UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI

JOSHUA RAWA, on behalf of himself and all others similarly situated, Plaintiff, v. MONSANTO COMPANY, Defendant.	Case No.: **DEMAND FOR JURY TRIAL**

CLASS ACTION COMPLAINT

Plaintiff Joshua Rawa, on behalf of himself and all others similarly situated, by and through his undersigned counsel, brings this action against Monsanto Company and alleges the following upon his own personal knowledge or, where he lacks personal knowledge, upon information and belief, including the investigation of his counsel.

NATURE OF THE ACTION

1. Monsanto is the manufacturer of the ubiquitous herbicide known as Roundup. Among other Roundup products, Monsanto manufactures, markets, and sells Roundup Weed & Grass Killer Concentrate Plus ("Roundup Concentrate Plus") and Roundup Weed & Grass Killer Super Concentrate ("Roundup Super Concentrate," together with Roundup Concentrate Plus, the "Roundup

Concentrates"). Unlike "Ready-to-Use" Roundup, the Roundup Concentrates are intended to be diluted with water prior to use.

2. Since late 2012 or early 2013, Monsanto advertised the Roundup Concentrates as capable of making a certain number of gallons, and as effective at addressing specific applications. For example, prominently at the top of the container in bold white numbers on a red background, the 32 oz. size Roundup Concentrate Plus advertises it makes 10 gallons of Roundup, the 36.8 oz. size advertises it makes 12 gallons of Roundup, and the 64 oz. size advertises it makes 21 gallons of Roundup, as pictured below.

3. These advertisements were false, however, because the Roundup Concentrates were in fact only capable of making *half* the number of gallons represented when diluted to the strength required for the uses advertised on the label

of each product, such as around flower beds and trees, on driveways and walkways, and along fences. Thus, for example, the 32 oz. size Roundup Concentrate Plus makes only 5 ⅓ gallons of Roundup for the advertised uses (despite advertising 10 gallons), the 36.8 oz. size makes only 6 ⅛ gallons of Roundup (despite advertising 12 gallons), and the 64 oz. size makes only 10 ⅔ gallons of Roundup (despite advertising 21 gallons). The same holds true for all sizes and variations of the Roundup Concentrates—each makes only between approximately 50% (for Roundup Concentrate plus) or 60% (for Roundup Super Concentrate) of the amount promised.

4. Plaintiff brings this action to recover damages for himself and other similarly-situated purchasers.

JURISDICTION & VENUE

5. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(d)(2)(A), the Class Action Fairness Act, because the matter in controversy exceeds the sum or value of $5,000,000 exclusive of interest and costs, and at least one member of the class of plaintiffs is a citizen of a state different from Monsanto. In addition, more than two-thirds of the members of the class reside in states other than the state in which Monsanto is a citizen and in which this case is filed, and therefore any exceptions to jurisdiction under 28 U.S.C. § 1332(d) do not apply. The Court also has supplemental jurisdiction over plaintiff's state law claims pursuant to 28 U.S.C. § 1367.

6. The Court has personal jurisdiction over Monsanto as a result of Monsanto's substantial, continuous and systematic contacts with the state and because Monsanto has purposely availed itself of the benefits and privileges of conducting business activities within the state.

7. Venue is proper in this Eastern District of Missouri pursuant to 28 U.S.C. § 1391(b) and (c), because Monsanto resides (*i.e.*, is subject to personal jurisdiction) in this district, and a substantial part of the events or omissions giving rise to the claims occurred in this district.

PARTIES

8. Plaintiff Joshua Rawa is a resident of St. Louis, Missouri.

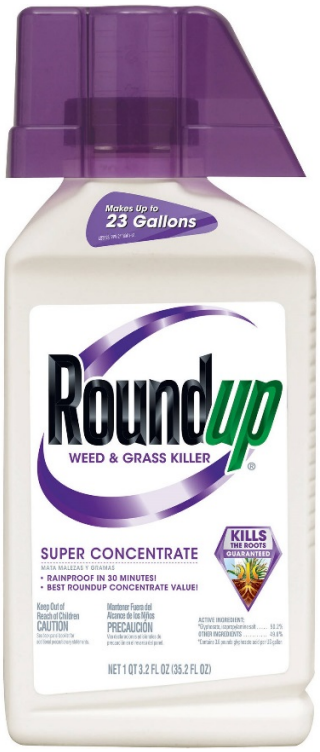
9. Defendant Monsanto Company is a Delaware corporation with its principal place of business in St. Louis, Missouri.

FACTS

10. Monsanto is one of the world's largest agricultural companies, and has long been manufacturing and selling herbicides to control weeds. Monsanto's leading herbicide is called Roundup, whose active ingredient is called glyphosate. Monsanto first introduced Roundup in the mid-1970s for the agricultural community, and then in the mid-1980s for residential use. Roundup has been a dramatically successful product, and is one of the most widely-used herbicides in the world for residential use.

11. Monsanto manufactures, markets, and sells Roundup in various formulations, including Roundup Ready-to-Use formulations, which are intended simply to be sprayed directly out of the bottle in which the product is purchased; and concentrated versions of the Roundup, such as the Roundup Concentrates, which the purchaser must first dilute with water before using with a tank sprayer.

