

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT, DIVISION ONE**

DEWAYNE JOHNSON,
Plaintiff and Appellant,

v.

MONSANTO COMPANY,
Defendant and Appellant.

On Appeal from San Francisco County Superior Court
Case No. CGC-16-550128
Honorable Suzanne R. Bolanos

**APPLICATION FOR LEAVE TO FILE
BRIEF AS AMICUS CURIAE IN SUPPORT OF DEFENDANT AND
APPELLANT**

**PROPOSED AMICUS CURIAE BRIEF IN SUPPORT OF DEFENDANTS AND
APPELLANTS**

KARI E. FISHER (SBN #245447)
CALIFORNIA FARM BUREAU FEDERATION
2600 River Plaza Drive
Sacramento, CA 95833
Telephone: (916) 561-5650
Facsimile: (916) 561-5691
*Attorneys for Proposed Amicus
California Farm Bureau Federation*

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**APPLICATION TO FILE BRIEF AS AMICUS CURIAE IN
SUPPORT OF DEFENDANT AND APPELLANT**

I. INTRODUCTION

Pursuant to California Rules of Court, rule 8.200(c), California Farm Bureau Federation (“Farm Bureau”) respectfully requests leave to file the accompanying brief of amici curiae in support of Defendant/Appellant Monsanto Company.

II. INTERESTS OF PROPOSED AMICI CURIAE

Farm Bureau is a non-governmental, non-profit, voluntary membership California corporation whose purpose is to protect and promote agricultural interests throughout the state of California and to find solutions to the problems of the farm, the farm home, and the rural community. Farm Bureau is California’s largest farm organization, comprised of 53 county Farm Bureaus currently representing approximately 36,000 members in 56 counties. Farm Bureau strives to protect and improve the ability of farmers and ranchers engaged in production agriculture to provide a reliable supply of food and fiber through responsible stewardship of California’s resources. To that end, Farm Bureau is involved in efforts to protect the resources of the state, including air and water quality, and advocates regularly in state and federal legislative, regulatory, and judicial matters on behalf of its members for the preservation of agricultural land and the protection of private property rights which underpin agricultural production.

Farm Bureau supports responsible farming and proper use and application of pesticides and respects the health and welfare of those throughout the state. Farm Bureau actively participates in state and federal legislative, regulatory, and judicial advocacy relating to pesticide regulation, registration, labeling, and use on behalf of its members.

This case raises an issue of vital concern to the membership of Farm Bureau. Members of the Farm Bureau are farmers and ranchers who utilize and depend on crop protection tools to grow food and fiber. Specifically, these members have a proprietary interest in their farming operations and the ability to protect their land and crops from damage caused by the introduction or spread of harmful weeds, pests and diseases.

No party's counsel has authored this brief, either in whole or in part; nor has any party or party's counsel contributed money intended to fund the preparation or submission of this brief. Likewise, no person other than the amici curiae, their members, or counsel have contributed money intended to fund the preparation or submission of this brief. (Cal. Rules of Court, rule 8.520(f)(4).)

III. PROPOSED AMICUS CURIAE BRIEF

Farm Bureau's purpose in submitting this amicus curiae brief is to demonstrate the importance of crop protection tools, such as pesticides and herbicides like glyphosate, to the agricultural industry and to advise the Court of the impact to the industry if decisions made by non-regulatory

groups are able to override federal pesticide approval and registration processes, as well as state approvals.

Crop protection tools provide farmers and ranchers with necessary tools and resources to prevent, address, and respond to weed and pest infestations which can be detrimental to the safety and welfare of the state and the agricultural industry. Farm Bureau submits this amicus curiae brief to demonstrate that affirming the actions of the trial court will severely impact Farm Bureau members whose livelihood depend on their ability to utilize approved crop protection tools in order to timely and responsibly respond to weeds impacting their crops.

This case raises issues of vital concern to the membership of Farm Bureau. Farm Bureau members, who are growers, manufacturers, and/or distributors, use pesticides to prevent and/or eradicate weeds, diseases, pest infestations, and other harmful invasions that would otherwise threaten food, water, energy, and other resources on which amici and the public depend. These applications of pesticides are strictly regulated under the Federal Insecticide, Fungicide and Rodenticide Act (“FIRFA”) as well as regulations of the Department of Pesticide Regulation (“DPR”) and the California Department of Food and Agriculture (“CDFA”), implementation and enforcement by DPR and the County Agricultural Commissioners (“CACs”), in coordination with CDFA. Farm Bureau members have a proprietary interest in their farming operations, use of crop protection tools

of choice, and/or formulation of the subject herbicides and pesticides. The regulatory effect of the trial court's decision impacts Farm Bureau members by impairing their ability to rely upon glyphosate as legally registered by the U.S. Environmental Protection Agency and the state of California.

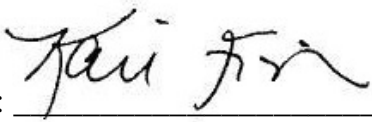
For these reasons, members of Farm Bureau have a substantial interest in ensuring that its farmer and rancher members are able to continue to utilize and rely upon lawfully registered crop protection tools in order to protect California's agricultural industry along with the health and safety of Californians and the environment.

IV. CONCLUSION

Based on the foregoing, Farm Bureau urges the Court to reverse the trial court's decision and rule in favor of Defendant/Appellant Monsanto Company.

Dated: September 3, 2019

CALIFORNIA FARM BUREAU FEDERATION

By: 
Kari E. Fisher
*Attorneys for Proposed Amicus
California Farm Bureau*

Document received by the CA 1st District Court of Appeal.

**PROPOSED AMICUS CURIAE BRIEF IN SUPPORT OF
DEFENDANT AND APPELLANT**

I. INTRODUCTION

Pests, including insects, weeds, and the diseases they transmit, can cause costly and irreparable harm to livestock and crops, as well as the natural, rural, and urban environment and humans. Crop protection tools, such as pesticides and herbicides, are used to manage these pests while reducing the amount of labor, fuel, and machinery used for pest control. This results in lower production costs, higher crop yields, higher quality food, increased profits for farmers, reduced negative environmental impacts, and a safe, healthy, secure food supply. California's farmers and ranchers rely upon federal and state approved crop protection tools, such as glyphosate, to control organisms and weeds that are harmful to agriculture and the ecosystem. Farmers and ranchers should be allowed to rely upon and use federal and state approved crop protection tools and not be subject to uncertainty and potential liability due to conflicting scientific reports put forth by non-regulatory bodies.

II. STATEMENT OF FACTS

The facts and circumstances, as well as the procedural history, of this case are well briefed by the parties, and amici will not provide a separate statement of facts herein.

