistically significant on pairwise statistical analysis, and/or were within the range of the historical control data.

- Based on a weight of evidence approach from a wide range of assays both *in vitro* and *in vivo* including endpoints for gene mutation, chromosomal damage, DNA damage and repair, there is no *in vivo* genotoxic or mutagenic concern for glyphosate.

VII. QUANTIFICATION OF CARCINOGENIC POTENTIAL

Not required.

VIII. BIBLIOGRAPHY

Akanuma M. (1995a). HR-001: DNA Repair Test (Rec-Assay). Unpublished Regulatory Study. Report Identification Number: IET 94-0141.

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Alavanja, M. C., Dosemeci, M., Samanic, C., Lubin, J., Lynch, C. F., Knott, C. Blair, A. (2004). Pesticides and lung cancer risk in the agricultural health study cohort. *Am J Epidemiol, 160* (9), 876–885.]

Alavanja, M. C., Samanic, C., Dosemeci, M., Lubin, J., Tarone, R., Lynch, C. F. Blair, A. (2003). Use of agricultural pesticides and prostate cancer risk in the Agricultural Health Study cohort. *Am J Epidemiol, 157*(9), 800–814.

Alvarez-Moya C, Silva MR, Arambula AMV, *et al*. (2011). Evaluation of genetic damage induced by glyphosate isopropylamine salt using Tradescantia bioassays. *Genet Mol Biol*, 34, 127–30.

Andreotti, G., Freeman, L. E., Hou, L., Coble, J., Rusiecki, J., Hoppin, J. A., Alavanja, M. C. (2009). Agricultural pesticide use and pancreatic cancer risk in the Agricultural Health Study Cohort. *Intl. J Cancer*, 124(10), 2495–2500.

Arysta Life Sciences (1997b). HR-001: 18-Month Oral Oncogenicity Study in Mice. Tokyo, Japan: The Institute of Environmental Toxicology.

Exhibit 4

United States Environmental Protection Agency
Office of Prevention, Pesticides And Toxic Substances (7508W)
EPA 738-R-93-014
September 1993

EPA

Reregistration Eligibility Decision (RED)

Glyphosate

REREGISTRATION ELIGIBILITY DECISION DOCUMENT

GLYPHOSATE

LIST A
CASE 0178

US Environmental Protection Agency
Office of Pesticide Programs
Special Review and Reregsitration Division

pH, increased absolute liver weight and increased liver weight/brain weight ratio (relative liver weight). No significant systemic effects were observed in the low-dose and mid-dose male and female groups. Therefore, the NOEL for systemic toxicity is 8000 ppm (males: 362 mg/kg/day and females: 457 mg/kg/day) and the LOEL is 20000 ppm (HDT; males: 940 mg/kg/day and females: 1183 mg/kg/day). (MRID 41643801)

A chronic study was conducted using male and female beagle dogs which were given glyphosate in gelatin capsules containing 0, 20, 100 or 500 mg/kg/day for one year. There were no effects based on all parameters examined, in all groups. Therefore, the NOEL for systemic toxicity is • 500 mg/kg/day, for both sexes. (MRID 00153374)

d. Carcinogenicity

A chronic feeding/carcinogenicity study was conducted using Sprague-Dawley rats which were fed diets containing glyphosate (males: 0, 3, 10 or 31 mg/kg/day and females: 0, 3, 11 or 34 mg/kg/day) for 26 months. The following findings were observed in the high-dose groups when compared with the concurrent controls: (1) increased incidence of thyroid C-cell carcinomas in females; and (2) increased incidence of interstitial cell (Leydig cell) testicular tumors. However, the Agency concluded that these neoplasms were not treatment-related and glyphosate was not considered to be carcinogenic in this study because the incidence of thyroid carcinomas was not statistically significant and the incidence of testicular tumors was within the historical incidence. The Agency also concluded that this study was not conducted at high enough dose levels for an adequate negative carcinogenicity. (MRID 00093879)

A chronic feeding/carcinogenicity study was conducted using Sprague-Dawley rats fed diets containing glyphosate (males: 0, 89, 362 or 940 mg/kg/day and females: 0, 113, 457 or 1183 mg/kg/day) for 2 years. The study showed a slightly increased incidence of (1) pancreatic islet cells adenomas in the low-dose and high-dose males; (2) hepatocellular (liver) adenomas in the low-dose and high-dose males; and (3) thyroid C-cells adenomas in the mid-dose and high-dose males and females. The Agency concluded that these

adenomas were not treatment-related and glyphosate was not considered to be carcinogenic in this study. With respect to pancreatic islet cells adenomas, there was no statistically significant positive dose-related trend in their occurrence; there was no progression to carcinomas; and the incidence of pancreatic hyperplasia (non-neoplastic lesion) was not dose-related. With respect to hepatocellular adenomas, the increased incidence of these neoplasms was not statistically significant in comparison with the controls; the incidence was within the historical control range; there was no progression to carcinomas; and the incidence of hyperplasia was not compound-related. With respect to thyroid C-cell adenomas, there was no statistically significant dose-related trend in their occurrence; the increased incidence was not statistically significant; there was no progression to carcinomas; and there was no significant dose-related increase in severity or incidence of hyperplasia in either sex. (MRID 41643801)

A carcinogenicity study in mice was conducted with CD-1 mice fed diets containing 0, 150, 750 or 4500 mg/kg/day of glyphosate for 18 months. No effects were observed in the low-dose and mid-dose groups. The following findings were observed in the high-dose group: (1) decreased body weight gain in males and females; (2) increased incidence of hepatocellular hypertrophy, hepatocellular necrosis and interstitial nephritis in males; (3) increased incidence of proximal tubule epithelial basophilia and hypertrophy in females; and (4) slightly increased incidence of renal tubular adenomas, a rare tumor, in males. Based on these effects, the systemic NOEL and LOEL were 750 mg/kg/day and 4500 mg/kg/day, respectively. The Agency concluded that the occurrence of these adenomas was spontaneous rather than compound-induced because the incidence of renal tubular adenomas in males was not statistically significant when compared with the concurrent controls. An independent group of pathologists and biometricians also conducted extensive evaluations of these adenomas and reached the same conclusion. Therefore, glyphosate was not considered to be carcinogenic in this study. (MRIDs 00130406, and 00150564)

On June 26, 1991, the Agency classified glyphosate in Group E (evidence of non-carcinogenicity for humans), based on a lack of convincing evidence of carcinogenicity in adequate studies with two animal species, rat and mouse.

Exhibit 5

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC 20460

OFFICE OF CHEMICAL SAFETY
AND POLLUTION PREVENTION

March 10, 2016

Ona E. Maune
Federal Regulatory Affairs Manager
Monsanto Company
1300 I Street NW Suite 450 East
Washington, DC 20005

Subject: Label Amendment – Label Format Changes
Product Name: RD 1687 Herbicide
EPA Registration Number: 71995-51
Application Date: 12/18/2014
Decision Number: 499010

Dear Ms. Maune:

The amended label referred to above, submitted in connection with registration under the Federal Insecticide, Fungicide and Rodenticide Act, as amended, is acceptable. This approval does not affect any conditions that were previously imposed on this registration. You continue to be subject to existing conditions on your registration and any deadlines connected with them.

A stamped copy of your labeling is enclosed for your records. This labeling supersedes all previously accepted labeling. You must submit one copy of the final printed labeling before you release the product for shipment with the new labeling. In accordance with 40 CFR 152.130(c), you may distribute or sell this product under the previously approved labeling for 18 months from the date of this letter. After 18 months, you may only distribute or sell this product if it bears this new revised labeling or subsequently approved labeling. “To distribute or sell” is defined under FIFRA section 2(gg) and its implementing regulation at 40 CFR 152.3.

Should you wish to add/retain a reference to the company’s website on your label, then please be aware that the website becomes labeling under the Federal Insecticide Fungicide and Rodenticide Act and is subject to review by the Agency. If the website is false or misleading, the product would be misbranded and unlawful to sell or distribute under FIFRA section 12(a)(1)(E). 40 CFR 156.10(a)(5) list examples of statements EPA may consider false or misleading. In addition, regardless of whether a website is referenced on your product’s label, claims made on the website may not substantially differ from those claims approved through the registration process. Therefore, should the Agency find or if it is brought to our attention that a website contains false or misleading statements or claims substantially differing from the EPA approved registration, the website will be referred to the EPA’s Office of Enforcement and Compliance.

EPA Reg. No. 71995-51
Decision No. 499010

Your release for shipment of the product constitutes acceptance of these conditions. If these conditions are not complied with, the registration will be subject to cancellation in accordance with FIFRA section 6. If you have any questions, please contact Sarah Meadows by phone at 703-347-0505, or via email at meadows.sarah@epa.gov.

Sincerely,

Reuben Baris, Product Manager 25
Herbicide Branch
Registration Division (7505P)
Office of Pesticide Programs

Enclosure

MASTER LABEL FOR EPA REG. NO. 71995-51

Primary Brand Name:

RD 1687 Herbicide

Alternate Brand Names:

Roundup® Ready-To-Use Max Control 365
Roundup® Ready-To-Use 365 Weed & Grass Killer Plus Weed Preventer

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Editorial Notes:
Bold, italicized text is information for the reader and is not part of the label.
Bracketed text [ ] is optional text and a 'place holder' for graphics.
Text separated by a backslash '/' denotes 'and/or' options.
Note: Duration references of 1 Year= 12 Months= 52 Weeks= 365 Days can be used throughout the label.
Refer to APPENDIX 1 for Consolidated List of Label Claims; APPENDIX 2 for Packaging Related Claims; and APPENDIX 3 for Packaging Related Instructions.

[Insert Brand Name and Logo]

[Insert Claims from Appendix 1 or 2] [Insert Graphics]

ACTIVE INGREDIENTS:

Glyphosate, isopropylamine salt†	1.00%
Imazapic, ammonium salt††	0.08%
Diquat dibromide	0.04%
OTHER INGREDIENTS	98.88%
TOTAL	**100.00%**

†Contains 0.06 lb. glyphosate acid equivalent and †† 0.006 lb. imazapic acid equivalent per US gallon.

Keep Out of Reach of Children

CAUTION

See [back/ side] [panel/ booklet/ label] for additional precautionary statements.
Alternative Text: [See container label for [complete] use directions and additional precautionary statements.]

NET [Insert Net contents FL OZ or GAL, see Appendix 2] [Insert Metric Conversion]

Net contents of final printed labeling based on various commercial sizes to be marketed

[Insert 2D code/ PPN code/ LB code]

ACCEPTED
03/10/2016
Under the Federal Insecticide, Fungicide and Rodenticide Act as amended, for the pesticide registered under EPA Reg. No. 71995-51

Optional Instructions for Booklet
OPEN/ ABRA
Open Booklet for Assembly and Use Instructions
Open booklet for details
Press to Reseal
Resealable Label for Directions & Precautions

Optional text for Pump 'N Go® 2 Sprayer [Insert Logo/ Graphics]

[The FAST and EASY Way to Kill and Prevent Weeds for up to 12 Months!] [Insert Claims from Appendix 1 or 2]
- [[The] Pump 'N Go® 2 sprayer provides up to [10/ insert length of spray time] minutes of continuous spray!]
- [Extendable wand provides greater accuracy without bending over.]

