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17 Attorneys for Plaintiffs

18 UNITED STATES DISTRICT COURT FOR THE
19 NORTHERN DISTRICT OF CALIFORNIA

20 SCOTT KOLLER, TIM FERGUSON,
21 RUBY CORNEJO and JOHN LYSEK,
22 individually, and on behalf of the general
23 public and those similarly situated,

24 Plaintiffs,

25 v.

26 MONSANTO COMPANY; BAYER
27 CROPSCIENCE LP; THE SCOTTS
28 COMPANY LLC; and SEAMLESS
CONTROL LLC.,

Defendants.

WOOL TRIAL LAW LLC

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CASE NO. _____

CLASS ACTION COMPLAINT FOR VIOLATIONS OF THE MAGNUSSON-MOSS WARRANTY ACT; VIOLATIONS OF THE SONG-BEVERLY CONSUMER WARRANTY ACT; BREACH OF EXPRESS AND IMPLIED WARRANTIES; VIOLATIONS OF CALIFORNIA CONSUMERS LEGAL REMEDIES ACT; FALSE ADVERTISING; FRAUDULENT CONCEALMENT; FRAUD, DECEIT, AND/OR MISREPRESENTATION; UNFAIR BUSINESS PRACTICES; AND UNJUST ENRICHMENT

JURY TRIAL DEMANDED

INTRODUCTION

1
2 1. Scott Koller, Tim Ferguson, Ruby Cornejo, and John Lysek (collectively,
3 “Plaintiffs”) bring this Class Action Complaint against Defendants Monsanto Company
4 (“Monsanto”), Bayer CropScience LP (“Bayer CropScience”), The Scotts Company LLC
5 (“Scotts”), and Seamless Control LLC (“Seamless Control”) (collectively “Defendants”), on
6 behalf of themselves and those similarly situated, for violations of Magnusson-Moss Warranty Act,
7 violations of the Song-Beverly Consumer Warranty Act, breach of express and implied warranties,
8 fraud, false advertising, unfair business practices, violations of the Consumers Legal Remedies
9 Act of California, and unjust enrichment. The following allegations are based upon information
10 and belief, including the investigation of Plaintiffs’ counsel, unless stated otherwise.

11 2. Defendants manufacture, market and/or distribute glyphosate-based herbicides
12 which are designed to kill weeds and primarily sold under the brand name “Roundup”. Roundup
13 consists of a family of various products, most of which are glyphosate-based herbicides, with
14 different formulations and different amounts of glyphosate. Some versions have around 2%
15 glyphosate. But Monsanto and Bayer CropScience also manufacture super concentrated
16 formulations with significantly higher amounts of glyphosate ranging from 41% to as much as
17 73.3% of glyphosate. This case relates to Defendants’ concentrated herbicides consisting of more
18 than 40% glyphosate (the “Products”¹).

19 3. The amount of glyphosate in a pesticide matters.² N-Nitrosoglyphosate (“NNG”)
20 is an impurity inherent to glyphosate. As a result, increasing glyphosate increases the NNG
21 impurity as well. Impurities are “not intentional additives of the pesticide product”; rather, they
22 are “chemical compounds formed, during synthesis of the active ingredient, or during formulation
23 or storage.” 45 Fed. Reg. 42855.

24 4. NNG belongs to a class of chemicals called nitrosamines. Nitrosamines are so
25 dangerous that The Environmental Protection Agency (“EPA”) *presumes* them to be carcinogenic

26
27 ¹ This includes all of Defendants’ herbicides with over 40% of glyphosate, regardless of whether
28 they are sold under the Roundup brand name. The Products include, but are not limited to, the
Products listed on Exhibit 1.

² An herbicide is a type of pesticide under 7 U.S.C. § 136(u)(2).

1 when they occur at certain levels. EPA’s review of nitrosamines determined that 80% of the
2 nitrosamines tested are carcinogenic. *See* 45 Fed. Reg. 42855.

3 5. Due to acute safety concerns with nitrosamines, EPA sets a hard limit of 1 part per
4 million (“ppm”) of NNG in pesticides, including glyphosate products.

5 6. The amount of NNG in a glyphosate product, however, does not remain static. It
6 grows over time.

7 7. Glyphosate, by its nature, is a highly reactive and unstable chemical in the
8 presence of nitrites. Any time glyphosate is exposed to nitrites, which are prevalent in everyday
9 environments such as city air, exhaust from cars, and, even in water, glyphosate degrades into
10 NNG. As Monsanto’s own former registration manager for glyphosate put it, the degradation
11 reaction is “fast and complete” and occurs “early.” *See* Deposition of Stephen Wratten in *Evans*
12 *v. Monsanto Co.*, No. 1722-CC01372-01, Cir. Ct. of Cty. of St. Louis Cty., Sept. 17, 2021
13 (“Wratten Tr.”), 135:14-18. And, the degradation of glyphosate into NNG occurs regardless of
14 whether the glyphosate is pure or mixed into a formulated end product.

15 8. Because NNG is an impurity inherent to glyphosate, increasing the concentration
16 of glyphosate within a product necessarily increases the amount of NNG in the product too. Thus,
17 when a product has 73.3% glyphosate, as opposed to 2% glyphosate, the concentrated product
18 will have far more NNG.

19 9. At least as early as 1997, Monsanto had evidence of serious problems with NNG
20 levels during manufacture. Monsanto’s internal testing revealed levels as high as **8 ppm** in a
21 glyphosate-based product that was stored in warehouse-like conditions for just 18 months. Later
22 on, in the early 2000s, Monsanto discovered high levels of NNG in whole bags of glyphosate. It
23 hypothesized that the elevated NNG was due to the exhaust from the tractors that were driven
24 near its products. Yet, Monsanto never reported either incident to EPA.

25 10. Monsanto knew that glyphosate’s reactivity with nitrites meant that NNG would
26 continue to form in the Products post-manufacture. Most importantly, Monsanto knew that, no
27 matter what efforts it took to control the level of NNG in the Products at manufacture—e.g.,
28 testing the water that goes into the Products—it could not control NNG levels once the Products

1 left the factory. Monsanto knew that simply opening a Product can cause NNG to form if nitrites
2 are in the air. This easily occurs anywhere car exhaust is present, as in consumers' garages, in the
3 presence of smog or near mowers, weed whackers, and other common lawn care equipment. *Even*
4 *adding water*—which is necessary to use the Products since they are concentrated formulations—
5 can cause NNG to form because nitrites are frequently present in water. Every exposure to nitrites
6 creates more NNG. Other factors common to consumer use and storage of the Products increase
7 NNG. Heat is one example. Long storage periods also exacerbate glyphosate degradation and
8 NNG production, often rapidly.

9 11. In 2004, Monsanto witnessed first-hand just how high NNG can get in its
10 glyphosate-based products. After discovering NNG levels of over 1 ppm in almost all of the
11 production lots for one of its Products, QuikPRO, Monsanto conducted a study to understand
12 NNG formation. The study confirmed that NNG formation cannot be controlled in the presence
13 of nitrites and that the chemical Monsanto uses to try to control NNG, sodium sulfite, is
14 ineffective at keeping NNG below 1 ppm. It also revealed that surfactants, which are found in the
15 Products, can increase NNG formation upon exposure to nitrites. Not only did the study show
16 that the Products could develop levels of NNG in excess of EPA's regulatory limit, it revealed
17 that *NNG can exceed an eye-popping 80 ppm*, more than 80 times EPA's regulatory limit.

18 12. EPA knows nothing about the study, or any of the other incidents in which
19 Monsanto found NNG levels over 1 ppm in its glyphosate-based products, according to EPA's
20 own statements.

21 13. Moreover, the EPA has a regulatory process for dealing with impurities that can
22 develop over time: the expiration date. The EPA allows manufacturers to restrict the time to
23 which the certified limit on impurities in a product (like NNG) will apply. If the manufacturer
24 states that use of the product is prohibited after a certain date, the limitation on impurities will
25 apply only through that date. *See* 40 C.F.R. § 158.350. If there is no such date, then the
26 regulatory limits apply until the consumer finishes using the product, whenever that may occur.
27 *Id.* Because Monsanto, Bayer CropScience, and Seamless Control never put an expiration date
28 on the Products' labels, the EPA regulatory limit of 1 ppm of NNG has always applied from the

1 time of manufacture until the consumer actually uses the Product, even if that is months or
2 decades after purchase.

3 14. Despite knowing all of the above, for decades, Monsanto has intentionally refused
4 to conduct tests on real world Products to find out how much NNG is actually in the Products
5 that consumers use. Stephen Wratten, Monsanto's registration manager for glyphosate (i.e., the
6 person in charge of interfacing with EPA about the Products), put this bluntly in a 2003 email:
7 "There is a lingering concern about aged samples of dry products...I would avoid sampling long-
8 aged dry product from retail." Wratten Tr. at 136:6-11. When asked point blank why he would
9 "avoid" testing real world products, he stated: "because you might find differences from when it
10 was manufactured." *Id.* at 138:2-3. With respect to NNG, he conceded "you might find more
11 than you started with." *Id.* at 138:6-7. And then acknowledged testing "***might result in you***
12 ***having to recall a bunch of product.***" *Id.* at 138:18-139:2 (emphasis supplied). When asked
13 directly if Monsanto would have to recall product that had more than 1 ppm of NNG, he said
14 "yes." *Id.* (emphasis supplied.)

15 15. The hidden levels of NNG in the Products is only coming to light now because, in
16 addition to withholding relevant information from EPA, Monsanto concealed the problem with
17 NNG in the Products in the multidistrict litigation pending in this District.

18 16. In 2017, plaintiffs in *In re: Roundup Products Liability Litig.* sought discovery on
19 impurities, including a deposition of Eric Haupfear, who as discussed below, has knowledge of
20 the topic. In response, lawyers for Monsanto claimed that the levels of impurities in Roundup
21 branded herbicides "are well within EPA safety standards." *See In re: Roundup Products Liability*
22 *Litig.*, No. 3:16-md-02741-VC, ECF No. 150-3 at 18 (N.D. Cal. Feb. 20, 2017). Based on that
23 representation, the Court denied further discovery on impurities like NNG in Defendants'
24 glyphosate products. *See id.* at ECF No. 165 (Feb. 24, 2017). Only recently, discovery in a parallel
25 state court action revealed that Monsanto knew (or, at a minimum, should have known) that the
26 amount of NNG in older, concentrated products that consumers nationwide have in their garages
27 is likely not "well within EPA safety standards." *See generally* Wratten Tr. In fact, Monsanto
28 knew that the level of impurities in Roundup could, and, in fact, in instances dating back to 1997

1 actually did, exceed EPA levels, and, in 2004, had proof that the products were capable of
2 reaching levels that were 80 times over the regulatory limit. More glaringly, Monsanto knew that
3 it could not control NNG post-manufacture and that the Products' exposure to nitrites, which are
4 widespread in water and air, causes more NNG to form, pushing levels over regulatory limits.
5 Yet, Monsanto concealed this information from the MDL Court, the EPA, and consumers
6 nationwide.

7 17. Monsanto has not acted alone in concealing the safety hazards associated with the
8 Products. In 2018, Bayer Aktiengesellschaft ("Bayer AG") acquired Monsanto and subsequently
9 appointed Bayer CropScience as the EPA registrant for the Products. From 2018 through at least
10 2019, Monsanto and Bayer CropScience sold some Products through a distributor, Seamless
11 Control, which independently registered the Products with EPA. Further, since around 1998,
12 Scotts served as Monsanto's, and later Bayer CropScience's, exclusive distributor and marketer
13 for at least one Product, the Roundup Weed & Grass Killer Super Concentrate.

14 18. Monsanto, Bayer CropScience, Scotts, and Seamless Control sold, or caused the
15 Products to be sold, to consumers even though they knew, or should have known, at the time of
16 those sales, that the Products were defective because they could (and almost invariably would)
17 degrade into higher and higher levels of NNG that would ultimately exceed regulatory limits.
18 This was true even if the Product was used, and stored, in accordance with the labels. More
19 egregiously, Defendants found evidence that, in certain instances, its glyphosate-based products
20 had over 1 ppm of NNG on the factory floor. This inherent defect presents a serious health hazard
21 that makes the Products unreasonably unsafe because it exposes consumers to a presumptive
22 carcinogen in excess of levels EPA considers safe when consumers mix or spray the Products. As
23 a result, Defendants violated the law, including, without limitation, breaching the Products'
24 express and implied warranties.

25 19. Further, the Products' registrations are conditioned upon compliance with the
26 certified limits for impurities, like NNG. A pesticide is registered and legal to sell *only if it never*
27 exceeds the certified limits *at any point in time*, unless "the product label bears a statement
28 prohibiting use after a certain date," (i.e., an expiration date) in which case, the certified limits

1 apply through the time provided for on the label. 40 C.F.R. § 156.350. In the absence of such a
2 statement, if a pesticide exceeds the impurity certified limit *at any point in time*, that pesticide is
3 and always has been unregistered. None of the Products here included a prohibition on their use
4 after a certain date. Because the Products were substantially likely to exceed 1 ppm NNG, even
5 if used and stored in accordance with the labels, the Products were always unregistered and were
6 illegal to sell and distribute in violation of Federal Insecticide, Fungicide, and Rodenticide Act
7 (“FIFRA”) and the California Food & Agriculture Code.

8 20. By marketing, distributing, and selling the Products under the names of registered
9 pesticides like “Roundup QuikPRO Herbicide” and “Roundup Weed & Grass Killer Super
10 Concentrate,” Defendants misled consumers into believing they were actually buying products
11 that are chemically identical to those like the “Roundup QuikPRO Herbicide” and “Roundup
12 Weed & Grass Killer Super Concentrate” registered with EPA. However, as explained above,
13 they are not. EPA approved only Products that could not and did not develop NNG in excess of
14 1 ppm *at any point in time* over the course of the Products’ *entire* life cycle. Because the Products
15 can and invariably do degrade, pushing NNG levels above regulatory limits, they were illegal.
16 Selling, distributing, and marketing the Products under the guise that they were EPA-approved
17 and have chemical compositions consistent with registered herbicides was unlawful and
18 misleading.

19 21. Defendants unlawfully, unfairly and or deceptively manufactured, marketed and
20 sold, or caused to be manufactured, marketed and sold, the Products and engaged in illegitimate
21 business or dishonest dealings by selling and distributing the Products without including a “Not
22 for sale or use after [date].” EPA requires that when “a pesticide formulation changes chemical
23 composition significantly,” such as here, the product “must bear the following statement in a
24 prominent position on the label: ‘Not for sale or use after [date].’” 40 C.F.R. § 156.10(g)(6). The
25 Products’ chemical composition changes significantly because they form higher and higher levels
26 of NNG that can, and invariably do, exceed EPA’s certified limits. Defendants knew this. Yet,
27 none of the Products included “Not for sale or use after [date].”

28 22. Consumers reasonably expect, in the absence of a prominent expiration date, that

1 the Products will remain suitable for use indefinitely. It can take consumers years to go through
2 a single unit, because the Products are highly concentrated and predominantly sold in bulk sizes
3 (i.e., over a gallon). But the Products are substantially likely to develop unsafe and unlawful levels
4 of NNG, a presumptive carcinogen, through consumers' ordinary use consistent with the labels.
5 Had Defendants included a "Not for sale or use after [date]" on the Products, as they were required
6 to do under the law, it would have revealed that the Products expire. That information was
7 material to reasonable consumers. Accordingly, Defendants' failure to include a "Not for sale or
8 use after [date]" makes the sale, distribution, and marketing of the Products unlawful, unfair and
9 misleading

10 **PARTIES**

11 23. Plaintiff Scott Koller is, and was at all relevant times, an individual and resident
12 of and is domiciled in Brentwood, California.

13 24. Plaintiff Tim Ferguson is, and was at all relevant times, an individual and resident
14 of and is domiciled in Manteca, California.

15 25. Ruby Cornejo is, and was at all relevant times, an individual and resident of and
16 is domiciled in Galt, California.

17 26. Plaintiff John Lysek is, and was at all relevant times, an individual and resident of
18 and is domiciled in Redding, California.

19 27. Defendant Monsanto Company ("Monsanto"), is a Delaware corporation with its
20 principal place of business in St. Louis, Missouri. Monsanto is registered to do business in
21 California. Monsanto is engaged in the design, development, manufacture, testing, packaging,
22 promoting, marketing, advertising, distribution, labeling, and sale of the Products either directly
23 or through its agents. Upon information and belief, Monsanto has sold or caused the sale of
24 millions of Products within the state of California. Bayer AG acquired Monsanto in June 2018.
25 Monsanto is an indirect, wholly-owned subsidiary of Bayer AG.

26 28. Defendant Bayer CropScience LP ("Bayer CropScience") is a Delaware limited
27 partnership with its principal place of business in Research Triangle Park, North Carolina. It is an
28 indirect subsidiary of Bayer AG. Bayer CropScience is registered to do business in California.

1 Upon information and belief, Bayer CropScience has sold or caused the sale of some or all of the
2 Products within the state of California. Bayer CropScience's general partner is Athenix
3 Corporation, which is a North Carolina corporation with its principal place of business located in
4 St. Louis, Missouri. Bayer CropScience's limited partners are:

- 5 • Monsanto
- 6 • Bayer CropScience Inc., a New York corporation with its principal place of business
7 located in St. Louis, Missouri.
- 8 • Bayer CropScience Holding, Inc., a Delaware corporation with its principal place of
9 business located in St. Louis, Missouri.
- 10 • Bayer Seeds B.V., a private company with limited liability incorporated under the laws of
11 the Netherlands with its principal place of business located in Mijdrecht, Netherlands.
- 12 • Hornbeck Seed Company, Inc., an Arkansas corporation with its principal place of
13 business located in St. Louis, Missouri.
- 14 • AgraQuest, Inc., a Delaware corporation with its principal place of business located in St.
15 Louis, Missouri.
- 16 • Bayer CropScience LLC, a Delaware limited liability company with its principal place of
17 business located in St. Louis, Missouri whose sole member is BCS US Holding LLC. BCS
18 US Holding LLC is a Delaware limited liability company with its principal place of
19 business located in Research Triangle Park, North Carolina whose sole member is KWA
20 Investment IV LLC. KWA Investment IV LLC is a Delaware limited liability company
21 with its principal place of business located in Wilmington, Delaware. Its sole member is
22 KWA Investment III LLC.

23 29. KWA Investment III LLC is a Delaware limited liability company with its
24 principal place of business located in Wilmington, Delaware, whose members are Bayer New TH
25 M1763 LLC, Bayer New MY M1455 LLC, Bayer New NL M3644 LLC, Bayer New CZ M3204
26 LLC, Bayer New CH M3868 LLC, Bayer New CA M5015 LLC, Bayer New MX M3640 LLC,
27 Bayer New ZA M3743 LLC, Bayer New UA M3702 LLC, Bayer New BE M3155 LLC, Bayer
28 New AU M1059 USD LLC, Bayer New TK M3970 LLC, Bayer New HU M3440 LLC, Bayer

1 New RO M3695 LLC, Bayer New DE M3385 LLC, Bayer New MA M3130 LLC, Bayer New
2 RU M3708 LLC, Bayer New PL M3655 LLC; Bayer Corporation; and Bayer US Holding LP.

3 30. Bayer New TH M1763 LLC is a Delaware limited liability company with its
4 principal place of business located in St. Louis, Missouri. Its sole member is Seminis Vegetable
5 Seeds, Inc., a California corporation whose principal place of business is located in St. Louis,
6 Missouri.

7 31. Bayer New MY M1455 LLC, Bayer New NL M3644 LLC, and Bayer New CZ
8 M3204 LLC are Delaware limited liability companies whose sole member is Monsanto.

9 32. Bayer New CH M3868 LLC, Bayer New CA M5015 LLC, Bayer New MX M3640
10 LLC, Bayer New ZA M3743 LLC, Bayer New UA M3702 LLC, Bayer New BE M3155 LLC,
11 Bayer New AU M1059 USD LLC, Bayer New TK M3970 LLC, Bayer New HU M3440 LLC,
12 Bayer New RO M3695 LLC, Bayer New DE M3385 LLC, Bayer New MA M3130 LLC, Bayer
13 New RU M3708 LLC, Bayer New PL M3655 LLC are all Delaware limited liability companies
14 with their principal places of business located in St. Louis, Missouri and are indirect subsidiaries
15 of Olympia Corporation, a Delaware corporation whose principal place of business is in St. Louis,
16 Missouri.

17 33. Bayer Corporation is an Indiana corporation with its principal place of business
18 located in Pittsburgh, Pennsylvania.

19 34. Bayer U.S. Holding LP is a Delaware limited partnership with its principal place
20 of business located in Wilmington, Delaware. Its sole general partner is Bayer World Investments
21 B.V., a Netherlands limited liability company with its principal place of business located in the
22 Netherlands and its sole limited partner is Bayer Solution B.V., a Netherlands limited liability
23 company with its principal place of business located in the Netherlands. Bayer Solution B.V. is a
24 wholly-owned by Bayer World Investments B.V.

25 35. Bayer CropScience is listed as a registrant for numerous pesticides with the
26 California Department of Pesticide Regulation.

27 36. Defendant The Scotts Company LLC (“Scotts”) is a Delaware limited liability
28 company with its principal place of business in Marysville, Ohio. Scotts is registered to do

1 business in California. Based on filings with the California Secretary of State, Scotts' member is
2 The Scotts Miracle-Gro Company which is an Ohio corporation with its principal place of
3 business in Marysville, Ohio. Since around 1998, Scotts has been Monsanto's exclusive
4 distributor for certain Monsanto products, including the Weed & Grass Killer Super Concentrate
5 and possibly other Products. It also has performed some formulation work for Monsanto. It also
6 unlawfully sold and distributed unregistered, illegal and misbranded pesticides both directly and
7 through Seamless Control, as discussed below.

8 37. Defendant Seamless Control LLC ("Seamless Control") is a Delaware limited
9 liability company. Based on its filings with the California Secretary of State, its principal place
10 of business is in St. Louis, Missouri, and its managing member is Anthony Leisure, who is an
11 individual who resides in St. Louis, Missouri. Its other members are Thierry Chenet and Gilles
12 Galliou who both reside in St. Louis Missouri.

13 38. Monsanto initially registered each of the Products with EPA. Monsanto also
14 registered the Products in California. Each Product's EPA and California registration numbers,
15 the dates of registration, current EPA registrant, and size, if known, are identified in Exhibit 1.

