

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

<p>BEYOND PESTICIDES, 701 E Street, SE, Suite 200, Washington, DC 20003, and ORGANIC CONSUMERS ASSOCIATION, 6771 South Silver Hill Drive, Finland, MN 55603, on behalf of the general public,</p> <p style="text-align:center">Plaintiffs,</p> <p>v.</p> <p>MONSANTO COMPANY, 800 North Lindbergh Boulevard, St. Louis, MO 63167, and DOE CORPORATIONS 1-10,</p> <p style="text-align:center">Defendant.</p>	<p>Case No. _____</p> <p style="text-align:center"><u>DEMAND FOR JURY TRIAL</u></p>
--	--

COMPLAINT

On behalf of the general public, Plaintiffs Beyond Pesticides and Organic Consumers Association (“OCA”) (collectively, “Plaintiffs”), non-profit organizations, by and through their counsel, bring this action against Defendant Monsanto Company and its wholly owned subsidiaries (collectively, “Monsanto” or “Defendant”) regarding the deceptive labeling, marketing, and sale of retail Roundup® “Garden Weeds” Weed & Grass Killer products (“Roundup” or “Roundup Products”) and alleges the following based upon information, belief, and the investigation of their counsel:

1. Defendant actively advertises and promotes its Roundup Products as targeting an enzyme “found in plants but not in people or pets.” These claims are false, misleading, and deceptive.
2. The active ingredient in the Roundup Products at issue is glyphosate. Contrary to Defendant’s claims, the enzyme that glyphosate targets *is* found in people and pets.
3. Plaintiffs bring this deceptive advertising case on behalf of the general public, and seek equitable relief, namely, the disgorgement of Monsanto’s profits for each sale of the Roundup Products in the District of Columbia, to be deposited into a community fund to be established for

the benefit of the general public.

INTRODUCTION

4. Glyphosate, the active ingredient in Monsanto's Roundup, is a biocide also regarded as the most commonly used herbicide in the world.

5. Due to its prevalent use, glyphosate has contaminated the nation's water supply and many common food products. Some studies have reported glyphosate in more than 90% of the human population.

6. Monsanto aggressively markets Roundup as safe for humans and animals, despite recent studies indicating that glyphosate may be carcinogenic and affect human and animal cardiovascular, endocrine, nervous, and reproductive systems.

7. Specifically, the label on many Roundup Products conspicuously states, "Glyphosate targets an enzyme found in plants but not in people or pets," and Monsanto has used this representation to build the Roundup brand and convince consumers that Roundup products do not target or affect humans and animals.

8. The representation that "[g]lyphosate targets an enzyme found in plants but not in people or pets" is false, deceptive, and misleading, because the enzyme targeted by the glyphosate in Roundup, in fact, is found in people and pets.

9. No reasonable consumer seeing these representations would expect that Roundup targets a bacterial enzyme that is found in humans and animals and that affects their immune health.

10. By deceiving consumers about the nature and effects of Roundup, Monsanto is able to sell a greater volume of Roundup, and to command a higher price for Roundup.

11. Consumers lack the scientific knowledge necessary to determine whether Roundup does in fact target an enzyme found in plants but not in people or pets, or to assess the health effects of Roundup in humans or animals.

12. Reasonable consumers must and do rely on Monsanto to report honestly Roundup's

effects on humans and animals and whether the enzyme it targets is found in people and pets.

13. Monsanto affirmatively states that the enzyme targeted by glyphosate is not found in people and pets, and fails to disclose to consumers that the enzyme targeted by glyphosate, and the shikimate pathway it is designed to inhibit, is found in people and pets.

14. Monsanto omits additional, material information that it knows, namely, that the enzyme targeted by glyphosate is found in people and pets, specifically in the beneficial bacteria upon which their gut and immune system rely.

15. Monsanto intended for consumers, including consumers throughout the District of Columbia, to rely on its representations, and reasonable consumers did so rely. As a result of its false and misleading labeling, and omission of fact, Monsanto was able to sell Roundup to the general public of the District of Columbia and realize sizeable profits.

