**IN THE CIRCUIT COURT, SEVENTEENTH JUDICIAL CIRCUIT,
IN AND FOR BROWARD COUNTY, FLORIDA**

CLASS REPRESENTATION

MICHAEL GREGORIO,

Plaintiff,

CASE NO.:

vs.

HOME DEPOT U.S.A., INC., a Delaware corporation,

Defendant.
_____/

CLASS ACTION COMPLAINT

Plaintiff, MICHAEL GREGORIO, individually, and on behalf of all others similarly situated in Florida, by and through the undersigned counsel, and pursuant to all applicable *Florida Rules of Civil Procedure*, hereby files this Class Action Complaint, and alleges against Defendant, HOME DEPOT U.S.A., INC. (hereinafter "Home Depot"), as follows:

NATURE OF THE ACTION

1. Plaintiff brings this action both on his own behalf and on behalf of a class of similarly situated consumers as defined below to redress the unfair business practices employed by Defendant in connection with its sale of the glyphosate-based herbicide Roundup® and its breach of contract with Plaintiff and the class.

2. At all relevant times, Defendant's retail stores and website have sold and continue to sell various Roundup® herbicide products directly to

consumers despite Defendant's knowledge Roundup® has the potential to cause cancer in humans, and that there is an ongoing scientific debate as to whether Roundup® can cause Non-Hodgkin's lymphoma ("NHL").

3. Defendant has been aware glyphosate—the active ingredient in Roundup®—is a Class 2A herbicide, meaning the World Health Organization's International Agency for Research on Cancer ("IARC") has determined it is probably carcinogenic to humans.

4. Defendant has also known Roundup® and other glyphosate-based herbicides have been banned by many countries, regions, and municipalities, including actions taken within Florida, because it may be dangerous to human health.

5. Additionally, Defendant is aware of the tens of thousands personal injury cases brought by individuals who have alleged Roundup® exposure caused their cancer.

6. Defendant has also been further aware that, within the past two years, three California juries found that Roundup® likely caused certain plaintiffs in these personal injury cases to develop NHL, and have awarded nearly $100 million in compensatory damages and over $2 billion in punitive damages collectively.

7. Despite Defendant's knowledge of Roundup®'s potential carcinogenicity throughout the class period, Defendant has sold and continues to sell Roundup® at its retail locations and on its website without providing consumers with any additional information on its website, store shelves or at the

point of sale about the products' potential health risks. Defendant, at the very least, should inform consumers there is an ongoing scientific dispute over its potential carcinogenicity.

8. Defendant's conduct—continuing to sell a line of weed killer products despite knowing there has been a credible, ongoing scientific debate about the products' potential carcinogenicity and without informing consumers about the potential health risks—constitutes an unfair business practice under Florida's Deceptive and Unfair Trade Practices Act ("FDUTPA") and a breach of contract.

JURISDICTION AND VENUE

9. Jurisdiction in this Court is proper pursuant to Sections 86.011, 86.021, 86.051, and 86.101, *Florida Statutes*. This Court has jurisdiction over Defendant because the Defendant has sufficient contacts with the State of Florida, Broward County, and it intentionally availed itself of the consumers or markets within the State of Florida, and more specifically, Broward County. The acts complained of herein occurred in Broward County, in the State of Florida.

10. This Court has personal jurisdiction over Defendant because Defendant is a foreign corporation authorized to do business in Florida and has sufficient minimum contacts with Florida or otherwise intentionally avails itself of the laws and markets of Florida, through the sale and distribution of its Roundup® products in Florida, to render the exercise of jurisdiction by the Florida courts permissible.

11. Venue for this Action lays in Broward County, Florida, pursuant to the provisions of Section 47.051, and 501.207, *Florida Statutes*, because Defendant transacts business in Broward County, Florida, and the transactions out of which this Action arose occurred in Broward County, Florida.

PARTIES

12. Plaintiff, MICHAEL GREGORIO, is an individual consumer over the age of eighteen (18), who resides in Broward County, Florida, and is a member of the Class alleged herein.

13. Defendant HOME DEPOT U.S.A., INC. is a publicly traded Delaware corporation, with a principal place of business in Atlanta, Georgia. HOME DEPOT U.S.A., INC. is the largest home improvement retailer in the United States and is engaged in the marketing, sale, and distribution of a product line of herbicide Roundup®, which contains the active ingredient glyphosate. All formulations of Roundup® are manufactured by non-parties Monsanto Company, Bayer Corporation, and/or Bayer AG.

