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10 UNITED STATES DISTRICT COURT
11 WESTERN DISTRICT OF WASHINGTON
12 AT SEATTLE

13 PATRICK LEONARD TIERNEY and
14 CHRISTY ANNA TIERNEY, *husband and*
wife and their marital community comprised
thereof,

15 *Plaintiffs,*

16 v.

17 MONSANTO COMPANY, BAYER
18 CORPORATION and BAYER AG,

19 *Defendants.*

Case No.

COMPLAINT

JURY DEMAND

20
21 **I. CIVIL COMPLAINT**

22 Plaintiffs PATRICK LEONARD TIERNEY and CHRISTY ANNA TIERNEY
23 (“Plaintiffs”), by and through their undersigned attorneys, hereby bring this Complaint for
24 damages against Defendants Monsanto Company, Bayer Corporation and Bayer AG
25 [collectively, “Defendants”] and allege the following:
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II. NATURE OF THE CASE

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

2. Plaintiffs maintain that Roundup and/or glyphosate are defective, dangerous to human health, unfit and unsuitable to be marketed and sold in commerce and lacked proper warnings and directions as to the dangers associated with their use.

3. Plaintiffs' injuries, like those striking thousands of similarly situated victims across the country, were avoidable.

III. JURISDICTION AND VENUE

4. This Court has jurisdiction over Defendants and this action pursuant to 28 U.S.C. § 1332 because there is complete diversity of citizenship between Plaintiffs and Defendants. Defendants are either incorporated and/or have their principal place of business outside of Washington State, where the Plaintiffs reside.

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

6. Venue is proper within this district pursuant to 28 U.S.C. § 1391 in that Defendants conduct business here and are subject to personal jurisdiction in this district. Furthermore, Defendants sell, market, and/or distribute Roundup within the Western District of Washington (Seattle).

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IV. PARTIES

7. Plaintiffs PATRICK LEONARD TIERNEY and CHRISTY ANNA TIERNEY are husband and wife and are residents and citizens of Duvall, King County, Washington. At all times relevant to this action, Plaintiffs were residents of Duvall, King County, Washington. Plaintiffs bring this action for personal injuries sustained by exposure to Roundup containing the active ingredient glyphosate and the surfactant polyethoxylated tallow amine (“POEA”). As a direct and proximate result of being exposed to Roundup, Plaintiff PATRICK LEONARD TIERNEY developed non-Hodgkin’s lymphoma, specifically, diffuse large B-cell lymphoma.

8. “Roundup” refers to all formulations of Defendants’ Roundup products, including, but not limited to, Roundup Concentrate Poison Ivy and Tough Brush Killer 1, Roundup Custom Herbicide, Roundup D-Pak herbicide, Roundup Dry Concentrate, Roundup Export Herbicide, Roundup Fence & Hard Edger 1, Roundup Garden Foam Weed & Grass Killer, Roundup Grass and Weed Killer, Roundup Herbicide, Roundup Original 2k herbicide, Roundup Original II Herbicide, Roundup Pro Concentrate, Roundup Prodry Herbicide, Roundup Promax, Roundup Quik Stik Grass and Weed Killer, Roundup Quikpro Herbicide, Roundup Rainfast Concentrate Weed & Grass Killer, Roundup Rainfast Super Concentrate Weed & Grass Killer, Roundup Ready-to-Use Extended Control Weed & Grass Killer 1 Plus Weed Preventer, Roundup Ready-to- Use Weed & Grass Killer, Roundup Ready-to-Use Weed and Grass Killer 2, Roundup Ultra Dry, Roundup-Ultra Herbicide, Roundup Ultramax, Roundup VM Herbicide, Roundup Weed & Grass Killer Concentrate, Roundup Weed & Grass Killer Concentrate Plus, Roundup Weed & Grass killer Ready-to-Use Plus, Roundup Weed & Grass Killer Super Concentrate, Roundup Weed & Grass Killer Ready-to-Use, Roundup WSD Water Soluble Dry Herbicide

1 Deploy Dry Herbicide, or any other formulation of containing the active ingredient glyphosate.

2 9. Defendant MONSANTO COMPANY (“Monsanto”) is a Delaware
3 corporation, with a principle place of business in St. Louis, Missouri.(Missouri Secretary of State
4 Charter No. F00488018). Monsanto has transacted and conducted business within Washington
5 State and has derived substantial revenue from goods and products used in this State.
6

7 10. Defendant BAYER CORPORATION (“Bayer Corp.”) is an Indiana corporation
8 that has its principal place of business at 100 Bayer Boulevard, Whippany, New Jersey 07981.

9 11. Defendant Bayer Corp. has transacted and conducted business within
10 Washington State.

11 12. Defendant Bayer Corp. has derived substantial revenue from goods and products
12 used in Washington State.
13

14 13. Upon information and belief, Defendant BAYER AG (“Bayer AG”) is a German
15 chemical and pharmaceutical company that is headquartered in Leverkusen, North Rhine,
16 Westphalia, Germany.

17 14. Upon information and belief, Defendant Bayer AG is the parent/holding company
18 of Defendants Bayer Corp. and Monsanto Company.

19 15. Upon information and belief, Defendant Monsanto Company is an indirect,
20 wholly owned subsidiary of Bayer AG.
21

22 16. Bayer AG is a publicly held corporation.