16 39. From time of their initial registrations, Monsanto designed and manufactured all
17 of the Products and caused them to be distributed, marketed, and sold at brick and mortar and
18 online retailers throughout the United States, including in California. Monsanto made express and
19 implied warranties directly to consumers that are on the labels on the Products, which are attached
20 hereto as follows:

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Ex. No.	Product
2	Roundup Weed & Grass Killer Super Concentrate
3	Roundup PRO Concentrate Herbicide
4	Roundup QuikPRO Herbicide
5	Roundup PROMAX Herbicide
6	Roundup Custom for Aquatic & Terrestrial Use
7	Ranger Pro Herbicide
8	Roundup PRO Herbicide
9	Roundup EasyMix Dry Concentrate Weed & Grass Killer
10	Roundup Quik Stik
11	Roundup ProDry Herbicide

40. Monsanto breached the Products’ express and implied warranties, as explained below.

41. Bayer AG acquired Monsanto in 2018. After the acquisition, Bayer CropScience, with Monsanto’s assistance, continued to manufacture, sell and distribute, through third parties, Products with the labels identified in the following table:

Ex. No.	Product
12	Roundup PRO Concentrate Herbicide
13	Roundup QuikPRO Herbicide
14	Roundup PROMAX Herbicide
15	Roundup Custom for Aquatic & Terrestrial Use
16	Ranger Pro Herbicide

42. After Bayer AG’s acquisition of Monsanto in 2018, Bayer CropScience became the registrant with EPA for the following Products:

1	Roundup PRO Concentrate Herbicide
2	Roundup QuikPRO Herbicide
3	Roundup PROMAX Herbicide
4	Roundup Custom for Aquatic & Terrestrial Use
5	Ranger Pro Herbicide
6	Roundup PRO Herbicide
7	
8	Roundup ProDry Herbicide

9
 10 43. Upon information and belief, Bayer CropScience currently manufactures and
 11 distributes, through third-parties, Roundup PRO Concentrate Herbicide, Roundup QuikPRO
 12 Herbicide, Roundup PROMAX Herbicide, Roundup Custom for Aquatic & Terrestrial Use, and
 13 Ranger Pro Herbicide, which are, in turn, sold to consumers across the United States, including
 14 in California. Bayer CropScience also currently markets and creates advertisements for Roundup
 15 PROMAX Herbicide, Roundup QuikPRO Herbicide, Roundup Custom for Aquatic & Terrestrial
 16 Use, and Roundup PRO Concentrate Herbicide. Monsanto, however, remains the manufacturer
 17 for the other Products that are still on the market and sells and distributes those Products, through
 18 third parties, to consumers nationwide, including in California. The Monsanto labels identified
 19 above for those Products also remain on those particular Products. Further, Monsanto is and has
 20 been, at all relevant times, listed as the registrant for the Products with California’s Department
 21 of Pesticide Regulation.

22 44. At least since 2020, possibly earlier, Bayer CropScience made express and
 23 implied warranties on the labels for Roundup PRO Concentrate Herbicide, Roundup QuikPRO
 24 Herbicide, Roundup PROMAX Herbicide, Roundup Custom for Aquatic & Terrestrial Use, and
 25 Ranger Pro Herbicide to consumers nationwide and in California, and, as alleged herein, Bayer
 26 CropScience breached those warranties. Copies of the relevant labels with the warranty language
 27 from Bayer CropScience are in Exs. 12 to 16.

28 45. Since around 1998, Scotts has served as Monsanto’s exclusive distributor for its

1 glyphosate-based products in the Lawn and Garden sector, which includes the Roundup Super
2 Concentrate Weed & Grass Killer. As a result, Scotts marketed and distributed the Roundup Super
3 Concentrate Weed & Grass Killer to retailers, which, in turn, sold the Roundup Super Concentrate
4 Weed & Grass Killer to consumers nationwide, including in California on behalf of Monsanto.

5 46. Beginning in 2018, Monsanto, and later on BayerCropScience, expanded its
6 relationship with Scotts and entered into a joint venture with Scotts to have Scotts sell, distribute
7 and market some its glyphosate-based products in the Industrial, Turf and Ornamental sector,
8 which includes many of the Products. As part of the joint venture, Monsanto and Scotts formed
9 Seamless Control, which they jointly owned either directly or indirectly through holding
10 companies. After Bayer AG’s acquisition of Monsanto, Bayer CropScience became part of the
11 joint venture with Scotts. Eventually, Bayer AG took over ownership of Seamless Control either
12 directly or through holding companies, and, as of December 31, 2019, Bayer AG disclosed it had
13 a 100% interest in Seamless Control. Further, as of May 1, 2019, Seamless Control identified its
14 three members, each of whom were senior executives with Bayer CropScience.

15 47. From 2018 to 2019 or 2020, Seamless Control distributed and marketed some of
16 the Products to retailers for sales to consumers nationwide pursuant to the joint venture. Though
17 Monsanto had initially registered the Products with EPA, EPA approved registrations for the
18 following Products on the following dates with Seamless Control as the registrant (the “Joint
19 Venture Products”). Copies of the labels for the Joint Venture Products are in the Exhibits
20 identified below.

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Ex. No.	Product	Date registered for Seamless	New EPA Registration No.
17	Roundup Custom for Aquatic & Terrestrial Use	February 16, 2018	EPA Reg. No. 93236-2
18	Roundup QuikPRO Herbicide	February 22, 2018	EPA Reg. No. 93236-4
19	Roundup PROMAX Herbicide	April 18, 2018	EPA Reg. No. 93236-3
20	Roundup PRO Herbicide	April 20, 2018	EPA Reg. No. 93236-1
21	Roundup PRO Concentrate Herbicide	May 25, 2018	EPA Reg No. 93236-6
22	Ranger Pro	May 25, 2018	EPA Reg. No. 93236-5

48. The Joint Venture Products' registrations with EPA were based on Monsanto's registrations of the Products and are subject to the same restrictions as to the formula.

49. In connection with Seamless Control's sale, distribution and marketing of the Joint Venture Products, Seamless Control made express and implied warranties to consumers nationwide, including to California consumers, on the Joint Venture Products' labels. The labels in effect at the time Seamless Control sold and distributed the Joint Venture Products, which include the specific language of Seamless Control's express warranties, are attached hereto as Exhibits 17 to 22. Seamless Control breached the Joint Venture Products' express and implied warranties, as explained below.

50. Upon information and belief, Monsanto, and, after its acquisition, Bayer CropScience, was responsible for coordinating the registration of the Joint Venture Products on behalf of Seamless Control. Stephen Adams, who was Monsanto's regulatory affairs manager at the time, filed the registration applications for each of the Joint Venture Products on behalf of Seamless Control. Adams also served as Senior Regulatory Affairs Manager for Bayer CropScience after Bayer AG's acquisition of Monsanto. As a regulatory affairs manager, Adams managed all aspects of the Products' registrations with EPA, which included data submission and regulatory compliance. As part of that job, he had to be familiar with the historic submissions to EPA and studies conducted in support of compliance for the Products. Because he was an agent

1 for Seamless Control on Monsanto's and later Bayer CropScience's behalf, Seamless is imputed
2 with Adams' knowledge about the Products.

3 51. Seamless Control cancelled the registrations for each of the Joint Venture Products
4 on December 21, 2020 and, upon information and belief, has not sold, distributed, or marketed
5 them since then.

6 52. During the joint venture with Seamless, Monsanto and, later on post-acquisition,
7 Bayer CropScience, manufactured the Products that were still on the market at the time and
8 distributed them to retailers through third-parties, which included shipping, holding for shipment,
9 releasing for shipment, and holding for distribution, within the meaning of 7 U.S.C. § 136(gg).
10 The retailers, in turn, sold the Products to consumers in the United States, including California.

11 53. Defendants unlawfully sold and/or distributed: (i) unregistered pesticides
12 throughout the United States, including in California; (ii) pesticides that had chemical
13 compositions that differed from what was allowed under their respective Confidential Statements
14 of Formula at the time of their distribution or sale; and (iii) misbranded pesticides. Defendants
15 uniformly represented that each of the Products contained an EPA-approved, registered pesticide
16 at the time consumers' purchases, even though they did not. Defendants also actively concealed
17 the safety hazard and defect with the Products from consumers and regulators alike. As the
18 registrants and/or manufacturers of the Products, Monsanto, Seamless Control and Bayer
19 CropScience had "a continuing obligation to adhere to FIFRA's labeling requirements." *Bates v.*
20 *Dow Agrosciences LLC*, 544 U.S. 431, 438 (2005). Monsanto, Seamless Control and Bayer
21 CropScience knowingly defied this fundamental requirement by omitting a "Not for sale or use
22 after [date]" from the labels, despite knowing the Products were prone to developing
23 uncontrollable and unlawful levels of NNG, even when used and stored under ordinary conditions
24 consistent with the Products' labels.

25 54. The acts and omissions of Defendants concurred with and contributed to the
26 various acts and omissions of each in proximately causing the injuries and damages as herein
27 alleged.

28

JURISDICTION AND VENUE

1
2 55. This Court has jurisdiction over the subject matter of this action pursuant to 28
3 U.S.C. § 1332(d)(2). The aggregate amount in controversy exceeds \$5,000,000, exclusive of
4 interest and costs; and at least one class member and one Defendant are citizens of different states.

5 56. The injuries, damages and/or harm upon which this action is based, occurred or
6 arose out of activities engaged in by Defendants within, affecting, and emanating from, the State
7 of California. Defendants regularly conduct and/or solicit business in, engage in other persistent
8 courses of conduct in, and/or derive substantial revenue from Products provided to persons in the
9 State of California. Defendants have engaged, and continue to engage, in substantial and
10 continuous business practices in the State of California. Defendants know that the Products are
11 and were sold throughout California, and caused the Products to be sold across the United States,
12 including California.

13 57. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) because a
14 substantial part of the events or omissions giving rise to the claims occurred in the state of
15 California, including within this District, including Plaintiffs' purchases of the Products.

16 58. In accordance with California Civil Code Section 1780(d), Plaintiff Koller
17 concurrently files herewith a declaration establishing that, at various times throughout the class
18 period, he purchased Roundup Weed & Grass Killer Super Concentrate from stores in the
19 Brentwood and Antioch California during the last four years. (Plaintiff Koller's declaration is
20 attached hereto as Exhibit 23.) More than thirty days prior to the filing of this Complaint, Plaintiff
21 Koller further provided to Defendants Monsanto, Bayer CropScience, and Seamless Control
22 notice and demand that sales of the Products violated, *inter alia*, FIFRA, 41 C.F.R. §158.350, 40
23 C.F.R. § 156.10(g)(6), 40 C.F.R. § 156.10(a)(5)(ii), Cal. Food & Agric. Code §§ 12991, 12881,
24 Cal. Civ. Code § 1770(a), the Magnusson-Moss Warranty Act, Consumers Legal Remedies Act
25 of California, and California's Unfair Competition Law. They did nothing to cure the violations.
26 Instead, they issued a blanket denial.

27 59. Plaintiffs accordingly allege that jurisdiction and venue are proper in this Court.
28

SUBSTANTIVE ALLEGATIONS

I. NITROSAMINES ARE A KNOWN CARCINOGENIC BY-PRODUCT OF GLYPHOSATE IN THE PRODUCTS.

60. Nitrosamines, as a class of molecules, are known carcinogens, and/or convert readily to potent carcinogens. *See, e.g.*, A.R.Tricker and R.Preussmann, “Carcinogenic N-nitrosamines in the diet: occurrence, formation, mechanisms and carcinogenic potential,” Mutation Research/Genetic Toxicology, Volume 259.3–4: 277-289 (March–April 1991); Mirvish, Sidney S., “Kinetics of dimethylamine nitrosation in relation to nitrosamine carcinogenesis.” Journal of the National Cancer Institute 44.3: 633-639 (1970); Straif, Kurt, et al., “Exposure to high concentrations of nitrosamines and cancer mortality among a cohort of rubber workers.” Occupational and Environmental Medicine, 57.3: 180-187 (2000); Loh, et al.; “N-nitroso compounds and cancer incidence: the European Prospective Investigation into Cancer and Nutrition (EPIC)–Norfolk Study,” Am. J. Clin. Nutr. 93.5:1053-061 (May 2011).

61. Monsanto, too, has historically acknowledged this. For instance, in 2015, William Heydens, Monsanto’s Product Safety Assessment Strategy Lead, wrote that “many N-Nitroso compounds are carcinogenic.”³

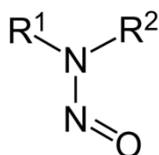
62. Scotts also has been aware. In 2003, a Monsanto employee forwarded an email to other Monsanto employees along and Jill Fairbrother, a Scotts employee.⁴ The forwarded email was from a third-party who quoted a genetic toxicology consultant who stated “over 75% of all other N-nitroso compounds so tested have been shown to cause cancer by way of tumor formation.”

63. Nitrosamines are compounds with an amine (i.e., a nitrogen with three single bonds to other atoms) that is bonded directly to a nitroso group (i.e., a nitrogen and oxygen connected by a double-bond). This structure is sometimes referred to as “>N–N=O”, where the lines represent electron bonds between the various nitrogen (“N”) and oxygen (“O”) atoms.

³ <https://usrtk.org/wp-content/uploads/bsk-pdf-manager/2019/04/Heydens-issues-with-glyphosate.pdf>

⁴ <https://www.baumhedlundlaw.com/assets/monsanto%20roundup%20pages/secret%20documents/Email-Showing-Monsanto-Had-Long-Known-of-N-nitrosoglyphosate-NNG-in-Roundup.pdf>

1 Because the nitroso group ($-N=O$) is bonded to the amine nitrogen ($>N-$), these compounds are
 2 also called N-nitrosamines. An exemplary general nitrosamine structure is shown below:

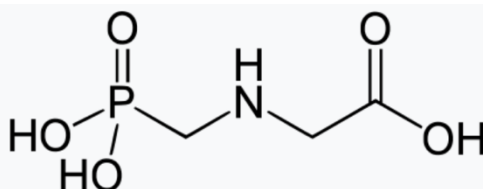


3
 4
 5
 6 64. Each “R” in the figure above can be a wide variety of organic (i.e., carbon-based)
 7 structures.

8 65. Reaction of secondary amines (i.e., compounds with a nitrogen bonded to two
 9 carbons) with nitrous acid produces nitrosamines. Nitrous acid forms when nitrites are protonated,
 10 which occurs readily in the presence of water. Thus, exposure of secondary amines to nitrites
 11 produces nitrosamines.

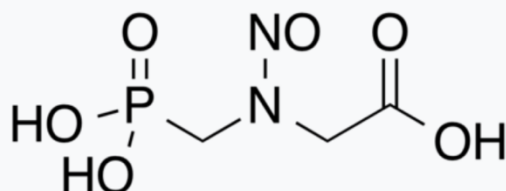
12 66. A nitrosamine formed by exposure of a secondary amine to nitrites is N-
 13 Nitrosoglyphosate.

14 67. Glyphosate is an organophosphate compound with the structure shown below:



15
 16
 17
 18
 19
 20 68. The nitrogen structure in glyphosate is a secondary amine. It therefore reacts with
 21 nitrous acid and/or nitrites to form N-nitrosamines.

22 69. In the presence of nitrites (or other nitrosating compounds), the secondary amine
 23 in glyphosate is nitrosylated to become N-nitrosoglyphosate, with the structure shown below:



1 70. Glyphosate is the active ingredient of the Products. The above N-nitrosamine is
2 thus a by-product formed by reaction of the Products with nitrites and any other nitrosating
3 agents, such as nitrogen oxide (which can come from exhaust and other sources).

4 **II. EPA LIMITS NNG LEVELS TO 1 PPM.**

5 71. The EPA is charged with regulating the sale and distribution of pesticides in the
6 United States. Due to the health risks associated with nitrosamines, the EPA has consistently
7 found that herbicides “contaminat[ed] with N-nitroso compounds at levels of one ppm or greater
8 would be cause for concern.” 55 Fed. Reg. 17560.

9 72. EPA developed its policy addressing n-nitroso compounds in pesticides in 1980.
10 See 45 Fed. Reg. 42854 (June 25, 1980). In that policy, EPA acknowledged that “[s]ome
11 pesticides are contaminated with N-nitroso contaminants. These substances are not intentional
12 additives of the pesticide product, but are rather chemical compounds formed during synthesis of
13 the active ingredient, or during formulation or storage.” 45 Fed. Reg. 42855.

14 73. EPA went on to explain that 80 N-nitrosamines had been tested, and, of those
15 tested, 80% were carcinogenic. In light of that, EPA concluded that “[s]uch compounds therefore
16 present a potential risk to the public health.” 45 Fed. Reg. 42855.

17 74. EPA adopted a process to evaluate the risks associated with nitrosamines. First,
18 the EPA requires applicants to submit chemistry data showing whether the product is
19 contaminated with N-nitroso compounds and, if so, at what levels. If the level is below 1 ppm,
20 then the EPA may treat the product under the usual registration procedures. If the level is above
21 1 ppm, then the applicant must submit further exposure and risk data. Specifically, “[f]or each
22 product shown to contain N-nitroso contamination above 1 ppm,” EPA requires submission of
23 data “on the potential oncogenic risk of the contaminant.” 45 Fed. Reg. 42856.

24 75. EPA made clear that “[i]n the absence of acceptable oncogenic testing with the
25 specific N-nitroso compound, the Agency *will assume that the contaminant is as potent a*
26 *carcinogen as N-nitrosodiethylamine (NDEA).*” 45 Fed. Reg. 42856 (emphasis added). EPA
27
28

1 classifies NDEA as a probable carcinogen. EPA, therefore, presumes nitrosamines are
2 carcinogenic unless the manufacturer provides acceptable oncogenic testing proving otherwise.

3 76. Consistent with EPA’s policy on nitrosamines, EPA limits NNG in glyphosate
4 products to 1 part per million (ppm).

5 77. Monsanto has been fully aware of this limit.

6 78. Monsanto’s former registration manager, Stephen Wratten, explained that the 1
7 ppm cap on NNG in glyphosate products is “a limit that we [Monsanto] agreed on with EPA.”
8 Wratten Tr., 154:23-24.

9 79. Stephen Adams, Monsanto’s Regulatory Affairs Manager at the time, also stated
10 in an email in 2014 that “formulations containing the ethanolamine salt form of Glyphosate...can
11 be converted into N-nitroso-glyphosate (NNG), an impurity of toxicological significance with an
12 upper concentration limit of 1 ppm in Glyphosate products.”⁵

13 80. Donna Farmer – Monsanto’s head of toxicology – reiterated this as well, stating in
14 a July 31, 2015 email that the concept “we” (i.e. Monsanto) “rel[ies] on globally is” that EPA
15 “has determined that even potent nitrosamine carcinogens would not be expected to create risk
16 concerns if present in pesticides at levels of 1 ppm or lower.”⁶ According to Dr. Farmer,
17 regulators like EPA “do not require special testing or risk assessment if the level’s at 1 ppm or
18 lower.”
19

20 81. Because Defendants maintain, and EPA has believed, that the Products do not
21 and cannot contain NNG levels over 1 ppm, EPA has not required Defendants to provide
22 “acceptable oncogenic testing” in accordance with EPA’s nitrosamine policy. To date,
23
24

25
26 ⁵<https://www.baumhedlundlaw.com/assets/monsanto%20roundup%20pages/secret%20document/s/Monsanto-Executive-Steven-Adams-on-NNG-Issue-Dont-Want-to-Draw-Attention-to-the-Toxicity-of-Our-Product.pdf>

27 ⁶<https://www.baumhedlundlaw.com/assets/monsanto%20roundup%20pages/secret%20document/s/Internal-Email-from-Donna-Farmer-Monsanto-Would-Rather-Keep-Roundup-NNG-Levels-Below-1ppm-Rather-Than-Debate-Biological-Activity.pdf>
28

1 Defendants have never provided EPA with acceptable oncogenic testing establishing that NNG is
2 not carcinogenic.

3 82. Rather, of the few toxicity studies that Monsanto has done for NNG, most of
4 which are discussed in the June 1986 Guidance for Reregistration of Pesticide Products
5 Containing Glyphosate as the Active Ingredient (“June 1986 Guidance”), almost all of them were
6 conducted by IBT, a lab known for engaging in extensive scientific fraud. Beginning in 1976,
7 FDA and EPA discovered serious deficiencies in tests conducted by IBT to support the
8 registration of numerous pesticides. Among those deficiencies were major discrepancies between
9 raw data and reports of pesticide toxicology studies conducted by IBT. EPA explained, “[t]he
10 IBT scandal shook the industry and government regulators,” and by 1977, EPA placed a
11 moratorium on registrations involving data from IBT.⁷ EPA then proceeded to launch a major
12 audit of IBT tests and came to find the majority of them to be invalid.⁸ Ultimately, EPA referred
13 the matter to the Department of Justice which culminated in convictions of three IBT executives,
14 including its president (who happened to be a former Monsanto employee), for mail fraud and
15 making false statements to the U.S. Government.

16
17 83. EPA further determined that each of the IBT toxicity studies on NNG were
18 inadequate. *See* June 1986 Guidance at 11-12. For example, EPA concluded that one chronic
19 toxicity study conducted by IBT that was performed on rats was “invalid” due to “dosing of the
20 control groups with an excessive amount of NaCl which resulted in high mortality of control
21 animals.” *Id.* The other chronic toxicity study done on dogs was also inadequate because the
22 study “lacked supporting raw data.” *Id.*

23 84. A 90-day subchronic oral toxicity study performed on rats – also conducted by
24 IBT – was also deficient “due to inadequate reporting of clinical signs and necropsy data, and
25 inadequate identification of the test material.” *Id.*

26
27
28 ⁷ <https://usrtk.org/wp-content/uploads/2017/10/EPA-summary-of-IBT-review-program.pdf>

⁸ *Id.*

1 85. EPA also rejected the mechanistic studies submitted by Monsanto finding “no
2 acceptable studies for mutagenic or reproductive effects are available at present for NNG.” *Id.*

3 86. Despite the serious defects with the NNG toxicity studies, EPA “determined that
4 oncogenicity testing of nitroso contaminants will normally be required only in those cases in
5 which the level of nitroso compounds exceeds 1.0 ppm.” *Id.* EPA further found that “[b]ecause
6 the amount of N-nitrogllyphosate is less than 1.0 ppm no additional toxicology data are required”.
7 *Id.*

8 87. Monsanto attempted to conduct one, non-IBT, long-term carcinogenicity lab test
9 of NNG in mice. The study failed because too many mice exposed to high doses of NNG died
10 before the completion date of the study.⁹ Because of the excessive deaths, the study was
11 terminated. Monsanto never informed EPA of the results.