14. "Roundup" refers to any and all Roundup®-brand products and other herbicide products containing glyphosate that have been sold by Home Depot at any time during the class period. Roundup includes but is not limited to the following products: Roundup Ready-To-Use Weed & Grass Killer III; Roundup Ready-To-Use Weed & Grass Killer III with Comfort Wand; Roundup Ready-To-Use Weed & Grass Killer III Sure Shot Wand; Roundup Ready-To-Use Weed & Grass Killer III Trigger Sprayer; Roundup Ready-To-Use Weed & Grass Killer III with Pump 'N Go 2 Sprayer; Roundup Ready-to-Use Weed & Grass

Killer III Pull N Spray Applicator; Roundup Ready-To-Use Weed & Grass Killer III Refill; Roundup Weed & Grass Killer Super Concentrate; Roundup Weed & Grass Killer Concentrate Plus; Roundup Weed & Grass Killer Concentrate Plus Value Size; Roundup Ready-to-Use Extended Control Weed & Grass Killer Plus Weed Preventer II; Roundup Concentrate Extended Control Weed & Grass Killer Plus Weed Preventer II; Roundup Ready-to-Use Extended Control Weed & Grass Killer Pump N Go II; Roundup Ready-To-Use Extended Control Weed & Grass Killer Plus Weed Preventer II with Comfort Wand; Roundup Ready-To-Use Extended Control Weed & Grass Killer Plus Weed Preventer II Trigger; Sprayer Roundup Ready-To-Use Extended Control Weed & Grass Killer Plus Weed Preventer II Refill; Roundup Ready-To-Use Poison Ivy Plus Tough Brush Killer; Roundup Ready-To-Use Poison Ivy Plus Tough Brush Killer with Comfort Wand; Roundup Ready-To-Use Poison Ivy Plus Tough Brush Killer Trigger (with Trigger Sprayer); Roundup Concentrate Max Control 365; Roundup Ready-To-Use Max Control 365 Refill; and Roundup Weed & Grass Killer Precision Gel.

15. Defendant transacted and conducted business within the State of Florida that relates to the allegations in this Complaint.

16. Defendant derived substantial revenue from goods and products purchased and used in the State of Florida.

17. Defendant purposefully availed itself of the privilege of conducting activities within the State of Florida, thus invoking the benefits and protections of its laws.

18. Defendant advertises and sells goods, specifically Roundup, throughout Florida and the United States, including in Broward County, Florida.

FACTUAL ALLEGATIONS

A. Background on Roundup's Ingredients and Packaging.

19. Roundup is sold at Home Depot retail locations throughout the United States, including those in Florida, and on Home Depot's website.

20. Glyphosate is the active ingredient in Roundup. Glyphosate is a nonselective herbicide that inhibits plant growth through interference with the production of essential aromatic amino acids. It was discovered to be an herbicide in 1970 and was first brought into the market as Roundup by Monsanto Company ("Monsanto") in 1974.

21. In addition to the active ingredient glyphosate, Roundup formulations also contain adjuvants and other chemicals, such as the surfactant polyethoxylated tallow amine ("POEA"), which are considered "inert" and therefore protected as "trade secrets" in manufacturing. Growing evidence suggests that these adjuvants and additional components of Roundup formulations are not, in fact, inert and are toxic in their own right.

22. Exemplar photographs of Roundup's packaging are attached hereto as **Exhibit "A."** The front panel of Roundup's packaging states: "Keep Out of Reach of Children" and "Caution." The back panel booklet provides Roundup may cause "moderate eye irritation."

23. Roundup's Safety Data Sheet ("SDS"), issued by Monsanto, similarly warns it may cause "serious eye irritation."

24. These statements about potential eye irritation on the packaging and SDS sheet give the false impression that eye irritation is the only potential health risk posed by Roundup.

B. The IARC Classification of Glyphosate.

25. The International Agency for Research on Cancer ("IARC"), an intergovernmental cancer agency within the World Health Organization ("WHO") of the United Nations, was tasked in 2015 with conducting and coordinating research into the causes of cancer it pertained to glyphosate.

26. In March 2015, an IARC "Working Group" of 17 experts from 11 countries convened to evaluate several insecticides and herbicides, including diazinon, tetrachlorvinphos, malathion, parathion, and glyphosate. The evaluation was based on a cumulative review of all publicly available and pertinent scientific studies. Some of the studies pertained to people exposed to glyphosate through their jobs, such as farmers. Others were experimental studies on cancer and cancer-related effects in experimental systems. The IARC Working Group's full monograph was published on July 29, 2015.

27. In its monograph, the IARC Working Group classified glyphosate as a Class 2A herbicide, which means it is probably carcinogenic to humans. It concluded non-Hodgkin lymphoma was most associated with glyphosate exposure.

28. The IARC also found that glyphosate caused DNA and chromosomal damage in human cells.

29. The IARC's conclusions were consistent with scientific developments that had occurred in prior decades.

C. Early Studies on Roundup's Carcinogenic Properties

30. As early as the 1980's, glyphosate's carcinogenic properties began to come to light.

31. On March 4, 1985, a group of within EPA's Toxicology Branch published a "consensus review" based on a mouse study conducted by Monsanto in 1983. The review "classified Glyphosate as a Category C oncogene," meaning it is a possible human carcinogen.

32. However, in June 1991, EPA published a memorandum entitled, "Second Peer Review of Glyphosate," which changed glyphosate's classification to Group E (evidence of non-carcinogenicity for humans). Two peer review committee members did not concur with the conclusions, and the Memorandum itself "emphasized however, that designation of an agent in Group E is based on the available evidence at the time of evaluation and should not be interpreted as a definitive conclusion that the agent will not be a carcinogen under any circumstances."

33. Further studies and developments indicated glyphosate indeed posed (and still poses) a definite carcinogenic effect on humans.

