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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

VICTOR SABORIO, individually and On  
Behalf of All Others Similarly Situated,

Plaintiffs,

vs.

AGRO RESEARCH INTERNATIONAL  
LLC; SENTINEL BIOLOGICS, INC.;  
AMAZON.COM INC.; AMAZON.COM  
SERVICES LLC; and DOES 1 to 100,  
inclusive,

Defendants.

Case No.

**CLASS ACTION COMPLAINT FOR  
DAMAGES**

1. Violation of Cal. Bus. Prof. Code §§ 17500,  
*et seq.*
2. Violation of Cal. Bus. Prof. Code §§ 17200,  
*et seq.*
3. Fraud—Intentional Misrepresentation
4. Breach of Implied Warranty of  
Merchantability

DEMAND FOR JURY TRIAL

1 Plaintiff VICTOR SABORIO, on behalf of himself and all others similarly situated, bring  
2 this action against Defendants Agro Research International LLC (“ARI), Sentinel Biologics, Inc.  
3 (“Sentinel”), Amazon.com Inc. (“Amazon”), Amazon.com Services LLC. (“Amazon Services”),  
4 and Does 1 through 100 (collectively, “Defendants”). Plaintiff alleges, upon information and belief,  
5 the investigation of their counsel, and the facts that are a matter of public record, as follows:

6 1. Plaintiff brings this action to obtain restitution and damages, as well as injunctive and other  
7 relief, individually and on behalf of a proposed class defined below (“the Class”) against  
8 Defendants, which Plaintiff contends falsely advertised and misrepresented products sold to  
9 Plaintiff and other consumers.

10 2. As alleged herein, Plaintiff is a purchaser and user of the agricultural herbicide and fertilizer  
11 product titled Weed Slayer [hereinafter “Weed Slayer” or “Weed Slayer/Agro Gold WS”],  
12 manufactured by ARI and sold and distributed by Amazon. Weed Slayer is a two-part mixture: Part  
13 A is the herbicide and Part B is a biological surfactant that enables the herbicide to penetrate  
14 through the leaf. Part B, also called Agro Gold WS, is advertised as an organic biological  
15 amendment containing nothing more than soil-enhancing bacteria and water. In reality, however,  
16 Agro Gold WS contains the synthetic herbicides glyphosate and diquat, both of which are  
17 prohibited for use in organic production.

18 3. Prior to and at the time of Plaintiff’s purchases of Weed Slayer/Agro Gold WS, Defendants  
19 represented to Plaintiff that this product was natural, organic, suitable for use on organic plants,  
20 and contained clove essential oil as its only active ingredient. These representations were false.

21 4. Due to Defendants’ false and misleading advertising and statements, Plaintiff and members  
22 of the Class were induced to purchase a non-organic, synthetic herbicide that was far inferior in  
23 value than that which had been promised.

24 5. Plaintiff asserts claims individually and collectively under the California False Advertising  
25 Law, Business & Professions Code sections 17500, *et seq.*; the Unfair Competition Law, Business  
26 & Professions Code sections 17200, *et seq.*; the Consumer Legal Remedies Act, Civil Code  
27 sections 1750, *et seq.*; for breach of the implied warranty of merchantability, and common law  
28 fraud.

6. Plaintiff seeks actual and compensatory damages, civil penalties, punitive damages, restitution, equitable relief, costs and expenses of litigation including attorneys' fees, and all additional and further relief that may be available and that the Court may deem appropriate and just under all of the circumstances.

### JURISDICTION AND VENUE

7. CAFA Jurisdiction: This Court has diversity jurisdiction over this action pursuant to the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. §§ 1332(d)(2) and 1453(b). This action is a class action as defined by 28 U.S.C. § 1332(d)(1)(B). The complaint is brought as a "Class Action" and Plaintiff brings it "individually and on behalf of the proposed classes."

- Minimal Diversity: As alleged herein, Defendant Agro Research International LLC is a Florida corporation with its principal place of business at 703 Camarague Place #203 in Lake Mary, Florida. Defendant Sentinel is a Texas corporation with its principal place of business at 59 E Whistlers Bend Circle in Conroe, Texas. Defendants Amazon and Aamazon Services are Delaware corporations with their principal places of business located at 410 Terry Avenue North, Seattle Washington. Additionally, Plaintiff is a resident of California and the proposed class consists of consumers who purchased Weed Slayer/Agro Gold WS on Amazon.com.
- Amount in Controversy Exceeds \$5 million: The amount in controversy in the underlying dispute exceeds \$5 million, thus satisfying 28 U.S.C. § 1332(d)(2). Plaintiff believes there to be more than 100 members of the proposed class. Plaintiff alleges that he and the proposed class have been fraudulently misled and intentionally misrepresented to in the course of the advertising and sale of Weed Slayer/Agro Gold WS.

8. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because, inter alia, Defendants engage and perform business activities in and throughout the State of California; and class members purchased Defendants' products within this District.

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**PARTIES****Plaintiff**

9. Plaintiff Victor Saborio is, and at all times relevant herein was, a resident of Los Angeles County, California. Plaintiff lives in Los Angeles County where he purchased Weed Slayer/Agro Gold WS on Amazon.com in reliance on the misrepresentations discussed herein. Had Weed Slayer/Agro Gold WS not been represented as organic, Plaintiff Saborio would not have purchased it. As a result of the misrepresentations made to him, Plaintiff Saborio unknowingly exposed his family, particularly his three-year-old daughter, to the synthetic ingredients when he used and applied the product in their yard at home.

