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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

_____, on behalf of themselves and
all others similarly situated,

Plaintiffs,

v.

BAYER AKTIENGESELLSCHAFT,
WERNER BAUMANN, WERNER
WENNING, LIAM CONDON, JOHANNES
DIETSCH, and WOLFGANG NICKL,

Defendants.

**COMPLAINT FOR VIOLATIONS OF
THE FEDERAL SECURITIES LAWS**

CLASS ACTION

DEMAND FOR JURY TRIAL

1
2 Plaintiffs _____ (“Plaintiffs”), by and through their counsel, allege the following
3 upon information and belief, except as to those allegations concerning Plaintiffs, which are
4 alleged upon personal knowledge. Plaintiffs’ information and belief are based upon, *inter alia*,
5 counsel’s investigation, which included review and analysis of: (i) documents filed publicly
6 by Bayer Aktiengesellschaft (“Bayer” or the “Company”) with the United States Securities and
7 Exchange Commission (“SEC”) and other regulators; (ii) press releases, presentations, and
8 media reports issued and disseminated by the Company; (iii) analyst and media reports
9 concerning Bayer; (iv) transcripts of Bayer’s investor conference calls; and (v) other public
10 information regarding the Company.

11 **I. INTRODUCTION**

12 1. This securities class action is brought on behalf of all persons or entities that
13 purchased or otherwise acquired Bayer American Depositary Receipts (“ADRs”) between May
14 23, 2016 and March 19, 2019, inclusive (the “Class Period”). The claims asserted herein are
15 alleged against Bayer and certain of the Company’s current and former senior executives
16 (collectively, “Defendants”), and arise under Sections 10(b) and 20(a) of the Securities Exchange
17 Act of 1934 (the “Exchange Act”) and Rule 10b-5, promulgated thereunder.

18 2. Headquartered in Leverkusen, Germany, Bayer is a multinational pharmaceutical
19 and life science company. On May 23, 2016, Bayer announced that it had made an unsolicited all-
20 cash offer to acquire Monsanto Company (“Monsanto”), a provider of agricultural chemicals and
21 other products based in St. Louis, Missouri. After a protracted regulatory approval process, on
22 June 7, 2018, Bayer completed its all-cash acquisition of Monsanto for \$128 per share, or \$63
23 billion including debt (the “Acquisition”), representing a 44% premium to Monsanto’s share price
24 on May 9, 2016—the day prior to Bayer’s first written proposal to acquire Monsanto.

25 3. Before the Acquisition, Monsanto aggressively marketed and sold its flagship weed
26 killer product, Roundup. Roundup is the most widely used weed killer around the world, which
27 generated nearly \$5 billion in annual revenue for Monsanto. The active ingredient in Roundup is
28 glyphosate, a toxic chemical long suspected of causing cancer, including non-Hodgkin’s

1 lymphoma—a lethal blood cancer.

2 4. In March 2015, more than one year prior to Bayer’s initial May 2016 offer to
3 acquire Monsanto, the International Agency for Research on Cancer (“IARC”), an arm of the
4 World Health Organization (“WHO”), found that there was strong evidence of an association
5 between exposure to glyphosate and non-Hodgkin’s lymphoma and concluded that glyphosate was
6 “probably carcinogenic to humans.”

7 5. In early 2016, after the IARC classified glyphosate as “probably carcinogenic to
8 humans,” numerous lawsuits were filed against Monsanto by cancer-stricken plaintiffs, alleging
9 that exposure to Monsanto’s glyphosate-based weed killer, Roundup, had caused their cancer and
10 that Monsanto failed to warn the public about the chemical’s toxic effects. One of the first
11 Roundup cancer lawsuits brought against Monsanto was filed on January 26, 2016, in the Superior
12 Court of the State of California for the County of San Francisco. *See Johnson v. Monsanto Co.*,
13 No. CGC-16-550128 (Cal. Super. Ct., Cnty. of S.F.) (the “*Johnson Case*”). Days later, on February
14 1, 2016, the first federal Roundup lawsuit was filed against Monsanto in the U.S. District Court
15 for the Northern District of California. *See Hardeman v. Monsanto Co.*, No. 3:16-cv-525 (N.D.
16 Cal.) (the “*Hardeman Case*”). Many more lawsuits followed.

17 6. On April 8, 2016, the Judge in the *Hardeman Case* refused to dismiss the lawsuit,
18 giving rise to a wave of new lawsuits that flooded courts across the country. In October 2016,
19 after dozens more lawsuits were filed in federal courts, the Judicial Panel on Multidistrict
20 Litigation consolidated these cases in the MDL No. 2741. These cases have been centralized in
21 the Northern District of California, overseen by the Honorable Judge Vince Chhabria. *See In re*
22 *Roundup Prods. Liab. Litig.*, No. 3:16-md-2741-VC (N.D. Cal.).

23 7. In March 2017, the Environmental Protection Agency (“EPA”) of California—a
24 large agricultural state and vast market for Monsanto’s Roundup product—adopted the IARC’s
25 classification of glyphosate as a probable carcinogen. In July 2017, the State of California added
26 glyphosate to its list of chemicals known to cause cancer.

27 8. As a result of the March 2015 WHO study classifying glyphosate as “probably
28 carcinogenic to humans” and the California EPA’s classification of glyphosate as “a known

1 carcinogen,” individuals alleging that Roundup caused personal injury, including cancer, had a
2 greatly enhanced ability to sue Monsanto. These findings provided support for the causation
3 element necessary for the Roundup cancer suits to succeed at trial and the number of Roundup
4 lawsuits filed against Monsanto continued to surge.

5 9. On September 14, 2016, Bayer entered into an agreement to purchase all of
6 Monsanto’s shares for \$128 per share, representing a 44% premium over Monsanto’s closing share
7 price on May 9, 2016. Due to a lengthy regulatory approval process, the Acquisition was not
8 completed until nearly two years later.