23 17. All references to the acts and omissions of Defendants in this Complaint shall
24 mean and refer to the actions of Monsanto as well as any acts and omissions of Defendants Bayer
25 Corp. and Bayer AG made during the acquisition process as well as all acts and omissions of
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1 Defendants Bayer Corp. and Bayer AG on and after the date they acquired Monsanto. Further,
2 Defendants Bayer Corp. and Bayer AG are jointly and severally liable with Monsanto for all acts,
3 omissions, and wrongdoing of Monsanto as set forth in this Complaint, among other reasons, as
4 the parent of Monsanto, as an affiliate of Monsanto, and under the doctrine of successor liability
5 by contract, the common law, or otherwise.
6

7 18. Defendants advertise and sell goods, specifically Roundup, in the State of
8 Washington.

9 19. Defendants transacted and conducted business that relates to the allegations in
10 this Complaint within the State of Washington.

11 20. Defendants derived substantial revenue from goods and products used in the State
12 of Washington.

13 21. Defendants expected or should have expected their acts to have consequences
14 within the State of Washington, and derived substantial revenue from interstate commerce.
15

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

18 23. Upon information and belief, Defendants purposefully availed themselves of the
19 privilege of conducting activities with the State of Washington, thus invoking the benefits and
20 protections of its laws.
21

22 24. Upon information and belief, Defendants did design, sell, advertise, manufacture
23 and/or distribute Roundup, with full knowledge of its dangerous and defective nature.

24 **V. FACTUAL ALLEGATIONS**

25 25. At all relevant times, Defendants were in the business of, and did, design,
26

1 research, manufacture, test, advertise, promote, market, sell, distribute, and/or have acquired and
2 are responsible for the commercial herbicide Roundup.

3
4 26. Monsanto is a multinational agricultural biotechnology corporation based in St.
5 Louis, Missouri. It is the world's leading producer of glyphosate.

6 27. Monsanto discovered the herbicidal properties of glyphosate during the 1970's
7 and subsequently began to design, research, manufacture, sell and distribute glyphosate based
8 "Roundup" as a broad spectrum herbicide.

9 28. Glyphosate is the active ingredient in Roundup.

10 29. Glyphosate is a broad spectrum herbicide used to kill weeds and grasses known
11 to compete with commercial crops grown around the globe.

12 30. Glyphosate is a "non selective" herbicide, meaning it kills indiscriminately based
13 only on whether a given organism produces a specific enzyme, 5-enolpyruvylshikimic acid-3-
14 phosphate synthase, known as EPSP synthase.

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

18 32. Sprayed as a liquid, plants absorb glyphosate directly through their leaves, stems,
19 and roots, and detectable quantities accumulate in the plant tissues.

20 33. Each year, approximately 250 million pounds of glyphosate are sprayed on crops,
21 commercial nurseries, suburban lawns, parks, and golf courses. This increase in use has been
22 driven largely by the proliferation of genetically engineered crops, crops specifically tailored to
23 resist the activity of glyphosate.
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1 34. Defendants are intimately involved in the development, design, manufacture,
2 marketing, sale, and/or distribution of genetically modified (“GMO”) crops, many of which are
3 marketed as being resistant to Roundup i.e., “Roundup Ready®.” As of 2009, Monsanto was the
4 world’s leading producer of seeds designed to be Roundup Ready®. In 2010, an estimated 70%
5 of corn and cotton, and 90% of soybean fields in the United States contained Roundup Ready®
6 seeds.
7

8 35. The original Roundup, containing the active ingredient glyphosate, was
9 introduced in 1974. Today, glyphosate products are among the world’s most widely used
10 herbicides.¹
11

12 36. For nearly 40 years, consumers, farmers, and the public have used Roundup,
13 unaware of its carcinogenic properties.
14

15 **VI. REGISTRATION OF HERBICIDES UNDER FEDERAL LAW**

16 37. The manufacture, formulation and distribution of herbicides, such as Roundup,
17 are regulated under the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), 7 U.S.C.
18 § 136 et seq. FIFRA requires that all pesticides be registered with the Environmental Protection
19 Agency (“EPA) prior to their distribution, sale, or use, except as described by FIFRA 7 U.S.C.
20 136a(a).
21

22 38. The EPA requires as part of the registration process, among other requirements,
23 a variety of tests to evaluate the potential for exposure to pesticides, toxicity to people and other
24 potential nontarget organisms, and other adverse effects on the environment. Registration by the
25 EPA, however, is not an assurance or finding of safety. The determination the EPA makes in
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27 ¹ *Backgrounder*, History of Monsanto’s Glyphosate Herbicides, June 2005.

1 registering or reregistering a product is not that the product is “safe,” but rather that use of the
2 product in accordance with its label directions “will not generally cause unreasonable adverse
3 effects on the environment.” 7 U.S.C. § 136(a)(c)(5)(D).
4

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

10 40. The EPA and the State of Washington registered Roundup for distribution, sale,
11 and manufacture in the United States, including the State of Washington.
12

13 41. FIFRA generally requires that the registrant, Monsanto, conduct health and safety
14 testing of pesticide products. The government is not required, nor is it able, to perform the product
15 tests that are required of the manufacturer.

16 42. The evaluation of each pesticide product distributed, sold, or manufactured is
17 completed at the time the product is initially registered. The data necessary for registration of a
18 pesticide has changed over time. The EPA is now in the process of reevaluating all pesticide
19 products through a Congressionally mandated process called “reregistration.” 7 U.S.C. § 136a-
20 1. In order to reevaluate these pesticides, the EPA demands the completion of additional tests
21 and the submission of data for the EPA’s review and evaluation.
22

23 43. In the case of glyphosate and Roundup, the EPA had planned on releasing its
24 preliminary risk assessment in relation to the registration process no later than July 2015. The
25 EPA completed its review of glyphosate in early 2015 but delayed releasing the assessment
26

1 pending further review in light of the World Health Organization’s March 24, 2015 finding that
2 glyphosate is a “probable carcinogen” as demonstrated by the mechanistic evidence of
3 carcinogenicity in humans and sufficient evidence of carcinogenicity in animals.
4

5 **VII. MONSANTO’S FALSE REPRESENTATIONS REGARDING**
6 **THE SAFETY OF ROUNDUP**

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

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

margin for workers who manufacture it or use it.