16. Monsanto's false and misleading representations and omissions violate the District of Columbia Consumer Protection Procedures Act ("DC CPPA"), D.C. Code §§ 28-3901, *et seq.*

17. Because Monsanto's labeling and advertising of Roundup tend to mislead and are materially deceptive about the true nature of the product, Plaintiffs bring this deceptive advertising case on behalf of the general public and seek equitable relief for the sale of Roundup Products in the District of Columbia.

JURISDICTION AND VENUE

18. This Court has personal jurisdiction over the parties in this case. Plaintiffs, by filing this Complaint, consent to this Court having personal jurisdiction over them.

19. Plaintiff Beyond Pesticides maintains its headquarters in the District of Columbia.

20. This Court has personal jurisdiction over Defendant Monsanto pursuant to D.C. Code § 13-423. Monsanto has sufficient minimum contacts with the District of Columbia to establish personal jurisdiction of this Court over it because, *inter alia*, Monsanto is engaged in deceptive schemes and acts directed at persons residing in, located in, or doing business in the District of Columbia, and otherwise purposefully avails itself of the laws of this District through

its marketing and sales of Roundup in this District.

21. This Court has subject-matter jurisdiction over this action pursuant to D.C. Code §§ 28-3905(k)(1)(B), (k)(1)(C), (k)(1)(D), and (k)(2).

22. Venue is proper in this District under 28 U.S.C. § 1391(b). Substantial acts in furtherance of the alleged improper conduct, including the dissemination of false and misleading information regarding the nature of Roundup, occurred within this District. Roundup is available for purchase at retail stores in the District of Columbia.

PARTIES

Plaintiff Beyond Pesticides

23. Beyond Pesticides, founded in 1981, is a 501(c)(3) non-profit organization headquartered in the District of Columbia that works with allies in protecting public health and the environment to lead the transition to a world free of toxic pesticides, including biocides. The organization's primary goal is to effect change through local action, assisting individuals and community-based organizations to stimulate discussion on the hazards of toxic pesticides, while providing information regarding safe alternatives.

24. Beyond Pesticides promotes safe air, water, land, and food, and works to protect public health and the environment by encouraging a transition away from the use of toxic pesticides. With the resources of Beyond Pesticides made available to the public on a national scale, Beyond Pesticides contributes to a significant reduction in unnecessary pesticide use, thus improving protection of public health and the environment.

25. Beyond Pesticides has historically taken a two-pronged approach to the pesticide problem by identifying the risks of conventional pest management practices, and promoting non-chemical and least-toxic management alternatives. For example, Beyond Pesticides produces *Pesticides and You*, a quarterly newsletter that provides in-depth articles and a voice for pesticide safety and alternatives. Within that structure, the conduct of Monsanto in promoting the widespread use of glyphosate has required Beyond Pesticides to divert significant resources to

addressing the issue and drawing public attention to glyphosate. In 2015, Plaintiff published an article in *Pesticides and You*, titled “Glyphosate Causes Cancer,” which urged members and supporters to take action and let elected officials know they oppose glyphosate use on lawns and in food. Additionally, Plaintiff’s “Daily News Blog,” which is designed to provide current information on pesticide issues, has had to feature articles on glyphosate 321 times since 2007, with 42 articles written in 2014, 61 in 2015, and 48 articles on glyphosate in 2016—taking space away from Beyond Pesticide’s more general mission. Beyond Pesticides also has had to disseminate information regarding glyphosate through fact sheets that it makes available to the public through its website, which tracks the regulatory status of scientific journal articles on its “Gateway on Pesticide Hazards and Safe Pest Management.”

26. In 2009, during the glyphosate registration review period, Beyond Pesticides submitted comments to the Environmental Protection Agency (“EPA”), asking the agency to cancel glyphosate’s registration due to the human and environmental risks, as well as the availability of alternatives. In July 2013, Beyond Pesticides, along with twenty-two other organizations, called on the EPA not to increase the allowable residue limits for glyphosate on certain food commodities, asserting that an increase in glyphosate tolerances and associated increases in glyphosate use put the public at additional, unreasonable risk. In 2016, Beyond Pesticides once again sent a letter to and met with EPA officials requesting the routine testing of glyphosate and participated in the EPA’s Scientific Advisory Panel on the Carcinogenic Potential of Glyphosate, providing both written and oral testimony on the subject.

