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7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF FRESNO**

10 MONSANTO COMPANY,

11 *Plaintiff,*

12 v.

13 OFFICE OF ENVIRONMENTAL HEALTH
14 HAZARD ASSESSMENT, *et al.*,

15 *Defendants,*

16 and

17 CENTER FOR FOOD SAFETY,

18 *Defendant-Intervenor*
19 *Applicant.*

) Case No. 16 CE CG 00183

)

)

) **NOTICE OF MOTION AND MOTION**

) **FOR LEAVE TO FILE**

) **ANSWER-IN-INTERVENTION;**

) **MEMORANDUM OF POINTS AND**

) **AUTHORITIES IN SUPPORT;**

) **DECLARATIONS IN SUPPORT;**

) **PROPOSED**

) **ANSWER-IN-INTERVENTION**

)

) Hon. Lisa M. Gamoiam

) Department: 404

) Hearing Date: April 27, 2016

) Hearing Time: 8:30 a.m.

)

)

1 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE THAT** on April 27, 2016, at 8:30 a.m., in Department 404 of
3 the Fresno Superior Court, 1130 O Street, Fresno, Defendant-Intervenor Applicant Center for
4 Food Safety will, and hereby does, move the Court for an order granting leave to file its Answer-
5 in-Intervention in this action. The proposed Answer-in-Intervention is attached to this motion as
6 Exhibit A. The motion will be made pursuant to the provisions of section 387 of the Code of
7 Civil Procedure and upon the grounds that:

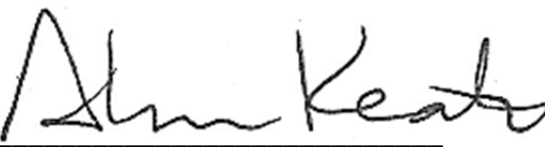
- 8 1. Intervenor Center for Food Safety has a direct and immediate interest in the subject
9 matter of this action;
- 10 2. The requested intervention will not enlarge the issues in this action; and
- 11 3. The interests of the Center for Food Safety outweigh any objections to its intervention.

12 The motion for leave to file the Answer-in-Intervention will be based upon this notice, the
13 attached memorandum of points and authorities, the Declarations of Doug Gurian-Sherman and
14 Kristina Boudreaux attached to this motion as Exhibit B and C, respectively, the proposed
15 Answer-in-Intervention, all pleadings and records on file in this action , and upon further
16 evidence or argument as may be presented by Center for Food Safety at the hearing of this
17 motion.

18
19 Date: March 2, 2016

Respectfully submitted,

20
21 CENTER FOR FOOD SAFETY

22
23
24 By 

25 Adam Keats
26 Counsel for Defendant-Intervenor Applicant
27 [Faxed Signature]
28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 Defendant-Intervenor Applicant Center for Food Safety (“CFS”), a nonprofit membership
4 organization that represents over 730,000 farmer and consumer members nationwide, including
5 tens of thousands in California, seeks the Court’s leave to intervene in support of Respondents
6 Office of Environmental Health Hazard Assessment (“OEHHA” or “Agency”) and Lauren Zeise
7 (collectively, “Respondents”) in the above-captioned lawsuit filed by Petitioner and Plaintiff
8 Monsanto Company (“Monsanto”). The lawsuit seeks to enjoin OEHHA from adding the
9 herbicide glyphosate to the Proposition 65 list of chemicals that are “known to the state of
10 California to cause cancer.” (Compl. ¶ 1.) Under Proposition 65, no person in the course of
11 doing business may knowingly or intentionally expose any individual to a chemical known to the
12 state to cause cancer or reproductive toxicity without first giving a clear and reasonable warning,
13 and the discharge of such chemical into a source of drinking water is prohibited. (Cal. Health &
14 Safety Code, §§ 25249.5 & 25249.6.) Since its inception, CFS has actively been involved in
15 efforts to address the adverse health and environmental impacts of pesticides such as glyphosate
16 and fully supports OEHHA’s listing of glyphosate under Proposition 65.

17 CFS is a public interest, nonprofit organization based in Washington, D.C., with offices
18 in San Francisco, CA; Hollywood, CA; Portland, OR; and Honolulu, HI. CFS’s mission is to
19 empower people, support farmers, and protect the earth from the harmful impacts of industrial
20 agriculture. A foundational part of CFS’s mission is to further the public’s fundamental right to
21 know what is in their food, food production methods, and technologies. CFS is a recognized
22 national leader on pesticides and their harm to public health and the environment; CFS has
23 worked on improving pesticide regulation and addressing their impacts continuously at both the
24 federal and state levels. CFS has a major program area specific to pesticides, and numerous staff
25 members—scientific, policy, campaign, and legal—whose daily work encompasses the topic.
26 CFS staff are recognized experts in the field, intimately familiar with the issue, the inadequacy of
27 federal pesticide oversight, pesticides’ health risks, and their adverse environmental impacts.
28 CFS has been particularly involved with the herbicide glyphosate, spearheading public interest
efforts to address its adverse health and environmental impacts, engaging in government

1 regulatory processes and public advocacy campaigns, producing and distributing scientific and
2 policy reports and other educational materials, and when necessary, engaging in public interest
3 litigation.

4 CFS has the scientific, technical, and regulatory expertise to defend this lawsuit, and the
5 Court should grant permissive intervention so that it can adequately protect its interests and the
6 interests of its members in this litigation.

7 This motion is timely. Respondents have not yet answered, and the first case
8 management conference for the case is not scheduled.

9 Intervention in this action will not enlarge the issues before the Court or prejudice or
10 delay the resolution of the case. The proposed Answer-in-Intervention, attached as Exhibit A,
11 raises no new issues and requests no extensions. Intervention is appropriate because CFS and its
12 members, many of whom are California residents, gardeners, or farmers who must interact with
13 glyphosate on a daily basis, have unique interests in the appropriate listing of glyphosate under
14 Proposition 65 that may differ from the broader interests of the State of California. CFS
15 therefore has a direct interest in the listing of glyphosate under Proposition 65 that is the subject
16 of this litigation, and its ability to protect that interest would be impaired or impeded absent
17 intervention.

18 ARGUMENT

19 A. CFS SHOULD BE GRANTED PERMISSIVE INTERVENTION.

20 CFS meets the statutory criteria for intervention under California Code of Civil Procedure
21 section 387. Section 387, subdivision (a), provides in relevant part:

22 Upon timely application, any person, who has an interest in the
23 matter in litigation, or in the success of either of the parties, or an
interest against both, may intervene in the action or proceeding.

24 (Code Civ. Proc., § 387, subd. (a).) In order to be granted permissive intervention, three
25 conditions must be satisfied: (1) the intervenor must have a direct and immediate interest in the
26 litigation; (2) the intervention will not enlarge the issues in the case; and (3) the reasons for
27 intervention outweigh opposition by the existing parties. (*Hinton v. Beck* (2009) 176
28 Cal.App.4th 1378, 1382-1383.) The point of intervention is to promote fairness to parties

1 directly affected by the outcome of litigation. (*Lincoln National Life Insurance Company v.*
2 *Board of Equalization* (1994) 30 Cal.App.4th 1411, 1423; *Rominger v. County of Trinity* (1983)
3 147 Cal.App.3d 655, 662.) Courts thus liberally construe the intervention statute in favor of
4 permitting intervention. (*Simpson Redwood Company v. State of California* (1987) 196
5 Cal.App.3d 1192, 1200.) CFS filed a timely motion and satisfies all three criteria.

6 **1. CFS Has a Direct and Immediate Interest in the Subject of the Litigation.**

7 CFS satisfies the first criteria, as it has been at the forefront of regulating glyphosate at
8 the state and federal levels, and its members, many of whom are farmers, gardeners, and
9 residents who interact with glyphosate regularly, are protected by the prohibitions and warnings
10 required by Proposition 65. (*See* Cal. Health & Safety Code, §§ 25249.5 & 25249.6.)
11 Glyphosate is a broad-spectrum herbicide, meaning it kills many varieties of green vegetation,
12 and is widely used in agricultural, residential, aquatic, and other settings. (Gurian-Sherman
13 Decl. ¶ 8; Compl. ¶ 2.) As more crops are genetically engineered to resist glyphosate,
14 glyphosate use increases and resistance in weeds increases, which further exacerbates the
15 environmental and health impacts of the herbicide. (Gurian-Sherman Decl. ¶¶ 8-9.) CFS's
16 comments on petitions to deregulate glyphosate-resistant crops and on pesticide registration
17 reviews of glyphosate have raised a wide range of concerns, including human health and
18 environmental impacts; costs to agriculture and farmers from drift damage; weed resistance; and
19 potential plant disease.¹ In October 2015, CFS submitted a petition in support of OEHHA's
20 listing of glyphosate under Proposition 65 that received 6,302 comments from CFS members,

21 _____
22 ¹ *See* Kimbrell et al., Comments to APHIS re petition from Monsanto Co. and the Scotts Co. seeking a determination
23 of nonregulated status for glyphosate-tolerant creeping bentgrass (Mar. 4, 2004) pp. 3-4 [citing studies
24 demonstrating birth defects and late abortions from women exposed to glyphosate]
25 <<http://www.centerforfoodsafety.org/files/commentsgebentgrass342004.pdf>> [as of Mar. 1, 2016]; *see also* Gurian-
26 Sherman et al., Comments to USDA on Environmental Assessment for the Determination of Nonregulated Status for
27 Monsanto Co. and Forage Genetics Roundup Ready Alfalfa (Jan. 24, 2005) pp 18-19 [citing studies demonstrating
28 birth defects and late abortions from women exposed to glyphosate]
<<http://www.centerforfoodsafety.org/files/commentsalfalfa1242005.pdf>> [as of Mar. 1, 2016]; *see also* Freese,
Comments to APHIS re Environmental Impact Statement; Determination of Regulated Status of Alfalfa Genetically
Engineered for Tolerance to the Herbicide Glyphosate (Feb. 6, 2008) p. 17 [citing studies demonstrating health
impacts to field workers and children from exposure to glyphosate]
<http://www.centerforfoodsafety.org/files/alfalfa_eis_scoping_comments-final_2-6-08.pdf> [as of Mar. 1, 2016];
see also Freese et al., Comments to EPA re Registration Review; Glyphosate Docket Opened for Review and
Comment (Sep. 21, 2009) pp. 18-19 [citing studies demonstrating probable connection between cancer and
glyphosate exposure] <http://www.centerforfoodsafety.org/files/2009-glyphosate-registration-review--final-9-21-09_48080.pdf> [as of Mar. 1, 2016].

1 most of whom are California residents.² CFS dedicates significant staff and economic resources
2 to furthering transparency in the food system, and in particular to advocating, educating, and
3 campaigning about the dangers of glyphosate.³ In addition, many of CFS's members are farmers
4 who live, work, and recreate in areas where particularly large amounts of glyphosate is sprayed,
5 as well as residential homeowners who live in areas where glyphosate is used. (Gurian-Sherman
6 Decl. ¶¶ 15-17; Boudreaux Decl. ¶¶ 9-13.) This case will significantly affect CFS's interests, as
7 evinced by its extensive and longstanding mission to warn the public and its members of the
8 health impacts of glyphosate.

9 To support permissive intervention, it is well settled that the proposed intervenor's
10 interest must be direct rather than consequential, and it must be an interest that is capable of
11 determination in the action. (*City and County of San Francisco v. State* (2005) 128 Cal.App.4th
12 1030, 1036; *Rominger, supra*, 147 Cal.App.3d at 660.) In *Rominger*, the Court granted Sierra
13 Club's motion to intervene in a declaratory relief action concerning state preemption of county
14 pesticide ordinances because Sierra Club's members would be exposed to harmful chemicals if
15 the county's ordinances banning certain pesticides were preempted. (*Rominger, supra*, 147
16 Cal.App.3d at 661.) The Court stated, "[w]here a statute exists specifically to protect the public
17 from a hazard to health and welfare that would allegedly occur without such statute, members of
18 the public have a substantial interest in the protection and benefit provided by such statute." (*Id.*
19 at 662-663.)

