

RICHMAN LAW GROUP  
Kim E. Richman  
81 Prospect Street  
Brooklyn, New York 11201  
Telephone: (212) 687-8291  
*Attorneys for Plaintiffs and the Proposed Classes*

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS**

<p>KEVIN BLAIR and GREGORY CHICK, on behalf of themselves and all others similarly situated,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>MONSANTO COMPANY and DOE CORPORATIONS 1-10,</p> <p style="text-align: center;">Defendants.</p>	<p>Case No.</p>
---	-----------------

**CLASS ACTION COMPLAINT**

Plaintiff Kevin Blair, a resident of Illinois, and Plaintiff Gregory Chick, a resident of California, (collectively, “Plaintiffs”) individually and on behalf of others similarly situated, by and through their undersigned counsel, hereby file this Class Action Complaint for damages and equitable and declaratory relief against Defendant Monsanto Company and its wholly-owned subsidiaries (collectively, “Monsanto” or “Defendant”), and allege as follows:

1. Monsanto labels its retail Roundup® “Garden Weeds” Weed & Grass Killer products (“Roundup Garden Products”) as targeting an enzyme that is *not* found “in people or pets,” based on its active ingredient, glyphosate:

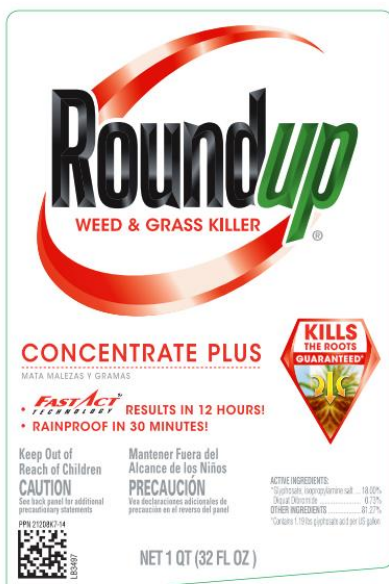
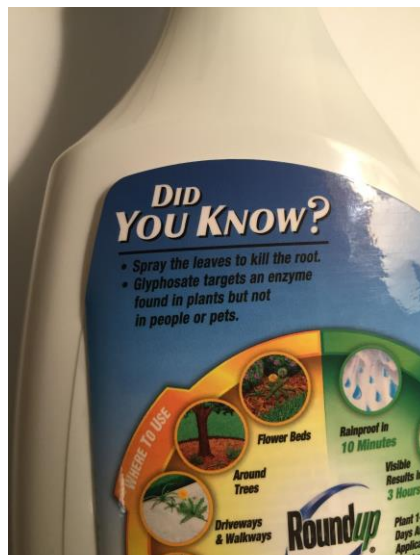
“Glyphosate targets an enzyme found in plants but not in people or pets.”

2. However, this claim is false, misleading, and deceptive, as the enzyme that glyphosate targets *is* found in people and pets.

3. Plaintiffs bring this deceptive advertising claim on behalf of consumers who purchased the Roundup Garden Products in Illinois and California, and seek relief, including refunds to purchasers.

### INTRODUCTION

4. Monsanto actively labels, advertises, and promotes its Roundup Garden Products with the false statement that Roundup's active ingredient, glyphosate, targets an enzyme that is *not* found "in people or pets," when in fact, the targeted enzyme *is* found in people and pets.



5. Glyphosate, the active ingredient in Roundup, targets the enzyme EPSP synthase. The beneficial bacteria in our gut (and the gut of other mammals), on which our immune systems rely, produce, and utilize EPSP synthase.<sup>1</sup> Thus, the targeted enzyme EPSP synthase *is* in people and pets.

6. The false statement regarding glyphosate and the enzyme is material. There is widespread controversy and concern around glyphosate and its risks. Studies indicate that the health of the beneficial bacteria in our bodies is directly linked to our general health. Studies also suggest that glyphosate may be carcinogenic and affect human and animal cardiovascular, endocrine, nervous, and reproductive systems.

7. In light of this controversy, and to assuage concerns about glyphosate's risks to health, Monsanto markets Roundup Garden Products with the false statement that they target an enzyme that is *not* found in people or pets. Monsanto omits material, contrary information, namely, that human gut bacteria produce and utilize the enzyme targeted by Roundup Garden Products.

8. Plaintiffs and consumers were deceived by the false statement and this deception caused them harm. Plaintiffs and consumers would have acted differently had they known the material information omitted by Monsanto.

9. As a result of the false statements and material omissions, Monsanto was able to sell more Roundup Garden Products and to charge more for the Products than it otherwise would have been.

---

<sup>1</sup> Beneficial bacteria that produce and utilize the enzyme EPSP synthase are also in other parts of human bodies, such as the reproductive tracts.

10. Monsanto's actions violate Illinois's Consumer Fraud and Deceptive Business Practices Act and California's Consumers Legal Remedies Act, False Advertising Law, and Unfair Competition Law.

