

MAK

CIVIL COVER SHEET

2:17-cv-2740

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

I. (a) PLAINTIFFS

Michael Overstreet

DEFENDANTS

Monsanto Company

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

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

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

(c) Attorneys (Firm Name, Address, and Telephone Number)

Greg Prosmushkin, Esquire, Greg Prosmushkin, P.C., 9637 Busleton Avenue, Philadelphia, PA 19115

Attorneys (If Known)

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

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

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

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

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

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL PROPERTY <input checked="" type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement		

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

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. 1332

Brief description of cause:

Member of Class Action against Def. for deceptive trade practices for misrepresentation of weed killer

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

5,000,000.00

CHECK YES only if demanded in complaint:

JURY DEMAND:

☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See Instructions):

JUDGE

DOCKET NUMBER

DATE

06/15/2017

SIGNATURE OF ATTORNEY OF RECORD

/s/ Greg Prosmushkin

JUN 19 2017

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

7400
MAK
MICHAEL OVERSTREET,

Plaintiff,

vs.

MONSANTO COMPANY,

Defendant.

17 2740
Case No.

DEMAND TRIAL BY JURY

FILED

JUN 19 2017

KATE BARKMAN, Clerk
By SV Dep. Clerk

CLASS ACTION COMPLAINT

Plaintiff, MICHAEL OVERSTREET, on behalf of himself and all others similarly situated, by and through his undersigned counsel, brings this action against Monsanto Company for violations of the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 Pa. Stat. Ann. §201-1, *et seq.*

NATURE OF THE ACTION

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

Super Concentrate (“Roundup Super Concentrate”) (Roundup Concentrate Plus and Roundup Super Concentrate will be referred to collectively as the “Roundup Concentrates”.) Unlike “Ready-to-Use” Roundup, the Roundup Concentrates are intended to be diluted with water prior to use.

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



3. Those advertisements were false, however, because the Roundup Concentrates were in fact only capable of making *half* the number of gallons

represented on the front of the bottle when diluted with water to the strength required for the uses advertised on the label of each product, such as around flower beds and trees, on driveways and walkways, and along fences. Thus, for example, the 32 fl. oz. size Roundup Concentrate Plus makes only $5 \frac{1}{3}$ gallons of Roundup for the advertised uses (despite advertising 10 gallons), the 36.8 fl. oz. size makes only $6 \frac{1}{8}$ gallons of Roundup (despite advertising 12 gallons), and the 64 fl. oz. size makes only $10 \frac{2}{3}$ gallons of Roundup (despite advertising 21 gallons). The same holds true for all sizes and variations of the Roundup Concentrates - - each makes only between approximately 50% (for Roundup Concentrate Plus) or 60% (for Roundup Super Concentrate) of the amount promised.

4. Plaintiff brings this action to recover actual damages for himself and other similarly-situated purchasers of the Roundup Concentrates.

JURISDICTION & VENUE

5. This Court has jurisdiction over this action pursuant to 28 U.S.C. §1332(d)(2)(A), the Class Action Fairness Act, because the matter in controversy exceeds the sum or value of \$5,000,000 exclusive of interest and costs, and at least one member of the class of plaintiffs is a citizen of a state different from Monsanto. The Court also has supplemental jurisdiction over plaintiff's state law claims pursuant to 28 U.S.C. § 1367.

6. The Court has personal jurisdiction over Monsanto as a result of Monsanto's substantial, continuous and systematic contacts with Pennsylvania and

because Monsanto has purposely availed itself of the benefits and privileges of conducting business activities within Pennsylvania.

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

PARTIES

8. Plaintiff, Michael Overstreet, is a resident of Philadelphia, Pennsylvania.

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

FACTS

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

11. Monsanto manufactures, markets, and sells *Roundup* in various formulations, including *Roundup* Ready-to-Use formulations, which are intended

simply to be sprayed directly out of the bottle in which the product is purchased; and concentrated versions of the Roundup, such as the Roundup Concentrates, which the purchaser must first dilute with water before using with a tank sprayer.

12. Specifically, Monsanto manufactures, markets and sells Roundup Concentrate Plus in 16 fl. oz., 32 fl. oz., 36.8 fl. oz., 40 fl. oz., 64 fl. oz., and 128 fl. oz. bottles (as partially pictured in the Nature of the Action, *supra*), and Roundup Super Concentrate in 35.2 fl. oz., 53.7 fl. oz., 64 fl. oz., and 128 fl. oz. bottles, as partially pictured below.