[Connect/ Extend/ Pump [insert# of time]/ Spray/ Store/ Depressurize/ Retighten to Store] [Insert Graphics for each step]

[**DID YOU KNOW?**]
[People and pets may enter treated area after spray has dried]
[Insert Claims from Appendix 1 or 2]
[Insert Graphics]

[**Use this product in areas where control of vegetation is desired for up to** [**1 year/ 12 months/ 365 days**]**. It is not for use on lawns, on or around fruits, vegetables, flowers, trees, shrubs or other plants, or over the root zones of desirable vegetation.**]

IMPORTANT! To prevent new weeds and grasses from growing, YOU MUST SPRAY THE ENTIRE AREA you want to control, NOT JUST the emerged weeds.

Optional Roundup® Graphics Wheel with the following Where To Use, What To Know and How To Use components

WHERE TO USE [Insert Graphics]
[[Yellow color/ insert color] represents area to be sprayed to receive up to [1 year/ 12 month] weed-free control.]
[[NOTE:] Product goes on clear and will not stain. [Insert color] [highlight/ color] shown for illustration purposes only.]
- [Driveway [&/ and] Sidewalk Cracks]
- [Patios [&/ and] Paths]
- [Along Fences [&/ and/ Curbs]]
- [Gravel Areas]

WHAT TO KNOW [Insert Graphics]
- [Rainproof in 30 Minutes]
- [Visible Results in 12 Hours]
- [Covers Up To [insert value from Appendix 2] sq ft]
- [Plant [12 months/ 1 Year] After Application[*] [[*] (see booklet for details)]

HOW TO USE [Insert Graphics] ***Select applicable packaging type below***

Battery Operated Sprayer Containers [Insert Graphics]
Connect Hose
Extend [Wand/ Insert Applicator Name]
[Add /Cone/ Dome/ Guard/ Shield]
Twist Nozzle [and/ &] Spray [Weeds]

Pump 'N Go® 2 Sprayer Containers [Insert Graphics]
[Connect Hose & Extend Wand]
[Pump & Spray [Weeds]]

Quick Connect Sprayers [Insert Graphics]
Pull Tubing Out
Insert Into Cap [(until it clicks)]
[Flip Cap Up/ Flip Up Spout/ [Turn/ Twist] [Spout/ Knob] to ON/ Pull Spout Up]
Adjust Spray Nozzle
[&/ Spray/ Weeds]

Refill Containers [Insert Graphics]
Pour Refill Into [Empty/ Insert Packaging Type] Container
[or] [Connect/ Reuse/ Transfer] [Insert Applicator Name/ Wand] [on/ to/ this] [Container/ Bottle]
[Do NOT Add Water [Picture of Droplet]]

Trigger Sprayers [Insert Graphics]
Adjust Nozzle
Spray Weeds [You Want To Kill]

[**DO NOT USE:**
In areas that will be planted or seeded within 1 year [(*see booklet for details)]]

Anti-theft device statement: [This bottle [may] contain[s] an anti-theft device[, either inside or on the back of the bottle]. [It does not affect product performance.]]

©[Insert Year] [MONSANTO COMPANY] [Insert Company Name]
[Produced/ Manufactured/ Distributed] [for/ by]] [Monsanto Company
Lawn & Garden Products] [Insert Company Name]
[P.O. Box 418 Marysville, OH 43041] [Insert Address]
[www.roundup.com]

EPA Reg. No. 71995-51
EPA Est. 239-IA-3^{I}, 239-MS-001^{M} [Insert Additional Establishments]
Superscript is first letter of lot number

[Made in/ Manufactured in/ Produced in/ Assembled in/ Product of] [USA/ [Insert Country]] [with [insert# %] or more US parts/ with over [insert# %] US parts/ with foreign and domestic parts]]

[Insert 2D code/ PPN code/ LB code] [Insert UPC Barcode/ Proof of Purchase]

[Insert LOT number or LOT number will be printed directly on the container]

Inside Back Booklet Label:

Pump 'N Go® 2 Sprayer Container Only: Insert 'HOW TO ASSEMBLE AND USE INSTRUCTIONS' from Appendix 3

Optional Section:
PRODUCT FACTS

[**WHAT IT DOES**]

[**KILLS** [**AND/ &**] **PREVENTS ALL TYPES** OF [TOUGH] WEEDS [AND/ &] GRASSES] [including [Insert from Weed List] [for up to 1 year]

[[Kills/ Controls] common weeds [and/ &] grasses [brush] [including/ such as] ***Alternative Text:*** [[Common] Weeds [grasses/ [&/ and]/ brush] controlled [include:]] [Bermudagrass, Black Medic, Buckhorn Plantain, Buttercup, Common Purslane, Curly Dock, Crabgrass, Dandelion, Kentucky Bluegrass, Lambsquarters, Morning Glory, Perennial Ryegrass, Spotted Spurge, Fescue, White Clover, and Yellow Nutsedge [Insert from Weed List] [and other broadleaf [and/ &] grassy weeds [brush]]].

[Insert Graphic of grassy, broadleaf and woody weeds]

[[Container] [covers/ treats] up to [insert X value from Appendix 2] sq ft.

[Insert Claims from Appendix 1 or 2]

[This product is intended for use in areas where control of vegetation is desired for up to 1 year. It is not for use on lawns, on or around fruits, vegetables, flowers, trees, shrubs or other plants, or over the root zones of desirable vegetation.]

HOW IT WORKS [Insert Graphics]

IMPORTANT: To prevent new weeds and grasses from growing, YOU MUST SPRAY THE ENTIRE AREA you want to [**control/ keep free of weeds**]**, NOT JUST the** [**emerged/ existing**] **weeds.**

[**Insert Brand Name/ This Product**] [**Dual Action**/ **Formula**] **Works** [**2/ Two**] **Ways:**

1. [[Glyphosate/ Insert Brand Name/ This product] [is absorbed by the weed's leaves/ enters plants through the foliage]. It moves through the weed to the root, stopping the production of an essential enzyme found in plants [, but not in humans or animals].]

   [Both glyphosate and diquat cause weeds to begin to yellow and wilt within [12] hours, with complete kill in 1 to 2 weeks.]

   [Weeds die, roots and all – so they don't grow back.]

2. [Imazapic [prevents new weeds from growing for up to 1 year by creating an invisible barrier in the soil.]

   Alternate text: [Imazapic [creates/ provides] an invisible barrier in the soil that prevents growth of [new] [weeds/ seeds/ and grasses] [from/ sprouting/ germinating/ appearing/ growing] for up to 1 year.]

DIRECTIONS FOR USE

It is a violation of Federal law to use this product in a manner inconsistent with its labeling. Always read and follow label directions.

WHERE TO USE [Insert Graphics]

[Apply/ spray] [Insert brand name/ this product] to BOTH existing weeds **and** [weed-prone] areas where weeds have not yet appeared. [Treated areas stay/ Keeps treated areas] weed free for up to 1 year.

Alternate text*:* [Apply only where you want to kill existing weeds AND prevent future weed growth for up to 1 year, such as:]

- On cracks and crevices in [driveways/ sidewalks/ and/ walkways]
- Patios and paths
- [Along fences/ fence lines] [foundations/ and/ curbs]
- [Gravel areas /gravel pathways/ [RV and boat] parking areas/ decorative rock]
- [Along retaining walls and landscape borders]
- [On [walkways/ driveways/ gravel pathways/ [RV and boat] parking areas/ under decks/ and/ [brick/ paver] patios/ paths]]

[**NOTE:**] In heavy clay soils, plant growth may be prevented for more than one year. In areas of heavy rainfall, applications every 6-8 months may be necessary. To avoid damage to desirable plants, DO NOT apply over their root systems. For shrubs and trees, DO NOT apply closer than twice the distance from the trunk to the drip line as roots may be within this area. [Insert Graphic showing tree drip line]

WHERE NOT TO USE [Insert Graphics]

- DO NOT SPRAY plants or grasses you like – they will die.
- DO NOT USE in areas that will be planted or seeded within 1 year.
- DO NOT SPRAY landscaped areas around young plants or in areas next to any desirable plants or grasses.
- DO NOT USE over the root zone of desirable trees or shrubs.
- DO NOT USE on steep slopes as movement on soil surface may damage desirable plants down the slope.
- DO NOT SPRAY next to a fence if desirable plants and grasses are growing on the other side.
- DO NOT USE in lawns or for lawn renovation as this product prevents desirable grasses from growing too.
- DO NOT USE for vegetable garden preparation or in and around fruits and vegetables.

NOTE: For weed control in these areas use an EPA registered product approved for the use sites listed above; such as [Insert Brand Name for EPA# 71995-33] [or] [Insert Brand Name for EPA# 71995-25].

For Quick Connect, Battery Operated Sprayers and Refill Containers Only:
HOW TO ASSEMBLE AND USE INSTRUCTIONS
[Insert Applicator Name or Packaging Type/ Directions] [Insert Instructions & Graphics from Appendix 3]

For Ready-To-Use Refill Containers Only
[**REFILL DIRECTIONS**]
[This product can be used as a refill in [2/ two] ways:] [1.] Use this product to refill the empty [Insert Brand Name for EPA# 71995-51] container by pouring product carefully and directly into the container. DO NOT add water. [2.] [Insert Applicator Name] can be reused with this [refill] [bottle/ container]. Follow the instructions below to disconnect the [Insert Applicator Name/ wand] from the [empty] [bottle/ container] and reconnect to the cap on this [bottle/ container].]

HOW TO APPLY [Insert Graphics] ***Select applicable packaging type below***

Pump 'N Go® 2 and Battery Operated Sprayers

- Follow illustrations and/or instructions in the How to Assemble and Use Instructions section to prime the sprayer.
- Spray the existing weeds AND the entire surrounding weed-prone area you want to keep [weed free/ free of weeds] for up to 1 year. Spray the area until **thoroughly wet**.
  Alternate Text: [To keep areas weed free for up to 1 year, spray the [entire/ desired/ weed-prone] area until **thoroughly wet**.]
  Alternate Text: [Spray [existing/ emerged] weeds and the entire surrounding [weed-prone] area where weeds or grasses you want to kill normally appear until **thoroughly wet**. Spray only the areas you want keep free of weeds for up to1 year].
- When applying [this product] to [targeted/ weed-prone/ treatment] areas, shield desirable plants from drift with a sheet of cardboard or plastic.] If desirable plants are accidentally sprayed, rinse off immediately with water [or cut off the treated area].