III. ARGUMENT

A. What are Pesticides?

Pesticides are chemical substances used to prevent, destroy, repel, or mitigate undesirable organisms such as weeds or harmful insects. (7 U.S.C. § 136(u); Food & Agr. Code, § 12753.) Pesticide products contain at least one active ingredient and other intentionally added inert ingredients. Called “inert ingredients” by the federal law, they are combined with active ingredients to make a pesticide product. (7 U.S.C. § 136(a).) Pesticide products include herbicides. (7 U.S.C. § 136(a)(2); Food & Agr. Code, § 12753.) Glyphosate is a non-selective herbicide that targets weeds while leaving the desired crop relatively unharmed. It is used widely by farmers and ranchers, homeowners, in landscape turf management, total vegetation control programs for maintenance of highways and railroads, forestry, pasture systems, and management of areas set aside as wildlife habitat.

Through the use of pesticides, the chemical control of pests has facilitated the industrialization of agriculture and has helped California and the United States to become and remain an agricultural powerhouse. (Cal. Dept. of Food and Agriculture, California Agricultural Production Statistics, 2017 Crop Year — Top 10 Commodities for California Agriculture (2019) <<https://www.cdffa.ca.gov/statistics/>> [as of August 30, 2019], (hereinafter “CDFA California Agricultural Production Statistics 2017”).) Used properly, pesticides, by definition, are toxic to certain pests and plants. (Cal.

Department of Pesticide Regulation, Pesticide Info, What You Should Know About Pesticides (April 2019) p. 1 <<https://www.cdpr.ca.gov/docs/dept/factshts/what2.pdf>> [as of August 30, 2019].) This inherent toxicity requires strict regulation at the federal and state levels to ensure the safety of the public, the food supply, and the environment. (*Ibid.*) “The United States Environmental Protection Agency (EPA) is the primary entity charged with regulation of pesticides, although it works in conjunction with state agencies. The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. §§ 136-136y, establishes the general system of federal pesticide regulation, and the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. §§ 301-392, establishes the system to govern pesticides in food and feed. States are generally permitted to enact legislation that restricts pesticide use more than federal law requires.” (The National Agricultural Law Center, University of Arkansas, Pesticides—An Overview, <<https://nationalaglawcenter.org/overview/pesticides/>> [as of August 30, 2019].)

B. Background on Pesticide Use and Regulation

The use of pesticides is fundamental for agriculture nationwide. The California Department of Pesticide Regulation (“DPR”) recognizes the importance of pesticide management for the state of California in its Strategic Plan, stating: “Pest management is essential to a modern society to protect public health, the food supply and enable effective resource

management.” (DPR, 2018 Strategic Plan (Sept. 2018), https://www.cdpr.ca.gov/docs/dept/planning/strg_pln/strtplan.pdf) [as of August 30, 2019].) “The people of California are best served by a continuous effort to minimize risks associated with pest management.” (*Ibid.*) Pesticides are often most economical and most efficient crop protection strategy available. Pesticides can also broaden the range of crops that a farmer can grow at any given time of year, increase crop yields, result in the production of higher quality foods, improve the quality and safety of produce, increase the availability, affordability and overall consumption of fruits and vegetables, and extend the shelf life of produce and prevent post-harvest losses from pests and diseases. (*Ibid.*, see Food & Agr. Code, §§ 821, 11501, 12786.) Through a coordinated and diligent response, pesticides can be a great tool to conserve biodiversity and help the environment.

The trial court’s decision to allow the jury to consider a scientific determination by the International Agency on the Research for Cancer (“IARC”), a nonregulatory group, while not considering scientific determinations legally made pursuant to federal and state law and other foreign regulatory decisions that rejected IARC’s conclusions threatens to derail longstanding pesticide registration regulatory processes and farmers and ranchers’ ability to rely upon a legally approved pesticide label when using crop protection tools. The resulting uncertainty regarding potential

liability even if using a crop protection tool in compliance with an approved label would be detrimental for farmers and ranchers. Farmers and ranchers plan years into the future regarding what crops to grow and what crop protection tools to use. Not being able to rely upon determinations made by the U.S. Environmental Protection Agency (“EPA”) and the state of California jeopardizes the use of crop protection tools, and therefore, the availability, affordability, and overall safety of California’s agricultural products by preventing the application of chemical pest management activities until it is too late to prevent devastating harm.

1. Federal Pesticide Regulation

Pesticide products are extensively regulated at the federal, state, and county level. At the federal level, the Federal Insecticide Fungicide and Rodenticide Act (“FIFRA”), 7 U.S.C. § 136 *et seq.*, is the statute that authorizes EPA with the authority to regulate the sale and use of pesticides¹ and designate this authority exclusively to U.S. states. FIFRA prohibits the distribution of any chemical substance for pesticidal purposes without a federal registration (license), which EPA issues only after a thorough multi-year examination and risk-based analysis of scientific data

¹ With limited exceptions, a pesticide is any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, or desiccant, or any nitrogen stabilizer. (7 U.S.C. § 136(u).) The term “pesticide” includes herbicides such as glyphosate. (*Ibid.*)

relevant to human-health concerns, environmental impacts, and efficacy.² (7 U.S.C. §§ 136a(c)(1), 136a(c)(2)(A), 136a(c)(2)(B), 136a(c)(5), 136bb.) FIFRA also imposes mandatory federal labeling requirements for pesticides, including directions for how to safely handle and legally apply them. (40 C.F.R. § 156 (1988).) As conditioned by FIFRA, the pesticide label cannot include any false and misleading statements; false and misleading claims make a product misbranded and sale and distribution of such product unlawful. (7 U.S.C. §§ 136(q)(A); 136j(a)(1)(E).) “A pesticide is ‘misbranded’ if its label contains a statement that is ‘false or misleading in any particular,’ including a false or misleading statement concerning the efficacy of the pesticide. 7 U.S.C. § 136(q)(1)(A); 40 C.F.R. § 156.10(a)(5)(ii). A pesticide is also misbranded if its label does not contain adequate instructions for use, or if its label omits necessary warnings or cautionary statements. 7 U.S.C. §§ 136(q)(1)(F), (G).” (*Bates v. Dow Agrosciences LLC* (2005) 544 U.S. 431, 438.)