**Defendants**

10. Defendant Agro Research International LLC (“ARI”) is a Florida corporation with its principal place of business at 703 Camarague Place #203 in Lake Mary, Florida. ARI maintains substantial ongoing business operations throughout California, including within this district, and is in the business of manufacturing and selling commercial agricultural products. ARI is the manufacturer of Weed Slayer and Agro Gold WS.

11. Defendant Sentinel Biologics, Inc. (“Sentinel”) is a Texas corporation with its principal place of business at 59 E Whistlers Bend Circle in Conroe, Texas. Sentinel is the manufacturer and designer of Agro Gold WS and ships the powdered substance to ARI for reconstitution, packaging, and distribution.

12. Defendant Amazon.com Inc. (“Amazon”) is a Delaware corporation with its principal place of business at 410 Terry Avenue North, Seattle WA. Amazon, or its affiliates, marketed, sold and shipped Weed Slayer/Agro Gold WS online to California consumers.

13. Defendant Amazon.com Services LLC (“Amazon Services”) is a Delaware corporation with its principal place of business at 410 Terry Avenue North, Seattle WA. Amazon Services is an affiliate of Amazon, doing business in California and marketed, sold and shipped Weed Slayer/Agro Gold WS online to California consumers.

14. The true names and capacities of DOES 1 through 100, inclusive, are unknown to Plaintiff who sue such Defendants by use of such fictitious names. Plaintiff will amend this complaint to

add the true names when they are ascertained. Plaintiff is informed and believes and thereon alleges that each of the fictitiously named Defendants is legally responsible for the occurrences herein alleged, and that Plaintiff's damages as herein alleged were proximately caused by their conduct

15. On information and belief, at all times herein mentioned, each Defendant was the agent, partner, joint venturer, representative, or employee of the remaining Defendants, and was acting within the course and scope of such agency, partnership, joint venture, or employment. In engaging in the conduct described below, the Defendants were all acting with the express or implied knowledge, consent, authorization, approval, or ratification of their co-Defendants.

### CLASS ACTION ALLEGATIONS

16. Plaintiff Saborio brings this action as a class action pursuant to Federal Rules of Civil Procedure, rule 23, on behalf of herself and the following Class ("Purchaser Class"):

Any person who purchased Weed Slayer, Agro Gold WS, or both, through Amazon.com, in California, at any time from April 28, 2019 to the present.

Plaintiff reserves the right to amend the Class definition if discovery or further investigation demonstrates that the Class should be expanded or otherwise modified.

17. The members of the Classes are so numerous that joinder of all members would be impracticable.

18. There are questions of law and fact common to the members of the Classes that predominate over any questions affecting only individual members, including, without limitation:

- Whether Defendants marketed and sold Weed Slayer/Agro Gold WS as an organic product suitable for use in organic production when, in reality, it contained the synthetic herbicides glyphosate and diquat;
- Whether Defendants marketed and sold Weed Slayer/Agro Gold WS as containing only a natural active ingredient when, in reality, it contained the synthetic herbicides glyphosate and diquat;
- Whether the manner in which Defendants advertised and marketed Weed Slayer/Agro Gold WS was likely to deceive consumers;
- Whether Defendants' conduct constitutes an unfair or fraudulent business act or

practice;

- Whether Defendants’ conduct otherwise violates California law; and
- Whether, as a result of Defendants’ conduct, Plaintiff is entitled to damages, restitution, equitable relief and/or other damages and relief, and, if so, the amount and nature of such relief.

19. Plaintiff brings claims that are typical of the claims of the members of the Class. Plaintiff has no interests antagonistic to those of the Class and are not subject to any unique defenses.

20. Plaintiff will fairly and adequately protect the interests of all members of the Class and has retained attorneys experienced in class action and complex litigation.

21. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy for, inter alia, the following reasons:

- The Classes are readily definable;
- Prosecution as a class action will eliminate the possibility of repetitious litigation; and
- It is economically impractical for any or all of the members of the Class to prosecute individual actions;
- A class action will enable claims to be handled in an orderly and expeditious manner, will save time and expense, and will ensure uniformity of decisions.

22. Plaintiff does not anticipate any difficulty in the management of this litigation.

### FACTUAL ALLEGATIONS

23. For decades, glyphosate was the herbicide of choice for commercial and home growers to eliminate weeds and support healthy plant and crop growth. Glyphosate, developed in the 1970s by Monsanto scientists, has since been marketed by Monsanto for agricultural use under the trade name Roundup.