11. Monsanto also breached an express warranty that its product targets an enzyme that is not found in people or pets.

12. Monsanto was unjustly enriched through utilizing the false statement and omitting material information.

13. Plaintiffs and other Class Members who purchased the Roundup Garden Products suffered economic damages in a similar manner because they purchased more Roundup Garden Products and/or paid more for Roundup Garden Products than they would have had they not been deceived.<sup>2</sup>

14. Accordingly, Plaintiffs seek compensation for themselves and Class members equal to the amount of money they paid for Roundup Garden Products that they would not have purchased had they known the truth, or in the alternative, the amount of money they paid based on the false statement.

#### **JURISDICTION AND VENUE**

15. This Court has subject-matter jurisdiction over this proposed class action pursuant to 28 U.S.C. § 1332(d), the Class Action Fairness Act ("CAFA"). CAFA grants federal courts original jurisdiction over any class action in which the proposed class has at least 100 members, any member of the proposed class is a citizen of a State different from any defendant, and the matter in controversy exceeds the sum of \$5 million, exclusive of interest and costs. Plaintiffs are

---

<sup>2</sup> Plaintiffs are not seeking damages for any personal injuries in this Complaint.

residents and citizens of Illinois and California, and on information and belief, Defendant Monsanto is a citizen of Missouri and Delaware. On information and belief, the amount in controversy exceeds \$5 million.

16. This Court has personal jurisdiction over Defendant Monsanto in this case. Monsanto transacts business throughout the United States, including in Illinois and in this judicial District.

17. Venue is proper in this District under 28 U.S.C. § 1391(b)(1). Substantial acts in furtherance of the alleged improper conduct, including the dissemination of the false statement occurred within this District.

### **PARTIES**

18. Defendant Monsanto Company was and is a Delaware corporation headquartered in St. Louis, Missouri, and a leading marketer of biocides nationwide. Monsanto is and was, at all relevant times, engaged in commercial transactions throughout Illinois and California.

19. Monsanto manufactures and/or causes the manufacture of Roundup Garden Products, and markets and distributes the Products in retail stores in Illinois and California, and through the Internet.

20. Plaintiff Kevin Blair is a citizen of the state of Illinois and a resident of Poplar Grove, Illinois. He purchased Monsanto's Roundup Garden Products, specifically, Roundup Concentrate Plus, on several occasions from the Home Depot store located at 140 Countryside Plaza, Countryside, Illinois 60525 and from the Menards store located at 6100 East Avenue, Hodgkins, Illinois 60525.

21. Plaintiff Gregory Chick is a citizen of the State of California and a resident of Ramona, CA. He purchased Monsanto's Roundup Garden Products on several occasions in the

last four years from, among other retailers, the United Green Mark store located at 900 W. Washington Avenue, Escondido, California 92025.

### **FACTUAL ALLEGATIONS**

#### **I. Glyphosate and the Enzyme That It Targets.**

22. Glyphosate, the active ingredient in Roundup, is a non-selective biocide, meaning that it will kill most plants and many simple organisms. Unlike selective biocides, glyphosate cannot be used on most lawns, as it would kill grass that has not been genetically modified.

23. Glyphosate kills plants by inhibiting the enzyme 5-enolpyruvylshikimate-3-phosphate (“EPSP”) synthase, disrupting the fifth of six enzymatic steps in the shikimate pathway, which processes aromatic amino acids.<sup>3</sup>

24. The same enzyme—the EPSP synthase that glyphosate “targets”—is present in many beneficial bacteria that inhabit the human and other mammalian gut.<sup>4</sup> Hence, contrary to Monsanto’s representation that the enzyme targeted by Roundup’s glyphosate is not found in people or pets, that enzyme *is* found in people and pets.

---

<sup>3</sup> Klaus M. Hermann, *The Shikimate Pathway as an Entry to Aromatic Secondary Metabolism*, 107 *Plant Physiology* 7 (1995), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC161158/pdf/1070007.pdf>; Herke Hollander & Nikolaus Amrhein, *The Site of the Inhibition of the Shikimate Pathway by Glyphosate*, 66 *Plant Physiology* 823, (1980), available at <http://www.plantphysiol.org/content/66/5/823.full.pdf>; Industry Task Force on Glyphosate, *Glyphosate: Mechanism of Action*, Glyphosate Facts (June 19, 2013), available at <http://www.glyphosate.eu/glyphosate-mechanism-action>.

<sup>4</sup> Anthony Samsel & Stephanie Sneff, *Glyphosate’s Suppression of Cytochrome P450 Enzymes and Amino Acid Biosynthesis by the Gut Microbiome: Pathways to Modern Diseases*, 15(4) *Entropy* 1416 (2013), available at <http://www.mdpi.com/1099-4300/15/4/1416/htm>.