- i) You can feel good about using herbicides by Monsanto. They carry a toxicity category rating of ‘practically non-toxic’ as it pertains to mammals, birds and fish.
- j) “Roundup can be used where kids and pets will play and breaks down into natural material.” This ad depicts a person with his head in the ground and a pet dog standing in an area which has been treated with Roundup.²

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

- a) its glyphosate containing pesticide products or any component thereof are safe, non-toxic, harmless or free from risk;
- b) its glyphosate-containing pesticide products or any component thereof manufactured, formulated, distributed or sold by Monsanto are biodegradable;
- c) its glyphosate-containing pesticide products or any component thereof stay where they are applied under all circumstances and will not move through the environment by any means;
- d) its glyphosate-containing pesticide products or any component thereof are “good” for the environment or are “known for their environmental characteristics;”
- e) glyphosate-containing pesticide products or any component thereof are safer or less toxic than common consumer products other than herbicides; and
- f) its glyphosate-containing products or any component thereof might be classified as “practically non-toxic”.

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

47. In 2009, France’s highest court ruled that Monsanto had not told the truth about

² Attorney General of the State of New York, In the Matter of Monsanto Company, Assurance of Discontinuance Pursuant to Executive Law § 63 (15) (Nov. 1996).

1 the safety of Roundup. The French court affirmed an earlier judgment that Monsanto had falsely
2 advertised its herbicide Roundup as “biodegradable” and that it “left the soil clean.”³

3
4 **VIII. EVIDENCE OF CARCINOGENICITY IN ROUNDUP**

5 48. As early as the 1980’s Monsanto was aware of glyphosate’s carcinogenic
6 properties.

7 49. On March 4, 1985, a group of the EPA’s Toxicology Branch published a
8 memorandum classifying glyphosate as a Category C oncogene.⁴

9 50. Category C oncogenes are possible human carcinogens with limited evidence of
10 carcinogenicity.

11 51. In 1986, the EPA issued a Registration Standard for glyphosate (NTIS PB87-
12 103214). The Registration standard required additional phytotoxicity, environmental fate,
13 toxicology, product chemistry, and residue chemistry studies. All of the data required was
14 submitted and reviewed and/or waived.⁵

15 52. In October 1991, the EPA published a Memorandum entitled “Second Peer
16 Review of Glyphosate.” The memorandum changed glyphosate’s classification to Group E
17 (evidence of non-carcinogenicity for humans). Two peer review committee members did not
18 concur with the conclusions of the committee and one member refused to sign.⁶
19
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22 ³ *Monsanto Guilty in “False Ad” Row*, BBC, Oct 15, 2009, available at
<http://news.bbc.co.uk/2/hi/europe/8308903.stm>

23 ⁴ Consensus Review of Glyphosate, Casewell No. 661A, March 4, 1985. United States Environmental Protection
Agency.

24 ⁵ <http://www.epa.gov/oppsrrd1/reregistration/REDS/factsheet/0178fact.pdf>

25 ⁶ Second Peer Review of Glyphosate, CAS No. 1071-83-6. October 30, 1991, United State Environmental
Protection Agency.

1 53. In addition to the toxicity of the active molecule, many studies support the
2 hypothesis that glyphosate formulations found in Defendants' Roundup products are more
3 dangerous and toxic than glyphosate alone.⁷ As early as 1991 evidence existed demonstrating
4 that glyphosate formulations were significantly more toxic than glyphosate alone.⁸

5
6 54. In 2002, Julie Marc published a study entitled "Pesticide Roundup Provokes Cell
7 Division Dysfunction at the Level of CDKI/Cyclin B Activation."

8 55. The study found that Monsanto's Roundup caused delays in the cell cycles of sea
9 urchins, while the same concentrations of glyphosate alone proved ineffective and did not alter
10 cell cycles.

11 56. In 2004, Julie Marc published a study entitled "Glyphosate-based pesticides
12 affect cell cycle regulation." The study demonstrated a molecular link between glyphosate-based
13 products and cell cycle dysregulation.

14 57. The study noted that "cell-cycle dysregulation is a hallmark of tumor cells and
15 human cancer. Failure in the cell-cycle checkpoints leads to genomic instability and subsequent
16 development of cancers from the initial affected cell." Further, "[s]ince cell cycle disorders such
17 as cancer result from dysfunction of unique cell, it was of interest to evaluate the threshold dose
18 of glyphosate affecting cells."⁹

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21 58. In 2005, Francisco Peixoto published a study showing that Roundup's effects on
22 rat liver mitochondria are much more toxic and harmful than the same concentrations of
23

24
25 ⁷ Martinez et al. 2007; Benachour 2009; Gasnier et al. 2010; Pexoto 2005; Marc 2004

26 ⁸ Martinez et al. 1991.

27 ⁹ Molinari, 2000; Stewart et al., 2003).

1 glyphosate alone.

2 59. The Peixoto study suggested that the harmful effects of Roundup on
3 mitochondrial bioenergetics could not be exclusively attributed to glyphosate and could be the
4 result of other chemicals, namely the surfactant POEA, or alternatively due to the possible
5 synergy between glyphosate and Roundup formulation products.
6

7 60. In 2009, Nora Benachour and Gilles-Eric Seralini published a study examining
8 the effects of Roundup and glyphosate on human umbilical, embryonic, and placental cells.

