

1 Michael L. Baum, Esq. (SBN: 119511)
2 mbaum@baumhedlundlaw.com
3 R. Brent Wisner, Esq. (SBN: 276023)
4 rbwisner@baumhedlundlaw.com
5 Cynthia Garber, Esq. (SBN: 208922)
6 cgarber@baumhedlundlaw.com
7 **BAUM, HEDLUND, ARISTEI, &**
8 **GOLDMAN, P.C.**
9 12100 Wilshire Blvd., Suite 950
10 Los Angeles, CA 90025
11 Telephone: (310) 207-3233
12 Facsimile: (310) 820-7444

Robert F. Kennedy, Jr., Esq.
rkennedy@kennedymadonna.com
Kevin J. Madonna, Esq.
kmadonna@kennedymadonna.com
KENNEDY & MADONNA, LLP
48 Dewitt Mills Road
Hurley, New York 12443
Telephone: (845) 481-2622
Facsimile: (845) 230-3111

Attorneys for Plaintiff

9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA

11 TERI MICHELLE MCCALL,
12 individually, and as successor in interest
13 for the estate of ANTHONY JACKSON
14 MCCALL, deceased,

Plaintiff,

15 vs.

16 MONSANTO COMPANY,
17 Defendant.

Case No.
COMPLAINT
DEMAND FOR JURY TRIAL

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INTRODUCTION

1
2 1. Anthony Jackson McCall (a/k/a Jack McCall) operated a farm in Cambria,
3 California for over forty years with his wife, Teri Michelle McCall (“Plaintiff”). During
4 that time, he avoided most pesticides and herbicides out of concern they could be toxic.
5 Mr. McCall, however, did use the weed killer Roundup, an herbicide created and
6 manufactured by the Monsanto Company. Roundup was supposed to be safe. After all,
7 Monsanto promoted Roundup as being harmless to humans for over thirty years—going
8 so far as to proclaim the product safe as table salt. The truth, however, is far more
9 insidious. The active chemical in Roundup, glyphosate, is a carcinogen, and Monsanto
10 has known this fact for decades.

11 2. In September 2015, Mr. McCall was admitted to the hospital to treat
12 enlarged lymph nodes in his neck. That same day, he was diagnosed with an aggressive
13 form of non-Hodgkin lymphoma. Despite an aggressive treatment involving multiple
14 rounds of chemotherapy, Mr. McCall suffered a stroke caused by his cancer treatment
15 on December 24, 2015. On December 26, 2015, he passed away.

16 3. Three years prior to Mr. McCall’s death, the family dog, Duke, who
17 played in the areas sprayed with Roundup, also developed lymphoma. He died shortly
18 thereafter. He was only six years old.

19 4. The McCalls learned of the potential link between Roundup and cancer,
20 shortly after he was diagnosed with cancer. The farm immediately stopped using
21 Roundup and, to this day, does not use any glyphosate-containing products.

22 5. Last year, the International Agency for Research on Cancer (IARC), an
23 organization within the World Health Organization (WHO), conducted an exhaustive
24 analysis on the toxicity of glyphosate. The IARC, which has already reviewed
25 hundreds of other chemical agents, convened a panel of seventeen renowned scientists
26 from eleven countries, specifically screened to avoid potential conflicts of interest, to
27 conduct a systematic review of all publically available information about glyphosate.
28 The year-long study resulted in the publication of an IARC Monograph—the

1 authoritative standard for cancer hazard assessment around the world. The IARC
2 classified glyphosate as a Group 2A hazard, meaning it is a probable human
3 carcinogen—the second highest hazard rating. Additionally, the IARC concluded there
4 was a positive association between glyphosate exposure and non-Hodgkin lymphoma.
5 As a result of the IARC’s study of glyphosate, the State of California’s Office of
6 Environmental Health Hazard Assessment (OEHHA) has decided to list glyphosate as
7 an agent “known to the state to cause cancer” under Proposition 65.

8 6. In 1970, Defendant Monsanto discovered the herbicidal properties of
9 glyphosate and began using it in its products in 1974, and marketing it under the brand
10 name Roundup. Roundup is a non-selective herbicide used to kill weeds that
11 commonly compete with the growing of crops. By 2001, glyphosate had become the
12 most-used active ingredient in American agriculture with 85–90 million pounds used
13 annually. That number grew to 185 million pounds by 2007.

14 7. Monsanto has represented Roundup as being safe to humans and the
15 environment since it began selling the herbicide. Indeed, Monsanto has proclaimed and
16 continues to proclaim to the world, and particularly to United States consumers, that
17 glyphosate-based herbicides, including Roundup, create no unreasonable risks to human
18 health or to the environment. This is untrue. Before glyphosate was first approved by
19 the Environmental Protection Agency (EPA), Monsanto knew that glyphosate could
20 pose significant risks to human health, including a risk of causing cancer. This lawsuit
21 seeks to hold Monsanto accountable for this misconduct.

PARTIES

22
23 8. Plaintiff Teri McCall resides in the County of San Luis Obispo, California.
24 Plaintiff owns a farm in Cambria, California, which Plaintiff operated with her late
25 husband, Anthony Jackson McCall (the “Decedent”), for over 40 years. The Decedent
26 regularly used Roundup on their farm. Plaintiff brings this action pursuant to the
27 applicable wrongful death and survival statutes on behalf of the Anthony Jackson
28 McCall’s estate and his wrongful death beneficiaries, Teri McCall, David McCall, Paul

1 McCall, Maggie McCall, and Alicia Suarez.

2 9. Defendant Monsanto Company (“Monsanto”) is a Delaware corporation
3 with its headquarters and principal place of business in St. Louis, Missouri. At all
4 times relevant to this complaint, Monsanto was the entity that discovered the herbicidal
5 properties of glyphosate and was the manufacturer of the Roundup at issue.

6 **JURISDICTION AND VENUE**

7 10. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332.
8 There is complete diversity of citizenship between the parties. In addition, Plaintiff
9 seeks damages in excess of \$75,000, exclusive of interest and costs.

10 11. This Court has personal jurisdiction over Monsanto insofar as Monsanto
11 is authorized and licensed to conduct business in the State of California, maintains and
12 carries on systematic and continuous contacts in this judicial district, regularly
13 transacts business within this judicial district, and regularly avails itself of the benefits
14 of this judicial district.

15 12. Additionally, Monsanto caused tortious injury by acts and omissions in
16 this judicial district and caused tortious injury in this district by acts and omissions
17 outside this district while regularly doing and soliciting business, engaging in a
18 persistent course of conduct, and deriving substantial revenue from goods used or
19 consumed and services rendered in this judicial district.

20 13. Venue is proper before this Court pursuant to 28 U.S.C. § 1391 because a
21 substantial part of the events or omissions giving rise to this claim occurred within this
22 judicial district.

23 **WRONGFUL DEATH AND SURVIVORSHIP ALLEGATIONS**

24 14. Plaintiff is a competent adult and the surviving spouse of Anthony
25 Jackson McCall, deceased (“Decedent”). She brings this action as successor in interest
26 to the estate of the Decedent, and all other persons entitled to a cause of action for
27 damages for injuries to, and the wrongful death of, the Decedent.

28 15. Plaintiff brings this action pursuant to the applicable wrongful death and

1 survival statutes.

2 16. The survivors and heirs at law of the Decedent and their relationship to
3 the Decedent are:

4 <u>Name</u>	<u>Relationship</u>
5 Alicia Suarez	Daughter
6 David McCall	Son
7 Paul McCall	Son
8 Maggie McCall	Daughter

9 17. On December 26, 2015, the Decedent died as a result of complications
10 associated with Roundup-induced cancer. Attached hereto as Exhibit A is a copy of
11 the Decedent's death certificate.

12 18. Pursuant to Cal. Civ. P. § 337.32, attached hereto as Exhibit B is a
13 declaration by the Plaintiff, Teri Michelle McCall.

14 **FACTUAL ALLEGATIONS**

15 19. Glyphosate is a broad-spectrum, non-selective herbicide used in a wide
16 variety of herbicidal products around the world, including the popular herbicide
17 Roundup.