12 88. Monsanto attempted to repeat the failed study in 1984. Like the first attempted
13 study, many of the animals exposed to high doses of NNG died early on. Although the second
14 study was completed, it revealed a statistically significant increase in malignant lymphomas in
15 male mice. Monsanto never informed EPA about the study.

16 89. Indeed, based on EPA’s own statements, it has not received any information from
17 Monsanto related to NNG since 1993 or earlier.

18 90. EPA has, thus, operated with the understanding that the Products do not contain
19 levels of NNG over 1 ppm. EPA reaffirmed this position as recently as May 18, 2021 in a brief it
20 submitted to the 9th Circuit in a case successfully challenging EPA’s January 2020 interim
21 registration review decision determining that glyphosate does not pose “any unreasonable risk to
22 man or the environment.” *NRDC v. United States EPA*, Nos. 20-70787, 20-70801, ECF No. 80-1
23 at 36-7 (9th Cir. May 18, 2021).

24 91. In that brief, EPA explained that it rejected the challenge to glyphosate’s
25 registration based on NNG because it found “NNG content was not toxicologically significant.”
26

27
28 ⁹ <https://www.baumhedlundlaw.com/documents/pdf/monsanto-documents-2/letter-discussing-18-month-chronic-mouse-gavage-1979.pdf>

1 EPA based that conclusion on the fact that “[n]o new data have been presented to warrant a
2 reevaluation of the Agency’s conclusion.” *Id.* at 36. Accordingly, EPA confirmed that, from at
3 least the 1993 re-registration of glyphosate to May 18, 2021, EPA has not received any new data
4 suggesting that levels of NNG were above 1 ppm in glyphosate-based products.

5 92. EPA nonetheless made clear in the same brief that “[i]f individual products
6 contain contaminants that exceed EPA’s level of concern, these must be reported to EPA and are
7 assessed on a case-by-case basis.” *Id.* at 37.

8 93. Defendants, however, have been aware of evidence for decades showing the
9 Products are substantially likely to develop elevated levels of NNG far in excess of the 1 ppm
10 limit, even when used and stored in accordance with label directions. Monsanto, in fact, had seen
11 first-hand instances of NNG in its glyphosate-based products reaching levels far in excess of 1
12 ppm. Yet, Defendants never reported any of that information or evidence to EPA.

13 **III. NNG FORMS AS AN IMPURITY IN GLYPHOSATE-BASED PRODUCTS.**

14 94. Monsanto initially registered the active ingredient in the Products, glyphosate,
15 with EPA in 1974. EPA has understood that NNG forms as an impurity in technical grade
16 glyphosate.

17 95. EPA regulations requires registration applicants to provide a Confidential
18 Statement of Formula and certify the ingredients and other substances within a pesticide. In
19 particular, 41 C.F.R. § 158.350 requires registration applicants to set an upper certified limit for
20 impurities of toxicological significance like NNG. *See* 41 C.F.R. § 158.350. The upper certified
21 limit represents the maximum amount of the impurity allowable within an ingredient or product.
22

23 96. EPA uses the certified limits to review the chemical composition of the pesticide
24 and to evaluate whether the pesticide will cause unreasonable adverse effects on human health
25 and the environment by looking at, among other things, the toxicity of the product if hazardous
26 ingredients and impurities are present at their upper certified limits.

27 97. To that end, Monsanto proposed, and EPA accepted, an upper certified limit of
28 NNG within glyphosate acid at 2.5 ppm.

1 98. Though all the Products have glyphosate as their primary, active ingredient, the
2 amount of glyphosate acid within a Product depends on the type of glyphosate salt used and its
3 concentration within the Product. The reason is because the Products are mixtures of different
4 substances and contain other ingredients like surfactants or water in liquid products. The non-
5 glyphosate ingredients dilute the amount of glyphosate, which, in turn, decrease the amount of
6 NNG within the formulated product at manufacture.

7 99. At the time EPA and Monsanto set the limit on NNG, Monsanto's most
8 concentrated product on the market was Rodeo, which was made of 40% glyphosate acid.

9 100. Stephen Wratten explained in an internal email, dated May 4, 2010, that
10 Monsanto's rationale behind setting the limit of NNG at 2.5 ppm in glyphosate acid was that "2.5
11 parts per million NNG in pure glyphosate acid would lead to a level of 1 part per million in the
12 most highly concentrated product Rodeo." Wratten Tr. 160:8-17.

13 101. Wratten later explained: "It's just math. .4 times 2.5 is 1. So if Rodeo is 40
14 percent glyphosate acid at a level of 2.5, that becomes 1 part per million in Rodeo." Wratten Tr.
15 160:23-25.

16 102. Thereby, Monsanto calculated, and EPA accepted, the limit of NNG for the
17 glyphosate product(s) by multiplying the percent of glyphosate acid within the product by 2.5
18 (the upper limit for NNG in glyphosate acid). Wratten then confirmed this calculation applies to
19 all of Monsanto's glyphosate-based products, which necessarily includes the Products at issue in
20 this case. *Id.* 161:1-163:14.

21 103. The expected limit, or level, of NNG within any of the Products can accordingly
22 be determined by simply multiplying the percentage of glyphosate acid in the Product by 2.5—
23 i.e., [percent glyphosate acid in product] x 2.5 = ppm NNG.
24

25 **IV. MONSANTO INTRODUCES PRODUCTS WITH HIGH CONCENTRATIONS**
26 **OF GLYPHOSATE TO MARKET.**
27
28

1 104. Since the initial registration of glyphosate in 1974, Monsanto registered with EPA
2 the following salt forms of glyphosate on or around the following dates: isopropylamine salt
3 (December 1, 1982), ammonium salt (March 22, 1982), and potassium salt (January 5, 1982).¹⁰

4 105. All of Monsanto's glyphosate-based products – including those consisting of salt
5 forms of glyphosate – inherited the limits of glyphosate acid, so the upper limit of 2.5 ppm in
6 glyphosate acid applied to all of Defendants' glyphosate-based products, irrespective of the form
7 of glyphosate in the product. Wratten Tr. 165:23-166:1.

8 106. Since the launch of Rodeo, which has since been re-branded as Roundup Custom
9 for Aquatic & Terrestrial Use, Monsanto has continued to manufacture, market, advertise and
10 sell more and more concentrated formulations. In 1999, Monsanto registered Ranger Pro with
11 EPA, which is 41% glyphosate. The following year, Monsanto added Pro Concentrate to its line,
12 which is 50.2% glyphosate. By the early 2000s, Monsanto introduced a host of super-
13 concentrated formulations, including Roundup ProDry Herbicide, which had 71.4% glyphosate,
14 Roundup Ultra Dry Herbicide, which had 71.4% glyphosate, and Roundup QuikPRO Herbicide
15 which has 73.3% glyphosate.

16 107. Increasing the amount of glyphosate within the Product necessarily means that
17 levels of NNG within the Product concomitantly increase.

18 108. Monsanto knew this. It similarly knew that increasing the concentration of
19 glyphosate acid above 40% in glyphosate-based products necessarily meant that the presumptive
20 upper certified limit would exceed EPA's limit of 1 ppm of NNG for glyphosate-based products.

21 109. Roundup QuikPRO Herbicide ("QuikPRO"), for instance, has 73.3% glyphosate
22 and 66.6% glyphosate acid. Applying Monsanto's own calculation of estimated NNG content,
23 (i.e., $2.5 \times .666$) demonstrates that Monsanto itself expected QuikPRO to have much higher
24 concentrations of NNG, and a presumptive upper limit of 1.665 ppm of NNG.
25

26
27
28 ¹⁰ <https://www.epa.gov/sites/default/files/2020-01/documents/glyphosate-interim-reg-review-decision-case-num-0178.pdf>

1 110. As such, *any product* with over 40% glyphosate acid would presumptively have a
2 limit above EPA’s limit of 1 ppm. Monsanto accordingly knew that its products with over 40%
3 glyphosate acid had higher levels of NNG at manufacture.

4 111. While Monsanto was aware that the Products had elevated levels of NNG and,
5 accordingly, some of the Products had upper limits that exceeded EPA’s limit of 1 ppm within
6 the end product, “EPA never noticed this discrepancy,” Wratten wrote in an internal email in
7 2010.¹¹

8 112. Wratten never told EPA about the “discrepancy” and he was not aware of anyone
9 else at Monsanto doing so either. Wratten Tr. 171:6-172:4. EPA’s public statements, including
10 those as recently as in 2018 and 2021, indicate that, to date, EPA is unaware of the
11 “discrepancy.”

12
13 **V. THE PRODUCTS ARE DEFECTIVE AND POSE AN UNREASONABLE
SAFETY HAZARD.**

14 113. Glyphosate, whether it is in its pure form or mixed in a formulated product, is
15 highly reactive when it comes in contact with nitrites.

16 114. Every time a Product is exposed to nitrites or nitrosating agents, NNG is likely to
17 form. The formation of NNG is linear—the greater exposure to nitrites or nitrosating agents, the
18 more NNG will form. As Dr. Wratten, who holds a PhD in chemistry, explained: “It’s a chemical
19 reaction. If you put nitrite and glyphosate together, I think it’s an equilibrium reaction, but
20 nevertheless, it could form NNG.” Wratten Tr. 154:1-4. Once nitrites are introduced to a
21 glyphosate formulation, “the reaction between glyphosate and nitrate is fast and complete, and
22 should occur early...” *Id.* 135:14-18.

23
24 115. There are numerous ways whereby nitrites or nitrosating agents can be introduced
25 to the Products, all of which are foreseeable, common uses of the Products. The most common
26

27
28 ¹¹ <https://www.baumhedlundlaw.com/documents/pdf/monsanto-documents-2/email-between-heydens-and-wratten-discussing-nng-levels-in-glyphosate.pdf>

1 exposures to nitrites or nitrosating agents are consistent with the labels' instructions; indeed,
2 some are required to use the Product.

3 116. For example, any time a consumer opens up a Product and exposes it to the air,
4 NNG will form if nitrites in the air react with the Product. Nitrites are commonly present in air
5 due to emissions from vehicles, lawn mowers, and industrial sources such as power plants.

6 117. One of the most common places for consumers to store the Products is in their
7 garage. Unfortunately, the garage is one of the worst places for nitrite exposure because car
8 exhaust—a known source of nitrites—is often present there. Thus, when a consumer simply
9 opens a Product in a garage if there is (and has been) car exhaust, which is likely, NNG forms.

10 118. Another common source of nitrites is water because nitrites from fertilizers,
11 waste, or minerals are often present in water. Because the Products are concentrated
12 formulations, the Products' labels instruct consumers to mix them with water. NNG can form
13 every time a consumer mixes a Product with water that has nitrites in it.

14 119. Each exposure to nitrites causes more and more NNG to form, and NNG only
15 increases over time.

16 120. Other factors make NNG levels even worse. Heat is one. Storing the Products in a
17 hot location, such as in a garage, shed or barn, accelerates NNG formation. Humidity also
18 increases NNG formation. Time is another factor. Storing the Products for long periods of time
19 also makes NNG worse within the Products.

20 121. The Products, thus, share a common defect: their high concentrations of
21 glyphosate degrade into uncontrollable and unlawful levels of NNG, even under ordinary
22 conditions *when used in accordance with the Products' labels—i.e., as directed by Defendants.*

23
24 **VI. MONSANTO CONCEALED THAT THE PRODUCTS' NNG LEVELS
25 INCREASE TO ILLEGAL LEVELS AFTER MANUFACTURE.**

26 122. Monsanto has been aware for decades that external factors, like water, exhaust,
27 heat, humidity, and long storage periods, cause NNG levels to increase in the Products post-
28 manufacture to levels in excess of EPA limits.

1 123. In 1997, for example, Monsanto tested one glyphosate-based product at the plant
2 and found it had 8 ppm after just 18 months in warehouse storage conditions and 4 ppm after 18
3 months at room temperature. Despite this result, there was no requirement to test every lot for
4 NNG at the time, or any effort to test formulations under real world aging conditions like the
5 ones that generated a result over 8 times the legal limit. Further, Monsanto acknowledged at the
6 time that that its dry formulations run closer to the 1 ppm at manufacture. Monsanto did not
7 report the testing results to EPA.

8 124. Later on, in February 2001, Monsanto tested samples of glyphosate for NNG and
9 found levels of NNG at 1.4 ppm at the point of manufacture. Eric Haupfear, a Monsanto
10 employee, who, upon information and belief, worked on process chemistry at the time, reacted:
11 “Thanks for the result...but actually this IS NOT a good result” since the specification of the
12 product was 1 ppm.¹²

13 125. That afternoon, Mr. Haupfear emailed other Monsanto employees, stating “I
14 wanted to ask everyone to please not forward the note below any further...” He claimed his
15 response “could be interpreted as more ‘alarming’ than this really is” and he did not “want to
16 start or imply an unnecessary fire drill.”

17 126. Mr. Haupfear conveniently wrote off the high levels of NNG as “related to things
18 that are coming into our system with the GI or with the W-building water supply rather than the
19 process itself” and recommended to “just monitor it over the next few weeks.”

20 127. Monsanto tried to control NNG formation by testing for nitrites in the water used
21 to formulate the Products. However, it later discovered that NNG forms in glyphosate in other
22 ways besides water during manufacture.

23 128. Monsanto became aware, at least as of 2003, of an incident involving high levels
24 of NNG in bags of glyphosate. At that time, Monsanto understood that exposure to “nitrogenous
25 materials from exhaust fumes or other sources may seep into bags and cause NNG formation” in
26 glyphosate products. Wratten Tr. 136:17-137:11. Dr. Wratten testified that the evidence was that
27

28 ¹²<https://www.baumhedlundlaw.com/assets/monsanto%20roundup%20pages/secret%20documents/Monsanto-Finds-Levels-of-N-nitrosoglyphosate-NNG-Exceed-the-Limit-of-1-ppm.pdf>

1 “there had been some analysis of – of stored products in the warehouses” where “little tractors or
2 trucks” were driven around “[a]nd maybe the NNG was somewhat higher than they thought it
3 had been initially.” *Id.*

4 129. In an effort to understand NNG formation, Monsanto conducted a study dated
5 October 5, 2004 that it also never provided to EPA or the public. The study, conducted by two of
6 the patent holders for one of the Products, Monsanto employees Andrew Dyszlewski and
7 Richard Kramer, was designed to measure formation of NNG in glyphosate and glyphosate
8 formulations under a variety of conditions.

9 130. The introduction of the study discusses the circumstances that prompted the study.
10 It provides that “[d]uring a production campaign of QuikPro®, a dry glyphosate plus diquat
11 mixture, **high levels of NNG (> 1.0 ppm) were reported in nearly all the production lots**”
12 (emphasis added). The study goes on to say that “[a]t first it was believed that nitrite
13 contamination was coming from a combustion source” but “[a]fter further investigation it was
14 discovered that the source of contamination was the ammonium glyphosate (MON 8750) starting
15 material” (i.e., one of QuikPRO’s active ingredients). It was evident to Monsanto that “the MON
16 8750 was exposed to a nitrite source which was most likely combustion gases.” The study further
17 explained that additional samples taken from the MON 8750 inventory at the warehouse
18 “showed a much more extensive problem.” In fact, “[n]early all the material was out of
19 **specification for NNG**”, meaning it was all above 1 ppm NNG. (emphasis added).

20 131. Monsanto definitively learned through the study that NNG forms readily in
21 glyphosate upon contact with nitrites; so much so that it could “penetrate deep within a
22 supersack of MON8750 given enough exposure time.” In fact, samples taken in connection with
23 the study reached levels as high as **80 ppm** (80 times over the legal limit). It further revealed that
24 humidity greatly exacerbates the problem. The study also showed that surfactants, which are
25 found in the Products, can increase NNG formation upon exposure to nitrites.

26 132. The study also proved that the inert ingredient Monsanto uses to try to control
27 NNG formation, sodium sulfite, readily degrades in the presence of humidity. It also proved that
28

1 sodium sulfite cannot keep NNG below 1ppm. In fact, samples tested with sodium sulfite were
2 found to be over 1 ppm.

3 133. Monsanto never sent the study or its results to EPA. It instead chose to withhold
4 the study in an effort to continue illegally selling and distributing the Products.

5 134. Monsanto had other internal discussions about the ways in which NNG increases
6 in its glyphosate formulations. In 2003, in response to an email from a colleague about testing for
7 NNG, Dr. Wratten wrote “[i]t is of course the NNG that concerns me.” Wratten Tr.143:19-144:9.
8 Dr. Wratten testified that the concern he had was with heat. The email chain, in fact, flags that
9 “at a higher temperature, NNG might increase.” *Id.* at 144:5-9.

10 135. Dr. Wratten also knew that consumers who choose “to apply glyphosate in
11 combination with fertilizers...might bring some nitrite into the mixture.” *Id.* 141:3-7.

12 136. Dr. Wratten even testified that exposure to water, which is requisite to the use of
13 the Products, was another source of nitrites. He testified: “People also, of course, dissolve the
14 formulated product in water for spraying. If the water comes from groundwater, and fertilizers or
15 something have leached, you – you just don’t know what might be in the groundwater. So you’re
16 adding materials to the formulation of unknown purity and composition.” *Id.* 141:12-19.

17 137. In agricultural areas, nitrogen-based fertilizers are a known major source of
18 contamination for groundwater aquifers. *See* Dubrovsky, N.M., and Hamilton, P.A., 2010,
19 Nutrients in the Nation’s Streams and Groundwater: National Findings and Implications: U.S.
20 Geological Survey Fact Sheet 2010, *available at* <https://pubs.usgs.gov/fs/2010/3078/>.

21 138. By 2007, Monsanto and Scotts faced problems caused by high nitrite levels in
22 water. On June 29, 2007, Lynn Boyd, a Monsanto employee, wrote an internal email stating,
23 “With summer upon us, once again, Scotts is faced with increasing nitrite levels in their city
24 water supply.” Ms. Boyd chose to “issue a change in the spec to increase nitrite level[s]”. She
25 noted that Monsanto “[f]or the past two summers” has “been issuing spec waivers for nitrite”
26 even though Scotts tended to see high levels of nitrites in the water it used to formulate the
27 glyphosate products nitrite levels.

28

1 139. Ms. Boyd proposed permanently changing the specifications for nitrite in
2 formulation water at Scotts and reached out to Dr. Wratten to get his thoughts “from a
3 registration perspective.” Dr. Wratten explained “I do think this is important, because the nitrite
4 level is linked to NNG, which a legal limit.” He went on to say, “Since I think the reaction
5 between nitrite and glyphosate is complete and instantaneous, and glyphosate is not limiting, for
6 every unit of nitrite in the water, there is a roughly 4-times higher concentration of NNG
7 produced.” He recommended “maintain[ing] our standards” but noted that “[p]ractically
8 speaking, I’m pretty sure nobody is looking at this in products on the shelf, and it has been a very
9 quiet issue for at least 15 years.”

10 140. More egregiously, of April 2008, Monsanto itself did not appear to even have a
11 firm grasp on how much NNG was in the Products, including *before* they were distributed to
12 retailers.

13 141. In an email chain from April 2008, Monsanto employees discussed different
14 techniques competitors used to avoid impurities like NNG from forming during manufacture.¹³ A
15 Monsanto employee, advised other Monsanto employees, including Donna Farmer, William
16 Heydens, Annette Kirk, and Stephen Waters, that “No ‘route’ really avoids NNG, since it is
17 formed inadvertently directly from glyphosate, in the presence of nitrosating agents. If
18 glyphosate is present, so may NNG be. Such nitrosating substances may occur from different
19 reagent batches, shipping containers, water, etc.” The employee conceded that while Monsanto
20 “might say our route avoids NNG” because Monsanto checks for impurities in the water used for
21 the products, it still forms. The employee then advised: “The only way to know for sure is to
22 measure NNG in many batches over time and convince yourself empirically that [it] does not
23 exceed your detection sensitivity or the legal 1 ppm limit.”

24 142. On May 4, 2010, Dr. Wratten again raised problems with NNG. In an email to
25 William Heydens, a Monsanto toxicologist, and Russell Schneider, a senior regulatory advisor
26 for Monsanto, Dr. Wratten wrote: “NNG is an undesired and inadvertent contaminant that arises
27

28 ¹³ https://www.baumhedlundlaw.com/documents/pdf/monsanto-documents-2/mongly02530964-mongly02530966_redacted.pdf

1 when glyphosate is exposed to a ‘nitrosating material,’ such as sodium nitrite. It can arise during
2 manufacturing of the AI [active ingredient], but also post-production environments such as
3 formulation components (including the water!) or even exposure of dry glyphosate to diesel
4 exhaust.”¹⁴

5 143. In the same email thread, Dr. Wratten acknowledged that NNG’s “level is not
6 fixed at the time of acid manufacture, but instead is greatly impacted by subsequent formulation
7 and handling steps.” *Id.* He added “[b]ecause of these facts, it is also easily contaminated during
8 sampling and analysis, and all high results need to be investigated and verified.” *Id.*

9 144. In July 31, 2015, John Acquavella, a former Monsanto employee and paid
10 epidemiology consultant at the time, asked Donna Farmer in an email whether “glyphosate [is]
11 really nitrosable” and if NNG is “judged likely to be an animal human carcinogen.”¹⁵

12 145. In response, Dr. Farmer acknowledged that it was, in fact, nitrosable. *Id.* She
13 additionally wrote that regulators like EPA “do not require special testing or risk assessment if
14 the levels are at 1 ppm or lower.” *Id.* She then admitted that “***Monsanto therefore prefers to***
15 ***carefully control against NNG formation rather than to engage in scientific debate around its***
16 ***biological activity***” even though in the same email she admitted that “nitrosating agents” can
17 arise “during or after manufacture.” *Id.* (emphasis supplied).

18 146. More fundamentally, Monsanto knew that, once the Products reached consumers,
19 there was nothing it could do to control against NNG formation, no matter what efforts the
20 company took to keep the levels down during manufacture because glyphosate is inherently
21 reactive with nitrites. Yet, it did nothing to inform consumers, EPA, or other regulators about the
22 inherent risks of the Products. It did not add an expiration date to the Products via notification
23 process. To the contrary, it did nothing.