24. In 2015, the World Health Organization classified glyphosate as “possibly carcinogenic to humans.”

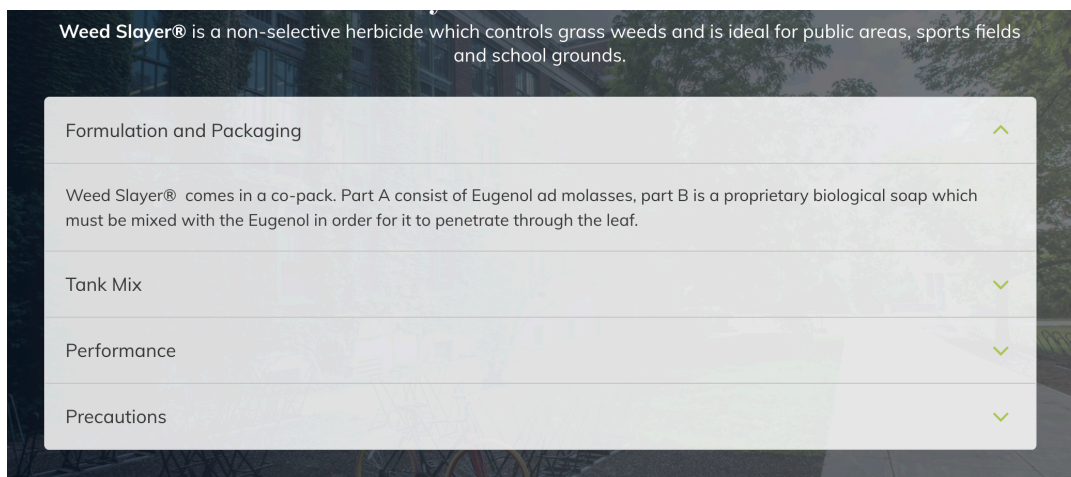
25. In 2018 and 2019 a series of high-profile lawsuits were filed, and jury verdicts were reached, against Roundup’s manufacturer, Monsanto (and later, Bayer), relating to its failure to

1 warn consumers of cancer risks posed by Roundup. In 2020, Bayer agreed to pay over \$10 billion  
 2 to settle approximately one hundred thousand cases against the company alleging health hazards  
 3 related to the use of Roundup.

4 26. Following the Roundup litigation, cities and municipalities began to ban the use of  
 5 glyphosate-based herbicides, and consumers began to seek out alternative products that did not  
 6 contain glyphosate.

### 7 **Weed Slayer: A Purportedly Natural and Organic Alternative**

8 27. Defendant Agro Research International manufactures and advertises a purportedly organic  
 9 alternative to popular synthetic herbicides, Weed Slayer. ARI's website advertises Weed Slayer as  
 10 a two-part herbicide, containing one-part herbicide and one-part "biological soap" that must be  
 11 added to the herbicide in order to assist the herbicide in penetrating through the leaf.



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20 28. The product instructions direct the consumer to mix Part A (Weed Slayer) and Part B (Agro  
 21 Gold WS) in specified amounts and dilute with water before spraying on the desired area.

#### 22 **DIRECTIONS FOR USE:**

23 Mix **32 ounces of PART A per acre** and **32 ounces of PART B per acre** into 25 gal-  
 24 lons and up to 50 gallons of water per acre. **Make sure to agitate** and empty every  
 25 jug thoroughly. When applying , make sure to protect all desirable crop or plants  
 26 from overspray as **WEED SLAYER** will affect them. **SHAKE BEFORE USE.**

27 29. The product label for Part A, Weed Slayer states: "Weed Slayer is a unique broad spectrum  
 28 natural herbicide made from Eugenol, an essential oil of Clove, and molasses." The label lists the  
 Active Ingredients as 6.0% Eugenol and the Inert Ingredients as 94.0% water and molasses. ARI's



1 website repeats the same information.

2 30. The product label for Part B, Agro Gold WS, states that the product is a biological  
3 amendment containing bacteria and 65% water. The label does not disclose any additional active  
4 or inactive ingredients. Part B is advertised as a biological amendment, soap, surfactant, or  
5 adjuvant, that is, an additive intended to increase the herbicide's effectiveness. A video posted on  
6 Agro Research's Weed Slayer webpage states that Part B, Agro Gold WS, "drives the Eugenol [in  
7 Part A] into the plant."

8 **Sentinel Manufactured and Designed the Part B Biological Amendment with Knowledge  
That it Would Be Sold as Organic to California Consumers**

9 31. Between 2014 and 2018, Sentinel registered two products as organic with the California  
10 Department of Food and Agriculture (CDFA). Sentinel directly communicated with CDFA to  
11 register these products and to renew each year. One of these products, Soil N-Lock, was  
12 manufactured by Sentinel for ARI under its Agro Gold brand.

13 32. In or around early 2017, ARI asked Sentinel to design and manufacture a biological  
14 herbicide that it intended to market and sell under the brand name Weed Slayer. Sentinel  
15 manufactured the herbicide and shipped said substance to ARI in Florida. Upon receiving the  
16 herbicide from Sentinel, ARI added water to reconstitute it and then packaged and sold it as Agro  
17 Gold WS.

18 33. The initial formulation of this herbicide ("the predecessor label product") was developed  
19 between 2017 and 2018. At this time, Sentinel knew, based on email and phone conversations with  
20 representatives of ARI, that ARI's intent was to have the product be sold as organic in California.