18 20. Glyphosate interferes with a plant's ability to form aromatic amino acids
19 necessary for protein synthesis. Plants treated with glyphosate generally die within
20 two to three days. Because plants absorb glyphosate, it cannot be completely removed
21 by washing or peeling produce, or by milling, baking, or brewing grains.

22 21. The herbicidal properties of glyphosate were discovered in 1970 by
23 Monsanto chemist John Franz. The first glyphosate-based herbicide was introduced to
24 the market in the mid-1970s under the brand name Roundup.

25 22. For about 40 years, farmers around the world have used Roundup,
26 containing glyphosate, without knowing of the dangers its use poses. That is because,
27 when Monsanto first introduced Roundup, it touted glyphosate as a technological
28 breakthrough: it could kill almost every weed without causing harm either to people or

1 to the environment. History, however, has demonstrated otherwise. According to the
2 WHO, the main chemical ingredient of Roundup—glyphosate—is a probable
3 carcinogen. Those most at risk are farm workers and other individuals with workplace
4 exposure to Roundup, such as workers in garden centers, nurseries, and landscapers.
5 Monsanto assured the public that Roundup was harmless. In order to prove this,
6 Monsanto championed falsified data and attacked legitimate studies exposing
7 glyphosate’s dangers. Monsanto orchestrated a prolonged campaign of misinformation
8 to convince government agencies, farmers, and the general population that Roundup
9 was safe. As a result of this deception, agricultural workers and farmers have been
10 exposed to a carcinogen, while Monsanto has made billions.

11 **I. Registration of Herbicides**

12 23. The manufacture, formulation, and distribution of herbicides, such as
13 Roundup, is regulated under the Federal Insecticide, Fungicide, and Rodenticide Act
14 (FIFRA), 7 U.S.C. §§ 136 *et seq.* FIFRA requires that all pesticides be registered with
15 the EPA prior to distribution, sale, or use, except as described by the Act. 7 U.S.C. §
16 136a(a).

17 24. Because pesticides are toxic to plants, animals, and humans, at least to
18 some degree, the EPA requires as part of the registration process, among other things,
19 a variety of tests to evaluate the potential for exposure to pesticides, toxicity to people
20 and other potential non-target organisms, and other adverse effects on the environment.
21 Registration by the EPA, however, is not an assurance or finding of safety. The EPA
22 does not deem certain products “safe,” but only that use of the product in accordance
23 with its label directions “will not generally cause unreasonable adverse effects on the
24 environment.” 7 U.S.C. § 136a(c)(5)(D).

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

1 whether a registration should be granted or allowed to continue to be sold in commerce.

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

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

15 28. In the case of glyphosate, the EPA planned on releasing its preliminary
16 risk assessment—in relation to the re-registration process—no later than July 2015.
17 The EPA completed its review of glyphosate in early 2015, but it delayed releasing the
18 risk assessment pending further review in light of the WHO’s health-related findings.

19 **II. Scientific Fraud Underlying the Marketing and Sale of Glyphosate**

20 29. Based on early studies that glyphosate could cause cancer in laboratory
21 animals, the EPA originally classified glyphosate as possibly carcinogenic to humans
22 (Group C) in 1985. After pressure from Monsanto, including contrary studies it
23 provided to the EPA, the EPA changed its classification to evidence of non-
24 carcinogenicity in humans (Group E) in 1991. In so classifying glyphosate, however,
25 the EPA stated that “[i]t should be emphasized, however, that designation of an agent in
26 Group E is based on the available evidence at the time of evaluation and should not be
27 interpreted as a definitive conclusion that the agent will not be a carcinogen under any
28 circumstances.”

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

3 31. In the first instance, Monsanto hired Industrial Bio-Test Laboratories
4 (“IBT”) to perform and evaluate pesticide toxicology studies relating to Roundup. IBT
5 performed approximately 30 tests on glyphosate and glyphosate-containing-products,
6 including 9 of the 15 residue studies needed to register Roundup with the EPA.

7 32. In 1976, the Food and Drug Administration (“FDA”) performed an
8 inspection of IBT and discovered discrepancies between the raw data and the final
9 report relating to the toxicological impacts of glyphosate. The EPA subsequently
10 audited IBT and determined that the toxicology studies conducted for the Roundup
11 were invalid. An EPA reviewer stated, after finding “routine falsification of data” at
12 IBT, that it was “hard to believe the scientific integrity of the studies when they said
13 they took specimens of the uterus from male rabbits.”

14 33. Three top executives of IBT were convicted of fraud in 1983.

15 34. In the second incident, Monsanto hired Craven Laboratories in 1991 to
16 perform pesticide and herbicide studies, including several studies on Roundup. That
17 same year, the owner of Craven Laboratories and three of its employees were indicted,
18 and later convicted, of fraudulent laboratory practices in the testing of pesticides and
19 herbicides.

20 **III. Monsanto’s Market Dominance**

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

27 36. In response, Monsanto began the development and sale of genetically
28 engineered “Roundup Ready” seeds in 1996. Since Roundup Ready crops are resistant

1 to glyphosate, farmers can spray Roundup onto their fields during the growing season
2 without harming the crop. This allowed Monsanto to expand its market for Roundup
3 even further. By 2000, Monsanto's biotechnology seeds were planted on more than 80
4 million acres worldwide and nearly 70% of American soybeans were planted from
5 Roundup Ready seeds. It also secured Monsanto's dominant share of the
6 glyphosate/Roundup market through a marketing strategy that coupled proprietary
7 Roundup Ready seeds with continued sales of its Roundup herbicide.

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

14 **IV. Monsanto Falsely Advertised Roundup as Being Safe for Decades**

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

- 22 a. "Remember that environmentally friendly Roundup herbicide is
23 biodegradable. It won't build up in the soil so you can use Roundup with
24 confidence along customers' driveways, sidewalks and fences."
- 25 b. "And remember that Roundup is biodegradable and won't build up in the
26 soil. That will give you the environmental confidence you need to use
27 Roundup everywhere you've got a weed, brush, edging or trimming
28 problem."

- 1 c. "Roundup biodegrades into naturally occurring elements."
- 2 d. "Remember that versatile Roundup herbicide stays where you put it. That
3 means there's no washing or leaching to harm customers' shrubs or other
4 desirable vegetation."
- 5 e. "This non-residual herbicide will not wash or leach in the soil. It ... stays
6 where you apply it."
- 7 f. You can apply Roundup with "confidence because it will stay where you
8 put it," it bonds tightly to soil particles, preventing leaching. Then, soon
9 after application, soil microorganisms biodegrade Roundup into natural
10 products.
- 11 g. "Glyphosate is less toxic to rats than table salt following acute oral
12 ingestion."
- 13 h. "Glyphosate's safety margin is much greater than required. It has over a
14 1,000-fold safety margin in food and over a 700-fold safety margin for
15 workers who manufacture it or use it."
- 16 i. "You can feel good about using herbicides by Monsanto. They carry a
17 toxicity category rating of 'practically non-toxic' as it pertains to
18 mammals, birds and fish."
- 19 j. "Roundup can be used where kids and pets will play and breaks down into
20 natural material." This ad depicts a person with his head in the ground and
21 a pet dog standing in an area that has been treated with Roundup.

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

- 26 a. glyphosate-containing pesticide products or any component thereof are
27 safe, non-toxic, harmless or free from risk;
- 28 b. glyphosate-containing pesticide products or any component thereof

1 manufactured, formulated, distributed or sold by Monsanto are
2 biodegradable;

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

6 d. glyphosate-containing pesticide products or any component thereof are
7 “good” for the environment or are “known for their environmental
8 characteristics”;

9 e. glyphosate-containing pesticide products or any component thereof are
10 safer or less toxic than common consumer products other than herbicides;
11 and,

12 f. glyphosate-containing products or any component thereof might be
13 classified as “practically non-toxic.”

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

16 41. In 2009, France’s highest court ruled that Monsanto had not told the truth
17 about the safety of Roundup. The French court affirmed an earlier judgment that
18 Monsanto had falsely advertised its herbicide Roundup as “biodegradable” and that it
19 “left the soil clean.”