Registration of a pesticide product is paramount; “[n]o person in any State may distribute or sell to any person any pesticide that is not registered” pursuant to section 3 of FIFRA. (7 U.S.C. § 136a.) Additionally, the

² FIFRA defines “unreasonable adverse effects on the environment” to mean “any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide.” (7 U.S.C. § 136(bb).)

pesticide label is critical as it is the law. (U.S. Environmental Protection Agency, Pesticide Registration Manual: Introduction, The Label is the Law! <<https://www.epa.gov/pesticide-registration/pesticide-registration-manual-introduction#labellaw>> [as of August 30, 2019].) A label is a legally binding document that mandates how the pesticide can and must be used and failure to follow the label as written when using the pesticide is a federal offense. (U.S. Environmental Protection Agency, Pesticide Registration, About Pesticide Registration, The Pesticide Label <<https://www.epa.gov/pesticide-registration/about-pesticide-registration>> [as of August 30, 2019].) “The overall intent of the label is to provide clear directions for effective product performance while minimizing risks to human health and the environment. It is a violation of federal law to use a pesticide in a manner inconsistent with its labeling. The courts consider a label to be a legal document.” (*Ibid.*)

Although FIFRA allows states to regulate the sale and use of federally registered pesticides, states cannot, however, impose “any requirements for labeling or packaging in addition to or different from those required under [FIFRA].” (7 U.S.C. § 136v(b).)

FIFRA, as amended by the Food Quality Protection Act of 1996, Pub. L. No. 104-170, 110 Stat. 1489, mandates the continuous review of existing pesticides. (7 U.S.C. § 136a(g), [“The registrations of pesticides are to be periodically reviewed.”].) At least every 15 years, or sooner, each registered

pesticide or pesticide case must be reviewed to determine whether it continues to meet the FIFRA standard for registration. (*Id.* at (g)(iii), (iv); 40 C.F.R. § 155.40(a).) As part of the re-registration process, EPA assesses if any changes have occurred since the previous registration, including any new data, information, or studies on the pesticide, conducts new risk assessments or risk/benefit assessments, consults with regulatory partners, and invites public participation in the process. (U.S. Environmental Protection Agency, Registration Review Process, <<https://www.epa.gov/pesticide-reevaluation/registration-review-process>> [as of August 30, 2019].) In order to be re-registered, the pesticide must generally “not cause unreasonable adverse effects on the environment. Registration review is intended to ensure that each pesticide’s registration is based on current scientific and other knowledge regarding the pesticide, including its effects on human health and the environment.” (40 C.F.R. § 155.40(a)(1).)

2. Pesticide Regulation and Pest Control in California

In addition to regulation at the federal level, California regulates pesticides and has for over a century. Although EPA promulgates minimum pesticide requirements, California’s laws and regulations are far more comprehensive. (Cal. Dept. of Pesticide Regulation, *A Guide to Pesticide Regulation in California* (2017) p. 7, [“California’s pesticide laws and regulations are typically more rigorous and carried out by regulatory

programs wider in scope than any other state” or the federal government.”].)

The California Legislature has established a comprehensive body of law to control every aspect of pesticide sales and use. These laws, along with corresponding regulations, protect people, the environment, and agriculture from harm caused by unsafe pesticide use as well as infestations from injurious pests and associated diseases. (Food & Agr. Code, §§ 11454, 11454.1, 11501, 12981, [DPR is mandated by law to protect the public health and environment by regulating pesticide sales and use and by fostering reduced-risk pest management.³].)

Prior to being sold or used in California, pesticides must be registered with both EPA and DPR. (Food & Agr. Code, §§ 12811; Cal. Code Regs., tit. 3, §§ 6170, 6170.5, 6171.) DPR will not allow any pesticide to be registered unless it determines it can be used safely. (Food & Agr. Code, §§ 12824, 12825.) DPR’s strict oversight begins with product evaluation and registration and continues through statewide licensing of commercial

³ The California Food and Agriculture Code, divisions 6 and 7, and implementing regulations promulgated at title 3 of the California Code of Regulations, division 6, establish California’s comprehensive program under which DPR regulates the manufacture, distribution, sale, and use of pesticides. The program seeks to provide for the proper, safe, and efficient use of pesticides essential for production of food and fiber, and to protect the public health and safety and the environment from harmful pesticides by ensuring proper stewardship of those pesticides. (Food & Agr. Code, § 11501; *Californians for Alternatives to Toxics v. California Department of Pesticide Regulation* (2006) 136 Cal. App. 4th 1049, 1057, [citing Food & Agr. Code, § 11501]; see also *People ex rel. Deukmejian v. County of Mendocino* (1984) 36 Cal.3d 476, 481.)

applicators, dealers, and consultants, environmental monitoring, residue testing of fresh produce, strict rules to protect workers and consumers, and local use enforcement administered by the county agricultural commissioners. (DPR Guide to Pesticide Regulation, *supra*, pp. 1, 7, 41; Food & Agr. Code, §§ 12815, 12824, 12825.)

In addition to DPR, the California Department of Food and Agriculture (“CDFA”) plays an important role, and has for over a century, in the development of pesticide regulations and pesticide use, response to pests and necessary pesticide use, the protection of human health and safety, the economic and environmental welfare of the state, and the state’s agricultural industry. CDFA is mandated by law to “promote and protect the agricultural industry of the state.” (Food & Agr. Code, § 401.) CDFA is charged to “prevent the introduction and spread of injurious insect or animal pests, plant diseases, and noxious weeds” (Food & Agr. Code, § 403) in order to “enhance, protect, and perpetuate the ability of the private sector to produce food and fiber in a way that benefits the general welfare and economy of the state. The department shall also seek to maintain the economic well-being of agriculturally dependent rural communities in this state.” (*Id.* at § 401.5.)

Pest management and control is of statewide interest and concern and those state agencies vested with authority occupy the field. (Food & Agr. Code, § 11501.1.) Collectively, DPR and CFDA’s pesticide related roles are

of paramount importance to the health and welfare of the citizens of the state, the environment, and the agricultural industry.

C. The Importance of Crop Protection Tools for California’s Agricultural Industry

1. Purpose and Benefits of Pesticides

There are many harmful insect pests,⁴ weeds, and plant diseases that put California’s environment and economy at risk. Due to uncontrolled population growth and rapid spread, invasive species cause a wide array of economic and environmental problems. (Food & Agr. Code, § 5260.5; Hoddle, University of California, Riverside, Center for Invasive Species Research, Frequent Asked Questions About Invasive Species (2018), <https://civr.ucr.edu/invasive_species_faqs.html> [as of August 30, 2019].) Currently, invasive species cost the state at least \$3 billion a year in impacts, with the economic impacts most severe in agricultural and urban areas where jobs and people’s quality of life are affected. (Hoddle, *supra*.) Weeds alone cost the state at least \$82 million a year. (*Ibid.*) Left unchecked, many of these pests could cause certain crops to no longer be

⁴ “‘Invasive pests’ means animals, plants, insects, and plant and animal diseases or groups of those animals, plants, insects, and plant and animal diseases, including seeds, eggs, spores, or other matter capable of propagation, where introduction into California would or would likely cause economic or environmental harm. ‘Invasive pests’ does not include agricultural crops, livestock, or poultry generally recognized by the department or the United States Department of Agriculture as suitable to be grown or raised in the state.” (Food & Agr. Code, § 5260.5.)

economically viable, and in a worst-case scenario, result in conversion of farmland to nonagricultural uses.