Quick Connect Sprayers and Trigger Sprayers

- Adjust [sprayer] nozzle to the desired spray setting [(Spray or Stream)].
- Spray the existing weeds AND the entire surrounding weed-prone area you want to keep [weed free/ free of weeds] for up to 1 year. Spray the area until **thoroughly wet**.
  Alternate Text: [To keep areas weed free for up to 1 year, spray the [entire/ desired/ weed-prone] area until **thoroughly wet**.]
  Alternate Text: [Spray [existing/ emerged] weeds and the entire surrounding [weed-prone] area where weeds or grasses you want to kill normally appear until **thoroughly wet**. Spray only the areas you want keep free of weeds for up to1 year].
- When applying [this product] to [targeted/ weed-prone/ treatment] areas, shield desirable plants from drift with a sheet of cardboard or plastic.] If desirable plants are accidentally sprayed, rinse off immediately with water [or cut off the treated area].

WHEN TO APPLY [Insert Graphics]

- For best results, apply during warm, sunny weather above 60° F [to accelerate systemic movement from foliage to roots].
- [Apply/ Spray] when air is calm to prevent drift to desirable plants.
- RAINPROOF [Protection]: Rain or watering 30 minutes after application will NOT wash away effectiveness. ***Alternative Text:*** [Insert Brand Name] is Rainproof in 30 minutes.]
- [Weeds yellow and wilt within 12 hours with complete kill in 1 to 2 weeks.]

APPLICATION RESTRICTIONS: Do not apply this product in a way that will contact any person or pet, either directly or through drift. Only persons applying this product may be in the area during application.

User Safety Recommendations:

- Clothing and protective equipment exposed to this product should be washed in detergent and hot water. Such items should be kept and washed separate from other laundry.
- Users should wash hands before eating, drinking, chewing gum, using tobacco, or using the toilet.
- Users should remove clothing immediately if product gets inside; then wash thoroughly and put on clean clothing.

Entry Restrictions: People and pets must not touch treated plants or enter treated areas until after spray has dried.

WHEN TO REPLANT [Insert Graphics]

All ornamental bedding plants [(annuals and perennials)], trees, shrubs, sod and seed [(flowers and grasses)] can be planted **1 year after** application.

Optional Section:
HOW TO REFILL

For Ready-To-Use Containers with Applicators Intended to be Reused/ Refilled

- This container and sprayer can be reused.
- To refill this empty container, pour product carefully and directly from the [Insert Brand Name for EPA# 71995-51] container designated as the ready-to-use refill container. DO NOT add water.
- Use [Insert brand name for EPA# 71995-49] to refill the container. [Insert Applicable Container Size Instructions from List below]

24 fl oz Trigger Sprayer:
Add 1.125 fl oz (7 Tsp) of [Insert brand name for EPA# 71995-49] to this empty container and then fill with water slowly to avoid foaming.

64 fl oz:
Add 3 fl oz (6 Tbs) of [Insert brand name for EPA# 71995-49] to this empty container and then fill with water slowly to avoid foaming.

1 Gallon:
Add 6 fl oz (12 Tbs) of [Insert brand name for EPA# 71995-49] to this empty container and then fill with water slowly to avoid foaming.

1.33 Gallon:
Add [the pre-measured bottle] [8 fl oz (16 Tbs)] of [Insert brand name for EPA# 71995-49] to this empty container and then fill with water slowly to avoid foaming.

1.5 Gallon:
Add 9 fl oz (18 Tbs) of [Insert brand name for EPA# 71995-49] to this empty container and then fill with water slowly to avoid foaming.

For Battery Operated Sprayers with Wand containers

- The [Insert Applicator Name/ wand] can be reused with the [Insert Brand Name for EPA# 71995-51] refill [bottle/ container]. Read and follow instructions in REFILL DIRECTIONS section to reuse the [Insert Applicator Name/ wand/ applicator].

Optional Section: Battery Operated Sprayer ONLY Select Any of the Options Below
HOW TO CLEAN:

- [Battery operated [wand/ Insert Applicator Name] may be used with other Roundup brand products, it will replace any sprayer fitted with a quick-connect cap.]
  Alternative Text: [Before using the [wand/ Insert Applicator Name] with other Roundup brand products, clean the sprayer thoroughly.]
- [Disconnect sprayer unit from the [quick-connect/ bottle] cap.]
- [Place ONLY the end of the hose into a bucket of water and spray continuously for 30 seconds onto [bare soil or gravel/ treated area].]
  Alternative Text: [Rinse sprayer and sprayer parts including the [hose/ cone/ dome/ guard/ shield] with water 3 times. Spray rinse water on [bare soil or gravel/ treated area]. Discard empty sprayer bottle as instructed in DISPOSAL section.]
  Alternative Text: [Rinse sprayer with water 3 times and then spray [clean] water through sprayer for 30 seconds.] [Spray rinse water on [bare soil or gravel/ treated area].
- [Connect [wand/ Insert Applicator Name] to any Roundup brand product with a quick-connect cap.]
- [Failure to properly clean sprayer before using with other Roundup brand products may cause damage to your plants.]

Optional Section: Select from the list below
KILLS AND PREVENTS ALL TYPES OF [**TOUGH**] **WEEDS AND GRASSES** [Insert Graphics]

Kills and prevents [insert from the list below] [and other broadleaf/ [and/ &] grassy weeds] [for up to 1 year].

Alternative Text: [Controls [common] weeds and grasses [brush] [including]/ [Common] Weeds [grasses/ [&/ and]/ brush] controlled [include:]] [Bermudagrass, Black Medic, Buckhorn Plantain, Buttercup, Common Purslane, Curly Dock, Crabgrass, Dandelion, Kentucky Bluegrass, Lambsquarters, Morning Glory, Perennial Ryegrass, Spotted Spurge, Fescue, White Clover, and Yellow Nutsedge [insert from the list below] [and other broadleaf [and/ &] grassy weeds [brush]]].

Annual Weed Control *Alternative Text:* [**Annuals/ Annual Weeds/** [**&/and**]**/ Grasses**] [(Continued)]

Annual Ryegrass	Diffuse Lovegrass	Kochia	Sowthistle (annual)
Barnyardgrass	Dog Fennel	Lambsquarters	Spotted Spurge
Bittercress	Evening Primrose	Little Bitter Cress	Sprangletop
Black Medic	Fall Panicum	London Rocket	Stinkgrass
Black Nightshade	Fiddleneck	Maiden Cane	Sunflower
Bluegrass (annual)	Field Pennycress	Mallow	Swinecress
Blue Mustard	Field Sandbur	Mayweed	Tansy Mustard
Blue Toadflax	Filaree	Morning Glory (annual)	Tansy Ragwort
Brassbuttons	Florida Pusley	Pennsylvania Smartweed	Teaweed
Bromegrass	Garden Spurge	Prickly Lettuce	Texas Panicum
Buckwheat	Giant Foxtail	Prostrate Spurge	Tumble Mustard
Bur Clover	Giant Ragweed	Puncture Vine	Velvetleaf
Burcucumber	Goosegrass	Purslane	Virginia Pepperweed
Buttercup	Green Foxtail	Purslane Speedwell	Wild Buckwheat
Carolina Geranium	Hairy Nightshade	Redroot Pigweed	Wild Mustard
Cheat	Hemp Sesbania	Russian Thistle	Wild Oats
Chickweed (Common)	Henbit	Sandspur	Wild Proso Millet
Chickweed (Mouseear)	Horseweed/ Marestail	Shattercane	Witchgrass
Cocklebur	Itchgrass	Shepherd's-purse	Wooly Cupgrass
Common Groundsel	Jimsonweed	Sicklepod	Yellow Foxtail
Crabgrass	Junglerice	Smooth Cat's Ear	Yellow Rocket
Creeping Beggarweed	Knotweed	Smooth Pigweed	

[**Tough**] **Perennial Weed Control** ***Alternative Text:*** [**Perennials/ Perennial Weeds/ Grasses/** [**&/and**]**/ Tough/ Brush**] [(Continued)]

Alder	Dallisgrass	Maple	Smooth Bromegrass
Artichoke Thistle	Dandelion	Milkweed	Sourwood
Ash	Dewberry	Nimblewill	Sowthistle (perennial)
Aspen (quaking)	Dogwood	Nutsedge	Spurred Anoda
Bahiagrass	Dollarweed	Oak	St. Augustinegrass
Bamboo	Elderberry	Oldenlandia	Sumac
Bermudagrass	Elm	Orchardgrass	Swamp Smartweed
Blackberry	Eucalyptus	Oxalis	Sweetgum
Blackgum	False Dandelion	Pampasgrass	Tan Oak
Black Locust	Fennel	Pennywort	Thimbleberry
Bluegrass (Kentucky)	Fescue species	Perennial Ryegrass	Timothy
Bluegum Eucalyptus	Field Bindweed	Persimmon	Torpedograss
Brackenfern	Giant Reed	Pine	Tree Tobacco
Broadleaf Plantain	Guineagrass	Poison Hemlock	Trumpetcreeper
Broom (French, Scotch)	Hawthorn	Poison Ivy	Vaseygrass
Buckhorn Plantain	Hazel	Poison Oak	Virginia Creeper
Canada Thistle	Hemp Dogbane	Poison Sumac	White Clover
Cattail	Honeysuckle	Poplar	Whitetop
Ceanothus	Horsenettle	Primrose	Wild Barley
Chamise	Horseradish	Purple Nutsedge	Wild Blackberry
Cherry	Iceplant	Quackgrass	Wild Oats
Cogongrass	Johnsongrass	Raspberry	Wild Rose (multiflora)
Common Mullein	Kikuyugrass	Ragweed (Common)	Wild Sweet Potato
Common Pokeweed	Knapweed	Red Clover	Wild Violet
Corn Speedwell	Kudzu	Redvine	Willow
Coyote Brush	Lantana	Reed Canarygrass	Wirestem Muhly
Creeping Bentgrass	Leafy Spurge	Sage	Yellow ~~Nutgrass~~ Nutsedge
Creeping Charlie	Locust	Salmonberry	Yellow Poplar
Crowfootgrass	Lovegrass	Saltcedar	Yellow Starthistle
Curly Dock	Madrone	Sassafras	Zoysia

[**NOTE**: Heavy lawn grass or well established difficult to control weeds, such as Bermudagrass, Nimblewill, Dandelion, or Canada Thistle may require a repeat application.]

STORAGE AND DISPOSAL ***Select applicable packaging type below:***

Battery Operated Sprayer Containers:
PESTICIDE STORAGE: Flip spout down. ***Alternative Text:*** [Close [Insert Color] spout on cap/ [Turn/ Twist] [spout/ knob] on cap to OFF/ Push spout down]. **NO NEED TO DISCONNECT SPRAYER HOSE FROM CAP.** Close nozzle on trigger sprayer. [Engage trigger lock.] [Retract and] Flip the [wand/ Insert Applicator Name] closed and place back in side [carrier/ clip/ holder]. Store product in original container in a safe place away from direct sunlight. Keep from freezing. If frozen, allow to thaw and shake well before using.