20 **V. Assessments of Glyphosate**

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

28 43. The established procedure for IARC Monograph evaluations is described

1 in the IARC Programme's Preamble. Evaluations are performed by panels of
2 international experts, selected on the basis of their expertise and the absence of actual
3 or apparent conflicts of interest.

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

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

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

23 47. On July 29, 2015, IARC issued its Monograph for glyphosate, Monograph
24 112. For Volume 112, the volume that assessed glyphosate, the Working Group
25 consisted of 17 experts from 11 countries who met from March 3–10, 2015, to assess
26 the carcinogenicity of certain herbicides, including glyphosate. The March meeting
27 culminated after a nearly one-year review and preparation by the IARC Secretariat and
28 the Working Group, including a comprehensive review of the latest available scientific

1 evidence. According to published procedures, the Working Group considered “reports
2 that have been published or accepted for publication in the openly available scientific
3 literature” as well as “data from governmental reports that are publicly available.”

4 48. The studies considered the various exposure groups, including
5 occupational exposure of farmers and tree nursery workers in the United States, forestry
6 workers in Canada and Finland, municipal weed-control workers in the United
7 Kingdom, and para-occupational exposure in farming families.

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

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

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

18 52. The IARC Working Group conducted a systematic review of over 15
19 studies designed to assess whether there was an association between Roundup exposure
20 in agricultural workers and Non-Hodgkin Lymphoma (NHL). The researchers
21 reviewed each study, identified the results and assessed each study’s strengths and
22 weaknesses. The IARC Working Group concluded that, despite the limited evidence
23 concerning the carcinogenicity of glyphosate in humans, a “positive association has
24 been observed for non-Hodgkin lymphoma.”

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

1 initiation-promotion study in mice.

2 54. The IARC Working Group also found that glyphosate caused DNA and
3 chromosomal damage in human cells. One study in community residents reported
4 increases in blood markers of chromosomal damage (micronuclei) after glyphosate
5 formulations were sprayed. In assessing the genotoxicity of glyphosate (the property of
6 chemical agents that damages the genetic information within a cell causing mutations,
7 which may lead to cancer), the IARC Working Group concluded “[t]here is strong
8 evidence that glyphosate causes genotoxicity.”

9 55. Additionally, the IARC assessed whether glyphosate exposure can induce
10 oxidative stress, which is thought to be involved in the development of numerous
11 conditions, including cancer, autism, and Parkinson’s disease. The IARC concluded
12 that “strong evidence exists that glyphosate . . . can induce oxidative stress.” This
13 could be an important mechanism by which Roundup causes cancer.¹

14 56. The IARC Working Group also noted that glyphosate has been detected in
15 urine of agricultural workers, indicating absorption. The IARC Working Group
16 specifically evaluated farm workers in the United States, and found that, within the days
17 following the application of Roundup to a crop, approximately 60% of farm workers
18 tested positive for glyphosate in the urine. Additionally, the IARC Working Group
19 noted that soil microbes degrade glyphosate to aminomethylphosphoric acid (AMPA).
20 Blood AMPA detection after exposure suggests intestinal microbial metabolism in
21 humans.

22 57. The IARC Working Group also reviewed an Agricultural Health Study,
23 consisting of a prospective cohort of 57,311 licensed pesticide applicators in Iowa and
24

25 ¹ In addition to DNA damage and oxidative stress, some scientists have suggested that
26 Roundup’s association with various serious health conditions is linked to the effect
27 Roundup has on the digestive system. Specifically, some scientists believe the same
28 mechanism that makes Roundup toxic to weeds also makes it toxic to the microbes
within the human gut. When humans are exposed to Roundup, it leads to a chronic
inflammatory state in the gut, as well an impaired gut barrier, which can lead to many
long-term health effects, including an increased risk of cancer.

1 North Carolina. While this study differed from others in that it was based on a self-
2 administered questionnaire, the results support an association between glyphosate
3 exposure and Multiple Myeloma, Hairy Cell Leukemia (HCL), and Chronic
4 Lymphocytic Leukemia (CLL), in addition to several other cancers.

5 58. In addition to the IARC's assessment, in 2014, scientists published a
6 systematic review and meta-analysis on the relationship between non-Hodgkin
7 lymphoma and occupational exposure to agricultural pesticides, including glyphosate,
8 in the International Journal of Environmental Research and Public Health. The study
9 showed a statistically significant association between farm workers exposed to
10 Roundup and non-Hodgkin lymphoma. The study confirmed two smaller studies from
11 2002 and 2008, published in the journal *Leukemia & Lymphoma* (2002) and the
12 International Journal on Cancer (2008), both of which also showed a statistically
13 significant increase in non-Hodgkin lymphoma among agricultural workers exposed to
14 glyphosate.

15 59. Recent studies, including a glyphosate residue study published in the
16 Journal of Environmental & Analytical Toxicology in 2014, indicate that "chronically
17 ill humans showed significantly higher glyphosate residues in urine than healthy
18 population." Glyphosate has been detected in the blood and urine of agricultural
19 workers, indicating that agricultural use of Roundup leads to its absorption.

20 60. In 1995, the Northwest Coalition for Alternatives to Pesticides reported
21 that, in California, which has the most comprehensive program for reporting pesticide-
22 caused illness, glyphosate was the third-most reported cause of pesticide illness among
23 agricultural workers.

24 61. Several countries around the world have instituted bans on the sale of
25 Roundup and other glyphosate-containing herbicides, both before and since IARC first
26 announced its assessment for glyphosate in March 2015, and more countries
27 undoubtedly will follow suit as the dangers of the use of Roundup are more widely
28 known.

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

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

10 64. France banned the private sale of Roundup and glyphosate following the
11 IARC assessment.

12 65. Bermuda banned both the private and commercial sale of glyphosate,
13 including Roundup. The Bermuda government explained: “Following a recent
14 scientific study carried out by a leading cancer agency, the importation of weed spray
15 ‘Roundup’ has been suspended.”

16 66. The Sri Lankan government banned the private and commercial use of
17 glyphosate out of concern that glyphosate has been linked to fatal kidney disease in
18 agricultural workers.

19 67. The government of Columbia announced a ban on using Roundup and
20 glyphosate to destroy illegal plantations of coca, the raw ingredient for cocaine in
21 response to the IARC’s assessment.

22 68. In late 2015, following a public comment period, the State of California’s
23 Office of Environmental Health Hazard Assessment (OEHHA) has determined to list
24 glyphosate as an agent “known to the state to cause cancer” pursuant to Proposition 65.

25 69. In November 2015, 96 prominent experts, including almost the whole
26 IARC team, reiterated IARC’s assessment that Roundup is probably a human
27 carcinogen.

28 70. In late February 2016, another 14 scientists signed a consensus statement

1 in the Environmental Health journal, saying regulatory estimates of tolerable exposure
2 levels for glyphosate were based on outdated science.

3 **VI. The Decedent's Exposure to Glyphosate and Subsequent Death**

4 71. Mr. McCall served in the U.S. Army during the Vietnam War as a First
5 Lieutenant, Artillery Forward Observer, in the 101st Airborne Division, where he was
6 awarded the Bronze Star and Distinguished Flying Cross.

7 72. When Mr. McCall returned from the war, he started a farm in Cambria,
8 California in 1975. That same year, Mr. McCall married Plaintiff, Teri Michelle
9 McCall, on the farm property. Over the next forty years of marriage, Mr. and Mrs.
10 McCall had three children, David, Paul, and Maggie.

11 73. Mr. McCall primarily worked the farmland himself, whereas Mrs. McCall
12 focused on farm administration and management. They mainly grew fruit crops—
13 apricots, peaches, plums, and apples—and also some avocados and vegetables. While
14 working the farm, Mr. McCall would regularly apply Monsanto's Roundup as an
15 herbicide. As a general matter, Mr. McCall refrained from using other herbicides and
16 pesticides out of a concern they might be hazardous to his own and his family's health.
17 Mr. McCall used Roundup in areas of the farm that could not be reached by tractor.

18 74. Mr. McCall did not smoke and there was no history of cancer in his
19 family.

20 75. In 2013, the McCall's dog, Duke, who spent much of his days playing in
21 those areas exposed to Roundup, passed away after developing lymphoma. He was
22 only six years old. At the time, the McCalls did not suspect that the cancer was caused
23 by Roundup exposure.