21 34. ARI initially had trouble registering the predecessor label product as organic in California.  
22 After learning this, Sentinel assisted ARI in the registration process by using its own knowledge of  
23 the certification process in California and by modifying the formula to remove certain microbial  
24 components that were presenting hurdles to organic certification. This amended formula was what  
25 was eventually manufactured by Sentinel and sold by ARI as Agro Gold WS, or Part B of the two-  
26 part Weed Slayer product. Sentinel's creation of the predecessor label product and Agro Gold WS  
27 was part of the same effort to create an effective herbicide to be sold as a component of the ARI  
28 product Weed Slayer.



35. In June 2018, ARI provided Sentinel with a confirmation letter from the CDFA stating: “We are in receipt of your organic input material registration fee for Agro Gold WS.” As a part of the registration process, the CDFA asked ARI—and ARI, in turn, asked Sentinel—to describe the manufacturing process for Agro Gold WS.

36. At all relevant times, Sentinel was aware that ARI intended to sell Weed Slayer—including the component manufactured by Sentinel—in California as an organic product. Sentinel’s assistance was critical in enabling ARI to market and sell Weed Slayer as an organic product in California.

### **ARI Falsely and Misleadingly Advertised and Sold Weed Slayer as Organic and Natural**

37. ARI’s website advertises its products as “products for organic crops.”



38. The Weed Slayer/Agro Gold WS product labels state that the product is certified organic.

39. Defendant’s website makes the following statements about Weed Slayer:

- Weed Slayer is “a unique organic broad spectrum, systemic herbicide.”
- Weed Slayer is “an herbicide made from Eugenol, an essential oil of cloves, and molasses.”
- “Weed Slayer is made of Organic Eugenol and Molasses.”

40. Defendant’s website further advertises its Agro Gold product line as “biological

amendments containing beneficial bacteria recommended for all crops.”

41. As discussed above, the product labels for Weed Slayer/Agro Gold WS list the only Active Ingredient as the clove oil-derived Eugenol.

42. Contrary to Defendants’ advertising and product labelling, however, Weed Slayer/Agro Gold WS contains two synthetic, non-organic Active Ingredients in addition to the Eugenol: glyphosate and diquat. Both chemicals are contained in Part B, Agro Gold WS.

### **Studies Are Conducted to Measure the Efficacy of Weed Slayer, Suggesting Similarity to Synthetic Herbicides**

43. A report created by the Research and Development Division of the country of Jamaica’s Ministry of Industry, Commerce, Agriculture, and Fisheries, “comparing the effectiveness of Weed Slayer Organic Herbicide against two conventional broad-spectrum herbicides commonly used in Jamaica.” The comparison in weeds treated with the products showed “no significant difference between glyphosate and [Weed Slayer].” The researchers concluded that “[t]hese results indicate similarities between the treatments.” Finally, they noted that “[g]lyphosate is systemic herbicide therefore, based on the similar behaviour of [Weed Slayer] it would also appear [Weed Slayer] is also a systemic herbicide.”

**Mean Total Monocot Species Density for Individual Herbicide Treatments over Five Weeks**

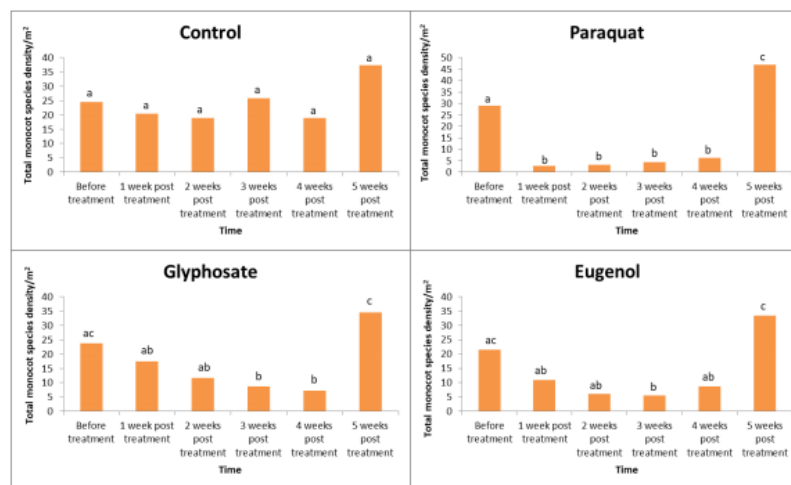


Figure 5 Change in total monocot density/ $m^2$  for each treatment over five weeks. The same letters above the bars indicates no significant difference in the mean monocot density for LSD test where  $P \leq 0.05$ .

44. As demonstrated by the graph of weed growth over the course of the five-week trial, glyphosate and Weed Slayer (denoted as eugenol in the chart) followed almost *identical* patterns in preventing the growth of weeds. The other conventional herbicide did not match these patterns.

**Amazon Falsely and Misleadingly Advertised and Sold Weed Slayer as Organic and Natural**

45. Amazon and Amazon Services repeated the representations made by ARI, above, to customers on its own website in order to induce customers to purchase Weed Slayer.

46. At the time it made these statements, Amazon and Amazon Services should have known—based on publicly available research, including the report discussed above, that Weed Slayer contained glyphosate.

**Agro Research Failed to Disclose the Presence of Two Synthetic, Non-Organic Ingredients in Weed Slayer: Glyphosate and Diquat**

47. On December 4, 2020, the CDFA announced that lab analysis of Agro Gold WS “detected the presence of Diquat and Glyphosate, which are substances prohibited by the U.S. Department of Agriculture (USDA) National Organic Program for use in organic production.”