Non-Sprayer (Refill) Containers:
PESTICIDE STORAGE: Store product in original container in a safe place away from direct sunlight. Keep from freezing. If frozen, allow to thaw and shake well before using.

Pump 'N Go® 2 Sprayer Containers:
PESTICIDE STORAGE: Push the [Insert Color/ yellow] button and retract the wand until the [Insert Color/ yellow] button snaps back into the original STORAGE POSITION. Place wand back onto [the top of] the bottle [in the integrated holster] with nozzle [facing down/ tip extended through the eyelet opening]. Push pump handle all the way down and turn pump handle and cap counter-clockwise to relieve pressure, then retighten to store. Store product in original container in a safe place away from direct sunlight. Keep from freezing. If frozen, allow to thaw and shake well before using.

Quick Connect Sprayer Containers:
PESTICIDE STORAGE: Flip spout down. ***Alternative Text:*** [Close [Insert Color] spout on cap/ [Turn/ Twist] [spout/ knob] on cap to OFF/ Push spout down]. **NO NEED TO DISCONNECT TRIGGER SPRAYER.** Close nozzle on trigger sprayer. Snap sprayer back in place. ***Alternative Text:*** [Place sprayer back in side [carrier/ clip/ holder]. Store product in original container in a safe place away from direct sunlight. Keep from freezing. If frozen, allow to thaw and shake well before using.

Trigger Sprayer Containers:
PESTICIDE STORAGE: Rotate nozzle to closed position. Store product in original container in a safe place away from direct sunlight. Keep from freezing. If frozen, allow to thaw and shake well before using.

For Containers with Refill Instructions:
PESTICIDE DISPOSAL AND CONTAINER HANDLING: Nonrefillable container. Do not reuse or refill this container unless the directions for use allow a different concentrated or ready-to-use product to be diluted in or poured directly into the container. Reuse or refill this container according to the directions contained in the [HOW TO REFILL] section.

For Containers without Refill Instructions:
PESTICIDE DISPOSAL AND CONTAINER HANDLING: Nonrefillable container. Do not reuse or refill this container. [Insert Applicator Name/ Comfort Wand/ Sure Shot Wand] can be reused with [this] [Insert Brand Name for EPA# 71995-51] [refill] [bottle/ container]. [Follow instructions in the REFILL DIRECTIONS section when reusing the [Insert Applicator Name/ wand].

ALL Packaging Types:
If Empty: Place in trash or offer for recycling, if available. **If Partly Filled:** Call your local solid waste agency [or Insert Telephone Number] for disposal instructions. Never place unused product down any indoor or outdoor drain.

PRECAUTIONARY STATEMENTS [Insert Graphics]

HAZARDS TO HUMANS & DOMESTIC ANIMALS

KEEP OUT OF REACH OF CHILDREN

CAUTION: Causes moderate eye irritation. Avoid contact with eyes or clothing. Wash thoroughly with soap and water after handling.

[Re-entry icon]

People and pets must not touch treated plants or enter treated areas until after spray has dried.

FIRST AID	
IF IN EYES	• Hold eye open and rinse slowly and gently with water for 15-20 minutes. • Remove contact lenses, if present, after first 5 minutes, then continue rinsing eyes. • Call a poison control center [Insert Telephone Number] or doctor for treatment advice.
EMERGENCY MEDICAL INFORMATION	
• Have the product container or label with you when calling a poison control center or doctor, or going for treatment. • You may contact [Insert Telephone Number] for emergency medical treatment information. • This product is identified as [**Insert Brand Name**], **EPA Reg. No. 71995-51**.	

ENVIRONMENTAL HAZARDS:

To protect the environment, do not allow pesticide to enter or run off into storm drains, drainage ditches, gutters or surface waters. Applying this product in calm weather when rain is not predicted for the next 24 hours will help to ensure that wind or rain does not blow or wash pesticide off the treatment area. Diquat is toxic to aquatic invertebrates. Do not apply directly to water. Imazapic demonstrates the properties and characteristics associated with chemicals detected in ground water. The use of this product in areas where soil is permeable, particularly where the water table is shallow, may result in groundwater contamination.

NOTICE: To the extent consistent with applicable law, buyer assumes all responsibility for safety and use not in accordance with directions.

[Guaranteed Satisfaction.*]

Optional Section
***CONSUMER GUARANTEE**

If for any reason you are not satisfied after using this product, simply send us original proof of purchase and we will [replace the product or] refund the purchase price.

Optional Section
ROUNDUP BRAND FAMILY OF PRODUCTS

Visit the Roundup website, [www.roundup.com], to learn more about the Roundup brand family of products for the best solutions to your toughest weed problems.

Alternative Text: [**Roundup® Lawn & Garden products have the best solutions to your toughest weed problems**.] [**Visit the Roundup website,** [www.roundup.com]**, to learn more about the Roundup brand family of products.**]]

[Insert Graphic- Roundup Product Family Photo]

- [Roundup Extended Control Weed & Grass Killer products] [– kill & prevent weeds for up to 4 months]
- [Roundup Max Control 365 products] [– kill & prevent weeds for up to [1 year/ 12 months]]
- [Roundup Ready-To-Use Weed & Grass Killer III/ Insert Brand Name for EPA# 71995-33] [– no mixing, no mess]
- [Insert Brand Name for EPA# 71995-33] [– kill weeds, protect desirable plants.]
- [Roundup Poison Ivy Plus Tough Brush Killer products] [– kill tough, brushy, hard-to-control weeds]
- [Roundup Wild Blackberry Plus Vine & Brush Killer products] [– kill tough brush & vines]
- [Insert Brand Name for EPA# 71995-29] [– [fast visible results]
- [Insert Brand Name for EPA# 71995-25] [– best Roundup brand concentrate value]
- [Insert Brand Name for EPA# 71995-60] [– targets hard to spray weeds]

Optional Spanish Translations:

[Insert generic logo and brand name in English & Spanish]

[Insert Label Language in Spanish as Applicable]

Base Label Information:

[Insert generic logo and brand name in English & Spanish]

Insert applicable instruction along side of base label:
[Resealable Label for Directions & Precautions / Etiqueta resellable de instrucciones y avisos de precaución.]
Alternative Text: [Open Booklet for Assembly and Use Instructions / Abra la etiqueta para las instrucciones para ensamblar y para usar.]

PRECAUTIONARY STATEMENTS

HAZARDS TO HUMANS & DOMESTIC ANIMALS

KEEP OUT OF REACH OF CHILDREN

CAUTION: Causes moderate eye irritation. Avoid contact with eyes or clothing. Wash thoroughly with soap and water after handling.

[Re-entry icon]

People and pets must not touch treated plants or enter treated areas until after spray has dried.

FIRST AID	
IF IN EYES	• Hold eye open and rinse slowly and gently with water for 15-20 minutes. • Remove contact lenses, if present, after first 5 minutes, then continue rinsing eyes. • Call a poison control center [Insert Telephone Number] or doctor for treatment advice.
EMERGENCY MEDICAL INFORMATION	
• Have the product container or label with you when calling a poison control center or doctor, or going for treatment. • You may contact [Insert Telephone Number] for emergency medical treatment information. • This product is identified as [**Insert Brand Name**], **EPA Reg. No. 71995-51**.	

ENVIRONMENTAL HAZARDS:

To protect the environment, do not allow pesticide to enter or run off into storm drains, drainage ditches, gutters or surface waters. Applying this product in calm weather when rain is not predicted for the next 24 hours will help to ensure that wind or rain does not blow or wash pesticide off the treatment area. Diquat is toxic to aquatic invertebrates. Do not apply directly to water. Imazapic demonstrates the properties and characteristics associated with chemicals detected in ground water. The use of this product in areas where soil is permeable, particularly where the water table is shallow, may result in groundwater contamination.

Insert Applicable Storage and Disposal Statements from Section above per Packaging Type

[Insert phone & computer icons]
Questions, Comments or Information
1-800-246-7219 www.roundup.com
Preguntas, Comentarios o Información

[Produced/ Manufactured/ Distributed] [for/ by]] [Monsanto Company
Lawn & Garden Products] [Insert Company Name]
[P.O. Box 418 Marysville, OH 43041] [Insert Address]

EPA Reg. No. 71995-51
EPA Est. 239-IA-3^{I}, 239-MS-001^{M} [Insert Additional Establishments]
Superscript is first letter of lot number

[Made in/ Manufactured in/ Produced in/ Assembled in/ Product of] [USA/ [Insert Country] [with [insert# %] or more US parts/ with over [insert# %] US parts/ with foreign and domestic parts]]

Anti-theft device statement: [This [bottle/ package] [may] contain[s] an anti-theft device [, either inside or on the back of the [bottle/ package]]. [It does not affect product performance.]]

[Insert Relevant Trademark Disclosure Statement(s)]

[Insert Relevant Patent Information Statement(s)] [For a list of patents, if any, covering this product or its use, please go to [insert patent website/ www.monsantotechnology.com/lawnandgarden].]

[Insert 2D Code/ PPN code/ Insert LB code] [UPC Code/ Proof of Purchase]