24 76. In September 2015, Mr. McCall, accompanied by his wife, was admitted
25 to a Veteran's hospital, complaining of swelling in his neck. During that visit, the
26 treating physicians conducted a biopsy on the affected area and tested it for cancer. It
27 came back positive for a rare and aggressive form of non-Hodgkin lymphoma.

28 77. Over the next few months, Mr. McCall underwent aggressive treatment

1 for his cancer, including multiple rounds of chemotherapy.

2 78. During this time, Mr. McCall became aware of the potential link between
3 glyphosate and cancer. He and the Plaintiff immediately stopped using the product on
4 their farm, and have not used it since.

5 79. Having had his immune system suppressed with the cancer treatment, on
6 Dec 22, 2015, Mr. McCall was admitted to the Sierra Vista Hospital in San Luis
7 Obispo, sick with fever. He then had a stroke on Christmas Eve, while in the hospital,
8 and passed away on Dec 26, 2015. The stated cause of death on Mr. McCall's death
9 certificate was "Metastatic Large Cell Lymphoma."

10 **LIMITATION ON ALLEGATIONS**

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

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

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

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

26
27
28 **COUNT I: STRICT LIABILITY (DESIGN DEFECT)**

1 84. Plaintiff incorporates by reference each and every allegation set forth in
2 the preceding paragraphs as if fully stated herein.

3 85. Plaintiff brings this strict liability claim against Defendant for defective
4 design.

5 86. At all times relevant to this litigation, Defendant engaged in the business
6 of testing, developing, designing, manufacturing, marketing, selling, distributing, and
7 promoting Roundup products, which are defective and unreasonably dangerous to
8 consumers, including the Decedent, thereby placing Roundup products into the stream
9 of commerce. These actions were under the ultimate control and supervision of
10 Defendant. At all times relevant to this litigation, Defendant designed, researched,
11 developed, manufactured, produced, tested, assembled, labeled, advertised, promoted,
12 marketed, sold, and distributed the Roundup products used by Decedent, as described
13 above.

14 87. At all times relevant to this litigation, Defendant's Roundup products
15 were manufactured, designed, and labeled in an unsafe, defective, and inherently
16 dangerous manner that was dangerous for use by or exposure to the public, and, in
17 particular, the Decedent.

18 88. At all times relevant to this litigation, Defendant's Roundup products
19 reached the intended consumers, handlers, and users or other persons coming into
20 contact with these products in California and throughout the United States, including
21 the Decedent, without substantial change in their condition as designed, manufactured,
22 sold, distributed, labeled, and marketed by Defendant.

23 89. Defendant's Roundup products, as researched, tested, developed,
24 designed, licensed, manufactured, packaged, labeled, distributed, sold, and marketed
25 by Defendant were defective in design and formulation in that, when they left the
26 hands of the Defendant's manufacturers and/or suppliers, they were unreasonably
27 dangerous and dangerous to an extent beyond that which an ordinary consumer would
28 contemplate.

1 90. Defendant's Roundup products, as researched, tested, developed, designed,
2 licensed, manufactured, packaged, labeled, distributed, sold, and marketed by
3 Defendant were defective in design and formulation in that, when they left the hands of
4 Defendant's manufacturers and/or suppliers, the foreseeable risks exceeded the alleged
5 benefits associated with their design and formulation.

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

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

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

1 Roundup products that exposure to Roundup and specifically, its active
2 ingredient glyphosate, could result in cancer and other severe illnesses
3 and injuries.

4 g. Defendant did not conduct adequate post-marketing surveillance of its
5 Roundup products.

6 h. Defendant could have employed safer alternative designs and
7 formulations.

8 93. The Decedent was exposed to Defendant's Roundup products in the
9 course of his work as a farmer, as described above, without knowledge of Roundup's
10 dangerous characteristics.

11 94. At all times relevant to this litigation, the Decedent used and/or was
12 exposed to the use of Defendant's Roundup products in an intended or reasonably
13 foreseeable manner, i.e., as a farmer, without knowledge of Roundup's dangerous
14 characteristics.

15 95. The Decedent could not reasonably have discovered the defects and risks
16 associated with Roundup or glyphosate-containing products before or at the time of
17 exposure due to the Defendant's suppression of scientific information linking
18 glyphosate to cancer.

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

26 97. At the time Roundup products left Defendant's control, there was a
27 practical, technically feasible and safer alternative design that would have prevented
28 the harm without substantially impairing the reasonably anticipated or intended

1 function of Defendant's herbicides.

2 98. Defendant's defective design of its Roundup products was willful,
3 wanton, fraudulent, malicious, and conducted with reckless disregard for the health
4 and safety of users of the Roundup products, including Plaintiff herein.

5 99. Therefore, as a result of the unreasonably dangerous condition of its
6 Roundup products, Defendant is strictly liable to Plaintiff.

7 100. The defects in Defendant's Roundup products were substantial and
8 contributing factors in causing Decedent's injuries and death, and, but for Defendant's
9 misconduct and omissions, Decedent would not have sustained his injuries.

10 101. Defendant's conduct, as described above, was reckless. Defendant risked
11 the lives of consumers and users of its products, including Decedent, with knowledge
12 of the safety problems associated with Roundup and glyphosate-containing products,
13 and suppressed this knowledge from the general public. Defendant made conscious
14 decisions not to redesign, warn or inform the unsuspecting public. Defendant's
15 reckless conduct warrants an award of punitive damages.

16 102. As a direct and proximate result of Defendant placing its defective
17 Roundup products into the stream of commerce, Decedent died and Decedent's heirs
18 have sustained pecuniary loss resulting from the loss of Decedent's society, comfort,
19 attention, protection, services and support and general damages in a sum in excess of
20 the jurisdictional minimum of this Court.

21 103. As a proximate result of the Defendant placing its defective Roundup
22 products into the stream of commerce, as alleged herein, there was a measurable and
23 significant interval of time during which Decedent suffered great mental anguish and
24 other personal injury and damages before his death.

25 104. As a proximate result of the Defendant placing its defective Roundup
26 products into the stream of commerce, as alleged herein, before his death, Decedent
27 sustained a loss of income, loss of earning capacity and property damage, including
28 lost income from his farm.

1 105. As a further proximate result of the conduct of Defendant, Plaintiff has
2 incurred expenses for funeral, burial and other related costs pertaining to Decedent's
3 death, in amounts to be proved at trial.

4 106. WHEREFORE, Plaintiff respectfully requests that this Court enter
5 judgment in Plaintiff's favor for compensatory and punitive damages, together with
6 interest, costs herein incurred, attorneys' fees and all such other and further relief as
7 this Court deems just and proper.

8 **COUNT II: STRICT LIABILITY (FAILURE TO WARN)**

9 107. Plaintiff incorporates by reference each and every allegation set forth in
10 the preceding paragraphs as if fully stated herein.

11 108. Plaintiff brings this strict liability claim against Defendant for failure to
12 warn.

13 109. At all times relevant to this litigation, Defendant engaged in the business of
14 testing, developing, designing, manufacturing, marketing, selling, distributing, and
15 promoting Roundup products, which are defective and unreasonably dangerous to
16 consumers, including Decedent, because they do not contain adequate warnings or
17 instructions concerning the dangerous characteristics of Roundup and specifically, the
18 active ingredient glyphosate. These actions were under the ultimate control and
19 supervision of Defendant.

20 110. Defendant researched, developed, designed, tested, manufactured,
21 inspected, labeled, distributed, marketed, promoted, sold, and otherwise released into
22 the stream of commerce its Roundup products, and in the course of same, directly
23 advertised or marketed the products to consumers and end users, including Decedent,
24 and therefore had a duty to warn of the risks associated with the use of Roundup and
25 glyphosate-containing products.

26 111. At all times relevant to this litigation, Defendant had a duty to properly
27 test, develop, design, manufacture, inspect, package, label, market, promote, sell,
28 distribute, maintain, supply, provide proper warnings, and take such steps as necessary

1 to ensure its Roundup products did not cause users and consumers to suffer from
2 unreasonable and dangerous risks. Defendant had a continuing duty to warn Decedent
3 of the dangers associated with Roundup use and exposure. Defendant, as manufacturer,
4 seller, or distributor of chemical herbicides is held to the knowledge of an expert in the
5 field.

