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Attorneys for Plaintiffs

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

This Document Applies To:

DANA FULTON, ELIZABETH FULTON,  
TERRY FULTON, and LORY MARQUES,  
individually and as Next Friend for MAX  
COLEMAN, a Minor,

Plaintiffs,

vs.

- 1) BAYER A.G.; a German corporation;
  - 2) MONSANTO COMPANY, a Delaware corporation;
  - 3) MONSANTO HAWAII PRODUCTION CO., LLC. a Delaware corporation;
  - 4) ALEXANDER & BALDWIN, INC., a Hawaii corporation; and
  - 5) DOES 1 to 10,
- Defendants.

CIVIL NO. 19-1-0369(3)  
(Toxic Tort/Personal Injury)

**COMPLAINT; DEMAND FOR JURY TRIAL; EXHIBITS "A" - "C"; SUMMONS**

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1ST CIRCUIT COURT  
STATE OF HAWAII  
FILED

N. MIYATA  
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Complex Litigation  
Judge: Honorable \_\_\_\_\_  
Trial Date: Not assigned

I do hereby certify that the foregoing is a true copy of the original.

Ex officio Clerk

## COMPLAINT

### I. PARTIES

Plaintiffs, by and through their undersigned attorneys, allege the following against Defendants:

1. Plaintiff DANA FULTON was born September 7, 1991 and is a resident of Maui, Hawaii. While in utero, Dana Fulton's mother, Elizabeth Fulton, resided at 201 Hale Kai Street in Kihei, Maui, Hawaii (the "Fulton Residence"). Plaintiff ELIZABETH FULTON is the mother of DANA FULTON. Plaintiff TERRY FULTON is the father of DANA FULTON

2. Plaintiff MAX COLEMAN was born on February 8, 2002 and is a resident of Maui, Hawaii. While Max was in utero, Max Coleman's mother, Lory Marques, resided at 363 Kaiolohia Street in Kihei, Maui, Hawaii (the "Coleman Residence"). Plaintiff LORY MARQUES is the mother of MAX COLEMAN.

3. Collectively, DANA FULTON, ELIZABETH FULTON, TERRY FULTON, LORY MARQUES and MAX COLEMAN are referred to herein as the "Plaintiffs."

4. Defendant BAYER A.G., is a German corporation with its headquarters in Leverkusen, Germany.

5. Defendant MONSANTO COMPANY is a Delaware corporation with its principal place of business and headquarters in St. Louis, Missouri. As a result of the merger between Bayer A.G. and Monsanto Company, Defendant Monsanto Company is a fully consolidated and wholly-owned subsidiary of the parent corporation, Bayer AG.

6. Defendant MONSANTO HAWAII PRODUCTION CO., LLC. is a fully consolidated and wholly-owned subsidiary of Defendant BAYER, A.G. with its principal place of business in St. Louis, Missouri. Upon information and belief, MONSANTO HAWAII PRODUCTION CO., LLC is the entity in Hawaii responsible for the harvesting of experimental

genetically-engineered crops and the testing and application of pesticides, herbicides, and insecticides on those crops at the relevant fields in Kihei, Maui.

7. Collectively, Defendants BAYER A.G.; MONSANTO COMPANY; and MONSANTO HAWAII PRODUCTION CO., LLC are referred to herein as “Monsanto.”

8. At all relevant times as described in this complaint, Monsanto leased land in and around Kihei, Maui for the growing and harvesting of experimental genetically-engineered crops and to test and apply pesticides, herbicides, and insecticides on those crops.

9. Defendant ALEXANDER & BALDWIN, INC. (hereinafter also referred to as “A&B”) is a Hawaii corporation with its principal place of business in Honolulu, Hawaii. At all relevant times to this complaint, A&B owned, farmed, harvested, and planted sugarcane in fields in the immediate vicinity of the Plaintiffs’ residences in and around Kihei, Maui.

10. DOE DEFENDANTS 1-10 are named hereunder fictitiously for the reason that their true identities are unknown to Plaintiffs, except that they are persons or entities engaged in the activities (specifically, as licensed applicators of the pesticides, chemicals, and substances as alleged herein) and responsible for the injuries and damages alleged herein. Plaintiffs at this time are unable to identify the names and identities of the persons or entities described as DOES 1-10. Plaintiffs request leave to insert herein their true names and capacities when they are ascertained.