20 CFS seeks to defend OEHHA's listing of glyphosate as a "chemical known in the state to
21 cause cancer" under Proposition 65, which is a statute that specifically exists to protect the public
22 from hazards to health and welfare. (*See* Cal. Health & Safety Code, §§ 25249.5 & 25249.6.)
23 Under the Proposition, the use of a chemical known to the state to cause cancer must be
24

25 ² See Spector et al., letter to Esther Barajas-Ochoa, Office of Environmental Health Hazard Assessment, Re: Support
26 for Prop 65 Glyphosate Listing (October 19, 2015)
<http://www.centerforfoodsafety.org/files/cfs_glyphosate_comments_ca_prop_65final_81570.pdf> [as of Mar. 1,
27 2016]; *see also* Center for Food Safety, Petition in Support of OEHHA's Listing of Glyphosate under Proposition 65
(October 20, 2015)
28 <[http://oehha.ca.gov/prop65/CRNR_notices/admin_listing/intent_to_list/pdf_zip/Nov15comments/CenterFoodSafe2](http://oehha.ca.gov/prop65/CRNR_notices/admin_listing/intent_to_list/pdf_zip/Nov15comments/CenterFoodSafe2.pdf)
.pdf> [as of Mar. 1, 2016].

³ See Center for Food Safety, Glyphosate and Cancer Risk: Frequently Asked Questions (May 2015)
<http://www.centerforfoodsafety.org/files/glyphosate-faq_64013.pdf> [as of Mar. 1, 2016].

1 accompanied by a warning and its discharge into drinking water is prohibited. (*Id.*) Similar to
2 the intervenors in *Rominger*, CFS’s members—many of whom are farmers—work, live, and
3 recreate in areas where particularly large amounts of glyphosate is sprayed; absent Proposition
4 65 protection, CFS members will not be fully informed of exposure to the carcinogenic effects of
5 the herbicide, their drinking water will not be free from glyphosate contamination, and their
6 personal health will not be protected from direct application of glyphosate. (Gurian-Sherman
7 Decl. ¶¶ 15-16; Boudreaux Decl. ¶¶ 16-18.) In addition, many CFS members live in residential
8 communities where glyphosate is used on lawns, gardens, and parks; Proposition 65 warnings
9 will inform those members of the carcinogenicity of glyphosate, which may cause them to use it
10 more sparingly and carefully. (Gurian-Sherman Decl. ¶ 17.) CFS and its members are among
11 the persons that Proposition 65 is designed to benefit and protect. Therefore, CFS and its
12 members have a direct and immediate interest in this litigation, and will gain or lose by the legal
13 operation and effect of the judgment.

14 Moreover, due to CFS’s direct interest in the regulation of glyphosate, CFS has
15 substantive knowledge regarding glyphosate’s environmental and health impacts, which will
16 allow CFS to provide a complimentary defense to the State because the State’s role in listing
17 glyphosate has been ministerial. (*See generally* Gurian-Sherman Decl.; *see also* Compl. ¶ 7.)
18 OEHHA listed glyphosate because it interprets the Labor Code to require the agency to list any
19 substance identified by the International Agency for Research on Cancer (“IARC”) as a human
20 or animal carcinogen. (Compl. ¶ 7; *see also* Cal. Code Regs., tit. 27, § 25904.) Accordingly,
21 the Agency has no discretion not to list a substance that IARC has classified as a carcinogen, and
22 considers the listings under the Labor Code as “ministerial.” (*Id.*)

23 CFS, on the other hand, has been heavily involved with substantive regulation of
24 glyphosate. (*See* Gurian-Sherman Decl. ¶ 10.) CFS was one of the first public interest
25 organizations to raise awareness about how the use of glyphosate in Roundup Ready crop
26 systems fosters herbicide-resistant weeds and increases the use of glyphosate, and CFS prevented
27 the planting and approval of glyphosate-resistant alfalfa and sugar beets through litigation. (*See*
28 *Geertson Seed Farms v. Monsanto* (9th Cir. 2009) 570 F.3d 1130; *see also* *Center for Food*

1 *Safety v. Vilsack* (N.D. Cal. 2010) 734 F. Supp. 2d 948.) CFS has written numerous comments
2 to the U.S. Department of Agriculture (“USDA”) and the U.S. Environmental Protection Agency
3 (“EPA”) regarding the health impacts of glyphosate.⁴ In 2009, CFS commented on EPA’s
4 Registration Review of Glyphosate, stating that EPA failed to look at many peer-reviewed
5 studies suggesting human health impacts from glyphosate exposure, especially occupational
6 exposure.⁵ CFS provided evidence that EPA’s basis for concluding that glyphosate is
7 non-carcinogenic failed to select endpoints for dermal or inhalational occupational exposure, and
8 failed to look at a moderately large number of case reports indicating a probable connection
9 between cancer cases and glyphosate exposure.⁶ In May 2015, CFS published a fact sheet titled
10 Glyphosate and Cancer Risk: Frequently Asked Questions, specifically addressing IARC’s and
11 EPA’s assessments and informing its members of the carcinogenic effects of glyphosate.⁷

12 If the glyphosate listing under Proposition 65 is invalidated, it will immediately remove
13 the protection that the State considers necessary to public health and welfare. CFS and its
14 members have a direct and immediate interest in this case; if this Court denies this motion to
15 intervene, CFS will be denied the opportunity to defend its interest.

16 **2. CFS’s Intervention Will Not Enlarge the Issues in the Case.**

17 CFS will not enlarge the issues in the case because it raises no new claims, and its
18 intervention will not delay or prejudice the parties. CFS’s interest is simply to defend the
19 validity of OEHHA’s listing of glyphosate under Proposition 65 as a chemical “known to the
20 state to cause cancer.” (Cal. Health & Safety Code, § 25249.8, subd. (a).) The First District
21 Court of Appeal has already upheld OEHHA’s interpretation of its listing requirements under
22 Proposition 65. (*See* Compl. ¶ 23; *see also California Chamber of Commerce v. Brown* (2011)
23 196 Cal.App.4th 233.) However, Monsanto now raises constitutional concerns related to
24 OEHHA’s interpretation of its listing requirements under the statute.

25
26
27 ⁴ *See* Kimbrel et al., *supra* note 1, at pp. 3-4; *see also* Gurian-Sherman et al., *supra* note 1, at pp. 18-19; *see also*
Freese, *supra* note 1, at p. 17.

28 ⁵ *See* Freese et al., *supra* note 1, at 18-19.

⁶ *Id.* at 18.

⁷ Center for Food Safety, *supra* note 3.

1 CFS believes that these issues can be decided purely on the constitutional claims
2 presented by Monsanto; however, Monsanto has also made numerous factual claims regarding
3 the carcinogenic effect of glyphosate, indicating a potential to go beyond the constitutional
4 claims. (Compl. ¶¶ 31-48.) Should the factual allegations regarding the carcinogenic effects of
5 glyphosate come into play in this litigation, CFS believes it is in a better position to defend those
6 claims than OEHHA, due to OEHHA's ministerial role in listing substances determined to be
7 carcinogenic by IARC. (Compl. ¶ 7; *see also* Cal. Code Regs., tit. 27, § 25904.) CFS's
8 intervention will therefore not enlarge the issues in the case beyond what Monsanto has
9 presented in its complaint, but intervention is appropriate due to CFS's substantive knowledge
10 regarding the health impacts and science of glyphosate.

11 **3. The Reasons Favoring Granting Intervention Outweigh the Opposition of**
12 **the Existing Parties.**

13 The reasons for granting intervention far outweigh the opposition of existing parties
14 because CFS's members are particularly susceptible to the harms of glyphosate; CFS has been
15 involved in the substantive regulation of glyphosate at the state and federal levels for decades,
16 and CFS has expertise regarding the health impacts of glyphosate. (*See generally* Gurian-
17 Sherman Decl.; Boudreaux Decl. ¶¶ 9-13.) Although the State is concerned with the protection of
18 all the citizens of California, its interest in this case is primarily that of defending the
19 constitutional validity of its statutory interpretation. The interest of CFS's members, however, as
20 direct beneficiaries of Proposition 65 protections, stems from their concern for their own health
21 and well-being. (Boudreaux Decl. ¶¶ 16-18; Gurian-Sherman Decl. ¶¶ 15-17.) This interest is
22 compelling enough that CFS should be permitted to intervene.

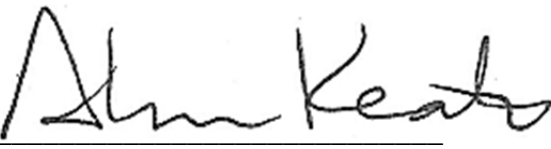
23 **CONCLUSION**

24 CFS is uniquely situated to participate in this action, much as the Sierra Club was
25 positioned in the *Rominger* case. (*Rominger, supra*, 147 Cal.App.3d at 660-663.) CFS meets
26 permissive statutory criteria for intervention, and therefore requests that it be granted leave to file
27 the attached Answer-in-Intervention.
28

1 Date: March 2, 2016

Respectfully submitted,

2
3 CENTER FOR FOOD SAFETY

4
5
6 By 

7 Adam Keats
8 Counsel for Defendant-Intervenor Applicant
9 [Faxed Signature]

Exhibit A

1 ADAM KEATS (CSB No. 191157)
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6 *Counsel for Defendant-Intervenor Applicant*

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
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10 MONSANTO COMPANY,

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13 OFFICE OF ENVIRONMENTAL HEALTH
14 HAZARD ASSESSMENT, *et al.*,

15 *Defendants,*

16 and

17 CENTER FOR FOOD SAFETY,

18 *Defendant-Intervenor*
19 *Applicant.*

) Case No. 16 CE CG 00183

)

)

) **[PROPOSED]**

) **ANSWER-IN-INTERVENTION TO**

) **MONSANTO COMPANY'S VERIFIED**

) **PETITION FOR WRIT OF MANDATE**

) **AND COMPLAINT FOR PRELIMINARY**

) **AND PERMANENT INJUNCTION AND**

) **DECLARATORY RELIEF**

)

) Hon. Lisa M. Gamoiam

) Department: 404

) Hearing Date: April 27, 2016

) Hearing Time: 8:30 a.m.

)

)

)

1 Defendant-Intervenor Applicant Center for Food Safety (“CFS”) hereby answers the
2 Verified Petition for Writ of Mandate and Complaint for Preliminary Injunction and Declaratory
3 Relief filed on January 21, 2016 (“Petition”) by Monsanto Company (“Petitioner”) and admits,
4 denies, and alleges as follows:

5 INTRODUCTION

6 1. The allegations in Paragraph 1 are Plaintiff’s characterization of its Petition and
7 conclusions of law to which no response is required.

8 2. Answering the first sentence in Paragraph 2, CFS admits to the allegation that
9 glyphosate is a widely used herbicide, but denies the allegation that it is highly effective.
10 Answering the second sentence in Paragraph 2, CFS lacks sufficient knowledge or information to
11 form a belief as to the truth of the allegations in the second sentence of Paragraph 2, and on that
12 basis, they are denied.

13 3. The allegations in Paragraph 3 are conclusions of law to which no response is
14 required; CFS further answers that Title 7 United States Code section 136 et seq. and California
15 Code of Regulations, title 2, division 6 speak for themselves and are the best evidence of their
16 contents. To the extent that Paragraph 3 calls for material allegations, CFS generally and
17 specifically denies each and every allegation contained in Paragraph 3.