24
25
26 ¹⁴ <https://www.baumhedlundlaw.com/documents/pdf/monsanto-documents-2/email-between-heydens-and-wratten-discussing-nng-levels-in-glyphosate.pdf>

27 ¹⁵ <https://www.baumhedlundlaw.com/assets/monsanto%20roundup%20pages/secret%20documents/Internal-Email-from-Donna-Farmer-Monsanto-Would-Rather-Keep-Roundup-NNG-Levels-Below-1ppm-Rather-Than-Debate-Biological-Activity.pdf>

1 147. Indeed, despite all of their knowledge, and awareness of how consumers use and
2 store the Products, including as directed by Defendants, Defendants never reported any of the
3 evidence of unlawful levels of NNG to EPA. To this day, Monsanto has withheld this
4 information from consumers, EPA and state regulatory entities nationwide.

5 **VII. MONSANTO ACTIVELY CONCEALED THE SAFETY HAZARDS WITH THE**
6 **PRODUCTS FROM REGULATORS AND CONSUMERS ALIKE.**

7 148. Internally, Monsanto was deeply worried about what it might find if it tested older
8 Products in the field, even though testing older products would inform Monsanto about the levels
9 of NNG within the Products consumers use, and thus are exposed to, in the real world.

10 149. On January 13, 2003, Dr. Wratten wrote: “[f]ormation of NNG on aging of the
11 formulation is one topic we have avoided carefully” and admitted that Monsanto’s U.S. business
12 never received an NNG aging study. Wratten Tr. 133:1-5.

13 150. When asked why Monsanto avoided the topic, Dr. Wratten admitted that
14 Monsanto simply did not want to know how much NNG was in the Products when consumers
15 used them. He testified: “It’s one of those things that you can’t ever finish, because imagine we
16 aged it for a year and everything was fine. Then someone says, Well, what about two years, or
17 what about five years. And it’s -- once you start down that path, I don’t see the end to it.” *Id.* at
18 133:6-13. Monsanto, of course, knew that consumers in the real world store the Products for
19 years. *Id.* at 133:14-18.

20 151. Instead of testing, Monsanto did the exact opposite; it intentionally avoided
21 testing, for fear of the results. Dr. Wratten wrote, in that same January 13, 2003 email: “[t]here is
22 a lingering concern about aged samples of dry products... *I would avoid sampling long-aged dry*
23 *product from retail.*” *Id.* at 136:6-11 (emphasis added).

24 152. When asked why he would avoid sampling long-aged dry product from retail,
25 Wratten explained that Monsanto does not sample products from consumers because there are
26 too “many variables.” *Id.* 137:16-138:3. He would “avoid it just because you might find
27 differences from when it was manufactured.” *Id.* He conceded, with respect to NNG, “you might
28 find more [NNG] than you started with.” *Id.* at 138:6-7. Sampling long-aged dry product from

1 retail also “*might result in you having to recall a bunch of product.*” *Id.* at 138:18-139:2
2 (emphasis supplied).

3 153. When asked directly if Monsanto would have to recall product that had more than
4 1 ppm of NNG, he said “yes.” *Id.* (emphasis supplied).

5 154. Dr. Wratten remained concerned about high levels of NNG in consumers’
6 Products seven years later. In 2010, he wrote “it is a real concern that even our own material that
7 was okay at the production plant could have higher levels later when sampled in the field.” *Id.* at
8 154:5-9. Wratten testified that by “real concern” he meant “it’s a real concern relative to the 1
9 ppm limit.” *Id.* at 154:15-17. At that time, he again reiterated that NNG could arise during the
10 manufacture of the active ingredient but also in “post-production environments” like adding
11 water or exposure to diesel. *Id.* at 153:10-18.

12 155. To date, Monsanto has not tested samples of aged products from retail.

13 156. Despite knowing the problems with Products out “in the field” (i.e., with
14 consumers), Defendants nonetheless sold and distributed the Products in quantities that are not
15 designed for a single use with one exception of which Plaintiffs are aware;¹⁶ rather, the rest of
16 the Products are marketed as bulk items designed to be used over multiple occasions and stored
17 over long periods of time. QuikPRO, for instance, comes in a 6.8 lb jug but the label
18 recommends mixing only 1.2 to 1.5 ounces of the Product to get 1 gallon of mixed herbicide.
19 One jug alone makes **72 gallons** of spray solution—more than a residential user would likely
20 spray in an entire lifetime. Given that it can take up to a year for weeds to grow back after area
21 has been sprayed, it can easily take consumers more than a year to use the entire bottle of
22 QuikPRO. The same is true for all of the other Products sold in quantities at or above a gallon,
23 which are specified on Exhibit 1.

24 157. In choosing to manufacture, market, sell and distribute the Products in large
25 quantities, Defendants knew (or, at a minimum, should have known) that consumers would use
26 the Products for multiple sprays over time. In doing so, they also knew that the Products would
27

28

¹⁶ The exception is QuikPRO which is also sold in a 6.8 lb jug and in packets of 5 of 1.5 oz each.

1 almost invariably get more dangerous with each use. Not only would it increase the likelihood of
2 exposure to nitrites, but age, humidity, hot temperatures and other exposures would lead to even
3 more, unsafe levels of NNG in the Products.

4 158. In short, Defendants prioritized profits over its customers' safety, despite
5 knowledge of the dangers of exposure to NNG in the Products. Simply put, Defendants did not
6 want to recall Product or risk a fire drill; instead, they elected to hide the truth from everyone.

7 159. To date, Bayer AG, speaking on behalf of Monsanto and Bayer CropScience,
8 insists that "[b]oth we and the relevant regulatory authorities continue to believe there are no
9 safety concerns in connection with these products." *See* Bayer 2021 Annual Report, p. 72.

10 160. In the wake of trial losses in personal injury cases alleging that Roundup causes
11 cancer, Monsanto and Bayer AG issued a series of statements assuring the public about the
12 safety of its products, even though, at the time, it knew that glyphosate was prone to developing
13 a presumably carcinogenic nitrosamine.

14 161. On August 16, 2018, Bayer AG told the public, "Bayer believes that the jury's
15 decision is at odds with the weight of scientific evidence, decades of real world experience and
16 the conclusions of regulators around the world that all confirm glyphosate is safe and does not
17 cause non-Hodgkin's lymphoma."¹⁷

18 162. On August 23, 2018, Bayer AG held a conference call to discuss the Roundup
19 litigation. Werner Baumann, Bayer AG's Chief Executive Officer, told investors that the verdict
20 is "completely inconsistent with all available facts," because Roundup was in "very good
21 regulatory standing" and there was "strong science supporting" glyphosate's safety.¹⁸

22 163. Bayer AG reiterated this concept in October 2018 after it lost the *Johnson* trial. It
23 assured consumers that "[g]lyphosate-based herbicides have been used safely and successfully
24 for over four decades worldwide." It based this assertion on the supposed "extensive body of
25 research on glyphosate and glyphosate-based herbicides, including more than 800 rigorous

26
27 ¹⁷ <https://media.bayer.com/baynews/baynews.nsf/id/Bayer-Conditions-for-beginning-Monsanto-integration-fulfilled>

28 ¹⁸ https://www.bayer.com/sites/default/files/2020-11/ConferenceCall_2018-08-23_Transcript.pdf

1 registration studies required by EPA, European and other regulators” that allegedly “confirm[]
 2 that these products are safe when used as directed.”¹⁹ But, at the time Bayer AG issued that
 3 statement, its subsidiaries, Monsanto and Bayer CropScience, knew that EPA did not have
 4 critical information about the inability to control NNG formation post-manufacture or the so-
 5 called “discrepancy” regarding the elevated levels of NNG in the Products – information that
 6 would have revealed the safety hazards posed by the Products.

7 164. To date, Bayer AG maintains a webpage for Monsanto and Bayer CropScience
 8 titled “Glyphosate is Safe” but does not mention anywhere that glyphosate is, by its nature,
 9 highly reactive to nitrites to form NNG, which poses a serious threat to consumers’ safety in
 10 using the Products.²⁰

11 **VIII. FIFRA REQUIREMENTS ON LIMITS OF IMPURITIES.**

12 165. FIFRA governs the sale, distribution and use of pesticides in the United States and
 13 establishes a federal registration framework that prohibits the distribution or sale of any
 14 unregistered pesticides. 7 U.S.C. § 136a(a). Specifically, Section 136a(a) provides “[e]xcept as
 15 provided by this subchapter, no person in any State may distribute or sell to any person any
 16 pesticide that is not registered under this subchapter.” *See also* 7 U.S.C. § 136j(a)(1)(A) (“it shall
 17 be unlawful for any person in any State to distribute or sell to any person – (A) any pesticide that
 18 is not registered under section 136a of this title...”).

19 166. FIFRA defines the term “pesticide” to include “any substance or mixture of
 20 substances intended for use as a plant regulator, defoliant, or desiccant.” 7 U.S.C. § 136(u)(2).
 21 The Products are pesticides because they are herbicides intended to kill weeds.

22 167. One of the factors EPA evaluates during the registration process is whether the
 23 pesticide “will not cause unreasonable adverse effects on humans and the environment.” *Bates v.*
 24 *Dow Agrosciences*, 544 U.S. 431, 438 (2005). *See also* 7 U.S.C. § 136a(c)(5)(C), (D), §§
 25 136(bb).

27
 28 ¹⁹ <https://www.bayer.com/en/glyphosate/is-glyphosate-safe>

²⁰ *Id.*

1 168. FIFRA defines “unreasonable adverse effects” to include “any unreasonable risk
2 to man or the environment, taking into account the economic, social, and environmental costs
3 and benefits of the use of any pesticide.” 7 U.S.C. 136(bb).

4 169. A product’s registration under FIFRA establishes the terms and conditions under
5 which that product may be lawfully sold, distributed, and used. *See* 7 U.S.C. § 136j(a)(1)(A); *see also*
6 7 U.S.C. §§ 136a(c)(1)(A)-(F), 136a(c)(5) and 136a(d)(1).

7 170. California also requires manufacturers to register herbicides that are sold in the
8 state with the Department of Pesticide Regulation. Specifically, Cal. Food & Agric. Code
9 § 12811 provides that “[e]very manufacturer of, importer of, or dealer in any pesticide...shall
10 obtain a certificate of registration from the department before the pesticide is offered for sale.”
11 Cal. Food & Agric. Code § 12993 further provides that “[i]t is unlawful for any person to
12 manufacture, deliver, or sell any pesticide or any substance or mixture of substances that is
13 represented to be a pesticide...which is not registered pursuant to this chapter...” Only EPA-
14 approved herbicides may be sold and registered in California.

15 171. As part of the federal registration process, applicants must certify the chemical
16 composition of the product, including limits on ingredients and impurities like NNG.²¹ *See* 41
17 C.F.R. §158.350. As to nitrosamines specifically, EPA has stated applicants “must certify the
18 upper limit of the N-nitroso compound in his Confidential Statement of Formula for all products
19 containing a positive level of N-nitroso contaminant.” 45 Fed. Reg. 42856.

20 172. The limits “become legally binding limits upon approval of the application” and
21 apply “to the product from the date of production to date of use.” 41 C.F.R. §158.350. In other
22 words, certified limits define the precise contours of the product pesticide manufacturers are
23 authorized to sell.
24

25
26
27 ²¹ EPA defines “impurity” to mean “any substance (or group of structurally similar substances if
28 specified by the Agency), in a pesticide product other than an active ingredient or an inert
ingredient, including unreacted starting materials, side reaction products, contaminants, and
degradation products.” 41 C.F.R. §158.300.

1 173. Applicants and registrants can shorten the applicable timeframe of the limits by
2 putting “a statement prohibiting use after a certain date” at which point “the certified limits will
3 apply only until that date.” 41 C.F.R. §158.350.

4 174. However, if an applicant or registrant declines to put “a statement prohibiting use
5 after a certain date” on the product, then an impurity within an herbicide can *never* exceed its
6 certified limit. In such circumstances, if an impurity exceeds its certified limit *at any point in*
7 *time*, the herbicide is and has always been unregistered and is illegal to sell or distribute.

8 **IX. DEFENDANTS UNLAWFULLY SOLD AND DISTRIBUTED UNREGISTERED**
9 **HERBICIDES.**

10 175. The upper certified limit for NNG in each of the Products is 1 ppm. The upper
11 certified limit is a binding part of each Products’ registration.

12 176. At all times relevant hereto, none of the Products contained a statement
13 prohibiting use after a certain date.

14 177. Defendants sold and distributed the Products knowing that consumers’ ordinary
15 use of the Products would invariably introduce nitrites and thereby cause NNG to form at levels
16 in excess of its certified limit of 1 ppm. Because the Products’ certified limits, upon which the
17 Products’ registrations with EPA are based, do not allow the Products to have over 1 ppm NNG
18 *at any point in time* since the Products do not include a statement prohibiting use after a certain
19 date, the Products are and have always been unregistered pesticides and violate 41 C.F.R.
20 §158.350. The sale and/or distribution of the Products was also prohibited because the Products’
21 chemical composition differed at the time of their sale or distribution from what was allowed
22 under their Confidential Statement of Formula. None of the Products’ Confidential Statements of
23 Formula permit NNG to exceed 1 ppm at any point in time during the Products’ life cycle. The
24 Products, however, can and invariably do exceed 1 ppm NNG even when used and stored in
25 accordance with the labels. Accordingly, Defendants never had a right to sell or distribute the
26 Products, and Defendants’ sale and distribution of the Products was illegal in violation of
27 FIFRA, including but not limited to:
28

- 1 a. 7 U.S.C. § 136a(a) (“no person in any State may distribute or sell to
2 any person any pesticide that is not registered under this subchapter);
- 3 b. 7 U.S.C. § 136j(a)(1)(A) (“it shall be unlawful for any person in any State to
4 distribute or sell to any person— (A) any pesticide that is not registered
5 under section 136a of this title or whose registration has been canceled or
6 suspended, except to the extent that distribution or sale otherwise has been
7 authorized by the Administrator under this subchapter”);
- 8 c. 7 U.S.C. § 136j(a)(1)(C) (“it shall be unlawful for any person in any State to
9 distribute or sell to any person— (C) any registered pesticide the composition of
10 which at the time of its distribution or sale from its composition as described in
11 the statement required in connection with registration under section 136a of this
12 title”);
- 13 d. 7 U.S.C. § 136j(a)(1)(E) (“it shall be unlawful for any person in any State to
14 distribute or sell to any person—(E) any pesticide which is adulterated or
15 misbranded”);
- 16 e. 7 U.S.C. § 136(q)(1)(C) (a pesticide is misbranded if “it is an imitation of, or is
17 offered for sale under the name of, another pesticide”);
- 18 f. 7 U.S.C. § 136j(a)(2)(S) (“It shall be unlawful for any person—to violate any
19 regulation issued under section 136a(a) or 136q of this title”).

20 178. Defendants’ sale and distribution of the Products was also illegal in violation of
21 parallel requirements under California law, including but not limited to:

- 22 a. Cal. Food & Agric. Code § 12811 (“[e]very manufacturer of, importer of, or
23 dealer in any pesticide...shall obtain a certificate of registration from the
24 department before the pesticide is offered for sale”);
- 25 b. Cal. Food & Agric. Code § 12881(c) (a pesticide is misbranded if it “it is an
26 imitation of, or offered for sale under the name of, another article”);
- 27 c. Cal. Food & Agric. Code § 12991(c) (it is unlawful for any person in connection
28 with a pesticide to “[e]ngage in illegitimate business or dishonest dealing”);

- 1 d. Cal. Food & Agric. Code § 12992 (“[i]t is unlawful for any person to sell any
2 adulterated or misbranded pesticide”); and
- 3 e. Cal. Food & Agric. Code § 12993 (“[i]t is unlawful for any person to
4 manufacture, deliver, or sell any pesticide or any substance or mixture of
5 substances that is represented to be a pesticide...which is not registered pursuant
6 to this chapter...”)

7 **X. DEFENDANTS UNLAWFULLY SOLD AND DISTRIBUTED MISBRANDED**
8 **HERBICIDES.**

9 179. The California Food & Agricultural Code and FIFRA further prohibit the sale or
10 distribution of pesticides that are “misbranded.” Section 136j(a)(1)(E) of FIFRA provides that “it
11 shall be unlawful for any person in any State to distribute or sell to any person—(E) any
12 pesticide which is adulterated or misbranded.” Section 12991 of Cal. Food & Agric. Code also
13 provides that “[i]t is unlawful for any person to sell any adulterated or misbranded pesticide”.

14 180. A pesticide is misbranded under FIFRA if its labeling “bears any statement...
15 which is false or misleading in any particular,” 7 U.S.C. 136(q)(1)(A) and 40 C.F.R.
16 § 156.10(a)(5), or if “it is an imitation of, or is offered for sale under the name of, another
17 pesticide,” 7 U.S.C. § 136(q)(1)(C).

18 181. California has parallel requirements that provide that a pesticide is misbranded if
19 “[i]t is labeled or branded so as to deceive or mislead the purchaser”, Cal. Food & Agric. Code §
20 12881(d), or “it is an imitation of, or offered for sale under the name of, another article,” Cal.
21 Food & Agric. Code § 12881(c). California also has further misbranding provisions that parallel
22 FIFRA and provide:

- 23 a. Cal. Food & Agric. Code § 12881(a) (a pesticide is misbranded if “[t]he package
24 or label bears any false or misleading statement, design, or device
25 regarding the article or any ingredient or substance that is contained in it”);
- 26 b. Cal. Food & Agric. Code § 12882(b) (a pesticide is misbranded if “[t]he contents
27 of the package are of a quality below that of the guarantee on the label, on the
28 application for registration of the pesticide, or of the analysis of the representative

1 sample delivered in connection with the application for registration of
2 the pesticide”);

3 c. Cal. Food & Agric. Code § 12991(a) (it is unlawful for any person in connection
4 with a pesticide to “[m]ake any material or substantial misrepresentation”);

5 d. Cal. Food & Agric. Code § 12991(b) (it is unlawful for any person in connection
6 with a pesticide to “[m]ake any false promises of a character likely to influence,
7 induce, or deceive”);

8 e. Cal. Food & Agric. Code § 12991(c) (it is unlawful for any person in connection
9 with a pesticide to “[e]ngage in illegitimate business or dishonest dealing”);

10 f. Cal. Food & Agric. Code § 12992 (“[i]t is unlawful for any person to sell any
11 adulterated or misbranded pesticide”); and

12 g. Cal. Food & Agric. Code § 12993 (“[i]t is unlawful for any person to
13 manufacture, deliver, or sell any pesticide or any substance or mixture of
14 substances that is represented to be a pesticide...which is not registered pursuant
15 to this chapter...”)

16 182. Defendants falsely sold and/or distributed the Products under the guise that they
17 were registered, approved by EPA, and legal to sell. In reality, the Products’ true chemical
18 compositions are not and never have been registered, approved by EPA, or legal to sell, as
19 explained above. The Products are, therefore, imitations of registered pesticides and falsely,
20 unlawfully, and unfairly offered for sale under the name of registered pesticides.

21 183. By marketing, selling, and distributing the Products under the names of registered
22 pesticides, Defendants misled consumers into believing they were buying EPA-approved
23 herbicides that are registered and legal to sell when, in fact, they were not. Reasonable
24 consumers believe when they see the name of a Product like “Roundup QuikPRO Herbicide” or
25 “Roundup Weed & Grass Killer Super Concentrate” that they are buying a product that is
26 chemically equivalent to the herbicides EPA approved to be sold as “Roundup QuikPRO
27 Herbicide” or “Roundup Weed & Grass Killer Super Concentrate” respectively. In reality, the
28 chemical composition within each Product, however, is not approved by EPA and is not

1 registered because the Products invariably form unlawful levels of a presumptive carcinogen,
2 NNG. Because EPA did not approve the Products' true chemical composition, Defendants' sale,
3 distribution and marketing of the Products deprived consumers of the benefit of EPA's safety
4 assessment. This information was material to consumers because it is a safety hazard for
5 consumers.

6 184. Defendants' marketing, sale and/or distribution of the Products accordingly was
7 unlawful, misleading and unfair and violated FIFRA and parallel requirements under the Cal.
8 Food & Agric. Code, including: Cal. Food & Agric. Code § 12881(a), (c), (d), 12882 (b),
9 12991(a), (b), (c), 12992 and 12993.

10 **XI. DEFENDANTS UNLAWFULLY FAILED TO PUT A "NOT FOR SALE OR USE**
11 **AFTER [DATE]" ON THE PRODUCTS.**

12 185. EPA specifically requires pesticide manufacturers to put a "Not for sale or use
13 after [date]" in certain circumstances. Specifically, when "a pesticide formulation changes
14 chemical composition significantly," the product "must bear the following statement in a
15 prominent position on the label: 'Not for sale or use after [date].'" 40 C.F.R. § 156.10(g)(6). The
16 product must comply with the certified limits for impurities up to the expiration time indicated
17 on the label. *See* 40 C.F.R. § 156.10(g)(6)(ii); 41 C.F.R. §158.350.

18 186. FIFRA defines "label" to mean "the written, printed, or graphic matter on, or
19 attached to, the pesticide or device or any of its containers or wrappers." 7 U.S.C. § 136(p)(1).

20 187. Defendants knew the Products changed in chemical composition over time
21 through the ordinary use of the Products, which invariably exposes the formulation to nitrites and
22 causes NNG to form at levels exceeding permissible limits.

23 188. The change in chemical composition in the Products due to an increase in NNG is
24 significant because NNG is an impurity of toxicological significance and it develops at levels
25 exceeding the certified limits approved by EPA and the limit at which EPA has determined NNG
26 poses a serious risk to human health and is presumed to be carcinogenic.

27 189. Indeed, EPA caps NNG at 1 ppm in glyphosate-based products. EPA also
28 presumes that nitrosamines like NNG are carcinogenic unless a manufacturer provides acceptable

1 oncogenic testing that establishes the particular nitrosamine is not carcinogenic in accordance
2 with EPA's June 26, 1980 policy, which is required when a manufacturer finds evidence of levels
3 of NNG over 1 ppm. Monsanto has never provided EPA with oncogenic testing that EPA deemed
4 to be acceptable to establish that NNG is not carcinogenic, and, according to EPA's own
5 statements, neither have any of the other Defendants.