9 10. By June 2018, when Bayer finally consummated the Acquisition, not only had
10 thousands of personal injury lawsuits related to Roundup exposure been filed against Monsanto,
11 but plaintiffs in several of the first Roundup cancer cases had survived motions to dismiss, obtained
12 damaging discovery, and fended off challenges to expert testimony and pretrial motions. Indeed,
13 around the same time, the *Johnson Case* was the first of the Roundup cancer cases set to go to trial.
14 Despite the significant liability risks related to Monsanto’s Roundup product, Bayer forged ahead
15 and acquired Monsanto for \$63 billion in cash—the largest acquisition in German corporate
16 history—which the Company financed, in large part, with newly assumed debt.

17 11. Throughout the Class Period, Defendants touted the Acquisition as “a compelling
18 transaction for shareholders” that would create “significant value” by generating “stronger growth,
19 better profitability, and a more resilient business profile.” Defendants also highlighted that the
20 combined business has “the potential to command a premium valuation” and assured investors that
21 the Acquisition “will translate into attractive financial benefits for Bayer and its shareholders.”
22 Defendants specifically downplayed the liability risks related to Monsanto’s Roundup product,
23 emphasizing that Bayer conducted a “thorough analysis” during the due diligence process and
24 “undertook appropriate due diligence of litigation and regulatory issues throughout the process”
25 which led Bayer to finalize the Acquisition. These and similar statements made by Defendants
26 during the Class Period were false and misleading. In truth, Defendants knew or recklessly
27 disregarded that the Acquisition would not result in the benefits for Bayer that Defendants had
28 represented, due to Monsanto’s significant exposure to liability risk related to Roundup. As a

1 result of Defendants' misrepresentations, Bayer ADRs traded at artificially inflated prices during
2 the Class Period.

3 12. The truth began to emerge on August 10, 2018, when a jury in the *Johnson Case*
4 found unanimously that Monsanto's glyphosate-based Roundup weed killer was a "substantial
5 factor" in causing the plaintiff to develop non-Hodgkin's lymphoma and that Monsanto knew, or
6 should have known, the risks associated with exposure to the chemical and failed to warn of this
7 severe health hazard. The jury also found that Monsanto acted with "malice or oppression" and
8 should be punished for its conduct. Accordingly, the jury ordered Monsanto to pay \$39 million in
9 compensatory damages and \$250 million in punitive damages. On this news, the price of Bayer
10 ADRs declined over 11%, from \$26.59 per ADR to \$23.59 per ADR.

11 13. On October 22, 2018, although the court in the *Johnson Case* reduced the award of
12 punitive damages from \$250 million to \$39 million to match the compensatory damages awarded
13 to the plaintiff, the court otherwise denied Monsanto's motion for judgment notwithstanding the
14 verdict and Monsanto's motion for a new trial, and upheld the jury's verdict, ruling that "there is
15 no legal basis to disturb the jury's determination that plaintiff's exposure to [glyphosate-based
16 herbicides] was a substantial factor in causing his [non-Hodgkin's lymphoma]." On this news, the
17 price of Bayer ADRs declined nearly 9%, from \$22.00 per ADR to \$20.10 per ADR.

18 14. Then, on March 19, 2019, a jury in the *Hardeman Case*—the first federal Roundup
19 cancer lawsuit to proceed to trial—issued a verdict on causation in phase one of the bifurcated
20 trial, finding that plaintiff's "exposure to Roundup was a substantial factor in causing his non-
21 Hodgkin's lymphoma." On this news, the price of Bayer ADRs declined over 9%, from \$19.67
22 per ADR to \$17.85 per ADR.

23 **II. JURISDICTION AND VENUE**

24 15. The claims asserted herein arise under Sections 10(b) and 20(a) of the Exchange
25 Act (15 U.S.C. §§ 78j(b) and 78t(a)), and Rule 10b-5 promulgated thereunder (17 C.F.R. §
26 240.10b-5). This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C.
27 §§ 1331 and 1337, and Section 27 of the Exchange Act (15 U.S.C. § 78aa).

28 16. Venue is proper in this District pursuant to Section 27 of the Exchange Act (15

1 U.S.C. § 78aa) and 28 U.S.C. § 1391(b). Bayer transacts business in California, including in this
2 District. In connection with the acts alleged in this Complaint, Defendants, directly or indirectly,
3 used the means and instrumentalities of interstate commerce, including, but not limited to, the
4 mails, interstate telephone communications, and the facilities of the national securities markets. In
5 addition, related actions filed against Monsanto in connection with its glyphosate-based herbicide
6 Roundup have been consolidated and are currently pending in this District. The Judicial Panel on
7 Multidistrict Litigation selected the Northern District of California as the appropriate transferee
8 district for these cases because “[t]wo of the earliest-filed and most procedurally advanced actions
9 are pending in this district” and the Northern District of California “is both convenient and easily
10 accessible for all parties . . . and has the necessary judicial resources and expertise to efficiently
11 manage this litigation.” See Transfer Order at 2, *In re Roundup Prods. Liab. Litig.*, No. 16-md-
12 2741-VC (N.D. Cal.), ECF No. 1; see also *Hardeman*, No. 3:16-cv-525.

13 **III. PARTIES**

14 17.

15 Plaintiffs, as indicated on the certifications submitted herewith, Plaintiffs purchased Bayer ADRs
16 at artificially inflated prices during the Class Period and suffered damages as a result of the
17 violations of the federal securities laws alleged herein.