34. In 1996, the New York Attorney General sued Monsanto for false and misleading advertising by touting its glyphosate-based Roundup products as, e.g., "safer than table salt" and "practically non-toxic" to mammals, birds, and fish.

35. On November 19, 1996, Monsanto entered into an Assurance of Discontinuance with the New York Attorney General, in which Monsanto agreed to alter the advertising, removing from advertisements that represent, directly or by implication, that the weed killers were biodegradable and environmentally friendly. Monsanto also agreed to pay $50,000 toward New York's costs of pursuing the case. At the time, New York was the only state to object to the advertising claims.

36. In 1997, Chris Clements, *et al.* published a study entitled, "Genotoxicity of Select Herbicides in *Rana catesbeiana* Tadpoles Using the Alkaline Single-Cell Gel DNA Electrophoresis (Comet) Assay." Genotoxicity refers to the property of chemical agents which cause damage to genetic information within a cell causing mutations, which may lead to cancer. In Clements' publication, tadpoles were exposed to various herbicides, including Roundup, for a 24-hour period. Roundup-treated tadpoles showed "significant DNA damage when compared with unexposed control animals.

37. In 1999, Lennart Hardell and Mikael Eriksson published a study entitled, "A Case–Control Study of Non-Hodgkin Lymphoma and Exposure to Pesticides," which consisted of a population-based case–control study in northern and middle Sweden encompassing 442 cases and twice as many controls was performed. Exposure data were ascertained by comprehensive questionnaires, and the questionnaires were supplemented by telephone interviews. The results indicated exposure to glyphosate and other herbicides yielded increased risks for NHL.

38. In 2002, Julie Marc, *et al.* published a study entitled, "Pesticide Roundup Provokes Cell Division Dysfunction at the Level of CDK1/Cyclin B Activation." The study found Defendant's Roundup caused delays in the cell cycles of sea urchins. It further noted the deregulations of cell cycle checkpoints are *directly linked* to genomic instability, which can generate diseases and cause cancer. The findings led to the conclusion Roundup "causes changes in cell cycle regulation that may raise questions about the effect of this pesticide on human health."

39. In 2003, A. J. De Roos, et al. published a study entitled, "Integrative assessment of multiple pesticides as risk factors for non-Hodgkin's lymphoma among men," which "[r]eported use of several individual pesticides was associated with increased NHL incidence, including . . . glyphosate. A subanalysis of these 'potentially carcinogenic' pesticides suggested a positive trend of risk with exposure to increasing numbers."

40. In 2004, Julie Marc, *et al.* published another study entitled, "Glyphosate-based pesticides affect cell cycle regulation." In that study, which tested Roundup 3plus on sea urchin eggs, determined "glyphosate-based pesticides are clearly of human health concern by inhalation in the vicinity of spraying," given the "molecular link between glyphosate and cell cycle dysregulation." It observed, "roundup may be related to increased frequency of non-Hodgkin's lymphoma among farmers, citing the study by A. J. De Roos., *et al.*

41. In 2005, Francisco Peixo published a study entitled, "Comparative effects of the Roundup and glyphosate on mitochondrial oxidative phosphorylation," which suggested the harmful effects of Roundup could be the result of Roundup's specific combination of chemicals, and the interaction of glyphosate and the surfactant POEA.

42. In 2008, Mikael Eriksson, *et al.* published a study entitled, "Pesticide exposure as risk factor for NHL including histopathological subgroup analysis," based on a case-control study of exposure to various pesticides as a risk factor for NHL. Eriksson's study strengthened previous associations between glyphosate and NHL.

43. In 2009, France's highest court ruled that Monsanto had not told the truth about the safety of Roundup. The French court affirmed an earlier judgment that Monsanto had falsely advertised its herbicide Roundup as "biodegradable" and that it "left the soil clean."

44. Also, in 2009, Nora Benachour and Gilles-Eric Seralini published a study entitled, "Glyphosate formulations induce apoptosis and necrosis in human umbilical, embryonic, and placental cells," which examined the effects of four different Roundup formulations on human umbilical, embryonic, and placental cells—at dilution levels far below agricultural recommendations. The study found the formations caused cell death in a few hours in a cumulative manner, caused DNA damage, and found that the formulations inhibit cell respiration. In addition, it was shown the mixture of the components used as Roundup adjuvants, particularly POEA (polyoxyethyleneamine) *amplified the action of the glyphosate*.

The Roundup adjuvants actually changed human cell permeability and increased the toxicity of glyphosate in Roundup alone. This study suggests Roundup poses even greater risks than glyphosate alone, as a result of Roundup's specific combination of chemicals, and the interaction of glyphosate and POEA.

D. Glyphosate-Based Herbicides, Including Roundup, are Banned Throughout Florida and the World.

45. Following the IARC's report on glyphosate, several countries have issued outright bans or restrictions on glyphosate herbicides, including Roundup.

46. In May 2015, the Netherlands banned all non-commercial use of glyphosate. *See* https://www.collective-evolution.com/2015/05/30/why-the-netherlands-just-banned-monsantos-glyphosate-based-herbicides/.