9 61. The study used dilution levels of Roundup and glyphosate far below agricultural
10 recommendations, corresponding with low levels of residues in food. The study concluded that
11 supposed “inert” ingredients, and possibly POEA, change human cell permeability and amplify
12 toxicity of glyphosate alone. The study further suggested that determinations of glyphosate
13 toxicity should take into account the presence of adjuvants, or those chemicals used in the
14 formulation of the complete pesticide. The study confirmed that the adjuvants in Roundup are
15 not inert and that Roundup is always more toxic than its active ingredient glyphosate.
16

17 62. The results of these studies were confirmed in recently published peer-reviewed
18 studies and were at all times available and/or known to Defendants.

19 63. Defendants knew or should have known that Roundup is more toxic than
20 glyphosate alone and that safety studies on Roundup, Roundup’s adjuvants and “inert”
21 ingredients, and/or the surfactant POEA were necessary to protect Plaintiff PATRICK
22 LEONARD TIERNEY from Roundup.
23

24 64. Defendants knew or should have known that tests, limited to Roundup’s active
25 ingredient glyphosate, were insufficient to prove the safety of Roundup.
26

1 65. Defendants failed to appropriately and adequately test Roundup, Roundup's
2 adjuvants and "inert" ingredients, and/or the surfactant POEA to protect Plaintiff from Roundup.

3
4 66. Rather than performing appropriate tests, Defendants relied upon flawed
5 industry- supported studies designed to protect Defendants' economic interests rather than
6 Plaintiff PATRICK LEONARD TIERNEY and the consuming public.

7 67. Despite its knowledge that Roundup was considerably more dangerous than
8 glyphosate alone, Defendants continued to promote Roundup as safe.

9 **IX. IARC CLASSIFICATION OF GLYPHOSATE**

10 68. The International Agency for Research on Cancer ("IARC") is the specialized
11 intergovernmental cancer agency tasked by the World Health Organization ("WHO") with
12 conducting and coordinating research into the causes of cancer.

13
14 69. An IARC Advisory Group to Recommend Priorities for IARC Monographs
15 during 2015-2019 met in April 2014. Though nominations for the review were solicited, a
16 substance must meet two criteria to be eligible for review by the IARC Monographs: there must
17 already be some evidence of carcinogenicity of the substance, and there must be evidence that
18 humans are exposed to the substance.

19
20 70. IARC set glyphosate for review in 2015-2016. IARC uses five criteria for
21 determining priority in reviewing chemicals. The substance must have a potential for direct
22 impact on public health; scientific literature to support suspicion of carcinogenicity; evidence of
23 significant human exposure; high public interest and/or potential to bring clarity to a controversial
24 area and/or reduce public anxiety or concern; related agents similar to one given high priority by
25 the above considerations. Data reviewed is sourced preferably from publicly accessible, peer-

1 reviewed data.

2 71. On March 24, 2015, after its cumulative review of human, animal, and DNA
3 studies for more than one (1) year, many of which have been in Defendants' possession since as
4 early as 1985, the IARC's working group published its conclusion that the glyphosate contained
5 in Defendants' Roundup herbicide, is a Class 2A "probable carcinogen" as demonstrated by the
6 mechanistic evidence of carcinogenicity in humans and sufficient evidence of carcinogenicity in
7 animals.
8

9 72. The IARC's full Monograph was published on July 29, 2015 and established
10 glyphosate as a class 2A probable carcinogen to humans. According to the authors glyphosate
11 demonstrated sufficient mechanistic evidence (genotoxicity and oxidative stress) to warrant a 2A
12 classification based on evidence of carcinogenicity in humans and animals.
13

14 73. The IARC Working Group found an increased risk between exposure to
15 glyphosate and non-Hodgkin's lymphoma ("NHL") and several subtypes of NHL, and the
16 increased risk continued after adjustment for other pesticides.

17 74. The IARC also found that glyphosate caused DNA and chromosomal damage
18 in human cells.

19 **X. EARLIER EVIDENCE OF GLYPHOSATE'S DANGER**

20 75. Despite the new classification by the IARC, Defendants have had ample evidence
21 of glyphosate and Roundup's genotoxic properties for decades.
22

23 76. Genotoxicity refers to chemical agents that are capable of damaging the DNA
24 within a cell through genetic mutations, which is a process that is believed to lead to cancer.

25 77. In 1997, Chris Clements published "Genotoxicity of select herbicides in Rana
26

1 catesbeiana tadpoles using the alkaline single-cell gel DNA electrophoresis (comet) assay.”

2 78. The study found that tadpoles exposed to Roundup showed significant DNA
3 damage when compared with unexposed control animals.

4 79. Both human and animal studies have shown that glyphosate and glyphosate-based
5 formulations such as Roundup can induce oxidative stress.

6 80. Oxidative stress and associated chronic inflammation are believed to be involved
7 in carcinogenesis.

8 81. The IARC Monograph notes that “[s]trong evidence exists that glyphosate,
9 AMPA and glyphosate-based formulations can induce oxidative stress.”

10 82. In 2006 Cesar Paz-y-Mifio published a study examining DNA damage in human
11 subjects exposed to glyphosate.

12 83. The study produced evidence of chromosomal damage in blood cells showing
13 significantly greater damage after exposure to glyphosate than before in the same individuals,
14 suggesting that the glyphosate formulation used during aerial spraying had a genotoxic effect on
15 exposed individuals.

16 84. The IARC Monograph reflects the volume of evidence of glyphosate pesticides’,
17 genotoxicity noting “[t]he evidence for genotoxicity caused by glyphosate-based formulations is
18 strong.”

19 85. Despite knowledge to the contrary, Defendants maintain that there is no evidence
20 that Roundup is genotoxic, that regulatory authorities and independent experts agree that
21 Roundup is not genotoxic, and that there is no evidence that Roundup is genotoxic.