In many situations when other management methods, such as physical and biological methods, are not adequate to eradicate, control, or prevent weed and pest infestations, chemical management methods, which include pesticides, are utilized by farmers and ranchers. The use of glyphosate is one such crop protection tool that has become a necessity for farmers and ranchers.

2. The Need For Pest and Weed Control

Today, there is a greater necessity to respond to invasive plants, weeds, and pests with the use of crop protection tools in order to protect human health and safety, the environment, and California's agricultural economy. "Invasive species constitute one of the most serious economic, social, and environmental threats of the 21st century. Nearly every terrestrial, wetland, and aquatic ecosystem in the United States has been invaded by non-native species, with economic losses estimated at \$137 billion per year. Invasive plants, animals, pests, and diseases are often introduced organisms that impact both natural and managed lands. As the volume of global travel and foreign imports grows, so does the threat of invasive species." (U.S. Dept. of Agriculture, National Institute of Food and Agriculture, Invasive Pests and Diseases <<https://nifa.usda.gov/topic/invasive-pests-and-diseases>> [as of August 30, 2019].) The state of

California has determined that “any premises, plants, conveyances or things which are infected or infested with any pest, or premises where any pest is found” to be public nuisances. (Food & Agr. Code, § 5401.)

Specifically, “[i]nvasive weeds are a problem on forestlands, rangelands, agricultural lands, and wetlands throughout California. The negative impacts from weed infestations are extensive and often irreversible.” (U.S. Department of the Interior, Bureau of Land Management, California Weeds and Invasives Program <<https://www.blm.gov/programs/natural-resources/weeds-and-invasives/blm-control-strategies/california>> [as of August 30, 2019] (hereinafter “BLM CA Weeds and Invasives”).) In California, the yellow starthistle, a common invasive weed that is toxic to horses, has infested over eight million acres in the state and is spreading. (*Ibid.*) However, all stages of development of the yellow starthistle can be controlled by glyphosate. (Council of Bay Area Resource Conservation Districts Equine Facilities Assistance Program, Controlling Yellow Starthistle (June 2000) Number 6, p. 3, <<https://ucanr.edu/sites/BayAreaRangeland/files/250535.pdf>> [as of August 30, 2019].) In order to effectively control starthistle and other invasive weeds, coordinated efforts, including the use of pesticides such as glyphosate, must be used. (BLM CA Weeds and Invasives, *supra.*)

In the agricultural setting, combating noxious and invasive weeds is essential. Weeds compete with crops for light, nutrients, and water,

especially during the first couple of weeks following emergence of the crop. (Univ. of Cal. Agric. and Natural Res., UC IPM, Statewide Integrated Pest Management Program, Corn, Pest Management Guidelines, *Integrated Weed Management* (July 2009) <<http://ipm.ucanr.edu/PMG/r113700111.html>> [as of August 30, 2019].) Herbicides reduce the early competition of weed infestation, reduce the seed bank, and reduce the potential for competition in the following crop. (*Ibid.*)

In California and the U.S., farmers and ranchers use glyphosate to manage weed growth, improve crop yield and productivity, and help support conservation-based practices. In 2019, according to the U.S. Department of Agriculture, 95% of cotton acres, 94% of soybean acres and 89% of corn acres planted were herbicide-tolerant crops. The loss of glyphosate to combat invasive and noxious weeds would present a significant challenge to farmers of these crops by reducing crop quality and reducing farm productivity and profitability. In addition, making glyphosate unavailable would unquestionably compromise the rapid growth of conservation-based no-till and conservation tillage soil practices. (See U.S. Environmental Protection Agency, Office of Chemical Safety and Pollution Prevention, Memorandum—Glyphosate: Response to Comments, Usage, and Benefits (April 18, 2019) p. 2 <<https://www.epa.gov/sites/production/files/2019-04/documents/glyphosate-response-comments-usage-benefits-final.pdf>> [as of August 30, 2019] (hereinafter “EPA Glyphosate Response to

Comments”).) Further, the use of glyphosate leads to reduction in management time and farm inputs such as labor and fuel, reduced carbon emissions, better weed control resulting in higher yields, use of fewer and less toxic herbicides, and more flexibility in timing of application, all of which would be compromised if farmers and ranchers could no longer rely upon this federally and state registered pesticide. (*Ibid.*)

The ability for farmers and ranchers to use federal and state registered crop protection tools, like glyphosate, which have undergone appropriate and adequate scientific review and re-review, strikes an appropriate balance between protecting natural and agricultural resources from the adverse impacts of pest invasions while providing for impact avoidance and minimization. Without the ability to rely upon and use glyphosate, injurious weed and pest infestations would be detrimental to agriculture, lead to the conversion of farmland to non-agricultural use, negatively impact the natural environment, and would be detrimental to the state of California and its economy as a whole.

3. Benefits of California Agriculture

Integral to the comprehensive regulatory scheme of pest and weed control and pesticide use is California’s legislative determination that the continued viability of the agricultural economy is of paramount importance to the people of California. (Food & Agr. Code, §§ 561, 802, 803, 821, 12786.) Accordingly, the ability of the state to control, detect, exclude, and

eradicate pest infestations is necessary to continue the preeminent position of this state as the leading farm state in the nation and is essential for the continuing supply of foodstuffs. (Food & Agr. Code, § 12786(c).)

California’s agricultural abundance includes more than 400 commodities and is a major national and international supplier of food and agricultural commodities. (CDFA California Agricultural Production Statistics 2017, *supra*.) With approximately 76,400 farms and ranches, “California’s agriculture is a \$54 billion per year industry that generates at least \$100 billion annually in related economic activity.” (Cal. Dept. of Food and Agriculture, *California Department of Food and Agriculture: 97 Years Protecting and Promoting Agriculture in the Golden State* (2019) <<https://www.cdfa.ca.gov/CDFa-History.html>> [as of August 30, 2019].) In 2017, California’s top 20 crop and livestock commodities accounted for more than \$37 billion in value, with nine of these commodities each exceeding \$1 billion in value. (Cal. Dept. of Food and Agriculture, *California Agricultural Statistics Review, 2017-2018*, p. 3 <<https://www.cdfa.ca.gov/statistics/PDFs/2017-18AgReport.pdf>> [as of August 30, 2019] (hereinafter “CDFA Agricultural Statistics Review”).) California helps feed the nation and the world, as well as fueling the state’s economy. (Food & Agr. Code, § 566.) California remains the national leader in agricultural production and exports. (Food & Agr. Code, § 566; CDFA Agricultural Statistics Review, *supra*, pp. 1, 2, [California is the

leading U.S. state for cash farm receipts, accounting for over 13 percent of the nation's total agricultural value.].) Additionally, California is the nation's sole producer (99 percent or more) of many specialty crops, including: almonds, artichokes, dates, figs, garlic, raisins, kiwifruit, honeydew melons, olives, clingstone peaches, pistachios, sweet rice, ladino clover seed, and walnuts. (CDFA Agricultural Statistics Review, *supra*, pp. 7-8.)