47. In 2016, Italy adopted a law prohibiting the use of glyphosate in areas frequented by the public or by "vulnerable groups" including children and the elderly and in the pre-harvest phase in agriculture. *See* https://www.soilassociation.org/news/2016/august/italy-bans-toxic-glyphosate/.

48. In June 2017, the Flemish government approved a ban on glyphosate for individual-use. *See* https://www.brusselstimes.com/all-news/belgium-all-news/43150/flemish-government-approves-ban-on-glyphosate-for-individuals/.

49. In September 2018, the agriculture ministry of the Czech Republic stated the country would ban the blanket use of glyphosate as a weedkiller and as a drying agent. *See* https://phys.org/news/2018-09-czech-republic-restrict-glyphosate-weedkiller.html. The ban came into effect on January 1, 2019. *See* http://www.arc2020.eu/czech-out-this-roundabout-way-to-not-ban-roundup/.

50. In October 2018, the Indian state of Punjab banned the sale of glyphosate. *See* https://www.thehindu.com/news/national/other-states/punjab-government-bans-sale-of-herbicide/article25314146.ece. And in February of 2019, the Indian state of Kerala followed suit, issuing a ban on the sale, distribution and use of glyphosate. *See* https://www.thenewsminute.com/article/kerala-government-bans-glyphosate-deadly-weed-killer-96220.

51. In January 2019, French authorities banned the sale of Roundup following a court ruling that regulators failed to take safety concerns into account when clearing the widely used herbicide. *See* https://www.france24.com/en/20190116-weedkiller-roundup-banned-france-after-court-ruling. In April 2019, a French appeals court ruled Bayer's Monsanto business was liable for the health problems of a farmer who inhaled Roundup. *See* https://www.insurancejournal.com/news/international/2019/04/11/523456.htm.

52. In March 2019, Vietnam announced it has banned the import of all glyphosate-based herbicides. *See* https://sustainablepulse.com/2019/03/25/vietnam-bans-import-of-glyphosate-herbicides-after-us-cancer-trial-verdict/#.XS-xCT9Kh9O.

53. In July 2019, Austria's Parliament passed a bill banning all uses of glyphosate. *See* https://www.reuters.com/article/us-austria-glyphosate/austrian-parliament-backs-eus-first-total-ban-of-weedkiller-glyphosate-idUSKCN1TX1JR. Although the ban was supposed to take effect on January 1, 2020, Austria's

Chancellor refused to sign it into law due to a legal technicality. *See* https://www.reuters.com/article/us-austria-glyphosate/austrian-leader-blocks-ban-on-weedkiller-glyphosate-citing-technicality-idUSKBN1YD11Z.

54. In January 2020, Luxembourg issued a total ban on glyphosate. *See* https://www.brusselstimes.com/all-news/eu-affairs/92006/luxembourg-will-be-first-eu-country-to-totally-ban-glyphosate/.

55. Several municipalities and regions in Spain, the United Kingdom, and the United States, have also banned glyphosate-based herbicides.

56. Further several counties in Florida have taken actions regarding the Product and/or Glyphosate:

- Fort Myers Beach: Banned Roundup.
- Key West: Banned the use of Roundup on city-Owned property. citing a $2.055 billion dollar jury verdict in California.
- Martin County: The local government instituted a Roundup ban that applies to all county employees and contractors working on county projects.
- Miami: Announced a city-wide ban on glyphosate-based herbicides in February of 2019.
- Miami Beach: Passed a resolution banning the use of Glyphosate weed killers for landscaping and maintenance work on city-owned property.
- North Miami: City Council approved a plan calling for the gradual reduction of pesticide use on city property and a study on alternative pesticides.

- Satellite Beach: City Council unanimously approved a resolution that bans the city and its contractors from using glyphosate-based herbicides, including Monsanto's Roundup.
- Stuart: City commissioners voted to ban glyphosate, calling for an integrated pest control plan that reduces the use of glyphosate with the ultimate goal of eliminating chemicals.

Given Defendant has retail locations in many of the areas listed above, it was likely aware of these bans and the concerns around glyphosate-based herbicides.

E. Monsanto Loses Three Jury Trials after Roundup is Found to Cause Cancer in Humans.

57. Tens of thousands of individuals have filed personal injury lawsuits against Monsanto and Bayer on grounds Roundup exposure caused their NHL.

58. Many of these lawsuits, filed in federal courts throughout the United States, were consolidated before Judge Vince Chhabria in a multi-district litigation ("MDL"), entitled *In re: Roundup Products Liability Litigation*, MDL No. 2741 (N.D. Cal.).

59. On August 10, 2018, a unanimous California jury in *Johnson v. Monsanto Co.,* No. CGC16550128 (Cal. Super. Ct., Cnty. of S.F.) held Monsanto's Roundup and Ranger Pro herbicides were unsafe and were a substantial factor in causing harm to the plaintiff. The jury also found Monsanto failed to adequately warn customers of the risks associated with its Roundup and Ranger Pro products, and that the company acted with malice or oppression. The jury awarded the plaintiff a total of $289 million, with $250 million in punitive

damages and $39.25 million in compensatory damages. The court later reduced the punitive damages award, bringing the total award to $78.5 million. On or about July 21, 2020, the California Court of Appeal affirmed the judgment, found the plaintiff's claims were not preempted, and reduced the total award.