6 112. At the time of manufacture, Defendant could have provided the warnings
7 or instructions regarding the full and complete risks of Roundup and glyphosate-
8 containing products because it knew or should have known of the unreasonable risks of
9 harm associated with the use of and/or exposure to such products.

10 113. At all times relevant to this litigation, Defendant failed to investigate,
11 study, test, or promote the safety or to minimize the dangers to users and consumers of
12 its product and to those who would foreseeably use or be harmed by Defendant's
13 herbicides, including Decedent.

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

21 115. Defendant knew or should have known that its products created significant
22 risks of serious bodily harm to consumers, as alleged herein, and Defendant failed to
23 adequately warn consumers, i.e., the reasonably foreseeable users, of the risks of
24 exposure to its products. Defendant has wrongfully concealed information concerning
25 the dangerous nature of Roundup and its active ingredient glyphosate, and further made
26 false and/or misleading statements concerning the safety of Roundup and glyphosate.

27 116. At all times relevant to this litigation, Defendant's Roundup products
28 reached the intended consumers, handlers, and users or other persons coming into

1 contact with these products in California and throughout the United States, including
2 Plaintiff, without substantial change in their condition as designed, manufactured, sold,
3 distributed, labeled, and marketed by Defendant.

4 117. Decedent was exposed to Defendant's Roundup products in the course of
5 his work as a farmer, as described above, without knowledge of their dangerous
6 characteristics.

7 118. At all times relevant to this litigation, Decedent used and/or was exposed
8 to the use of Defendant's Roundup products while using them for their intended or
9 reasonably foreseeable purposes, without knowledge of their dangerous characteristics.

10 119. Decedent could not have reasonably discovered the defects and risks
11 associated with Roundup or glyphosate-containing products prior to or at the time of
12 Decedent's exposure. Decedent relied upon the skill, superior knowledge, and
13 judgment of Defendant to know about and disclose serious health risks associated with
14 using the products.

15 120. Defendant knew or should have known that the minimal warnings
16 disseminated with its Roundup products were inadequate, failed to communicate
17 adequate information on the dangers and safe use/exposure, and failed to communicate
18 warnings and instructions that were appropriate and adequate to render the products
19 safe for their ordinary, intended and reasonably foreseeable uses, including agricultural
20 and horticultural applications.

21 121. The information that Defendant did provide or communicate failed to
22 contain relevant warnings, hazards, and precautions that would have enabled farmers
23 such as Decedent to utilize the products safely and with adequate protection. Instead,
24 Defendant disseminated information that was inaccurate, false and misleading, and
25 which failed to communicate accurately or adequately the comparative severity,
26 duration, and extent of the risk of injuries with use of and/or exposure to Roundup and
27 glyphosate; continued to aggressively promote the efficacy of its products, even after it
28 knew or should have known of the unreasonable risks from use or exposure; and

1 concealed, downplayed, or otherwise suppressed, through aggressive marketing and
2 promotion, any information or research about the risks and dangers of exposure to
3 Roundup and glyphosate.

4 122. This alleged failure to warn is not limited to the information contained on
5 Roundup's labeling. The Defendant was able, in accord with federal law, to comply
6 with California law by disclosing the known risks associated with Roundup through
7 other non-labeling mediums, i.e., promotion, advertisements, public service
8 announcements, and/or public information sources. The Defendant, however, did not
9 disclose these known risks through any medium.

10 123. To this day, Defendant has failed to adequately and accurately warn of the
11 risks of cancer associated with the use of and exposure to Roundup and its active
12 ingredient glyphosate.

13 124. As a result of their inadequate warnings, Defendant's Roundup products
14 were defective and unreasonably dangerous when they left the possession and/or
15 control of Defendant, were distributed by Defendant, and used by Decedent in the
16 course of work as a farmer.

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

21 126. Had Defendant provided adequate warnings and instructions and properly
22 disclosed and disseminated the risks associated with its Roundup products, Decedent
23 could have avoided the risk of developing injuries and could have obtained or used
24 alternative herbicides.

25 127. As a direct and proximate result of Defendant placing its defective
26 Roundup products into the stream of commerce, Decedent died and Decedent's heirs
27 have sustained pecuniary loss resulting from the loss of Decedent's society, comfort,
28 attention, protection, services and support and general damages in a sum in excess of

1 the jurisdictional minimum of this Court.

2 128. As a proximate result of Defendant placing its defective Roundup
3 products into the stream of commerce, as alleged herein, there was a measurable and
4 significant interval of time during which Decedent suffered great mental anguish and
5 other personal injury and damages before his death.

6 129. As a proximate result of Defendant placing its defective Roundup
7 products into the stream of commerce, as alleged herein, before his death, Decedent
8 sustained a loss of income, loss of earning capacity and property damage, including
9 lost income from his farm.

10 130. As a further proximate result of Defendant's conduct, Plaintiff has
11 incurred expenses for funeral, burial and other related costs pertaining to Decedent's
12 death, in amounts to be proved at trial.

13 131. WHEREFORE, Plaintiff respectfully requests that this Court enter
14 judgment in Plaintiff's favor for compensatory and punitive damages, together with
15 interest, costs herein incurred, attorneys' fees and all such other and further relief as
16 this Court deems just and proper.

17 **COUNT III: NEGLIGENCE**

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

20 133. Defendant, directly or indirectly, caused Roundup products to be sold,
21 distributed, packaged, labeled, marketed, promoted, and/or used by Decedent.

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

27 135. At all times relevant to this litigation, Defendant had a duty to exercise
28 reasonable care in the marketing, advertisement, and sale of the Roundup products.

1 Defendant's duty of care owed to consumers and the general public included providing
2 accurate, true, and correct information concerning the risks of using Roundup and
3 appropriate, complete, and accurate warnings concerning the potential adverse effects
4 of exposure to Roundup, and, in particular, its active ingredient glyphosate.

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

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

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

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

25 140. Defendant was negligent in its promotion of Roundup, outside of the
26 labeling context, by failing to disclose material risk information as part of its promotion
27 and marketing of Roundup, including the Internet, television, print advertisements, etc.
28 Nothing prevented Defendant from being honest in its promotional activities, and in

1 fact, Defendant had a duty to disclose the truth about the risks associated with Roundup
2 in its promotional efforts, outside of the of the context of labeling.

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

7 142. Defendant's negligence included:

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

1 that use of and exposure to Roundup presented severe risks of cancer and
2 other grave illnesses;

- 3 h. Failing to warn Decedent, consumers, and the general public that the
4 product's risk of harm was unreasonable and that there were safer and
5 effective alternative herbicides available to the Decedent and other
6 consumers;
- 7 i. Systematically suppressing or downplaying contrary evidence about the
8 risks, incidence, and prevalence of the side effects of Roundup and
9 glyphosate-containing products;
- 10 j. Representing that its Roundup products were safe for their intended use
11 when, in fact, Defendant knew or should have known the products were
12 not safe for their intended purpose;
- 13 k. Declining to make or propose any changes to Roundup products' labeling
14 or other promotional materials that would alert consumers and the general
15 public of the risks of Roundup and glyphosate;
- 16 l. Advertising, marketing, and recommending the use of the Roundup
17 products, while concealing and failing to disclose or warn of the dangers
18 known (by Defendant) to be associated with or caused by the use of or
19 exposure to Roundup and glyphosate;
- 20 m. Continuing to disseminate information to its consumers, which indicate or
21 imply that Defendant's Roundup products are not unsafe for use in the
22 agricultural and horticultural industries; and
- 23 n. Continuing the manufacture and sale of its products with the knowledge
24 that the products were unreasonably unsafe and dangerous.

25 143. Defendant knew and/or should have known that it was foreseeable
26 consumers such as the Decedent would suffer injuries as a result of Defendant's failure
27 to exercise ordinary care in the manufacturing, marketing, labeling, distribution, and
28 sale of Roundup.

1 144. The Decedent did not know the nature and extent of the injuries that could
2 result from the intended use of and/or exposure to Roundup or its active ingredient
3 glyphosate.