## II. FACTUAL ALLEGATIONS

### A. Monsanto and Genetically Engineered Seeds in Hawaii

11. Monsanto was the first of the multi-national seed companies to experiment with genetically-engineered (“GE”) seed production in Hawaii. Beginning in the 1960’s, predecessor entities of Monsanto (including Trojan Seed Company, Pfizer, and Dekalb) began purchasing



and leasing plots of land on both Molokai and Maui for development of corn seed nurseries. Included in this land acquisition and development were locations in Kihei, Maui.

12. GE technology is a form of crop modification which allows scientists to create new crop varieties with desirable traits, such as drought resistance, virus resistance, or pesticide resistance. Instead of selecting parent crops with specific traits to cross breed, genetic engineering allows breeders to change a plant's trait by directly altering that plant's DNA.

13. The crop varieties that have succeeded the most on the market thus far are those which are herbicide and insect resistant. These traits are genetically engineered into three main commodity crops: corn, cotton, and soybeans.

14. Hawaii's GE Industry consists of two operations: (1) cultivating GE crop seeds for export and commercial distribution in North and South America; and (2) conducting field trials of new GE crops that have not yet been approved for commercial distribution.

15. Hawaii's chief attraction to seed crop firms was and is that its year-round growing season allows for multiple plantings per year, permitting more rapid breeding of new varieties than is possible on the mainland, where the climate permits only one crop per season.

16. Seed companies can harvest three to four yields of corn per year in Hawaii, which is significant compared to the continental United States where one can only harvest one crop each year.

17. By 2013, GE seed corn was Hawaii's top crop, comprising roughly 80-85% of the GE seed nurseries in Hawaii; Soybeans represent 14-19%; while the last 1% of the industry represents other types of GE seeds.

18. In addition to the production of GE seeds, Hawaii is also one of the nation's leading locations for open-air field trials of new GE crops. The field trials are a necessary step to

perfect a new GE crop before commercialization. Typically, GE scientists start by testing a crop in a laboratory, then in a green house, and finally in trials conducted in open-air fields. The results of the field trials determine the conditions under which the crop can be grown successfully and to which types of herbicides, pesticides, and/or fungicides it can withstand. Important to this testing in open air fields is that the soil surrounding the GE crop be sterile or void of any living organisms, including fungus, weeds, insects, or grass. As a result, large amounts of herbicides, pesticides, and fungicides are routinely applied at these field trials.

19. Herbicide resistance is the ability of a plant to withstand an herbicide application that would otherwise kill it, to enable more convenient weed control. Herbicide-resistant crops are by far the dominant type of GE crop grown today, and they lead to much increased use of and dependence on toxic insecticides, pesticides, and herbicides.

20. This use of toxic pesticides, insecticides, and herbicides includes the application of Restricted Use Pesticides (“RUP”), which are pesticides that may cause unreasonably adverse effects to human health and the environment even when used as directed.

21. As alleged further herein, and at all relevant times, large quantities of pesticides, herbicides, and insecticides, including RUPs, were consistently applied at Defendant Monsanto’s GE fields in Kihei, Maui.

22. Constant and persistent trade winds affect Maui the majority of the year. These winds allow for the pesticides applied on Defendants’ fields to drift into nearby communities and expose people who come into contact with them.

23. Pesticide spray drift is the movement of pesticides through the air from the time of application or soon after, to any site other than the area intended. Airborne liquid pesticide droplets are produced by spray nozzles used in application equipment for spraying pesticides.



Some other pesticides are formulated as very fine dry particles (commonly referred to as dust formulations). Both fluid droplets and dust particles have the potential to move from the target site of application under certain conditions. Movement of pesticides can also result from contaminated dust blown from field soils and through volatilization (the vaporization of pesticides).

24. As alleged herein, all of the herbicides, insecticides, fungicides, and other chemicals applied contained statements on their respective labels to not apply those products in a way that will contact workers or other persons, either directly or through drift.