18 18. Defendant Bayer is a multinational pharmaceutical and life science company.
19 Incorporated under the laws of Germany, the Company maintains its corporate headquarters in
20 Leverkusen, Germany. As explained on Bayer’s website, ADRs “are a U.S. dollar-denominated
21 form of equity ownership in a non-U.S. company” and “are an instrument used widely by non-
22 U.S. companies to offer and trade their shares conveniently and efficiently in the U.S. equity
23 markets.” Bayer ADRs represent Bayer ordinary shares and as of September 20, 2017, when Bayer
24 performed an ADR ratio change, four Bayer ADRs correspond to one Bayer ordinary share.
25 Bayer ADRs are registered by Bayer with the SEC on Form F-6 and are issued by a U.S. bank,
26 The Bank of New York Mellon, acting as depositary. Since September 27, 2007, Bayer ADRs
27 have traded in the U.S. over-the-counter market under ticker symbol “BAYRY.”

28

1 19. Defendant Werner Baumann (“Baumann”) has served as Bayer’s Chief Executive
2 Officer and Chairman of the Company’s Board of Management since May 1, 2016.

3 20. Defendant Werner Wenning (“Wenning”) served as the Chairman of Bayer’s
4 Supervisory Board from October 1, 2012 until April 28, 2020.

5 21. Defendant Liam Condon (“Condon”) has served as President of Bayer’s Crop
6 Science Division and a member of the Company’s Board of Management since January 1, 2016.

7 22. Defendant Johannes Dietsch (“Dietsch”) served as Bayer’s Chief Financial Officer
8 (“CFO”) from October 1, 2014 until May 31, 2018, and as a member of the Company’s Board of
9 Management from September 1, 2014 until May 31, 2018.

10 23. Defendant Wolfgang Nickl (“Nickl”) has served as Bayer’s CFO since June 1,
11 2018, and as a member of the Company’s Board of Management since April 26, 2018.

12 24. Defendants Baumann, Wenning, Condon, Dietsch, and Nickl are collectively
13 referred to hereinafter as the “Individual Defendants.” The Individual Defendants, because of their
14 positions with Bayer, possessed the power and authority to control the contents of the Company’s
15 reports, press releases, and presentations to securities analysts, money and portfolio managers, and
16 institutional investors. Each of the Individual Defendants was provided with copies of the
17 Company’s reports, presentations, and press releases alleged herein to be misleading prior to, or
18 shortly after, their issuance and had the ability and opportunity to prevent their issuance or cause
19 them to be corrected. Because of their positions and access to material non-public information
20 available to them, each of the Individual Defendants knew that the adverse facts specified herein
21 had not been disclosed to, and were being concealed from, the public, and that the positive
22 representations which were being made were then materially false and/or misleading.

23 **IV. BACKGROUND**

24 25. In March 2015, more than one year prior to Bayer’s May 2016 initial offer to
25 acquire Monsanto, the WHO classified glyphosate, the active ingredient in Monsanto’s flagship
26 weed killer product, Roundup, as “probably carcinogenic to humans.”

27 26. In early 2016, there was a surge of personal injury lawsuits filed against Monsanto
28 by individuals alleging that Roundup had caused their cancer.

1 27. When Bayer completed its acquisition of Monsanto in June 2018, the Company
2 faced thousands of personal injury lawsuits relating to Roundup exposure and plaintiffs in several
3 of the first of these cases had already survived motions to dismiss, obtained damaging discovery,
4 and fended off challenges to expert testimony and pretrial motions.

5 **V. DEFENDANTS' MATERIALLY FALSE AND MISLEADING**
6 **STATEMENTS CAUSE SUBSTANTIAL LOSSES TO INVESTORS**

7 28. The Class Period begins on May 23, 2016, when the Company issued a press release
8 announcing that Bayer had made an unsolicited all-cash offer to acquire Monsanto for \$122 per
9 share, representing a 37% premium over Monsanto's closing share price on May 9, 2016—the day
10 before Bayer presented its first written offer to Monsanto. The press release described the
11 Acquisition as having “[c]ompelling value-creation potential” and touted it as a “compelling
12 opportunity to create a global agriculture leader.” In the press release, Defendant Baumann is
13 quoted as saying that the Acquisition would generate “substantial value” for Bayer's shareholders.

14 29. That same day, the Company held two investor conference calls to discuss its offer
15 to acquire Monsanto. During the first conference call, Defendant Baumann stated that “we expect
16 to create substantial value for our shareholders” and described Monsanto as “an extraordinary fit
17 and a major advance for us.” Defendant Dietsch stated that the Acquisition “would have a positive
18 impact on our earnings and margin development” and “we are convinced that the combined
19 business should be able to claim a premium valuation.” In discussing the merits of the transaction,
20 Defendant Baumann described the Acquisition as “a highly attractive value proposition” that
21 would allow Bayer to “tap into opportunities to drive further growth and an even better financial
22 profile.” Defendant Baumann described the Acquisition as having “superior value creation
23 potential” and stated that “it's actually very difficult to see something that is similarly attractive,
24 as we see here, with the proposed acquisition of Monsanto.” Defendant Condon stated that “there's
25 a tremendous opportunity in here to create additional value, which is beyond what we can create
26 purely by ourselves.” In response to an analyst's question regarding the potential non-renewal of
27 glyphosate's license in Europe due to concerns over health risks associated with exposure to the
28 chemical and whether that posed a material risk to the Acquisition, Defendant Baumann stated “as

1 you would expect us to do, we have looked at it. We do understand the risk and the exposure that
2 does exist” and “[i]t would not affect the overall offer and proposal to acquire Monsanto.”

3 30. During the second conference call held later that day, Defendant Baumann stated
4 that “[f]ollowing thorough consideration and preparation, we strongly believe that it is actually the
5 combination of the two businesses that captures best the inherent value, and we are fully committed
6 to pursuing the transaction.” Defendant Dietsch stated that “this combination will bring significant
7 short and long-term benefits to farmers across the globe; and, they will translate into attractive
8 financial benefits for Bayer and its shareholders.”