18 4. Answering the first sentence in Paragraph 4, CFS admits that numerous regulatory
19 agencies and independent scientists have evaluated glyphosate, but CFS denies that this is a
20 complete and accurate description of agencies and independent scientists that have evaluated
21 glyphosate. CFS further denies that said regulatory agencies and independent scientists have all
22 concluded that glyphosate does not present a carcinogenic risk to humans. Answering the
23 second sentence in Paragraph 4, CFS admits that the U.S. Environmental Protection Agency
24 (“EPA”), the European Commission (“EC”), the European Food Safety Authority (“EFSA”), the
25 Health Canada Pest Management Regulatory Agency (“PMRA”), and the World Health
26 Organization (“WHO”) are regulatory and scientific bodies that have evaluated glyphosate, but
27 CFS denies that this is a complete and accurate description of agencies and independent
28 scientists that have evaluated glyphosate. Except as otherwise admitted or denied herein, CFS

1 generally and specifically denies each and every allegation contained in Paragraph 4.

2 5. Answering Paragraph 5, CFS answers that Paragraph 5 calls for legal conclusions
3 and no response is required. To the extent that Paragraph 5 contains material allegations, CFS
4 admits that the Office of Environmental Health Hazard Assessment (“OEHHA”) evaluated
5 glyphosate in 1997 and 2007, but CFS denies that OEHHA reviewed all the relevant data and
6 CFS denies that OEHHA’s determination that glyphosate is “unlikely to pose a cancer hazard to
7 humans” is complete and accurate. Except as otherwise admitted or denied herein, CFS
8 generally and specifically denies each and every allegation contained in Paragraph 5.

9 6. Answering Paragraph 6, CFS answers that OEHHA’s Notice of Intent to List
10 glyphosate under Proposition 65 and California Health and Safety Code section 25249.8,
11 subdivision (a), speak for themselves and are the best evidence of their contents. To the extent
12 that Paragraph 6 calls for legal conclusions, no response is required. To the extent that
13 Paragraph 6 contains material allegations, CFS generally and specifically denies each and every
14 allegation contained in Paragraph 6.

15 7. Answering Paragraph 7, CFS answers that California Code of Regulations, title
16 27, sections 25904 and 25904, subdivision (c), speak for themselves and are the best evidence of
17 their contents. To the extent that the allegations in Paragraph 7 are conclusions of law, no
18 response is required. To the extent that Paragraph 7 contains material allegations, CSF generally
19 and specifically denies each and every allegation contained in Paragraph 7.

20 8. Answering Paragraph 8, CFS admits that OEHHA relied on a determination by
21 the International Agency for Research on Cancer (“IARC”) that glyphosate is a “probable
22 carcinogen,” but denies that OEHHA relied exclusively on IARC’s determination. To the extent
23 that Paragraph 8 contains material allegations, CFS generally and specifically denies each and
24 every allegation. To the extent that Paragraph 8 calls for legal conclusions, no response is
25 required. Except as otherwise admitted or denied herein, CFS generally and specifically denies
26 each and every allegation contained in Paragraph 8.

27 9. Answering Paragraph 9, CFS generally and specifically denies each and every
28 allegation. To the extent that the allegations in Paragraph 9 are conclusions of law, no response

1 is required.

2 10. The allegations in Paragraph 10 are conclusions of law to which no response is
3 required; to the extent that they are deemed material allegations, they are denied.

4 11. Answering Paragraph 11, CFS generally and specifically denies each and every
5 allegation. To the extent that the allegations in Paragraph 11 are conclusions of law, no response
6 is required.

7 12. Answering Paragraph 12, CFS generally and specifically denies each and every
8 allegation. To the extent that the allegations in Paragraph 12 are conclusions of law, no response
9 is required.

10 **PARTIES**

11 13. Answering the first sentence in Paragraph 13, CFS admits, on information and
12 belief, that Monsanto Company is a corporation headquartered in St. Louis, Missouri, and
13 incorporated in the State of Delaware. Answering the second sentence in Paragraph 13, CFS
14 lacks sufficient information or belief to answer the allegations contained in the second sentence
15 of Paragraph 13, and on that basis, denies each and every allegation in the second sentence of
16 Paragraph 13.

17 14. Answering Paragraph 14, CFS answers that section 25249.12 of the California
18 Health and Safety Code and California Code of Regulations, title 27, section 25102, subdivision
19 (o), speak for themselves and are the best evidence of their contents. To the extent that the
20 allegations in Paragraph 14 are conclusions of law, no response is required.

21 15. Answering Paragraph 15, CFS admits, on information and belief, that Lauren
22 Zeise, Ph.D., is the Acting Director of OEHHA and as such is its highest administrative official.
23 To the extent that the allegations in Paragraph 14 are conclusions of law, no response is required.

24 **JURISDICTION AND VENUE**

25 16. Answering Paragraph 16, CFS answers that California Code of Civil Procedure
26 sections 525, 526, 1060, and 1085, and Article VI, Section 10 of the California Constitution
27 speak for themselves and are the best evidence of their contents. To the extent that Paragraph 16
28 calls for legal conclusions, no answer is required. To the extent that Paragraph 16 contains

1 material allegations, CFS generally and specifically denies each and every allegation contained
2 in Paragraph 16.

3 17. Answering Paragraph 17, CFS answers that California Code of Civil Procedure
4 sections 395 and 401 speak for themselves and are the best evidence of their contents. To the
5 extent that Paragraph 17 calls for legal conclusions, no answer is required. To the extent that
6 Paragraph 17 contains material allegations, CFS generally and specifically denies each and every
7 allegation contained in Paragraph 17.

8 **STATUTORY AND REGULATORY BACKGROUND**

9 18. Answering the first sentence in Paragraph 18, CFS admits, on information and
10 belief, that in 1986 the California voters, by initiative, enacted the Safe Drinking Water and
11 Toxic Enforcement Act of 1986, now codified at California Health & Safety Code section
12 25249.5 et seq. (“Proposition 65”). Answering the second sentence in Paragraph 18, CFS
13 answers that California Health & Safety Code sections 25249.5 and 25249.6 speak for
14 themselves and are the best evidence of their contents. To the extent that Paragraph 18 calls for
15 legal conclusions, no answer is required.

16 19. Answering Paragraph 19, CFS answers that California Health & Safety Code
17 section 25249.8, subdivision (a), speaks for itself and is the best evidence of its contents. To the
18 extent that Paragraph 19 calls for legal conclusions, no answer is required.

19 20. Answering Paragraph 20, CFS answers that California Health & Safety Code
20 section 25249.8, subdivision (a), and Labor Code section 6382, subdivision (b)(1), speak for
21 themselves and are the best evidence of their contents. To the extent that Paragraph 20 calls for
22 legal conclusions, no answer is required. To the extent that Paragraph 20 contains material
23 allegations, CFS generally and specifically denies each and every allegation contained in
24 Paragraph 20.

25 21. Answering Paragraph 21, CFS answers that California Health & Safety Code
26 section 24249.8, subdivision (a), speaks for itself and is the best evidence of its contents. To the
27 extent that Paragraph 21 calls for legal conclusions, no answer is required. To the extent that
28 Paragraph 21 contains material allegations, CFS generally and specifically denies each and every

1 allegation contained in Paragraph 21.

2 22. Answering Paragraph 22, CFS answers that California Health & Safety Code
3 section 25249.8, subdivision (a), and California Code of Regulations, title 27, section 25904
4 speak for themselves and are the best evidence of their contents. To the extent that Paragraph 22
5 calls for legal conclusions, no answer is required. To the extent that Paragraph 22 contains
6 material allegations, CFS generally and specifically denies each and every allegation contained
7 in Paragraph 22.

8 23. Answering the first sentence in Paragraph 23, CFS answers that *California*
9 *Chamber of Commerce v. Brown* (2011) 196 Cal.App.4th. 233 speaks for itself and is the best
10 evidence of its contents. To the extent that the first sentence in Paragraph 23 calls for legal
11 conclusions, no answer is required. To the extent that the first sentence in Paragraph 23 contains
12 material allegations, CFS admits that the First District Court of Appeal upheld OEHHA's listing
13 of chemicals classified by IARC on an ongoing basis. Answering the second and third sentences
14 in Paragraph 23, CFS answers that the second and third sentences in Paragraph 23 are Plaintiff's
15 characterization of its Petition and conclusions of law to which no response is required. To the
16 extent that the second and third sentences in Paragraph 23 contain material allegations, CFS
17 generally and specifically denies each and every allegation contained in Paragraph 23. Except as
18 otherwise admitted or denied herein, CFS generally and specifically denies each and every
19 allegation in Paragraph 23.

20 24. Answering Paragraph 24, CFS answers that California Code of Regulations, title
21 27, section 25904, subdivision (b), speaks for itself and is the best evidence of its contents. To
22 the extent that Paragraph 24 calls for legal conclusions, no answer is required.

23 25. Answering Paragraph 25, CFS answers that California Code of Regulations, title
24 27, section 25904, subdivision (c), speaks for itself and is the best evidence of its contents. To
25 the extent that Paragraph 25 calls for legal conclusions, no answer is required. To the extent that
26 Paragraph 25 contains material allegations, CFS generally and specifically denies each and every
27 allegation contained in Paragraph 25.

1
2 **FACTUAL ALLEGATIONS**

3 26. Answering the first sentence in Paragraph 26, CFS admits that glyphosate is a
4 broad-spectrum herbicide that is used to control weeds in a variety of settings. Answering the
5 second sentence in Paragraph 26, CFS generally and specifically denies each and every
6 allegation contained in the second sentence of Paragraph 26. Answering the third sentence in
7 Paragraph 26, CFS lacks sufficient knowledge or information to form a belief as to the truth of
8 the allegations in the third sentence of Paragraph 26, and on that basis, they are denied. To the
9 extent that Paragraph 26 calls for legal conclusions, no answer is required. Except as otherwise
10 admitted or denied herein, CFS generally and specifically denies each and every allegation
11 contained in Paragraph 26.

12 27. Answering the first sentence in Paragraph 27, CFS lacks sufficient knowledge or
13 information to form a belief as to the truth of the allegations in the first sentence of Paragraph 27,
14 and on that basis, they are denied. Answering the second sentence in Paragraph 27, CFS
15 generally and specifically denies each and every allegation contained in the second sentence of
16 Paragraph 27. To the extent that Paragraph 27 calls for legal conclusions, no response is
17 required. Except as otherwise admitted or denied herein, CFS generally and specifically denies
18 each and every allegation contained in Paragraph 27.

19 28. Answering the first sentence in Paragraph 28, CFS admits that glyphosate-based
20 herbicides are used to control vegetation in utility right-of-ways, along roadsides and railways, in
21 aquatic environments, and in residential home and garden settings. To the extent that Paragraph
22 28 calls for legal conclusions, no response is required. Except as otherwise admitted or denied
23 herein, CFS generally and specifically denies each and every allegation contained in Paragraph
24 28.

25 29. CFS generally and specifically denies each and every allegation contained in
26 Paragraph 29. To the extent that Paragraph 29 calls for legal conclusions, no response is
27 required.

28 30. Answering the first sentence in Paragraph 30, CFS admits that municipal, county,

1 and state government agencies in California use glyphosate-based herbicides to manage
2 vegetation. Answering the second, third, and fourth sentences in Paragraph 30, CFS lacks
3 sufficient knowledge or information to form a belief as to the truth of the allegations contained in
4 the second, third, and fourth sentences of Paragraph 30, and on that basis, they are denied. To
5 the extent that the allegations in Paragraph 30 call for conclusions of law, no answer is required.
6 Except as otherwise admitted or denied herein, CFS generally and specifically denies each and
7 every allegation contained in Paragraph 30.