25. Studies show that the health of beneficial gut bacteria is essential to the overall health of humans and other mammals.<sup>5</sup> Microorganisms that populate the human body outnumber human cells 10 to one.<sup>6</sup>

26. Studies examining low doses of glyphosate-based biocides at levels that are generally considered “safe” for humans show that these compounds can nevertheless cause liver and kidney damage.<sup>7</sup>

27. Widespread controversy and concern exist regarding glyphosate’s effect on human and animal health.

28. In 2015, the International Agency for Research on Cancer, the cancer research arm of the World Health Organization, found glyphosate to be a “probable carcinogen.”<sup>8</sup> A summary of the study underlying this declaration was published in *The Lancet Oncology*, Vol. 16, No. 5

---

<sup>5</sup> Sai Manasa Jandhyala, et al., *Role of the Normal Gut Microbiota*, 21 *World J. of Gastroenterology* 8787 (2015), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4528021/>.

<sup>6</sup> Andrea G. Braundmeier, et al., *Individualized Medicine and the Microbiome in Reproductive Tract*, 6 *Frontiers in Physiology* 97 (2015), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4381647/>.

<sup>7</sup> John P. Myers, et al., *Concerns over use of glyphosate-based herbicides and risks associated with exposures: a consensus statement*, 15 *Environ. Health* 9 (2016), available at <https://ehjournal.biomedcentral.com/articles/10.1186/s12940-016-0117-0>; see also Gilles-Eric Seralini, et al., *Republished study: long-term toxicity of a Roundup herbicide and a Roundup-tolerant genetically modified maize*, 26 *Environ. Sci. Europe* 14 (2014), available at <http://enveurope.springeropen.com/articles/10.1186/s12302-014-0014-5>; A.L. Benedetti, et al., *The effects of sub-chronic exposure of Wistar rats to the herbicide Glyphosate-Biocarb*, 153(2) *Toxicol. Lett.* 227-32 (2004), available at <http://www.ncbi.nlm.nih.gov/pubmed/15451553>; K. Larsen, et al., *Effects of Sublethal Exposure to a Glyphosate-Based Herbicide Formulation on Metabolic Activities of Different Xenobiotic-Metabolizing Enzymes in Rats*, 33(4) *Int. J. Toxicol.* 307-18 (Jul. 2014), available at <http://www.ncbi.nlm.nih.gov/pubmed/24985121>; Robin Mesnage, et al., *Transcriptome profile analysis reflects rat liver and kidney damage following chronic ultra-low dose Roundup exposure*, 14 *Environ. Health* 70 (2015), available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC4549093>.

<sup>8</sup> Daniel Cressey, *Widely Used Herbicide Linked to Cancer*, *Nature Magazine*, 24 March 2015, available at <http://www.nature.com/news/widely-used-herbicide-linked-to-cancer-1.17181>.

(May 2015).<sup>9</sup> The IARC study noted such carcinogenic risk factors as DNA damage to human cells resulting from exposure to glyphosate.<sup>10</sup>

29. In light of those conclusions, in April 2016, following a review of products containing glyphosate and tallowamine, a substance that enhances the activity of glyphosate, France's health and safety agency announced its intention to ban weed-killers that combine the two chemicals.<sup>11</sup>

30. In response to the growing evidence of glyphosate's effects on humans, the California Office of Environmental Health Hazard Assessment (OEHHA) announced that glyphosate would be added to an official state list of known carcinogens, requiring Monsanto to label Roundup products with warnings that it may cause cancer.<sup>12</sup> A lawsuit brought by Monsanto challenging OEHHA's decision was dismissed in California Superior Court.<sup>13</sup>

## **II. Monsanto's False Statement On, and Material Omission From, Roundup Labels.**

31. Monsanto includes a false statement on the labels of its Roundup Garden Products. Under the phrase, "DID YOU KNOW?" the label states, "Glyphosate targets an enzyme found in plants but not people or pets."<sup>14</sup>

32. The labels of the following Roundup Garden Products include the false statement:

---

<sup>9</sup> Available at <http://www.thelancet.com/journals/lanonc/article/PIIS1470-2045%2815%2970134-8/abstract>.

<sup>10</sup> See *id.*

<sup>11</sup> See "France to Ban Some Glyphosate Weedkillers Amid Health Concerns," Reuters, Apr. 8, 2016, available at <http://www.reuters.com/article/us-france-glyphosate-idUSKCN0X512S>.

<sup>12</sup> "Glyphosate to be Listed under Proposition 65 as Known to the State to Cause Cancer," OEHHA, Mar. 28, 2017, available at <https://oehha.ca.gov/proposition-65/crn/glyphosate-be-listed-under-proposition-65-known-state-cause-cancer>.

<sup>13</sup> "Judge Rejects Monsanto Bid To Block Herbicide From California Cancer List," CBS Los Angeles, Mar. 13, 2017, available at <http://losangeles.cbslocal.com/2017/03/13/judge-rejects-monsanto-bid-to-block-herbicide-from-california-cancer-list/>.