9 31. On July 14, 2016, Bayer issued a press release announcing that the Company had
10 increased its all-cash offer to purchase Monsanto from \$122 per share to \$125 per share,
11 representing a 40% premium over Monsanto’s closing share price on May 9, 2016. The press
12 release stated that “[t]he revised offer retains compelling value creation potential for Bayer
13 shareholders” and “fully captures the intrinsic value of Monsanto, and shares the synergy benefits
14 that the combination would create.”

15 32. On July 27, 2016, Bayer held a conference call with analysts and investors to
16 discuss the Company’s financial results for the second quarter of 2016. During the call, Defendant
17 Baumann emphasized that “there is very, very sound logic and rationale for looking at a significant
18 capital deployment into the acquisition of Monsanto versus doing something different, either in
19 consumer or in pharma.”

20 33. On September 14, 2016, the Company issued a press release announcing that Bayer
21 and Monsanto had signed a definitive merger agreement under which Bayer would acquire
22 Monsanto for \$128 per share in an all-cash transaction, representing a 44% premium to Monsanto’s
23 closing share price on May 9, 2016. The press release stated that Bayer’s acquisition of Monsanto
24 “represents a major step forward for our Crop Science business and reinforces Bayer’s leadership
25 position as a global innovation driven Life Science company with leadership positions in its core
26 segments, delivering substantial value to shareholders, our customers, employees and society at
27 large.” The press release also stated that “[b]eyond the attractive long term value creation potential
28 of the combination, Bayer expects the transaction to provide its shareholders with accretion to core

1 EPS (earnings per share) in the first full year after closing and a double-digit percentage accretion
2 in the third full year.” In the press release, Defendant Baumann is quoted as saying “I am
3 convinced that Monsanto will flourish as part of one of the most respected and trusted companies
4 in the world.”

5 34. That same day, Bayer and Monsanto held a joint investor conference call to discuss
6 the signing of the merger agreement. During the call, Defendant Baumann stated “[t]his
7 transaction is a compelling opportunity for the shareholders of both companies. Following receipt
8 of additional information and thorough analysis conducted during the due diligence process, we
9 have raised our initial offer and have agreed on an all cash consideration of \$128.00 per Monsanto
10 share, representing a premium of 44% to the Monsanto share price of \$89.03 on May 9, 2016, the
11 day prior to our first proposal.”

12 35. Also during the call, Defendant Baumann emphasized that “[i]n combining Bayer
13 and Monsanto, we will create a global leader in the agricultural industry” and “we expect to create
14 significant value for our shareholders.” Defendant Baumann further touted the Acquisition as “an
15 extraordinary fit and a major advance for us,” emphasizing that “[b]oth Monsanto and we at Bayer
16 are absolutely convinced that this combination of our two complementary businesses has a
17 compelling logic and creates value in a major way for all constituencies.” Defendant Baumann
18 described the Acquisition as “a synergistic case which has the potential to achieve a premium
19 valuation based on our improved profitability, strong earnings accretion, and enhanced earnings
20 growth” and “[o]verall, we believe that this is a highly value accretive transaction which benefits
21 not only the shareholders but also our customers, employees, and all stakeholders involved.”
22 During the call, Defendant Dietsch stated that “[t]he combination of Bayer and Monsanto
23 represents an attractive value equation opportunity” and “[t]he combined [agriculture] business is
24 a premium asset which has the potential to command a premium valuation.” Defendant Dietsch
25 also stated that “[w]e expect significant near term synergy potential and, in addition, substantially
26 longer term synergies from integrated solutions” and “[a]s a result, we expect stronger growth,
27 better profitability, and a more resilient business profile.”

28 36. On October 26, 2016, Bayer issued a press release announcing its financial results

1 for the third quarter of 2016. In the press release, Defendant Baumann is quoted as saying that the
2 Acquisition is “a major strategic milestone for Bayer” and “[t]he two companies are a perfect fit
3 and complement each other ideally.”

4 37. On February 22, 2017, Bayer issued a press release announcing its financial results
5 for fiscal year 2016. In the press release, Defendant Baumann is quoted as saying “[t]his
6 transaction is the perfect fit for our strategy of seeking leadership positions with our Life Science
7 activities in attractive, innovation-driven markets” and “[o]nce the businesses have been
8 combined, Bayer would be able to create substantial additional value in the long term through
9 more innovation, stronger growth and greater efficiency.”

10 38. On April 28, 2017, Bayer held its annual shareholders’ meeting. During the
11 meeting, Defendant Baumann stated that “through the transaction, we intend to create substantial
12 additional value in the long term for the company, for you, our shareholders, and the society as a
13 whole.” Defendant Baumann also stated that “[t]he acquisition of Monsanto is the perfect fit for
14 our strategy of aspiring to occupy leadership positions with our Life Science businesses in
15 attractive, innovation-driven markets. And we are convinced that together with Monsanto, we will
16 be able to create substantial added value in the long term through more innovation, stronger growth
17 and greater efficiency.” During the meeting, Defendant Baumann downplayed the negative
18 perception of Monsanto, stating that “[w]e are, of course, aware that Monsanto does not have a
19 good reputation in some countries, especially in Europe. And you can argue about whether the
20 company has always acted wisely in its dealings with the public. However, that’s not the Monsanto
21 we know at all. Monsanto is a modern, highly innovative and extremely well-managed biotech
22 company.” During the meeting, Defendant Wenning assured investors that Bayer’s “Supervisory
23 Board fulfilled its supervisory and consultative duties in relation to this transaction in a very
24 thorough and exhaustive manner,” emphasizing that “[a]ll of the essential aspects . . . [were]
25 scrutinized and reviewed by us in detail and are supported by us unreservedly.”