6 190. Because Defendants knew the Products are highly reactive with nitrites and
7 consumers' ordinary use of the Products would likely cause NNG to form in excess of permissible
8 levels, they were required to put a "Not for sale or use after [date]" on the Products' labels.
9 Defendants' failure to do so violates 40 C.F.R. § 156.10(g)(6).

10 191. Defendants had a duty to disclose the "Not for sale or use after [date]" pursuant to
11 40 C.F.R. § 156.10(g)(6). They also had a duty to disclose the "Not for sale or use after [date]"
12 because Defendants had exclusive knowledge about the reactivity of the Products when exposed
13 to nitrites and the circumstances in which the Products develop NNG. The information was
14 material because the Products' reactivity with nitrites poses a safety hazard to consumers since
15 nitrosamines are known carcinogens. Consumers, including Plaintiffs, have no ability to know
16 this information themselves because testing is not readily available, and Defendants actively
17 concealed this information from Plaintiffs, those similarly situated, EPA, and the general public.
18 Further, when a product does not include an expiration date, reasonable consumers are led to
19 believe that a product is safe to use until they finish using the entirety of the product, which can
20 take well over a decade. They also assume that the Product will not develop unlawful levels of a
21 presumptive carcinogen as they use the Product.

22 192. Defendants' failure to include a "Not for sale or use after [date]" on the Products
23 misled consumers as to the time frame in which they could safely use the Products and created a
24 safety hazard for consumers since in the absence of a "Not for sale or use after [date]," consumers
25 may unknowingly use and expose themselves to a Product that has unlawfully high levels of NNG,
26 a presumptive carcinogen.

27 193. Monsanto, Bayer CropScience and Seamless Control easily could have added a
28 "Not for sale or use after [date]" to the Products through the notification process in accordance

1 with PR Notice 98-10 and 40 C.F.R. § 152.46, as EPA has allowed other manufacturers, like A-
2 dec, Inc., to do.²² *See Hardeman v. Monsanto Co.*, 997 F. 3d 941, 960-1 (9th Cir. 2021) (“Though
3 Monsanto contends that ‘[a]dding a warning about cancer would hardly qualify as a ‘minor
4 modification,’ EPA has repeatedly permitted pesticide manufacturers to use the notification
5 procedure to add notices related to cancer to their products’ labels.”)

6 194. Instead, Monsanto, Bayer CropScience, and Seamless Control knowingly sold
7 (and Monsanto and Bayer CropScience continue to sell) the Products without informing
8 consumers as to the applicable “Not for sale or use after [date]” on the Products’ labels in violation
9 of federal and California law, even though that is exactly where a reasonable consumer would
10 look for such information.

11 195. What’s worse, Monsanto has acknowledged that some of the Products have a shelf
12 life or expiration date but has failed to include this information on the Products’ labels where it
13 is legally required to put it and where it would be most obvious to consumers. For example, the
14 Material Safety Data Sheets (MSDS) for some of the Products identify a specified shelf life. For
15 instance, the MSDS for Roundup PRO Concentrate Herbicide effective May 25, 2015 issued by
16 Monsanto (“2015 MSDS”) discloses that its “[r]ecommended maximum shelf life:” is “2 years.”
17 *See Exhibit 24* (May 29, 2015 MSDS for Roundup PRO Concentrate Herbicide).

18 196. Bayer CropScience later issued a version of the MSDS for the Roundup PRO
19 Concentrate Herbicide in 2020 without that disclosure. *See Exhibit 25* (August 12, 2020 MSDS
20 for Roundup PRO Concentrate Herbicide).

21 197. The older 2015 MSDS does not lawfully disclose an expiration date to consumers.
22 First, the 2015 MSDS – and all the other MSDS’s – do not qualify as “labels” under FIFRA
23 because the MSDS does not come “attached to” the Products themselves. Nor are they included
24 with the Products when purchased off-the-shelf from a retailer. Indeed, the rule requires
25 placement of the “Not for sale or use after [date]” “in a *prominent* position *on the label*” so that
26 consumers can and will see the date every time they use it. 40 C.F.R. § 156.10(g)(6) (emphasis
27

28 ²² A-Dec, Inc. is a manufacturer that added an expiration date via the notification process. *See*
https://www3.epa.gov/pesticides/chem_search/ppls/079662-00001-20110915.pdf

1 added). The point of the expiration date is to prevent consumers from using the Products after a
2 certain time period. An expiration date that is buried in an MSDS, does not come attached to the
3 Product, and is not *prominently* featured on the label defeats the point of this requirement. It is,
4 however, evidence that Defendants knew the Product should have been marketed and sold with a
5 clearly stated shelf life or expiration date.

6 198. Setting aside that it is atypical for consumers to even see the MSDS, reasonable
7 consumers could see the MSDS and still reasonably believe they could safely use the Products
8 after 2 years since they do not explicitly tell consumers not to *use* the product after a certain date.
9 In fact, the 2015 MSDS for Roundup PRO Concentrate Herbicide expressly disclaims that it
10 applies to consumer use of the Product and states the consumer should, instead, rely on the label
11 for such purposes. Specifically, it states:

12 This Material Safety Data Sheet (MSDS) serves different purposes than and
13 DOES NOT REPLACE OR MODIFY THE EPA-APPROVED PRODUCT
14 LABELING (attached to and accompanying the product container). This MSDS
15 provides important health, safety, and environmental information for employers,
16 employees, emergency responders and others handling large quantities of the
17 product in activities generally other than product use, while the labeling provide
18 information specifically for product use in the ordinary course. Use, storage, and
19 disposal of pesticide products are regulated by the EPA under the authority of the
20 Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) through the product
21 labeling, and ***all necessary and appropriate precautionary use, storage, and
22 disposal information is set forth on that labeling.*** It is a violation of federal law
23 to use a pesticide product in any manner not prescribed on the EPA-approved
24 label.

25 2015 MSDS (emphasis added).

26 199. The 2015 MSDS for Roundup PRO Concentrate Herbicide also contains
27 representations that conceal the safety hazard posed by the products' propensity to react with
28 nitrites and develop NNG. It provides that the product is "[s]table under normal conditions of
handling and storage." Further, the section relating to the "[p]ossibility of hazardous reactions"
does not disclose reactions with nitrites, or warnings to keep the product away from sources of
nitrites.

200. Similarly, the 2003 MSDS for the Roundup Weed & Grass Killer Super
Concentrate provides that "shelf life" is "currently under test" but then recommends a 2-year shelf

1 life. Monsanto removed the reference to the shelf life in subsequent MSDSs for the Roundup
2 Weed & Grass Killer Super Concentrate.

3 201. The Products’ failure to include a “Not for sale or use after [date]” was unlawful
4 and renders them misbranded in violation of FIFRA and the regulations promulgated pursuant to
5 it, including, but not limited to:

- 6 a. 7 U.S.C. § 136(q)(1)(E) (a pesticide is misbranded if “any word, statement, or
7 other information required by or under authority of this subchapter to appear on
8 the label or labeling is not prominently placed thereon with such conspicuousness
9 (as compared with other words, statements, designs, or graphic matter in
10 the labeling) and in such terms as to render it likely to be read and understood by
11 the ordinary individual under customary conditions of purchase and use”);
- 12 b. 7 U.S.C. § 136j(a)(1)(E) (“it shall be unlawful for any person in any State to
13 distribute or sell to any person—(E) any pesticide which is adulterated or
14 misbranded”); and
- 15 c. 40 C.F.R. § 156.10(a)(5) (a pesticide is misbranded “if its labeling is false or
16 misleading in any particular including both pesticidal and non-pesticidal claims”).

17 202. Defendants’ sale and distribution of the Products was unlawful and violates the
18 California Food & Agricultural Code, including, but not limited to:

- 19 a. Cal. Food & Agric. Code § 12881(a) (a pesticide is misbranded if its package or
20 label bears any false or misleading statement, design, or device regarding the
21 article or any ingredient or substance that is contained in it);
- 22 b. Cal. Food & Agric. Code § 12881(d) (a pesticide is misbranded if it is labeled or
23 branded so as to deceive or mislead the purchaser);
- 24 c. Cal. Food & Agric. Code § 12991 (“It is unlawful for any person, individually or
25 through another, in connection with [a pesticide]... to (a) Make any material or
26 substantial misrepresentation. (b) Make any false promises of a character likely to
27 influence, induce, or deceive. (c) Engage in illegitimate business or dishonest
28 dealing...”); and

1 d. Cal. Food & Agric. Code § 12992 (“[i]t is unlawful for any person to sell any
2 adulterated or misbranded pesticide”).

3 **XII. PLAINTIFFS’ EXPERIENCES**

4 **A. Scott Koller**

5 203. Plaintiff Scott Koller is a consumer who is interested in herbicide products to
6 control weeds. He purchased Roundup Weed & Grass Killer Super Concentrate on several
7 occasions from Lowe’s, Ace Hardware, and Home Depot stores in the Brentwood, California and
8 Antioch, California areas in the last decade, including at least two over the last four years. Mr.
9 Koller typically used the Product over the course of a year or two. He stored the Product in his
10 garage or, during the summer, outside in his yard next to his lawn mower or in an adjacent plastic
11 shed. Each location—his garage, side yard and plastic shed—are not temperature controlled, and
12 all reach well over 100 degrees Fahrenheit in summer.

13 204. Mr. Koller made each of his purchases after reading and relying on the
14 truthfulness of the Roundup Weed & Grass Killer Super Concentrate label, which among other
15 things, promised the Product contained “Roundup Weed & Grass Killer Super Concentrate” as
16 registered with EPA. Mr. Koller believed the truth of the representation, i.e., that the Product was
17 chemically identical to the “Roundup Weed & Grass Killer Super Concentrate” registered with
18 EPA. The label also led him to believe that the Product contained a registered, EPA-approved
19 herbicide. But, as explained above, the Product is not “Roundup Weed & Grass Killer Super
20 Concentrate” as registered with EPA because the registered “Roundup Weed & Grass Killer
21 Super Concentrate” can never exceed 1 ppm NNG at any point in time. The Products, by contrast,
22 have a different chemical composition that enables them to develop NNG far in excess of the 1
23 ppm legal limit. EPA never approved or registered the Products’ true chemical compositions.
24 Had Mr. Koller known the truth, Mr. Koller would not have purchased the Roundup Weed &
25 Grass Killer Super Concentrate.

26 205. Further, Mr. Koller made each of his purchases after reading and relying on the
27 truthfulness of the Product’s label, which did not include “Not for sale or use after [date].”
28 Because there was not a “Not for sale or use after [date]” disclaimer on the Roundup Weed &

1 Grass Killer Super Concentrate, he believed that it could be used for an indefinite duration when
2 used and stored in accordance with the label. When Mr. Koller bought the Roundup Weed &
3 Grass Killer Super Concentrate, he did not see an expiration date or a “Not for sale or use after
4 [date].” Had there been an expiration date, he would have noticed it. The length of time in which
5 he could use the Roundup Weed & Grass Killer Super Concentrate was important to him because
6 it comes in a large quantity, and it typically takes him a year or more to use all of it. Had
7 Defendants complied with the law, and put a “Not for sale or use after [date]” instruction on the
8 Product’s label, he would not have been drawn to the Product and would not have purchased it.
9 At a minimum, he would have paid less for each Product. Indeed, the Products are worth less to
10 consumers since the Products do not last for an indefinite duration, but, rather, can be used only
11 for a limited period of time, if at all.

12 206. In addition, at the time of each of Mr. Koller’s purchases of the Roundup Weed &
13 Grass Killer Super Concentrate, he was not aware that it was defective because it was substantially
14 likely to develop uncontrollable and unlawful levels of a presumptive carcinogen, even with use
15 and storage consistent with the label. This information was material to Mr. Koller because it
16 concerns his safety in using the Products. Mr. Koller would not have purchased the Products or
17 would not have paid as much for them if he had known of the defect with the Products.

18 207. Mr. Koller continues to want to purchase products that control weeds, including
19 Roundup Weed & Grass Killer Super Concentrate and other Products the Defendants manufacture,
20 distribute or sell. He regularly visits online and brick and mortar stores where the Products are
21 sold. Without purchasing and having the Products professionally tested or consulting scientific
22 and regulatory experts, Mr. Koller will be unable to determine if representations that Defendants
23 make regarding the properties and features of the Products are true and complete or the length of
24 time in which he can safely use the Products. Because Mr. Koller does not know the formula for
25 the Products, which can change over time, and cannot test whether the Products change in
26 chemical composition over time and degrade into unlawful levels of NNG without first
27 purchasing a Product, Mr. Koller will be unable to rely on the Products’ labels when shopping for
28 herbicide products in the future absent an injunction that requires Monsanto and Bayer

1 CropScience to add a “Not for sale or use after [date]” direction to the Products’ labels via EPA’s
2 notification process. In addition, at present Mr. Koller cannot rely on the accuracy of Monsanto’s
3 and Bayer CropScience’s labels for the entire line of glyphosate products, including glyphosate
4 products that have more than 40% glyphosate, which Mr. Koller is also interested in purchasing
5 with labeling that comports with regulations. Should Monsanto or Bayer CropScience begin to
6 market and sell a new line of products, Mr. Koller could also be at risk for buying another one of
7 their products in reliance on the same or similar misrepresentation and omissions. And because
8 of unlawful and misleading labels on the Products, Mr. Koller cannot make informed choices
9 between the herbicides offered by Monsanto and/or Bayer CropScience and herbicides offered by
10 other manufacturers, such as choices based on price and length of time in which the product is
11 suitable for consumer use.

12 **B. Tim Ferguson**

13 208. Plaintiff Tim Ferguson is a consumer who is interested in herbicide products. He
14 purchased QuikPRO packets from Tractor Supply in Ripon, California on or around September
15 2021. He has stored the Product in the back of his truck where it can get very hot.

16 209. Mr. Ferguson made his purchase after reading and relying on the truthfulness of
17 the QuikPRO label, which among other things, promised the Product contained “Roundup
18 QuikPRO Herbicide” as registered with EPA. Mr. Ferguson believed the truth of the
19 representation, i.e., that the Product was chemically identical to the “Roundup QuikPRO
20 Herbicide” registered with EPA. The label also led him to believe that the Product contained a
21 registered, EPA-approved herbicide. But, as explained above, the Product is not “Roundup
22 QuikPRO Herbicide” as registered with EPA because the registered “Roundup QuikPRO
23 Herbicide” can never exceed 1 ppm NNG at any point in time. The Products, by contrast, have a
24 different chemical composition that enables them to develop NNG far in excess of the 1 ppm legal
25 limit. EPA never approved or registered the Products’ true chemical composition. Had Mr.
26 Ferguson known the truth, he would not have purchased the QuikPRO.

27 210. Further, Mr. Ferguson made purchase after reading and relying on the truthfulness
28 of the Product’s label, which did not include “Not for sale or use after [date].” Because there was

1 not a “Not for sale or use after [date]” disclaimer on the Products, he believed that QuikPRO
2 could be used for an indefinite duration when used and stored in accordance with the label. When
3 Mr. Ferguson bought the QuikPRO, he did not see an expiration date or a “Not for sale or use
4 after [date].” Had there been an expiration date, he would have noticed it. The length of time in
5 which he could use the QuikPRO was important to him because he did not plan to use all the
6 packets in one use and intended to store unused packets for use even possibly years later. Had
7 Defendants complied with the law, and put a “Not for sale or use after [date]” disclosure on the
8 Product’s label, he would not have been drawn to the Products and would not have purchased
9 them. At a minimum, he would have paid less for each Product. Indeed, the Products are worth
10 less to consumers since the Products do not last for an indefinite duration, but, rather, can be used
11 only for a limited period of time, if at all.

12 211. In addition, at the time of Mr. Ferguson’s purchase of the QuikPRO, he was not
13 aware that it was defective because it was substantially likely to develop uncontrollable and
14 unlawful levels of a presumptive carcinogen, even with use and storage consistent with the label.
15 This information was material to Mr. Ferguson because it concerns his safety in using it. Mr.
16 Ferguson would not have purchased the QuikPRO or would not have paid as much for it if he had
17 known of the defect with the Product.

18 212. Mr. Ferguson continues to want to purchase products that control weeds, including
19 QuikPRO and other Products the Defendants manufacture, distribute or sell. He regularly visits
20 online and brick and mortar stores where the Products are sold. Without purchasing and having
21 the Products professionally tested or consulting scientific and regulatory experts, Mr. Ferguson
22 will be unable to determine if representations that Defendants make regarding the properties and
23 features of the Products are true and complete or the length of time in which he can safely use the
24 Products. Because Mr. Ferguson does not know the formula for the Products, which can change
25 over time, and cannot test whether the Products change in chemical composition over time and
26 degrade into unlawful levels of NNG without first purchasing a Product, Mr. Ferguson will be
27 unable to rely on the Products’ labels when shopping for herbicide products in the future absent
28 an injunction that requires Monsanto and Bayer CropScience to add a “Not for sale or use after

1 [date]” to the Products’ labels via EPA’s notification process. In addition, at present Mr. Ferguson
2 cannot rely on the accuracy of Monsanto’s and Bayer CropScience’s labels for the entire line of
3 glyphosate products, including glyphosate products that have more than 40% glyphosate, which
4 Mr. Ferguson is also interested in purchasing with labeling that comports with regulations. Should
5 Monsanto or Bayer CropScience begin to market and sell a new line of products, Mr. Ferguson
6 could also be at risk for buying another one of their products in reliance on the same or similar
7 misrepresentation and omissions. And because of unlawful and misleading labels on the Products,
8 Mr. Ferguson cannot make informed choices between the herbicides offered by Monsanto and/or
9 Bayer CropScience and herbicides offered by other manufacturers, such as choices based on price
10 and length of time in which the product is suitable for consumer use.

11 **C. Ruby Cornejo**

12 213. Plaintiff Ruby Cornejo is a consumer who is interested in herbicide products. Ms.
13 Cornejo has purchased Roundup products for decades. More recently, she has purchased
14 QuikPRO packets from Amazon which were sent to her home in Galt, California in April 2022,
15 December 2021, and April 2021. She also purchased QuikPRO packets from Tractor Supply in
16 June 2020 and from Doitonmyown.com in April 2021. She also purchased jugs of QuikPRO
17 about four years ago from Horizon in Sacramento, California. She also has bought Roundup
18 PROMAX jugs on multiple occasions from 2004 to 2020 from various stores, including Tractor
19 Supply in Galt, California. Ms. Cornejo uses the Products to maintain her rural property. She
20 typically stores the Products in her barn where she also has a tractor. Her barn can get hot in the
21 summer. When she has bought the Products in the larger quantities, like the QuikPRO and
22 PROMAX jugs, it can take her longer than a year to go through a bottle.

23 214. Ms. Cornejo made each of her purchases after reading and relying on the
24 truthfulness of the QuikPRO and PROMAX labels, which among other things, promised that the
25 Product contained “Roundup QuikPRO Herbicide” and/or “Roundup PROMAX Herbicide” as
26 registered with EPA. Ms. Cornejo believed the truth of the representation, i.e., that the Product
27 was chemically identical to the “Roundup QuikPRO Herbicide” and “Roundup PROMAX
28 Herbicide” registered with EPA. The label also led her to believe that the Products contained

1 registered, EPA-approved herbicides. But, as explained above, the Products are not “Roundup
2 QuikPRO Herbicide” and/or “Roundup PROMAX Herbicide” as registered with EPA because
3 the registered “Roundup QuikPRO Herbicide” and “Roundup PROMAX Herbicide” can never
4 exceed 1 ppm NNG at any point in time. The Products, by contrast, have a different chemical
5 composition that enables them to develop NNG far in excess of the 1 ppm legal limit. EPA never
6 approved or registered the Products’ true chemical composition. Had Ms. Cornejo known the
7 truth, she would not have purchased the Products.

8 215. Further, Ms. Cornejo made each of her purchases after reading and relying on the
9 truthfulness of the Products’ labels, which did not include “Not for sale or use after [date].”
10 Because there was not a “Not for sale or use after [date]” disclaimer on the Products, she believed
11 that the Products could be used for an indefinite duration when used and stored in accordance
12 with the label. When Ms. Cornejo bought the Products, she did not see an expiration date or a
13 “Not for sale or use after [date]” on the Products’ labels. Had there been an expiration date, she
14 would have noticed it. The length of time in which she could store and use the Products was
15 important to her because some of the Products come in large quantities, and it can take her years
16 to use the Products. Further, when she buys the Products that come in packets, she does not use
17 all the packets at once and stores unused packets for long periods of time as well, often for years.
18 Had Defendants complied with the law, and put a “Not for sale or use after [date]” disclaimer on
19 the Product’s label, she would not have been drawn to the Products and would not have purchased
20 them. At a minimum, she would have paid less for each Product. Indeed, the Products are worth
21 less to consumers since the Products do not last for an indefinite duration, but, rather, can be used
22 only for a limited period of time, if at all.

23 216. In addition, at the time of each of Ms. Cornejo’s purchases of the Products, she
24 was not aware that the Products were defective because they are substantially likely to develop
25 uncontrollable and unlawful levels of a presumptive carcinogen, even with use and storage
26 consistent with the label. This information was material to Ms. Cornejo because it concerns her
27 safety in using the Products. Ms. Cornejo would not have purchased the Products or would not
28 have paid as much for them if she had known of the defect with the Products.

1 217. Ms. Cornejo continues to want to purchase products that control weeds, including
2 QuikPRO and other products the Defendants manufacture, distribute or sell. She regularly visits
3 online and brick and mortar stores where the Products are sold. Without purchasing and having
4 the Products professionally tested or consulting scientific and regulatory experts, Ms. Cornejo
5 will be unable to determine if representations that Defendants make regarding the properties and
6 features of the Products are true and complete or the length of time in which she can safely use
7 the Products. Because Ms. Cornejo does not know the formula for the Products, which can change
8 over time, and cannot test whether the Products change in chemical composition over time and
9 degrade into unlawful levels of NNG without first purchasing a Product, Ms. Cornejo will be
10 unable to rely on the Products' labels when shopping for herbicide products in the future absent
11 an injunction that requires Monsanto and Bayer CropScience to add a "Not for sale or use after
12 [date]" to the Products' labels via EPA's notification process. In addition, at present Ms. Cornejo
13 cannot rely on the accuracy of Monsanto's and Bayer CropScience's labels for the entire line of
14 glyphosate products, including glyphosate products that have more than 40% glyphosate, which
15 Ms. Cornejo is also interested in purchasing with labeling that comports with regulations. Should
16 Monsanto or Bayer CropScience begin to market and sell a new line of products, Ms. Cornejo
17 could also be at risk for buying another one of their products in reliance on the same or similar
18 misrepresentation and omissions. And because of unlawful and misleading labels on the Products,
19 Ms. Cornejo cannot make informed choices between the herbicides offered by Monsanto and/or
20 Bayer CropScience and herbicides offered by other manufacturers, such as choices based on price
21 and length of time in which the product is suitable for consumer use.