60. On March 27, 2019, a unanimous California jury in *Hardeman v. Monsanto Co.*, No. 3:16-cv-00525-VC (N.D. Cal.) found Monsanto liable for failing to warn Roundup could cause cancer, liable for negligence, and liable in a design defect claim. The jury awarded the plaintiff a total of $80.27 million, with $75 million in punitive damages and $5.27 million in compensatory damages. The court later reduced the punitive damages award, bringing the total award to $25.27 million. Monsanto has appealed the judgment and the matter is currently before the Ninth Circuit Court of Appeals.

61. On May 13, 2019, a California jury found Monsanto likely caused a couple's cancer in *Pilliod v. Monsanto Co.,* No. RG17862702 (Cal. Super. Ct., Cnty. of Alameda). The jury found on a preponderance of the evidence Roundup was a significant contributing factor in causing the plaintiff's NHL. The jury awarded the plaintiffs a total of $2.055 billion, with $2 billion in punitive damages and $55 million in compensatory damages. The court later reduced the punitive and compensatory damages awards, bringing the total award to $87 million. Monsanto has appealed the judgment and the matter is currently before the California Court of Appeal.

62. On information and belief, throughout the class period, Home Depot was aware of the existence of the aforementioned personal injury litigation involving Roundup, and has been aware of as well as the ultimate jury verdicts.

F. The Makers of Roundup Agreed to Pay Over $10 Billion to Settle Personal Injury Suits.

63. On June 24, 2020, the makers of Roundup announced they reached a $10.1 billion settlement with thousands of plaintiffs in the MDL. When finalized, the settlements will bring closure to approximately 75% of the current Roundup personal injury litigation, involving approximately 125,000 filed and unfiled claims overall.

64. On the same day, a separate $1.1 billion MDL class settlement was announced and submitted to Judge Chhabria for approval. This MDL class was broadly defined as anyone ever exposed to Roundup (who, as of June 24, 2020, had not retained counsel). The MDL class settlement attempted to certify and settle an issue class under Rules 23(b) and (c)(4) "to seek a litigated determination of the general causation dispute on a class-wide basis."

65. Specifically, as part of the proposed MDL class settlement, Monsanto and Bayer agreed to create and fund an independent "Class Science Panel," which would consider a closed set of materials and issue "a binding and determinative" answer to the question of whether exposure to Roundup can cause NHL in humans. By agreeing to the creation of this Class Science Panel, Monsanto and Bayer acknowledged the ongoing scientific dispute over Roundup's potential carcinogenicity.

66. After early opposition to the proposed class settlement and Judge Chhabria's issuance of an order expressing concerns about the constitutionality of the settlement, the proposed MDL class settlement was withdrawn by the parties. Had it, however, been approved by Judge Chhabria, the Class Science Panel would have been required, under the terms of the proposed class settlement, to issue a causation finding in four years (but not earlier). In exchange, MDL class members would have forever waived their right to punitive damages and be barred from filing a case against Monsanto during this four-year period.

67. In the meantime, a large portion of the $1.1 billion would have been used to provide "immediate relief to diagnose or ameliorate NHL and compensate for delay, and a final determination of the central question in this controversy."

68. As part of the proposed MDL class settlement, Monsanto agreed to a $50 million notice plan (with the option to allocate more money to the plan), wherein it agreed to notify the MDL class members (1) there is a potential exposure to Roundup causes cancer in humans and (2) they can avail themselves of several cancer-related "class benefits." Monsanto agreed to give notice of this information by direct mail, email, posters for retailers such as Home Depot to display in their stores, and through multi-national and local media.

69. As discussed herein, Plaintiff similarly seeks an order compelling Home Depot to disclose Roundup's potential health risks on its website and at its retail locations at the point of sale, through posters and/or notices. According to

the documents filed in seeking approval of the MDL settlement class, the breadth and expense of the notice plan were based on the fact that the average reasonable consumer who has been exposed to Roundup—unlike the retail behemoth Home Depot—is not aware that Roundup is potentially carcinogenic.

70. The aforementioned "MDL class benefits" included the creation of Diagnostic Accessibility Grant Program ("DAGP"), a medical outreach and assistance program that would distribute grants to existing medical clinics and healthcare providers that offer diagnostic services to class members who have not been diagnosed with NHL (representing 18% of the settlement fund). The DAGP Administrator would conduct an outreach campaign to inform MDL class members of the availability of NHL diagnostic services. The program would prioritize certain areas of the United States, where high-quality healthcare is not readily available, to expand access to NHL diagnostic evaluation for the most at-risk and medically-underserved populations. The service areas will be identified using occupational data, including geographic information regarding where certain MDL class members (including farm, landscaping, and groundskeeping workers) reside or work in the greatest concentrations.

71. The MDL class benefits also include Interim Assistance Grants ("IAGs") to compensate class members diagnosed with NHL for the effects of the delay during the litigation standstill on an as-needed basis (representing 77% of the settlement fund). The IAGs would be need-based, with diagnosed MDL class members presumptively eligible if their income is at or below defined levels

relative to the United States Federal Poverty Guidelines in the year of their diagnosis.