27. Beyond Pesticides holds an annual national conference that draws the attendance of around 200 to 250 people. Here, too, Beyond Pesticides has been forced to move its resources toward addressing glyphosate, instead of pesticides more generally. One of the keynote speakers at the 2016 conference, which took place in Portland, Maine, was Aaron Blair, Ph.D., a National Cancer Institute researcher and the overall chair of the International Agency for Research on Cancer’s (“IARC”) evaluation panel, which found glyphosate to be a “probable carcinogen.” In

his remarks, Dr. Blair spoke about the research process the panel used to evaluate this chemical's harmful effects on human health.

28. Because of Monsanto's actions in marketing and encouraging the use of glyphosate, Beyond Pesticides has regularly had to engage its 3,174 members to take action regarding glyphosate, and to contact its listserv, which reaches over 60,000 people who have signed up to receive emails. In 2013, for example, Beyond Pesticides sent an alert asking its members and list serve subscribers to take action to stop the proposed increase of glyphosate food-tolerance levels; in 2014, Plaintiff sent its members in Connecticut an action alert promoting a ban on glyphosate-tolerant Kentucky Bluegrass, and sent three alerts urging EPA to reject a new herbicide formulated with both glyphosate and 2,4-D. In 2015, Beyond Pesticides sent another action alert regarding the IARC's determination that glyphosate is a "probable carcinogen," asking supporters to urge the EPA and United States Department of Agriculture to put a stop to glyphosate use.

29. If Monsanto's actions had not forced Beyond Pesticides to direct its resources to responding to glyphosate use, including glyphosate use by consumers within the District of Columbia, Beyond Pesticides could instead have used these resources to focus on moving away from toxic pesticides, per its larger mission.

30. On November 7, 2016, Beyond Pesticides purchased Roundup Ready-To-Use Weed & Grass Killer at an Ace Hardware store located at 1055 5th Street NW in Washington, D.C., in order to evaluate the product's purported qualities.

Plaintiff Organic Consumers Association

31. The OCA is a 501(c)(3) non-profit public-interest organization that proactively addresses crucial issues of truth in advertising, accurate food labeling, food safety, genetic engineering, children's health, corporate accountability, environmental sustainability, and related topics.

32. The OCA performs its work throughout the United States, including in the District of Columbia. Some of the OCA's staff resides in or near the District of Columbia, including its

political director. The OCA has members who reside in the District of Columbia.

33. The OCA was formed in 1998 in the wake of backlash by consumers against the U.S. Department of Agriculture's controversial proposed national regulations for organic food. In its public education, network building, and mobilization activities, the OCA works with a broad range of public interest organizations to challenge industrial agriculture, corporate globalization, and to inspire consumers to "Buy Local, Organic, and Fair Made." The OCA's website, publications, research, and campaign staff provide an important service for hundreds of thousands of consumers and community activists every month. Its media team provides background information, interviews, and story ideas to television and radio producers and journalists on a daily basis.

34. Thus, the OCA represents the interests of consumers by educating consumers on food safety, industrial agriculture, genetic engineering, corporate accountability, and environmental sustainability issues. The OCA educates consumers, increasing their awareness and knowledge of the agricultural production, and protects the environment by regenerating organic and/or sustainable agriculture. The OCA also uses its member base to pressure food companies to adopt honest labeling practices, to the benefit of consumers.

35. Monsanto's actions in marketing and promoting the use of glyphosate, and the widespread infiltration of glyphosate into the food supply, have caused the OCA to divert significant resources from its broader mission to addressing glyphosate instead. For example, in January 2015, OCA's Political Director, Alexis Baden-Mayer, took time away from political actions and instead spent it researching and distributing an article titled "Monsanto's Roundup Enough to Make You Sick," *available at* <https://www.organicconsumers.org/news/monsantos-roundup-enough-make-you-sick>. Over the last several years, the OCA has moved resources away from organic-food concerns generally, and used them instead to issue hundreds and hundreds of newsletter pieces and action alerts on glyphosate.

Defendant Monsanto Company

36. At all times mentioned herein, Defendant Monsanto Company was and is a Delaware corporation headquartered in St. Louis, Missouri, and a leading marketer of weed killer through retail stores nationwide. Monsanto was and is, at all relevant times, engaged in commercial transactions throughout the District of Columbia, including this judicial District, as well as internet sales.