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

Product	Label Statement
Roundup Concentrate Plus 16 oz.	“Makes Up to 5 Gallons”

simply to be sprayed directly out of the bottle in which the product is purchased; and concentrated versions of the Roundup, such as the Roundup Concentrates, which the purchaser must first dilute with water before using with a tank sprayer.

12. Specifically, Monsanto manufactures, markets and sells Roundup Concentrate Plus in 16 fl. oz., 32 fl. oz., 36.8 fl. oz., 40 fl. oz., 64 fl. oz., and 128 fl. oz. bottles (as partially pictured in the Nature of the Action, *supra*), and Roundup Super Concentrate in 35.2 fl. oz., 53.7 fl. oz., 64 fl. oz., and 128 fl. oz. bottles, as partially pictured below.



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

Product	Label Statement
Roundup Concentrate Plus 16 oz.	“Makes Up to 5 Gallons”

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

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



15. Given the price of the Roundup Concentrates in comparison to Ready-

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

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

Roundup Concentrate Plus





[illegible]

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

Roundup Concentrate Plus



Roundup Super Concentrate



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

How to Use

"Add 6 fl oz Per Gallon of Water" [Roundup Concentrate Plus]

"Add 2 1/2 fl oz Per Gallon of Water" [Roundup Super Concentrate]

"Use a Tank Sprayer"

Where to Use

"Along Fences"

"Driveways & Walkways"

"Around Trees"

"Around Flower Beds"

What to Know

"Rainproof in 30 Minutes"

"Visible Results in 12 Hours" [Roundup Concentrate Plus]

"Visible Results in 2 to 4 Days" [Roundup Super Concentrate]

"Plant 1 to 3 Days After Application (See booklet for details)"

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

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

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

20. Sealed underneath the back-panel label page is a pamphlet that includes additional information and instructions for use.

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

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

23. Even for those who have already purchased the product and then succeeded in removing the pamphlet, generally they do not feel the need to review the instructions on several pages of fine print before actual use, particularly since they have already seen the easy-to-read diagram with mixing instructions on the cover of the pamphlet prior to purchase.

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

25. As an example, two internal pages of the several-page pamphlet for the 64 fl. oz. Roundup Super Concentrate are depicted below:

DIRECTIONS FOR USE

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

PRODUCT FACTS KILLS ALL TYPES OF WEEDS & GRASSES

Kills up to 62 Gallons

Treats up to 52,750 sq ft

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

WHERE TO USE

- On patios, walkways, driveways, gravel or mulch beds
- Around fruits, vegetables, flowers, shrubs or trees
- Along fences
- In large areas
- For lawn replacement
- For garden plot preparation

MIXING INSTRUCTIONS

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

- For best results, add 2-1/2 fl oz (5 Tbs) to 1 gallon of water.

- Spot treat or spray evenly over 300 sq ft.

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

Hand-Spray: For large areas, consider using the Order® Dial 'N Spray®.

- Set dial to 2-1/2 oz.

- To sprayer (or add 2-1/2 fl oz (5 Tbs) for each 300 sq ft. **DO NOT** add water.

- Spray evenly over treated area.

- After spraying, unused product can be poured back into its original container.

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

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

HOW TO APPLY

- Spray the weeds or grasses you want to kill until thoroughly wet.

- When spot treating weeds around desirable plants, shield plants from drift with a sheet of cardboard or plastic. If desirable plants are accidentally sprayed, rinse off immediately with water.

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

WHEN TO APPLY

- Apply when weeds are actively growing.
- For best results, apply during warm, sunny weather (above 60° F) to accelerate systemic movement from foliage to roots.
- Apply when air is calm to prevent drift to desirable plants.
- **RAIN-PROOF:** Protection: Rain or watering 20 minutes after application will NOT wash away effectiveness.
- If used to control weeds around fruit or nut trees, canberries, or gaspines allow 17 days before harvesting.

WHEN TO REPLANT

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

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

ADDITIONAL TIPS

To Kill Vines

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

To Kill Canes

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

To Kill Stumps

- Cut living stump close to ground.
- Drive 4 to 6 holes into freshly cut stump.
- Immediately pour undiluted product into holes.

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

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

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

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

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

28. A reasonable purchaser - - for example, an ordinary homeowner interested in removing weeds along a fence, on a driveway, or around trees or flower beds - - would not open the sealed pamphlet prior to purchase and then upon purchasing the product and reading the entire pamphlet understand what constitutes an "easy to kill weed".