<sup>14</sup> Discovery may reveal additional misrepresentations of a similar nature on Roundup Garden Product labeling.



- Roundup® Ready-To-Use Weed & Grass Killer III products (sold in various sizes and with various applicators);
- Roundup® Weed & Grass Killer Concentrate products (Concentrate Plus and Super Concentrate).<sup>15</sup>

33. Monsanto is aware<sup>16</sup> that consumers are becoming increasingly concerned about Roundup's potential effects on people and animals<sup>17</sup> and knows that consumers are more likely to buy—and will pay more for—Roundup if they believe it targets an enzyme that is not found in people and animals.

34. When it enters the human body, the glyphosate found in Roundup Garden Products contributes to the buildup of glyphosate levels in the human body. Over time, this buildup—even if it comes from relatively low levels of exposure at any given time—can lead to the kind of endocrine-disruptive effects that mindful consumers are trying to avoid by purchasing products labeled as not affecting humans and animals.<sup>18</sup>

35. Monsanto includes the false statement in order to induce members of the public to purchase (or to purchase more of) the Roundup Garden Products and/or to pay more for them.

---

<sup>15</sup> Discovery may reveal additional varieties of Roundup Garden Products labeled with the misrepresentation or similar misrepresentations.

<sup>16</sup> See, e.g., Eric Sachs, *Conversation Questions Regarding Glyphosate*, Monsanto, <http://discover.monsanto.com/posts/conversation-questions-regarding-glyphosate/> (last visited Mar. 14, 2017).

<sup>17</sup> See, e.g., *Two-Thirds of Europeans Support Glyphosate Ban, Says Yougov Poll*, The Guardian, Apr. 11, 2016, available at <https://www.theguardian.com/environment/2016/apr/11/two-thirds-of-europeans-support-ban-on-glyphosate-says-yougov-poll>; *Fears Over Roundup Herbicide Residues Prompt Private Testing*, Washington Post, Apr. 13, 2015, available at [https://www.washingtonpost.com/national/health-science/worries-about-an-ingredient-in-widely-used-lawn-herbicide-after-who-report/2015/04/13/f6b0a418-df8a-11e4-a1b8-2ed88bc190d2\\_story.html](https://www.washingtonpost.com/national/health-science/worries-about-an-ingredient-in-widely-used-lawn-herbicide-after-who-report/2015/04/13/f6b0a418-df8a-11e4-a1b8-2ed88bc190d2_story.html).

<sup>18</sup> See *supra*, n.7.

36. Monsanto omits material information from the label of Roundup Garden Products in order to induce members of the public to purchase (or to purchase more of) the Products and/or to pay more for them.

**II. Monsanto's Knowledge That Its Representations Are False and Omission of Material Information.**

37. Glyphosate was invented by Monsanto, an agrochemical and agricultural biotechnology corporation, which began marketing it in 1974 under the trade name Roundup.

38. Monsanto holds itself out to the public as a trusted expert on glyphosate. It offers a video on its website purporting to answer "*Questions Regarding Glyphosate*," and explains that glyphosate blocks an enzyme, and "without that enzyme, the weed can't make the building blocks it needs to grow. The entire weed withers to the ground."<sup>19</sup>

39. Monsanto's scientific knowledge about glyphosate and the enzyme it blocks is sufficient to enable Monsanto to engineer plants genetically to be resistant to glyphosate (which it calls "Roundup-Ready" crops).

40. Monsanto knew, or in the exercise of reasonable care should have known, that the enzyme that glyphosate targets is in bacteria that form the human and animal gut biome, and that therefore its statement that "glyphosate targets an enzyme found in plants but not in people or pets" was false.

41. Monsanto willfully advertised its Roundup Garden Products using the material false statement.

42. Monsanto willfully omitted material information from Roundup Garden Products concerning the use of EPSP synthase by bacteria within the human gut biome.

---

<sup>19</sup> See, e.g., Sachs, *supra* n.16.

43. Through the false statements made in its labeling, and through its material omissions, Monsanto conceals the truth. Monsanto's concealment tolls the applicable statute of limitations.

44. To this day, Monsanto continues to conceal, suppress, and misrepresent the true nature of Roundup and its active ingredient, glyphosate.

### **III. Reasonable Consumers Deceived by the False Statement.**

45. The statement "Glyphosate targets an enzyme found in plants but not in people or pets," under the phase "DID YOU KNOW?" was on the label of the Roundup Garden Products that Plaintiff purchased.

46. Plaintiffs saw and were deceived by the false statement, and by Monsanto's omission of material information.

47. Consumers, including members of the Classes, have been and are likely to be deceived by Monsanto's false statement and material omission.