26 39. That same day, Bayer also issued a press release regarding its annual shareholders’
27 meeting. The press release stated that the Acquisition would “create substantial additional value”
28 for Bayer’s shareholders. In the press release, Defendant Baumann is quoted as saying that “[t]he

1 acquisition of Monsanto is the perfect fit for our strategy” and “[t]ogether with Monsanto, we will
2 be able to create substantial additional value in the long term through more innovation, stronger
3 growth and greater efficiency.”

4 40. On July 27, 2017, Bayer held a conference call with analysts and investors to
5 discuss the Company’s financial results for the second quarter of 2017. During the call, in response
6 to an analyst’s question about the Company’s level of comfort with the due diligence Bayer
7 performed in connection with the Acquisition, Defendant Baumann assured investors that “the
8 Monsanto people went out of their way to provide us with transparency, data and visibility to the
9 most critical questions we had that also related to value and the composition of our business case
10 because they wanted to convince us to pay a higher price compared to what was on the table” and
11 emphasized that “we have a very high level of comfort” on Bayer’s due diligence.

12 41. On May 25, 2018, Bayer held its annual shareholders’ meeting. During the
13 meeting, despite mounting Roundup cancer lawsuits against Monsanto, Defendant Baumann
14 assured investors that “[t]he acquisition is just as attractive today as we assessed it to be 2 years
15 ago” and “this acquisition has very great potential for creating value for our company, our
16 shareholders and our customers.” Defendant Baumann also stated that “[w]ithout question, the
17 acquisition of Monsanto has extended our position in the agricultural sector” and further
18 emphasized the acquisition as “a very important and logical step in the evolution of Bayer.”

19 42. That same day, Bayer issued a press release regarding its annual shareholders’
20 meeting. In the press release, Defendant Baumann is quoted as saying that “[v]iewed from various
21 aspects and overall, I’m convinced that this acquisition has very great potential for creating value
22 for our company, our stockholders and our customers.”

23 43. On June 4, 2018, Bayer issued a press release announcing that the Company had
24 received all the required regulatory approvals to move forward with the Acquisition and Bayer
25 expected to complete its purchase of Monsanto on June 7, 2018. In the press release, Defendant
26 Baumann is quoted as saying that “[t]he acquisition of Monsanto is a strategic milestone in
27 strengthening our portfolio of leading businesses in health and nutrition. We will double the size
28 of our agriculture business and create a leading innovation engine in agriculture, positioning us to

1 better serve our customers and unlock the long-term growth potential in the sector.” The press
2 release also quotes Defendant Baumann as saying “[t]he acquisition is anticipated to generate
3 significant value” and “Bayer expects a positive contribution to core earnings per share starting in
4 2019” and “[f]rom 2021 onward, that contribution is expected to be double-digit percentage.” In
5 the press release, Defendant Baumann emphasized that “[w]e have diligently prepared for the
6 upcoming integration over the past two years” and “[o]ur extensive experience in integrating other
7 large companies has proven that we can and will be successful.”

8 44. On June 7, 2018, Bayer issued a press release announcing the completion of the
9 Acquisition. In the press release, Defendant Baumann is quoted as saying “[t]oday is a great day
10 . . . for our shareholders, because this transaction has the potential to create significant value.”

11 45. The statements set forth above in ¶¶28-44 were materially false and misleading and
12 they failed to disclose material facts necessary to make the statements made, in light of the
13 circumstances under which they were made, not false and misleading. Specifically, Defendants
14 willfully or recklessly made and/or caused the Company to make false and misleading statements
15 that failed to disclose that the Acquisition would burden Bayer with significant exposure to the
16 risk of suffering billions of dollars in judgments and reputational damage, among other things, if
17 lawsuits brought against Monsanto alleging that exposure to its glyphosate-based Roundup
18 product caused cancer, were successful. As a result, Defendants’ positive statements about the
19 prospects of the Acquisition and the benefits it would create for Bayer’s business were materially
20 false and/or misleading and/or lacked a reasonable basis.

21 **VI. THE TRUTH EMERGES**

22 46. On August 10, 2018, a jury in the *Johnson* Case—the first Roundup cancer lawsuit
23 to go to trial—found unanimously that Monsanto’s glyphosate-based Roundup weed killer was a
24 “substantial factor” in causing the plaintiff to develop non-Hodgkin’s lymphoma and that
25 Monsanto knew, or should have known, the risks associated with exposure to the chemical and
26 failed to warn of this severe health hazard. The jury also found that Monsanto acted with “malice
27 or oppression” and should be punished for its conduct. As a result, the jury ordered Monsanto to
28 pay \$39 million in compensatory damages and \$250 million in punitive damages. On this news,

1 the price of Bayer ADRs declined over 11%, from \$26.59 per share to \$23.59 per share.

2 47. However, despite these disclosures, Bayer downplayed the significance of the jury
3 verdict in the *Johnson Case* and continued to misrepresent the prospects of the Acquisition. On
4 August 16, 2018, the Company issued a press release announcing that it would begin integrating
5 Monsanto into Bayer's business. The press release stated that the Acquisition "gives rise to a
6 leading agriculture company with a high level of innovative strength, a strong product portfolio
7 and the highest ethical standards" and "Bayer expects that the acquisition will already make a
8 positive contribution to core earnings per share starting in 2019, with a double-digit percentage
9 from 2021 onward."