22 86. In addition to glyphosate and Roundup’s genotoxic properties, Defendants have

1 long been aware of glyphosate's carcinogenic properties.

2 87. Glyphosate and Roundup, in particular, have long been associated with
3 carcinogenicity and the development of numerous forms of cancer, including, but not limited to,
4 non-Hodgkin's lymphoma ("NHL"), Hodgkin's lymphoma, multiple myeloma, and soft tissue
5 sarcoma.
6

7 88. Defendants have known of this association since the early to mid-1980s and
8 numerous human and animal studies have evidenced the carcinogenicity of glyphosate and/or
9 Roundup.

10 89. In 1985, the EPA studied the effects of glyphosate in mice finding a dose related
11 response in male mice linked to renal tubal adenomas, a rare tumor. The study concluded the
12 glyphosate was oncogenic.
13

14 90. In 2003, Lennart Hardell and Mikael Eriksson published the results of two case
15 controlled studies on pesticides as a risk factor for NHL and hairy cell leukemia.

16 91. The study concluded that glyphosate had the most significant relationship to NHL
17 among all herbicides studies with an increased odds ratio of 3.11.

18 92. In 2003, AJ De Roos published a study examining the pooled data of mid-western
19 farmers, examining pesticides and herbicides as risk factors for NHL.
20

21 93. The study, which controlled for potential confounders, found a relationship
22 between increased NHL incidence and glyphosate.

23 94. In 2008, Mikael Eriksson published a population based case-control study of
24 exposure to various pesticides as a risk factor for NHL.

25 95. This strengthened previous associations between glyphosate and NHL.
26

1 96. In spite of this knowledge, Defendants continued to issue broad and sweeping
2 statements that Roundup was, and is, safer than ordinary household items such as table salt,
3 despite a lack of scientific support for the accuracy and validity of these statements and, in fact,
4 voluminous evidence to the contrary.
5

6 97. Upon information and belief, these statements and representations have been
7 made with the intent of inducing Plaintiffs, the agricultural community, and the public at large to
8 purchase and increase the use of Defendants' Roundup for Defendants' pecuniary gain, and in
9 fact, did induce Plaintiff PATRICK LEONARD TIERNEY to use Roundup.
10

11 98. Defendants made these statements maliciously and with complete disregard and
12 reckless indifference to the safety of Plaintiff PATRICK LEONARD TIERNEY and the general
13 public.
14

15 99. Notwithstanding Defendants' representations, scientific evidence has established
16 a clear association between glyphosate and genotoxicity, inflammation, and an increased risk of
17 many cancers, including, but not limited to, NHL, Multiple Myeloma, and soft tissue sarcoma.
18

19 100. Defendants knew or should have known that glyphosate is associated with an
20 increased risk of developing cancer, including, but not limited to, NHL, Multiple Myeloma, and
21 soft tissue sarcomas.
22

23 101. Defendants failed to appropriately and adequately inform and warn Plaintiffs of
24 these dangerous risks associated with the use of and exposure to glyphosate and/or Roundup,
25 including, but not limited to, the risk of developing NHL, as well as other severe and personal
26 injuries, which are permanent and/or long-lasting in nature, cause significant physical pain and
27 mental anguish, diminished enjoyment of life, and the need for medical treatment, monitoring

1 and/or medications.

2 102. Despite the IARC's classification of glyphosate as a class 2A probable
3 carcinogen, Defendants continue to maintain that glyphosate and/or Roundup is safe, non-
4 carcinogenic, non- genotoxic; and falsely warrant to users and the general public that independent
5 experts and regulatory agencies agree that there is no evidence of carcinogenicity or genotoxicity
6 in glyphosate and Roundup.
7

8 103. Defendants claimed and continue to claim that Roundup is safe, non-
9 carcinogenic, and non-genotoxic. These misrepresentations are consistent with Defendants'
10 cavalier approach to investigating and ensuring the safety of its products, the safety of the public
11 at large, and the safety of Plaintiffs.
12

13 **XI. SCIENTIFIC FRAUD UNDERLYING CERTAIN SAFETY**
14 **DETERMINATIONS OF GLYPHOSATE**

15 104. After the EPA's 1985 classification of glyphosate as possibly carcinogenic to
16 humans (Group C), Monsanto exerted pressure upon the EPA to change its classification.

17 105. This culminated in the EPA's reclassification of glyphosate to Group E, which
18 was based upon evidence of non-carcinogenicity in humans.

19 106. In so classifying, the EPA stated that "[i]t should be emphasized, however, that
20 designation of an agent in Group E is based on the available evidence at the time of evaluation
21 and should not be interpreted as a definitive conclusion that the agent will not be a carcinogen
22 under any circumstances."
23

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

26 108. In the first instance, Monsanto hired Industrial Bio-Test Laboratories ("IBT") to

1 perform and evaluate pesticide toxicology studies relating to Roundup. IBT performed
2 approximately 30 tests on glyphosate and glyphosate-containing products, including 11 of the 19
3 chronic toxicology studies needed to register Roundup with the EPA.
4

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

11 110. Three top executives of IBT were convicted of fraud in 1983.

12 111. In the second incident, Monsanto hired Craven Laboratories (“Craven”) in 1990
13 to perform pesticide and herbicide studies, including several studies on Roundup.
14

15 112. In March of 1991, the EPA announced that it was investigating Craven for
16 “allegedly falsifying test data used by chemical firms to win EPA approval of pesticides.”

17 113. The investigation lead to the indictments of the laboratory owner and a handful
18 of employees.