37. Monsanto manufactures and/or causes the manufacture of weed killer products, and markets and distributes the products in retail stores in the District of Columbia and throughout the United States. Defendant makes, markets, sells, and distributes products under various trademarks, including the Roundup name.

38. Upon information and belief, Defendant has caused harm to the general public of the District of Columbia.

39. Beyond Pesticides and the OCA are acting for the benefit of the general public as private attorneys general pursuant to D.C. Code § 28-3905(k)(1). Beyond Pesticides and the OCA are non-profit organizations pursuant to D.C. Code § 28-3901(a)(14). The OCA is a public-interest organization pursuant to D.C. Code § 28-3901(a)(15).

FACTUAL ALLEGATIONS

40. Plaintiffs bring this suit against Monsanto for equitable relief under the DC CPPA, D.C. Code § 28-3901 *et seq.*, based on misrepresentations and omissions committed by Monsanto regarding Roundup. Monsanto falsely states on the Roundup label and website that “[g]lyphosate targets an enzyme found in plants but not in people or pets,” when in fact glyphosate targets a bacterial enzyme that is found in people and pets.

A. Worldwide Use and Effects of Glyphosate

41. On information and belief, the synthetic biocide glyphosate is, by volume, the world’s most widely produced herbicide.

42. Glyphosate was invented by Monsanto, which began marketing the biocide in 1974

under the trade name Roundup, after DDT was banned from agricultural use.

43. Monsanto manufactures and distributes certain formulations of glyphosate to farmers and other formulations of glyphosate to consumers, both under the Roundup trademark.

44. By the late 1990s, use of Roundup had surged as a result of Monsanto's strategy of genetically engineering seeds to grow food crops that could tolerate, and survive, high doses of the biocide. The introduction of these genetically engineered seeds enabled farmers more easily to control weeds on their crops.

45. Glyphosate functions as a biocide by inhibiting the enzyme 5-enolpyruvylshikimate-3-phosphate ("EPSP") synthase, disrupting the fifth of six enzymatic steps in the shikimate pathway, which processes aromatic amino acids in certain organisms.¹

46. Although humans and other mammals themselves do not have a shikimate pathway, the shikimate pathway is present in bacteria, including beneficial bacteria that inhabit the mammalian gut and are essential to overall health.² EPSP is therefore "found in . . . people [and] pets."

47. Just like it inhibits EPSP synthase in weeds, the active ingredient in Roundup inhibits EPSP synthase in these human and pet gut bacteria, and just like it targets weeds, the active ingredient in Roundup targets the human and pet gut bacteria.³

48. On information and belief, there are three routes of exposure through which

¹ Heike Hollander & Nikolaus Amrhein, *The Site of the Inhibition of the Shikimate Pathway by Glyphosate*, 66 PLANT PHYSIOLOGY 823, (1980), available at <http://www.plantphysiol.org/content/66/5/823.full.pdf>; *Glyphosate: Mechanism of Action*, Glyphosate Facts (June 19, 2013), <http://www.glyphosate.eu/glyphosate-mechanism-action>.

² Hermann, Klaus M., *The Shikimate Pathway as an Entry to Aromatic Secondary Metabolism*, 107 PLANT PHYSIOLOGY 7 (1995), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC161158/pdf/1070007.pdf>; Jandhyala, S.M., et al., *Role of the Normal Gut Microbiota*, 21 WORLD J. OF GASTROENTEROLOGY 8787 (2015), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4528021/>.

³ Anthony Samsel & Stephanie Sneff, *Glyphosate's Suppression of Cytochrome P450 Enzymes and Amino Acid Biosynthesis by the Gut Microbiome: Pathways to Modern Diseases*, 15(4) ENTROPY 1416 (2013), <http://www.mdpi.com/1099-4300/15/4/1416/htm>.

biocides enter the body—ingestion, dermal absorption, and inhalation.

49. On information and belief, the presence of glyphosate in the human and animal gut likely results from the ingestion of glyphosate residues on food caused by agricultural and general environmental use of the product, including household use by consumers who purchase retail Roundup Products. Consumers may also be exposed to glyphosate via dermal absorption when using the retail Roundup Products or contacting surfaces on which or near which glyphosate has been sprayed. Pets may be exposed to glyphosate by ingesting grass that has been treated with glyphosate, or contacting surfaces on which or near which glyphosate has been sprayed.