48. Consumers cannot discover the falsity of the statement from reading the label. Nor can they discover the falsity of the statement from visiting Roundup's website. The website also states, on each Roundup Garden Product's individual webpage, "Glyphosate targets an enzyme found in plants but not people or pets."<sup>20</sup>

49. Other Roundup webpages, such as one titled "How Do Roundup® Weed & Grass Killer Products Work?", repeat the false statement both in writing and in videos.<sup>21</sup>

---

<sup>20</sup> See, e.g., Scotts Miracle-Gro Co., *Roundup® Ready-To-Use Weed & Grass Killer III with Sure Shot® Wand*, Roundup.com, <http://www.roundup.com/smg/goprod/roundup-ready-to-use-weed-grass-killer-iii-with-sure-shot-wand/prod11330002?&> (last visited Mar. 14, 2017).

<sup>21</sup> Scotts Miracle-Gro Co., *How Do Roundup® Weed & Grass Killer Products Work?*, Roundup.com, <http://www.roundup.com/smg/goART3/Howto/how-do-roundup-weed-and-grass-killer-products-work/43200019> (last visited Mar. 14, 2017); see also Sachs, *supra* n.16.

50. Discovery of the true nature of Roundup requires scientific knowledge and research that the average consumer cannot be expected to undertake. A reasonable consumer is likely to be deceived by Monsanto's false statement and material omission.

51. Monsanto's deceptive representation, and its omission, are material in that an ordinary person would attach importance to such information and would be induced to act upon such information in making purchasing decisions.

**IV. Monsanto's False Statement Injured Plaintiffs and the Class Members.**

52. As an immediate, direct, and proximate result of Monsanto's misrepresentation and omission, Monsanto injured Plaintiffs and Class Members in that they:

- (i) paid more for Roundup Garden Products that were falsely represented than they would have had the Roundup Product not been falsely represented;
- (ii) purchased Roundup Garden Products that they otherwise would not have purchased, had they not been deceived;
- (iii) purchased Roundup Garden Products that they otherwise would not have purchased, had they known the truth about glyphosate;
- (iv) were deprived of the benefit of the bargain because the Roundup Garden Products they purchased were different from what Monsanto promised and/or had less value than what was represented; and
- (v) did not receive Roundup Garden Products that measured up to their expectations as created by Monsanto.

53. Plaintiffs and the Class members purchased, purchased more of, and/or paid more for Roundup Garden Products than they would have had they not been deceived by the

representations and omissions. Had Monsanto not made the false statement and omitted material information, Plaintiffs and the Class members would not have been injured as listed above.

### **CLASS ALLEGATIONS**

54. Plaintiffs re-allege and incorporate by reference the allegations set forth in the preceding paragraphs of this Complaint.

55. This action is maintainable as a class action pursuant to Rule 23(a) and 23 (b)(2) & (3) of the Federal Rules of Civil Procedure.

56. Plaintiffs bring this action on behalf of Illinois and California Classes, defined as follows:

Illinois Class: All consumers who purchased Roundup® Ready-To-Use Weed & Grass Killer III, Roundup® Weed & Grass Killer Concentrate Plus (or Super Concentrate), or other Roundup Garden Products with similar statements on the label, in Illinois, since the date the product first included on the label the statement, “Glyphosate targets an enzyme found in plants but not in people or pets.”

California Class: All consumers who purchased Roundup® Ready-To-Use Weed & Grass Killer III, Roundup® Weed & Grass Killer Concentrate Plus (or Super Concentrate), or other Roundup Garden Products with similar statements on the label, in California, since the date the product first included on the label the statement, “Glyphosate targets an enzyme found in plants but not in people or pets.”

57. All members of the Classes were and are similarly affected by the misrepresentation on the Roundup Garden Products, and by Monsanto’s omissions, and the relief sought herein is for the benefit of Plaintiffs and members of the Classes.

**I. Numerosity.**

58. On information and belief, Roundup Garden Products are the best-selling weed & grass killers in the United States.

59. Based on the sales and popularity of the Roundup Garden Products, the number of consumers in the Classes is so large as to make joinder impracticable, if not impossible. Class Members may be notified of the pendency of this action by recognized, Court-approved notice dissemination methods, which may include U.S. Mail, electronic mail, Internet postings, and/or published notice.

**II. Predominance of Common Questions of Law and Fact.**

60. The prerequisites to maintaining a class action pursuant to Federal Rule of Civil Procedure 23(b)(3) are met because questions of law and fact common to each Class Member predominate over any questions affecting only individual members and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

61. There are numerous questions of law and fact common to Plaintiffs and the other Class Members that predominate over questions affecting only individual members, including:

- a. Whether Monsanto's representation that "Glyphosate targets an enzyme found in plants but not in people or pets" is false, misleading, or deceptive;
- b. Whether Monsanto omitted material information from the labels of the Roundup Garden Products;
- c. Whether practices related to the marketing, labeling, and sales of the Roundup Garden Products were unfair, deceptive, fraudulent, and/or unlawful;

- d. Whether Monsanto breached an express warranty created through the labeling and marketing of the Roundup Garden Products;
- e. Whether Monsanto was unjustly enriched through its use of the misrepresentation; and
- f. Whether Monsanto's conduct economically injured Plaintiffs and Class Members.