Even though the primary market for California agricultural production is largely the rest of the nation, foreign markets have become more important in recent years. For instance, in 2017, 28 percent of the state's production was shipped to overseas markets. (CDFA California Agricultural Statistics Review, *supra*, p. 8.) The value of California's agricultural exports has grown by 83 percent over the past 10 years. (*Ibid.*)

In addition to substantially impacting the state's and local counties' economy, agriculture also provides substantial benefits to the state's employment force. California provides "one out of 10 jobs in California." (Food & Agr. Code, § 566.) In 2018, there were 422,320 persons in California's agricultural labor force. (Cal. Employment Development Dept., California Agricultural Employment 2018 Annual Average (June 2019) <<https://www.labormarketinfo.edd.ca.gov/file/agric/ca-ag-employ-map-2018.pdf>> [as of August 30, 2019].)

The Legislature has found that agriculture is a major and essential component of California’s economy and that the proper, safe, and efficient use of pesticides is essential for the protection and production of agricultural commodities and for health protection. (Cal. Code Regs., tit. 3, § 6100(a)(1)-(2); Food & Agr. Code, § 12786(a), [“The continued viability of the agricultural economy is of paramount importance to the people of California.”]; *id.* at § 12786(c), [“The ability of the state to control, detect, exclude, and eradicate pest infestations is necessary to continue the preeminent position of this state as the leading farm state and is essential for the continuing supply of foodstuffs.”].) Further, every resident of California is “directly and indirectly affected by California agriculture.” (Food & Agr. Code, § 803.) As also found by the Legislature in 1978 and continues to be declared, pesticide applications must be made in a timely manner to protect the health, safety, and welfare of the state, and agricultural commodities, and to prevent economic waste. (Cal. Code Regs., tit 3, § 6100(a)(1)-(2), [“Agriculture is a major and essential component of California’s economy [and that] [t]he proper, safe, and efficient use of pesticides is essential for the protection and production of agricultural commodities and for health protection.”]; *id.* § 6100(a)(3); Pub. Resources Code, § 21080.5, as amended by Stats. 1978, ch. 308, §1(c); Food & Agr. Code, § 12786(a); *id.* at § 12786(c); *id.* § 802; *id.* § 803; *id.* § 821(f).)

Thus, in order for agriculture to remain and thrive in California, farmers and ranchers must be able to continue using federally registered crop protection tools such as glyphosate in order to continue controlling and eradicating pests and weeds, especially since changes, even small ones, in agricultural production sets in motion a series of “ripple effects,” which collectively cause changes in output (economic production) throughout the economy.

D. Need For Glyphosate

Since its registration by EPA in 1974, glyphosate has become an effective and important crop protection tool worldwide. (EPA Glyphosate Response to Comments, *supra*, p. 2, [“Glyphosate is the most commonly used herbicide in the United States.”].) “Glyphosate is registered for use in agriculture, including horticulture, viticulture, and silviculture, as well as non-agricultural sites including commercial, industrial, and residential areas.” (*Ibid.*) “In addition to agricultural uses, glyphosate is important for noxious and invasive weed control in aquatic systems, pastures/rangelands, public lands, forestry, and rights-of-way applications. Glyphosate is the leading herbicide used to control invasive species in the United States.” (*Ibid.*)

Part of its rise in agricultural use is that it allows farmers and ranchers to specifically target a broad range problematic and invasive weeds and grasses but not the agricultural crop. (*Ibid.*) Farmers also use glyphosate as

a harvest aid to control green weeds and aid in uniform ripening of the crop. (*Id.* at p. 13.) A vast majority of farmers and ranchers in all 50 states rely upon glyphosate for effective weed control. Continued access to glyphosate is important to farmers in all 50 states but is especially important to farmers who grow corn, soybeans, and cotton. In fact, during 2019, nearly 170 million acres were planted in herbicide-tolerant corn, cotton, or soybeans, representing 92% of the combined planted area. Without the use of glyphosate many of these acres would have to be seeded differently or risk crop loss. (See Duke & Powles, *Mini-Review Glyphosate: a once-in-a-century herbicide* (2008) volume 64, No. 4 Pest Manag. Sci. 319, 321-22.)

The availability of glyphosate and glyphosate-resistant crops have not only allowed farmers and ranchers to improve yields and profitability, but also better protect the environment.⁵ (Green, *The benefits of herbicide-resistant crops* (2012) volume 68, No. 10 Pest Manag. Sci. 1323.) The use

⁵ “Since 1996, genetically modified herbicide-resistant crops, primarily glyphosate-resistant soybean, corn, cotton and canola, have helped to revolutionize weed management and have become an important tool in crop production practices. Glyphosate-resistant crops have enabled the implementation of weed management practices that have improved yield and profitability while better protecting the environment. Growers have recognized their benefits and have made glyphosate-resistant crops the most rapidly adopted technology in the history of agriculture. Weed management systems with glyphosate-resistant crops have often relied on glyphosate alone, have been easy to use and have been effective, economical and more environmentally friendly than the systems they have replaced.” (Green, *The benefits of herbicide-resistant crops* (2012) volume 68, No. 10 Pest Manag. Sci. 1323.)

of glyphosate and herbicide-tolerant crops, made possible by the availability of glyphosate, has led to broader adaptation of conservation tillage and no-till methods. (*Id.* at p. 322, [“Tillage is an environmentally harmful practice that causes loss of top soil and consequent pollution of surface waters and air. Utilization of tillage results in significant fossil fuel use with associated negative impacts.”].) These practices help to conserve soil, preserve and increase nutrients, improve water quality, trap excess carbon in the soil, reduce greenhouse gas emissions, reduce soil erosion, conserve soil moisture, and are useful for integrated pest management. (*Ibid.*; U.S. Environmental Protection Agency, *Glyphosate, Basic Information On Uses* <<https://www.epa.gov/ingredients-used-pesticide-products/glyphosate>> [as of August 30, 2019].) The 2017 Census of Agriculture revealed no-till conservation as the top soil practice in 2017 at 104 million acres, and 8 million acres above levels five years ago. (U.S. Department of Agriculture, *2017 Census of Agriculture* (April 2019) volume 1, Part 51, p. 643 <https://www.nass.usda.gov/Publications/AgCensus/2017/Full_Report/Volume_1,_Chapter_1_US/usv1.pdf> [as of August 30, 2019].) Effective weed management tools aid farmers in producing food to feed the world while also protecting the environment for generations to come. Through soil conservation practices and many other practices, farmers work hard to be good stewards of the land.