50. The wider effects of glyphosate on the human immune system are beginning to become known. Nevertheless, this lawsuit does not seek compensation for personal injury or any health effects of glyphosate. Instead, this lawsuit seeks equitable relief on behalf of the general public, namely, the disgorgement of Monsanto's profits for each sale of the Roundup Products in the District of Columbia, to be deposited into a community fund to be established for the benefit of the general public.

B. Monsanto's Misrepresentation and Omission of Material Fact

51. Consumers are becoming increasingly aware of biocides in the environment and concerned about their potential effects on people and animals.⁴

52. Monsanto is aware of these concerns,⁵ and knows that consumers are more likely

⁴ See, e.g., *Glyphosate to be Listed under Proposition 65 as Known to the State to Cause Cancer*, OEHHA (Mar. 28, 2017), available at <https://oehha.ca.gov/proposition-65/crn/glyphosate-be-listed-under-proposition-65-known-state-cause-cancer>; *Two-Thirds of Europeans Support Glyphosate Ban, Says Yougov Poll*, THE GUARDIAN (Apr. 11, 2016), available at <https://www.theguardian.com/environment/2016/apr/11/two-thirds-of-europeans-support-ban-on-glyphosate-says-yougov-poll>; *Fears Over Roundup Herbicide Residues Prompt Private Testing*, WASHINGTON POST (Apr. 13, 2015), available at https://www.washingtonpost.com/national/health-science/worries-about-an-ingredient-in-widely-used-lawn-herbicide-after-who-report/2015/04/13/f6b0a418-df8a-11e4-a1b8-2ed88bc190d2_story.html.

⁵ See, e.g., Eric Sachs, *Conversation Questions Regarding Glyphosate*, Monsanto, <http://discover.monsanto.com/posts/conversation-questions-regarding-glyphosate/> (last visited Feb. 1, 2017).

to buy—and will pay more for—weed killers that they believe do not affect people and animals.

53. To sell more Roundup, and to command a high price, Monsanto markets Roundup Products with claims that their active ingredient, glyphosate, targets an enzyme found only in plants and not in people or pets.

54. Monsanto has built Roundup's reputation by including this representation on many Roundup Products' labels, and by omitting the contrary fact that the enzyme targeted by glyphosate is found in people and pets. The omission is consistent across the Roundup Product lines and therefore, regardless of whether the representation appears on a specific bottle of Roundup, Monsanto is able to command higher prices, and to sell more volume, across the line of Roundup Products.

55. Monsanto intends this claim to create the false and misleading impression among consumers that glyphosate has no effect on people or pets, or the beneficial bacteria found in their gut biomes, despite its knowledge of evidence to the contrary.

56. Monsanto omits the material fact that peer-reviewed scientific research studies have shown that the enzyme targeted by glyphosate in fact is present in human and animal gut bacteria.

57. Monsanto's conduct in labeling and marketing Roundup as targeting an enzyme found only in plants (and thereby only affecting plants, not humans or animals) deceives and/or is likely to deceive the public.

58. Consumers have been deceived into believing that Roundup targets an enzyme found only in plants and not in people or pets.

59. Consumers cannot discover the true nature of Roundup from reading the label. Should any consumer visit Monsanto's website seeking additional information, the website purports to include various "background materials" on glyphosate⁶ but still does not mention that

⁶ *Roundup/Glyphosate Background Materials*, Monsanto, <http://www.monsanto.com/products/pages/roundup-safety-background-materials.aspx> (last visited, Feb. 1, 2017).

the enzyme targeted by Roundup is present in bacteria integral to the gut and immune system of people and pets.

60. Discovery of the true nature of Roundup requires knowledge of and access to a laboratory for testing or research that is not available to the average reasonable consumer.

61. Monsanto deceptively and misleadingly conceals material facts about Roundup, namely, that Roundup targets a bacterial enzyme found in people and pets.

62. Monsanto's concealment tolls the applicable statute of limitations.

63. To this day, Monsanto continues to conceal, suppress, and misrepresent the true nature of Roundup.

C. Monsanto's Knowledge That Its Representations Are False

64. Monsanto holds itself out to the public as a trusted expert in herbicides.⁷

65. Monsanto is aware of how glyphosate works on the shikimate pathway,⁸ and on information and belief is aware of studies showing that the shikimate pathway is present in bacteria integral to the digestive systems of people and pets.