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

30. Reasonable consumers read and understand "up to" representations - - like the "Makes Up to" a specific number of "Gallons" representations on Roundup Concentrates - - as providing, under normal and reasonable conditions for use, the maximum results promised. Indeed, the U.S. Federal Trade Commission has explicitly determined this to be the case, stating that its "view" is "that advertisers using these claims should be able to substantiate that consumers are likely to achieve the maximum results promised under normal circumstances."

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

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

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

34. In March 1976 Plaintiff purchased a bottle of the Risperdal
Compendium Plus. Plaintiff purchased the product at a local pharmacy.

35. Plaintiff purchased the Risperdal Compendium Plus as reported in the
Risperdal Compendium Plus.

36. Plaintiff purchased the Risperdal Compendium Plus for use in his
home.

37. Plaintiff purchased the D.B.B. no. bottle of Risperdal Compendium
Plus because Plaintiff was told that the recommended product would work up
to 100%. The Risperdal Compendium Plus cost about \$30. Plaintiff expected
the product would be sufficient to take care of his needs and give him better

38. Plaintiff expects that 10 patients would yield a sufficient amount of
Risperdal Compendium Plus to take care of his needs and give him better

39. Plaintiff did not see any other pamphlet on the back of the bottle
to be purchasing the product. When Plaintiff purchased the product he believed
the pamphlet contained the only information that was sufficient to the information
he needed. Plaintiff purchased the product. Plaintiff did not believe that it would

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

PLAINTIFF'S PURCHASE

34. In March 2016, Plaintiff purchased a bottle of the Roundup Concentrate Plus. Plaintiff purchased the product at a local retailer.

35. Plaintiff purchased the Roundup Concentrate Plus as opposed to the Ready-to-Use product.

36. Plaintiff purchased the Roundup Concentrate Plus for use at his home.

37. Plaintiff purchased the 36.8 fl. oz. bottle of Roundup Concentrate Plus because Monsanto advertised that the concentrated product would make up to 12 gallons. The Roundup Concentrate Plus cost about \$30. Plaintiff estimated the product would be sufficient to kill the weeds and grass at his home.

38. Plaintiff estimated that 12 gallons would yield a sufficient amount of finished product to kill the weeds and grass at his home.

39. Plaintiff did not tear open the pamphlet on the back of the bottle before purchasing the product. When Plaintiff purchased the product, he believed the pamphlet contained the same information that was displayed on the outside of the bottle. Before purchasing the product, Plaintiff did not believe that it would

be appropriate to tear open the pamphlet on the back of the bottle.

40. Plaintiff purchased the Roundup Concentrate Plus because given the size of the area he needed to treat, it was expected that the Roundup Concentrate Plus would be a better value than the Ready-to-Use product and because he expected the finished product would yield 12 gallons.

41. Plaintiff mixed the product with water according to the graphic on the back of the bottle and the instructions inside the pamphlet (i.e., 6 fl. oz. of concentrate per gallon of water).

42. When purchasing Roundup Concentrate Plus, Plaintiff was seeking a product that was effective at killing all unwanted weeds and grass, and which was more affordable than the Roundup Ready-to-Use products. Plaintiff understood that he was purchasing a concentrate with a substantially better dollar-per-gallon value than the Ready-to-Use alternative (i.e., the value that would be had if the product supplied the maximum number of gallons). Moreover, Plaintiff was seeking a product that would yield 12 gallons of finished product that would kill all unwanted weeds and grass, including a product that "KILLS THE ROOTS" ... "GUARANTEED".

43. Those representations, upon all of which Plaintiff relied in purchasing the product, however, were false and misleading. That is because, as described in detail herein, the Roundup Concentrates *do not* yield the volume, in

gallons, as promised if following the instructions for the advertised uses prominently stated on the product's back panel.

44. By representing the *amount* of finished product Plaintiff was supposedly buying, Monsanto implicitly also represented the product's value to Plaintiff. That representation, however, was false because, based on Monsanto's prominent mixing instructions, the Roundup Concentrate Plus was effectively under-filled, such that Plaintiff received a different and substantially lesser value - - and, one with a higher cost - - than Monsanto represented. In effect, Plaintiff received half the product he believed he purchased. Accordingly, Plaintiff did not realize the benefit of his bargain and his expectations were not met.

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

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

47. Absent the false and misleading labeling complained of herein, Plaintiff and other Class members would only have been willing to pay less for the Roundup Concentrates.

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

49. Plaintiff and other Class members detrimentally altered their position and suffered actual damages in an amount of the under-filled portion of the Roundup Concentrate purchases.