The broad spectrum use of glyphosate has been especially useful for California's farmers and ranchers. With its ability to target an extensive range of invasive and noxious weeds and be used with a broad spectrum of crops, its use is virtually indispensable, especially given that California's farmers and ranchers grow more than 400 commodities, with many farmers growing multiple crops and varieties. In order to protect the diversity and abundance of California's agricultural industry, the ability to use one herbicide for many or all crops is preeminent. The loss of glyphosate would present a significant challenge to farmers of crops such as almonds, avocados, cherries, grapes, pistachios, tomatoes, and walnuts by reducing crop quality and shrinking farm productivity and profitability. In addition, making glyphosate unavailable would unquestionably compromise California's rapid growth of conservation-based no-till soil practices. California's farmers and ranchers produce a majority of the fruits, vegetables, dairy products, and other agricultural commodities that contribute significantly to the national and international food supply, public health, and the economic vitality of the many regions where these commodities are grown and consumed. In order to continue to grow and produce healthy foods, farmers and ranchers need to be able to rely upon the use of glyphosate.

E. Reliance Upon IARC Monograph 112 is Improper

Plaintiff's reliance upon IARC Monograph 112 as the foundational basis for its causation opinions conflicts with longstanding federal law (as well as state law) regarding the registration and safety of glyphosate, and instead, substitutes IARC's analysis for that of the United States. Further, the trial court's decision to allow the jury to consider, and ultimately rely upon, IARC's Monograph 112 while not considering scientific determinations by EPA is improper since IARC does not make international law and ultimate reliance upon its analysis disregards federal law.

FIFRA, originally enacted in 1947, and all its amendments are lawful statutory enactments of Congress that must be abided by. (See Section III. B. 1, *ante re FIRA*.) IARC, as explained below, is not a regulatory, legislative, rulemaking, or governmental body and its monographs (or any of its decisions) do not have the force of law. Thus, ultimate deference to IARC's monographs to the detriment of properly approved and registered pesticides pursuant to federal law is improper.

1. IARC, Monograph 112, and EPA Review of Glyphosate

IARC is an intergovernmental agency forming part of the World Health Organization of the United Nations. (World Health Organization, International Agency for the Research on Cancer, IARC's Mission: Cancer Research for Cancer Prevention (2019) <<https://www.iarc.fr/about-iarc-mission/>> [as of August 30, 2019] (hereinafter "IARC Mission").) Its role is

to conduct and coordinate research into the causes of cancer. (World Health Organization, International Agency for Research on Cancer, IARC Monographs on the Evaluation of Carcinogenic Risks to Humans Preamble (Jan. 2006, updated Sept. 2015), p.1 <<https://monographs.iarc.fr/wp-content/uploads/2018/06/CurrentPreamble.pdf> > [as of August 30, 2019] (hereinafter “IARC Preamble”).) It also collects and publishes data regarding the occurrence of cancer worldwide and cancer control programs. (IARC Mission, *supra*; IARC Preamble, *supra*, p. 3.) IARC plays an important role in fostering science and the scientific understanding of cancer, but its valuable scientific process is different than the processes employed by regulatory agencies. This is in part because IARC, along with the World Health Organization, are not regulatory bodies and do not impose international laws. Rather, IARC’s nongovernmental consortium of scientists review existing scientific literature and provide “independent, scientific opinion on environmental carcinogenesis” in the form of monographs⁶ to governmental authorities for their use or nonuse. (IARC Preamble, *supra*, pp. 1, 3.) As recognized by IARC, the monograph evaluations are “only one part of the body of information on which public health decisions maybe based” given the different requirements and

⁶ Monographs are “critical reviews and evaluations of evidence on the carcinogenicity of a wide range of human exposures.” (IARC Preamble, *supra*, p. 2.)

regulations of each country. (*Id.* at p. 3.) The IARC monograph evaluations may assist national and international authorities in making risk assessments and in taking preventive action, but the monographs themselves are not risk assessments. (World Health Organization, International Agency for Research on Cancer, IARC Monographs, Some Organophosphate Insecticides and Herbicides Volume 112 (2017) p. 1 <<https://publications.iarc.fr/549>> [as of August , 2019] (hereinafter “Full IARC Monograph 112”).) Rather, “[t]he Monographs evaluate cancer hazards, despite the historical presence of the word ‘risks’ in the title.” (*Ibid.*) Further, neither the monographs nor IARC recommend legislation or regulation; any regulations stemming from information in an IARC monograph are up to that county. (IARC Preamble, *supra*, p. 3, [*“Therefore, no recommendation is given with regard to regulation or legislation, which are the responsibility of individual governments or other international organizations.”* Emphasis added.]); World Health Organization, International Agency for Research on Cancer, IARC Monographs Volume 112: Evaluation of Five Organophosphate Insecticides and Herbicides (Mar. 20, 2015) p. 2 <https://www.iarc.fr/wp-content/uploads/2018/07/Monograph_Volume112-1.pdf> [as of August 30, 2019], “The Monographs Programme provides scientific evaluations based on a comprehensive review of the scientific literature, but it remains the responsibility of individual governments and other international organizations to recommend regulations, legislation, or

public health intervention.”] (hereinafter “IARC Monograph 112 Summary”).)

Once a monograph is released, governmental authorities can then utilize IARC’s information in completing their regulatory review, conducting risk assessments, making regulatory decisions, and implementing rules. This is exactly what happened here. IARC released a summary of its evaluation of glyphosate on March 20, 2015 and published the detailed assessment, entitled Monograph Volume 112, Some Organophosphate Insecticides and Herbicides, in 2017. (IARC Monograph 112 Summary, *supra*, p. 1; Full IARC Monograph 112, *supra*.) In Monograph 112, IARC classified glyphosate as “probably carcinogenic to humans (Group 2A).” (Full IARC Monograph 112, *supra*, p. 398.) IARC’s classification “was based on ‘limited’ evidence of cancer in humans (from real-world exposures that actually occurred) and ‘sufficient’ evidence of cancer in experimental animals (from studies of ‘pure’ glyphosate).” (World Health Organization, International Agency for Research on Cancer, Q&A on Glyphosate (March 1, 2016) p. 1 <https://www.iarc.fr/wp-content/uploads/2018/11/QA_Glyphosate.pdf> [as of August 30, 2019].)