APPENDIX 1: Consolidated List of Label Claims

- ***Product guarantee statement for use throughout**** [Guaranteed Satisfaction/ Consumer Guarantee] If for any reason you are not satisfied after using this product, simply send us the original proof of purchase and we will [replace the product or] refund the purchase price.
- 2 in 1 [kills and prevents]
- Absorbed into both broadleaf and grassy weeds
- Absorbs on contact, starts working immediately
- Absorbed through the leaves, it goes all the way to the root for total kill [on weeds you directly spray]
- Apply [one time/ once] to kill and prevent [for up to/ 1 year/ 365/ 12 months]
- Before [Insert Graphic of live weed] / After [Insert Graphic of dead weed]
- Begins absorbing on contact
- Begins to work in [Insert value between 1 and 24] hours
- Begins working in hours
- Binds to soil and prevents weeds where applied
- Blocks weed[s] [growth] [for up to/ 1 year/ 12 months]
- [Can be used [on/ along]/ For use [on/ along]] [cracks/ and/ crevices/ in] [driveways/ sidewalks/ walkways/ driveway cracks/ sidewalk cracks/ brick/ paver/ patios/ paths/ gravel [areas/ paths/ driveways]/ decorative rock/ fences/ foundations/ curbs/ retaining walls/ landscape borders/ [RV and boat] parking [areas/ lots]/ under decks]
- Completely kills even the toughest weeds and grasses
- *CONSUMER GUARANTEE: If for any reason you are not satisfied after using this product, simply send us original proof of purchase and we will [replace the product or] refund the purchase price.
- Consumer Guarantee* [see/ open] booklet for details.] ***qualify guarantee***
- Controls tough weeds longer than other Roundup brand products [*longer than Roundup® Ready-To-Use Extended Control Weed & Grass Killer Plus Weed Preventer II]
- Dead Weeds Guaranteed* [or Your Money Back] ***qualify guarantee***
- Delivers maximum performance: Kills tough weeds and grasses to the root, prevents new weeds and grasses for up to 1 year; visible results in 12 hours; rain-proof protection in 30 minutes
- Do NOT add water
- [Driveways/ Patios/ Sidewalks] Stay[s] clear [of weeds] for up to [1/ a] year
- Dual [2-way] Action [kills and prevents]
- Dual [2-way] Action: Kills existing weeds [roots and all] and prevents new weeds from appearing for up to [1 year/ 12 months/ 52 weeks/ 365 days]
- Even if it rains – [Roundup brands/ Insert Brand Name] won't lose effectiveness
- Exclusive [Roundup brand/ Insert brand name] formula
- Exclusive formula won't be washed away by rain or watering 30 minutes after treatment.
- Extended weed control
- FastAct® [II] [Technology] [– Results in 12 Hours!]
- Fast acting [formula]
- Fast-acting for visible results in 12 hours
- For [outdoor] residential use [only]
- For use on driveways, patios, sidewalks & gravel [areas/ paths]
- Goodbye weeds
- Got Tough Weeds – Get [Insert brand name/ Roundup Max Control 365/ products]
- Great value – covers up to [Insert Value from Appendix 2 table] sq ft
- Guaranteed effective: Kills weeds and grasses, roots and all, with just one application
- Guaranteed* [results/ satisfaction] [[see/ open] booklet for details.] ***qualify guarantee***
- Guaranteed* results [with one application] ***qualify guarantee***
- Hard on weeds, easy on you
- Ideal for killing and preventing unwanted weeds and grasses. Use along fences, retaining walls; in cracks of walks, driveways and patios.
- It's your year!™
- Keeps driveways, walkways, patios and weed-free for up to [1 year/ 12 months/ 52 weeks/ 365 days]
- Keeps weeds from growing [for up to [1 year/ 12 months]
- Kills all [annual and perennial] weeds, grasses and other unwanted plants

- **Kill and prevent unwanted weeds** and grasses. Use along fences, retaining walls; in cracks of walks, drives and patios
- Kills and prevents for up to [1 year/ 12 months/ 52 weeks/ 365 days]
- Kills existing tough weeds [& grasses] [to the root/ roots and all]
- Kills even the toughest weeds
- Kills over 200 [different/ types/ species/ kinds/ of] of weeds[*] [*/(as listed)/ as listed/ below/ on the [product] label]
- Kills [to] the root[s] so [treated] weeds don't come back
- Kills the root[s] [so weeds don't come back] [first time, every time] [guaranteed] ***qualify guarantee***
- Kills [to] the roots [Guaranteed[!/*]] ***qualify guarantee***
- Kills [the toughest/ weeds and grasses] to the root so [weeds/ they] don't come back
- Kills the roots of [both] broadleaf and grassy weeds
- Kills the weed you see and the root you don't
- Kills the weeds [& grasses] you see [roots & all] and prevents [new] [weeds/ seeds] [from/ sprouting/ germinating/ appearing] for up to 1 year
- Kills unwanted weeds [and grasses]
- Kills vegetation [weeds/ and grasses] for up to [1 year /12 months/ 52 weeks/ 365 days]
- Kills weeds [and grasses] [clear/ down to the root] [1-2 weeks] [roots and all]
- Kills weeds [and unwanted grasses] – roots and all
- Kills weeds clear down to the root, 1st time, every time so weeds don't come back – guaranteed ***qualify guarantee***
- Kills weeds dead
- Kills weeds and grasses in – Patios – Driveways – Walkways – Gravel Areas
- Kills weeds, roots and all
- Kills what you directly spray
- Long lasting weed & grass control
- Longest lasting Roundup brand formula
- Multipurpose grass and broadleaf weed control
- [Next day/ this weekend] results: Begins killing on contact, visible results in 12 hours
- No more hand pulling
- No Root, No Weed, No Problem®
- Non-staining [formula]
- Not for sale or sales into the state of New York
- Not registered for sale or use in New York
- [One application] Kills [existing] weeds [& grasses] [roots & all] and prevents [new] [weeds/ seeds] [from sprouting/ germinating/ appearing/ growing] for up to [1 year/ 12 months/ 365 days]
- One [application/ spray] kills weeds and grasses, roots and all [maximum effectiveness]
- One [application/ spray] kills weeds [to the root] and prevents [new] weeds for up to [1 year/ 12 months/ 365 days]
- [One/ 1] [step/ stop] [weed] protection [for up to/ 1 year/ 12 months/ 365 days/ 52 weeks]
- Outdoor use only [Insert Graphic]
- [Patented] FastAct® [II] Technology
- Powerful protection against weeds [for up to/ 1 year/ 12 months/ 52 weeks/ 365 days]
- Product goes on clear and [dries clear/ stays clear/ will not stain]
- Prevents [growth/ re-growth/ new growth] for up to [1 year/ 12 months/ 365 days/ 52 weeks]
- [Protects against/ Prevents] [new] weeds [for up to/ 1 year/ 12 months/ 52 weeks/ 365 days]
- Protects [against weeds] [up to/ 3[X]/ 300%] longer* [than current brand/ than original]* *than Roundup Extended Control Ready-To-Use Weed & Grass Killer Plus Weed Preventer II
- Proven performance: Roundup brands work the first time, every time – and have for [more than/ 30/ insert # years] years
- Provides maximum control: Kills existing weeds to the root so they don't come back
- Provides extended [up to 1 year/ 12 months] control of weeds in driveways, walkways and patios
- [Provides] [visible] results in 12 hours
- [RainFast/ RAINPROOF/ Rainproof Protection:] in 30 minutes [for control that won't wash away]
- [Roundup brand's/ Our] longest lasting formula
- [Roundup Max Control 365 products/ Roundup brand/ Insert Brand Name] can be used on patios, walkways, driveways, gravel areas and along fences

- [Roundup Max Control 365 products/ Insert Brand Name] create[s] an invisible [weed] [shield/ barrier] for up to [1 year/ 12 months/ 365 days/ 52 weeks]
- [Roundup Max Control 365 products/ Insert Brand Name] [is/ are] [Relentless in the fight against weeds [for up to/ 1 year/ 12 months/ 52 weeks/ 365 days]
- [Roundup Max Control 365 products/ Roundup brand[s]/ Insert Brand Name] [is/ are] tougher than the toughest weed
- [Roundup Max Control 365 products/ Roundup brand's] [are the/ most] [advanced/ powerful] formula [[to protect against/ to prevent] weeds] [for up to/ 1 year/ 12 months/ 52 weeks/ 365 days]
- Roundup's exclusive formula won't be washed away by rain or watering 30 minutes after treatment
- Roundup's exclusive [patented] [FastAct®] [II] [technology] formula kills to the root so weeds don't come back
- Same great formula!
- Satisfaction guaranteed* [or/ we will gladly refund purchase price/ your money back with proof of purchase] ***qualify guarantee***
- So long weeds
- Spray today, dead tomorrow
- [Spray weeds/ Use] on [brick/ paver] patios, paths, sidewalks, sidewalk cracks, walkways and driveways
- Spray the [weed/ leaves] to kill the root
- Starts to kill [in hours/ the same day/ overnight]
- Starts working [immediately/ in Insert # hours/ overnight]
- Systemic [weed/ and grass] killer for spot treatment of undesirable vegetation
- The fast & easy way to kill and prevent weeds for up to [1 year/ 12 months/ 52 weeks/ 365 days]
- Tough formula [kills to the roots]
- Tougher than the toughest weeds
- Unlike hand pulling, Roundup kills all the way to the roots
- Up to [1 year/ 12 months/ 52 weeks/ 365 days] without weeds
- Use along fences, on paths, patios, sidewalks, driveways, and on brick or gravel areas
- Use on [driveways/ sidewalks/ patios/ brick walks/ gravel paths/ fence lines] to prevent [weed growth/ weeds from growing] [for up to/ 1 year/ 12 months/ 365 days/ 52 weeks]
- Visible effects are gradual wilting and yellowing advancing to complete browning and root destruction
- Visible Results in 12 Hours!
- Visible results in 12 hours, weed free for up to [1 year/ 12 months/ 52 weeks/ 365 days]
- Weed Barrier [protection/ technology]
- [Weeds won't grow for] up to [1 year/ 12 months/ 52 weeks/ 365 days] [without weeds]
- Weed Preventer
- Works first time, every time [guaranteed] ***qualify guarantee***
- Works on [Insert or Select from Weed List]
- [Year long/ 12 month/ 52 week/ 365 day] weed control

Promotional Offering Options

- [Insert value]% Free [More] [than X] ***qualify***
- [Insert value]% More in Each Bottle
- [Insert value]% More Value size [than X] ***qualify***
- [Insert #] [Concentrate] Bottle[s] [Included/ Attached]
- [Insert #] [Concentrate] Refill[s] [Included/ Attached]
- [Insert #] Pre-Measured [Concentrate] [Refill/ Bottle[s]] [Included/ Attached]
- [Insert #] Refill[s] [Included/ Attached]
- [Insert Dollar Amount] Rebate
- A [Insert Dollar Amount] Value
- Bonus [Size/ Pack/ Pak]
- BONUS SIZE [Insert Value]% MORE! ***qualify***
- Bundle Pack
- Can be used in [Insert Packaging Type/ Container/ Sprayer]
- Can be used to REFILL [Insert Packaging Type/ Container/ Sprayer]
- Club [Pack/ Pak/ Size]
- Combo [Pack/ Pak/ Size]
- [CONE/ DOME/ GUARD/ SHIELD] INCLUDED!
- Easy Mix Refill System
- Free Concentrate
- FREE [CONE/ DOME/ GUARD/ SHIELD]
- Free [Insert Description] with this purchase of [Insert Brand Name] [Insert Container Size]
- FREE REFILL [with purchase [of Insert Brand Name]]
- FREE [Insert Brand Name] a [Insert Dollar Amount] [VALUE]
- Free [Insert Container Size] [Insert Brand Name] [Concentrate/ Refill] [Included/ Attached/ Inside/ With Purchase/ Coupon]
- FREE [Insert Brand Name] SAMPLE [Included/ Attached/ Inside/ With Purchase]
- FREE SAMPLE
- Great Value
- Larger size [covers up to [Insert value from Appendix 2] sq ft]
- NEW! ***Use only if new package or formulation***
- NOT FOR INDIVIDUAL SALE
- NOW! ***Use only if new package or formulation***
- [Part of] [Easy Mix] Refill [System]
- [Pre-Measured] [Concentrate] [Bottle/ Refill] makes [up to] 1.33 Gallons/ Insert Product Size]
- Ready-To-Use
- Refill [Included]
- Refill Size
- Refill System
- [Insert Packaging Type/ Sprayer] Refill
- SAMPLE NOT FOR SALE
- Save up to $[Insert Value] on [your] next purchase
- TWIN [PACK/ PAK]
- Value [Pack/ Pak]
- VALUE [SIZE/ SIZED]