19
20 **XII. MONSANTO’S CONTINUING DISREGARD FOR THE SAFETY OF**
21 **PLAINTIFFS AND THE PUBLIC**

22 114. Monsanto claims on its website that “[r]egulatory authorities and independent
23 experts around the world have reviewed numerous long term/carcinogenicity and genotoxicity
24 studies and agree that there is no evidence that glyphosate, the active ingredient in Roundup brand
25 herbicides and other glyphosate based herbicides, causes cancer, even at very high doses, and
26

1 that it is not genotoxic.”¹⁰

2 115. Ironically, the primary source for this statement is a 1986 report by the WHO, the
3 same organization that now considers glyphosate to be a probable carcinogen.
4

5 116. Glyphosate, and Defendants’ Roundup products in particular, has long been
6 associated with serious side effects and many regulatory agencies around the globe have banned
7 or are currently banning the use of glyphosate herbicide products.

8 117. Defendants’ statements proclaiming the safety of Roundup and disregarding its
9 dangers misled Plaintiff PATRICK LEONARD TIERNEY.

10 118. Despite Defendants’ knowledge that Roundup was associated with an elevated
11 risk of developing cancer, Defendants’ promotional campaigns focused on Roundup’s purported
12 “safety profile.”
13

14 119. Defendants’ failure to adequately warn Plaintiff PATRICK LEONARD
15 TIERNEY resulted in (1) Plaintiff using and being exposed to glyphosate and Roundup instead
16 of using another acceptable and safe method of controlling unwanted weeds and pests; and (2)
17 scientists and physicians failing to warn and instruct consumers about the risk of cancer,
18 including NHL, and other injuries associated with Roundup.

19 120. Defendants failed to seek modification of the labeling of Roundup to include
20 relevant information regarding the risks and dangers associated with Roundup exposure.
21

22 121. The failure of Defendants to appropriately warn and inform the EPA has resulted
23 in inadequate warnings in safety information presented directly to users and consumers.
24

25 ¹⁰ Backgrounder-Glyphosate: No Evidence of Carcinogenicity. Updated November 2014. (downloaded October 9
26 2015).

1 122. The failure of Defendants to appropriately warn and inform the EPA has resulted
2 in the absence of warning or caution statements that are adequate to protect health and the
3 environment.
4

5 123. The failure of Defendants to appropriately warn and inform the EPA has resulted
6 in the directions for use that are not adequate to protect health and the environment.

7 124. By reason of the foregoing acts and omissions, Plaintiffs seek compensatory
8 damages as a result of Plaintiff PATRICK LEONARD TIERNEY's use of, and exposure to,
9 Roundup which caused or was a substantial contributing factor in causing Plaintiff to suffer from
10 cancer, specifically NHL, and Plaintiff suffered severe and personal injuries which are permanent
11 and lasting in nature, physical pain and mental anguish, including diminished enjoyment of life.
12

13 125. By reason of the foregoing acts and omissions, Plaintiffs have sustained severe
14 and permanent injuries and losses.

15 126. By reason of the foregoing acts and omissions, Plaintiffs have endured and, in
16 some categories, continue to suffer emotional and mental anguish, medical expenses, and other
17 economic and non-economic damages as a result of the actions and inactions of the Defendants.
18

19 **XIII. PLAINTIFF'S EXPOSURE TO ROUNDUP**

20 127. Plaintiff PATRICK LEONARD TIERNEY, a professional landscaper, used
21 Roundup beginning in approximately August 1988 at work.

22 128. For years, Plaintiff applied Roundup on a regular basis. Plaintiff followed all
23 safety and precautionary warnings during the course of his use.

24 129. Plaintiff was diagnosed with non-Hodgkin's lymphoma, specifically diffuse large
25 B-cell lymphoma in May 2018. Plaintiff's non-Hodgkin's Lymphoma, specifically diffuse large
26

1 B-cell lymphoma, was proximately and actually caused by his exposure to Defendants. Roundup
2 products.

3
4 130. As a result of his illness, Plaintiff PATRICK LEONARD TIERNEY has incurred
5 significant economic and non- economic damages and his wife has suffered a loss of consortium.

6 **XIV. FIRST CAUSE OF ACTION**
7 **WASHINGTON PRODUCT LIABILITY ACT**

8 131. Plaintiffs incorporate by reference all prior paragraphs of this Complaint as if
9 fully set forth herein and further alleges as follows:

10 132. At all times relevant to this litigation, Defendants engaged in the business of
11 testing, developing, designing, manufacturing, marketing, selling, distributing, and promoting
12 Roundup products.

13 133. At all times relevant to this litigation, Defendants designed, researched,
14 developed, manufactured, produced, tested, assembled, labeled, advertised, promoted, marketed,
15 sold, and distributed the Roundup products used by Plaintiffs as described above.

16 134. At all times relevant to this litigation, Defendants' Roundup products were
17 expected to reach and did reach the intended consumers, handlers, and users or other persons
18 coming into contact with these products in Washington and throughout the United States,
19 including Plaintiffs, without substantial change in their condition as designed, manufactured,
20 sold, distributed, labeled, and marketed by Defendants.