In a similar timeframe as the release of Monograph 112, EPA began conducting its registration review of glyphosate pursuant to FIFRA, 7 U.S.C. § 136a. (83 Fed.Reg. 8476 (Feb. 27, 2018).) Rather than conducting hazard determinations like IARC, EPA’s robust pesticide registration review

reviewed the carcinogenic potential of glyphosate by examining the “glyphosate cancer database, including data from epidemiological, animal carcinogenicity, and genotoxicity studies.” (U.S. Environmental Protection Agency, Glyphosate: EPA Actions and Regulatory History <<https://www.epa.gov/ingredients-used-pesticide-products/glyphosate>> [as of August 30, 2019].) EPA also convened a FIFRA Scientific Advisory Panel to review EPA’s evaluation of the carcinogenic potential of glyphosate and conducted human health and ecological risk assessments. (*Ibid.*; 83 Fed.Reg. 8476 (Feb. 27, 2018).) Following its regulatory requirements and procedures,⁷ including an independent evaluation of *all* scientific data available including Monograph 112, EPA released its Proposed Interim Registration Review Decision for glyphosate in April 2019, finding “no risks to public health when glyphosate is used in accordance with its current label and that glyphosate is not a carcinogen.”⁸ (U.S. Environmental Protection Agency,

⁷ “The EPA conducted an independent evaluation of the carcinogenic potential of glyphosate and has determined that glyphosate is ‘not likely to be carcinogenic to humans.’ The agency’s cancer classification is based on a thorough weight-of-evidence review of all relevant data and is in accordance with the agency’s 2005 Guidelines for Carcinogen Risk Assessment.” (U.S. Environmental Protection Agency, Glyphosate, Proposed Interim Registration Review Decision Case Number 0178 (April 2019) p. 7 <<https://www.epa.gov/sites/production/files/2019-04/documents/glyphosate-pid-signed.pdf>> [as of August 30, 2019].)

⁸ “As part of this action, EPA continues to find that there are no risks to public health when glyphosate is used in accordance with its current label and that glyphosate is not a carcinogen. The agency’s scientific findings on human health risk are consistent with the conclusions of science reviews by many other countries and other federal agencies. While the agency did not

News Release: EPA Takes Next Step in Review Process for Herbicide Glyphosate, Reaffirms No Risk to Public Health (April 30, 2019) <<https://www.epa.gov/newsreleases/epa-takes-next-step-review-process-herbicide-glyphosate-reaffirms-no-risk-public-health>> [as of August 30, 2019].) EPA came to a different conclusion than IARC, in part because “EPA’s cancer evaluation [was] more robust than IARC’s evaluation,” which only considered a subset of those scientific studies evaluated by EPA. (U.S. Environmental Protection Agency, Glyphosate, Proposed Interim Registration Review Decision Case Number 0178 (April 2019) p. 7 <<https://www.epa.gov/sites/production/files/2019-04/documents/glyphosate-pid-signed.pdf>> [as of August 30, 2019] (hereinafter “Proposed Registration Review”).) Further, EPA’s cancer evaluation was more transparent, employed a statutorily mandated public process, and its “conclusion is consistent with other regulatory authorities and international organizations, including the Canadian Pest Management Regulatory

identify public health risks in the 2017 human health risk assessment, the 2017 ecological assessment did identify ecological risks. To address these risks, EPA is proposing management measures to help farmers target pesticide sprays on the intended pest, protect pollinators, and reduce the problem of weeds becoming resistant to glyphosate.” (U.S. Environmental Protection Agency, News Release: EPA Takes Next Step in Review Process for Herbicide Glyphosate, Reaffirms No Risk to Public Health (April 30, 2019) <<https://www.epa.gov/newsreleases/epa-takes-next-step-review-process-herbicide-glyphosate-reaffirms-no-risk-public-health>> [as of August 30, 2019].)

Agency, the Australian Pesticide and Veterinary medicines Authority, the European Food Safety Authority, the European Chemicals Agency, the German Federal Institute for Occupational Safety and Health, the Joint FAO/WHO Meeting on Pesticides Residues, the New Zealand Environmental Protection Authority, and the Food Safety Commission of Japan.” (Proposed Registration Review, *supra*, p. 8.) Thus, IARC’s and EPA’s separate and distinct roles should be recognized by the courts and each given its appropriate weight.

F. The Basis for the Trial Court’s Ruling Improperly Relies Upon Monograph 112

1. Proper Role of Monograph 112

As detailed above, the focus of IARC’s monographs, including Monograph 112, is reviewing readily available scientific material in order to make hazard determinations as opposed to risk assessments. (Full IARC Monograph 112, *supra*, p. 1.) IARC’s approach focuses on an entirely theoretical question of whether a substance is capable of causing cancer under any circumstances at any possible dose. In contrast, through pesticide registrations and registration reviews, EPA analyzes scientific studies and data in order to make human health risk assessments and ecological risk assessments to determine whether there is any threat of harm to human health or the environment under actual conditions of use in the real world. (7 U.S.C. § 136a(c)(5).) Not only does permitting the IARC

Monograph 112 to be the foundation for Plaintiff's case upset the carefully constructed regulatory regime in FIFRA, it also shifts the focus to the wrong question—theoretical hazard determinations. A theoretical hazard determination will not provide a proper evaluation on the risks of pesticide use and should not be used to make regulatory decisions or legal decisions.

Compounding matters, not only does Monograph 112 focus on the wrong question, but the jury was not allowed to review evidence supporting the correct question. The court admitted the complete IARC Monograph 112 without limitation (12A RT 1715:24-1716:6, 1740:19-24) but withheld written conclusions of various regulatory agencies as inadmissible or admissible only to show Monsanto's state of mind with respect to two EPA documents. (13B RT 2122:18-2124:12; 14A RT 2202:13-2205:11; 14B RT 2288:14-21; 20 RT 3529:1-3530:5; 29A RT 5054:22-5055:6.) By erroneously admitting IARC Monograph 112, but not admitting the EPA regulatory determinations on glyphosate, the jury and the trial court were not provided with proper scientific evidence, especially the scientific evidence used pursuant to FIFRA when reviewing and approving a pesticide for use in the United States and making sure there are no "unreasonable risk[s] to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide." (7 U.S.C. § 136(bb).)

2. The Court Must Defer to Federal Law

The trial court's decision disregards federal law, as well as state law, regarding the registration and safety of glyphosate, and instead, substitutes IRAC's analysis for that of the United States. Ignoring or disregarding EPA's statutory mandates and regulatory decisions in favor of a non-regulatory entity is improper and threatens the federal regulatory structure for protecting human health and safety and the environment, as well as ensuring the proper use of pesticides. Although IARC's work is useful and important, IARC serves a different role than governmental agencies and therefore, Monograph 112 should not be substituted for that of the EPA.