10 48. On August 23, 2018, the Company held a conference call with analysts and
11 investors to discuss Bayer's integration of Monsanto, as well as the verdict in the *Johnson Case*.
12 During the call, Defendant Baumann assured investors that, despite the jury verdict in the *Johnson*
13 Case, "nothing has changed concerning our strategy, attractive synergy potential and longer-term
14 growth and margin expectations for our combined Crop Science business" and "[w]e expect strong
15 value creation through the Monsanto acquisition." Defendant Baumann downplayed the
16 significance of the verdict in the *Johnson Case* and the risk of future liability from other Roundup
17 cases, emphasizing that "[a] verdict by one jury in one case does not change the scientific facts
18 and the conclusions of regulators that glyphosate does not cause cancer" and that the *Johnson Case*
19 "was an individual accelerated case, which doesn't have any bearing and any meaning and a direct
20 relation to all other cases that will be tried going forward." Defendant Baumann also stressed that
21 Bayer would rigorously defend its position going forward in the glyphosate litigations,
22 highlighting "the significant experience Bayer has had in the past in U.S. product litigation."
23 Moreover, to quell investor concerns over "big questions on the assessment of the litigation risk
24 prior to Bayer and Monsanto signing the merger agreement," Defendant Baumann assured
25 investors that "Bayer, through counsel, undertook appropriate due diligence of litigation and
26 regulatory issues throughout the process, leading to the finalization of the merger." Defendant
27 Baumann stated further that at "the time when we decided to acquire Monsanto . . . very few cases
28 had been filed at the time in 2016, and the situation was quite different in terms of where this entire

1 complex stood in the very early stage in 2016 and where we are now, still at a very early stage, but
2 with the first case tried.”

3 49. On September 5, 2018, the Company issued a press release announcing its financial
4 results for the second quarter of 2018. In the press release, Defendant Baumann is quoted as saying
5 that “[t]he acquisition of Monsanto brings together two strong and highly complementary
6 businesses” and “[w]e are now a leader in the agricultural industry.” The press release also stated
7 that as a result of the Acquisition, “Bayer now also has the strongest portfolio of seed and crop
8 protection products for a wide range of crops and indications, the best research and development
9 platform and the leading digital farming business” and “its existing herbicides business was
10 significantly enlarged.”

11 50. That same day, the Company held a conference call with analysts and investors to
12 discuss Bayer’s financial results for the second quarter of 2018. During the call, Defendant
13 Baumann again downplayed the significance of the Roundup cancer lawsuits against Monsanto,
14 stating “[f]rom a scientific perspective . . . there’s absolutely nothing that has been seen in terms
15 of a statistical signal that there is a cause-and-effect relationship between the application of
16 glyphosates as a formulated product, so not only the active, but also a formulated product, and the
17 onset of cancer on some individuals. Nothing whatsoever.” In response to an analyst’s question
18 regarding the level of the Company’s provisioning of litigation reserves for the glyphosate lawsuits
19 against Monsanto, Defendant Nickl also downplayed the risk of potential damages awarded in
20 those cases, responding that Bayer only had reserved “for the legal cost for 3 years for the defense
21 in the glyphosate complex” and not for damages because “[it] is not our practice to accrue for
22 damages [a]nd that’s also not possible if it’s not estimable,” and “if it is not more likely than not”
23 and “we therefore have not put any provision on the books for potential damages.”

24 51. The statements set forth above in ¶¶47-50 were materially false and misleading and
25 they failed to disclose material facts necessary to make the statements made, in light of the
26 circumstances under which they were made, not false and misleading. Specifically, Defendants
27 willfully or recklessly made and/or caused the Company to make false and misleading statements
28 that failed to disclose that the Acquisition would burden Bayer with significant exposure to the

1 risk of suffering billions of dollars in judgments and reputational damage, among other things, if
2 lawsuits brought against Monsanto alleging that exposure to its glyphosate-based Roundup
3 product caused cancer, were successful. As a result, Defendants' positive statements about the
4 prospects of the Acquisition and the benefits it would create for Bayer's business as well as
5 statements downplaying the risk of potential liability and damages in the Roundup cancer lawsuits
6 were materially false and/or misleading and/or lacked a reasonable basis.

7 52. On October 22, 2018, despite reducing the award of punitive damages from \$250
8 million to \$39 million, the Judge overseeing the trial in the *Johnson* Case denied Monsanto's
9 motion for judgment notwithstanding the verdict and Monsanto's motion for a new trial and upheld
10 the jury's verdict, ruling that "there is no legal basis to disturb the jury's determination that
11 plaintiff's exposure to [glyphosate-based herbicides] was a substantial factor in causing his [non-
12 Hodgkin's lymphoma]." On this news, the price of Bayer ADRs declined nearly 9%, from \$22.00
13 per ADR to \$20.10 per ADR.

14 53. However, Bayer continued to downplay the significance of these disclosures and
15 misrepresent the prospects of the Acquisition. On December 5, 2018, the Company held a
16 conference call with analysts and investors. During the call, in describing Bayer's response to the
17 glyphosate lawsuits against Monsanto, including the Company's imminent appeal of the jury
18 verdict in the *Johnson* Case, Defendant Baumann emphasized that "[w]e are now joining forces
19 between our litigation group and . . . the vast expertise we have, in particular, in product litigation
20 cases . . . [a]nd we are also preparing the next cases with joint forces and our external legal support
21 so that we believe that our chances to prevail beyond the science and the fact[s] are very, very
22 good" and "we are quite optimistic going into 2019 as the next cases are going to be litigated."
23 Moreover, despite lawsuits filed by approximately 9,300 plaintiffs as of October 30 2018, all
24 alleging that exposure to Monsanto's glyphosate-based products caused cancer, with additional
25 lawsuits anticipated, and despite already losing one such case at trial, Defendant Condon continued
26 to tout the Acquisition, stating that "the combination of Bayer Crop Science and legacy Monsanto
27 is a phenomenal combination" and "[t]his is really a special company that we have now put
28 together."

1 54. On February 27, 2019, the Company issued a press release announcing its financial
2 results for the fiscal year 2018. Despite reporting that, as of January 28, 2019, lawsuits from more
3 than 11,000 plaintiffs had been served in the United States in connection with their exposure to
4 Roundup, the press release quoted Defendant Baumann as saying that “[w]e have the science on
5 our side and will continue to vigorously defend this important and safe herbicide for modern and
6 sustainable farming.”