B. Monsanto's GE Fields in Kihei, Maui

25. During the relevant time periods, Monsanto owned, operated, and/or leased large tracts of land in and around Kihei, Maui for use in its GE seed production and open air field testing. These included the following locations: a facility at 2111 Piilani Highway in Kihei ("Monsanto Piilani"); a facility at 3555 Mokulele Highway in Kihei ("Monsanto Mokulele"); and a facility located on Ohukai Road in Kihei ("Monsanto Ohukai"), collectively, the "Monsanto GE Fields." (See Attachment 1, attached herein as Exhibit "A").

26. Combined, these Monsanto GE Fields encompass nearly 784 acres of farmland in and around Kihei, Maui.

27. These Monsanto GE Fields are also located in close proximity to residential neighborhoods, elementary schools, and commercial areas.

28. Specifically, and most relevant to this complaint, the Monsanto Mokulele fields are located less than 500 yards from a residential neighborhood in Kihei known as Hale Piilani, where both the Coleman and Fulton Residences were located.

29. Constant and persistent trade winds affect Maui the majority of the year. In Kihei, the trade winds generally blow in from the north/northeast across the Monsanto GE Fields and into the adjacent community of Kihei. This means that homes located to the south/southeast of Monsanto Mokulele—including the Coleman and Fulton Residences—are particularly vulnerable to offsite drift of the pesticides sprayed at those fields. (*See* Attachment 2, attached herein as Exhibit “B”).

30. During all relevant times, Monsanto used its Mokulele field to conduct open air testing of their GE crops.

31. As part of this process, and at the relevant times, numerous herbicides, insecticides, fungicides, and other chemicals were regularly applied at Monsanto Mokulele. Upon information and belief, these included several restricted use pesticides.

32. Monsanto’s use of herbicides, insecticides, fungicides, and other chemicals, including restricted use pesticides, on its Mokulele field, has included, but was not limited to: atrazine; esenvalerate; glyphosate; b-cyfluthrin; chlorpyrifos; lambda-cyhalothrin; chlorantraniliprole; s-metolachlor; paraquat dichloride; alachlor; methomyl; Lorsban; permethrin; simazine; tefluthrin; cyfluthrin; and O-dimethyl.

33. Crucially, the complete records of which pesticides were applied, the precise fields on which they were applied, the dates on which they were applied, the frequency with which they were applied, the amount and concentration of the pesticide applied, and other relevant information is in the exclusive possession and control of the Defendant Monsanto.

34. The pesticides applied at Monsanto Mokulele contained teratogenic, mutagenetic, genotoxic, and/or reproductively toxic chemicals. Even minimal exposures to these pesticides

and their active ingredients (or a combination of pesticides) used at these Monsanto GE fields can adversely impact human health.

35. These chemicals can cause birth defects in children if the fetus is exposed in utero to them through absorption and inhalation exposure through the mother.

36. As detailed below, the Fulton and Coleman Residences were located in close proximity to each other in the neighborhood of Hale Piilani in Kihei, and both within ½ mile or less downwind of Monsanto Mokulele. (*See* Attachment 2, attached herein as Exhibit “B”).

C. Plaintiff Dana Fulton’s Proximity to Monsanto Mokulele and Resulting Birth Defects

37. Plaintiff Dana Fulton was born on September 7, 1991. Dana Fulton’s mother Elizabeth Fulton lived at 201 Hale Kai Street in Kihei, Maui before, during, and after the conception and pregnancy of her daughter, Dana Fulton. The Fulton Residence at 201 Hale Kai Street in Kihei was located ½ of a mile south/southeast of Monsanto Mokulele. (*See* Attachment 2, attached herein as Exhibit “B”). As such, the persistent windy conditions allowed for the pesticides sprayed at Monsanto Mokulele to drift offsite to the Fulton Residence.

38. Additionally, the pesticides applied at Monsanto Mokulele drifted to the Fulton Residence through and by way of excessive airborne dust, usually reddish in color, generated as a result of Monsanto’s GE field operations and the pesticide applications thereon.

39. While living at the Fulton Residence, each and every pesticide, chemical, or substance set forth in Paragraph 32 and applied at Monsanto Mokulele was absorbed into the body of Elizabeth Fulton through her skin and through inhalation, and during her pregnancy with Dana Fulton these same chemicals were delivered to her infant offspring while in utero.



40. The inhalation and absorption of these pesticides, chemicals, and substances was a result of the drifting of those pesticides, chemicals, and substances applied at Monsanto Mokulele.