22 **D. John Lysek**

23 218. Plaintiff John Lysek is a consumer who is interested in herbicide products. Mr.
24 Lysek purchased a new jug of QuikPRO from eBay, which was sent to his home in Redding,
25 California, about two years ago. One of the reasons he purchased the Product was because he
26 believed it would last for years since it was sold in a large quantity. It typically takes him years
27 to go through a jug of QuikPRO. Mr. Lysek also bought packets of QuikPRO from eBay that
28 were sent to his home in Redding, California about four years ago.

1 219. Mr. Lysek made each of his purchases after reading and relying on the truthfulness
2 of the QuikPRO label, which among other things, promised the Product contained “Roundup
3 QuikPRO Herbicide” as registered with EPA. Mr. Lysek believed the truth of the representation,
4 i.e., that the Product was chemically identical to the “Roundup QuikPRO Herbicide” registered
5 with EPA. The label also led him to believe that the Product contained a registered, EPA-approved
6 herbicide. But, as explained above, the Product is not “Roundup QuikPRO Herbicide” as
7 registered with EPA because the registered “Roundup QuikPRO Herbicide” can never exceed 1
8 ppm NNG at any point in time. The Products, by contrast, have a different chemical composition
9 that enables them to develop NNG far in excess of the 1 ppm legal limit. EPA never approved or
10 registered the Products’ true chemical composition. Had Mr. Lysek known the truth, he would
11 not have purchased the QuikPRO.

12 220. Further, Mr. Lysek made each of his purchases after reading and relying on the
13 truthfulness of the QuikPRO label, which did not include “Not for sale or use after [date].”
14 Because there was not a “Not for sale or use after [date]” disclaimer on the Products, he believed
15 that QuikPRO could be used for an indefinite duration when used and stored in accordance with
16 the label. When Mr. Lysek bought the QuikPRO, he did not see an expiration date or a “Not for
17 sale or use after [date]” on the Products. Had there been an expiration date, he would have noticed
18 it. The length of time in which he could store and use QuikPRO was important to him because it
19 comes in a large quantity, and it can take him years to use the full jug. Further, when he buys
20 QuikPRO in packets, he does not use all the packets at once and stores unused packets for long
21 periods of time as well, often for years. Had Defendants complied with the law, and put a “Not
22 for sale or use after [date]” disclaimer on the Product labels, he would not have been drawn to the
23 Products and would not have purchased them. At a minimum, he would have paid less for each
24 Product. Indeed, the Products are worth less to consumers since the Products do not last for an
25 indefinite duration, but, rather, can be used only for a limited period of time, if at all.

26 221. In addition, at the time of each of Mr. Lysek’s purchases of the QuikPRO, he was
27 not aware that it was defective because it was substantially likely to develop uncontrollable and
28 unlawful levels of a presumptive carcinogen, even with use and storage consistent with the label.

1 This information was material to Mr. Lysek because it concerns his safety in using it. Mr. Lysek
2 would not have purchased the QuikPRO or would not have paid as much for it if he had known
3 of the defect with the Product.

4 222. Mr. Lysek continues to want to purchase products that control weeds, including
5 QuikPRO and other products the Defendants manufacture, distribute or sell. He regularly visits
6 online and brick and mortar stores where the Products are sold. Without purchasing and having
7 the Products professionally tested or consulting scientific and regulatory experts, Mr. Lysek will
8 be unable to determine if representations that Defendants make regarding the properties and
9 features of the Products are true and complete or the length of time in which he can safely use the
10 Products. Because Mr. Lysek does not know the formula for the Products, which can change over
11 time, and cannot test whether the Products change in chemical composition over time and degrade
12 into unlawful levels of NNG without first purchasing a Product, Mr. Lysek will be unable to rely
13 on the Products' labels when shopping for herbicide products in the future absent an injunction
14 that requires Monsanto and Bayer CropScience to add a "Not for sale or use after [date]" to the
15 Products' labels via EPA's notification process. In addition, at present Mr. Lysek cannot rely on
16 the accuracy of Monsanto's and Bayer CropScience's labels for the entire line of glyphosate
17 products, including glyphosate products that have more than 40% glyphosate, which Mr. Lysek
18 is also interested in purchasing with labeling that comports with regulations. Should Monsanto or
19 Bayer CropScience begin to market and sell a new line of products, Mr. Lysek could also be at
20 risk for buying another one of their products in reliance on the same or similar misrepresentation
21 and omissions. And because of unlawful and misleading labels on the Products, Mr. Lysek cannot
22 make informed choices between the herbicides offered by Monsanto and/or Bayer CropScience
23 and herbicides offered by other manufacturers, such as choices based on price and length of time
24 in which the product is suitable for consumer use.

25 223. The Products, in their current form, are worthless because Plaintiffs bargained for
26 properly branded, EPA-approved herbicides that are chemically identical to the registered
27 herbicides they purport to be and comport with limits EPA sets for toxicologically significant
28 impurities like NNG. Instead, Plaintiffs received misbranded, unregistered herbicides that are not

1 EPA-approved, have not undergone a safety assessment by EPA, are chemically different from
2 their registrations and are illegal to sell or distribute.

3 224. On April 22, 2022, Mr. Koller and Mr. Ferguson notified Defendants Monsanto,
4 Bayer CropScience, and Seamless Control by letter that the actions described above violated the
5 CLRA, UCL, Magnusson-Moss Warranty Act, Song-Beverly Warranty Act, and the Products’
6 express and implied warranties and that they intended to represent a class of similarly situated
7 person. Plaintiffs demanded that they, among other things, recall the Products and to cease
8 misleading consumers.

9 225. Defendants Monsanto, Bayer CropScience, and Seamless Control refused to
10 acknowledge any defects with the Products and dismissed it as “sheer speculation.” Further, they
11 staunchly refused to even inform consumers at large about the defect or otherwise address the
12 failure to include a “Not for sale or use after [date]” disclaimer on the Products. In light of these
13 failures, Plaintiffs Koller and Ferguson rejected Defendants’ offer of refunds for the Products
14 they purchased. Indeed, to date, Defendants have not initiated a recall of the Products.

15 **XIV. CLASS ALLEGATIONS**

16 226. Plaintiffs bring this class action lawsuit on behalf of themselves and proposed
17 classes of similarly situated persons, pursuant to Rule 23(b)(2) and (b)(3) of the Federal Rules of
18 Civil Procedure. Plaintiffs seek to represent the following groups of similarly situated persons,
19 defined as follows:

20 **The Class:** All natural persons in the United States who purchased the Products other
21 than for resale or distribution.

22 **California Subclass:** All Class members who purchased the Products in California other
23 than for resale or distribution.

24 227. Excluded from the Class and California Subclass are Defendants and their
25 subsidiaries and affiliates; all persons who make a timely election to be excluded from the Class
26 and/or California Subclass; governmental entities; and the Judge to whom this case is assigned
27 and his immediate family. Plaintiffs reserve the right to revise the Class and/or California
28 Subclass definitions based upon information learned through discovery.

1 228. This action has been brought and may properly be maintained as a class action
2 against Defendants because there is a well-defined community of interest in the litigation and the
3 proposed class is easily ascertainable.

4 229. Numerosity: Plaintiffs do not know the exact size the Class and California
5 Subclass, but they estimate that it is composed of more than 100 persons. The persons in the Class
6 and California Subclass are so numerous that the joinder of all such persons is impracticable and
7 the disposition of their claims in a class action rather than in individual actions will benefit the
8 parties and the court.

9 230. Common Questions Predominate: This action involves common questions of law
10 and fact to the potential classes because each class member’s claim derives from the deceptive,
11 unlawful and/or unfair statements and omissions that led consumers to believe that the Products
12 could be safely used for an indefinite duration of time and contained registered pesticides. The
13 common questions of law and fact predominate over individual questions, as proof of a common
14 or single set of facts will establish the right of each member of the Class and California Subclass
15 to recover. The questions of law and fact common for the Class include:

- 16 • Whether there is a defect in the Products;
- 17 • The warranties that came with the Products;
- 18 • Whether Defendants breached the warranties for the Products; and
- 19 • Whether members are entitled to payment of actual, incidental, and/or consequential
20 damages plus interest thereon, and if so, what is the nature of such relief.

21 231. Further, the common questions of law and fact to the California Subclass include:

- 22 • Whether Defendants should have put a “Not for sale or use after [date]” on the Products;
- 23 • Whether the chemicals within the Products are registered pesticides;
- 24 • Whether Defendants’ actions violate Federal and California laws invoked herein;
- 25 • Whether the marketing and/or labeling for the Products are unlawful and/or misleading;
- 26 • Whether Defendants misrepresented or omitted material facts in connection with the
27 marketing, advertising, packaging, labeling and sale of the Products;
- 28 • Whether Defendants’ failure to provide a “Not for sale or use after [date]” date on the

1 Products sold was likely to deceive reasonable consumers;

- 2 • Whether Defendants' unlawful, unfair and/or deceptive practices harmed Plaintiffs and
- 3 the members of the California Subclass;
- 4 • Whether Defendants engaged in the behavior knowingly, recklessly, or negligently;
- 5 • The amount of profits and revenues Defendants earned as a result of the conduct;
- 6 • Whether California Subclass members are entitled to restitution, injunctive and other
- 7 equitable relief and, if so, what is the nature (and amount) of such relief; and
- 8 • Whether California Subclass members are entitled to payment of actual, incidental,
- 9 consequential, exemplary and/or statutory damages plus interest thereon, and if so, what
- 10 is the nature of such relief.

11 232. Typicality: Plaintiffs' claims are typical of the claims of the other members of the
12 Class and California Subclass because, among other things, all such claims arise out of the same
13 wrongful course of conduct engaged in by Defendants in violation of law as complained of herein.
14 Further, the damages of each member of the Class and California Subclass were caused directly
15 by Defendants wrongful conduct in violation of the law as alleged herein

16 233. Adequacy of Representation: Plaintiffs will fairly and adequately protect the
17 interests of all Class and California Subclass members because it is in their best interests to
18 prosecute the claims alleged herein to obtain full compensation due to them for the unfair and
19 illegal conduct of which they complain. Plaintiffs also have no interests that are in conflict with,
20 or antagonistic to, the interests of Class and California Subclass members. Plaintiffs have retained
21 highly competent and experienced class action attorneys to represent their interests and that of
22 the Class and California Subclass. By prevailing on their own claims, Plaintiffs will establish
23 Defendants' liability to all Class and California Subclass members. Plaintiffs and their counsel
24 have the necessary financial resources to adequately and vigorously litigate this class action, and
25 Plaintiffs and counsel are aware of their fiduciary responsibilities to the Class and California
26 Subclass members and are determined to diligently discharge those duties by vigorously seeking
27 the maximum possible recovery for Class and California Subclass members

1 234. Superiority: There is no plain, speedy, or adequate remedy other than by
2 maintenance of this class action. The prosecution of individual remedies by members of the
3 classes will tend to establish inconsistent standards of conduct for Defendants and result in the
4 impairment of Class and California Subclass members' rights and the disposition of their interests
5 through actions to which they were not parties. Class action treatment will permit a large number
6 of similarly situated persons to prosecute their common claims in a single forum simultaneously,
7 efficiently, and without the unnecessary duplication of effort and expense that numerous
8 individual actions would engender. Furthermore, as the damages suffered by each individual
9 member of the classes may be relatively small, the expenses and burden of individual litigation
10 would make it difficult or impossible for individual members of the classes to redress the wrongs
11 done to them, while an important public interest will be served by addressing the matter as a class
12 action.

13 235. Plaintiffs are unaware of any difficulties that are likely to be encountered in the
14 management of this action that would preclude its maintenance as a class action. Plaintiffs are,
15 however, aware that, on June 21, 2022, Judge Chhabria, of the Northern District of California,
16 entered an order preliminarily approving a class action settlement in *Gilmore v. Monsanto*
17 *Company*, Case No. 21-8159 (N.D. Cal.) ("*Gilmore*").

18 236. The *Gilmore* class is distinct from the Class alleged herein for a number of reasons.
19 First, the *Gilmore* class does not cover all of the Products at issue in this litigation; rather, only
20 two products overlap—i.e., Roundup Weed & Grass Killer Super Concentrate and Roundup PRO
21 Concentrate are also part of the *Gilmore* settlement. Second, the *Gilmore* settlement does not
22 cover the claims at issue in this case. Accordingly, even as to the two overlapping products,
23 Plaintiffs' claims are not released in *Gilmore*. The *Gilmore* release specifically covers claims
24 regarding "any alleged omission, regarding the alleged carcinogenicity, toxicity, genotoxicity,
25 endocrine disruptive effects, or any other alleged health effects of the Products or any ingredient
26 or component thereof, including, but not limited to, glyphosate." The *Gilmore* release language
27 does not include claims regarding the sale or distribution of unregistered pesticides, the sale or
28 distribution of products that have different chemical compositions from what is allowed under

1 their registrations, the sale or distribution of products that expire, or product defects that cause
2 them to develop uncontrollable levels of NNG. Further, the *Gilmore* release does not discuss (or
3 even mention) impurities like NNG; rather, it only relates to “any ingredient or components
4 thereof.” As set forth above, NNG is not an ingredient, or component of any ingredient, in the
5 two overlapping products. Finally, the *Gilmore* class period is from August 19, 2017 to the date
6 of preliminary approval—i.e., June 21, 2022. As discussed below, Defendants’ fraudulent acts
7 make tolling of the statute of limitations appropriate here, thus warranting a class period that both
8 *ante* and *post*-dates the *Gilmore* class. Finally, the *Gilmore* class counsel did not investigate or
9 litigate about NNG or other impurities nor make the factual and legal allegations asserted by
10 Plaintiffs here.

11 237. In any event, each of the named Plaintiffs intend to, and hereby does, opt-out of
12 the *Gilmore* settlement.

13 **ANY APPLICABLE STATUTE OF LIMITATIONS ARE TOLLED**

14 **I. THE DISCOVERY RULE**

15 238. The tolling doctrine is designed for cases of concealment such as this. Plaintiffs,
16 the Class and California Subclass members did not discover, and could not have discovered
17 through the exercise of reasonable diligence, that Defendants were concealing and
18 misrepresenting the Products’ true chemical composition to regulators and the public.

19 239. Plaintiffs and Class and California Subclass members had no realistic ability to
20 discover the fact that the ordinary use of the Products causes the Products to change in chemical
21 composition over time and form a presumably carcinogenic chemical at impermissible levels
22 because Defendants hid those facts from EPA and the public.

23 240. Any statutes of limitation otherwise-applicable to any claims asserted herein have
24 thus been tolled by the discovery rule.

25 **II. FRAUDULENT CONCEALMENT**

26 241. All applicable statutes of limitation have also been tolled by Defendants’
27 knowing, active and ongoing fraudulent concealment of the facts alleged herein.

28

1 U.S.C. § 2301, *et seq.* (“MMWA”).

2 247. This claim is brought against Defendants Monsanto, Seamless Control, and Bayer
3 CropScience (collectively, the “Warranty Defendants”) on behalf of the members of the Class.

4 248. This Court has jurisdiction to decide claims brought under 15 U.S.C. § 2301 by
5 virtue of 28 U.S.C. § 1332 (a)-(d).

6 249. Plaintiffs and members of the Class are “consumers” within the meaning of 15
7 U.S.C. § 2301(3).

8 250. Each Warranty Defendant is a “supplier” and “warrantor” within the meaning of
9 15 U.S.C. § 2301(4) and (5), respectively.

10 251. The Products are “consumer products” within the meaning of 15 U.S.C. § 2301(1).
11 The Products are consumer goods, used for household purposes, including controlling weeds in
12 home gardens, lawns, and other household areas (e.g., driveways and patios with cracks into
13 which weeds can grow). For example, QuikPRO lists sites for use that include apartment
14 complexes, driveways, fencerows, landscape areas, ornamental landscapes, parking areas,
15 recreational areas, and residential areas. The instructions specifically state the product should not
16 be used on plants grown for commercial sale or use. Further, the Products are available for
17 purchase by ordinary consumers via both online retailers, including Amazon, DoMyOwn.com,
18 and Forestrydistributing.com, that sell to California consumers and brick-and-mortar stores in
19 California that sell herbicides, including Lowes, Home Depot, Tractor Supply, Costco and Ace
20 Hardware.

21 252. 15 U.S.C. § 2310(d)(1) provides a cause of action for any consumer who is
22 damaged by the failure of a warrantor to comply with a written or implied warranty.

23 253. The amount in controversy of Plaintiffs’ individual claims meet or exceed \$25.00
24 in value. In addition, the amount in controversy meets or exceeds \$50,000 in value (exclusive of
25 interest and costs) on the basis of all claims to be determined in this lawsuit since each Plaintiff
26 has over \$50,000 in attorneys’ fees.

27 254. Each Warranty Defendant provided Plaintiffs and each member of the Class with
28 “written warranties” and “implied warranties,” which are covered under 15 U.S.C. § 2301(6) and

1 (7) respectively.

2 255. Almost all of the Products come with the express warranty that the Products
3 “conform[] to the chemical description on the label.” The Warranty Defendants breached this
4 warranty because the Products’ chemical composition changes significantly as consumers use the
5 Products in accordance with the label. Further, each Products’ true chemical composition is not
6 and has never been registered with EPA and is different in chemical composition from what is
7 allowed under their Confidential Statement of Formula at sale or distribution since the Products
8 can and are substantially likely to develop levels of NNG above the certified limits and, therefore,
9 may not be lawfully sold or distributed.

10 256. Many of the Products come with the express warranty that the Product “is
11 reasonably fit for the purposes set forth in the Complete Directions for Use label booklet
12 (“Directions”) when used in accordance with those Direction under the conditions described
13 therein.” Each of the Warranty Defendants breached this warranty because the Products were can
14 and are substantially likely to develop unlawful levels of NNG, even when used and stored in
15 accordance with the label. This defect, which was known only by Defendants and not reasonably
16 discoverable prior to purchase by Plaintiffs or class members, made them unreasonably unsafe
17 because it exposes consumers to a presumptive carcinogen. Further, the Products were not
18 reasonably fit because they are unregistered pesticides not approved by EPA and/or have chemical
19 compositions that differ from what is allowed in their respective Confidential Statements of
20 Formula at sale or distribution, which makes them illegal to sell or distribute.

21 257. Each Product sold by Warranty Defendants comes with an implied warranty that
22 it will merchantable and fit for the ordinary purpose for which it would be used that are “implied
23 warranties” within the meaning of 15 U.S.C. § 2301(7). Each Warranty Defendant has breached
24 its implied warranty of merchantability because the Products were not in merchantable condition
25 when sold, were defective when sold, and/or do not possess even the most basic degree of fitness
26 for ordinary use, as described above.

27 258. The terms of these warranties became part of the basis of the bargain when
28 Plaintiffs and each member of the Class purchased a Product.

1 259. Plaintiffs and each member of the Class have had sufficient direct dealings with
2 the Warranty Defendants via their agents (including distributors, dealers, and sellers authorized
3 by the Warranty Defendants) to establish privity of contract between the Warranty Defendants,
4 on the one hand, and Plaintiffs and each member of the Class, on the other hand.

5 260. Nonetheless, privity is not required here since Plaintiffs and each member of the
6 Class were third-party beneficiaries of the Warranty Defendants' agreements with distributors
7 and sellers for the distribution, dealing, and sale of the Warranty Defendants' Products to
8 consumers. Specifically, Plaintiffs and class members are the intended beneficiaries of the
9 Warranty Defendants' implied warranties. The Products are manufactured with the express
10 purpose an intent of being sold to consumers, and the distributors and sellers were not the intended
11 ultimate consumers of the Products.

12 261. Plaintiffs Koller and Ferguson have met all requirements for pre-suit notice.
13 However, pursuant to 15 U.S.C. § 2310(e), Plaintiffs are entitled to bring this class action and are
14 not required to give the Warranty Defendants notice and an opportunity to cure until such time as
15 the Court determines the representative capacity of Plaintiffs pursuant to Rule 23 of the Federal
16 Rules of Civil Procedure.

17 262. Furthermore, affording the Warranty Defendants a reasonable opportunity to cure
18 their breach of the warranties would be unnecessary and futile. At the time of sale of each Product,
19 the Warranty Defendants knew, or should have known that the Products were not merchantable,
20 but nonetheless failed to rectify the situation and/or disclose the defects. In addition, despite
21 receiving notice of the breach, the Warranty Defendants have not made any effort to resolve the
22 defect with the Products, and, in fact, deny that there is any defect at all. Under the circumstances,
23 the remedies available under any informal settlement procedure would be inadequate and any
24 requirement that Plaintiffs or members of the class resort to an informal dispute resolution
25 procedure and/or afford the Warranty Defendants a reasonable opportunity to cure its breach of
26 warranties is excused and thereby deemed satisfied.

27 263. In addition, given the conduct described herein, any attempts by the Warranty
28 Defendants, in their capacity as warrantors, to limit the implied warranties in a manner that would

1 exclude coverage of the defects in Product is unconscionable and any such effort to disclaim, or
 2 otherwise limit, liability for the defects is null and void, especially since the Products themselves
 3 were illegal to sell or distribute. Further, California provides that “[n]o limitations of warranty by
 4 the seller shall exclude or waive either of the following warranties: (a) [t]hat the pesticide
 5 corresponds to all claims and descriptions that the registrant has made in respect to it in print; (b)
 6 [t]hat the pesticide is reasonably fit for use for any purpose for which it is intended according to
 7 any printed statement of the registrant.” Cal. Food & Ag. Code § 12854. Thus, both of the
 8 warranties provided under Cal. Food & Ag. Code § 12854 were made for the Products.
 9 Defendants’ breaches of the express and implied warranties, as described above, breached both
 10 of the warranties provided under Cal. Food & Ag. Code § 12854 for all the Products.