7 55. That same day, the Company held a conference call with analysts and investors to
8 discuss Bayer’s financial results for the fiscal year 2018. During the call, Defendant Baumann
9 downplayed the risks of the increasing number of Roundup cancer lawsuits filed, stating “[w]hile
10 there’s an increase [in lawsuits filed] since our last reporting, it is by no means a reflection of the
11 merits of the litigation.”

12 56. The statements set forth above in ¶¶53-55 were materially false and misleading and
13 they failed to disclose material facts necessary to make the statements made, in light of the
14 circumstances under which they were made, not false and misleading. Specifically, Defendants
15 willfully or recklessly made and/or caused the Company to make false and misleading statements
16 that failed to disclose that the Acquisition would burden Bayer with significant exposure to the
17 risk of suffering billions of dollars in judgments and reputational damage, among other things, if
18 lawsuits brought against Monsanto alleging that exposure to its glyphosate-based Roundup
19 product caused cancer, were successful. As a result, Defendants’ positive statements about the
20 prospects of the Acquisition and the benefits it would create for Bayer’s business as well as
21 statements downplaying the risk of potential liability and damages in the Roundup cancer lawsuits
22 were materially false and/or misleading and/or lacked a reasonable basis.

23 57. Then, on March 19, 2019, a jury in the bellwether *Hardeman* Case—the first federal
24 Roundup cancer lawsuit against Monsanto to proceed to trial—issued a verdict on causation in
25 phase one of the bifurcated trial, finding that plaintiff’s “exposure to Roundup was a substantial
26 factor in causing his non-Hodgkin’s lymphoma.” On this news, the price of Bayer ADRs declined
27 over 9%, from \$19.67 per ADR to \$17.85 per ADR.

28 58. As a result of Defendants’ wrongful acts and omissions, and the precipitous decline

1 in the market value of the Company's ADRs, Plaintiffs and other Class members have suffered
2 significant losses and damages.

3 **VII. LOSS CAUSATION**

4 59. During the Class Period, as detailed herein, Defendants made materially false and
5 misleading statements and omissions, and engaged in a scheme to deceive the market. This
6 artificially inflated the price of Bayer ADRs and operated as a fraud or deceit on the Class (as
7 defined below). Later, when Defendants' prior misrepresentations and fraudulent conduct were
8 disclosed to the market, the price of Bayer ADRs fell precipitously as the prior artificial inflation
9 came out of the price over time. As a result of their purchases of Bayer ADRs during the Class
10 Period, Plaintiffs and other members of the Class suffered economic loss, *i.e.*, damages, under the
11 federal securities laws.

12 **VIII. CLASS ACTION ALLEGATIONS**

13 60. Plaintiffs bring this action as a class action, pursuant to Rule 23 of the Federal Rules
14 of Civil Procedure, on behalf of all persons who purchased or otherwise acquired Bayer ADRs
15 during the Class Period (the "Class"). Excluded from the Class are Defendants and their families,
16 directors, and officers of Bayer and their families and affiliates.

17 61. The members of the Class are so numerous that joinder of all members is
18 impracticable. The disposition of their claims in a class action will provide substantial benefits to
19 the parties and the Court.

20 62. There is a well-defined community of interest in the questions of law and fact
21 involved in this case. Questions of law and fact common to the members of the Class which
22 predominate over questions which may affect individual Class members include:

- 23 (a) Whether Defendants violated the Exchange Act;
- 24 (b) Whether Defendants omitted and/or misrepresented material facts;
- 25 (c) Whether Defendants' statements omitted material facts necessary in order
26 to make the statements made, in light of the circumstances under which they were made, not
27 misleading;
- 28 (d) Whether the Individual Defendants are personally liable for the alleged

1 misrepresentations and omissions described herein;

2 (e) Whether Defendants knew or recklessly disregarded that their statements
3 and/or omissions were false and misleading;

4 (f) Whether Defendants' conduct impacted the price of Bayer ADRs;

5 (g) Whether Defendants' conduct caused the members of the Class to sustain
6 damages; and

7 (h) The extent of damage sustained by Class members and the appropriate
8 measure of damages.

9 63. Plaintiffs' claims are typical of those of the Class because Plaintiffs and the Class
10 sustained damages from Defendants' wrongful conduct.

11 64. Plaintiffs will adequately protect the interests of the Class and have retained counsel
12 experienced in class action securities litigation. Plaintiffs have no interests which conflict with
13 those of the Class.

14 65. A class action is superior to other available methods for the fair and efficient
15 adjudication of this controversy. Joinder of all Class members is impracticable.

16 **IX. INAPPLICABILITY OF STATUTORY SAFE HARBOR**

17 66. Bayer's "Safe Harbor" warnings accompanying its forward-looking statements
18 issued during the Class Period were ineffective to shield those statements from liability.

19 67. Defendants are also liable for any false or misleading forward-looking statements
20 pleaded herein because, at the time each such statement was made, the speaker knew the statement
21 was false or misleading and the statement was authorized and/or approved by an executive officer
22 of Bayer who knew that the statement was false. None of the historic or present tense statements
23 made by Defendants were assumptions underlying or relating to any plan, projection, or statement
24 of future economic performance, as they were not stated to be such assumptions underlying or
25 relating to any projection or statement of future economic performance when made, nor were any
26 of the projections or forecasts made by Defendants expressly related to, or stated to be dependent
27 on, those historic or present tense statements when made.