8 31. Answering Paragraph 31, CFS answers that OEHHA, *Public Health Goal for*
9 *Chemicals in Drinking Water: Glyphosate* (December 1997 and June 2007) speaks for itself and
10 is the best evidence of its contents. To the extent that Paragraph 31 calls for legal conclusions,
11 no answer is required. To the extent that Paragraph 31 contains material allegations, CFS admits
12 that OEHHA conducted risk assessments of glyphosate in 1997 and 2007, but CFS denies that
13 the risk assessments were complete and accurate. Except as otherwise admitted or denied herein,
14 CFS generally and specifically denies each and every allegation contained in Paragraph 31

15 32. Answering Paragraph 32, CFS answers that the 2007 OEHHA Assessment speaks
16 for itself, and is the best evidence of its contents. To the extent that Paragraph 32 calls for legal
17 conclusions, no answer is required. To the extent that Paragraph 32 contains material
18 allegations, CFS generally and specifically denies each and every allegation contained in
19 Paragraph 32.

20 33. Answering Paragraph 33, CFS lacks sufficient knowledge or information to form
21 a belief as to the truth of the allegations contained in Paragraph 33, and on that basis, they are
22 denied. To the extent that Paragraph 33 calls for conclusions of law, no response is required.

23 34. Answering Paragraph 34, CFS lacks sufficient information to form a belief as to
24 the truth of the allegations contained in Paragraph 34, and on that basis, they are denied. To the
25 extent that Paragraph 34 calls for legal conclusions, no response is required.

26 35. Answering the first sentence in Paragraph 35, CFS admits that OEHHA
27 evaluated glyphosate, but denies that its evaluation was complete and accurate. Answering the
28 second sentence in Paragraph 35, CFS admits that OEHHA reviewed several carcinogenicity

1 studies in which glyphosate was administered to experimental animals (rats and mice), but denies
2 that this review was complete and accurate. Answering the third sentence in Paragraph 35, CFS
3 generally and specifically denies each and every allegation contained in the third sentence of
4 Paragraph 35. Answering the fourth sentence in Paragraph 35, CFS answers that the 2007
5 OEHHA Assessment speaks for itself and is the best evidence of its contents. To the extent that
6 Paragraph 35 calls for legal conclusions, no answer is required. Except as otherwise admitted or
7 denied herein, CFS generally and specifically denies each and every allegation contained in
8 Paragraph 35.

9 36. Answering Paragraph 36, CFS generally and specifically denies each and every
10 allegation contained in Paragraph 36. To the extent that Paragraph 36 calls for legal conclusions,
11 no response is required.

12 37. Answering the first sentence in Paragraph 37, CFS admits that glyphosate has
13 been the subject of many toxicological, ecotoxicological, and environmental studies. Answering
14 the second sentence in Paragraph 37, CFS generally and specifically denies each and every
15 allegation contained in the second sentence of Paragraph 37. To the extent that Paragraph 37
16 calls for legal conclusions, no response is required. Except as otherwise admitted or denied
17 herein, CFS generally and specifically denies each and every allegation contained in Paragraph
18 37.

19 38. Answering Paragraph 38, CFS admits that EPA, the German Federal Institute for
20 Risk Assessment (“BfR”), EFSA, EC, PMRA, and the Joint Food and Agriculture Organization
21 of the United Nations (“FAO”) and WHO Meeting on Pesticide Residues (“JMPR”), are
22 regulatory and scientific bodies that have evaluated glyphosate, but CFS denies that this is a
23 complete and accurate description of agencies and scientific bodies that have evaluated
24 glyphosate. CFS further denies that said regulatory agencies and independent scientists have all
25 concluded that glyphosate does not present a carcinogenic risk to humans. To the extent that
26 Paragraph 38 calls for legal conclusions, no response is required. Except as otherwise admitted
27 or denied herein, CFS generally and specifically denies each and every allegation contained in
28 Paragraph 37.

1 39. Answering the first sentence in Paragraph 39, CFS admits that glyphosate was
2 first registered as an herbicide in the United States in 1974. Answering the second sentence in
3 Paragraph 39, CFS admits that EPA approved the renewal of glyphosate’s registration in 1993,
4 but denies that EPA conducted a proper review of glyphosate. Moreover, EPA review and
5 renewal were conducted in the 1990s, but EPA is currently conducting a new registration review
6 of glyphosate, which was scheduled to be completed in 2015, but has not yet been completed;
7 IARC’s finding came out in 2014. In answering the third and fourth sentences in Paragraph 39,
8 CFS answers that EPA, Registration Eligibility Decisions (RED): Glyphosate, EPA-738-F-93-
9 011 (1993) speaks for itself and is the best evidence of its contents. To the extent that Paragraph
10 39 calls for legal conclusions, no response is required. Except as otherwise admitted or denied
11 herein, CFS generally and specifically denies each and every allegation contained in Paragraph
12 39.

13 40. Answering Paragraph 40, CFS answers that the Statement of Carissa Cyran,
14 Chemical Review Manager for the U.S. EPA Office of Pesticide Programs (2015) speaks for
15 itself and is the best evidence of its contents. To the extent that Paragraph 40 calls for legal
16 conclusions, no response is required. To the extent that Paragraph 40 contains material
17 allegations, CFS generally and specifically denies each and every allegation contained in
18 Paragraph 40.

19 41. Answering Paragraph 41, CFS answers that Renewal Assessment Report and
20 Proposed Decision, Volume 1 (Revised Jan.29, 2015) speaks for itself and is the best evidence of
21 its contents. To the extent that Paragraph 41 calls for legal conclusions, no response is required.
22 To the extent that Paragraph 41 contains material allegations, CFS generally and specifically
23 denies each and every allegation contained in Paragraph 41.

24 42. Answering Paragraph 42, CFS answers that BfR, *Does Glyphosate Cause*
25 *Cancer?* BfR communication N. 007/2015 (March 2015) speaks for itself and is the best
26 evidence of its contents. To the extent that Paragraph 42 calls for legal conclusions, no answer is
27 required. To the extent that Paragraph 42 contains material allegations, CFS generally and
28 specifically denies each and every allegation contained in Paragraph 42.

1 43. Answering Paragraph 43, CFS answers that BfR, *Does Glyphosate Cause*
2 *Cancer?* BfR Communication No. 007/2015 (March 2015) speaks for itself and is the best
3 evidence of its contents. To the extent that Paragraph 43 calls for legal conclusions, no answer is
4 required. To the extent that Paragraph 43 contains material allegations, CFS generally and
5 specifically denies each and every allegation contained in Paragraph 43.

6 44. Answering Paragraph 44, CFS answers that EFSA, *Conclusions on the Peer*
7 *Review of the Pesticide Risk Assessment of the Active Substance Glyphosate* (November 12,
8 2015) speaks for itself and is the best evidence of its contents. To the extent that Paragraph 44
9 calls for legal conclusions, no response is required. To the extent that Paragraph 44 contains
10 material allegations, CFS generally and specifically denies each and every allegation contained
11 in Paragraph 44.

12 45. Answering Paragraph 45, CFS answers that EFSA, *Conclusions on the Peer*
13 *Review of the Pesticide Risk Assessment of the Active Substance Glyphosate* (November 12,
14 2015) speaks for itself and is the best evidence of its contents. To the extent that Paragraph 45
15 calls for legal conclusions, no response is required. To the extent that Paragraph 45 contains
16 material allegations, CFS generally and specifically denies each and every allegation contained
17 in Paragraph 45.

18 46. Answering Paragraph 46, CFS answers that EC, Report for the Active Substance
19 Glyphosate, Directive 6511/VI/99 (January 2002) speaks for itself and is the best evidence of its
20 contents. To the extent that Paragraph 46 calls for legal conclusions, no response is required. To
21 the extent that Paragraph 46 contains material allegations, CFS generally and specifically denies
22 each and every allegation contained in Paragraph 46.

23 47. Answering Paragraph 47, CFS answers that PMRA, Proposed Re-Evaluation
24 Decision, PRVD2015-01, Glyphosate (April 2015) speaks for itself and is the best evidence of its
25 contents. To the extent that Paragraph 47 calls for legal conclusions, no response is required. To
26 the extent that Paragraph 47 contains material allegations, CFS generally and specifically denies
27 each and every allegation contained in Paragraph 47.

28 48. Answering Paragraph 48, CFS answers that WHO/FAO, Pesticide Residues in

1 Food–2004, Part II: Toxicological (2004) speaks for itself and is the best evidence of its
2 contents. To the extent that Paragraph 48 calls for legal conclusions, no response is required. To
3 the extent that Paragraph 48 contains material allegations, CFS generally and specifically denies
4 each and every allegation contained in Paragraph 48.

5 49. Answering the first sentence in Paragraph 49, CFS admits that IARC is a
6 specialized agency of WHO that is based in Lyon, France. Answering the second sentence in
7 Paragraph 49, CFS answers that IARC Monographs on the Evaluation of Carcinogenic Risks to
8 Humans: Preamble (2006) (“IARC Preamble”) speaks for itself and is the best evidence of its
9 contents. To the extent that Paragraph 49 calls for conclusions of law, no response is required.
10 Except as otherwise admitted or denied herein, CFS generally and specifically denies each and
11 every allegation contained in Paragraph 49.

12 50. Answering the first sentence in Paragraph 50, CFS generally and specifically
13 denies each and every allegation contained in the first sentence of Paragraph 50. Answering the
14 second sentence in Paragraph 50, CFS admits IARC convenes a separate Working Group that is
15 responsible for developing each volume of *Monographs*; a volume contains one or more
16 *Monographs*, which can cover either a single agent or several related agents, and IARC defines
17 agent broadly to encompass biological organisms (e.g. viral infections), behavioral practices (e.g.
18 tobacco smoking), occupational exposures (e.g. as firefighter), physical agents (e.g. surgical
19 implants), and foods or components of food (e.g. coffee and caffeine). To the extent that
20 Paragraph 50 calls for legal conclusions, no response is required. Except as otherwise admitted
21 or denied herein, CFS generally and specifically denies each and every allegation contained in
22 Paragraph 50.

23 51. Answering the first sentence in Paragraph 51, CFS admits only that IARC selects
24 the members of each Working Group, but denies that the selection process is entirely
25 discretionary; for example, IARC staff select Working Group members based on knowledge and
26 experience and absence of real or apparent conflicts of interest, but consideration is also given to
27 balance of scientific findings and views as well as demographic diversity. Furthermore,
28 meetings may also be attended by invited specialists and observers who have critical knowledge

1 or experience but also have a real or apparent conflict of interest; invited specialists and
2 observers provide information during discussions and includes observers from national and
3 international health agencies, companies whose products are being assessed, and trade groups
4 that represent those companies. Answering the second sentence in Paragraph 51, CFS answers
5 that the guidelines issued by the WHO in 2004 speak for itself and is the best evidence of its
6 contents. Answering the third sentence in Paragraph 51, CFS generally and specifically denies
7 each and every allegation contained in the third sentence of Paragraph 51. To the extent that
8 Paragraph 51 calls for legal conclusions, no response is required. Except as otherwise admitted
9 or denied herein, CFS generally and specifically denies each and every allegation contained in
10 Paragraph 51.

11 52. Answering Paragraph 52, CFS answers that the IARC Preamble speaks for itself
12 and is the best evidence of its contents. To the extent that Paragraph 52 calls for legal
13 conclusions, no response is required. To the extent that Paragraph 52 contains material
14 allegations, CFS generally and specifically denies each and every allegation contained in
15 Paragraph 52.