**III. Typicality.**

62. The claims asserted by Plaintiffs in this action are typical of the claims of the respective Classes, as they arise from the same course of conduct by Monsanto, and the relief sought within the Classes is common to the Class Members. There are no defenses available to Monsanto that are unique to Plaintiffs.

**IV. Adequacy.**

63. Plaintiffs will fairly and adequately represent and protect the interests of the Classes. Plaintiffs are adequate representatives of the Classes because their interests do not conflict with the interests of the Class members they seek to represent and they have retained counsel competent and experienced in both a wide variety of actions seeking to protect consumers from fraudulent and deceptive practices and class action litigation generally. Plaintiffs and Plaintiffs' counsel will fairly and adequately protect the interests of the members of the Classes.

**V. Superiority of Class Action.**

64. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of the Class Members is not practicable, and questions of law and fact common to the Class predominate over any questions affecting only

individual Class Members. Each Class Member has been damaged and is entitled to recovery as a result of the violations alleged herein.

65. Moreover, because the damages suffered by individual Class Members may be relatively small, the expense and burden of individual litigation would make it difficult or impossible for individual Class Members to redress the wrongs done to them, while an important public interest will be served by addressing the matter as a class action. Class action treatment will allow those persons similarly situated to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system.

66. Plaintiffs are unaware of any difficulties in managing this case that should preclude class action.

**VI. Declaratory Relief.**

67. Certification also is appropriate because Monsanto acted, or refused to act, on grounds generally applicable to the Classes, thereby making appropriate the declaratory relief sought on behalf of the Classes. Further, given the large number of consumers of the Roundup Garden Products, allowing individual actions to proceed in lieu of a class action would run the risk of yielding inconsistent and conflicting adjudications.

**CAUSES OF ACTION**  
**COUNT I**

**Violation of the Illinois Consumer Fraud and Deceptive Business Practices Act**  
**815 ILCS 505/1, *et seq.***

68. All of the foregoing paragraphs are re-alleged as if fully set forth herein.

69. Plaintiff Blair brings this cause of action on behalf of members of the Illinois Class.

70. The Illinois Consumer Fraud and Deceptive Business Practices Act (“Illinois CFA”) prohibits “unfair or deceptive acts or practices, including but not limited to the use or



employment of any deception, fraud, false pretense, false promise, misrepresentation . . . or the use or employment of any practice described in Section 2 of the ‘Uniform Deceptive Trade Practices Act’ [815 ILCS 510/2] . . . in the conduct of trade or commerce . . . whether any person has in fact been misled, deceived or damaged thereby.” 815 ILCS 505/2.

71. In using a false statement to market its Roundup Garden Products, Monsanto employed deception, fraud, false pretense, false promise, and misrepresentation.

72. Monsanto violated 815 ILCS 505/2, by:

- a. Representing that its Roundup Garden Products have “characteristics, . . . benefits, [and] quantities that they do not have,” 815 ILCS 510/2 (a)(5);
- b. Representing its Roundup Garden Products “are of a particular standard, quality, [and] grade” when “they are of another,” 815 ILCS 510/2 (a)(7);
- c. Labeling its Roundup Garden Products “with intent not to sell them as advertised,” 815 ILCS 510/2 (a)(9); and
- d. Engaging in “conduct which similarly creates a likelihood of confusion or misunderstanding,” 815 ILCS 510/2 (a)(12).

73. Monsanto’s conduct offends public policies and is immoral, unethical, unscrupulous, and substantially injurious to consumers.

74. Monsanto’s sale of the Roundup Garden Products is an unfair method of competition, unconscionable act and practice, and an unfair and deceptive act and practice in the conduct of its business.

75. Plaintiff Blair and Illinois Class Members suffered “actual damage” as a result of a violation of this Act. *See* 815 ILCS 505/10a(a).

76. Plaintiff Blair and Illinois Class Members are entitled to
- a. “actual economic damages”;
  - b. “reasonable attorney’s fees and costs”; and
  - c. “other relief which the court deems proper.”

815 ILCS 505/10a (a).

77. Plaintiff Blair and Illinois Class Members are entitled to punitive damages.

## **COUNT II**

### **Breach of Express Warranty Under Illinois law**

78. All of the foregoing paragraphs are re-alleged as if fully set forth herein.

79. Monsanto provided Plaintiff Blair and members of the Illinois Class with written express warranties including, but not limited to, warranties that the glyphosate present in Roundup “targets an enzyme found in plants but not in people or pets.”

80. These affirmations of fact or promises by Monsanto relate to the goods and became part of the basis of the bargain.

81. Plaintiff Blair and members of the Illinois Class purchased Roundup Garden Products believing them to conform to the express warranties.