APPENDIX 2: Packaging Related Claims

Calculation of Spray Coverage

- ***To determine how many square feet can be treated, divide the number of fluid ounces by 128 and multiply by 300 (X= Net contents (fl oz) ÷ 128 x 300 sq ft)***

NET CONTENT SKU Size	Spray Coverage
24 FL OZ [(1 PT 8 FL OZ/ 1.5 PT)]	• Treats up to 56 sq ft
30 FL OZ [(1 PT 14 FL OZ/ 1.875 PT)]	• Treats up to 70 sq ft
64 FL OZ [(½ GAL/ 2 QT)]	• Treats up to 150 sq ft
1 GALLON [(128 FL OZ)]	• Treats up to 300 sq ft
1.1 GALLON [(141 FL OZ)]	• Treats up to 330 sq ft
1.25 GALLON [(160 FL OZ)]	• Treats up to 375 sq ft
1.33 GALLON [(170 FL OZ)]	• Treats up to 400 sq ft
1.5 GALLON [(192 FL OZ)]	• Treats up to 450 sq ft

Other Packaging Related Claims

General:

- Accurate
- Accurately targets [what/ the weeds] you want to [spray/ kill]
- Accurately targets [precisely/ exactly] [what/ the weeds] you want to [spray/ kill]
- Adjustable [spray/ sprayer] nozzle for maximum control
- Adjustable spray pattern for maximum control
- [Applicator/ Application] [Device/ System]!
- [Insert Brand Name of Batteries] Batteries included
- Battery Operated
- Be smarter than you weeds
- Change the way you spray
- Convenient
- No Mix[ing], No Mess
- No Mixing [necessary] [No measuring]
- [Easy/ Convenient] To Use
- Easy to store
- EASY-TO-USE [Insert Applicator Name]
- Easy to use [convenient/ handy/ useful]
- Fast and easy [application/ way to spray]
- Give your hands a break
- Great for large or small [jobs/ areas]
- Ideal for large or small [jobs/ areas]
- Handy
- It's always ready to spray
- No leaks or mess
- [Precise/ Precision] control – [sprays/ targets/ only what you want]
- [Precise /Precision] control for maximum accuracy
- Pre-mixed, pre-measured, easy-to-use
- Power Up with Duracell® [Batteries]
- Powered by Duracell® [Batteries]
- Quick [&/ and] easy to use
- Recycle symbol [Insert Graphic]
- Redesigned [Insert Applicator Name/ Sprayer]
- Refillable [Container]

- Requires no mixing
- [Save/ Saves] time and energy
- Targeted spray
- Targets weeds [in tight/ hard to reach/ places]
- The easy way to kill [and prevent] weeds [for up to/ 12 months/ 1 year]
- The easy way to spray
- The fast and easy way to kill [and prevent] weeds [for up to/ 12 months/ 1year]
- The fast way to spray
- You're always ready to spray

Pump 'N Go® 2 Sprayer:

- [33%/ Insert Value %] More than 1 gallon size
- Consistent spray for maximum accuracy
- Continuous, adjustable spray
- Convenient [extendable wand]
- Cover more ground faster
- Easy to use tank sprayer
- Extendable wand provides greater accuracy without bending over
- Long[er] spray time with less pumping
- No [constant] pumping
- No [More] Hand Fatigue
- No constant trigger [squeezing/ pulling]
- No more pumping, no more pulling, just spray
- No more squeeze, squeeze, squeeze
- No more tired [aching] hands
- One pump [= /equals] [Insert #] trigger sprays
- One pump delivers [Insert #] trigger sprays
- [Insert Applicator Name] [Provides] Up to [Insert #] minutes of continuous spray
- Quickly covers large areas
- Reusable [Pump 'N Go 2] [sprayer/ container]
- [Up to] [10/ insert #] [minutes of] Continuous spray

Refill Container:

- Don't Forget Your Refill
- Just [connect/ plug in] [Insert Applicator Name/ Comfort Wand/ Sure Shot Wand] and it's ready to spray
- Pour refill [directly] into [Insert Packaging Type] [container/ sprayer]
- [Ready-To-Use] Refill [Available]
- [Refills/ Recharges/ Reloads/ Renews] [Insert Applicator Name/ Comfort Wand/ Sure Shot Wand/ Pump 'N Go 2] [sprayer]
- Reuse with [Insert Applicator Name/ Comfort Wand/ Sure Shot Wand]
- The fast and easy way to refill your [Insert Packaging Type] [container/ sprayer]
- There is no mixing and no measuring, you just [pour/ connect] and go
- Works with [Insert Applicator Name/ Comfort Wand/ Sure Shot Wand]

Battery Operated Sprayer with Wand:

- [33%/ Insert Value %] More than 1 gallon size
- Comfort Wand® [with extended reach/ [with continuous spray]
- Consistent spray for maximum accuracy
- Continuous Spray [Wand]
- Continuous spray wand [with extended reach]
- Continuous, adjustable spray
- Easy reach extendable spray wand
- Easy to use tank sprayer
- Extended Reach [Wand]

- Extendable spray wand – less bending
- Extendable [Insert Applicator Name] spray wand
- No [constant] pumping
- No constant trigger [squeezing/ pulling]
- No [More] Hand Fatigue
- No more pumping, no more pulling, just spray
- No more squeeze, squeeze, squeeze
- No more tired [aching] hands
- No more trigger sprayer
- [One-Touch] [Precision] Wand
- Power Sprayer [for large areas]
- Quickly covers large areas
- Reusable [Comfort Wand] [One-Touch Wand] [Insert Applicator Name]
- The powerful way to spray

Battery Operated Sprayer with Extendable Wand:

- [Adds control so] [the spray] [only] goes where you want it to go
- Apply faster with the [extended wand/ Insert Applicator Name]
- [Avoid accidental spray to [surrounding/ nearby] [flowers/ and/ vegetables/ desirable plants]
- [Bending [down/ over] to kill weeds is [a thing of the past/ in the past/ no longer needed]
- [Cone/ Dome/ Guard/ Shield] attaches to the bottle [stores easily] [when not in use]
- [Cone/ Dome/ Guard/ Shield] helps protect [nearby/ desirable plants/ flowers] [from spray/ drift/ damage] [even in windy conditions]
- [Cone/ Dome/ Guard/ Shield] keeps the spray contained so wind won't carry it to [desirable plants/ flowers and shrubs]
- [Cone/ Dome/ Guard/ Shield] helps protect [nearby plants/ desirable plants] [from splashing/ from spray]
- Continuous Spray
- Customize the [wand/ Insert Applicator Name] length [for personal comfort]
- Direct application reduces unintended damage to nearby plants [from the wind] [due to accidental spray]
- Easily get[s] into [deep,] hard-to-reach areas
- Extend
- Extended [Reach/ Continuous Spray] Sure Shot™ Wand [with extended reach/ with continuous spray]
- Extended [Reach/ Continuous Spray] Wand [with extended reach/ with continuous spray]
- [Extended/ Extendable] wand puts more distance between you and the spray
- Extends 2 feet [for more targeted control] [so no more/ bending over/ aching back]
- Focus the spray [where you need it most/ where you want it to go]
- Ideal for [use/ targeting] weeds in hard to reach places
- Ideal for [use/ targeting] weeds on driveways, sidewalks and patios
- [Helps] [Contain/ Isolate/ Target] [the product/ spray]
- [Helps] Keep[s] the spray on the weed
- Helps protect desirable [plants/ vegetation/ flowers/ shrubs/ vegetables]
- [Insert Applicator name] gives you an easy way to kill weeds
- [Just/ Simply] spray the leaves to kill the [weed to the] root
- Helps protect~~s~~ desirable plants [such as flowers and shrubs]
- [Lightweight/ and/ durable] applicator
- [Now it's] [[Protective] [cone/ dome/ guard/ shield] makes it] Easier to kill weeds in more places
- Pinpoint the weeds [you want] to kill
- [Precisely] [Target[s]] [hard to reach/ weeds/ places] [the weeds you want to kill]
- [Precision/ Precise/ Adjustable] sprayer
- [Protective] [cone/ dome/ guard/ shield] helps [focus/ target] the spray on the weed[s]
- [Protective] [cone/ dome/ guard/ shield] [at the end of the wand] fits over the weed [(like an umbrella)] [so the spray is contained/ to help contain the spray]
- [Protective] [cone/ dome/ guard/ shield] fits over weeds to help contain spray [even in windy conditions]
- Reach[es] into [tight/ hard to reach] places [weeds like to grow]
- Reach

- Removable [protective] [cone/ dome/ guard/ shield]
- Reusable [Sure Shot Wand] [Insert Applicator Name]
- [Sprayer provides the best way to] Focus the spray on the leaves [where it does the most [good/ damage]]
- Sure Shot™ [Extended/ Reach/ Continuous Spray] Wand [with extended reach/ with continuous spray]
- Target[s] hard to reach [weeds/ places]
- Targets the weed under the shield
- [Use in and around] [Ideal for targeting weeds in] [fences/ driveways/ sidewalks/ patios/ and/ hard to reach places]
- Use without [the/ protective] [cone/ dome/ guard/ shield] on [patios/ walkways/ driveways/ and/ gravel/ areas]
- [Wand/ Insert Applicator Name] extends [to the top of the weeds for direct application] [2 feet] [letting you more precisely [pinpoint/ focus on] [the weeds you want to kill]
- [Wand/ Insert Applicator Name] [extends 2 feet] [to] Reduce[s] [back] bending [and the] [continuous spray wand helps reduces hand fatigue] [putting more distance between you and the spray]
- [Wand/ Insert Applicator Name] [provides the best way to] Focus the spray on the leaves [to kill to the root]
- [Wand/ Insert Applicator Name] [provides] precision control to [maximize every spray/ get the most [effect] from every spray]

APPENDIX 3: Packaging Related Instructions

QUICK CONNECT SPRAYER [Insert Graphics]

1. Remove sprayer. Pull cord/tubing ALL THE WAY OUT.
2. Insert [Insert Color] plug into [spout/ knob/ opening] on cap [until it clicks].
3. Flip up spout. ***Alternative Text:*** [Flip up [Insert Color] spout until fully upright/ [Turn/ Twist] [spout/ knob] to ON/ Pull spout up.] [Open/ Adjust] nozzle [at end of sprayer] to the desired spray setting [(spray or stream)].