4 145. Defendant's negligence was the proximate cause of Decedent's injuries
5 and death, i.e., absent Defendant's negligence, Decedent would not have developed
6 cancer.

7 146. Defendant's conduct, as described above, was reckless. Defendant
8 regularly risks the lives of consumers and users of its products, including Decedent,
9 with full knowledge of the dangers of its products. Defendant has made conscious
10 decisions not to redesign, re-label, warn, or inform the unsuspecting public, including
11 Decedent. Defendant's reckless conduct therefore warrants an award of punitive
12 damages.

13 147. As a direct and proximate result of Defendant placing its defective
14 Roundup products into the stream of commerce, Decedent died and Decedent's heirs
15 have sustained pecuniary loss resulting from the loss of Decedent's society, comfort,
16 attention, protection, services and support and general damages in a sum in excess of
17 the jurisdictional minimum of this Court.

18 148. As a proximate result of Defendant's negligence, as alleged herein, there
19 was a measurable and significant interval of time during which Decedent suffered
20 great mental anguish and other personal injury and damages before his death.

21 149. As a proximate result of Defendant's negligence, as alleged herein, before
22 his death Decedent sustained a loss of income, loss of earning capacity and property
23 damage, including lost income from his farm.

24 150. As a further proximate result of Defendant's conduct, Plaintiff has
25 incurred expenses for funeral, burial and other related costs pertaining to Decedent's
26 death, in amounts to be proved at trial.

27 151. WHEREFORE, Plaintiff respectfully requests that this Court enter
28 judgment in Plaintiff's favor for compensatory and punitive damages, together with

1 interest, costs herein incurred, attorneys' fees and all such other and further relief as
2 this Court deems just and proper.

3 **COUNT IV: FRAUD**

4 152. Plaintiff incorporates by reference each and every allegation set forth in
5 the preceding paragraphs as if fully stated herein.

6 153. Defendant has defrauded the agricultural community in general and
7 Decedent in particular by misrepresenting the true safety of Roundup and by failing to
8 disclose known risks of cancer.

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

19 155. Due to these misrepresentations and omissions, at all times relevant to this
20 litigation, Defendant's Roundup was misbranded under 7 U.S.C. § 136(g) and its
21 distribution within California and around the United States was a violation of 7 U.S.C.
22 § 136j and 40 C.F.R. § 156.10(a)(5).

23 156. The following are a selection of specific instances when the Defendant
24 made the above misrepresentations and/or omissions concerning Roundup and/or
25 glyphosate to Decedent:

- 26 a. On February 1, 1989, Decedent purchased Roundup from a farm supply
27 store in Morro Bay, California. When Decedent purchased Roundup, the
28 labeling on the product did not warn or disclose the true safety risks of

1 Roundup to Decedent, as described in the preceding numbered paragraph.
2 Since that true risk information was known to Defendant and was not
3 reasonably knowable to reasonable consumers, the Decedent was unaware
4 of these material facts and/or omissions prior to purchasing the product.
5 Decedent paid \$87.78 for the product, money the decedent would not
6 have expended absent the Defendant's misrepresentations and/or material
7 omissions.

8 b. On May 18, 1989, the Decedent purchased Roundup from a farm supply
9 store in Morro Bay, California. When Decedent purchased Roundup, the
10 labeling on the product did not warn or disclose the true safety risks of
11 Roundup to the Decedent, as described in the preceding numbered
12 paragraph. Since that true risk information was known to Defendant and
13 was not reasonably knowable to reasonable consumers, Decedent was
14 unaware of these material facts and/or omissions prior to purchasing the
15 product. Decedent paid \$87.81 for the product, money the decedent
16 would not have expended absent Defendant's misrepresentations and/or
17 material omissions.

18 c. On July 30, 1990, Decedent purchased Roundup from a farm supply store
19 in San Luis Obispo, California. When Decedent purchased Roundup, the
20 labeling on the product did not warn or disclose the true safety risks of
21 Roundup to Decedent, as described in the preceding numbered paragraph.
22 Since that true risk information was known to Defendant and was not
23 reasonably knowable to reasonable consumers, Decedent was unaware of
24 these material facts and/or omissions prior to purchasing the product.
25 Decedent paid \$89.00 for the product, money the decedent would not have
26 expended absent Defendant's misrepresentations and/or material
27 omissions.

28 d. On May 6 1, 1991, the Decedent purchased Roundup from a farm supply

1 store in San Luis Obispo, California. When Decedent purchased Roundup,
 2 the labeling on the product did not warn or disclose the true safety risks of
 3 Roundup to Decedent, as described in the preceding numbered paragraph.
 4 Since that true risk information was known to Defendant and was not
 5 reasonably knowable to reasonable consumers, Decedent was unaware of
 6 these material facts and/or omissions prior to purchasing the product.
 7 Decedent paid \$89.74 for the product, money the decedent would not have
 8 expended absent Defendant’s misrepresentations and/or material
 9 omissions.

10 e. On May 11, 1992, Decedent purchased Roundup from a farm supply store
 11 in San Luis Obispo, California. When Decedent purchased Roundup, the
 12 labeling on the product did not warn or disclose the true safety risks of
 13 Roundup to Decedent, as described in the preceding numbered paragraph.
 14 Since that true risk information was known to Defendant and was not
 15 reasonably knowable to reasonable consumers, Decedent was unaware of
 16 these material facts and/or omissions prior to purchasing the product.
 17 Decedent paid \$146.26 for the product, money Decedent would not have
 18 expended absent Defendant’s misrepresentations and/or material
 19 omissions.

20 f. On December 28, 1999, Decedent purchased Roundup from a farm supply
 21 store in San Luis Obispo, California. When Decedent purchased Roundup,
 22 the labeling on the product did not warn or disclose the true safety risks of
 23 Roundup to Decedent, as described in the preceding numbered paragraph.
 24 Since that true risk information was known to Defendant and was not
 25 reasonably knowable to reasonable consumers, the Decedent was unaware
 26 of these material facts and/or omissions prior to purchasing the product.
 27 Decedent paid \$108.95 for the product, money Decedent would not have
 28 expended absent Defendant’s misrepresentations and/or material

1 omissions.

2 g. On December 28, 1999, Decedent purchased Roundup from a farm supply
3 store in San Luis Obispo, California. When Decedent purchased
4 Roundup, the labeling on the product did not warn or disclose the true
5 safety risks of Roundup to the Decedent, as described in the preceding
6 numbered paragraph. Since that true risk information was known to
7 Defendant and was not reasonably knowable to reasonable consumers,
8 Decedent was unaware of these material facts and/or omissions prior to
9 purchasing the product. The Decedent paid \$108.95 for the product,
10 money Decedent would not have expended absent the Defendant's
11 misrepresentations and/or material omissions.

12 h. On December 28, 1999, Decedent purchased Roundup from a farm supply
13 store in San Luis Obispo, California. When Decedent purchased Roundup,
14 the labeling on the product did not warn or disclose the true safety risks of
15 Roundup to the Decedent, as described in the preceding numbered
16 paragraph. Since that true risk information was known to Defendant and
17 was not reasonably knowable to reasonable consumers, Decedent was
18 unaware of these material facts and/or omissions prior to purchasing the
19 product. Decedent paid \$108.95 for the product, money Decedent would
20 not have expended absent the Defendant's misrepresentations and/or
21 material omissions.

22 i. On July 31, 2002, Decedent purchased Roundup from a farm supply store
23 in San Luis Obispo, California. When Decedent purchased Roundup, the
24 labeling on the product did not warn or disclose the true safety risks of
25 Roundup to Decedent, as described in the preceding numbered paragraph.
26 Since that true risk information was known to Defendant and was not
27 reasonably knowable to reasonable consumers, Decedent was unaware of
28 these material facts and/or omissions prior to purchasing the product. The

1 Decedent paid \$136.00 for the product, money Decedent would not have
2 expended absent the Defendant's misrepresentations and/or material
3 omissions.