48. Accordingly, the CDFA issued a Stop Use Notice and Statewide Quarantine and Removal from Sale Order for Agro Gold WS to all organic operations in California. The Notice and Order states “[s]ale and use of this product thus poses a public health risk because the product was found to contain herbicides not disclosed on its label” and orders all organic operations in possession of Agro Gold WS to hold the product and contact the CDFA for further instructions.

49. Glyphosate and diquat are both synthetic, non-natural pesticides prohibited from use in organic production under 7 CFR §205.105.

50. Indeed, glyphosate and diquat are present in Weed Slayer in amounts consistent with commercial non-organic herbicide concentrates (i.e. Roundup).

**FIRST CAUSE OF ACTION**

False Advertising  
(Bus. & Prof. Code, §§ 17500, *et seq.*)

51. Plaintiff hereby realleges and incorporates by reference all paragraphs above as if set forth in detail herein.

52. Business and Professions Code sections 17500, *et seq.* prohibit the publication of any

statement concerning the sale of goods that is untrue or misleading. Defendants' conduct, as described above, constitutes the publication of untrue and misleading statements concerning the sale of Weed Slayer/Agro Gold WS.

53. Defendants engaged in the advertising and marketing to the public and offered for sale Weed Slayer/Agro Gold WS throughout California.

54. Defendant engaged in the advertising and marketing alleged herein with the intent to induce Plaintiff and the Class to purchase Weed Slayer/Agro Gold WS.

55. Defendants' advertisements and marketing representations regarding Weed Slayer/Agro Gold WS were false, misleading, and likely to deceive the public.

56. Specifically, Defendants made the following misrepresentations:

- Defendants' products are "products for organic crops."
- Weed Slayer is "a unique organic broad spectrum, systemic herbicide."
- Weed Slayer is "an herbicide made from Eugenol, an essential oil of cloves, and molasses."
- "Weed Slayer is made of Organic Eugenol and Molasses."
- The products in Defendants' Agro Gold product line are "biological amendments containing beneficial bacteria recommended for all crops."
- Agro Gold WS contains only bacteria and 65% water.

57. In reality, Weed Slayer/Agro Gold WS contained the synthetic, non-natural herbicides glyphosate and diquat, both of which are prohibited under federal law for use in organic production.

58. At the time Defendants made and disseminated the statements alleged herein, Defendants knew or should have known that the statements were untrue and misleading.

59. Plaintiff suffered concrete and identifiable economic injuries as a consequence of Defendants' unlawful conduct described above, because they purchased a product that was far inferior in value to that which was advertised and marketed by Defendants.

60. Plaintiff, on behalf of himself and on behalf of the Class, seek restitution, injunctive relief, and all other relief allowable under the law.

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**SECOND CAUSE OF ACTION**

**Unlawful, Unfair, and Fraudulent Business Acts and Practices**  
(Bus. & Prof. Code, §§ 17200, *et seq.*)

61. Plaintiff hereby realleges and incorporates by reference all paragraphs above as if set forth in detail herein.

62. Business & Professions Code sections 17200 *et seq.* prohibits acts of “unfair competition” which is defined by Business & Professions Code section 17200 as including “any unlawful, unfair or fraudulent business act or practice.”

**Unlawful Business Acts and Practices**

63. Defendants’ conduct, as described above, constitutes unlawful business acts and practices.

64. Defendants, by the conduct described above, have violated and continue to violate Business & Professions Code section 17200’s prohibition against engaging in “unlawful” business acts or practices by violating Cal. Civil Code §§ 1750, *et seq.*; breaching the implied warranty of merchantability; and by committing common law fraud, as discussed in the relevant causes of action herein.

65. Plaintiff suffered concrete and identifiable economic injuries as a consequence of Defendants’ unlawful conduct described above, because they purchased a product that was far inferior in value to that which was advertised and marketed by Defendants.

66. As a result of Defendants’ conduct, Plaintiff is entitled to restitution of monies paid for the purchase of Weed Slayer/Agro Gold WS.

67. Plaintiff also seeks on behalf of the general public an order enjoining Defendants from continuing its unlawful business practices and from such future conduct.

**Unfair Business Acts and Practices**

68. Defendants’ deceptive acts and practices, as described above, constitute unfair business practices within the meaning of Business & Professions Code, sections 17200, *et seq.*

69. Plaintiff and other members of the class suffered a substantial injury in fact resulting in the loss of money or property by virtue of Defendants’ conduct.

70. Defendants’ conduct does not benefit consumers or competition. Indeed, the injury to consumers and competition is substantial. As described above, Defendants deceptively marketed

and sold Weed Slayer/Agro Gold WS as a natural, organic herbicide that contained only clove essential oil as its active ingredient. These representations induced Plaintiff and the Class to purchase and use the product. In reality, however, the product contained glyphosate and diquat, both synthetic herbicides prohibited by federal law for use in organic production.

71. Plaintiff and Class members could not have reasonably avoided the injury each of them suffered.

72. The gravity of the consequences of Defendants' conduct as described above outweighs any justification, motive or reason therefore, is immoral, unethical, oppressive, unscrupulous, and offends the public policy established by the State of California, which, among other things, seeks to protect the reasonable expectations of consumers concerning the nature, extent and quality of their care coverage.