21 135. In violation of the Washington Products Liability Act ("WPLA"), RCW 7.72, et
22 seq., at all times relevant to this action, at the time Defendants' Roundup products left control of
23 Defendants, they were defective and not reasonably safe. These defects include, but are not
24 limited to, the following:
25
26

- 1 a) Defendants are strictly liable for Plaintiff's injuries and damages
2 because at the time of manufacture, and at the time Defendants'
3 Roundup products left control of Defendants, the likelihood that
4 Defendants' Roundup products would cause injury or damage
5 similar to that suffered by Plaintiffs, and the seriousness of such
6 injury or damage had been known by Defendants and
7 outweighed the burden on Defendants to design a product that
8 would have prevented Plaintiffs' injuries and damages and
9 outweighed the adverse effect that an alternative design that was
10 practical and feasible would have on the usefulness of the subject
11 product.
- 12 b) Defendants' Roundup products were unsafe to an extent beyond
13 that which would be contemplated by an ordinary consumer, in
14 one or more of the following particulars: exposure to Roundup
15 and specifically, its active ingredient glyphosate, could result in
16 cancer and other severe illnesses and injuries, making Roundup
17 not reasonably safe when used in the way it is ordinarily used
18 and is dangerous to an extent beyond that which would be
19 contemplated by the ordinary consumer.
- 20 c) The Roundup products manufactured and/or supplied by
21 Defendants were defective in design in that, an alternative design
22 and/or formulation exists that would prevent severe and
23 permanent injury. Indeed, at the time that Defendants designed
24 their Roundup products, the state of the industry's scientific
25 knowledge was such that a less risky design or formulation was
26 attainable.
- 27 d) The Roundup products were not reasonably safe in design under
the WPLA.
- e) The Roundup products manufactured and/or supplied by
Defendants were not reasonably safe because Defendants did not
provide an adequate warning or instruction about the product. At
the time the Roundup products left Defendants' control, they
possessed dangerous characteristics and Defendants failed to use
reasonable care to provide an adequate warning of such
characteristics and their danger to users and handlers of the
product. The Roundup products are not safe and cause severe
and permanent injuries. The Roundup products were not
reasonably safe because the warning was inadequate, and
Defendants could have provided adequate warnings or
instructions.
- f) The Roundup products manufactured and/or supplied by
Defendants were not reasonably safe because adequate warnings
or manufacturer instructions were not provided after the

1 Roundup products were manufactured and when Defendants
2 learned of, or should have learned of, the dangers connected with
3 the Roundup products.

- 4 g) The Roundup products manufactured and/or supplied by
5 Defendants were not reasonably safe because they did not
6 conform to an express warranty made by Defendants regarding
7 the product's safety and fitness for use. Defendants expressly
8 warranted that the Roundup products were safe and fit for their
9 intended purposes, that they were of merchantable quality, that
10 they did not produce any dangerous side effects, that they were
11 adequately tested, and that their Roundup products were safe to
12 human health and the environment, and effective, fit, and proper
13 for their intended use. Defendants did not disclose the material
14 risks that Defendants' Roundup products could cause severe and
15 permanent injury. Defendants' express warranty regarding the
16 Roundup products induced Plaintiffs to use the products, and
17 Plaintiffs' damages were proximately caused because
18 Defendants' express warranty was untrue. The Roundup
19 products were not reasonably safe because of nonconformity to
20 express warranty under the WPLA.

21 136. As a direct and proximate result of Defendants placing their defective Roundup
22 products into the stream of commerce, Plaintiff PATRICK LEONARD TIERNEY suffered grave
23 injuries, and endured physical pain and discomfort, as well as economic hardship, including
24 considerable financial expenses for medical care and treatment, along with other damages further
25 discussed in herein.

26 **XV. SECOND CAUSE OF ACTION**
27 **BREACH OF IMPLIED WARRANTIES**

1 137. Plaintiffs hereby incorporate by reference the allegations of this Complaint
2 contained in each of the preceding paragraphs as if fully stated herein.

3 138. At all times relevant to this litigation, Defendants engaged in the business of
4 testing, developing, designing, manufacturing, marketing, selling, distributing, and promoting its
5 Roundup products, which are defective and unreasonably dangerous to consumers, including

1 Plaintiffs, thereby placing Roundup products into the stream of commerce. These actions were
2 under the ultimate control and supervision of Defendants.

3
4 139. Before the time that Plaintiffs were exposed to the use of the aforementioned
5 Roundup products, Defendants impliedly warranted to their consumers—including Plaintiffs—
6 that their Roundup products were of merchantable quality and safe and fit for the use for which
7 they were intended; specifically, as agricultural and horticultural herbicides.

8 140. Defendants, however, failed to disclose that Roundup has dangerous propensities
9 when used as intended and that the use of and/or exposure to Roundup and glyphosate-containing
10 products carries an increased risk of developing severe injuries, including Plaintiffs' injuries.

11
12 141. Upon information and belief, Plaintiff and/or Plaintiff's employers reasonably
13 relied upon the skill, superior knowledge and judgment of Defendants and upon its implied
14 warranties that the Roundup products were of merchantable quality and fit for their intended
15 purpose or use.

16 142. Upon information and belief, Plaintiff PATRICK LEONARD TIERNEY and/or
17 his employers were at all relevant times in privity with Defendants.

18
19 143. Plaintiffs are the intended third-party beneficiary of implied warranties made by
20 Defendants to the purchasers of their agricultural and horticultural herbicides, including the
21 company that employed Plaintiff PATRICK LEONARD TIERNEY, and as such he is entitled to
22 assert this claim.

23 144. The Roundup products were expected to reach and did in fact reach consumers
24 and users, including Plaintiff PATRICK LEONARD TIERNEY, without substantial change in
25 the condition in which they were manufactured and sold by Defendants.

1 145. At all times relevant to this litigation, Defendants were aware that consumers and
2 users of its products, including Plaintiff PATRICK LEONARD TIERNEY, would use Roundup
3 products as marketed by Defendants, which is to say that Plaintiffs was a foreseeable user of
4 Roundup.
5

6 146. Defendants intended that their Roundup products be used in the manner in which
7 Plaintiffs in fact used them and Defendants impliedly warranted each product to be merchantable
8 quality, safe, and fit for this use, despite the fact that Roundup was not adequately tested or
9 researched.
10

11 147. In reliance upon Defendants' implied warranty, Plaintiffs used Roundup as
12 instructed and labeled and in the foreseeable manner intended, recommended, promoted, and
13 marketed by Defendants.