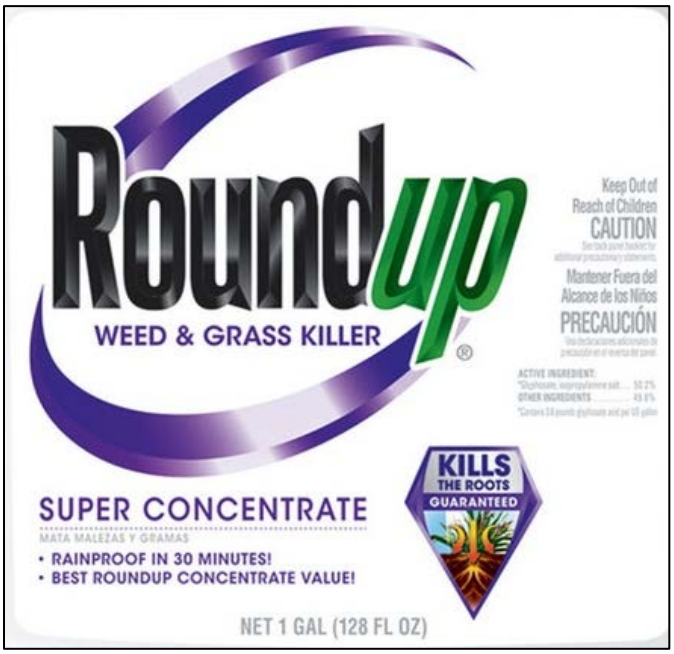
12. Specifically, Monsanto manufactures, markets and sells Roundup Concentrate Plus in 32-, 36.8-, 53.7-, 64-, and 128-ounce bottles (as partially pictured in the introduction above), and Roundup Super Concentrate in 35.2-, 53.7-, 64-, and 128-ounce bottles, as partially pictured below.



13. The principal display panel of each of the Roundup Concentrates prominently claims that that product "Makes Up to" a stated number of gallons, as follows.

Product	Label Statement
Roundup Concentrate Plus 16 oz.	"Makes Up to 5 Gallons"
Roundup Concentrate Plus 32 oz. (1 qt.)	"Makes Up to 10 Gallons"
Roundup Concentrate Plus 36.8 oz.	"Makes Up to 12 Gallons"
Roundup Concentrate Plus 40 oz.	"Makes Up to 13 Gallons"
Roundup Concentrate Plus 64 oz.	"Makes Up to 21 Gallons"
Roundup Super Concentrate 35.2 oz.	"Makes Up to 23 Gallons"
Roundup Super Concentrate 53.7 oz. (0.42 gal.)	"Makes Up to 35 Gallons"
Roundup Super Concentrate 64 oz. (1/2 gal.)	"Makes Up to 42 Gallons"
Roundup Super Concentrate 128 oz. (1 gal.)	"Makes Up to 85 Gallons"

14. Directly under the Roundup name, each Roundup Concentrate label states "WEED & GRASS KILLER." Further, directly under the Roundup name and within a prominent geometric design with an eye-catching illustration, each Roundup Concentrate label also states claims the product "**KILLS** THE ROOTS GUARANTEED." A close-up of a Roundup Super Concentrate label illustrating these elements is depicted below.



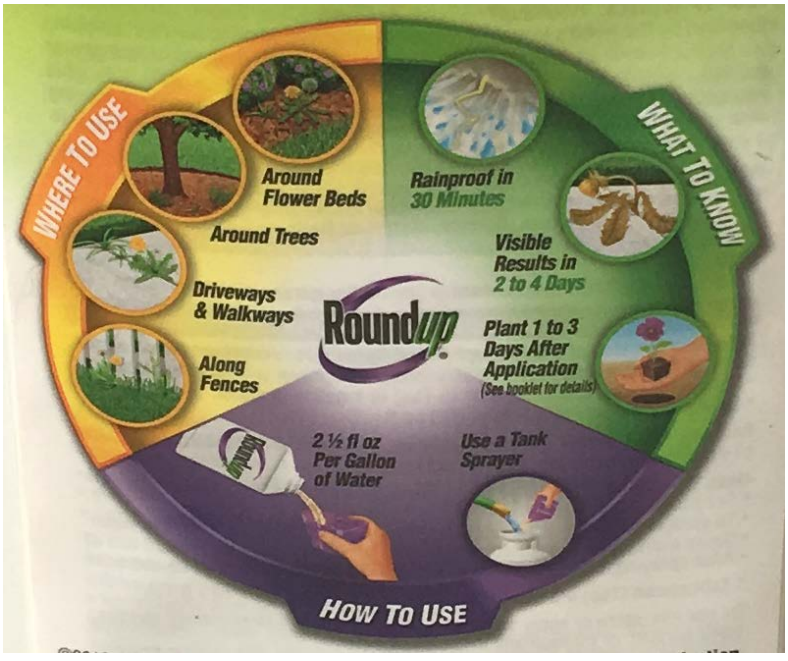
15. Given the price of the Roundup Concentrates in comparison to Ready-to-Use Roundup, together with the purported number of gallons each Roundup Concentrate makes, Monsanto markets the Roundup Concentrates as better values than its Ready-to-Use products.

16. A glossy several-page pamphlet is taped over the back label of each Roundup Concentrate bottle, with its front page showing a graphic providing information under three headings, "Where to Use," "What to Know," and "How to Use." The back of the bottle of the Roundup Super Concentrate and Roundup Concentrate Plus, respectively, with the taped pamphlet, is depicted below.

17. Close-up exemplars of this graphic for Roundup Concentrate Plus, and Roundup Super Concentrate, respectively, are depicted below.