16 53. Answering Paragraph 53, CFS answers that the IARC preamble speaks for itself
17 and is the best evidence of its contents. To the extent that Paragraph 53 calls for legal
18 conclusions, no response is required. To the extent that Paragraph 53 contains material
19 allegations, CFS generally and specifically denies each and every allegation.

20 54. Answering the first and second sentences in Paragraph 54, CFS answers that the
21 first and second sentences in Paragraph 54 call for conclusions of law and no response is
22 required. Answering the third sentence in Paragraph 54, CFS answers that it calls for legal
23 conclusions and no response is required. To the extent that the third sentence in Paragraph 54
24 contains material allegations, CFS generally and specifically denies each and every allegation
25 contained in the third sentence of Paragraph 54. Except as otherwise admitted or denied herein,
26 CFS generally specifically and denies each and every allegation contained in Paragraph 54.

27 55. Answering the first sentence in Paragraph 55, CFS answers that the first sentence
28 in Paragraph 55 calls for legal conclusions and no response is required. To the extent that the

1 first sentence in Paragraph 55 contains material allegations, CFS generally and specifically
2 denies each and every allegation contained in the first sentence of Paragraph 55. Answering the
3 second, third, and fourth sentences in Paragraph 55, CFS answers that the IARC preamble speaks
4 for itself and is the best evidence of its contents. To the extent that the second, third, and fourth
5 sentences in Paragraph 55 call for conclusions of law, no response is required. Except as
6 otherwise admitted or denied herein, CFS generally and specifically denies each and every
7 allegation contained in Paragraph 55.

8 56. Answering Paragraph 56, CFS answers that Volume 112 of IARC's *Monographs*
9 series speaks for itself and is the best evidence of its contents. To the extent that Paragraph 56
10 calls for legal conclusions, no response is required. To the extent that Paragraph 56 contains
11 material allegations, CFS admits that IARC convened a Working Group of seventeen scientists
12 to assess the carcinogenicity of glyphosate and four insecticides and the IARC Working Group
13 classified glyphosate as "probably carcinogenic to humans."

14 57. Answering Paragraph 57, CFS answers that Paragraph 57 calls for legal
15 conclusions, and no response is required. To the extent that Paragraph 57 contains material
16 allegations, CFS generally and specifically denies each and every allegation contained in
17 Paragraph 57.

18 58. Answering Paragraph 58, CFS answers that IARC Monograph Volume 112
19 speaks for itself and is the best evidence of its contents. To the extent that Paragraph 58 calls for
20 legal conclusions, no response is required.

21 59. Answering Paragraph 59, CFS answers that Paragraph 59 calls for legal
22 conclusions and no response is required. To the extent that Paragraph 59 contains material
23 allegations, CFS admits that OEHHA evaluated glyphosate, but CFS denies that OEHHA
24 reviewed all the relevant data and CFS denies that OEHHA's determination that glyphosate is
25 "unlikely to pose a cancer hazard to humans" is complete and accurate. Except as otherwise
26 admitted or denied herein, CFS generally and specifically denies each and every allegation
27 contained in Paragraph 59.

28 60. Answering Paragraph 60, CFS admits that other regulatory and scientific bodies

1 have evaluated one or more of these same long-term carcinogenicity studies in rodents, but CFS
2 denies that this is a complete and accurate description of the evaluations conducted by these
3 regulatory and scientific bodies; CFS also denies that this is a complete and accurate description
4 of the regulatory and scientific bodies that have evaluated the carcinogenicity of glyphosate. To
5 the extent that Paragraph 60 calls for conclusions of law, no response is required. Except as
6 otherwise admitted or denied herein, CFS generally and specifically denies each and every
7 allegation contained in Paragraph 60.

8 61. Answering Paragraph 61, CFS admits that on September 4, 2015, OEHHA
9 published a Notice of Intent to List glyphosate pursuant to the Labor Code listing mechanism.
10 To the extent that Paragraph 61 calls for legal conclusions, no response is required.

11 62. Answering Paragraph 62, CFS answers that OEHHA's published Notice of Intent
12 to list glyphosate and California Code of Regulations, title 27, section 25904, subdivision (b),
13 speak for themselves and are the best evidence of their contents. To the extent that Paragraph 62
14 calls for legal conclusions, no response is required.

15 63. Answering Paragraph 63, CFS answers that OEHHA's published Notice of Intent
16 to list glyphosate and California Code of Regulations, title 27, section 25904, subdivision (b),
17 speak for themselves and are the best evidence of their contents. To the extent that Paragraph 63
18 calls for conclusions of law, no response is required. To the extent that Paragraph 63 contains
19 material allegations, CFS generally and specifically denies each and every allegation contained
20 in Paragraph 63.

21 64. The allegations in Paragraph 64 are conclusions of law to which no response is
22 required; to the extent they may be deemed to be material allegations, they are denied.

23 65. The allegations in Paragraph 65 are conclusions of law to which no response is
24 required; to the extent they may be deemed to be material allegations, they are denied.

25 66. The allegations in Paragraph 66 are conclusions of law to which no response is
26 required; to the extent they may be deemed to be material allegations, they are denied.

27 67. Answering Paragraph 67, CFS answers that California Health & Safety Code
28 sections 25249.5 and 25249.6 speak for themselves and are the best evidence of their contents.

1 CFS further answers that the allegations in Paragraph 67 are conclusions of law to which no
2 response is required; to the extent they may be deemed to be material allegations, they are
3 denied.

4 68. The allegations in Paragraph 68 are conclusions of law to which no response is
5 required; to the extent they may be deemed to be material allegations, they are denied.

6 69. The allegations in Paragraph 69 are conclusions of law to which no response is
7 required; to the extent they may be deemed to be material allegations, they are denied.

8 70. The allegations in Paragraph 70 are conclusions of law to which no response is
9 required; to the extent they may be deemed to be material allegations, they are denied.

10 71. The allegations in Paragraph 71 are conclusions of law to which no response is
11 required; to the extent they may be deemed to be material allegations, they are denied.

12 72. The allegations in the first sentence in Paragraph 72 are conclusions of law to
13 which no response is required; to the extent they may be deemed to be material allegations, they
14 are denied. Answering the second sentence in Paragraph 72, CFS admits that OEHHA has
15 described the Labor Code listings as “ministerial;” to the extent that the second sentence in
16 Paragraph 72 calls for conclusions of law, no response is required. Except as otherwise admitted
17 or denied herein, CFS generally and specifically denies each and every allegation contained in
18 Paragraph 72.

19 73. The allegations in Paragraph 73 are conclusions of law to which no response is
20 required; to the extent they may be deemed to be material allegations, they are denied.

21 74. The allegations in Paragraph 74 are conclusions of law to which no response is
22 required; to the extent they may be deemed to be material allegations, they are denied.

23 75. The allegations in Paragraph 75 are conclusions of law to which no response is
24 required; to the extent they may be deemed to be material allegations, they are denied.

25 76. Answering Paragraph 76, CFS answers that the California and United States
26 Constitutions speak for themselves and are the best evidence of their contents. CFS further
27 answers that the allegations in Paragraph 76 are conclusions of law to which no response is
28 required; to the extent they may be deemed to be material allegations, they are denied.

1 77. Answering the first sentence in Paragraph 77, CFS admits that Monsanto is a
2 leading manufacturer of glyphosate, which is the active ingredient in its Roundup line of
3 products. The allegations contained in the second and third sentences in Paragraph 77 are
4 conclusions of law to which no response is required; to the extent they may be deemed to be
5 material allegations, they are denied. Except as otherwise admitted or denied herein, CFS
6 generally and specifically denies each and every allegation contained in Paragraph 77.

7 78. The allegations in Paragraph 78 are conclusions of law to which no response is
8 required; to the extent they may be deemed to be material allegations, they are denied.

9 79. The allegations in Paragraph 79 are conclusions of law to which no response is
10 required; to the extent they may be deemed to be material allegations, they are denied.

11 80. Answering Paragraph 80, CFS admits only that IARC selects the members of
12 each Working Group, but denies that the selection process is entirely discretionary or chosen in a
13 non-transparent manner; for example, IARC staff select Working Group members based on
14 knowledge and experience and absence of real or apparent conflicts of interest, but consideration
15 is also given to balance of scientific findings and views as well as demographic diversity.
16 Furthermore, meetings may also be attended by invited specialists and observers who have
17 critical knowledge or experience but also have a real or apparent conflict of interest; invited
18 specialists and observers provide information during discussions and includes observers from
19 national and international health agencies, companies whose products are being assessed, and
20 trade groups that represent those companies. Except as otherwise admitted or denied herein,
21 CFS generally and specifically denies all other allegations contained in Paragraph 80. To the
22 extent that Paragraph 80 calls for legal conclusions, no response is required.

23 81. The allegations in Paragraph 81 are conclusions of law to which no response is
24 required; to the extent they may be deemed to be material allegations, they are denied.

25 82. The allegations in Paragraph 82 are conclusions of law to which no response is
26 required; to the extent they may be deemed to be material allegations, they are denied.

27 83. Answering Paragraph 83, CFS admits that OEHHA has described the Labor Code
28 listings as “ministerial.” Except as otherwise admitted or denied herein, CFS generally and

1 specifically denies all other allegations contained in Paragraph 83. To the extent that Paragraph
2 80 calls for legal conclusions, no response is required.

3 84. The allegations in Paragraph 84 are conclusions of law to which no response is
4 required; to the extent they may be deemed to be material allegations, they are denied.

5 85. The allegations in Paragraph 85 are conclusions of law to which no response is
6 required; to the extent they may be deemed to be material allegations, they are denied.

7 86. The allegations in Paragraph 86 are conclusions of law to which no response is
8 required; to the extent they may be deemed to be material allegations, they are denied.

9 87. Answering Paragraph 87, CFS answers that Article II, Section 12 of the California
10 Constitution speaks for itself and is the best evidence of its contents. CFS further answers that
11 the allegations in Paragraph 87 are conclusions of law to which no response is required; to the
12 extent they may be deemed to be material allegations, they are denied.

13 88. Answering Paragraph 88, CFS admits, on information and belief, that Proposition
14 65, including the Labor Code listing mechanism, is a statute proposed to the electors by
15 initiative. To the extent that Paragraph 88 calls for legal conclusions, no response is required.

16 89. The allegations in Paragraph 89 are conclusions of law to which no response is
17 required; to the extent they may be deemed to be material allegations, they are denied.

18 90. The allegations in Paragraph 90 are conclusions of law to which no response is
19 required; to the extent they may be deemed to be material allegations, they are denied.

20 91. The allegations in Paragraph 91 are conclusions of law to which no response is
21 required; to the extent they may be deemed to be material allegations, they are denied.

22 92. Answering Paragraph 92, CFS answers that the Guarantee Clause (Article IV,
23 Section 4, Clause 1) of the United States Constitution speaks for itself and is the best evidence of
24 its contents. CFS further answers that the allegations in Paragraph 92 are conclusions of law to
25 which no response is required; to the extent they may be deemed to be material allegations, they
26 are denied.

27 93. The allegations in Paragraph 93 are conclusions of law to which no response is
28 required; to the extent they may be deemed to be material allegations, they are denied.

1 94. The allegations in Paragraph 94 are conclusions of law to which no response is
2 required; to the extent they may be deemed to be material allegations, they are denied.

3 95. Answering Paragraph 95, CFS answers that Article 4, Section 1 of the California
4 Constitution speaks for itself and is the best evidence of its contents. CFS further answers that
5 the allegations in Paragraph 95 are conclusions of law to which no response is required; to the
6 extent they may be deemed to be material allegations, they are denied.

7 96. The allegations in Paragraph 96 are conclusions of law to which no response is
8 required; to the extent they may be deemed to be material allegations, they are denied.