72. Furthermore, the class benefits include a Research Funding Program ("RFP"), which would fund medical and scientific research into the diagnosis and treatment of NHL (representing 5% of the settlement fund).

73. Monsanto's proposed $1.1 billion MDL settlement, the establishment of a Class Science Panel, the $50 million notice plan, and the extensive class benefits underscore the fact that there is a still a dispute as to whether there is a causal connection between Roundup and NHL that is not widely known to consumers. Yet Home Depot, which has been well-aware of the dispute, continues to sell Roundup without disclosing it to its customers. As Judge Chhabria has stated, there is "at least a strong argument that the only reasonable conclusion one could draw right now is that we don't yet know" whether Roundup can cause NHL.

G. Home Depot Does Not Inform Consumers that There Has Been an Ongoing Scientific Debate about Whether Roundup Has the Potential to Cause Cancer in Humans.

74. Home Depot is responsible for passing Roundup down the line from the manufacturer to consumers, by making it available for purchase. Thus, Home Depot plays an integral role in placing Roundup into the stream of commerce.

75. Customers rely on Defendant—the largest home improvement retailer in the United States—to offer quality products from trusted brands. But instead of putting its customers' safety first and removing Roundup from its stores or informing consumers about Roundup's potential health risks, Home

Depot has continued selling a potentially deadly product for its own direct financial benefit.

76. At all relevant times, Home Depot was fully aware of Roundup's potential health risks. Specifically, Home Depot knew the IARC classified glyphosate as Class 2A herbicide in July 2015.

77. Despite its knowledge of Roundup's potential to cause cancer, and that the risk is not disclosed on the Roundup's packaging, Home Depot has continued to sell Roundup without informing consumers that there is an ongoing scientific dispute over its potential carcinogenicity, or that exposure to Roundup might cause cancer.

78. Home Depot has also made and continues to make partial misrepresentations regarding Roundup's safety. On its product webpages, Home Depot provides consumers with a copy of Roundup's SDS sheet, which provides that the only hazards associated with Roundup is "serious eye irritation." *See, e.g.,* Safety Data Sheet for Roundup® Ready-To-Use Weed & Grass Killer III, *available at* https://images.homedepot-static.com/catalog/pdfImages/86/8625a03e-364b-4d8b-9999-e3413ad36173.pdf. These representations lead reasonable consumers to believe that is the only danger associated with its use, when in fact, it has the potential to cause cancer.

I. Plaintiff's Purchase of Roundup from Defendant.

79. On or about January 15, 2021, Plaintiff, Michael Gregorio, purchased Roundup Ready-To-Use Weed & Grass Killer III with Pump 'N Go 2 Sprayer (Net Wt. 170.0 Fluid Oz) at a Home Depot located at 1701 W. Oakland

Park Blvd, Oakland Park, FL 33311. A copy of the receipt is attached hereto as **Exhibit "B."**

80. Home Depot did not provide Plaintiff (nor any of its other customers) with any information regarding the carcinogenic nature of Roundup.

81. Home Depot could have, but failed to provide such information by, for example, displaying it on the shelves where Roundup was sold (or, for some consumers, on the product pages online).

82. In making his purchasing decision, Plaintiff relied, to his detriment, on the absence of any warning on Roundup's label and at Home Depot, such as on store shelves and at the point of sale.

83. Had Plaintiff known of the carcinogenic properties of Roundup and its links to cancer, he would not have purchased it.

84. Bayer recently announced plans to invest $5.6 billion over the next decade developing weed killers. Plaintiff purchased Roundup from Home Depot for many years, and he may purchase it again if he (mistakenly) believes Roundup has been changed in some way to remove or mitigate its potential risks. In other words, Plaintiff would have no way to know whether the Roundup product has been changed if Home Depot continues selling it without providing any information about the ongoing scientific debate surrounding the carcinogenicity of Roundup.

CLASS ALLEGATIONS

85. Plaintiff brings this class action pursuant to all applicable *Florida Rules of Civil Procedure,* on behalf of himself and all members of the following Class (the "Class"):

All persons in the State of Florida who purchased at least one Roundup product from Home Depot, for personal use and not for re-sale, since February 3, 2017.

86. Specifically excluded from the proposed Class is Defendant, its officers, directors, agents, trustees, parents, children, corporations, trusts, representatives, employees, successors, assigns, or other persons or entities related to or affiliated with Defendant and/or its officers and/or directors, or any of them. Also excluded from the proposed Class are the Court, the Court's immediate family and Court staff.

87. Subject to additional information obtained through further investigation and discovery, the foregoing definition of the Class may be expanded or narrowed by amendment.

A. Numerosity

88. The members of the Class are so numerous that individual joinder of all class members is impracticable.

89. The precise number of members of the Class is unknown to Plaintiff, but it is clear that the number greatly exceeds the number that would make joinder practicable, particularly given Home Depot's comprehensive distribution and sales network throughout Florida.