66. Monsanto therefore knows that glyphosate targets an enzyme present not only in plants, but also in people and pets.

67. Monsanto knows what representations it makes on the labels of Roundup.

68. Monsanto thus knew all the facts demonstrating that Roundup Products with the representation "targets an enzyme found in plants but not in people or pets" were mislabeled and falsely advertised, and knew that a material fact was omitted from the label of all Roundup Products.

D. Consumers' Reliance on Monsanto's False and Misleading Representations

69. Consumers frequently rely on label representations and information in making purchase decisions.

⁷ See, e.g., *id.*

⁸ *Id.*

70. Although reliance is not an element of the DC CPPA, it is nonetheless the case that Monsanto made the false, misleading, and deceptive representations and omissions intending for consumers to rely upon these representations and omissions in purchasing Roundup.

71. In making the false, misleading, and deceptive representations and omissions at issue, Monsanto knew and intended that consumers would purchase Roundup when consumers would otherwise purchase a competing product or not purchase at all.

72. Consumers are willing to pay more for a weed killer product that purports to target an enzyme found only in plants, and they expect that product to not target an enzyme found in, or to affect, people and pets.

73. In making the false, misleading, and deceptive representations and omissions at issue, Monsanto also knew and intended that consumers would pay more for weed killer products that do not target an enzyme found in, or affect, people and pets, furthering Monsanto's private interest of increasing sales of Roundup and decreasing the sales of competing weed killer products that are truthfully marketed.

74. Monsanto has failed to provide adequate relief to members of the consuming public as of the date of the filing of this Complaint.

75. Reasonable consumers do not expect Roundup, which Monsanto represents and advertises as targeting "an enzyme found in plants but not in people or pets," to target an enzyme found in humans and animals, on which they depend for overall health.

76. Monsanto's statements and other representations convey a series of express and implied claims and/or omissions that Monsanto knows are material to the reasonable consumer in making a purchasing decision, and that Monsanto intended for consumers to rely upon when choosing to purchase Roundup.

77. Monsanto misrepresented the nature of Roundup and/or failed to adequately disclose the fact that Roundup's key ingredient targets an enzyme found in the gut bacteria of people and pets, which was and is false, misleading, and/or likely to deceive reasonable consumers.

78. Accordingly, Plaintiffs seek equitable relief on behalf of the general public for each sale of Roundup Products in the District of Columbia. Plaintiffs do not seek injunctive relief or monetary damages in this action.

CAUSE OF ACTION

VIOLATION OF THE DISTRICT OF COLUMBIA CONSUMER PROTECTION PROCEDURES ACT

79. Pursuant to D.C. Code §§ 28-3905(k)(1) and 28-3905(k)(2), Plaintiffs Beyond Pesticides and the OCA bring this Cause of Action against Monsanto on behalf of the general public of the District of Columbia, for Monsanto's violation of DC CPPA, D.C. Code § 28-3901, *et seq.*

80. Plaintiffs incorporate by reference all the allegations of the preceding paragraphs of this Complaint.

81. Monsanto's labeling and advertising of Roundup misrepresents, tends to mislead, and omits material facts regarding the nature of Roundup.

82. Monsanto has labeled and advertised Roundup as targeting "an enzyme found in plants but not in people or pets," and has otherwise presented an image and marketing materials suggesting that Roundup does not target an enzyme in, or affect, humans and animals.

83. The representations omit the truth about Roundup, namely, that its active ingredient, glyphosate, targets a bacterial enzyme found in humans and animals, which they depend on for overall health.

84. Roundup lacks the characteristics, benefits, styles, and standards that Monsanto states and implies in its labeling and advertisements.

85. These misstatements, innuendo, and omissions are material and have the tendency to mislead.

86. Monsanto knowingly did not sell Roundup as advertised.

87. The facts as alleged above demonstrate that Monsanto has violated the DC CPPA,

D.C. Code § 28-3901 *et seq.* Specifically, Monsanto has violated D.C. Code § 28-3904, which makes it an unlawful trade practice to:

- (a) represent that goods or services have a source, sponsorship, approval, certification, accessories, characteristics, ingredients, uses, benefits, or quantities that they do not have; . . .
- (d) represent that goods or services are of particular standard, quality, grade, style, or model, if in fact they are of another;
- (e) misrepresent as to a material fact which has a tendency to mislead;
- (f) fail to state a material fact if such failure tends to mislead;
- (f-1) [u]se innuendo or ambiguity as to a material fact, which has a tendency to mislead;
... [or]
- (h) advertise or offer goods or services without the intent to sell them or without the intent to sell them as advertised or offered.