Roundup Concentrate Plus

Roundup Super Concentrate



18. As depicted above, the specific statements within each section of the graphic are as follows:

How to Use

- "Add 6 fl oz Per Gallon of Water" [Roundup Concentrate Plus]
- "Add 2 1/2 fl oz Per Gallon of Water" [Roundup Super Concentrate]
- "Use a Tank Sprayer"

Where to Use

- "Along Fences"
- "Driveways & Walkways"
- "Around Trees"
- "Around Flower Beds"

What to Know

- "Rainproof in 30 Minutes"
- "Visible Results in 12 Hours" [Roundup Concentrate Plus]
- "Visible Results in 2 to 4 Days" [Roundup Super Concentrate]
- "Plant 1 to 3 Days After Application (See booklet for details)"

19. Given the dilutions set forth on the back panel of each Roundup Concentrate, the specified number of gallons that Monsanto represents the Roundup Concentrates are capable of making for the advertised uses is approximately *double* what they are actually capable of making when mixed with water according to

Monsanto's own instructions. Thus, the Roundup Concentrates actually make about *half* the amount Monsanto claims, as demonstrated in the table below.

Product	"Makes Up to" Gallon Promise	Back Label Instruction (Amount to Mix with 1 Gallon Water)	Amount Made Following Instructions
Concentrate Plus (16 oz.)	5 gallons	6 fl. oz.	2.67 gallons
Concentrate Plus (32 oz.)	10 gallons	6 fl. oz.	5.33 gallons
Concentrate Plus (36.8 oz.)	12 gallons	6 fl. oz.	6.13 gallons
Concentrate Plus (40 oz.)	13 gallons	6 fl. oz.	6.67 gallons
Concentrate Plus (64 oz.)	21 gallons	6 fl. oz.	10.67 gallons
Concentrate Plus (128 oz.)	42 gallons	6 fl. oz.	21.33 gallons
Super Concentrate (35.2 oz.)	23 gallons	2.5 fl. oz.	14.08 gallons
Super Concentrate (53.7 oz.)	35 gallons	2.5 fl. oz.	21.48 gallons
Super Concentrate (64 oz.)	42 gallons	2.5 fl. oz.	25.6 gallons
Super Concentrate (128 oz.)	85 gallons	2.5 fl. oz.	51.2 gallons

20. Sealed underneath the back-panel label page is the remainder of the pamphlet that also includes instructions for use.

21. But the pamphlet as taped to the back label of the bottles is sealed tightly and only with careful effort is the pamphlet able to be removed and opened without being torn.

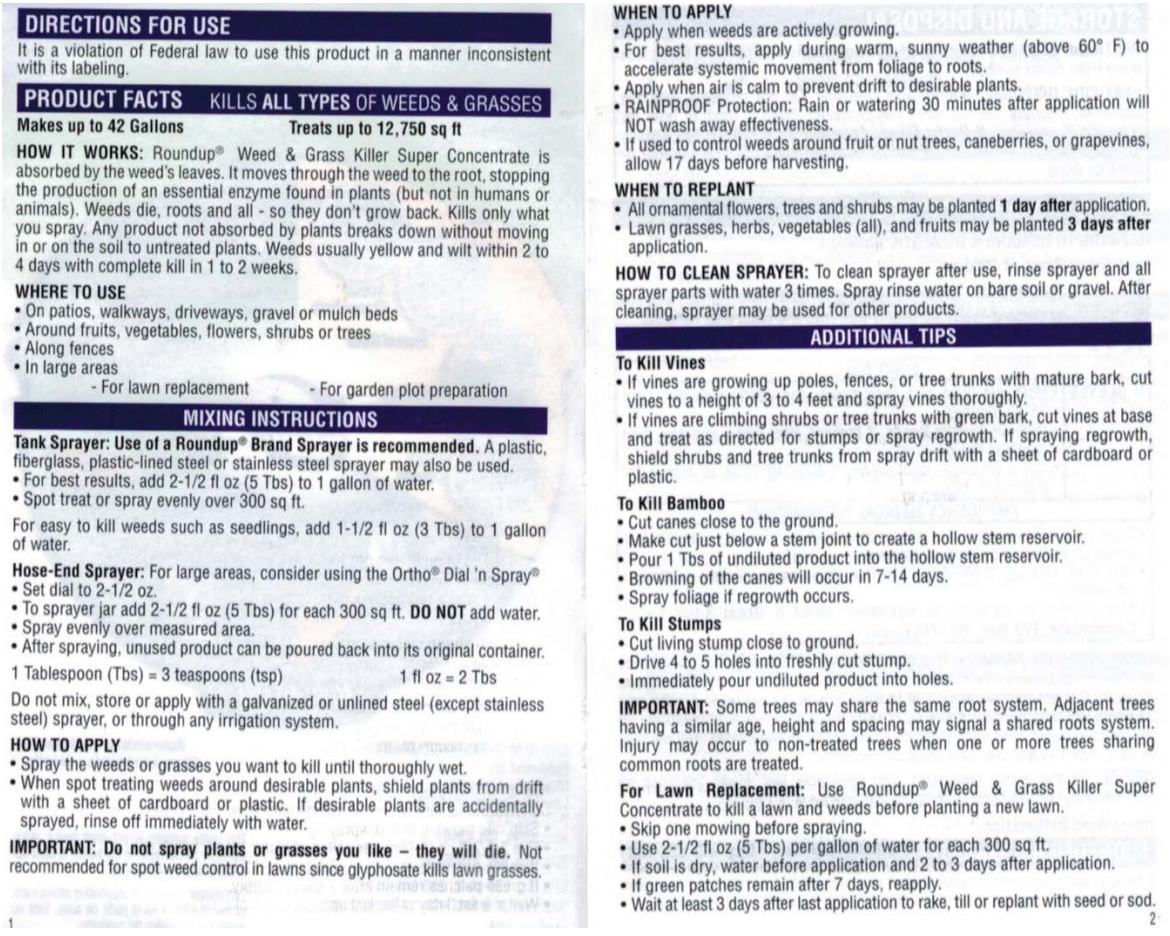
22. As a result, most reasonable consumers would not feel permitted to unseal the pamphlet prior to purchase. Thus, the vast majority of purchasers do not rely on any of the information contained within the pamphlet, and would not even see that information, *prior* to purchase.