73. Plaintiff suffered concrete and identifiable economic injuries as a consequence of Defendants' unlawful conduct described above, because they purchased a product that was far inferior in value to that which was advertised and marketed by Defendants.

74. As a result of Defendants' conduct, Plaintiff is entitled to restitution of monies paid for the purchase of Weed Slayer/Agro Gold WS.

75. Plaintiff also seeks on behalf of the general public an order enjoining Defendants from continuing its unlawful business practices and from such future conduct.

#### **Fraudulent Business Acts and Practices**

76. Defendants' conduct as set forth herein constitutes fraudulent business practices under Business & Professions Code, sections 17200, *et seq.*

77. As described above, Defendants made uniform misleading and fraudulent communications regarding the organic and natural characteristics of Weed Slayer/Agro Gold WS. Specifically, these fraudulent statements were located on the product labels, Defendants' websites, and in materials provided to consumers.

78. As described above, Defendants made the following misrepresentations:

- Defendants' products are "products for organic crops."
- Weed Slayer is "a unique organic broad spectrum, systemic herbicide."

- 1 • Weed Slayer is “an herbicide made from Eugenol, an essential oil of cloves, and
- 2 molasses.”
- 3 • “Weed Slayer is made of Organic Eugenol and Molasses.”
- 4 • The products in Defendants’ Agro Gold product line are “biological amendments
- 5 containing beneficial bacteria recommended for all crops.”
- 6 • Agro Gold WS contains only bacteria and 65% water.

7 79. In reality, Weed Slayer/Agro Gold WS contained the synthetic, non-natural herbicides  
8 glyphosate and diquat, both of which are prohibited under federal law for use in organic production.

9 80. Defendants’ misleading and fraudulent communications were and are likely to deceive  
10 reasonable California consumers, leading them to believe they are purchasing an organic, natural  
11 herbicide that did not contain glyphosate or diquat and was suitable for use in organic production.

12 81. These communications regarded a material aspect of and were a substantial factor leading  
13 Plaintiff to purchase Weed Slayer/Agro Gold WS from Defendants.

14 82. Plaintiff suffered concrete and identifiable economic injuries as a consequence of  
15 Defendants’ unlawful conduct described above, because they purchased a product that was far  
16 inferior in value to that which was advertised and marketed by Defendants.

17 83. As a result of Defendants’ conduct, Plaintiff is entitled to restitution of monies paid for the  
18 purchase of Weed Slayer/Agro Gold WS.

19 84. Plaintiff also seeks on behalf of the general public an order enjoining Defendants from  
20 continuing its unlawful business practices and from such future conduct.

### 21 **THIRD CAUSE OF ACTION**

#### 22 **Fraud**

23 85. Plaintiff hereby realleges and incorporates by reference all paragraphs above as if set forth  
24 in detail herein.

25 86. As described above, Defendants made uniform misleading and fraudulent communications  
26 regarding the organic and natural characteristics of Weed Slayer/Agro Gold WS. Specifically, these  
27 fraudulent statements were located on the product labels and ARI’s and Amazon’s websites.

28 87. As described above, Defendants made the following misrepresentations:



- 1 • ARI's products are "products for organic crops."
- 2 • Weed Slayer is "a unique organic broad spectrum, systemic herbicide."
- 3 • Weed Slayer is "an herbicide made from Eugenol, an essential oil of cloves, and
- 4 molasses."
- 5 • "Weed Slayer is made of Organic Eugenol and Molasses."
- 6 • The products in Defendants' Agro Gold product line are "biological amendments
- 7 containing beneficial bacteria recommended for all crops."
- 8 • Agro Gold WS contains only bacteria and 65% water.

9 88. In reality, Weed Slayer/Agro Gold WS contained the synthetic, non-natural herbicides  
10 glyphosate and diquat, both of which are prohibited under federal law for use in organic production.

11 89. Defendant ARI had a duty to disclose that Weed Slayer/Agro Gold WS was not organic,  
12 not suitable for use on organic crops, and contained the synthetic, non-natural herbicides glyphosate  
13 and diquat for three separate reason: (1) Defendant had exclusive knowledge of the active  
14 ingredients in Weed Slayer/Agro Gold WS; (2) Defendant actively concealed that Weed  
15 Slayer/Agro Gold WS contained the synthetic, non-natural herbicides glyphosate and diquat; and  
16 (3) Defendant made partial representations to Plaintiff regarding the active ingredients in Weed  
17 Slayer/Agro Gold WS but failed to disclose all active ingredients.

18 90. Defendants Amazon and Amazon Services had a duty to disclose that Weed Slayer/Agro  
19 Gold WS was not organic, not suitable for use on organic crops, and contained the synthetic, non-  
20 natural herbicides glyphosate and diquat for two separate reason: (1) Defendant should have known  
21 that Weed Slayer/Agro Gold WS contained the synthetic, non-natural herbicides glyphosate and  
22 diquat; and (2) Defendant made partial representations to Plaintiff regarding the active ingredients  
23 in Weed Slayer/Agro Gold WS but failed to disclose all active ingredients.