90. Members of the Class 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.

B. Commonality and Predominance

91. As set forth in detail hereinabove, common issues of fact and law predominate because Plaintiff's claims are based on a deceptive common course of conduct. All members of the Class were exposed to Defendant's deceptive course of conduct alleged herein.

92. Furthermore, common questions of law or fact include:

a. whether Defendant engaged in the conduct as alleged herein;

b. whether Defendant's practices violate applicable law cited herein;

c. whether Plaintiff and the other members of the Class are entitled to actual, statutory, or other forms of damages, and/or other monetary relief; and

d. whether Plaintiff and the other members of the Class are entitled to equitable relief, including but not limited to injunctive relief.

93. Defendant engaged in a common course of conduct in contravention of the laws Plaintiff seeks to enforce individually, and on behalf of the other members of the Class. Materially identical business practices, and injuries are involved. Individual questions, if any, pale by comparison, in both quality and quantity, to the numerous common questions that dominate this action. Moreover, the common questions will yield common answers.

C. Typicality

94. Plaintiff's claims are typical of the claims of the other members of the Class because, among other things, all members of the Class were comparably injured through the same uniform misconduct described herein. Further, there are no defenses available to Defendant that are unique to Plaintiff.

D. Adequacy of Representation

95. Plaintiff is an adequate representative of the members of the Class because Plaintiff's interests do not conflict with the interests of the other members of the Class that Plaintiff seeks to represent. Plaintiff has retained counsel competent and experience in complex class action litigation and Plaintiff will prosecute this action vigorously. The Class' interests will be fairly and adequately protected by Plaintiff and Plaintiff's counsel. Undersigned counsel has represented consumers in a wide variety of actions where they have sought to protect consumers from fraudulent and deceptive practices.

E. Declaratory and Injunctive Relief

96. Defendant has acted or refused to act on grounds generally applicable to Plaintiff and the other members of the Class, thereby making appropriate final injunctive relief and declaratory relief, as described herein, with respect to the members of the Class as a whole.

F. Superiority

97. A class action is superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this class action. The damages or other

financial detriment suffered by Plaintiff and the other members of the Class are relatively small compared to the burden and expense that would be required to individually litigate their claims against Defendant, so it would be impracticable for members of the Class to individually seek redress for Defendant's wrongful conduct. Even if the members of the Class could afford individual litigation, the court system could not. Individualized litigation creates a potential for inconsistent or contradictory judgments; and increases the delay and expense to all parties and the court system and thereby unnecessarily clogging of dockets.

98. By contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court. Given the similar nature of the members of the Class' claims and the absence of material or dispositive differences in laws upon which the claims are based, the Class will be easily managed by the Court and the parties.

FIRST CAUSE OF ACTION:

VIOLATION OF THE FLORIDA DECEPTIVE AND UNFAIR TRADE PRACTICES ACT, FLA. STAT § 501.201 *et seq.*

99. Plaintiff hereby incorporates by reference each of the proceeding allegations as if fully set forth herein.

100. Individually and on behalf of the proposed Class, Plaintiff brings this claim pursuant to the Florida Deceptive and Unfair Trade Practices Act, Sections 501.201 to 501.213, *Florida Statutes.*

101. The express purpose of FDUTPA is to "protect the consuming public . . . from those who engage in unfair methods of competition, or

unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce." Section 501.202(2), *Florida Statutes.*

102. Section 501.204(1), *Florida Statutes* declares as unlawful "unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce.

103. The sale of the Products at issue in this cause were "consumer transactions" within the scope of FDUTPA.

104. Plaintiff and all Class members are "consumers" as defined by Section 501.203, *Florida Statutes.*

105. The Product is a good within the meaning of FDUTPA and Defendant is engaged in trade or commerce within the meaning of FDUTPA.

Home Depot's Unfair Conduct

106. As detailed above, Defendant's unfair conduct includes selling, marketing, and advertising Roundup without informing consumers that it is potentially carcinogenic. At the very least Home Depot should inform its customers that there is an ongoing scientific dispute over its potential carcinogenicity.

107. Defendant's business practices, as alleged herein, are unfair for the following reasons:

a. The injury to the consumer is substantial. Defendant had knowledge of Roundup's potential health risks and nonetheless continued selling it directly to consumers. And in doing so, Defendant sold the

harmful, potentially carcinogenic product without providing any warning as to its risks.

b. The injury is not outweighed by any countervailing benefits to consumers or competition. There can be no benefit to consumers or competition where Defendant has withheld information that is material and indeed critical to consumers' purchasing decisions.

c. Consumers could not reasonably have avoided the injury because Defendant has deceived consumers by selling a product with links to cancer without disclosing the known health risks, as set forth herein.

108. Defendant's business practices are also unfair because its conduct (knowingly selling a potentially deadly product without telling consumers about the risk) is immoral, unethical, oppressive, unscrupulous, or substantially injurious to consumers. The gravity of the harm to consumers is not outweighed by the utility of Defendant's conduct.

109. Lastly, Defendant's business practices are unfair because they undermine public policy, which is tethered to specific constitutional and statutory provisions, including Florida's consumer protection statutes.

110. The unfairness of Defendant's business practices is underscored by its position in the marketplace to exert pressure on the makers of Roundup to include appropriate health and safety warnings on the weed killer's packaging label.