23. Even for those who have already purchased the product and then succeeded in removing the pamphlet, generally they do not feel the need to review

the instructions on several pages of fine print before actual use, particularly since they have already seen the easy-to-read diagram with mixing instructions on the cover of the pamphlet prior to purchase.

24. And even for those who do read the remainder of the pamphlet after purchase, it is only through a careful review of this pamphlet, including noticing a buried "fine print" instruction, that the customer may see the inconsistent statement from Monsanto that accounts for the prominent misrepresentation that overstates the number of gallons made.

25. As an example, two internal pages of the several-page pamphlet for the1/2 gallon Super Concentrate are depicted below:



DIRECTIONS FOR USE

It is a violation of Federal law to use this product in a manner inconsistent with its labeling.

PRODUCT FACTS KILLS **ALL TYPES** OF WEEDS & GRASSES

Makes up to 42 Gallons **Treats up to 12,750 sq ft**

HOW IT WORKS: Roundup® Weed & Grass Killer Super Concentrate is absorbed by the weed's leaves. It moves through the weed to the root, stopping the production of an essential enzyme found in plants (but not in humans or animals). Weeds die, roots and all - so they don't grow back. Kills only what you spray. Any product not absorbed by plants breaks down without moving in or on the soil to untreated plants. Weeds usually yellow and wilt within 2 to 4 days with complete kill in 1 to 2 weeks.

WHERE TO USE

- On patios, walkways, driveways, gravel or mulch beds
- Around fruits, vegetables, flowers, shrubs or trees
- Along fences
- In large areas

- For lawn replacement - For garden plot preparation

MIXING INSTRUCTIONS

Tank Sprayer: Use of a Roundup® Brand Sprayer is recommended. A plastic, fiberglass, plastic-lined steel or stainless steel sprayer may also be used.

- For best results, add 2-1/2 fl oz (5 Tbs) to 1 gallon of water.
- Spot treat or spray evenly over 300 sq ft.

For easy to kill weeds such as seedlings, add 1-1/2 fl oz (3 Tbs) to 1 gallon of water.

Hose-End Sprayer: For large areas, consider using the Ortho® Dial 'n Spray®

- Set dial to 2-1/2 oz.
- To sprayer jar add 2-1/2 fl oz (5 Tbs) for each 300 sq ft. **DO NOT** add water.
- Spray evenly over measured area.
- After spraying, unused product can be poured back into its original container.

1 Tablespoon (Tbs) = 3 teaspoons (tsp) 1 fl oz = 2 Tbs

Do not mix, store or apply with a galvanized or unlined steel (except stainless steel) sprayer, or through any irrigation system.

HOW TO APPLY

- Spray the weeds or grasses you want to kill until thoroughly wet.
- When spot treating weeds around desirable plants, shield plants from drift with a sheet of cardboard or plastic. If desirable plants are accidentally sprayed, rinse off immediately with water.

IMPORTANT: Do not spray plants or grasses you like – they will die. Not recommended for spot weed control in lawns since glyphosate kills lawn grasses.

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WHEN TO APPLY

- Apply when weeds are actively growing.
- For best results, apply during warm, sunny weather (above 60° F) to accelerate systemic movement from foliage to roots.
- Apply when air is calm to prevent drift to desirable plants.
- RAINPROOF Protection: Rain or watering 30 minutes after application will NOT wash away effectiveness.
- If used to control weeds around fruit or nut trees, caneberries, or grapevines, allow 17 days before harvesting.

WHEN TO REPLANT

- All ornamental flowers, trees and shrubs may be planted **1 day after** application.
- Lawn grasses, herbs, vegetables (all), and fruits may be planted **3 days after** application.

HOW TO CLEAN SPRAYER: To clean sprayer after use, rinse sprayer and all sprayer parts with water 3 times. Spray rinse water on bare soil or gravel. After cleaning, sprayer may be used for other products.

ADDITIONAL TIPS

To Kill Vines

- If vines are growing up poles, fences, or tree trunks with mature bark, cut vines to a height of 3 to 4 feet and spray vines thoroughly.
- If vines are climbing shrubs or tree trunks with green bark, cut vines at base and treat as directed for stumps or spray regrowth. If spraying regrowth, shield shrubs and tree trunks from spray drift with a sheet of cardboard or plastic.

To Kill Bamboo

- Cut canes close to the ground.
- Make cut just below a stem joint to create a hollow stem reservoir.
- Pour 1 Tbs of undiluted product into the hollow stem reservoir.
- Browning of the canes will occur in 7-14 days.
- Spray foliage if regrowth occurs.

To Kill Stumps

- Cut living stump close to ground.
- Drive 4 to 5 holes into freshly cut stump.
- Immediately pour undiluted product into holes.