11 264. As a direct and proximate result of the Warranty Defendants’ breach of the written
 12 and implied warranties, Plaintiffs and each member of the class have suffered damages, in that
 13 the Products they purchased were so inherently flawed, unfit, or unmerchantable as to have
 14 significantly diminished or no intrinsic market value. Plaintiffs, individually and on behalf of the
 15 class, seek all damages permitted by law, including compensation for the cost of purchasing
 16 Products, along with all other incidental and consequential damages, statutory attorney fees,
 17 equitable relief, and all other relief allowed by law.

18 **PLAINTIFFS’ SECOND CAUSE OF ACTION**

19 **Violation of the Song-Beverly Consumer Warranty Act For Breach of Express Warranties,**
 20 **Cal. Civ. Code §§ 1791.2 & 1793.2(d)**

21 *On Behalf of Plaintiffs and the California Subclass Against Defendants Monsanto, Seamless
 22 Control and Bayer CropScience*

23 265. Plaintiffs reallege and incorporate by reference the above paragraphs of this Class
 24 Action Complaint as if set forth herein.

25 266. Plaintiffs and members of the Class are “buyers” within the meaning of Cal. Civ.
 26 Code § 1791(b).

27 267. The Products are “consumer goods” within the meaning of Cal. Civ. Code
 28 § 1791(a).

268. Defendants Monsanto and Bayer CropScience are “manufacturers” within the

1 meaning within the meaning of Cal. Civ. Code § 1791(j).

2 269. Defendant Seamless Control is a “distributor” within the meaning of Cal. Civ.
3 Code § 1791(e).

4 270. Plaintiffs and the California Subclass members bought new Products
5 manufactured by Monsanto and Bayer CropScience and/or distributed by Seamless Control.

6 271. The Warranty Defendants made express warranties to Plaintiffs and the California
7 Subclass within the meaning of Cal. Civ. Code §§ 1791.2 and 1793.2, as described above.

8 272. Almost all of the Products come with the express warranty that the Products
9 “conform[] to the chemical description on the label.” The Warranty Defendants breached this
10 warranty because the Products’ chemical composition changes significantly as consumers use the
11 Products in accordance with the label. Further, each Product’s true chemical composition is not
12 and has never been registered with EPA and is different from what is allowed in its Confidential
13 Statement of Formula at sale or distribution since the Products can and are substantially likely to
14 develop levels of NNG above the certified limits and, therefore, may not be lawfully sold or
15 distributed.

16 273. Many of the Products come with the express warranty that the Product “is
17 reasonably fit for the purposes set forth in the Complete Directions for Use label booklet
18 (“Directions”) when used in accordance with those Direction under the conditions described
19 therein.” Each of the Warranty Defendants breached this warranty because the Products had
20 unlawful levels of NNG were substantially likely to develop unlawful levels of NNG. This defect,
21 which was known only by Defendants and not reasonably discoverable prior to purchase by
22 Plaintiffs or class members, made them unreasonably unsafe because it exposes consumers to a
23 presumptive carcinogen. Further, the Products were not reasonably fit because they were
24 unregistered pesticides not approved by EPA and/or have chemical compositions that are different
25 from what is allowed in their respective Confidential Statements of Formula at sale or distribution,
26 which makes illegal to sell or distribute.

27 274. The Warranty Defendants provided these warranties to Plaintiffs and the
28 California Subclass. These warranties formed the basis of the bargain that was reached when

1 Plaintiffs and the California Subclass purchased of the Products.

2 275. However, the Warranty Defendants knew or should have known that the
3 warranties were false and/or misleading. The Warranty Defendants were aware that the Products
4 were substantially likely to develop NNG above legal limits, which posed a safety hazard to
5 consumers since NNG is a presumptive carcinogen. The Warranty Defendants, therefore, knew
6 the Products contained a defect, and notice of the breach is not required.

7 276. Plaintiffs and the California Subclass reasonably relied on the Warranty
8 Defendants' express warranties concerning the chemical composition of the Products and/or the
9 Products' fitness for the purposes set forth in the Directions for Use when making their
10 purchases. However, the Products were not as warranted. Unbeknownst to Plaintiffs and the
11 California Subclass, the Products were designed such that they form a presumably carcinogenic
12 chemical at levels higher than legal limits, even with normal use and storage consistent with the
13 label. This was a defect. The Warranty Defendants, therefore breached their express warranties
14 by providing products containing defects that were never disclosed to Plaintiffs and the
15 California Subclass, even though the defects were only known to Defendants and not reasonably
16 discoverable prior to purchase by Plaintiffs or class members.

17 277. Further, the Warranty Defendants breached their express warranties because each
18 Product's true chemical composition is not and has never been registered with EPA and is
19 different from what is allowed in its respective Confidential Statement of Formula at sale or
20 distribution since the Products can and are substantially likely to develop levels of NNG above
21 the certified limits and, therefore, may not be lawfully sold or distributed.

22 278. Any opportunity to cure the express breach is unnecessary and futile.

23 279. As a direct and proximate result of the Warranty Defendants' breach of express
24 warranties, Plaintiffs and the California State Class suffered significant damages, in that the
25 Products they purchased were so inherently flawed, unfit, or unmerchantable as to have
26 significantly diminished or no intrinsic market value, and seek damages in an amount to be
27 determined at trial.

28

1 280. Pursuant to Cal. Civ. Code §§ 1793.2 and 1794, Plaintiffs and the California
2 Subclass members seek an order enjoining Defendants’ unfair and/or deceptive acts or practices,
3 damages, punitive damages, and any other just and proper relief available under the Song-
4 Beverly Consumer Warranty Act.

5 **PLAINTIFFS’ THIRD CAUSE OF ACTION**

6 **Violation of the Song-Beverly Consumer Warranty Act For Breach of Implied Warranty of**
7 **Merchantability, Cal. Civ. Code §§ 1791.1 and 1792**

8 *On Behalf of Plaintiffs and the California Subclass Against Defendants Monsanto and Bayer*
9 *CropScience*

10 281. Plaintiffs reallege and incorporate by reference the above paragraphs of this Class
11 Action Complaint as if set forth herein.

12 282. Plaintiffs and members of the Class are “buyers” within the meaning of Cal. Civ.
13 Code § 1791(b).

14 283. The Products are “consumer goods” within the meaning of Cal. Civ. Code §
15 1791(a).

16 284. Defendants Monsanto and Bayer CropScience are “manufacturers” within the
17 meaning within the meaning Cal. Civ. Code § 1791(j).

18 285. Monsanto and Bayer CropScience impliedly warranted to Plaintiffs and the Class
19 that the Products were “merchantable” within the meaning of Cal. Civ. Code §§ 1791.1(a) and
20 1792; however, the Products do not have the quality that a buyer would reasonably expect, and
21 were therefore not merchantable.

22 286. Cal. Civ. Code § 1791.1(a) states:

23 “Implied warranty of merchantability” or “implied warranty that goods are
24 merchantable” means that the consumer goods meet each of the following:

- 25 (1) Pass without objection in the trade under the contract description.
26 (2) Are fit for the ordinary purposes for which such goods are used.
27 (3) Are adequately contained, packaged, and labeled.
28 (4) Conform to the promises or affirmations of fact made on the container
or label.

29 287. The Products would not pass without objection in the trade due to the defect in the
30 Products, as described above, and because they are illegal to sell or distribute since they are

1 unregistered pesticides and/or have different chemical compositions from what is allowed in
2 their respective Confidential Statements of Formula at the time of their sale or distribution.

3 288. Because of the defect in the Products as well as their status as illegal pesticides
4 that cannot be sold or distributed, the Products are not in merchantable condition and thus not fit
5 for ordinary purposes. Unbeknownst to Plaintiffs and the California Subclass, the Products were
6 designed such that they form a presumably carcinogenic chemical at levels higher than legal
7 limits, even with normal use and storage consistent with the label. This was a defect that made
8 the Products unreasonably unsafe. This defect was only known to Defendants and not reasonably
9 discoverable prior to purchase by Plaintiffs or class members. Also unbeknownst to Plaintiffs,
10 the Products' true chemical composition was not registered with EPA and/or differed from what
11 was allowed in their Confidential Statements of Formula at the time of their sale or distribution,
12 and, therefore, were illegal to sell or distribute.

13 289. The Products are not adequately labeled because the labels fail to include a "Not
14 for sale or use after [date]" disclosure pursuant to 40 C.F.R. § 156.10(g)(6). The labels also make
15 it appear as if the Products are registered pesticides when they are not. The labels further make it
16 appear as if they are chemically equivalent to registered pesticides when they are not. Rather, the
17 Products are imitations of registered pesticides.

18 290. Monsanto and Bayer CropScience breached the implied warranty of
19 merchantability and caused damage to Plaintiffs and the California class members who
20 purchased the Products since they did not receive the benefit of their bargain.

21 291. Notice of breach is not required because the Plaintiffs and the California Subclass
22 did not purchase the Products directly from Monsanto and/or Bayer CropScience. Further,
23 Monsanto and Bayer CropScience had notice of these issues by its knowledge of the issues as
24 described above.

25 292. Any effort by Monsanto and Bayer CropScience to disclaim the implied warranty
26 of merchantability was null and void because the Products were purchased off-the-shelf from
27 brick and mortar or online retailers not sold on an "as is" or "with all faults" basis per Cal. Civ.
28 Code § 1792.3. Further, because Monsanto and Bayer CropScience made express warranties as

1 described above, they could not disclaim the implied warranty of merchantability under Cal. Civ.
2 Code § 1793. Finally, any effort to disclaim implied warranties is null and void because the
3 Products were illegal to sell or distribute, as explained above.

4 293. As a direct and proximate result of Monsanto’s and Bayer CropScience’s breach
5 of implied warranty of merchantability, Plaintiffs and the California Subclass received goods
6 whose dangerous condition substantially impairs their value.

7 294. Pursuant to Cal. Civ. Code §§ 1791.1(d) & 1794, Plaintiffs and the California
8 Subclass seek an order enjoining Monsanto’s and Bayer CropScience’s unfair and/or deceptive
9 acts or practices, damages, punitive damages, and any other just and proper relief available under
10 the Song-Beverly Consumer Warranty Act.

11 **PLAINTIFFS’ FOURTH CAUSE OF ACTION**

12 **Breach of Implied Warranty, Cal. Com. Code § 2314**

13 *On Behalf of Plaintiffs and the California Subclass Against Monsanto, Seamless Control and
14 Bayer CropScience*

15 295. Plaintiffs reallege and incorporate by reference the above paragraphs of this Class
16 Action Complaint as if set forth herein.

17 296. The Warranty Defendants were at all relevant times “merchants” with respect to
18 the Products under Cal. Com. Code § 2104(1) and “sellers” of the Products under § 2103(1)(d).

19 297. The Products are and were at all relevant times “goods” within the meaning of
20 Cal. Com. Code § 2105(1).

21 298. A warranty that the Products were in merchantable condition and fit for the
22 ordinary purpose for which the Products are used is implied by law pursuant to Cal. Com. Code
23 § 2314 and Cal. Food & Ag. Code § 12854.

24 299. The Warranty Defendants sold Products that were not in merchantable condition
25 and/or fit for their ordinary purpose in violation of the implied warranty and Cal. Food & Ag.
26 Code § 12854. Unbeknownst to Plaintiffs and the California Subclass, the Products were
27 designed such that they form a presumably carcinogenic chemical at levels higher than legal
28 limits, even with normal use and storage consistent with the label. This was a defect that made
the Products unreasonably unsafe. This defect was only known to Defendants and not reasonably

1 discoverable prior to purchase by Plaintiffs or class members. The Products were not in
 2 merchantable condition due to the defect, as explained above, and because they are unregistered
 3 pesticides and/or have different chemical compositions from what is allowed in their respective
 4 Confidential Statements of Formula, which made them illegal to sell or distribute. The Products
 5 were not fit for their ordinary purpose as they are substantially likely to develop unlawful levels
 6 of a presumably carcinogenic impurity that creates a safety hazard for consumers. The Products
 7 were also not fit for their ordinary purpose because they are unregistered pesticides and/or have
 8 different chemical compositions from what was allowed in their respective Confidential
 9 Statements of Formula, which made them illegal to sell or distribute.

10 300. Any attempt to disclaim the implied warranties provided in Cal. Food & Ag. Code
 11 § 12854 is unlawful and improper since it provides that “[n]o limitations of warranty by the
 12 seller shall exclude or waive either of the following warranties: (a) [t]hat the pesticide
 13 corresponds to all claims and descriptions that the registrant has made in respect to it in print; (b)
 14 [t]hat the pesticide is reasonably fit for use for any purpose for which it is intended according to
 15 any printed statement of the registrant.” Cal. Food & Ag. Code § 12854. Thus, both of the
 16 warranties provided under Cal. Food & Ag. Code § 12854 were made for the Products.
 17 Defendants’ breaches of the implied warranties, as described above, breached both of the
 18 warranties provided under Cal. Food & Ag. Code § 12854 for all the Products.

19 301. The Warranty Defendants’ breaches of the implied warranty of merchantability
 20 caused damage to the Plaintiffs and the California Subclass. The amount of damages due will be
 21 proven at trial.

22 **PLAINTIFFS’ FIFTH CAUSE OF ACTION**

23 **Breach of Express Warranty, Cal. Com. Code § 2313**

24 *On Behalf of Plaintiffs and the California Subclass Against Monsanto, Seamless Control and
 Bayer CropScience*

25 302. Plaintiffs reallege and incorporate by reference the above paragraphs of this Class
 26 Action Complaint as if set forth herein.

27 303. The Warranty Defendants were at all relevant times “merchants” with respect to
 28 the Products under Cal. Com. Code § 2104(1) and “sellers” of the Products under § 2103(1)(d).

1 304. The Products are and were at all relevant times “goods” within the meaning of Cal.
2 Com. Code § 2105(1).

3 305. The Warranty Defendants made express warranties on the labels of the Products,
4 as explained above.

5 306. Almost all of the Products come with the express warranty that the Products
6 “conform[] to the chemical description on the label.” The Warranty Defendants breached this
7 warranty because the Products’ chemical composition changes significantly as consumers use the
8 Products in accordance with the label. Further, each Product’s true chemical composition is not
9 and has never been registered with EPA and/or differs from what is allowed in its respective
10 Confidential Statement of Formula because the Products can and are substantially likely to
11 develop levels of NNG above the certified limits and, therefore, may not be lawfully sold or
12 distributed.

13 307. Many of the Products come with the express warranty that the Product “is
14 reasonably fit for the purposes set forth in the Complete Directions for Use label booklet
15 (“Directions”) when used in accordance with those Direction under the conditions described
16 therein.” Each of the Warranty Defendants breached this warranty because the Products were
17 substantially likely to develop unlawful levels of NNG even when used and stored in accordance
18 with the label. This defect, which was known only by Defendants and not reasonably discoverable
19 prior to purchase by Plaintiffs or class members, made them unreasonably unsafe because it
20 exposes consumers to a presumptive carcinogen. Further, the Products were not reasonably fit
21 because they were unregistered pesticides and/or have different chemical compositions from what
22 was allowed in their respective Confidential Statements of Formula, which made them illegal to
23 sell or distribute.

24 308. The Warranty Defendants provided these warranties to Plaintiffs and the
25 California Subclass. These warranties formed the basis of the bargain that was reached when
26 Plaintiffs and the California Subclass purchased the Products.

27 309. However, the Warranty Defendants knew or should have known that the
28 warranties were false and/or misleading. The Warranty Defendants were aware that the Products

1 were substantially likely to develop NNG above legal limits, even when used and stored in
2 accordance with the label, which posed a safety hazard to consumers since NNG is a presumptive
3 carcinogen. The Warranty Defendants, therefore, knew the Products contained a defect.

4 310. Plaintiffs and the California Subclass reasonably relied on the Warranty
5 Defendants' express warranties concerning the chemical composition of the Products and the
6 Products' fitness for the purposes set forth in the Directions for Use when making their purchases.
7 However, the Products were not as warranted. Unbeknownst to Plaintiffs and the California
8 Subclass, the Products were designed such that they form a presumably carcinogenic chemical at
9 levels higher than legal limits and significantly changed in composition over time. These were
10 defects. The Warranty Defendants, therefore breached their express warranties by providing
11 products containing defects that were never disclosed to Plaintiffs and the California Subclass.

12 311. Any opportunity to cure the express breach is unnecessary and futile.

13 312. As a direct and proximate result of the Warranty Defendants' breach of express
14 warranties, Plaintiffs and the California Subclass suffered significant damages, and seek
15 damages in an amount to be determined at trial.

16 **PLAINTIFFS' SIXTH CAUSE OF ACTION**
17 **Fraudulent Concealment**

18 *On Behalf of Plaintiffs and the California Subclass Against Defendants*

19 313. Plaintiffs reallege and incorporate by reference the above paragraphs of this Class
20 Action Complaint as if set forth herein.

21 314. Plaintiffs bring this cause of action on behalf of themselves and on behalf of the
22 California Subclass against each of the Defendants.

23 315. Each Defendant committed fraud by intentionally concealing, suppressing, and
24 failing to disclose material facts regarding the Products, including that (i) the Products were
25 defective; (ii) the Products are unregistered pesticides; (iii) the Products do not contain EPA-
26 approved herbicides; (iv) the Products are not the registered herbicides they purport to be; (v)
27 the Products expire; and (v) the Products should not be used after a certain period of time.

28 316. Defendants knew or should have known the true facts, due to their involvement in

1 the design, testing, manufacture, sale, distribution and registration of the Products and
2 obligations under FIFRA. Yet, at no time did any of these Defendants reveal the truth Plaintiffs
3 or the California Subclass. Defendants, instead, concealed the truth, intending for Plaintiffs and
4 the California Subclass to rely – which they did. In fact, Monsanto took steps to ensure that their
5 employees did not reveal the known defect to regulators or consumers.

6 317. These omitted and concealed facts were material because they would be relied on
7 by a reasonable person purchasing an herbicide and pose a serious safety hazard to consumers.
8 They also were material because they directly impact the value of the Products purchased and the
9 legality of Defendants’ sale and distribution of the Products. Plaintiffs and California Subclass
10 Members trusted Defendants not to sell them Products that were defective or that were illegal to
11 sell.

12 318. A reasonable consumer would not have expected the Products to be unfit for use
13 because they develop unlawful levels of a presumptive carcinogen under real world conditions.
14 A reasonable consumer also would not have expected the Products to be unregistered pesticides,
15 not approved by EPA that could not be lawfully sold. Reasonable consumers also would not
16 expect the Products to expire and be unfit for use after a certain period of time in the absence of a
17 “Not for sale or use after [date].” Rather, reasonable consumers would expect the Products to be
18 chemically equivalent to the registered pesticides the Products purport to be. Plaintiffs and the
19 members of the Class did not know of the facts which were concealed from them by Defendants.
20 Moreover, as consumers, Plaintiffs and the members of the Class did not, and could not, find out
21 the truth on their own.

22 319. Defendants had a duty to disclose that the Products expired; should not be used
23 after a certain period of time; were unregistered pesticides; do not contain EPA-approved
24 herbicides; the Products were not the registered pesticides they claimed to be; and are defective.
25 Defendants had such a duty because the true facts were known and/or accessible only to them
26 and because these facts were not known to or reasonably discoverable by Plaintiffs or the
27 members of the California Subclass. Defendants were also legally required to disclose the facts
28 under federal law.

1 320. Had the truth been revealed, Plaintiffs and the California Subclass would not have
2 purchased the Products, or would have paid less for them. Plaintiffs and the members of the
3 California Subclass sustained damage because they own the Products that never should have
4 been placed in the stream of commerce. Accordingly, Defendants are liable to Plaintiffs and the
5 members of the California Subclass for damages in an amount to be proven at trial.

6 321. Defendants' acts were done wantonly, maliciously, oppressively, deliberately,
7 with intent to defraud; in reckless disregard of the rights of Plaintiffs and the California Subclass;
8 and to enrich themselves. Their misconduct warrants assessment of punitive damages in an
9 amount sufficient to deter such conduct in the future, which shall be determined at trial.

10 **PLAINTIFF'S SEVENTH CAUSE OF ACTION**
11 **Common Law Fraud, Deceit and/or Misrepresentation**
12 *On Behalf of Plaintiffs and the California Subclass Against Defendants*

13 322. Plaintiffs reallege and incorporate by reference the above paragraphs of this Class
14 Action Complaint as if set forth herein.

15 323. Plaintiffs bring this claim individually and on behalf of the other members of the
16 California Subclass.

17 324. Defendants have fraudulently and deceptively represented the Products to be
18 registered pesticides. Defendants do so by selling and distributing the Products under the names
19 of registered pesticides even though, in truth, the Products are not registered pesticides and differ
20 in chemical composition from the registered pesticides they purport to be. They are, accordingly,
21 illegal to sell or distribute.

22 325. These misrepresentations and omissions were known exclusively to, and actively
23 concealed by, Defendants, not reasonably known to Plaintiffs, and material at the time they were
24 made. Defendants knew or should have known the composition of the Products, and knew or
25 should have known that the Products are unregistered pesticides; are chemically different from
26 what is allowed in their Confidential Statements of Formula; and illegal to sell or distribute.
27 Defendant's misrepresentations concerned material facts that were essential to the analysis
28 undertaken by Plaintiffs as to whether to purchase the Products. In misleading Plaintiffs and not

1 so informing Plaintiffs, Defendants breached their duty to them. Defendants also gained
2 financially from, and as a result of, their breach.

3 326. Plaintiffs and those similarly situated relied to their detriment on Defendants'
4 misrepresentations. Had Plaintiffs and those similarly situated been adequately informed and not
5 intentionally deceived by Defendants, they would have acted differently by, without limitation:
6 (i) declining to purchase the Products, (ii) purchasing less of them, or (iii) paying less for the
7 Products.

8 327. By and through such fraud, deceit, misrepresentations and/or omissions,
9 Defendants intended to induce Plaintiffs and those similarly situated to alter their position to their
10 detriment. Specifically, Defendants fraudulently and deceptively induced Plaintiffs and those
11 similarly situated to, without limitation, purchase the Products.

12 328. Plaintiffs and those similarly situated justifiably and reasonably relied on
13 Defendants' misrepresentations, and, accordingly, were damaged by Defendants.

14 329. As a direct and proximate result of Defendants' misrepresentations, Plaintiffs and
15 those similarly situated have suffered damages, including, without limitation, the amount they
16 paid for the Products.