4 j. On March 18, 2009, Decedent purchased Roundup from a farm supply
5 store in San Luis Obispo, California. When the Decedent purchased
6 Roundup, the labeling on the product did not warn or disclose the true
7 safety risks of Roundup to the Decedent, as described in the preceding
8 numbered paragraph. Since that true risk information was known to
9 Defendant and was not reasonably knowable to reasonable consumers,
10 Decedent was unaware of these material facts and/or omissions prior to
11 purchasing the product. Decedent paid \$149.99 for the product, money
12 Decedent would not have expended absent Defendant's
13 misrepresentations and/or material omissions.

14 k. On April 11, 2011, Decedent purchased Roundup from a farm supply
15 store in San Luis Obispo, California. When Decedent purchased
16 Roundup, the labeling on the product did not warn or disclose the true
17 safety risks of Roundup to Decedent, as described in the preceding
18 numbered paragraph. Since that true risk information was known to
19 Defendant and was not reasonably knowable to reasonable consumers,
20 Decedent was unaware of these material facts and/or omissions prior to
21 purchasing the product. Decedent paid \$79.99 for the product, money
22 Decedent would not have expended absent Defendant's
23 misrepresentations and/or material omissions.

24 l. On September 28, 2011, Decedent purchased Roundup from a farm
25 supply store in San Luis Obispo, California. When Decedent purchased
26 Roundup, the labeling on the product did not warn or disclose the true
27 safety risks of Roundup to Decedent, as described in the preceding
28 numbered paragraph. Since that true risk information was known to

1 Defendant and was not reasonably knowable to reasonable consumers,
2 Decedent was unaware of these material facts and/or omissions prior to
3 purchasing the product. Decedent paid \$107.99 for the product, money
4 Decedent would not have expended absent Defendant's
5 misrepresentations and/or material omissions.

6 m. On May 22, 2012, Decedent purchased Roundup from a farm supply store
7 in San Luis Obispo, California. When Decedent purchased Roundup, the
8 labeling on the product did not warn or disclose the true safety risks of
9 Roundup to Decedent, as described in the preceding numbered paragraph.
10 Since that true risk information was known to Defendant and was not
11 reasonably knowable to reasonable consumers, Decedent was unaware of
12 these material facts and/or omissions prior to purchasing the product.
13 Decedent paid \$94.99 for the product, money Decedent would not have
14 expended absent Defendant's misrepresentations and/or material
15 omissions.

16 n. On March 25, 2013, Decedent purchased Roundup from a farm supply
17 store in San Luis Obispo, California. When the Decedent purchased
18 Roundup, the labeling on the product did not warn or disclose the true
19 safety risks of Roundup to Decedent, as described in the preceding
20 numbered paragraph. Since that true risk information was known to
21 Defendant and was not reasonably knowable to reasonable consumers,
22 Decedent was unaware of these material facts and/or omissions prior to
23 purchasing the product. The Decedent paid \$105.99 for the product,
24 money Decedent would not have expended absent Defendant's
25 misrepresentations and/or material omissions.

26 o. On May 8, 2014, Decedent purchased Roundup from a farm supply store
27 in San Luis Obispo, California. When Decedent purchased Roundup, the
28 labeling on the product did not warn or disclose the true safety risks of

1 Roundup to Decedent, as described in the preceding numbered paragraph.
2 Since that true risk information was known to Defendant and was not
3 reasonably knowable to reasonable consumers, Decedent was unaware of
4 these material facts and/or omissions prior to purchasing the product.
5 Decedent paid 79.99 for the product, money Decedent would not have
6 expended absent Defendant's misrepresentations and/or material
7 omissions.

8 p. On December 22, 2014, Decedent purchased Roundup from a farm supply
9 store in San Luis Obispo, California. When Decedent purchased
10 Roundup, the labeling on the product did not warn or disclose the true
11 safety risks of Roundup to Decedent, as described in the preceding
12 numbered paragraph. Since that true risk information was known to
13 Defendant and was not reasonably knowable to reasonable consumers,
14 Decedent was unaware of these material facts and/or omissions prior to
15 purchasing the product. Decedent paid \$79.99 for the product, money
16 Decedent would not have expended absent Defendant's
17 misrepresentations and/or material omissions.

18 157. Decedent relied on the Defendant's misrepresentations and/or material
19 omissions regarding the safety of Roundup and its active ingredient glyphosate in
20 deciding whether to purchase and/or use the product on his farm. Decedent did not
21 know nor could he reasonably have known of the misrepresentations and/or material
22 omissions by Defendant concerning Roundup and its active ingredient glyphosate.

23 158. The misrepresentations and/or material omissions that form the basis of
24 this fraud claim are not limited to statements made on the Roundup labeling, as defined
25 under federal law, but also involve Defendant's representations and omissions made as
26 part of its promotion and marketing of Roundup, including on the Internet, television,
27 in print advertisements, etc. Nothing prevented Defendant from disclosing the truth
28 about the risks associated with Roundup in its promotional efforts outside of the

1 labeling context, using the forms of media and promotion Defendant traditionally used
2 to promote the product's efficacy and benefits.

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

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

17 161. As a proximate result of Defendant's fraudulent and deceitful conduct and
18 representations, Decedent died and Plaintiff has sustained damages and other losses in
19 an amount to be proven at trial.

20 162. As a proximate result of Defendant's fraud, as alleged herein, before his
21 death, Decedent sustained a loss of income, loss of earning capacity and property
22 damage, including lost income from his farm.

23 163. As a further proximate result of Defendant's conduct, Plaintiff has
24 incurred expenses for funeral, burial and other related costs pertaining to Decedent's
25 death, in amounts to be proved at trial.

26 164. WHEREFORE, Plaintiff respectfully requests that this Court enter
27 judgment in Plaintiff's favor for compensatory and punitive damages, together with
28 interest, costs herein incurred, attorneys' fees and all such other and further relief as

1 this Court deems just and proper.

2 **COUNT V: BEACH OF EXPRESS WARRANTIES**

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

5 166. At all times relevant to this litigation, Defendant engaged in the business of
6 testing, developing, designing, manufacturing, marketing, selling, distributing, and
7 promoting its Roundup products, which are defective and unreasonably dangerous to
8 consumers, including Plaintiff, thereby placing Roundup products into the stream of
9 commerce. These actions were under the ultimate control and supervision of Defendant.

10 167. Defendant had a duty to exercise reasonable care in the research,
11 development, design, testing, packaging, manufacture, inspection, labeling,
12 distributing, marketing, promotion, sale, and release of its Roundup products, including
13 a duty to:

- 14 a. ensure that its products did not cause the user unreasonably dangerous
15 side effects;
- 16 b. warn of dangerous and potentially fatal side effects; and
- 17 c. disclose adverse material facts, such as the true risks associated with the
18 use of and exposure to Roundup and glyphosate-containing products,
19 when making representations to consumers and the general public,
20 including Plaintiff.

21 168. As alleged throughout this pleading, the ability of Defendant to properly
22 disclose those risks associated with Roundup is not limited representations made on
23 the labeling.

24 169. At all times relevant to this litigation, Defendant expressly represented
25 and warranted to the purchasers of its products, by and through statements made by
26 Defendant in labels, publications, package inserts, and other written materials intended
27 for consumers and the general public, that its Roundup products were safe to human
28 health and the environment, effective, fit, and proper for their intended use. Defendant

1 advertised, labeled, marketed, and promoted Roundup products, representing the
2 quality to consumers and the public in such a way as to induce their purchase or use,
3 thereby making an express warranty that its Roundup products would conform to the
4 representations.

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

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

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

21 173. Defendant breached these warranties because, among other things, its
22 Roundup products were defective, dangerous, unfit for use, did not contain labels
23 representing the true and adequate nature of the risks associated with their use, and were
24 not merchantable or safe for their intended, ordinary, and foreseeable use and purpose.
25 Specifically, Defendant breached the warranties in the following ways:

- 26 a. Defendant represented through its labeling, advertising, and marketing
27 materials that its Roundup products were safe, and fraudulently withheld
28 and concealed information about the risks of serious injury associated

1 with use of and/or exposure to Roundup and glyphosate by expressly
2 limiting the risks associated with use and/or exposure within its warnings
3 and labels; and

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

9 174. The Decedent detrimentally relied on the express warranties and
10 representations of Defendant concerning the safety and/or risk profile of Roundup in
11 making a decision to purchase the product. Decedent reasonably relied upon Defendant
12 to disclose known defects, risks, dangers, and side effects of Roundup and glyphosate.
13 Once Decedent discovered the relationship between Roundup and cancer, the Decedent
14 stopped using the product on his farm. He would not have purchased or used Roundup
15 had the Defendant properly disclose the risks associated with the product, either through
16 advertising, labeling, or any other form of disclosure.