IMPORTANT: Some trees may share the same root system. Adjacent trees having a similar age, height and spacing may signal a shared roots system. Injury may occur to non-treated trees when one or more trees sharing common roots are treated.

For Lawn Replacement: Use Roundup® Weed & Grass Killer Super Concentrate to kill a lawn and weeds before planting a new lawn.

- Skip one mowing before spraying.
- Use 2-1/2 fl oz (5 Tbs) per gallon of water for each 300 sq ft.
- If soil is dry, water before application and 2 to 3 days after application.
- If green patches remain after 7 days, reapply.
- Wait at least 3 days after last application to rake, till or replant with seed or sod.

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26. Notably, the pamphlet falsely restates, as the very first item under the heading, "PRODUCT FACTS - KILLS ALL TYPES OF WEEDS & GRASSES," that the product "Makes up to 42 Gallons." The pamphlet further falsely states, as the first bullet under "Mixing Instructions," that, "For best results, add 2-1/2 fl oz (5 Tbs) to 1 gallon of water."

27. Only when a purchaser reads further down into "Mixing Instructions" is the very first and only reference to the possibility of using a greater dilution, wherein it states "For easy to kill weeds such as seedlings, add 1-1/2 fl oz (3 Tbs) to 1 gallon of water."

28. A reasonable purchaser – for example, an ordinary homeowner interested in removing weeds along a fence, on a driveway, or around trees or flower beds – does not have the professional understanding of what constitutes an "easy to kill weed," and does not have the technical expertise to discern when it would be appropriate to use less concentrate per this instruction.

29. To the contrary, a reasonable consumer would instead rely on Monsanto's representation that "for best results, add 2-1/2 fl oz (5 Tbs) to 1 gallon of water," especially inasmuch as this is consistent with the prominent graphic on the product's rear panel (which is also the cover to the pamphlet), set forth adjacent to the product's advertised intended uses.

30. Reasonable consumers read and understand "up to" representations – like the "Makes Up to" a specific number of "Gallons" representations on the

Roundup Concentrates – as providing, under normal and reasonable conditions for use, the maximum results promised. Indeed, the U.S. Federal Trade Commission has explicitly determined this to be the case, stating that its "view" is "that advertisers using these claims should be able to substantiate that consumers are likely to achieve the maximum results promised under normal circumstances."

31. As demonstrated by the pamphlet itself, including its cover, use of the product only on "weeds such as seedlings" is not normal use. Rather, normal use is as represented on the pamphlet's cover, and of course on the front of the bottle: as a "WEED AND GRASS KILLER," that "KILLS ALL TYPES OF WEEDS & GRASSES," and is to be used "Along Fences," on "Driveways & Walkways," "Around Trees," and "Around Flower Beds," wherein the use is "GUARANTEED" to "KILL[] THE ROOTS."

32. Reasonable consumers should not be expected to notice, and then engage in the math necessary to determine that, following the dilution instructions provided on the back of the label of each Roundup Concentrate, the product only makes half the amount stated prominently on the front.

33. Moreover, even for the rare consumer that might engage in the math and notice the discrepancy, no explanation is provided except the single, small-print sentence buried in the pamphlet, and thus the labeling remains confusing, and at best ambiguous as to whether, and under what circumstances, the product "Makes

Up to" the amount stated, and at what point the efficacy of the product becomes less than what the consumer believes it to be, or not efficacious at all.

PLAINTIFF'S PURCHASE AND INJURY

34. About two years ago, in about 2015, plaintiff Joshua Rawa purchased a bottle of Monsanto's Roundup Ready-to-Use herbicide for his personal use, at his residence, around and in the cracks in his cement driveway and around his landscaping. Because he had had run out of the Roundup Ready-to-Use bottle, he needed to purchase it again.

35. As such, in about April or May 2016, he went to the Lowes location in Bridgeton, Missouri, where, in addition to the Ready-to-Use version of Roundup, he also saw other versions of Roundup, including Roundup Super Concentrate, which was being offered for about $50. He noticed that the top of the bottle stated that it "made up to 23 gallons," which he believed meant that it would make 23 gallons for normal use, including for such things as cement driveways and around landscaping for which he used the Ready-to-Use formulation the previous season. He also saw on the back of the Super Concentrate was the front page of a little pamphlet that was taped shut to the back of the bottle. Because it was taped shut, he did not tear open the pamphlet while looking at the product in the store, thinking that would be improper, and he also believed that, in any event, the pamphlet probably contained much information that he did not necessarily need to know in order to decide whether or not to purchase the product.

36. Instead, what was important for him in order to make his purchasing decision was to what extent the Super Concentrate was a better price value than the Ready-to-Use version for which he went to the store to begin with. Using his cell phone, he did some quick math, comparing the price-per-gallon of the promised 23 gallons of Roundup Super Concentrate to the price-per-gallon of the Ready-to-Use version. By doing so, he was able to determine that Roundup Super Concentrate provided a better value than Roundup Ready-to-Use. As a result, plaintiff purchased the Roundup Super Concentrate. In doing so, he relied on the statement that the product made 23 gallons, and the fact that the product therefore provided a substantially better price value than Ready-to-Use. Indeed, the better price value was the determining factor in plaintiff's decision to purchase Roundup Super Concentrate.