CLASS ACTION ALLEGATIONS

50. While reserving the right to redefine or amend the class definition prior to seeking class certification, pursuant to Federal Rule of Civil Procedure

23, plaintiff seeks to represent a Class of all persons who, on or after March 2014 (the "Class Period"), purchased in the Commonwealth of Pennsylvania, for personal or household use and not for resale or distribution, Roundup Weed & Grass Killer Concentrate Plus, or Roundup Weed & Grass Killer Super Concentrate, in packaging whose label stated that the product "makes up to" a specified number of gallons, specifically as follows:

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

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

52. Questions of law and fact common to Plaintiff and the Class include:

- a. Whether Monsanto's use of the phrase "Makes up to" creates a likelihood of deception or has the capacity to deceive when read in conjunction with the mixing instructions on the back

panel of the Roundup Concentrate products;

- b. The actual damages suffered as a result of Monsanto's deceptive labeling practices;
- c. The proper amount of restitution; and
- d. The proper amount of attorneys' fees.

53. Those common questions of law and fact predominate over questions that affect only individual Class members.

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

55. Plaintiff will fairly and adequately represent and protect the interests of the Class; he has no interests incompatible with the interests of the Class; and he has retained counsel competent and experienced in class action litigation.

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

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

CAUSE OF ACTION

Count I

Violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 Pa. Stat. Ann. §201-1, *et seq.*

58. The Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 Pa. Stat. Ann. § 201-1, *et seq.* makes it unlawful to engage “in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding.” 73 Pa. Stat. Ann. §201-2(4)(xii); §201-3.

59. As detailed throughout Plaintiff’s Complaint, Defendant Monsanto, represented: that its Roundup Concentrate Plus 16 fl. oz. makes up to 5 gallons; that its Roundup Concentrate Plus 32 fl. oz. makes up to 10 gallons; that its Roundup Concentrate Plus 36.8 fl. oz. makes up to 12 gallons; that its Roundup Concentrate Plus 40 fl. oz. makes up to 13 gallons; that its Roundup Concentrate Plus 64 fl. oz. makes up to 21 gallons; and that its Roundup Concentrate Plus 128 fl. oz. makes up to 42 gallons.

60. Defendant Monsanto also represented: that its Roundup Super Concentrate 35.2 fl. oz. makes up to 23 gallons; that its Roundup Super Concentrate 53.7 fl. oz. makes up to 35 gallons; that its Roundup Super Concentrate 64 fl. oz. makes up to 42 gallons; and that its Roundup Super Concentrate 128 fl. oz. makes up to 85 gallons.

61. But, Defendant's representations about its Roundup Concentrate Plus and Roundup Super Concentrate were false and misleading. Roundup Concentrate Plus and Roundup Super Concentrate actually make up only about half the advertised number of gallons.

62. The Roundup Concentrates create a likelihood of deception and have the capacity to deceive, especially when read in conjunction with the mixing instructions on the back panel of the Roundup Concentrate products.

63. Defendant violated Section 201-2(4)(xxi) of the Pennsylvania Unfair Trade Practices and Consumer Protection Law by misrepresenting the actual amount of finished product made using the instructions on the label with the intent that Plaintiff and the Class rely on them and purchase its products.

64. Plaintiff and the Class were damaged by Monsanto's deceptive practices and their subsequent purchases of Roundup Concentrates. Plaintiff and the Class would not have purchased Roundup Concentrate Plus and Roundup Super Concentrate or paid the price they did, had the true facts been known.

PRAYER FOR RELIEF

Wherefore, Plaintiff, on behalf of himself, all others similarly situated, prays for

judgment against Defendant, Monsanto Company, and the following remedies:

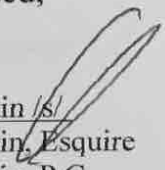
- a. An Order declaring this action to be a proper class action, appointing Plaintiff as class representative, and appointing his undersigned counsel as class counsel;
- b. An Order requiring Monsanto to bear the cost of class notice;
- c. An Order compelling Monsanto to conduct a corrective advertising campaign;
- d. An Order requiring Monsanto to pay all actual, compensatory, and punitive damages (as allowed by law) permitted under the Pennsylvania Unfair Trade Practices and Consumer Protection Law;
- e. Pre- and post-judgment interest (as allowed by law);
- f. An award of attorneys' fees and costs; and
- g. Such other and further relief for Plaintiff and the Class as the Court deems appropriate and just.

JURY DEMAND

Plaintiff hereby demands a trial by jury.

Respectfully Submitted,

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