24 91. Said communications were made with actual knowledge of their falsity or with reckless  
25 disregard or deliberate ignorance of whether or not they were false.

26 92. Defendants' misleading and fraudulent communications were and are likely to deceive  
27 reasonable California consumers, leading them to believe they are purchasing an organic, natural  
28 herbicide that did not contain glyphosate or diquat and was suitable for use in organic production.

93. These communications regarded a material aspect of and were a substantial factor leading Plaintiff to purchase Weed Slayer/Agro Gold WS from Defendants.

94. Plaintiff suffered concrete and identifiable economic injuries as a consequence of Defendants' unlawful conduct described above, because they purchased a product that was far inferior in value to that which was advertised and marketed by Defendants.

95. As a result of Defendants' conduct, Plaintiff and the Class are entitled to all monetary and other damages permitted under the law, including, but not limited to restitution of monies paid to purchase Weed Slayer/Agro Gold WS and compensatory damages for resulting business harm, including loss of sales and harm to reputation.

#### **FOURTH CAUSE OF ACTION**

##### **Breach of Implied Warranty of Merchantability (Against ARI, Amazon, and Amazon Services)**

96. Plaintiff hereby realleges and incorporates by reference all paragraphs above as if set forth in detail herein.

97. Plaintiff brings this cause of action against ARI, Amazon, and Amazon Services on behalf of the Class.

98. Defendants were at all times merchants with respect to Weed Slayer/Agro Gold WS, which was sold to Plaintiff and the Class, and were in the business of selling such products.

99. Each container of Weed Slayer/Agro Gold WS comes with an implied warranty that it will be merchantable and fit for the ordinary purpose for which it will be used. Defendants breached the implied warranty of merchantability because Weed Slayer/Agro Gold WS was not in merchantable condition when sold, was defective when sold, and did not possess even the most basic degree of fitness for ordinary use of an organic product.

100. The ordinary intended purpose of Weed Slayer/Agro Gold WS, and the purpose for which it was marketed, promoted, and sold, as an organic alternative to synthetic herbicides. Weed Slayer/Agro Gold WS was not fit for that use because it (1) was not organic but actually contained glyphosate and diquat as active ingredients; (2) had the potential to be carcinogenic; and (3) posed unreasonably risks of substantial bodily injury resulting from its use and application. Due to these and other features, Weed Slayer/Agro Gold WS is not fit for its ordinary, intended use as an organic.

1 101. Plaintiff and Class Members have had sufficient direct dealings with either ARI (via its  
2 website) or its agents (including retail sellers like Amazon and Amazon Services) to establish  
3 privity of contract between ARI and Plaintiff and Class Members.

4 102. Plaintiff and Class members have had sufficient dealings with Amazon.com to establish  
5 privity of contract between Amazon and Amazon Services and Plaintiff and Class Members.

6 103. Plaintiff and Class Members were third-party beneficiaries of ARI agreements with  
7 distributors and sellers for the distribution and sale of Weed Slayer/Agro Gold WS to consumers.  
8 Plaintiff and Class Members were the intended beneficiaries of ARI's implied warranties.

9 104. Plaintiff and Class members were third-party beneficiaries of Amazon's and Amazon  
10 Services' agreements with distributors and sellers for the distribution and sale of Weed Slayer/ARI  
11 to consumers. Plaintiff and Class members were the intended beneficiaries of Amazon's and  
12 Amazon Services' implied warranties.

13 105. Plaintiff and Class Members were injured as a direct and proximate result of Defendants'  
14 breach of their implied warranties of merchantability. Had Plaintiff and Class Members been aware  
15 of the unmerchantable condition of Weed Slayer/Agro Gold WS, they would not have purchased  
16 it, or would have paid less for it.

17 106. Plaintiff seeks damages in an amount to be proven at trial, as well as any other relief the  
18 Court may deem proper.


19 107. Defendants were provided notice of these issues by numerous complaints made by  
20 consumers directly to Defendants or through their agents within a reasonable amount of time after  
21 they discovered that Weed Slayer/Agro Gold WS was defective and unmerchantable.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, pray for judgment against Defendants as follows:

- A. An order certifying this case as a class action and appointing Plaintiff and their counsel to represent the Class;
- B. For actual and compensatory damages according to proof pursuant to all applicable laws and regulations;
- C. For restitution and disgorgement to the extent permitted by applicable law;
- D. For an order enjoining Defendants from continuing to engage in the conduct described herein;
- E. For civil and statutory penalties available under applicable law;
- F. For pre-judgment and post-judgment interest;
- G. For punitive damages under applicable law;
- H. For an award of attorneys' fees, costs and expenses as authorized by applicable law;
- I. For such other and further relief as this Court may deem just and proper; and
- J. For trial by jury on all causes of action so triable.