111. Similarly, Defendant is in a position to protect consumers from the risks of Roundup by simply not selling the product or, alternatively, providing a

point of purchase shelf-warning, and can adjust the costs of such protection in the course of its ongoing business relationships with Bayer and Monsanto, yet unfairly chooses not to.

112. Defendant's conduct was and is uniform, material, and constitutes a continuing course of conduct of unfair competition.

Plaintiff's Loss of Money or Property

113. Plaintiff has suffered injury in fact and has lost money or property as a result of Defendant's actions as set forth herein. Specifically, Plaintiff purchased Roundup from at least one of Defendant's retail locations in Florida for his own personal use.

114. When purchasing Roundup, Plaintiff was not aware it had the potential to cause cancer, nor that there was an ongoing scientific dispute about whether Roundup could cause NHL. When purchasing Roundup, Plaintiff was not aware it had carcinogenic properties. Plaintiff would not have purchased Roundup from Defendant had he known it had carcinogenic properties.

Relief Sought

115. Pursuant to sections 501.211(2) and 501.2105, *Florida Statutes*, Plaintiff seeks an order of this Court enjoining Defendant from engaging in the unfair business practices alleged herein in connection with the sale of Roundup. The form and scope of injunctive relief is within the Court's sole discretion after a finding of liability, but the following are two examples of the type of injunctive relief which may be available: (a) an order enjoining Home Depot from selling Roundup may be appropriate; (b) an order requiring Home Depot to provide

information to consumers about Roundup's potential health risks—including, *e.g.*, the fact that there is a scientific dispute over its potential carcinogenicity—at the point of sale, on store shelves and/or on product webpages may also be appropriate. Such an order would enhance safety since Home Depot is in an ideal position in the marketplace to warn its customers about Roundup's potential safety risks. Additionally, Home Depot may be the only entity in the distribution chain reasonably available to many Florida consumers.

116. Furthermore, Plaintiff seeks an order awarding Plaintiff and the Class restitution of the money wrongfully acquired by Defendant from Class Members by means of the unfair business practices alleged herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and on behalf of the members of the Class defined herein, prays for judgment and relief on all Causes of Action as follows:

A. An order certifying that the action may be maintained as a Class Action;

B. An order enjoining Defendant from pursuing the policies, acts, and practices complained of herein;

C. Pre-judgment interest from the date of filing this suit;

D. Restitution;

E. Reasonable attorneys' fees;

F. Declaratory relief;

G. Costs of this suit; and

H. Such other and further relief as the Court may deem necessary or appropriate.

SECOND CAUSE OF ACTION:

BREACH OF CONTRACT

117. Plaintiff hereby incorporates by reference the allegations contained in paragraph numerals one (1) through ninety-eight (98) as if fully set forth herein.

118. Individually and on behalf of the proposed Class, Plaintiff brings this claim for breach of contract.

119. On information and belief, Defendant had Roundup placed in a position on the shelf to maximize its appeal and likely purchase.

120. On information and belief, Defendant enticed customers, including the Plaintiff, to purchase Roundup.

121. Defendant knew that Plaintiff relied on Defendant's actions in purchasing Roundup.

122. Defendant, as a merchant, was in the best position to know about the dangerous aspects of Roundup.

123. By its conduct and actions, Defendant agreed to take action, including warning, product placement, and promotional communication, that informed Plaintiff about the dangerous conditions of Roundup.

124. By failing to inform Plaintiff about the dangerous conditions of Roundup, through product placement, promotional communications and other communicative means, Defendant breached its contract with Plaintiff.

125. Defendant's breach conduct includes selling, marketing, and advertising Roundup without informing consumers that it is potentially carcinogenic and the ongoing scientific dispute over its potential carcinogenicity.

126. Due to this breach, Plaintiff has been damaged.

127. If not for this breach, Plaintiff would not have purchased Roundup.

128. The injury to the consumer is substantial. Defendant had knowledge of Roundup's potential health risks and nonetheless continued selling it directly to consumers. And in doing so, Defendant sold the harmful, potentially carcinogenic product without providing any warning as to its risks.

129. Defendant's business practices of knowingly selling a potentially deadly product without telling consumers about the risk is immoral, unethical, oppressive, unscrupulous, or substantially injurious to consumers.

130. Lastly, Defendant's business practices undermine public policy of Merchants informing customers about dangerous products.

131. Defendant is in a position to protect consumers from the risks of Roundup by simply not selling the product or, alternatively, providing a point of purchase shelf-warning, and can adjust the costs of such protection in the course of its ongoing business relationships with Bayer and Monsanto, yet chooses not to. Consequently, Defendant breached its contract with Plaintiff.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and on behalf of the members of the Class defined herein, prays for judgment and relief on all Causes of Action as follows:

A. An order certifying that the action may be maintained as a Class Action;

B. Pre-judgment interest from the date of filing this suit;

C. Costs of this suit; and

D. Such other and further relief as the Court may deem necessary or appropriate.

DEMAND FOR JURY TRIAL

Plaintiff and the Class by counsel hereby demand a trial by jury as to all issues so triable.

Submitted: February 3, 2021.

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