37. Once home with the product, plaintiff followed the mixing instructions that were on the graphic page of the pamphlet taped shut on the back of the bottle. He never tore open the pamphlet taped to the back of the bottle, believing there was no need to do so since he knew the mixing instructions from the graphic for the same typical applications for which he used Ready-to-Use the previous season—for his cement driveway and around his landscaping. To use the product the first time, he followed the process of mixing the product with water consistent with the mixing instructions shown on the graphic taped to the back of the bottle, and he repeated this mixing process throughout the season.

38. As the season progressed, plaintiff had the impression that the concentrate product did not work as well as the Ready-to-Use version.

39. When purchasing Roundup Super Concentrate, plaintiff was seeking a product that was effective at killing all unwanted weeds and grass, and which was more affordable than the Roundup Ready-to-Use products, and understood that he was purchasing a concentrate with a substantially better dollar-per-gallon value than the Ready-to-Use alternative (*i.e.*, the value that would be had if the product supplied the maximum number of gallons). Moreover, plaintiff was seeking a product that would yield the number of gallons represented, and a product that, at the dilution resulting in that amount of gallons, would kill all unwanted weeds and grass, including being "GUARANTEED" to "KILL[] THE ROOTS."

40. These representations, upon all of which plaintiff relied in purchasing these products, however, were false and misleading. This is because, as described in detail herein, the Roundup Concentrates *do not* yield the volume, in gallons, as promised if following the instructions for the advertised uses prominently stated on the product's back panel.

41. By representing the *amount* of product plaintiff was supposedly buying, Monsanto implicitly also represented the product's value to plaintiff. That representation, however, was false because, based on Monsanto's prominent mixing instructions, the Roundup Super Concentrate was effectively under-filled, such that plaintiff received a different and substantially lesser value—one with a higher

cost—than Monsanto represented. Accordingly, plaintiff did not realize the benefit of his bargain and his expectations were not met.

42. In addition, plaintiff paid substantially more than the market value represented by the price he and Monsanto bargained for. Like other class members, plaintiff bargained with Monsanto on a particular market value for a certain number of gallons of Roundup made by diluting the Roundup Super Concentrate. But because Monsanto only delivered a portion of those gallons, plaintiff paid a price-per-gallon that was significantly higher than reflected in the market price to which he and Monsanto agreed, and received an amount of gallons that was significantly lower than Monsanto promised. For these reasons, the Roundup Super Concentrate plaintiff purchased was worth less than what he paid for it.

43. Thus, through use of the misleading representation as to the amount of product provided and thereby its value, Monsanto obtained enhanced negotiating leverage allowing it to command a price plaintiff and other class members would not have paid had they been fully informed. Specifically, plaintiff and other Class members would have paid approximately 50% less for Roundup Concentrate Plus, and 40% less for Roundup Super Concentrate, had they paid the agreed-upon market price for the number of gallons actually received.

44. The Roundup Concentrates cost more than similar products without misleading labeling, and would have cost less absent the false and misleading statements complained of herein.

45. Absent the false and misleading labeling complained of herein, plaintiff and other Class members would only have been willing to pay less for the Roundup Super Concentrate.

46. By use of its misleading labeling, Monsanto created increased marketplace demand for the Roundup Concentrates, and increased its market share relative to what its demand and share would have been had Monsanto labeled the Roundup Concentrate products truthfully.

47. Plaintiff and other Class members lost money as a result of Monsanto's deceptive claims and practices in that they did not receive what they paid for when purchasing the Roundup Concentrates.

48. Plaintiff and other Class members detrimentally altered their position and suffered damages in an amount of the under-filled portion of her Roundup Concentrates purchase.

CLASS ACTION ALLEGATIONS

49. While reserving the right to redefine or amend the class definition prior to seeking class certification, pursuant to Federal Rule of Civil Procedure 23, plaintiff seeks to represent a Class of all persons who, on or after April 5, 2012 (the "Class Period"), purchased in the United States, other than in California, for personal or household use and not for resale or distribution, Roundup Weed & Grass Killer Concentrate Plus, or Roundup Weed & Grass Killer Super Concentrate, in

packaging whose label stated that the product "makes up to" a specified number of gallons, specifically as follows:

Product	Label Statement
Roundup Concentrate Plus 16 oz.	"Makes Up to 5 Gallons"
Roundup Concentrate Plus 32 oz. (1 qt.)	"Makes Up to 10 Gallons"
Roundup Concentrate Plus 36.8 oz.	"Makes Up to 12 Gallons"
Roundup Concentrate Plus 40 oz.	"Makes Up to 13 Gallons"
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Roundup Super Concentrate 64 oz. (1/2 gal.)	"Makes Up to 42 Gallons"
Roundup Super Concentrate 128 oz. (1 gal.)	"Makes Up to 85 Gallons"

50. The members in the proposed Class are so numerous that individual joinder of all members is impracticable, and the disposition of the claims of all Class members in a single action will provide substantial benefits to the parties and Court.

