

1 Robert S. Arns, State Bar No. 65071 (rsa@arnslaw.com)
Jonathan E. Davis, State Bar No. 191346 (jed@arnslaw.com)
2 Shounak S. Dharap, State Bar No. 311557 (ssd@arnslaw.com)
3 Katherine A. Rabago, State Bar No. 333374 (kar@arnslaw.com)

4 **ARNS DAVIS LAW**
A Professional Corporation
5 515 Folsom St., 3rd Floor
San Francisco, CA 94109
6 Tel: (415) 495-7800
Fax: (415) 495-7888

7 Attorneys for Plaintiffs

8
9 UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

10
11 VICTOR SABORIO, individually and On
12 Behalf of All Others Similarly Situated,

13 Plaintiffs,

14 vs.

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

19 Defendants.

Case No.

CLASS ACTION COMPLAINT FOR DAMAGES

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

DEMAND FOR JURY TRIAL



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

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

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

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

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

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

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

JURISDICTION AND VENUE

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

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

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

///

///

PARTIES

Plaintiff

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

Defendants

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

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

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

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

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

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

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

9 **CLASS ACTION ALLEGATIONS**

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

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

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

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

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

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

1 practice;

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

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

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

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

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

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

20 **FACTUAL ALLEGATIONS**

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

25 24. In 2015, the World Health Organization classified glyphosate as "possibly carcinogenic to
26 humans."

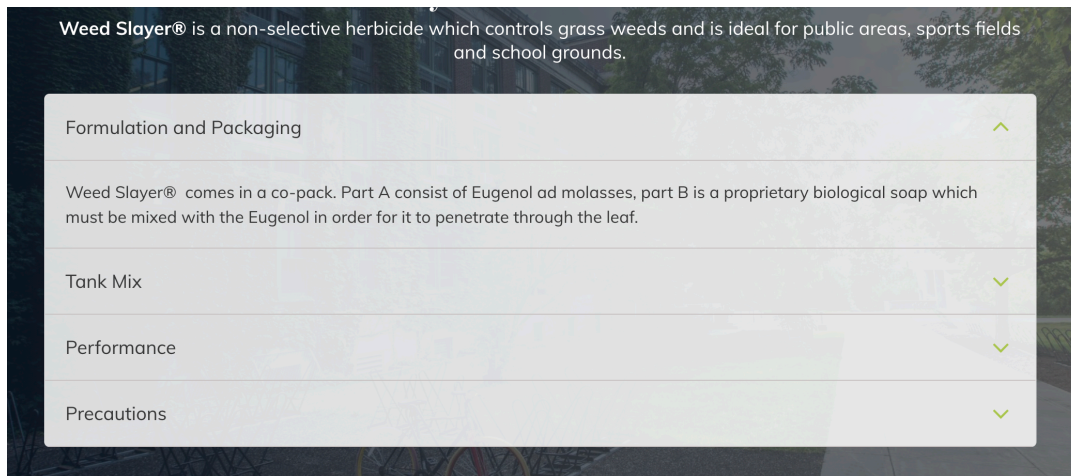
27 25. In 2018 and 2019 a series of high-profile lawsuits were filed, and jury verdicts were
28 reached, against Roundup's manufacturer, Monsanto (and later, Bayer), relating to its failure to

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

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

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

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



19
20 28. The product instructions direct the consumer to mix Part A (Weed Slayer) and Part B (Agro
21 Gold WS) in specified amounts and dilute with water before spraying on the desired area.

22 **DIRECTIONS FOR USE:**

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

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

1 website repeats the same information.

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

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

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

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

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

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

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

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

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

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



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

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

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

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

1 amendments containing beneficial bacteria recommended for all crops.”

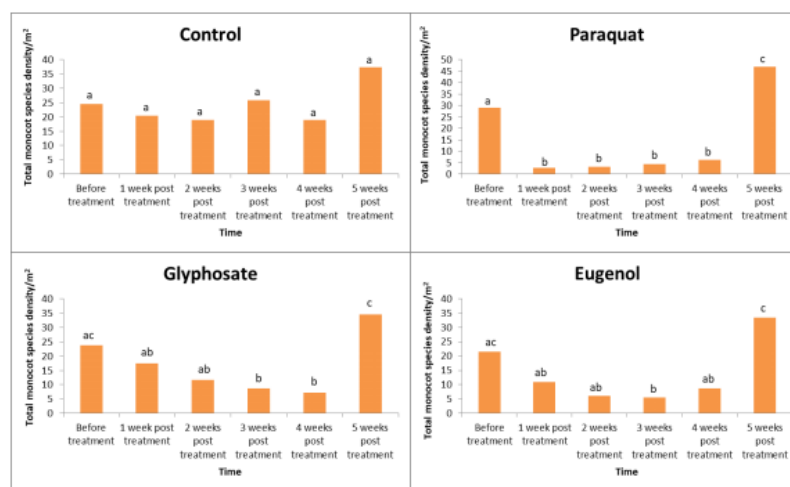
2 41. As discussed above, the product labels for Weed Slayer/Agro Gold WS list the only Active
3 Ingredient as the clove oil-derived Eugenol.

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

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

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

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



19 Figure 5 Change in total monocot density/m² for each treatment over five weeks. The same
20 letters above the bars indicates no significant difference in the mean monocot density for
21 LSD test where P ≤ 0.05.

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

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

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

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

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

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

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

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

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

25 **FIRST CAUSE OF ACTION**
26 **False Advertising**
27 **(Bus. & Prof. Code, §§ 17500, *et seq.*)**

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

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

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

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

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

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

10 56. Specifically, Defendants made the following misrepresentations:

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

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

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

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

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

28 //

SECOND CAUSE OF ACTION

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

1
2
3 61. Plaintiff hereby realleges and incorporates by reference all paragraphs above as if set forth
4 in detail herein.

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

Unlawful Business Acts and Practices

8
9 63. Defendants’ conduct, as described above, constitutes unlawful business acts and practices.

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

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

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

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

Unfair Business Acts and Practices

22
23 68. Defendants’ deceptive acts and practices, as described above, constitute unfair business
24 practices within the meaning of Business & Professions Code, sections 17200, *et seq.*

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

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

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

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

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

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

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

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

19 **Fraudulent Business Acts and Practices**

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

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

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

- 27
- Defendants' products are "products for organic crops."
 - Weed Slayer is "a unique organic broad spectrum, systemic herbicide."
- 28

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

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

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

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

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

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

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

21 **THIRD CAUSE OF ACTION**
22 **Fraud**

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

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

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

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

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

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

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

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

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

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

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

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

10 **FOURTH CAUSE OF ACTION**

11 Breach of Implied Warranty of Merchantability
12 (Against ARI, Amazon, and Amazon Services)

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

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

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

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

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

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

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

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

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

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

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

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

PRAYER FOR RELIEF

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

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

Dated: April 28, 2023



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

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Says 'Organic' Weed Slayer, Agro Gold WS Herbicides Contain Glyphosate, Diquat](#)