9 97. The allegations in Paragraph 97 are conclusions of law to which no response is
10 required; to the extent they may be deemed to be material allegations, they are denied.

11 98. Answering Paragraph 98, CFS answers that Article I, Section 2 of the California
12 Constitution and the First Amendment to the United States Constitution speak for themselves
13 and are the best evidence of their contents. CFS further answers that the allegations in Paragraph
14 98 are conclusions of law to which no response is required; to the extent they may be deemed to
15 be material allegations, they are denied.

16 99. Answering Paragraph 99, CFS answers that California Code of Regulations, title
17 27, section 25601 speaks for itself and is the best evidence of its contents. CFS further answers
18 that the allegations in Paragraph 99 are conclusions of law to which no response is required; to
19 the extent they may be deemed to be material allegations, they are denied.

20 100. Answering the first sentence in Paragraph 100, CFS admits that OEHHA
21 evaluated glyphosate in 1997 and again in 2007, but CFS denies that OEHHA reviewed all the
22 relevant data and CFS denies that OEHHA'S determination that glyphosate is "unlikely to pose a
23 cancer hazard to humans" is complete and accurate. Answering the second sentence in
24 Paragraph 100, CFS answers that the second sentence in Paragraph 100 calls for conclusions of
25 law and no response is required. To the extent that the second sentence in Paragraph 100
26 contains material allegations, CFS generally and specifically denies each and every allegation
27 contained in the second sentence of Paragraph 100. Except as otherwise admitted or denied
28 herein, CFS generally and specifically denies each and every allegation contained in Paragraph

1 100.

2 101. The allegations in Paragraph 101 are conclusions of law to which no response is
3 required; to the extent they may be deemed to be material allegations, they are denied.

4 102. The allegations in Paragraph 102 are conclusions of law to which no response is
5 required; to the extent they may be deemed to be material allegations, they are denied.

6 103. The allegations in Paragraph 103 are conclusions of law to which no response is
7 required; to the extent they may be deemed to be material allegations, they are denied.

8 104. The allegations in Paragraph 104 are conclusions of law to which no response is
9 required; to the extent they may be deemed to be material allegations, they are denied.

10 105. Answering Paragraph 105, CFS generally and specifically denies each and every
11 allegation contained in Paragraph 105. To the extent that Paragraph 105 calls for legal
12 conclusions, no response is required.

13 106. Answering Paragraph 106, CFS generally and specifically denies each and every
14 allegation contained in Paragraph 106. To the extent that Paragraph 106 calls for legal
15 conclusions, no response is required.

16 107. Answering Paragraph 107, CFS generally and specifically denies each and every
17 allegation contained in Paragraph 107. To the extent that Paragraph 107 calls for legal
18 conclusions, no response is required.

19 108. Answering Paragraph 108, CFS generally and specifically denies each and every
20 allegation contained in Paragraph 108. To the extent that Paragraph 108 calls for legal
21 conclusions, no response is required.

22 109. Answering Paragraph 109, CFS generally and specifically denies each and every
23 allegation contained in Paragraph 109. To the extent that Paragraph 109 calls for legal
24 conclusions, no response is required.

25 110. Answering Paragraph 110, CFS generally and specifically denies each and every
26 allegation contained in Paragraph 110. To the extent that Paragraph 110 calls for legal
27 conclusions, no response is required.

28 111. Answering Paragraph 111, CFS generally and specifically denies each and every

1 allegation contained in Paragraph 111. To the extent that Paragraph 111 calls for legal
2 conclusions, no response is required.

3
4 **FIRST CAUSE OF ACTION**

5 112. Answering Paragraph 112, CFS realleges and incorporates each and every answer
6 in Paragraphs 1 through 111, inclusive, to the same extent Petitioner has incorporated those
7 paragraphs into this cause of action.

8 113. Answering Paragraph 113, CFS generally and specifically denies each and every
9 allegation contained in Paragraph 113. CFS further answers that the California and United States
10 Constitutions speak for themselves and are the best evidence of their contents. To the extent that
11 Paragraph 113 calls for conclusions of law, no response is required.

12 114. Answering Paragraph 114, CFS generally and specifically denies each and every
13 allegation contained in Paragraph 114. CFS further answers that the California and United States
14 Constitutions speak for themselves and are the best evidence of their contents. To the extent that
15 Paragraph 114 calls for conclusions of law, no response is required.

16 115. Answering Paragraph 115, CFS generally and specifically denies each and every
17 allegation contained in Paragraph 115. CFS further answers that the California and United States
18 Constitutions speak for themselves and are the best evidence of their contents. To the extent that
19 Paragraph 115 calls for conclusions of law, no response is required.

20 116. Answering Paragraph 116, CFS generally and specifically denies each and every
21 allegation contained in Paragraph 116. To the extent that Paragraph 116 calls for conclusions of
22 law, no response is required.

23 117. Answering Paragraph 117, CFS generally and specifically denies each and every
24 allegation contained in Paragraph 117. CFS further answers that section 1085 of the Code of
25 Civil Procedure speaks for itself and is the best evidence of its contents. To the extent that
26 Paragraph 117 calls for conclusions of law, no response is required.

27 **SECOND CAUSE OF ACTION**

28 118. Answering Paragraph 118, CFS realleges and incorporates each and every answer

1 in Paragraphs 1 through 117, inclusive, to the same extent Petitioner has incorporated those
2 paragraphs into this cause of action.

3 119. Answering Paragraph 119, CFS generally and specifically denies each and every
4 allegation contained in Paragraph 119. To the extent that Paragraph 119 calls for conclusions of
5 law, no response is required.

6 120. Answering Paragraph 120, CFS generally and specifically denies each and every
7 allegation contained in Paragraph 120. CFS further answers that the California and United States
8 Constitutions speak for themselves and are the best evidence of their contents. To the extent that
9 Paragraph 120 calls for conclusions of law, no response is required.

10 121. Answering Paragraph 121, CFS generally and specifically denies each and every
11 allegation contained in Paragraph 121. To the extent that Paragraph 121 calls for conclusions of
12 law, no response is required.

13 122. Answering Paragraph 122, CFS generally and specifically denies each and every
14 allegation contained in Paragraph 122. To the extent that Paragraph 122 calls for conclusions of
15 law, no response is required.

16 123. Answering Paragraph 123, CFS generally and specifically denies each and every
17 allegation contained in Paragraph 123. CFS further answers that section 1060 of the Code of
18 Civil Procedure speaks for itself and is the best evidence of its contents. To the extent that
19 Paragraph 123 calls for conclusions of law, no response is required.

20 **THIRD CAUSE OF ACTION**

21 124. Answering Paragraph 124, CFS realleges and incorporates each and every answer
22 in Paragraphs 1 through 123, inclusive, to the same extent Petitioner has incorporated those
23 paragraphs into this cause of action.

24 125. Answering Paragraph 125, CFS generally and specifically denies each and every
25 allegation contained in Paragraph 125. To the extent that Paragraph 125 calls for conclusions of
26 law, no response is required.

27 126. Answering Paragraph 126, CFS generally and specifically denies each and every
28 allegation contained in Paragraph 126. To the extent that Paragraph 126 calls for conclusions of

1 law, no response is required.

2 127. Answering Paragraph 127, CFS generally and specifically denies each and every
3 allegation contained in Paragraph 127. To the extent that Paragraph 127 calls for conclusions of
4 law, no response is required.

5 128. Answering Paragraph 128, CFS generally and specifically denies each and every
6 allegation contained in Paragraph 128. CFS further answers that sections 3420 and 3422 of the
7 California Civil Code and sections 526, subdivisions (a)(1), (4), & (5), and/or (b)(4), of the Code
8 of Civil Procedure speak for themselves and are the best evidence of their contents. To the
9 extent that Paragraph 128 calls for conclusions of law, no response is required.

10 **PRAYER FOR RELIEF**


11 WHEREFORE, CFS prays as follows:

- 12 1. That Petitioner takes nothing by its Petition
- 13 2. That the Petition be dismissed in its entirety or that the Petition and each of its
14 causes of action be dismissed or denied;
- 15 3. That Petitioner's requests for relief, including a peremptory writ, judicial
16 declaration, and preliminary and permanent injunction, be denied;
- 17 4. That Petitioner's request for attorneys' fees and costs be denied;
- 18 5. That CFS be awarded for attorneys' fees, expenses, and costs of suit incurred as
19 allowed by law; and
- 20 6. For any and all other relief the Court may deem just and proper.

21
22 Date: March 2, 2016

Respectfully submitted,

23 CENTER FOR FOOD SAFETY

24
25
26 By 

27 Adam Keats
28 Counsel for Defendant-Intervenor Applicant
[Faxed Signature]

Exhibit B

1 ADAM KEATS (CSB No. 191157)
2 SYLVIA SHIH-YAU WU (CSB No. 273549)
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7 *Counsel for Defendant-Intervenor Applicant*

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF FRESNO**

10 MONSANTO COMPANY,) Case No. 16 CE CG 00183
11)
11 *Plaintiff,*)
12) **DECLARATION OF DOUG**
12 v.) **GURIAN-SHERMAN**
13)
13 OFFICE OF ENVIRONMENTAL HEALTH)
14 HAZARD ASSESSMENT, *et al.*,)
15)
15 *Defendants,*)
16)
16 and)
17)
17 CENTER FOR FOOD SAFETY,)
18)
18 *Defendant-Intervenor*)
19 *Applicant.*)
20)

1 **DECLARATION OF DOUGH GURIAN-SHERMAN**

2 I, Doug Gurian-Sherman, declare that if called as a witness in this action I would
3 competently testify of my own personal knowledge as follows:

4 1. I am the Director of Sustainable Agriculture and Senior Scientist at Center for
5 Food Safety (“CFS”). I previously served as Senior Scientist for CFS from 2004-2006. CFS is a
6 tax-exempt, nonprofit membership organization; its purpose and goals are to address the
7 environmental, health, and economic impacts of agriculture and food processing technologies,
8 including pesticides and genetically modified food. As the Director of Sustainable Agriculture, I
9 oversee and run CFS’s emerging agro-ecology program, which is intended to analyze and
10 promote sustainable farming and agricultural alternatives to the prevalent system of industrial
11 agriculture. As Senior Scientist, my responsibility is to ensure that the scientific analysis used by
12 CFS is accurate and sound. I communicate with media; research and write reports and papers
13 about agricultural science and technology; write regulatory comments; and assist with legal work
14 to make sure the science is of the highest quality. In both capacities, as Director of Sustainable
15 Agriculture as well as Senior Scientist, I do analysis of pesticides and herbicides. I specifically
16 analyze the effect of pesticides and herbicides on the environment and human health, particularly
17 in regards to plants that are genetically engineered to be resistant to herbicides, such as
18 glyphosate-resistant crops. I also work on CFS’s pollinator project, where I am heavily involved
19 in analyzing pesticides such as neonicotinoids and other insecticides that harm invertebrates. In
20 regards to agro-ecology, my main function regarding pesticides is to evaluate their benefits and
21 compare those benefits to non-pesticide, ecologically-sound alternatives.

22 2. Prior to my current position at CFS, I was the Senior Scientist for the Food and
23 Environment Program of the Union for Concerned Scientists (“UCS”). UCS is a nonprofit
24 partnership consisting of scientists and citizens combining rigorous scientific analysis,
25 innovative policy development, and effective citizen advocacy to achieve practical
26 environmental solutions. Previously, I was founding Co-Director and Science Director for the
27 biotechnology project at the Center for Science in the Public Interest (“CSPI”). I went to CSPI
28 from the U.S. Environmental Protection Agency (“EPA”), where I was responsible for assessing

1 human health and environmental risks from transgenic plants and microorganisms and
2 developing biotechnology policy. Before joining the EPA, I worked in the Biotechnology Group
3 at the U.S. Patent and Trademark Office, and served on the United States Food and Drug
4 Administration (“FDA”)’s inaugural Food Biotechnology Subcommittee of the Food Advisory
5 Committee.