51. Questions of law and fact common to plaintiffs and the Class include:

a. whether by mixing according to the instructions on the back label of the Roundup Concentrates, the products would result in the "Makes Up To" amount of gallons stated on the principal display panel and in the first bullet point under the heading "MIXING INSTURCTIONS" in the taped, sealed pamphlet;

b. whether the claimed "Makes up to" amount of gallons was material to purchasers;

c. Whether a reasonable consumer believes that "Makes up to" actually means the product will make that amount when used under normal, reasonable conditions;

d. Whether a reasonable consumer would remove the sealed pamphlet before purchasing any Roundup Concentrate products;

e. Whether a reasonable consumer would notice the statement in the pamphlet and understand what "easy to kill weeds such as seedlings" means;

f. Whether a reasonable consumer would be likely to deviate from the instructions included on the back panel of Roundup Concentrate Plus and/or in the pamphlet to "Add 6 fl oz per Gallon of Water" in light of Monsanto's representation "for best results, add 6 fl oz (12 Tbs) per gallon of water."

g. Whether a reasonable consumer would be likely to deviate from the instructions included on the back panel of Roundup Super Concentrate and/or in the pamphlet to "Add 2 1/2 fl oz per Gallon of Water" in light of Monsanto's representation "for best results, add 2-1/2 fl oz (5 Tbs) to 1 gallon of water."

h. Whether Monsanto's conduct violates public policy;

i. The proper amount of damages, including punitive damages;

j. The proper amount of restitution;

k. The proper scope of injunctive relief, including corrective advertising and recall from the marketplace; and

l. The proper amount of attorneys' fees.

52. These common questions of law and fact predominate over questions that affect only individual Class members.

53. Plaintiff's claims are typical of Class members' claims because they are based on the same underlying facts, events, and circumstances relating to Monsanto's conduct. Specifically, all Class members, including plaintiff, were subjected to the same misleading and deceptive conduct when they purchased the Roundup Concentrates, and suffered economic injury because Roundup Concentrates are misrepresented in the same manner. Absent Monsanto's business practice of deceptively and unlawfully labeling the Roundup Concentrates, plaintiff and other Class members would have paid less for the products.

54. Plaintiff will fairly and adequately represent and protect the interests of the Class, has no interests incompatible with the interests of the Class, and has retained counsel competent and experienced in class action litigation, and specifically in litigation involving false and misleading advertising, and who have been appointed Class Counsel in a related action on behalf of a Class of California purchasers of the Roundup Concentrates.[1]

[1] See *Martin v. Monsanto Co.*, --- F.3d ----, 2017 WL 1115167 (C.D. Cal. Mar. 24, 2017).

55. Class treatment is superior to other options for resolution of the controversy because the relief sought for each Class member is small, such that, absent representative litigation, it would be infeasible for Class members to redress the wrongs done to them.

56. Monsanto has acted on grounds applicable to the Class, thereby making appropriate final injunctive and declaratory relief concerning the Class as a whole.

57. As a result of the foregoing, class treatment is appropriate under Fed. R. Civ. P. 23(a), 23(b)(2), and 23(b)(3). In addition, it may be appropriate, pursuant to Fed. R. Civ. P. 23(c)(4), to maintain this action as a class action with respect to particular issues.

CAUSES OF ACTION

Count I – Violation of the Missouri Merchandising Practices Act, Mo. Rev. Stat. §§ 407.010 *et seq.*

58. Plaintiff realleges and incorporates the allegations stated above in the Complaint as if set forth in full herein.

59. Plaintiff, other members of the Class, and defendant, are all persons within the meaning of the Missouri Merchandising Practices Act ("MMPA"), Mo. Rev. Stat. § 407.010(5).

60. Defendant conducted trade and commerce within the meaning of the MMPA, *id.* § 407.010(7).

61. The MMPA, *id.* § 407.020.1, provides that:

> The act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce . . . in or from the state of Missouri, is declared to be an unlawful practice. . . . Any act, use or employment declared unlawful by this subsection violates this subsection whether committed before, during or after the sale, advertisement or solicitation.

62. For the reasons described herein, during the Class Period, Monsanto engaged in deception, fraud, false pretense, false promise, misrepresentation, unfair practice, concealment, suppression, and omission, in connection with its sale and advertisement of the Roundup Concentrates.

63. Specifically, Monsanto overstated the number of gallons of spray solution the Roundup Concentrates would make, based on an unrealistic mixing instruction buried in a pamphlet that reasonable consumers would not see before purchasing the products.

64. By virtue of Monsanto's violation, plaintiff and other Class members suffered an ascertainable loss within the meaning of the MMPA, *id.* § 407.025.1, because the actual value of the Roundup Concentrates they purchased was less than the value of the product as represented and thus are entitled to bring this action against defendant, including on a classwide basis, *id.* §§ 407.025.2-3.

PRAYER FOR RELIEF

65. Wherefore, plaintiff, on behalf of himself, all others similarly situated, and the general public, prays for judgment against Monsanto as to each and every cause of action, and the following remedies:

a. An Order declaring this action to be a proper class action, appointing plaintiff as class representative, and appointing his undersigned counsel as class counsel;

b. An Order requiring Monsanto to bear the cost of class notice;

c. An Order compelling Monsanto to conduct a corrective advertising campaign;

d. An Order requiring Monsanto to pay all actual, compensatory, and punitive damages permitted under the causes of action alleged herein;

e. Pre- and post-judgment interest;

f. An award of attorneys' fees and costs; and

g. Any other and further relief that Court deems necessary, just, or proper.

[Continued on Following Page]

JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues so triable.