Additionally, the trial court's decision to admit IARC Monograph 112 into evidence but not EPA determinations defeats provisions of FIFRA, especially 7 U.S.C. § 136a(f)(2): "As long as no cancellation proceedings are in effect registration of a pesticide shall be prima facie evidence that the pesticide, its and packaging comply with the registration provisions of the subchapter." There are no cancellation proceedings for glyphosate, nor were there any during the trial court proceedings. Glyphosate's federally and state approved label⁹ was valid during IARC's review and the trial court's proceedings, and continues to remain valid today. Further, the label is the law. However, the reliance on IARC Monograph 112 to establish causation

⁹ Since the release of the IARC Monograph 112, DPR has not made any changes to glyphosate's pesticide registration or use requirements.

calls into question the validity of glyphosate's label and its compliance with the registration provisions, especially those related to environmental and human health, since Monograph 112 is at odds with EPA's conclusions on glyphosate. (7 U.S.C. §§ 136a(c)(5), 136(bb).) For farmers and ranchers, a questionable label cannot be relied upon.

G. Farmers and Ranchers' Use of Glyphosate is in Jeopardy Given the Trial Court's Decision

Farmers and ranchers, users of registered products, should be able to rely upon federal and state pesticide approvals and the regulatory process. The label is the law and farmers and ranchers comply with the label when using crop protection tools, including glyphosate. However, the trial court's decision fundamentally questions the validity of glyphosate's pesticide label. Reliance on IARC Monograph 112 to establish causation erodes the underpinnings of glyphosate's pesticide registration, particularly the science that is the basis for EPA's decision to register and re-register the product, questions the validity of the registration and label, and further calls into question if farmers and ranchers who use the product in accordance with the label are acting in compliance with the law. This will cause a cascading effect through the entire crop protection tool chain, from manufacturers, distributors, sellers, and ultimately to the end users—the farmers and ranchers who grow food and fiber for the state and nation.

1. Creation of Regulatory and Legal Uncertainty

Affirming the trial court's decision will cause great regulatory and legal uncertainty for the regulated public and will especially erode the regulatory certainty that farmers and ranchers should otherwise be able to rely upon when using registered pesticides. Given the trial court's decision, in which EPA's regulatory decisions were not admitted into evidence and thus, no weight was given to EPA's registration process or regulatory conclusions, farmers and ranchers fear that the trial court's decision will erode the highly regulated and controlled pesticide registration process. Specifically, if the judgment is affirmed, it will set precedent regarding causation and liability which will cascade down the user chain to those who regularly use and rely upon registered crop protection tools. Farmers and ranchers and applicators of pesticides apply crop protection tools in accordance with the pesticide's legally approved label. However, with this decision, farmers and ranchers fear that they can no longer rely upon a legally approved pesticide label to be the law of the land, thus calling into question—what is the law?

To best protect American businesses, families, and homes, it is paramount to have a uniform set of regulations and laws. Contradictory law and/or regulations regarding the legality of pesticide products could lead to situations where certain vital crop protection tools cannot be used, or products could be used to protect one community but not another, leading to

an outbreak resulting in harm to both communities and risks to public health, safety, and the environment. The lack of uniformity reduces business climate certainty and increases consumer costs, without a commensurate improvement in human health or the environment.

2. Negative Impact to Agriculture

Farmers and ranchers, users of herbicide and pesticide products, must abide by all applicable state and federal laws regarding pesticide application and use, and work under the regulatory and legal framework in existence. Farmers and ranchers depend on regulatory and legal certainty regarding the validity of registered pesticides and their labels. This is especially vital because the agricultural industry makes cropping and planning decisions months and years in advance, including what fields to plant, what crops to plant on what field, and what crop protection tools to use.

Specifically, Farm Bureau's farmer and rancher members make business decisions, including planting decisions well into the future based on the belief that they would be able to utilize glyphosate to protect these crops. For instance, many almond trees are purchased years in advance based on the farmers' understanding that they will be able to protect those crops by using certain crop protection tools including glyphosate. As with many crops, planting almond trees is a long-term business decision as an almond tree does not bear fruit during the first 3-4 years after planting.

Additionally, almond trees are alternate bearing so that a large crop one year

is often followed by a lighter crop the following year. Given the long-term planning involved in farming, family farmers need consistency and predictability to produce the healthy fruits, nuts, and vegetables that feed Californians and families all over the world.

It is essential for farmers and ranchers to be able to use crop protection tools such as glyphosate. Glyphosate allows farmers and ranchers to prevent, address, and respond to weed infestations in a timely manner which otherwise can be detrimental to the safety and welfare of the state and the agricultural industry. By affirming the judgment, the ability to rely upon and use glyphosate is essentially eliminated given its regulatory and legal uncertainty and the potential for a finding of causation and liability through use, even if used in compliance with the label. Further, by casting doubt on the validity of glyphosate's pesticide label and the associated potential liability from using the product, farmers and ranchers will have to turn to other products. Without the ability to use glyphosate, food, water, energy, and other resources are threatened, including increases in production costs, increases in the use and amounts other herbicides, increases in the frequency of non-glyphosate herbicide treatments, reduction in tillage conservation practices, reduction in crop production, changes in the seed supply chain, reverting to older methods of weed control that may be more harmful to the environment, increases in soil erosion and loss, increases in water quality impacts and water runoff, increases in CO2 emissions, increases in water

use, potential decreases in use of cover crop techniques and use of integrated pest management, and increases in labor needs. Additionally, farmers will be at a significant economic and crop disadvantage compared with those states and countries that allow the use of glyphosate.

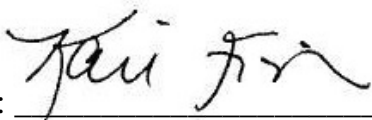
Therefore, farmers and ranchers should be allowed to rely upon and use federal and state approved crop protection tools and not be subject to uncertainty and potential liability due to conflicting scientific reports put forth by non-regulatory bodies. By not being able to now rely upon determinations made by the EPA and the state of California, affirming the judgment jeopardizes the use of crop protection tools, and therefore, the availability, affordability, and overall safety of California's agricultural products by preventing the application of chemical pest management activities used to prevent devastating harm.

IV. CONCLUSION

Based on the foregoing, Farm Bureau urges the Court to reverse the trial court's decision and rule in favor of Defendant/Appellant Monsanto Company.

Dated: September 3, 2019

CALIFORNIA FARM BUREAU FEDERATION

By:  _____

Kari E. Fisher

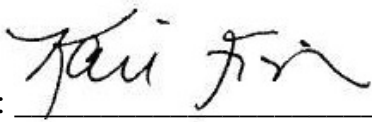
*Attorneys for Proposed Amicus
California Farm Bureau Federation*

CERTIFICATE OF WORD COUNT

Pursuant to Rule 8.204(c)(1) of the California Rules of Court, I certify that this brief is printed in 13-point Times New Roman font and contains 7,973 words, according to the word counting feature of the word processing software used to prepare it.

Dated: September 3, 2019

CALIFORNIA FARM BUREAU FEDERATION

By: _____

Kari E. Fisher
*Attorneys for Proposed Amicus
California Farm Bureau Federation*

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