14 148. Plaintiff PATRICK LEONARD TIERNEY could not have reasonably
15 discovered or known of the risks of serious injury associated with Roundup or glyphosate.

16 149. Defendants breached their implied warranty to Plaintiff PATRICK LEONARD
17 TIERNEY in that their Roundup products were not of merchantable quality, safe, or fit for their
18 intended use, or adequately tested. Roundup has dangerous propensities when used as intended
19 and can cause serious injuries, including those injuries complained of herein.
20

21 150. The harm caused by Defendants' Roundup products far outweighed their benefit,
22 rendering the products more dangerous than an ordinary consumer or user would expect and more
23 dangerous than alternative products.

24 151. As a direct and proximate result of Defendants' placing their defective Roundup
25 products into the stream of commerce, Plaintiffs suffered injuries, and endured physical pain and
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1 discomfort, as well as economic hardship, including considerable financial expenses for medical
2 care and treatment, along with other damages further discussed herein.

3
4 **XVI. THIRD CAUSE OF ACTION**
VIOLATION OF WASHINGTON CONSUMER PROTECTION ACT

5 152. Plaintiffs hereby incorporate by reference the allegations of this Complaint
6 contained in each of the preceding paragraphs as if fully stated herein.

7
8 153. Defendants violated the Washington Consumer Protection Act (“CPA”).

9 154. Defendants engaged in unfair or deceptive acts or practices including, but not
10 limited to, the following:

- 11 a) engaging in acts and practices by willfully failing and refusing to
12 timely report information that reasonably suggested Roundup,
13 like that used by Plaintiffs, may cause or contribute to cause
14 cancer and other serious illnesses;
15 b) representing knowingly or with reason to know that Roundup has
16 approval, characteristics, uses, or benefits that it does not have;
17 c) representing knowingly or with reason to know that Roundup is
18 of a particular standard, quality, or grade when it differs
19 materially from that representation; and/or
20 d) representing knowingly or with reason to know that Roundup has
21 uses, benefits, or characteristics that have been otherwise proven
22 incorrect;

23 155. Defendants’ unfair and deceptive acts or practices described above were
24 committed in the course of Defendants’ trade or commerce.

25 156. Defendants’ unfair and deceptive acts or practices described above affected
26 public interest.

27 157. Defendants’ violation of the Washington CPA, whether individually or in
combination, caused Plaintiff’s injuries and damages set forth herein.

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XVII. FOURTH CAUSE OF ACTION
PUNITIVE DAMAGES

158. Plaintiffs incorporate herein by reference, as though fully set forth at length, each and every allegation and statement contained in the foregoing paragraphs.

159. Defendants are liable for punitive and/or exemplary damages under choice of law principles. Defendants acted with willful disregard of the rights of the Plaintiffs and the public. Defendants' conduct was outrageous and reckless toward the safety of the Plaintiffs and the public.

XVIII. FIFTH CAUSE OF ACTION
LOSS OF CONSORTIUM

160. Plaintiffs incorporate by reference all other paragraphs of this Complaint as if fully set forth herein, and further allege:

161. Plaintiff CHRISTY ANN TIERNEY, at all times relevant, was and is the lawful wife of Plaintiff PATRICK LEONARD TIERNEY.

162. As a direct, legal, and proximate result of the culpability and fault of Defendants, be such fault through strict liability, negligence or otherwise, Plaintiff CHRISTY ANN TIERNEY suffered the loss of support, services, love, companionship, affection, society, intimate relations, and other elements of consortium, all to her general damage in an amount in excess of the jurisdictional minimum of this Court.

163. Plaintiffs demand judgment against Defendant for compensatory and punitive damages such as a jury may award, and such other relief as the Court deems just and proper in order to remedy Plaintiff CHRISTY ANN TIERNEY's loss of consortium.

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XIX. DAMAGES

164. Plaintiffs incorporate herein by reference, as though fully set forth at length, each and every allegation and statement contained in the foregoing paragraphs.

165. As a direct and proximate result of Defendants' tortious conduct and breach of duties as set forth herein, Plaintiffs are entitled to be compensated for their damages.

166. Plaintiffs further reserve and hereby claim all other rights and remedies arising from the Plaintiffs' injuries.

167. All of the above damages are in an amount which will be proved at trial.

168. WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them as hereinafter set forth.

XX. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demands judgment against the Defendants, jointly and severally, on each of the above- referenced claims and causes of action and as follows:

1. Awarding Plaintiffs compensatory damages in excess of the jurisdictional amount, including, but not limited to past and future pain, suffering, emotional distress, disability, loss of enjoyment of life, loss of consortium, and other non-economic damages and losses;

2. Awarding Plaintiffs' their economic damages and losses, including without limitation past and future medical expenses, out of pocket expenses, lost earnings and lost earning capacity, lost household services, and other economic damages in an amount to be determined at trial;

3. Awarding punitive damages;

- 1 4. Awarding pre-judgment interest;
- 2 5. Awarding post-judgment interest;
- 3 6. Awarding Plaintiffs reasonable attorneys' fees;
- 4 7. Awarding Plaintiffs the costs of these proceedings;
- 5 8. Treble damages in the maximum amounts permitted by RCW
- 6 19.86.090; and
- 7 9. Such other and further relief as this Court deems just and proper.

8
9 **XXI. DEMAND FOR JURY TRIAL**

10 Plaintiffs hereby demand trial by jury as to all issues.

11 DATED this 19th day of February, 2019. CORRIE YACKULIC LAW FIRM, PLLC

12
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