Respectfully Submitted,

By: */s/ Kevin Dolley*
Thomas A. Canova*
Jack Fitzgerald*
THE LAW OFFICE OF JACK FITZGERALD, PC
Hillcrest Professional Building
3636 Fourth Avenue, Suite 202
San Diego, California 92103
Phone: (619) 692-3840
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(*Pro Hac Vice applications forthcoming)

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Kevin J. Dolley (# 54132MO)
LAW OFFICES OF KEVIN J. DOLLEY, LLC
2726 S. Brentwood Blvd.
St. Louis, Missouri 63144
Phone: (314) 645-4100
Fax: (314) 736-6216
kevin@dolleylaw.com
(Local Counsel for Plaintiff)

Attorneys for Plaintiff and all others similarly situated

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Joshua Rawa

(b) County of Residence of First Listed Plaintiff St. Louis, MO
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

The Law Offices of Kevin J. Dolley; 2726 S. Brentwood Blvd., St. Louis, MO 63144; (314) 645-4100

DEFENDANTS

Monsanto Company

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

John Rosenthal, Winston & Straw LLP, 1700 K. St., N.W., Washington, DC 20006, (202) 282-5785

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☒ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☒ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury

PERSONAL INJURY
- ☐ 362 Personal Injury - Med. Malpractice
- ☐ 365 Personal Injury - Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☒ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 444 Welfare
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 440 Other Civil Rights

PRISONER PETITIONS
- ☐ 510 Motions to Vacate Sentence

Habeas Corpus:
- ☐ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition

FORFEITURE/PENALTY
- ☐ 610 Agriculture
- ☐ 620 Other Food & Drug
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 630 Liquor Laws
- ☐ 640 R.R. & Truck
- ☐ 650 Airline Regs.
- ☐ 660 Occupational Safety/Health
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Mgmt. Relations
- ☐ 730 Labor/Mgmt.Reporting & Disclosure Act
- ☐ 740 Railway Labor Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Empl. Ret. Inc. Security Act

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 810 Selective Service
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 875 Customer Challenge 12 USC 3410
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 892 Economic Stabilization Act
- ☐ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Information Act
- ☐ 900Appeal of Fee Determination Under Equal Access to Justice
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing **(Do not cite jurisdictional statutes unless diversity)**:
28 U.S.C. Section 1332(d)(2)(A), the Class Action Fairness Act

Brief description of cause:
Missouri Merchandising Practices Act class action (false advertising)

VII. REQUESTED IN COMPLAINT:

☑ CHECK IF THIS IS A **CLASS ACTION** UNDER F.R.C.P. 23

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☑ Yes ☐ No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ DOCKET NUMBER _____

DATE
04/05/2017

SIGNATURE OF ATTORNEY OF RECORD
Kevin J. Dolley Kevin Dolley

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of Missouri

JOSHUA RAWA, on behalf of himself, the general public, and all others similarly situated,

Plaintiff(s)

v.

MONSANTO COMPANY,

Defendant(s)

Civil Action No. 17-CV-1252

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Monsanto Company
800 N. Lindbergh Blvd., G5EE
St. Louis, MO 63167

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Kevin J. Dolley
Law Offices of Kevin J. Dolley, LLC
2726 S. Brentwood Blvd.
St. Louis, MO 63144

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

Civil Action No. 17-CV-1252

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____

was received by me on *(date)* _____ .

❒ I personally served the summons on the individual at *(place)* _____

_____ on *(date)* _____ ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)* _____

_____ , a person of suitable age and discretion who resides there,

on *(date)* _____ , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* _____ , who is

designated by law to accept service of process on behalf of *(name of organization)* _____

_____ on *(date)* _____ ; or

❒ I returned the summons unexecuted because _____ ; or

❒ Other *(specify):*

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____

Server's signature

_____

Printed name and title

_____

Server's address

Additional information regarding attempted service, etc:

Print Save As... Reset

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI

Joseph Rawa,
,
Plaintiff,

v.

Monsanto Company
,
Defendant,

Case No. 17-CV-1252

ORIGINAL FILING FORM

THIS FORM MUST BE COMPLETED AND VERIFIED BY THE FILING PARTY WHEN INITIATING A NEW CASE.

☐ THIS SAME CAUSE, OR A SUBSTANTIALLY EQUIVALENT COMPLAINT, WAS PREVIOUSLY FILED IN THIS COURT AS CASE NUMBER _____ AND ASSIGNED TO THE HONORABLE JUDGE _____.

☐ THIS CAUSE IS RELATED, BUT IS NOT SUBSTANTIALLY EQUIVALENT TO ANY PREVIOUSLY FILED COMPLAINT. THE RELATED CASE NUMBER IS _____ AND THAT CASE WAS ASSIGNED TO THE HONORABLE _____. THIS CASE MAY, THEREFORE, BE OPENED AS AN ORIGINAL PROCEEDING.

☒ NEITHER THIS SAME CAUSE, NOR A SUBSTANTIALLY EQUIVALENT COMPLAINT, HAS BEEN PREVIOUSLY FILED IN THIS COURT, AND THEREFORE MAY BE OPENED AS AN ORIGINAL PROCEEDING.

The undersigned affirms that the information provided above is true and correct.

Date: 04/05/2017

/s/ Kevin J. Dolley
Signature of Filing Party

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

Joseph Rawa
_____,
Plaintiff (s),

v.

Monsanto Company
_____,
Defendant(s).

Case No. 17-CV-1252

NOTICE OF INTENT TO USE
PROCESS SERVER

Comes now Plaintiff and notifies the court of the intent to use
(Plaintiff or Defendant)

John Houseman
7750 Clayton Rd. Suite 302B
St. Louis, MO 63117
(name and address of process server)

To serve: Monsanto Company
(name of defendants to be served by this process server) in the

above-styled cause. The process server listed above possesses the requirements as stated in Rule 4 of the Federal Rules of Civil Procedure.

The undersigned affirms the information provided above is true and correct.

04/05/2017
(date)

/s/ Kevin J. Dolley
(attorney for Plaintiff)

(attorney for Defendant)