17 330. Defendants' conduct as described herein was willful and malicious and was
18 designed to maximize Defendants' profits even though Defendants knew that it would cause loss
19 and harm to Plaintiffs and those similarly situated.

20 **PLAINTIFFS' EIGHTH CAUSE OF ACTION**

21 **Violations of the Consumer Legal Remedies Act, Cal. Civil Code § 1750, et seq**
22 *On Behalf of Plaintiffs and the California Subclass Against Monsanto, Bayer CropScience, and*
Seamless Control

23 331. Plaintiffs reallege and incorporate by reference the above paragraphs of this Class
24 Action Complaint as if set forth herein.

25 332. This cause of action is brought pursuant to the California Consumers Legal
26 Remedies Act, California Civil Code § 1750, et seq. ("CLRA") by Plaintiffs and is brought against
27 Defendants Monsanto, Bayer CropScience, and Seamless Control, which are referred to as
28 "Defendants" for purposes of this cause of action.

1 333. Defendants, Plaintiffs, and the California Subclass members are “persons” within
2 the meaning of Cal. Civ. Code § 1761(c). Plaintiffs and the California Subclass members are
3 “consumers” within the meaning of Cal. Civ. Code § 1761(d).

4 334. The Products that Plaintiffs and members of the California Subclass purchased are
5 “goods” within the meaning of California Civil Code § 1761.

6 335. Defendants’ actions, representations and conduct have violated, and continue to
7 violate the CLRA, because they extend to transactions that are intended to result, or which have
8 resulted, in the sale of goods or services to consumers.

9 336. The CLRA prohibits “unfair or deceptive acts or practices undertaken by any
10 person in a transaction intended to result or which results in the sale of goods or services to any
11 consumer[.]” Cal. Civ. Code § 1770(a).

12 337. In the course of their business, Defendants, through their agents, employees, and
13 subsidiaries, violated the CLRA as detailed above. They did so by, among other things as
14 described above, manufacturing, selling and/or distributing Products that can and are substantially
15 likely to develop unlawful levels of a presumably carcinogenic chemical which they concealed
16 from regulators and consumers; manufacturing, selling and/or distributing the Products as
17 registered pesticides even though they were not; selling and distributing pesticides that differ in
18 chemical composition from what is allowed in their Confidential Statements of Formula at the
19 time of their sale or distribution; selling and/or distributing the Products as containing EPA-
20 approved herbicides even though they do not; selling and/or distributing Products that misled
21 consumers into believing they are chemically identical to registered pesticides when they are not;
22 selling and/or distributing the Products as registered pesticides even though they were not; selling
23 and distributing pesticides that differ in chemical composition from what is allowed in their
24 Confidential Statements of Formula at the time of their sale or distribution; selling and/or
25 distributing the Products as containing EPA-approved herbicides even though they do not; selling
26 and/or distributing Products under the name of registered pesticides even though they are
27 chemically different from the registered pesticides they purport to be; selling and/or distributing
28 Products without including a “Not for sale or use after [date],” and marketing, offering for sale

1 and selling defective Products that pose a safety hazard to consumers. In committing these acts,
2 Defendants engaged in one or more of the following unfair or deceptive acts or practices as
3 defined in Cal. Civ. Code § 1770(a):

- 4 a. Misrepresenting the source, sponsorship, approval, or certification of goods or
5 services;
- 6 b. Representing that the Products have approval, characteristics, ingredients, uses, or
7 benefits that they do not have;
- 8 c. Representing that the Products are of a particular standard, quality and grade
9 when they are not; and/or
- 10 d. Advertising the Products with the intent not to sell or lease them as advertised.

11 338. As explained above, Defendants had knowledge of the defect with the Products.

12 339. Defendants' concealment of the true characteristics of the Products was material
13 to Plaintiffs and the California Subclass. Had they known the truth, Plaintiffs and the California
14 Subclass would not have purchased the Products, or—if the Products' true nature had been
15 disclosed, and the Products rendered legal to sell—would have paid significantly less for them.

16 340. Plaintiffs and California Subclass members had no way of discerning that
17 Defendants' representations were false and misleading, or otherwise learning the facts that
18 Defendants had concealed or failed to disclose, because the Products are complex chemical
19 formulations whose composition is unknown to consumers. Further, testing is not readily
20 available. Plaintiffs and California Subclass members did not, and could not, unravel
21 Defendants' deception on their own.

22 341. Defendants, as explained above, had an ongoing duty to Plaintiffs and the
23 California Subclass to refrain from unfair and deceptive practices under the CLRA in the course
24 of their business. Specifically, Defendants owed Plaintiffs and California Subclass members a
25 duty to disclose material facts concerning the Products because they possessed exclusive
26 knowledge, they intentionally concealed it from Plaintiffs and the California Subclass, and/or
27 they made misrepresentations that were rendered misleading because they were contradicted by
28 withheld facts.

1 342. Plaintiffs and California Subclass members suffered ascertainable loss and actual
2 damages as a direct and proximate result of Defendants’ concealment, misrepresentations, and/or
3 failure to disclose material information.

4 343. Defendants’ violations present a continuing risk to Plaintiffs and the California
5 Subclass, as well as to the general public. Defendants’ unlawful acts and practices complained of
6 herein affect the public interest.

7 344. Under Cal. Civ. Code § 1780(b), Plaintiffs seek an additional award against
8 Defendants of up to \$5,000 for each California Subclass member who qualifies as a “senior
9 citizen” or “disabled person” under the CLRA, which includes Plaintiff Cornejo. Defendants
10 knew or should have known that their conduct was directed to one or more California Subclass
11 members who are senior citizens or disabled persons. Defendants’ conduct caused one or more
12 of these senior citizens or disabled persons to suffer a loss of property set aside for retirement or
13 for personal or family care and maintenance, or assets essential to the health or welfare of the
14 senior citizen. One or more California Subclass members who are senior citizens or disabled
15 persons are substantially more vulnerable to Defendants’ conduct because of age, poor health,
16 infirmity and/or sensitivity to toxic substances, and each of them suffered economic damage
17 resulting from Defendants’ conduct.

18 345. More than thirty days prior to the filing of this Complaint, Plaintiffs Koller and
19 Ferguson provided Defendants with notice and demand that Defendants correct, repair, replace
20 or otherwise rectify the unlawful, unfair, false and/or deceptive practices complained of herein.
21 Despite receiving the aforementioned notice and demand, Defendants failed to do so in that,
22 among other things, they failed to identify similarly situated customers, notify them of their right
23 to correction, repair, replacement or other remedy, and/or to provide that remedy. Accordingly,
24 Plaintiffs seek, pursuant to California Civil Code § 1780(a)(3), on behalf of themselves and those
25 similarly situated California Subclass members, compensatory damages, punitive damages and
26 restitution of any ill-gotten gains due to Defendants’ acts and practices

27 346. Plaintiffs also request that this Court award their costs and reasonable attorneys’
28 fees pursuant to California Civil Code § 1780(d).

PLAINTIFFS' NINTH CAUSE OF ACTION

(False Advertising, Business and Professions Code § 17500, *et seq.* (“FAL”))

On Behalf of Plaintiffs and the California Subclass Against Monsanto, Seamless Control and Bayer CropScience

347. Plaintiffs reallege and incorporate by reference the above paragraphs of this Class Action Complaint as if set forth herein.

348. Plaintiffs bring this claim against Monsanto, Seamless Control and Bayer CropScience, which are collectively referred to herein for purposes for cause of action as “Defendants.”

349. California Bus. & Prof. Code § 17500 states: “It is unlawful for any person, ... corporation ...or any employee thereof with intent directly or indirectly to dispose of real or personal property... or to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated ... before the public in this state or from this state before the public in any state, in any newspaper or other publication, or any advertising device, ... or in any other manner or means whatever, including over the Internet, any statement ... which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.”

350. Beginning at an exact date unknown to Plaintiffs, but within three (3) years preceding the filing of this Complaint, Defendants made or caused to be made and disseminated throughout California and the United States untrue, false, deceptive and/or misleading statements in connection with the advertising and marketing of the Products.

351. Defendant made representations and statements (by omission) on the Products’ labels that led reasonable customers to believe that the Products that they were purchasing (i) were registered pesticides; (ii) contained EPA-approved herbicides; (iii) were chemically identical to registered pesticides; (iv) did not expire; and/or (v) were safe to use for the entire life cycle of the Product if used and stored in accordance with the label instructions. Further, Defendants had a duty to disclose these facts, which Defendants failed to do.

352. Plaintiffs and the California Subclass members relied to their detriment on Defendants’ false, misleading and deceptive advertising and marketing practices, including each

1 of the omissions and misrepresentations set forth above. Had Plaintiffs and those similarly
2 situated been adequately informed and not intentionally deceived by Defendants, they would
3 have acted differently by, without limitation, refraining from purchasing Defendants' Products or
4 paying less for them.

5 353. Defendants' acts and omissions are likely to deceive the general public.

6 354. Defendants engaged in these false, misleading and deceptive advertising and
7 marketing practices to increase their profits. Accordingly, Defendants has engaged in false
8 advertising, as defined and prohibited by section 17500, *et seq.* of the California Business and
9 Professions Code.

10 355. The aforementioned practices, which Defendants used, and continues to use, to
11 their significant financial gain, also constitute unlawful competition and provide an unlawful
12 advantage over Defendants' competitors as well as injury to the general public.

13 356. As a direct and proximate result of such actions, Plaintiffs and the other California
14 Subclass members have suffered, and continue to suffer, injury in fact and have lost money
15 and/or property as a result of such false, deceptive and misleading advertising in an amount
16 which will be proven at trial, but which is in excess of the jurisdictional minimum of this Court.

17 357. Plaintiffs seek, on behalf of themselves and the California Subclass, full
18 restitution of monies, as necessary and according to proof, to restore any and all monies acquired
19 by Defendants from Plaintiffs, the general public, or those similarly situated by means of the
20 false, misleading and deceptive advertising and marketing practices complained of herein, plus
21 interest thereon. Pursuant to Federal Rule of Civil Procedure 8(e)(2), Plaintiffs make the
22 following allegations in this paragraph only hypothetically and as an alternative to any contrary
23 allegations in their other causes of action, in the event that such causes of action will not
24 succeed. Plaintiffs, the California Subclass may be unable to obtain monetary, declaratory and/or
25 injunctive relief directly under other causes of action and will lack an adequate remedy at law, if
26 the Court requires them to show classwide reliance and materiality beyond the objective
27 reasonable consumer standard applied under the FAL, because Plaintiffs may not be able to
28

1 establish each California Subclass member’s individualized understanding of Defendant’s
 2 misleading representations as described in this Complaint, but the FAL does not require
 3 individualize proof of deception or injury by absent class members. *See, e.g., Ries v. Ariz. Bevs.*
 4 *USA LLC*, 287 F.R.D. 523, 537 (N.D. Cal. 2012) (“restitutionary relief under the UCL and FAL
 5 ‘is available without individualized proof of deception, reliance, and injury.’”). In addition,
 6 Plaintiffs, the California Subclass may be unable to obtain such relief under other causes of
 7 action and will lack an adequate remedy at law, if Plaintiffs re unable to demonstrate the
 8 requisite *mens rea* (intent, reckless, and/or negligence), because the FAL imposes no such *mens*
 9 *rea* requirement and liability exists even if Defendants acted in good faith.

10 358. Plaintiffs seek, on behalf of themselves and the California Subclass, a declaration
 11 that the above-described practices constitute false, misleading and deceptive advertising.

12 359. Plaintiffs seek, on behalf of themselves and the California Subclass, an injunction
 13 requiring Monsanto and Bayer CropScience to add a “Not for sale or use after [date]” to the
 14 Products via EPA’s notification process. Absent an injunction, Monsanto and Bayer CropScience
 15 will continue to cause injury in fact to the general public and the loss of money and property in
 16 that Monsanto and Bayer CropScience will continue to violate the laws of California, unless
 17 specifically ordered to comply with the same. This expectation of future violations will require
 18 current and future consumers to repeatedly and continuously seek legal redress in order to
 19 recover monies paid to Monsanto and Bayer CropScience to which it is not entitled. Plaintiffs,
 20 those similarly situated and/or other consumers have no other adequate remedy at law to ensure
 21 future compliance with the California Business and Professions Code alleged to have been
 22 violated herein.
 23

24 **PLAINTIFFS’ TENTH CAUSE OF ACTION**
 25 **(Unlawful, unfair, and fraudulent trade practices violation of Business and Professions**
 26 **Code § 17200, et seq)**

27 *On Behalf of Plaintiffs and the California Subclass Against all Defendants*

28 360. Plaintiffs reallege and incorporate by reference the above paragraphs of this Class
 Action Complaint as if set forth herein.

1 361. Within four (4) years preceding the filing of this lawsuit, and at all times
2 mentioned herein, Defendants have engaged, and continue to engage, in unlawful, unfair, and
3 fraudulent trade practices in California by engaging in the unlawful, unfair, and fraudulent
4 business practices outlined in this Complaint.

5 362. Defendants have engaged, and continue to engage, in unlawful practices by,
6 without limitation, violating the following state and federal laws: (i) the CLRA as described
7 herein; (ii) the FAL as described herein; (iii) the California Food & Agriculture Code, including
8 without limitation Cal. Food & Agric. Code § 12811; § 12881 generally, including (a), (c), (d); §
9 12882(b); § 12991 generally, including (a), (b), (c); § 12992; § 12993; § 12996, and (iii) and
10 federal laws regulating the advertising and branding of pesticides in 21 U.S.C. § 343(a), *et seq.*,
11 including but not limited to 7 U.S.C. § 136(q)(1)(A), (C), (E), (F), (G); § 136a(a); §
12 136j(a)(1)(A), (C), and (E); § 136j(a)(2)(S), and EPA regulations, including but not limited to 40
13 C.F.R. § 156.10(a)(5), § 156.10(g)(6), §158.350.

14 363. In particular, Defendants have engaged, and continues to engage, in unfair and
15 fraudulent practices by, without limitation, the following: (i) unlawfully selling and distributing
16 unregistered pesticides; (ii) unlawfully selling and distributing pesticides that differ in chemical
17 composition from what is allowed under their Confidential Statements of Formula at the time of
18 their sale or distribution; (iii) unlawfully selling and distributing the Products under the names of
19 registered pesticides even though the Products are chemically different from the registered
20 pesticides they purport to be; (iv) unlawfully selling and distributing Products that expire without
21 informing consumers; and (v) marketing, offering for sale and selling Products that Defendants
22 knew were defective and pose a safety hazard to consumers.

23 364. As explained above, Defendants had knowledge of the defect with the Products.

24 365. Further, each Defendant committed fraud by selling and distributing pesticides
25 that were illegal to sell and distribute, as described above. Further, Monsanto, Bayer
26 CropScience, Scotts and Seamless Control committed fraud by failing to disclose the defect with
27 the Products which was material to consumers because the defect causes the Products to develop
28

1 unlawful levels of a probable carcinogen. Each of the Defendants further committed fraud by
2 intentionally concealing, suppressing, and failing to disclose material facts regarding the
3 Products, including that the Products were unregistered pesticides; do not contain EPA-approved
4 herbicides; are not chemically identical to registered herbicides; expire; and should not be used
5 after a certain period of time. Defendants knew or should have known the true facts, due to their
6 involvement in the design, testing, manufacture, sale, distribution, and registration of the
7 Products and due to their obligations under FIFRA and California law. Yet, at no time did any of
8 these Defendants reveal the truth Plaintiffs or the California Subclass. Defendants, instead,
9 concealed the truth, intending for Plaintiffs and the California Subclass to rely – which they did.
10 In fact, Monsanto took steps to ensure that their employees did not reveal known the defect to
11 regulators or consumers.

12 366. Plaintiffs and those similarly situated relied to their detriment on Defendants’
13 unlawful, unfair, and fraudulent business practices. Had Plaintiffs and those similarly situated
14 been adequately informed and not deceived by Defendants, they would have acted differently by,
15 without limitation: (i) declining to purchase the Products, or (ii) paying less for the Products.

16 367. Defendants’ acts and omissions are likely to deceive the general public.

17 368. Defendants engaged in these deceptive and unlawful practices to increase its
18 profits. Accordingly, Defendants have engaged in unlawful trade practices, as defined and
19 prohibited by section 17200, *et seq.* of the California Business and Professions Code.

20 369. The aforementioned practices, which Defendants have used to its significant
21 financial gain, also constitute unlawful competition and provide an unlawful advantage over
22 Defendants’ competitors as well as injury to the general public.

23 370. As a direct and proximate result of such actions, Plaintiffs and the other California
24 Subclass members, have suffered and continue to suffer injury in fact and have lost money
25 and/or property as a result of such deceptive and/or unlawful trade practices and unfair
26 competition in an amount which will be proven at trial, but which is in excess of the
27 jurisdictional minimum of this Court. Among other things, Plaintiffs, California Subclass
28

1 members lost the amount they paid for the Products.

2 371. As a direct and proximate result of such actions, Defendants have enjoyed, and
3 continues to enjoy, significant financial gain in an amount which will be proven at trial, but
4 which is in excess of the jurisdictional minimum of this Court.

5 372. Plaintiffs seek, on behalf of themselves and those similarly situated, equitable
6 relief, including the restitution for the premium and/or full price that they or others paid to
7 Defendants as a result of Defendants' conduct. Plaintiffs and the California Subclass lack an
8 adequate remedy at law to obtain such relief with respect to their "unlawfulness" claims in this
9 UCL cause of action because the California Food & Agriculture Code does not provide a direct
10 cause of action, so Plaintiffs and the California Subclass members must allege those violations as
11 predicate acts under the UCL to obtain relief.

12 373. Plaintiffs also seek equitable relief, including restitution, with respect to their
13 UCL "fraudulent" prong claims. Pursuant to Federal Rule of Civil Procedure 8(e)(2), Plaintiffs
14 make the following allegations in this paragraph only hypothetically and as an alternative to any
15 contrary allegations in their other causes of action, in the event that such causes of action do not
16 succeed. Plaintiffs and the California Subclass may be unable to obtain monetary, declaratory
17 and/or injunctive relief directly under other causes of action and will lack an adequate remedy of
18 law, if the Court requires them to show classwide reliance and materiality beyond the objective
19 reasonable consumer standard applied under the UCL, because Plaintiffs may not be able to
20 establish each California Subclass member's individualized understanding of Defendants'
21 misleading representations as described in this Complaint, but the UCL does not require
22 individualized proof of deception or injury by absent class members. *See, e.g., Stearns v*
23 *Ticketmaster*, 655 F.3d 1013, 1020, 1023-25 (distinguishing, for purposes of CLRA claim,
24 among class members for whom website representations may have been materially deficient, but
25 requiring certification of UCL claim for entire class).

26 374. Plaintiffs seek, on behalf of those similarly situated, a declaration that the above-
27 described trade practices are fraudulent, unfair, and/or unlawful.
28

1 375. Plaintiffs seek, on behalf of those similarly situated, an injunction requiring Bayer
2 CropScience and Monsanto to add a ““Not for sale or use after [date]” to the Products via EPA’s
3 notification process. Absent an injunction, Bayer CropScience and Monsanto will continue to
4 cause injury in fact to the general public and the loss of money and property in that Defendants
5 will continue to violate the laws of California, unless specifically ordered to comply with the
6 same. This expectation of future violations will require current and future consumers to
7 repeatedly and continuously seek legal redress in order to recover monies paid to Defendants to
8 which they were not entitled. Plaintiffs, those similarly situated and/or other consumers
9 nationwide have no other adequate remedy at law to ensure future compliance with the
10 California Business and Professions Code alleged to have been violated herein.

11
12 **PLAINTIFF’S ELEVENTH CAUSE OF ACTION**
 (Unjust Enrichment)

13 *On Behalf of Plaintiffs and the California Subclass Against all Defendants*

14 376. Plaintiffs reallege and incorporate by reference all paragraphs alleged herein.

15 377. Plaintiffs brings this claim individually and on behalf of the other members of the
16 California Subclass.

17 378. Plaintiffs and members of the California Subclass conferred a benefit on the
18 Defendants by purchasing the Products.

19 379. Defendants have been unjustly enriched in retaining the revenues from Plaintiffs
20 and members of the California Subclass’s purchases of the Products, which retention is unjust
21 and inequitable, because the Products were illegal to sell and Defendants falsely represented that
22 the Products contained registered, EPA-approved herbicides even though they did not.
23 Defendants also hid the defect from Plaintiffs and members of the California Subclass. These
24 actions harmed Plaintiffs and members of the California Subclass because they paid a price
25 premium as a result.

26 380. Because Defendants’ retention of the non-gratuitous benefit conferred on it by
27 Plaintiffs and members of the California Subclass is unjust and inequitable, Defendants must pay
28 restitution to Plaintiffs and members of the California Subclass for its unjust enrichment, as

1 ordered by the Court. Plaintiffs and those similarly situated have no adequate remedy at law to
2 obtain this restitution.

3 381. Plaintiffs, therefore, seek an order requiring Defendants to make restitution to
4 them and other members of the California Subclass.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiffs, on behalf of themselves and those similarly situated,
7 respectfully request that the Court enter judgement against Defendants as follows:

8 A. Certification of the proposed Classes, including appointment of Plaintiff's counsel
9 as class counsel;

10 B. An order temporarily and permanently enjoining Defendants Monsanto and Bayer
11 CropScience from continuing the unlawful, deceptive, fraudulent, and unfair business practices
12 alleged in this Complaint;

13 C. An award of compensatory damages in an amount to be determined at trial, except
14 for those causes of action where compensatory damages are not legally available;

15 D. An award of statutory damages in an amount to be determined at trial, except for
16 those causes of action where statutory damages are not legally available;

17 E. An award of punitive damages in an amount to be determined at trial, except for
18 those causes of action where punitive damages are not legally available;

19 F. An award of treble damages, except for those causes of action where treble
20 damages are not legally available;

21 G. An award of restitution in an amount to be determined at trial;

22 H. An order requiring Defendants to pay both pre- and post-judgment interest on any
23 amounts awarded;

24 I. For reasonable attorneys' fees and the costs of suit incurred; and

25 J. For such further relief as this Court may deem just and proper.

26 **JURY TRIAL DEMANDED**

27 Plaintiffs hereby demand a trial by jury.
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Dated: July 22, 2022

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