41. Defendant Monsanto knew or should have known of the hazardous nature of the teratogenic, genotoxic, and reproductively toxic pesticides, chemicals, and substances applied at its GE fields in Kihei, including their ability to cause birth defects via exposure to pregnant mothers.

42. Monsanto had a duty to comply with the labeling instructions on the pesticides applied at Monsanto Mokulele which required that, *inter alia*, pesticides not be applied in a way that will expose workers or other persons, either directly or through drift.

43. Because of the inherent risks for pesticide exposure and the potential of pesticide drift migration, Monsanto had a duty to make sure that the pesticides applied at Monsanto Mokulele, including the restricted use pesticides identified in Paragraph 32 were applied in a manner that did not cause them to drift to the Fulton Residence where Elizabeth Fulton lived while pregnant with Dana Fulton.

44. Monsanto knew or should have known that the prevailing trade winds around Monsanto Mokulele in Kihei blew primarily from the north/northeast—that is, from Monsanto Mokulele towards Kihei.

45. These winds could, and did, cause the pesticides applied at Monsanto Mokulele to drift into the community in Kihei, including the Fulton Residence where Elizabeth Fulton lived while pregnant with Dana Fulton.

46. The exposure of Elizabeth Fulton and Dana Fulton to the pesticides listed in Paragraph 32 was foreseeable and could or should have been anticipated by Monsanto.

47. As a direct and proximate result of the exposure of Elizabeth Fulton and Plaintiff Dana Fulton to these teratogenic, genotoxic, and reproductively toxic pesticides, chemicals, and substances, plaintiff Dana Fulton was caused to sustain severe and permanent birth defects, including but not limited to, an underdeveloped right side of her body; esophageal atresia and tracheoesophageal fistula; paralyzed vocal chords; aortopexy; and the necessitation of a tracheostomy tube for breathing, and other injuries.

D. Plaintiff Max Coleman's Proximity to Monsanto Mokulele and Resulting Birth Defects

48. Plaintiff Max Coleman was born on February 8, 2002. Max Coleman's mother Lory Marques lived at 363 Kaiolohia Street in Kihei, Maui before, during, and after the conception and pregnancy of her son, Max Coleman. During the relevant time period, the Coleman Residence at Kaiolohia Street was located approximately 750 feet from Monsanto Mokulele. (*See* Attachment 2, attached herein as Exhibit "B"). As such, the persistent windy conditions allowed for the pesticides sprayed at Monsanto Mokulele to drift offsite to the Coleman Residence.

49. Additionally, the pesticides applied at Monsanto Mokulele drifted to the Coleman Residence through and by way of excessive airborne dust, usually reddish in color, generated as a result of Monsanto's GE field operations and the pesticide applications thereon.

50. While living at the Coleman Residence, each and every pesticide, chemical, or substance set forth in Paragraph 32 and applied at Monsanto Mokulele was absorbed into the body of Lory Marques through her skin and through inhalation, and during her pregnancy with Max Coleman these same chemicals were delivered to her infant offspring while in utero.

51. The inhalation and absorption of these pesticides, chemicals, and substances was a result of the drifting of those pesticides, chemicals, and substances applied at Monsanto Mokulele.

52. Defendant Monsanto knew or should have known of the hazardous nature of the teratogenic, genotoxic, and reproductively toxic pesticides, chemicals, and substances applied at its GE fields in Kihei, including their ability to cause birth defects via exposure to pregnant mothers.

53. Monsanto had a duty to comply with the labeling instructions on the pesticides applied at its GE Fields which required that, *inter alia*, pesticides not be applied in a way that will expose workers or other persons, either directly or through drift.

54. Because of the inherent risks for pesticide exposure and the potential of pesticide drift migration, Monsanto had a duty to make sure that the pesticides applied at Monsanto Mokulele, including the restricted use pesticides identified in Paragraph 32 were applied in a manner that did not cause them to drift to the Coleman Residence where Lory Marques lived while pregnant with Max Coleman.

55. Monsanto knew or should have known that the prevailing trade winds around its GE Fields in Kihei blew primarily from the north/northeast—that is, from the Monsanto fields towards Kihei. In particular, Monsanto knew or should have known that the homes on Kaiolohia Street directly behind and abutting the Monsanto Mokulele location, including the Coleman Residence, were especially vulnerable to pesticide drift as a result of the prevailing wind conditions due to extreme close proximity of Monsanto Mokulele location to these homes.