82. Monsanto breached these warranties.

83. As a proximate result of the breach of warranties by Monsanto, Plaintiff Blair and the members of the Illinois Class did not receive goods as warranted and did not receive the benefit of the bargain. They have therefore been injured and have suffered damages in an amount to be proven at trial.

**COUNT III**

**Unjust Enrichment Under Illinois Law**

84. All of the foregoing paragraphs are re-alleged as if fully set forth herein. To the extent required by law, this cause of action is pleaded in the alternative to Plaintiff Blair's contract-based claims.

85. As the intended, direct, and proximate result of Monsanto's conduct, Monsanto has been unjustly enriched through sales of Roundup Garden Products at the expense of Plaintiff Blair and the Illinois Class members.

86. As the intended, direct, and proximate result of its conduct, Monsanto unfairly obtained other benefits, including increased value for Monsanto's other products that contain glyphosate.

87. Under the circumstances, it would be against equity and good conscience to permit Monsanto to retain the ill-gotten benefits that it received from Plaintiff Blair and the other members of the Illinois Class, in light of the fact that the Roundup Garden Products purchased by Plaintiff Blair and the other members of the Illinois Class were not what Monsanto purported them to be.

**COUNT IV**

**Violations of California's Consumers Legal Remedies Act  
Cal. Civ. Code §§ 1750 *et seq.***

88. All of the foregoing paragraphs are re-alleged as if fully set forth herein.

89. Plaintiff Chick brings this cause of action on behalf of members of the California Class.

90. This cause of action is brought pursuant to California's Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750-1785 (the "CLRA").

91. Plaintiff Chick and the California Class Members are “consumers,” as the term is defined by California Civil Code § 1761(d), because they bought the falsely labeled Products for personal, family, or household purposes.

92. Monsanto violated Cal. Civ. Code § 1770 by:

- a. “Representing that goods . . . have . . . characteristics [or] benefits . . . which they do not have,” Cal. Civ. Code § 1770(a)(5);
- b. “Representing that goods . . . are of a particular standard, quality, or grade . . . if they are of another,” Cal. Civ. Code § 1770(a)(7); and
- c. “Advertising goods or services with intent not to sell them as advertised.” Cal. Civ. Code § 1770(a)(9).

93. Plaintiff Chick and the California Class Members suffered “damage as a result of” Monsanto’s violation of Section 1770.

94. Pursuant to Cal. Civ. Code § 1782, Plaintiff Chick, via letter dated March 15, 2017, provided notice to Monsanto of its violation of Section 1770 and of Plaintiff’s intention to file this action if Monsanto did not agree to rectify said violation within 30 days. Monsanto responded via letter dated April 12, 2017, and declined to take any steps remedying the violation.

95. Plaintiff Chick and the California Class Members are entitled to:

- a. “Actual damages”;
- b. “Restitution of property”;
- c. “Punitive damages”;
- d. “Any other relief that the court deems proper,” Cal. Civ. Code § 1780(a);  
and
- e. “court costs and attorney’s fees,” Cal. Civ. Code § 1780(e).

**COUNT V**

**Violations of California’s False Advertising Law (FAL)  
Cal. Bus. & Prof. Code § 17500, *et seq.***

96. All of the foregoing paragraphs are re-alleged as if fully set forth herein.

97. Plaintiff Chick brings this cause of action on behalf of members of the California Class.

98. This cause of action is brought pursuant to California’s False Advertising Law (the “FAL”), Cal. Bus. & Prof. Code § 17500 *et seq.*

99. The FAL prohibits any “firm, corporation or association . . . with intent directly or indirectly to dispose of real or personal property . . . to make or disseminate . . . before the public in [California] . . . in . . . any advertising device . . . including over the Internet, any statement, concerning that real or personal property . . . or concerning any circumstance or matter of fact connected with the proposed performance or disposition thereof, 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.” Cal. Bus. & Prof. Code § 17500.

100. The misrepresentations by Monsanto of the material facts detailed herein constitute false and misleading advertising, and therefore constitute a violation of FAL.

101. The above acts of Monsanto were likely to deceive reasonable consumers.

102. The business practices alleged above are unlawful under the FAL, which forbids misleading and deceptive advertising.

103. Plaintiff Chick and the other members of the California Class have suffered injury in fact and have lost money or property as a result of Monsanto’s violations of the FAL.

104. As a result, Monsanto has been unjustly enriched at the expense of Plaintiff and the other members of the Class. Plaintiff Chick and members of the California Class, pursuant to

California Business and Professions Code § 17535, are entitled to such other orders and judgments that may be necessary to disgorge Monsanto's ill-gotten gains and restore to any person in interest any money paid for the falsely labeled Products as a result of Monsanto's wrongful conduct.