28

1 **X. PRESUMPTION OF RELIANCE**

2 68. At all relevant times, the market for Bayer ADRs was an efficient market for the
3 following reasons, among others:

4 (a) Bayer ADRs met the requirements for listing, and were listed and actively
5 traded on the U.S. over-the-counter market, a highly liquid and efficient market;

6 (b) Bayer filed periodic public reports;

7 (c) Bayer regularly and publicly communicated with investors via established
8 market communication mechanisms, including through regular disseminations of press releases
9 through major newswire services and through other wide-ranging public disclosures, such as
10 communications with the financial press and other similar reporting services; and

11 (d) Bayer was followed by several securities analysts employed by major
12 brokerage firm(s) who wrote reports which were distributed to the sales force and certain
13 customers of their respective brokerage firm(s). Each of these reports was publicly available and
14 entered the public marketplace.

15 69. As a result of the foregoing, the market for Bayer ADRs promptly digested current
16 information regarding Bayer from all publicly available sources and reflected such information in
17 the price of Bayer ADRs. Under these circumstances, all purchasers of Bayer ADRs during the
18 Class Period suffered similar injury through their purchase of Bayer ADRs at artificially inflated
19 prices and the presumption of reliance applies.

20 70. A Class-wide presumption of reliance is also appropriate in this action under the
21 Supreme Court's holding in *Affiliated Ute Citizens of Utah v. United States*, 406 U.S. 128 (1972),
22 because the Class' claims are grounded on Defendants' material omissions. Because this action
23 involves Defendants' failure to disclose material adverse information regarding Bayer's purchase
24 of Monsanto—information that Defendants were obligated to disclose—positive proof of reliance
25 is not a prerequisite to recovery. All that is necessary is that the facts withheld be material in the
26 sense that a reasonable investor might have considered them important in making investment
27 decisions. Given the significance of the Acquisition to Bayer and the impact it could have on the
28 Company's business, including Monsanto's exposure to significant liability risk from the Roundup

1 lawsuits, which Bayer would assume as a result of the Acquisition, that requirement is satisfied
2 here.

3 **XI. CAUSES OF ACTION**

4 **COUNT I**

5 **For Violations of Section 10(b) of the Exchange Act and Rule 10b-5**
6 **Against All Defendants**

7 71. Plaintiffs repeat, incorporate, and reallege each and every allegation set forth above
8 as if fully set forth herein.

9 72. During the Class Period, Defendants carried out a plan, scheme, and course of
10 conduct which was intended to and, throughout the Class Period, did: (i) deceive the investing
11 public, including Plaintiffs and other Class members, as alleged herein; and (ii) cause Plaintiffs
12 and other members of the Class to purchase Bayer ADRs at artificially inflated prices.

13 73. Defendants: (i) employed devices, schemes, and artifices to defraud; (ii) made
14 untrue statements of material fact and/or omitted to state material facts necessary to make the
15 statements not misleading; and (iii) engaged in acts, practices, and a course of business which
16 operated as a fraud and deceit upon the purchasers of the Company's ADRs in an effort to maintain
17 artificially high market prices for Bayer ADRs in violation of Section 10(b) of the Exchange Act
18 and Rule 10b-5, promulgated thereunder.

19 74. Defendants, individually and in concert, directly and indirectly, by the use, means
20 or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a
21 continuous course of conduct to conceal adverse material information about the Company's
22 financial well-being, operations, and prospects.

23 75. During the Class Period, Defendants made the false statements specified above,
24 which they knew or recklessly disregarded to be false and misleading in that they contained
25 misrepresentations and failed to disclose material facts necessary in order to make the statements
26 made, in light of the circumstances under which they were made, not misleading.

27 76. Defendants had actual knowledge of the misrepresentations and omissions of
28 material fact set forth herein, or recklessly disregarded the true facts that were available to them.

1 Defendants engaged in this misconduct to conceal Bayer's true condition from the investing public
2 and to support the artificially inflated prices of the Company's ADRs.

3 77. Plaintiffs and the Class have suffered damages in that, in reliance on the integrity
4 of the market, they paid artificially inflated prices for Bayer ADRs. Plaintiffs and the Class would
5 not have purchased the Company's ADRs at the prices they paid, or at all, had they been aware
6 that the market prices for Bayer ADRs had been artificially inflated by Defendants' fraudulent
7 course of conduct.

8 78. As a direct and proximate result of Defendants' wrongful conduct, Plaintiffs and
9 the other members of the Class suffered damages in connection with their respective purchases of
10 the Company's ADRs during the Class Period.

11 79. By virtue of the foregoing, Defendants violated Section 10(b) of the Exchange Act
12 and Rule 10b-5, promulgated thereunder.

13 **COUNT II**

14 **For Violations of Section 20(a) of the Exchange Act**
15 **Against the Individual Defendants**

16 80. Plaintiffs repeat, incorporate, and reallege each and every allegation set forth above
17 as if fully set forth herein.

18 81. The Individual Defendants acted as controlling persons of Bayer within the
19 meaning of Section 20(a) of the Exchange Act. By virtue of their high-level positions,
20 participation in and/or awareness of the Company's operations, direct involvement in the day-to-
21 day operations of the Company, and/or intimate knowledge of the Company's actual performance,
22 and their power to control public statements about Bayer, the Individual Defendants had the power
23 and ability to control the actions of Bayer and its employees. By reason of such conduct, the
24 Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act.

25 **XII. PRAYER FOR RELIEF**

26 82. WHEREFORE, Plaintiffs pray for judgment as follows:

27 (a) Determining that this action is a proper class action under Rule 23 of the
28 Federal Rules of Civil Procedure;

1 (b) Awarding compensatory damages in favor of Plaintiffs and other Class
2 members against all Defendants, jointly and severally, for all damages sustained as a result of
3 Defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;

4 (c) Awarding Plaintiffs and the Class their reasonable costs and expenses
5 incurred in this action, including attorneys' fees and expert fees; and

6 (d) Awarding such equitable/injunctive or other further relief as the Court may
7 deem just and proper.

8 **XIII. JURY DEMAND**

9 83. Plaintiffs demand a trial by jury.

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