6 3. I obtained my bachelor of science degree from the University of Michigan School
7 of Natural Resources and master's and doctorate degrees in plant pathology from the University
8 of California at Berkeley. After obtaining my doctorate, I conducted post-doctoral research on
9 rice and wheat molecular biology with the U.S. Department of Agriculture (“USDA”). I am the
10 author of numerous papers and reports on agricultural biotechnology and I have frequently
11 advised and testified before government agencies regulating genetically engineered crops.

12 4. I have previously made declarations as a qualified expert concerning the
13 development of weed resistance to the herbicide glyphosate, and the likelihood that genetically
14 engineered crops resistant to glyphosate can contaminate non-genetically engineered varieties of
15 the same crop. (*See International Center for Technology Assessment v. Johanns*, (D.D.C. 2007)
16 473 F.Supp. 2d 9; *see also Center for Food Safety v. Vilsack* (N.D. Cal. 2010) 734 F.Supp.2d
17 948; *see also Geertson Seed Farms v. Monsanto* (9th Cir. 2009) 570 F.3d 1130.) I have written
18 on the subject of glyphosate-resistant weeds, and my department at EPA was responsible for
19 regulating resistance issues for GE insect-resistant crops.

20 5. The resistance of weeds to herbicides (such as glyphosate), i.e. the acquired
21 immunity of certain weeds to the otherwise lethal effects of the herbicide, is a substantial
22 problem for farmers. Weeds become resistant because rare individual weed plants contain one or
23 several genes that allow them to survive application of the herbicide. The subsequent repeated
24 use of the herbicide amplifies, or selects, these rare individuals because they are not effectively
25 controlled and competition from herbicide susceptible weeds has been eliminated. Therefore,
26 after several years, these resistant weeds can become widespread and cause large losses for
27 farmers, or force them to apply more herbicide, including other types of herbicides that still
28 work. Weeds resistant to glyphosate-based herbicides like Roundup have developed in the past

1 fifteen years due to the use of Roundup on Roundup resistant crops, and have become a big
2 problem (glyphosate is the generic name of the herbicidal chemical in Roundup and related
3 herbicides).

4 6. The advent of Roundup Ready crops substantially increases the likelihood that
5 glyphosate-resistant weeds will develop. Although the general mechanisms of resistance are the
6 same as resistance to other herbicides—the selective survival of rare resistance genes that
7 naturally occur in the weed population—the nature and extent of Roundup Ready crops increases
8 the development of resistant weeds substantially. In particular, the unprecedented extent of the
9 use of a single herbicide (glyphosate), made possible by herbicide-resistant crops, greatly
10 amplifies the evolutionary forces that result in herbicide resistance and the spread of resistant
11 weeds compared to herbicide use prior to GE herbicide-resistant crops. For example, some crops
12 are naturally resistant to some herbicides; corn is tolerant to 2,4-D or similar herbicides. With
13 the advent of genetic engineering, such herbicide resistance (often obtained from microbes rather
14 than plants) can be engineered into plants, as is the case with several of our most widely planted
15 crops, such as corn, soybeans, and cotton, all of which have been genetically engineered to be
16 resistant to the herbicide glyphosate—which is widely used.

17 7. Glyphosate herbicides are now the most widely used in the world—due to
18 Roundup Ready crops—and this tremendous selection pressure very strongly favors resistant
19 weeds. This has substantially increased both the number of glyphosate-resistant weeds, and their
20 geographic extent. The vast acreage under Roundup Ready crop cultivation also encourages the
21 more rapid spread of resistant varieties of weeds, because they are selected, or favored, in an
22 extensive geographic area.

23 8. Glyphosate is a broad-spectrum herbicide, meaning it kills a wide range of green
24 vegetation, and is less costly in the short term than many other herbicides. For this reason,
25 glyphosate has become a very popular herbicide. As more crops are genetically engineered to be
26 Roundup Ready, glyphosate use increases and resistance in weeds increases. The result is an
27 increasing risk that glyphosate is becoming less easy to use and less effective, and farmers use
28 more of the herbicide, or more costly and sometimes more toxic alternative herbicides.

1 9. Glyphosate was first registered as a broad spectrum herbicide by the EPA in the
2 1970s. I first became aware of glyphosate in the early- to mid-1980s, and my work studying
3 glyphosate and its connection to genetically modified crops started picking up in the early 2000s
4 when I was made aware that weeds were becoming resistant to glyphosate in connection to
5 herbicide-resistant crops. As weeds became resistant to glyphosate, farmers started increasing
6 the amount of glyphosate used, which further exacerbated the problem. The increased use of
7 glyphosate-based herbicides with glyphosate-resistant crops has substantial environmental
8 impacts, including reduced biodiversity, the loss of milkweed (a plant that the Monarch butterfly
9 relies on, which has caused a steady decline in Monarch butterfly populations), and potential
10 impacts to water and aquatic life, such as amphibians. By the early 2000s, I had become aware
11 of the potential health impacts involved with glyphosate based on peer-reviewed
12 epidemiologically studies that were circulating.

13 10. My colleagues at CFS and I have done substantial work related to regulation of
14 glyphosate. I believe that glyphosate may have a role in agriculture, but it needs to be
15 dramatically reduced and used much more selectively. I have contributed to the regulation of
16 glyphosate by commenting on federal regulatory decisions, writing blogs, and past expert
17 declarations in cases related to the deregulation of glyphosate-resistant crops, such as
18 glyphosate-resistant bentgrass, alfalfa, and sugar beets. I wrote comments on behalf of CFS
19 analyzing the increased use of glyphosate on glyphosate-resistant crops regarding
20 glyphosate-resistant bentgrass, alfalfa, and sugar beets. In the comments, I evaluated both
21 environmental and possible health impacts with the use of glyphosate and glyphosate-resistant
22 crops, as well as weeds becoming more resistant to glyphosate. I am the coauthor of a recent fact
23 sheet regarding the probable carcinogenic effects of glyphosate titled “Glyphosate and Cancer
24 Risk: Frequently Asked Questions.” CFS has also raised issues concerning the carcinogenic
25 effects of glyphosate in comments to the EPA in 2009 regarding EPA’s registration review of
26 glyphosate.

27 11. My main concern regarding the health impacts of glyphosate is that it is a
28 probable carcinogen. Prior to the International Agency for Research on Cancer (“IARC”)’s

1 determination that glyphosate was a probable carcinogen; there were already epidemiological
2 studies in the 1990s indicating that glyphosate may be a carcinogen. IARC then made the most
3 compelling case for the reasonable probability that glyphosate is a carcinogen, and I think
4 IARC's assessment is accurate.

5 12. It is important to understand the difference between IARC's assessment and other
6 regulatory agency's assessments, such as the EPA. I am keenly familiar with both assessments,
7 particularly because I worked for the EPA doing risk assessments. IARC conducts a hazard
8 assessment, whereas the EPA conducts a risk assessment. In a risk assessment, EPA uses
9 toxicological tests submitted by manufacturers seeking registration of a pesticide to determine
10 what quantity below a certain level of exposure would not cause cancer or other harm. In other
11 words, EPA determines what level of exposure would cause cancer, and then mandates a use that
12 is below that level. IARC, on the other hand, does not quantify what level below a certain
13 amount of exposure causes cancer; its role is simply to determine whether a chemical is a
14 carcinogen. In order to make its hazard assessment, IARC looks at all peer-reviewed data on the
15 subject, and determines what the best available data is. IARC's analysis included the use of
16 epidemiological studies, which evaluated the effect of glyphosate on farmers and farmworkers.
17 The data showed that at actual levels of exposure to glyphosate, there is a high prevalence of
18 non-Hodgkin lymphoma and other rare kidney cancers.

19 13. IARC is a highly qualified and independent agency that conducts its own
20 assessments of available science, which the scientific community holds in high regard. It would
21 be scientifically unreasonable to dismiss or devalue IARC's assessment. The criticism of IARC
22 is that it is not a full risk assessment because it does not analyze the quantity of glyphosate below
23 a certain level that does not cause cancer; however, IARC analyzed actual human exposure to
24 glyphosate and found that it is probably a carcinogen. For this reason, IARC's assessment is
25 likely more reliable than the EPA's. IARC looks at all peer-reviewed science, which is basically
26 the gold standard for scientific analysis, including epidemiological studies. EPA, on the other
27 hand, rejects certain peer-reviewed science that does not meet EPA's particular model, including
28 certain epidemiological studies that evaluate actual human exposure. IARC is essentially more

1 protective than the EPA because it uses more data to come to its conclusions, and all the data it
2 uses is peer-reviewed. The differing conclusions between a regulatory agency and IARC are
3 thus not necessarily based on a disagreement, but a different model and analysis. How scientists
4 value risk is a social decision. The EPA's risk assessment tends to determine what the safe level
5 of use for a particular pesticide is, but mostly without research on actual harm in humans;
6 whereas IARC's hazard assessment evaluates both toxicology in animals and model systems, as
7 well as actual human exposure, to determine whether a chemical is a carcinogen or not.

8 14. I understand that Proposition 65 requires the State of California to list all
9 chemicals known to cause cancer or reproductive toxicity. I am also aware that once a chemical
10 is listed, it may not be knowingly or intentionally discharged without a clear and reasonable
11 warning to the public, and discharge into a drinking source is prohibited. Based on IARC's
12 assessment, I believe that glyphosate is properly listed as a chemical known to the State of
13 California to cause cancer under Proposition 65.

14 15. The listing of glyphosate under Proposition 65 is particularly important to
15 members of CFS. The segments of society that are most at risk of the harmful effects of
16 glyphosate are farmers, farmworkers, and their families. The epidemiological studies used by
17 IARC specifically analyzed exposure of glyphosate to farmworkers, indicating a link between
18 glyphosate and cancer. CFS represents many members, both farmers and non-farmers, in large
19 agricultural areas in California. Some of the most heavily farmed areas in California include
20 Kern, Tulare, Kings, Fresno, and Madero County. According to the California Department of
21 Public Health, those five areas use a substantial amount of glyphosate per acre every year.¹ CFS
22 represents over 90,000 members in California; 612 members in Kern County; 256 members in
23 Tulare County; 72 members in Kings County; 787 members in Fresno County; and 193 members
24 in Madero County.

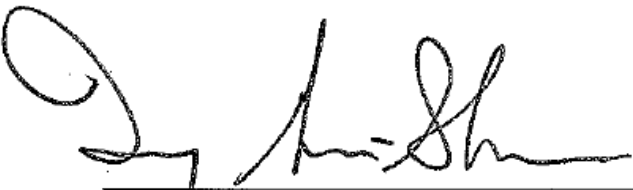
25 16. The Proposition 65 warning requirement will protect farmworkers because
26 indication that the chemical is a carcinogen will inform farmers to use glyphosate more
27

28 ¹ See California Department of Public Health, Agricultural Pesticide Use in California (Dec. 14, 2015, 12:52 PM)
<http://cehpt.org/page/pesticides/agricultural_pesticide_use_in_california> [as of Feb. 29, 2016].

1 sparingly. Due to the drinking water prohibition, its use will also be more limited in areas where
2 there is a known drinking source, which will also protect CFS members.