17 175. Defendant had sole access to material facts concerning the nature of the
18 risks associated with its Roundup products as expressly stated within its warnings and
19 labels, and Defendant knew that consumers and users such as Plaintiff could not have
20 reasonably discovered that the risks expressly included in Roundup warnings and labels
21 were inadequate and inaccurate.

22 176. Decedent had no knowledge of the falsity or incompleteness of
23 Defendant's statements and representations concerning Roundup.

24 177. Decedent used and/or was exposed to the use of Roundup as researched,
25 developed, designed, tested, manufactured, inspected, labeled, distributed, packaged,
26 marketed, promoted, sold, or otherwise released into the stream of commerce by
27 Defendant.

28 178. Had the warnings, labels, advertisements, or promotional material for

1 Roundup products accurately and adequately set forth the true risks associated with the
2 use of such products, including Decedent's injuries, rather than expressly excluding
3 such information and warranting that the products were safe for their intended use,
4 Decedent could have avoided the injuries complained of herein.

5 179. As a direct and proximate result of Defendant breach of express warranty,
6 the Decedent died and Decedent's heirs have sustained pecuniary loss resulting from
7 the loss of Decedent's society, comfort, attention, protection, services and support and
8 general damages in a sum in excess of the jurisdictional minimum of this Court.

9 180. As a proximate result of the Defendant's breach of express warranty, as
10 alleged herein, there was a measurable and significant interval of time during which the
11 Decedent suffered great mental anguish and other personal injury and damages before
12 his death.

13 181. As a proximate result of the Defendant's breach of express warranty, as
14 alleged herein, before his death the Decedent sustained a loss of income, loss of earning
15 capacity and property damage, including lost income from his farm.

16 182. As a proximate result of the conduct of Defendant's breach of express
17 warranty, Plaintiff incurred expenses for funeral, burial and other related costs
18 pertaining to Decedent's death, in amounts to be proved at trial.

19 183. WHEREFORE, Plaintiff respectfully requests that this Court enter
20 judgment in Plaintiff's favor for compensatory and punitive damages, together with
21 interest, costs herein incurred, attorneys' fees, and all such other and further relief as
22 this Court deems just and proper.

23 **COUNT V: BREACH OF IMPLIED WARRANTIES**

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

26 185. At all times relevant to this litigation, Defendant engaged in the business
27 of testing, developing, designing, manufacturing, marketing, selling, distributing, and
28 promoting its Roundup products, which are defective and unreasonably dangerous to

1 consumers, including the Decedent, thereby placing Roundup products into the stream
2 of commerce. These actions were under the ultimate control and supervision of
3 Defendant.

4 186. Before the time Decedent was exposed to the aforementioned Roundup
5 products, Defendant impliedly warranted to its consumers—including Plaintiff’s
6 employer—that its Roundup products were of merchantable quality and safe and fit for
7 the use for which they were intended; specifically, as agricultural herbicides.

8 187. Defendant, however, failed to disclose that Roundup has dangerous
9 propensities when used as intended and that use of and/or exposure to Roundup and
10 glyphosate-containing products carries an increased risk of developing severe injuries
11 and death, including Decedent’s injuries and death.

12 188. Decedent was the intended beneficiary of the implied warranties made by
13 Defendant to the purchasers of its herbicides.

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

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

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

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

28 193. Decedent could not have reasonably discovered or known of the risks of

1 serious injury associated with Roundup or glyphosate.

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

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

9 196. As a direct and proximate result of Defendant's breach of implied
10 warranty, Decedent died and Decedent's heirs have sustained pecuniary loss resulting
11 from the loss of Decedent's society, comfort, attention, protection, services and
12 support and general damages in a sum in excess of the jurisdictional minimum of this
13 Court.

14 197. As a proximate result of the Defendant's breach of implied warranty, as
15 alleged herein, there was a measurable and significant interval of time during which
16 Decedent suffered great mental anguish and other personal injury and damages before
17 his death.

18 198. As a proximate result of Defendant's breach of implied warranty, as
19 alleged herein, before his death, Decedent sustained a loss of income, loss of earning
20 capacity and property damage, including lost income from his farm.

21 199. As a further proximate result of Defendant's breach of implied warranty,
22 Plaintiff incurred expenses for funeral, burial and other related costs pertaining to
23 Decedent's death, in amounts to be proved at trial.

24 200. WHEREFORE, Plaintiff respectfully requests that this Court enter
25 judgment in Plaintiff's favor for compensatory and punitive damages, together with
26 interest, costs herein incurred, attorneys' fees and all such other and further relief as
27 this Court deems just and proper.
28

1 **EXEMPLARY DAMAGES ALLEGATIONS**

2 201. Plaintiff incorporates by reference each and every allegation set forth in
3 the preceding paragraphs as if fully stated herein.

4 202. Defendant's conduct as alleged herein was done with oppression, fraud,
5 and malice. Defendant was fully aware of Roundup's safety risks. Nonetheless,
6 Defendant deliberately crafted its label, marketing, and promotion to mislead farmers
7 and consumers.

8 203. This was not done by accident or through some justifiable negligence.
9 Rather, Defendant knew that it could turn a profit by convincing the agricultural
10 industry that Roundup was harmless to humans, and that full disclosure of Roundup's
11 true risks would limit the amount of money Defendant would make selling Roundup in
12 California. This was accomplished not only through its misleading labeling, but
13 through a comprehensive scheme of selective fraudulent research and testing,
14 misleading advertising, and deceptive omissions as more fully alleged throughout this
15 pleading. Decedent, like all other farmers within California, was robbed of his right to
16 make an informed decision about whether to purchase and use an herbicide on his
17 property, knowing the full risks attendant to that use. Such conduct was done with
18 conscious disregard of the Decedent's rights.

19 204. There is no indication that Defendant will stop its deceptive and unlawful
20 marketing practices unless it is punished and deterred. Accordingly, Plaintiff requests
21 punitive damages against the Defendant for the harms caused to the Decedent prior to
22 his death.

23 **JURY TRIAL DEMAND**

24 205. Plaintiff demands a trial by jury on all of the triable issues within this
25 pleading.

26 **PRAYER FOR RELIEF**

27 206. WHEREFORE, Plaintiff requests that the Court enter judgment in her
28 favor and against the Defendant, awarding the Estate of the Decedent:

- 1 a. actual or compensatory damages in such amount to be determined at trial
2 and as provided by applicable law;
3 b. exemplary and punitive damages sufficient to punish and deter the
4 Defendant and others from future fraudulent practices;
5 c. pre-judgment and post-judgment interest;
6 d. costs including reasonable attorneys' fees, court costs, and other litigation
7 expenses; and
8 e. any other relief the Court may deem just and proper.
9

10 Dated: March 9, 2016

BAUM HEDLUND ARISTEI & GOLDMAN, P.C.

11 /s/ R. Brent Wisner
12 R. Brent Wisner (SBN: 276023)
rbwisner@baumhedlundlaw.com
13 Michael L. Baum, Esq. (SBN: 119511)
mbaum@baumhedlundlaw.com
14 Cynthia Garber, Esq. (SBN: 208922)
cgarber@baumhedlundlaw.com
15 12100 Wilshire Blvd., Suite 950
16 Los Angeles, CA 90025
Telephone: (310) 207-3233
Facsimile: (310) 820-7444

KENNEDY & MADONNA, LLP

17 Robert F. Kennedy, Jr., Esq.
rkennedy@kennedymadonna.com
18 Kevin J. Madonna, Esq.
kmadonna@kennedymadonna.com
19 48 Dewitt Mills Road
20 Hurley, New York 12443
21 Telephone: (845) 481-2622
22 Facsimile: (845) 230-3111

Attorneys for Plaintiff