88. The DC CPPA makes such conduct an unlawful trade practice “whether or not any consumer is in fact misled, deceived or damaged thereby.” D.C. Code § 28-3904.

89. Though Plaintiffs need not show proof of deception to succeed on their DC CPPA claim, consumers were in fact deceived. Monsanto knew or should have known that because of its misrepresentations, reasonable consumers would believe that Roundup does not target a bacterial enzyme in humans and animals, which they depend on for overall health.

90. Plaintiffs have a sufficient nexus to consumers of the Roundup Products to adequately represent the interests of those consumers, and of the general public of the District of Columbia.

91. Because Monsanto misrepresents the characteristics, ingredients, and benefits of Roundup; misrepresents the standard, quality, and grade of Roundup; misrepresents, fails to state, and uses innuendo and ambiguity in ways which tend to mislead reasonable consumers with regard to material facts about Roundup; and advertises Roundup without the intent to sell it as advertised;

Monsanto's labeling and marketing of Roundup violates D.C. Code §§ 28-3904(a), (d), (e), (f), (f-1), and (h).

92. Monsanto is a "person" within the meaning of D.C. Code § 28-3901(a)(1), is a merchant under § 28-3901(a)(3), and provides "goods" within the meaning of § 28-3901(a)(7).

93. Pursuant to D.C. Code § 28-3905(k)(1)(C), "[a] nonprofit organization may, on behalf of itself or any of its members, or on any such behalf and on behalf of the general public, bring an action seeking relief from the use of a trade practice in violation of a law of the District, including a violation involving consumer goods or services that the organization purchased or received in order to test or evaluate qualities pertaining to use for personal, household, or family purposes."

94. Pursuant to D.C. Code § 28-3905(k)(1)(D)(i), "a public interest organization may, on behalf of the interests of a consumer or a class of consumers, bring an action seeking relief from the use by any person of a trade practice in violation of a law of the District if the consumer or class could bring an action under subparagraph (A) of this paragraph for relief from such use by such person of such trade practice."

95. Via §§ 28-3905(k)(1)(C), the DC CPPA allows for non-profit organizational standing to the fullest extent recognized by the D.C. Court of Appeals in its past and future decisions addressing the limits of constitutional standing under Article III.

96. Plaintiffs Beyond Pesticides and OCA are "person[s]" within the meaning of D.C. Code § 28-3901(a)(1) and a "non-profit organization" within the meaning of D.C. Code § 28-3901(a)(14). Plaintiff OCA is a "public interest organization" within the meaning of D.C. Code § 28-3901(a)(15).

97. Plaintiffs bring this Count against Monsanto for Monsanto's violation of the DC CPPA, D.C. Code § 28-3901 *et seq.*

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Beyond Pesticides and OCA pray for judgment against

Defendant Monsanto and requests the following relief:

- A. a declaration that Monsanto's conduct is in violation of the DC CPPA;
- B. an order awarding equitable relief pursuant to D.C. Code § 28-3901(k)(2)(F),
specifically:
 - 1. directing Monsanto to disgorge the profits obtained from each sale of the Roundup Products in the District of Columbia;
 - 2. establishing a community fund for the benefit of the general public of the District of Columbia, which fund shall be used for educational and other charitable purposes relating to consumer awareness of glyphosate; and
 - 3. directing Monsanto to pay into said community fund all monies which it has been required to disgorge;
- C. an order awarding reasonable attorneys' fees and costs; and
- D. such further relief, including equitable relief, as this Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury.

DATED: April 7, 2017

RICHMAN LAW GROUP

Kim E. Richman (D.C. Bar No. 1022978)
81 Prospect Street
Brooklyn, NY 11201
Telephone: (212) 687-8291
Facsimile: (212) 687-8292
krichman@richmanlawgroup.com

Attorney for Plaintiff