**COUNT VI**

**Violations of California's Unfair Competition Law  
Cal. Bus. & Prof. Code § 17200, *et seq.***

105. All of the foregoing paragraphs are re-alleged as if fully set forth herein.

106. This cause of action is brought pursuant to California's Unfair Competition Law (the "UCL"), Cal. Bus. & Prof. Code § 17200 *et seq.*

107. By committing the acts and practices alleged herein, Monsanto has engaged in deceptive, unfair, and unlawful business practices in violation of the UCL.

108. Monsanto has violated the UCL's proscription against engaging in unlawful conduct in that its conduct violates 21 U.S.C. § 331; Cal. Civ. Code § 1709; Cal. Civ. Code § 1750 *et seq.*; Cal. Com. Code § 2313; and Cal. Bus. & Prof. Code § 17500 *et seq.*

109. There is no benefit to consumers or competition from Monsanto's deceptively marketing and labeling its Roundup Garden Products. Indeed, the harm to consumers and competition from this conduct is substantial. Plaintiff Chick and the other members of the California Class who purchased the Roundup Garden Products suffered a substantial injury as alleged herein.

110. Plaintiff Chick and the other members of the California Class who purchased the Roundup Garden Products had no way of reasonably avoiding the injury each of them suffered.

111. Monsanto's acts constitute unfair business practices under Cal. Bus. & Prof. Code § 17200 because the gravity of the consequences of Monsanto's conduct outweighs Monsanto's

legitimate reasons, justifications, and/or motives for engaging in such conduct, if any, particularly considering the available legal alternatives which exist in the marketplace.

112. Monsanto's conduct is immoral, unethical, unscrupulous, offends established public policy, and is substantially injurious to Plaintiff and the other members of the Class.

113. Monsanto's violations continue to this day. Pursuant to California Business and Professions Code § 17203, Plaintiff Chick and the other members of the California Class seek such orders and judgments that may be necessary to disgorge Monsanto's ill-gotten gains and to restore to any person in interest any money paid for the falsely-labeled Products as a result of Monsanto's wrongful conduct.

## **COUNT VII**

### **Breach of Express Warranty Under California Law**

114. All of the foregoing paragraphs are re-alleged as if fully set forth herein.

115. Monsanto provided Plaintiff Chick and members of the California Class with written express warranties including, but not limited to, warranties that the glyphosate present in Roundup "targets an enzyme found in plants but not in people or pets."

116. Plaintiff Chick and members of the California Class purchased Roundup Garden Products believing them to conform to the express warranties.

117. Monsanto breached these warranties.

118. As a proximate result of the breach of warranties by Monsanto, Plaintiff Chick and the members of the California Class did not receive goods as warranted and did not receive the benefit of the bargain. They have therefore been injured and have suffered damages in an amount to be proven at trial.

**COUNT VIII**

**Unjust Enrichment Under California law**

119. All of the foregoing paragraphs are re-alleged as if fully set forth herein. To the extent required by law, this cause of action is pleaded in the alternative to Plaintiff Chick's contract-based claims.

120. As the intended, direct, and proximate result of Monsanto's conduct, Monsanto has been unjustly enriched through sales of Roundup Garden Products at the expense of Plaintiff Chick and the California Class members.

121. Under the circumstances, it would be against equity and good conscience to permit Monsanto to retain the ill-gotten benefits that it received from Plaintiff Chick and the California Class members, in light of the fact that the Roundup Garden Products they purchased were not what Monsanto purported them to be.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs demand judgment on behalf of themselves and the proposed Classes, providing such relief as follows:

A. Certification of Illinois and California Classes under Federal Rule of Civil Procedure 23(a) and (b)(3); appointment of Plaintiff Blair as representative of the Illinois Class; appointment of Plaintiff Chick as representative of the California Class; and appointment of the undersigned counsel as counsel for each Class;

B. An order declaring that Monsanto is financially responsible for notifying members of the Classes of the pendency of this suit in the event the putative class is certified;



C. An order requiring an accounting for, and imposition of, a constructive trust upon all monies received by Monsanto as a result of the unfair, misleading, fraudulent, and unlawful conduct alleged herein;

D. An order declaring Monsanto's conduct to be in violation of applicable law;

E. An order awarding restitution, disgorgement, punitive damages, monetary damages in an amount to be determined at trial, together with costs and disbursements, including reasonable attorneys' fees and costs as allowed by law;

F. Prejudgment interest at the maximum rate allowable by law; and

G. Such further relief as this Court may deem just and proper.

**JURY TRIAL DEMANDED**

Plaintiffs hereby demand a trial by jury on all issues so triable.

Dated: April 24, 2017

Respectfully submitted,

**RICHMAN LAW GROUP**



---

Kim E. Richman (SBN KR9774)  
krichman@richmanlawgroup.com  
81 Prospect Street  
Brooklyn, New York  
Telephone: (212) 687-8291  
Facsimile: (212) 687-8292