3 17. The Proposition 65 warning will also protect CFS members that live in residential
4 communities that use glyphosate but are unaware that glyphosate is a carcinogen. Glyphosate is
5 a weed killer used predominantly in agriculture, but it is also widely used in residential areas,
6 including lawns, gardens, and parks. For the most part, glyphosate does not persist long in soil
7 or the environment; however, if someone exposed to glyphosate treads the chemical into their
8 home, it may persist for a much longer time. In addition, many average consumers who use
9 glyphosate on their lawn may not know the proper application of the chemical, which may cause
10 them to use more than necessary. Homeowners are not properly trained in the use of glyphosate
11 or herbicides, and there is a potential for homeowners and members in residential communities
12 to be exposed to relatively high quantities of glyphosate. A Proposition 65 label on glyphosate
13 would inform homeowners and other residents, including CFS members, that glyphosate is
14 linked to cancer, and might cause them to use the herbicide more sparingly and carefully.

15
16 DATED: February 29, 2016, in Tacoma Park, Maryland.

17
18
19
20
21 
22 _____
23 Doug Gurian-Sherman, Ph. D.

24
25
26
27
28 [Faxed Signature]

Exhibit C

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2 SYLVIA SHIH-YAU WU (CSB No. 273549)
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10 *Counsel for Defendant-Intervenor Applicant*

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **IN AND FOR THE COUNTY OF FRESNO**

13 MONSANTO COMPANY,)

Case No. 16 CE CG 00183

14 *Plaintiff,*)

15 v.)

**DECLARATION OF KRISTINA
BOUDREAUX**

16 OFFICE OF ENVIRONMENTAL HEALTH)
17 HAZARD ASSESSMENT, *et al.*,)

18 *Defendants,*)

19 and)

20 CENTER FOR FOOD SAFETY,)

*Defendant-Intervenor
Applicant.*)

1 **DECLARATION OF KRISTINA BOUDREAUX**

2 I, Kristina Boudreaux, declare that if called as a witness in this action I would
3 competently testify of my own personal knowledge as follows:

4 1. I have been a member of the Center for Food Safety (“CFS”) since 2009. I am a
5 firm supporter of CFS’s work regulating industrial agriculture, including preventing the
6 proliferation of genetically engineered (“GE”) crops and pesticides. I became a member of CFS
7 because I own an organic farm, purchase organic food, and believe that CFS’s mission
8 addressing the environmental and health impacts of industrial agriculture is important to me and
9 my family.

10 2. I have an undergraduate degree from the University of Colorado Boulder, where I
11 studied computer science and foreign language. I have a Juris Doctorate from Santa Clara
12 University School of Law.

13 3. Prior to law school, I was a systems engineer at Informix Software for seven
14 years. After my children were born, our family bought a conventional farm in Sebastopol, CA,
15 in Sonoma County, which is now a certified organic vineyard.

16 4. I am currently the manager of Boudreaux Vineyards, LLC, in Sebastopol, CA,
17 where I reside. My husband and I purchased the nine acre vineyard a little over eleven years
18 ago. The vineyard had been farmed conventionally, and we dedicated our lives to organic
19 farming and converting the status of the farm. After years of hard work, Boudreaux Vineyards is
20 now certified organic by the California Certified Organic Farmers (“CCOF”), an organic
21 certification program accredited by the U.S. Department of Agriculture (“USDA”)’s National
22 Organic Program.

23 5. As practitioners of sustainable forms of agriculture, we also practice biodynamic
24 agriculture in the vineyard. Biodynamic agriculture focuses on managing the land as an
25 organically independent ecosystem. In accordance with the principles of biodynamic farming,
26 we raise a flock of five sheep on our farm and utilize them for weed control and soil
27 maintenance. We have begun exploring the possibility of being certified biodynamic by
28

1 Demeter USA, the U.S. chapter of Demeter International, the world's only private certifier of
2 biodynamic farming and farm products.

3 6. My home is located on approximately three of our nine acre property. The
4 remaining six acres of the property are used for growing grapes. I sell my grapes to wineries and
5 receive a price premium for my grapes because they are certified organic. The price premium
6 varies depending on the grape variety. There is a price premium of about \$500 per ton of my
7 organic pinot noir and chardonnay grapes. At the current levels of my vineyard production, the
8 price premium for my organic certification generates about \$7,500 additional income for my
9 business. We also grow olives and have a vegetable garden, which is for personal use.

10 7. In order to remain certified organic, we are prohibited from using most pesticides
11 and herbicides, such as glyphosate. Glyphosate is a broad-spectrum herbicide used to kill weeds,
12 which is the main ingredient in the commercial herbicide Roundup. I have never used any
13 products containing glyphosate on my property.

14 8. I first heard about glyphosate about a decade ago when my children were in
15 elementary school. I was volunteering at my children's public school when I found out that the
16 school was spraying Roundup on the sidewalk to kill the weeds for aesthetic purposes. I had
17 heard that glyphosate may be linked to non-Hodgkin lymphoma, and successfully stopped the
18 school from spraying Roundup on its sidewalks.

19 9. My vineyard is on a hillside, and we are surrounded on three sides by two
20 conventional vineyards. The fourth side of my property abuts the road. During the rainy
21 seasons, we get runoff from other vineyards. I know the conventional vineyards surrounding our
22 property utilize Roundup for weed control. I am also aware that many pounds of glyphosate are
23 used in Sonoma County generally. In viticulture, glyphosate is used once or twice a year for
24 weed control on conventional farms. Glyphosate is not sprayed in between the vines; rather it is
25 sprayed underneath the vines and on the surrounding fences. The glyphosate is typically sprayed
26 in February and March. The reason glyphosate is used in late winter and early spring is because
27 moisture can ruin the grapes by causing mold and disease in the vines. Weeds collect moisture,
28 and as they grow taller, the weeds trap the moisture around the base of the plants. This provides

1 an environment for mold and other diseases to grow, endangering the fruit grown off of that base
2 later in the season, which will be rejected by wineries if molded. Therefore, the conventional
3 farms use glyphosate underneath the vines once in February, and possibly again in March, to kill
4 the weeds that collect moisture so no disease is cultured in the vines. The use of glyphosate has
5 been regular and consistent for many years now.

6 10. In organic viticulture, we are not allowed to use glyphosate. Instead, we utilize an
7 under row mower multiple times a year, and every three years we utilize an under row till. The
8 under row till is the most effective way to kill weeds, but it can damage the soil, which is why
9 we utilize it less than the under row mower. The conventional farms that use glyphosate take the
10 easy way out; they would rather spray the pesticide once or twice a year than utilize an under
11 row mower a few times a year.

12 11. Conventional farmers in our area also utilize Roundup on the fences bordering
13 their properties. They spray glyphosate on their fences mostly for cosmetic reasons; the vineyard
14 is aesthetically more pleasing when there are no weeds tangled in their borderline fences.

15 12. I am concerned that my family and I are being exposed to the glyphosate used on
16 the conventional farms in our area. The ocean is only about a fifteen minute drive from my
17 home, so there is not much protection from the wind. I am concerned that the glyphosate drifts
18 onto my property when it is sprayed due to the heavy winds coming off the coast. Furthermore,
19 since glyphosate is used in the late winter and early spring, it is frequently raining when it is
20 used, and I worry that the runoff from the rain causes glyphosate to enter my property. My
21 property is on a hillside, and when it rains the glyphosate does not stop at the fence line.

22 13. My biggest concern is that the glyphosate may leach into our aquifer. The only
23 source of water that I use on my property is from wells that tap into the aquifer beneath my
24 property. We use the water as a source of drinking water as well as for agricultural and domestic
25 purposes, including watering our grapes, olives, and vegetable garden. We have been using the
26 well water for as long as we have lived on this property, since November 2004. I believe that
27 multiple people utilize the same aquifer because all our neighbors also use well water as a source
28 of drinking water and for farming. I also believe the local wildlife refuge, the Laguna de Santa

1 Rosa, uses the same aquafer. I am concerned that when it rains, the glyphosate seeps into the
2 groundwater and ends up in my drinking water supply. I pay \$30 a year for a certificate that I
3 file with the North Coast Water Coalition, which regulates our water supply.

4 14. I have taken precautions to prevent me and my family from consuming water
5 contaminated with glyphosate, but I am not positive that it is adequate. I have put a Multipure
6 water filter on every drinking faucet in my home, and I replace the filters once a year.

7 15. I am concerned that my family and I are exposed to glyphosate from inhalation,
8 food residues, and our drinking water. I am most concerned about exposure to glyphosate
9 through drinking water, which is why I use the Multipure water filters. I know that glyphosate
10 has been linked to non-Hodgkin lymphoma, and I want to ensure that my children are protected.
11 I am able to avoid glyphosate on food products because I try to purchase only organic food. I
12 buy organic food for the purpose of avoiding synthetic chemicals and herbicides, such as
13 glyphosate. However, I am not always able to buy 100% organic food, and I worry that there
14 may be glyphosate on that food.

15 16. I know that Proposition 65 requires the state to list all chemicals known to the
16 state to cause cancer or reproductive harms. I also know that once a chemical is listed, it may
17 not be used unless it is accompanied by a warning. I am also aware that a listed chemical is
18 prohibited from being discharged if it may end up in a source of drinking water.

19 17. I believe that glyphosate should be listed as a carcinogen under Proposition 65
20 because of its link to non-Hodgkin lymphoma. I also believe that the listing of glyphosate on the
21 Proposition 65 list will protect me and my family. Warnings will raise awareness, and I believe
22 that people will be smarter about when and where they use Roundup so that children are not
23 exposed to it. I think if there was a warning that glyphosate is a carcinogen, public schools
24 would be less inclined to use it on sidewalks as a weed killer, and therefore my children would
25 be better protected. I know that if I saw a Proposition 65 warning on a school, I would not send
26 my children to that school.

27 18. The Proposition 65 listing of glyphosate will also prevent exposure to my family
28 through our source of drinking water. Since discharge of a Proposition 65 chemical into a source

1 of drinking water is prohibited, neighborhood farmers will be required to cut down its use to the
2 extent that it may seep into our groundwater supply. Moreover, I believe that if the
3 neighborhood farmers were aware of the carcinogenic effects of glyphosate, they would cut
4 down the non-agricultural uses of glyphosate, such as the cosmetic uses on borderline fences. If
5 farmers cut down the use of glyphosate, it would reduce my fear of the concentrations of
6 glyphosate that potentially enter my property and drinking water.

7
8 DATED: February 28, 2016, in Sebastopol, California.

9 

10 Kristina A. Boudreaux
11 [Faxed Signature]

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO**

3 I, Effie Shum, declare: I am and was at the times of service hereunder mentioned, over
4 eighteen (18) years of age, and not a party to this action. My business address is 303 Sacramento
5 Street, 2nd Floor, San Francisco, CA 94111.

6 On March 2, 2016, I caused to be served the below listed document(s), entitled:

- 7 1) **NOTICE OF MOTION AND MOTION FOR LEAVE TO FILE**
- 8 **ANSWER IN INTERVENTION;**
- 9 2) **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT;**
- 10 3) **DECLARATIONS IN SUPPORT; and**
- 11 4) **PROPOSED ANSWER-IN-INTERVENTION**

12 on counsel of Petitioner in this action, by personally delivering the above listed documents
13 address as follows:

14 Trenton H. Norris
15 ARNOLD & PORTER LLP
16 Three Embarcadero Center, 10th Floor
17 San Francisco, CA 94111

18 Further, I caused to be served the above listed documents on Defendants in this action, by
19 placing a true copy thereon in an envelope and depositing the sealed envelope with Federal
20 Express, addressed as follows:

21 Office of Environmental Health Hazard
22 Assessment
23 1001 I Street
24 Sacramento, CA 95814

25 Lauren Zeise, Acting Director
26 Office of Environmental Health Hazard
27 Assessment
28 1001 I Street
Sacramento, CA 95814

I declare under the penalty of perjury under the laws of the State of California that the foregoing
is true and correct.

Executed on March 2, 2016, in San Francisco, California.



Effie Shum [Faxed Signature]