PUMP 'N GO® 2 SPRAYER [Insert Graphics]

Instructions for Printing on the Wand and Handle:

Wand: STORAGE POSITION Push button and pull nozzle end. Extend to spray position. [Insert Arrow Graphic] SPRAY POSITION

Handle: [Insert Arrow Graphic] RELEASE PRESSURE AFTER USE Push handle to cap & turn. RETIGHTEN.

1. CUT [Insert Graphics]
Carefully cut the [Insert #/ two] [Insert Color/ white] zip ties securing the hose and pump handle with scissors. Use caution not to cut the [Insert Color/ white] hose.

2. CONNECT [Insert Graphics]
Unwind hose. Firmly push the connector at the end of the hose onto the spout on the pump, until it locks into place.

3. EXTEND WAND [Insert Graphics]
Lift sprayer wand off bottle. Push [Insert Color/ yellow] button while pulling out on the wand nozzle tip. Fully extend wand until [Insert Color/ yellow] button snaps into SPRAY POSITION. **NOTE**: [Insert Color/ white] trigger will not function until wand is fully extended and [Insert Color/ yellow] button is visible in the SPRAY POSITION.

4. PUMP [Insert Graphics]
Make sure handle is screwed on **tightly** or the bottle will not pressurize. Pump container [Insert Number of Pumps to Prime X-X] times to pressurize bottle. A full bottle requires fewer pumps than an empty bottle. Pumping to the higher range will provide longer spray duration. After pumping, push pump down and turn handle clockwise to lock into carrying position. **NOTE**: This bottle is designed to expand under pressure and cannot be over-pressurized.

5. SPRAY [Insert Graphics]
Aim wand. Spray by pushing down [Insert Color/ white] trigger with thumb. Adjust spray pattern by rotating [Insert Color/ white] nozzle tip up to one-half rotation. Spray weeds [and grasses] until **thoroughly wet**.

6. STORE [Insert Graphics]
When finished spraying, push the [Insert Color/ yellow] button and [retract/ push] the wand until the [Insert Color/ yellow] button snaps back into the original STORAGE POSITION. Place wand back onto [the top of] the bottle [in the integrated holster] with nozzle [facing down/ tip extended through the eyelet opening].

7. DEPRESSURIZE [Insert Graphics]
Push pump handle all the way down and turn pump handle and cap counter-clockwise to relieve pressure, then retighten to store.

REFILL CONTAINER [Insert Graphics]

How to attach [Insert Applicator Name/ wand] to [Insert Brand Name for 71995-51] [Refill] [Bottle/ Container]:
Removing [Insert Applicator Name] from original empty [bottle/ container]:

1. Remove the [Insert Applicator Name/ wand] by pulling the [Insert Color] plug from the [Insert Color] [spout/ opening/ knob] on cap.
2. At the bottom of the side [clip/ carrier/ holder] press the middle tab up and slide the [clip/ carrier/ holder] upwards to remove it from the empty [bottle/ container].

Adding [Insert Applicator Name] to [Insert Brand name for 71995-51] [Refill] [bottle]:

3. Slide the side [clip/ carrier/ holder] downward on the knob located [on the] [right-hand] side of the refill [bottle/ container].
4. [Insert [Insert Color] plug at end of hose into [Insert Color] [spout/ knob/ opening] on cap [until it clicks].]

BATTERY OPERATED SPRAYER WITH WAND [Insert Graphics]

Wand Safety Sticker or Printed on the Handle: Always lock after use ***Alternative Text:*** [Always lock sprayer when opening and closing] [Insert Icons]

[Insert Illustration or Photo]

1. Remove [Insert Graphics- Unsnap holder/ Twist left/ Pull]
- Remove [wand/ Insert Applicator Name] [from] [side/ carrier/ holder/ clip/ bottle].
- Remove protective strip from battery compartment to activate batteries.
- [Pull connector by slightly twisting from [side/ carrier/ holder/ clip/ bottle] and unwrap hose completely.]

2. Connect [Insert Graphics]
- Insert [Insert Color] plug at end of hose into [Insert Color] [spout/ knob/ opening] on cap [until it clicks]. Flip up spout. ***Alternative Text:*** [Flip up [Insert Color] spout until fully upright/ [Turn/ Twist] [spout/ knob] to ON/ Pull spout up.] [Spout must remain up while spraying.]

3. Extend [Insert Graphics]
- Flip open [wand/ Insert Applicator Name] until it clicks and locks into position.

4. [**Twist Nozzle and**] **Spray** [Insert Graphics]
- Slide trigger lock on [wand/ Insert Applicator Name] handle to the unlocked position.
- Twist nozzle [at end of sprayer] to desired spray pattern.
- Point [Insert Applicator Name] nozzle away from body and hold [Insert Color] trigger for continuous spray.

Important Use Information: Do not submerge in water. When storing sprayer for long periods, remove batteries.

BATTERY OPERATED SPRAYER WITH EXTENDABLE WAND [Insert Graphics]

Wand Safety Sticker or Printed on the Handle: Always lock after use ***Alternative Text:*** [Always lock sprayer when opening and closing] [Insert Icons]

[Insert Illustration or Photo]

1. Remove [Insert Graphics- Unsnap holder/ Twist left/ Pull]
- Remove [wand/ Insert Applicator Name] [from] [side/ carrier/ holder/ clip/ bottle].
- Remove protective strip from battery compartment to activate batteries.
- [Pull connector by slightly twisting from [side/ carrier/ holder/ clip/ bottle] and unwrap hose completely.]

2. Connect [Insert Graphics]
- Insert [Insert Color] plug at end of hose into [Insert Color] [spout/ knob/ opening] on cap [until it clicks]. Flip up spout. ***Alternative Text:*** [Flip up [Insert Color] spout until fully upright/ [Turn/ Twist] [spout/ knob] to ON/ Pull spout up.] [Spout must remain up while spraying.]
- [Remove [protective] [cone/ dome/ guard/ shield] [from side clip/ from bottle] and attach over nozzle [for targeted application].

3. Extend [Insert Graphics]
- Flip open [wand/ Insert Applicator Name] until it clicks and locks into position.
- [Extend [wand/ fully]].

4. [**Twist Nozzle and**] **Spray** [Insert Graphics]
- Slide trigger lock on [wand/ Insert Applicator Name] handle to the unlocked position.
- Twist nozzle [at end of sprayer] to desired spray pattern.
- [Place the [cone/ dome/ guard/ shield] [on the ground] over weeds or grasses you want to kill.] [Use the [cone/ dome/ guard/ shield] to cover the weeds or grasses you want to kill.]
- Point [Insert Applicator Name] nozzle away from body and hold [Insert Color] trigger for continuous spray.
- [[Cone/ Dome/ Guard/ Shield] can be removed when applying product to [areas such as] [driveways/ walkways/ patios/ and/ gravel].

Important Use Information: Do not submerge in water. When storing sprayer for long periods, remove batteries.

BATTERY REPLACEMENT SECTION- BATTERY OPERATED SPRAYER WITH WANDS ONLY
[Insert Graphics]

To replace batteries: Open battery compartment at bottom of [wand/ Insert Applicator Name] with a small screwdriver [Insert Illustration]. Remove used batteries and replace with [Insert #/ four] new [AA/ alkaline] batteries [in correct position as marked inside battery compartment] [or per illustration].

Securely close battery compartment door and screw closed firmly. Always use a complete set of the same type when replacing batteries. Best performance is achieved with alkaline batteries. Never mix alkaline, carbon-zinc or rechargeable batteries. Dispose of used batteries according to manufacturer's instructions or in household trash.

Optional Section for Battery Operated Sprayer Only:
IMPORTANT SPRAYER INFORMATION

- Read and follow all directions before use.
- [Insert Applicator Name] is to be used only with Roundup brand products with a quick-connect cap. [Insert Applicator Name] may not be compatible with other products.
- Do not drop or throw sprayer.
- Do not [submerge/ immerse] sprayer in water. Never place sprayer in dishwasher.
- Do not use soap or other cleaning agents to clean sprayer. If necessary, clean outer sprayer surface only with damp towel.
- Insert batteries in their correct (+/-) position. Remove batteries for winter storage or when storing product for long periods of time.
- Always use a complete set of new alkaline batteries. Never mix alkaline, carbon-zinc, or rechargeable batteries.
- Always follow the manufacturer's instructions for battery disposal and use.
- Purge [Insert Applicator Name] of liquid for winter storage or place [wand/ Insert Applicator Name] in a heated storage area.

Optional Section:
TROUBLESHOOTING SECTION FOR BATTERY OPERATED SPRAYER

[Troubleshooting Section for [Battery Powered/ Comfort Wand/ One-Touch Wand/ Extendable Wand/ Sure Shot Wand/ Insert Applicator Name] Directions]

Troubleshooting Tips:

Problem: Sprayer does not [spray/ function].
Possible Cause: Batteries not installed properly.
Solution: See instructions for correct battery placement.

Problem: Sprayer makes a straining noise. [Sprayer runs but no product comes out].
Possible Cause: Nozzle is turned Off.
Solution: Twist nozzle to desired spray pattern.

Possible Cause: [Insert Color] plug at end of hose is not [flipped up/ open].
Solution: Insert [Insert Color] plug at end of hose into [Insert Color] [spout/ knob/ opening] on cap [until it clicks] and [flip up spout/ flip up [Insert Color] spout until fully upright/ [turn/ twist] [spout/ knob] to ON/ pull spout up.]

Possible Cause: Sprayer is not primed.
Solution: Press and hold button on sprayer for about [10/ 15/ 20/ 30] seconds to prime the sprayer.

Problem: Spray pattern is weak [or uneven]. [Product flow is uneven or dribbles out of nozzle].
Possible Cause: Weak batteries.
Solution: Install a fresh set of alkaline batteries.

Possible Cause: [Insert Color] plug at end of hose is not [in the fully upright position/ in the ON position].
Solution: Insert [Insert Color] plug at end of hose into [Insert Color] [spout/ knob/ opening] on cap [until it clicks]. [Attach coupler to the cap] and [flip up spout/ flip up spout/ flip up [Insert Color] spout until fully upright/ [turn/ twist] [spout/ knob] to ON/ pull spout up.]

Possible Cause: Sprayer nozzle not fully open.
Solution: [Turn/ Twist] nozzle to desired spray pattern.

Exhibit 6

MAR 10 1992

Mr. Roy G. Danhaus
Monsanto Company
700 14th Street NW., Suite 1100
Washington, DC 20005

Dear Mr. Danhaus:

Subject: Roundup Quik Stik Grass and Weed Killer (Revise Package Labels)
EPA Registration No. 524-452
Your Application Dated February 6, 1992

The labeling referred to above, submitted in connection with registration under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, is acceptable. Please submit five (5) copies of your final printed labeling incorporating these changes before you release the product for shipment. A stamped copy of labeling is enclosed for your records.