Dated: April 28, 2023



Shounak S. Dharap  
Katherine A. Rabago  
515 Folsom Street, Third Floor  
San Francisco, CA 94105  
Telephone: (415) 495-7800  
Facsimile: (415) 495-7888

CIVIL COVER SHEET

The JS-CAND 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 in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS VICTOR SABORIO, individually and  
On Behalf of All Others Similarly Situated,

(b) County of Residence of First Listed Plaintiff Los Angeles County  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)  
Robert S. Arns, Arns Davis Law Firm, 515 Folsom St., 3rd  
Fl., San Francisco, CA 94105, (415) 495-7800

DEFENDANTS AGRO RESEARCH INTERNATIONAL LLC;  
SENTINEL BIOLOGICS, INC.; AMAZON.COM INC.; AMAZON.COM  
SERVICES LLC; and DOES 1 to 100, inclusive,  
County of Residence of First Listed Defendant Seminole County  
(IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

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

X 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)

	PTF	DEF		PTF	DEF
Citizen of This State	X 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	X 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	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
110 Insurance 120 Marine 130 Miller Act 140 Negotiable Instrument 150 Recovery of Overpayment Of Veteran's Benefits 151 Medicare Act 152 Recovery of Defaulted Student Loans (Excludes Veterans) 153 Recovery of Overpayment of Veteran's Benefits 160 Stockholders' Suits 190 Other Contract 195 Contract Product Liability 196 Franchise	<div>PERSONAL INJURY</div> <div>310 Airplane 315 Airplane Product Liability 320 Assault, Libel &amp; Slander 330 Federal Employers' Liability 340 Marine 345 Marine Product Liability 350 Motor Vehicle 355 Motor Vehicle Product Liability 360 Other Personal Injury 362 Personal Injury -Medical Malpractice</div> <div>CIVIL RIGHTS</div> <div>440 Other Civil Rights 441 Voting 442 Employment 443 Housing/ Accommodations 445 Amer. w/Disabilities-- Employment 446 Amer. w/Disabilities--Other 448 Education</div>	<div>PERSONAL INJURY</div> <div>365 Personal Injury -- Product Liability 367 Health Care/ Pharmaceutical Personal Injury Product Liability 368 Asbestos Personal Injury Product Liability</div> <div>PERSONAL PROPERTY</div> <div>X 370 Other Fraud 371 Truth in Lending 380 Other Personal Property Damage 385 Property Damage Product Liability</div> <div>PRISONER PETITIONS</div> <div>HABEAS CORPUS</div> <div>463 Alien Detainee 510 Motions to Vacate Sentence 530 General 535 Death Penalty</div> <div>OTHER</div> <div>540 Mandamus &amp; Other 550 Civil Rights 555 Prison Condition 560 Civil Detainee-- Conditions of Confinement</div>	<div>625 Drug Related Seizure of Property 21 USC § 881 690 Other</div> <div>LABOR</div> <div>710 Fair Labor Standards Act 720 Labor/Management Relations 740 Railway Labor Act 751 Family and Medical Leave Act 790 Other Labor Litigation 791 Employee Retirement Income Security Act</div> <div>IMMIGRATION</div> <div>462 Naturalization Application 465 Other Immigration Actions</div>	<div>422 Appeal 28 USC § 158 423 Withdrawal 28 USC § 157</div> <div>PROPERTY RIGHTS</div> <div>820 Copyrights 830 Patent 835 Patent--Abbreviated New Drug Application 840 Trademark 880 Defend Trade Secrets Act of 2016</div> <div>SOCIAL SECURITY</div> <div>861 HIA (1395ff) 862 Black Lung (923) 863 DIWC/DIWW (405(g)) 864 SSID Title XVI 865 RSI (405(g))</div> <div>FEDERAL TAX SUITS</div> <div>870 Taxes (U.S. Plaintiff or Defendant) 871 IRS--Third Party 26 USC § 7609</div>	<div>375 False Claims Act 376 Qui Tam (31 USC § 3729(a)) 400 State Reapportionment 410 Antitrust 430 Banks and Banking 450 Commerce 460 Deportation 470 Racketeer Influenced &amp; Corrupt Organizations 480 Consumer Credit 485 Telephone Consumer Protection Act 490 Cable/Sat TV 850 Securities/Commodities/ Exchange 890 Other Statutory Actions 891 Agricultural Acts 893 Environmental Matters 895 Freedom of Information Act 896 Arbitration 899 Administrative Procedure Act/Review or Appeal of Agency Decision 950 Constitutionality of State Statutes</div>

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

X 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--Transfer	8 Multidistrict Litigation--Direct File
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VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 USC 1332; Cal. Bus. & Prof. Code, §§ 17200, et seq.; Cal Bus. & Prof. Code, §§ 17500, et seq; Cal. Civ. Code, §§ 1750, et seq  
Brief description of cause:  
False advertising and unlawful, unfair, and fraudulent business acts and practices.

VII. REQUESTED IN COMPLAINT:

X CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P.

DEMAND \$

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

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE  
Hon. James Donato

DOCKET NUMBER  
3:21-cv-00518-JD

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)  
(Place an "X" in One Box Only)

X SAN FRANCISCO/OAKLAND

SAN JOSE

EUREKA-MCKINLEYVILLE

DATE April 28, 2023

SIGNATURE OF ATTORNEY OF RECORD

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

**Authority For Civil Cover Sheet.** The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
  - b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.)
  - c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section “(see attachment).”
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an “X” in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
  - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
  - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
  - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an “X” in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an “X” in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
  - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
  - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
  - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
  - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
  - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
  - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an “X” in this box if you are filing a class action under Federal Rule of Civil Procedure 23. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- Date and Attorney Signature.** Date and sign the civil cover sheet.