Sincerely yours,

Robert J. Taylor
Product Manager (25)
Fungicide-Herbicide Branch
Registration Division (H7505C)

56071:I:Taylor:WP5.0-09:KEVRIC:03/03/92:04/03/92:aw:DD:CL

CONCURRENCES								
SYMBOL	H7505C							
SURNAME	RWalker							
DATE	3/9/92							

EPA Form 1320-1 (12-70) OFFICIAL FILE COPY

FRONT PANEL

~~NEW~~ ROUNDUP®

QUIK STIK
by Monsanto

Grass & Weed Killer

• THIS BOX IS MADE FROM 100% RECYCLED MATERIAL

- SOLID
- SYSTEMIC GRASS AND WEED KILLER FOR SPOT TREATMENT OF UNDESIRABLE VEGETATION
- KILLS ACTIVELY GROWING LABELED WEEDS AND GRASSES, ROOTS AND ALL
- JUST ADD WATER - MAKES 24 OZ.
- DOES NOT HAVE SOIL ACTIVITY
- SUITABLE FOR USE AROUND FLOWER BEDS, TREES, SHRUBS, FENCES, WALKS AND FOR LAWN RENOVATION
- USE WITH 24 OZ. HAND-HELD SPRAYER

Read the entire label before using this product. Use only according to label instructions.
NOTICE: Buyer assumes all responsibility for safety and use not in accordance with directions. If these terms are not acceptable, return at once unopened.

Keep out of reach of children.

CAUTION!

See back panel for Precautionary Statements and Directions for Use.

EPA Reg. No. 524-~~XXX~~452

ACCEPTED
MAR 10 1992
Under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, for the pesticide registered under EPA Reg. No. 524-452

MONSANTO COMPANY
AGRICULTURAL PRODUCTS
ST. LOUIS, MISSOURI 63167
U.S.A.

ACTIVE INGREDIENT:

Glyphosate, N-(phosphonomethyl)glycine	60.0%
INERT INGREDIENTS	~~40.0%~~
	100.0%

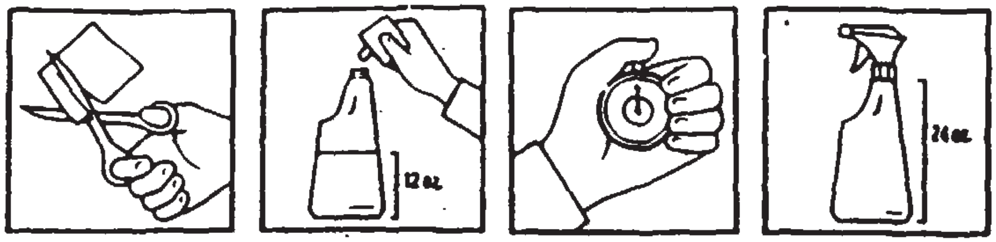
This product is protected by U.S. Patents ~~No. 3,799,758~~, No. 4,405,531 ~~and No. 4,840,650~~. Other patents pending. No license granted under any non-U.S. patent(s).
® Trademark of Monsanto Company
© MONSANTO COMPANY 19~~8~~92

CONTAINS THREE (9 gm) EFFERVESCENT TABLETS ~~(9 gm)~~

Roundup®

QUIK STIK

Directions for Mixing



1. Cut open foil pouch [illegible] or follow pack opening instructions. [illegible] 12 oz (1½ cups) of clean water and add tablet [illegible] until tablet is completely dissolved. [illegible] Add an additional 12 oz clean water, seal [illegible] and use. Do not shake.

PRECAUTIONARY STATEMENTS

HAZARDS TO HUMANS AND DOMESTIC ANIMALS

~~Keep out of reach of children.~~
CAUTION! Wash thoroughly with soap and water after handling. Keep children and pets off treated area until spray is thoroughly dry.
FIRST AID: If it appears that a part of the tablet has been ingested, remove visible particles from mouth. Rinse mouth with water. Have person drink water or milk.

In case of an emergency involving this product, Call Collect, day or night, (314)694-4000. *(Picture of telephone receiver)*

ENVIRONMENTAL HAZARDS

~~Do not apply directly to water or wetland (swamps, bogs marshes or potholes).~~ Do not apply directly to water or to areas where surface water is present, or to intertidal areas below the mean high water mark. Do not contaminate water when disposing of equipment washwaters.

PHYSICAL OR CHEMICAL HAZARDS

Spray solutions of this product should be mixed, stored or applied ONLY in stainless steel, aluminum, fiberglass, plastic or plastic-lined steel containers. DO NOT MIX, STORE OR APPLY SPRAY SOLUTIONS OF THIS PRODUCT IN GALVANIZED STEEL OR UNLINED STEEL (EXCEPT STAINLESS STEEL) CONTAINERS OR SPRAYERS. Use of this product in such containers could result in the formation of an explosive hydrogen gas mixture which could flash or explode if ignited by open flames or any other ignition source.

DIRECTIONS FOR USE

It is a violation of Federal law to use this product in any manner inconsistent with its labeling.
Roundup® Quik Stik herbicide, when dissolved in water, is a nonselective grass and weed killer which when absorbed by contacted foliage, is carried throughout the stems and roots to give complete kill of labeled tough annual and perennial grasses and broadleaf weeds. This product has no herbicidal activity in the soil and will not wash or leach to affect nearby vegetation. It is formulated for "spot" application to kill individual weeds

BACK PANEL

around trees, shrubs, fences, patios, walks, flower gardens, and for lawn renovation. Yellowing and wilting usually occur within one week with a complete kill in 2 to 4 weeks. For best results, apply to actively growing undesirable plants in warm sunny weather. One application will control most listed weeds. If certain hard-to-control weeds are not completely killed within 4 weeks, repeat application. Treated areas can be reseeded or replanted 7 or more days after application.

MIXING AND SPRAYING

Do not apply this product through any type of irrigation system. Use pump-up type or hand-trigger sprayers. For product identification, apply the Roundup® Quik Stik Grass & Weed Killer sticker (enclosed in the box) to the sprayer. Fill the sprayer with 12 oz. (1½ cups) of clean water and then add one effervescent tablet. DO NOT SHAKE the sprayer to accelerate dissolution. Wait until the tablet has completely dissolved (2-3 minutes) and add an additional 12 oz. of clean water before sealing the sprayer. (One tablet makes 24 oz. of spray solution.) DO NOT SEAL THE SPRAYER UNTIL THE TABLET IS COMPLETELY DISSOLVED. Use of hose-end sprayers or sprinkler devices may result in poor and/or erratic results.

Position sprayer tip approximately 1-2 feet from the weed and apply to completely cover the weed, stopping just before the spray begins to run off.

CLEANING EQUIPMENT

Triple-rinse sprayer and flush all sprayer components with water to remove residues of this product. After thorough cleaning, equipment may be used to apply other products.

WEEDS CONTROLLED: Bahiagrass, Barnyardgrass, Bermudagrass, Blackberry, Thistles, Chickweed, Common Ragweed, Crabgrasses. Dandelion, Kudzu, Fescues, Field Bindweed, Foxtail, Johnsongrass, Kentucky Bluegrass, Lambsquarter, Orchardgrass, Perennial Ryegrass, Poison Ivy, Poison Oak, Quackgrass, Shepherdspurse, Smooth Bromegrass, Sowthistle, White Clover and Yellow Nutsedge and many other annual and perennial grasses, weeds, sedges and brush.

IMPORTANT: This product is a nonselective weed killer which can injure or kill all vegetation contacted. AVOID SPRAY CONTACT ON DESIRABLE PLANTS. APPLY ONLY WHEN THE AIR IS CALM. If spray or drift accidentally contacts desirable vegetation, wash off immediately with water. Rainfall within 6 hours could affect performance. Avoid mowing, cutting or otherwise disturbing treated vegetation for at least 7 days.

For more product information, call toll-free 1-800-225-2883.

(Picture of telephone receiver)

STORAGE AND DISPOSAL

Do not contaminate water, foodstuffs, feed or seed by storage or disposal.

BACK PANEL CONTINUED

STORAGE: STORE THIS PRODUCT ONLY IN ITS ORIGINAL CONTAINER AND IN A SECURE STORAGE AREA. Protect product from moisture.
DISPOSAL: To dispose of unused product or solutions of this product, securely wrap original container or container of solution, in several layers of newspaper and discard in trash. Do not reuse inner wrapping or outer container. Discard both in trash.

EPA Est. ~~XXX62259-MN-2~~
~~897.23-000.01A-000.01~~

(bar code)

0 70183 50030 7

(Proof of purchase)

CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

Loretta I. Pennie (continued on attachment)

(b) County of Residence of First Listed Plaintiff Alameda, CA
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
See attachment

DEFENDANTS

Monsanto Company; Wilbur-Ellis Company, LLC; Wilbur-Ellis Feed, LLC

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*
See attachment

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment Of Veteran's Benefits
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☒ 365 Personal Injury – Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities–Employment
- ☐ 446 Amer. w/Disabilities–Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee–Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC § 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC § 158
- ☐ 423 Withdrawal 28 USC § 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS–Third Party 26 USC § 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC § 3729(a))
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

- ☐ 1 Original Proceeding
- ☒ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District *(specify)*
- ☐ 6 Multidistrict Litigation–Transfer
- ☐ 8 Multidistrict Litigation–Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing ***(Do not cite jurisdictional statutes unless diversity)***:

Brief description of cause:
See attachment

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, Fed. R. Civ. P.

DEMAND $

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S), IF ANY *(See instructions):*

JUDGE Vince Chhabria DOCKET NUMBER 3:16-md-02741

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) ☒ **SAN FRANCISCO/OAKLAND** ☐ **SAN JOSE** ☐ **EUREKA-MCKINLEYVILLE**

DATE: 03/28/2017 **SIGNATURE OF ATTORNEY OF RECORD:**

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

Authority For Civil Cover Sheet. The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)."

II. Jurisdiction. The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

(1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.

(2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

(3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

(4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)

III. Residence (citizenship) of Principal Parties. This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the six boxes.

(1) Original Proceedings. Cases originating in the United States district courts.

(2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.

(3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

(4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

(5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

(6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.

(8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket.

Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Federal Rule of Civil Procedure 23.

Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

IX. Divisional Assignment. If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: "the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated."

Date and Attorney Signature. Date and sign the civil cover sheet.

ATTACHMENT TO CIVIL COVER SHEET

Section I

Plaintiffs:

(continued from cover sheet)

Pablo Aguero
Michael J. Allen
Kelly S. Baron
John Barton
Mark Barton
Maria Bedolla,
Jean E. Bevanmarquez
Mark J. Blackwelder
Donald E. Brenner
Deborah Brooks
Denton L. Carender, Sr.
Frank Chavez
Gina E. Davis
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(continued from cover sheet)

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Section VI

Brief Description of Cause: Tort (strict liability and negligence), fraud, breach of express warranties, and breach of implied warranties claims arising from alleged personal injury due to exposure to glyphosate-containing herbicides. Removable based on substantial federal question, federal officer, and supplemental jurisdiction.