56. These winds could, and did, cause the pesticides applied at Monsanto Mokulele to drift into the community in Kihei, including the Coleman Residence where Lory Marques lived while pregnant with Max Coleman

57. The exposure of Lory Marques and Max Coleman to the pesticides listed in Paragraph 32 was foreseeable and could or should have been anticipated by Monsanto.

58. As a direct and proximate result of the exposure of Lory Marques and Plaintiff Max Coleman to these teratogenic, genotoxic, and reproductively toxic pesticides, chemicals, and substances, Plaintiff Max Coleman was caused to sustain severe and permanent birth defects, including but not limited to hydronephrosis (resulting in limited kidney functionality) and severe ADHD.

E. Alexander & Baldwin's Central Valley Sugarcane Fields in Maui

59. Sugarcane production is an integral part of the history of Maui and its economy.

60. Defendant Alexander & Baldwin, Inc. was one of the “Big Five” agricultural companies which dominated Hawaiian industry in the late 19<sup>th</sup> century and through most of the 20<sup>th</sup> century. A&B owned, harvested, and produced sugarcane on tens of thousands of acres of fields throughout Maui. Until recently A&B was the largest private landowner on Maui.<sup>1</sup>

61. In particular, A&B, through its wholly-owned subsidiary Hawaii Commercial & Sugar (“HC&S”), planted, grew, and harvested sugarcane crop on nearly 36,000 acres in Maui’s Central Valley through 2015. These large swaths of land stretched from Kahului to the north shore of Kihei.

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<sup>1</sup> In 2018—several years after the exposures as alleged in this Complaint—A&B sold its nearly 36,000 acres of former HC&S sugarcane fields to Mahi Pono, a farming venture between Pomona Farming, LLC, a California-based agricultural group, and the Public Sector Pension Investment Board (PSP Investments), a long-term investor and one of Canada’s largest pension investment managers.

62. At all relevant times, A&B's sugarcane fields abutted the Kihei neighborhood of Hale Piilani, where the Coleman and Fulton Residences were located. (See Attachment 3, attached herein as Exhibit "C"). A&B's fields were located north/northeast of the Hale Piilani neighborhood. The Hale Piilani neighborhood, and the Coleman and Fulton Residences, were directly downwind from A&B's fields in Kihei.

63. Monsanto also leased its Monsanto Mokulele fields from A&B and these fields were at one time working sugarcane fields owned and operated by A&B.

64. Due to length of time for which they were continuously harvested, most sugarcane plantation soils in Hawaii are highly weathered and relatively infertile. Fertilizers and soil amendments are required to sustain high production levels. Sugarcane is water-intensive and water is predominantly supplied from rainfall collection transported by ditches to sugarcane fields. Rainfall is not uniformly distributed and Hawaii does not have cool, dry winters which makes it substantially different from other sugarcane growing areas.

65. As part of A&B's sugar cane operations, herbicides and pesticides were routinely applied to its sugar cane crop and fields, including those fields upwind from the Coleman and Fulton Residences in Kihei.

66. Herbicides account for nearly all pesticide use in Hawaii's sugar cane. The soil-applied herbicide rates are higher in Hawaii compared to U.S. mainland rates because tropical soils have high iron oxide content and a large absorptive surface area similar to clayey and organic soils.

67. Five herbicides—atrazine, diuron, pendimethalin, glyphosate and ametryn—represent a majority of the total pesticide usage on sugar cane in Hawaii. Other herbicides used

in significant amounts are trifluralin, 2,4-D and hexazinone. Upon information and belief, these and other herbicides were applied during the relevant time period on A&B's fields in Kihei.

68. The complete records of which herbicides and pesticides were applied, the precise fields on which they were applied, the dates on which they were applied, the frequency with which they were applied, the amount and concentration of the pesticide applied, and other relevant information is in the exclusive possession and control of the Defendant A&B.

69. During the relevant time, the pesticides applied at A&B's sugar cane fields contained teratogenic, mutagenetic, genotoxic, and/or reproductively toxic chemicals. Even minimal exposures to these pesticides and their active ingredients (or a combination of pesticides) at A&B's fields can adversely impact human health.

70. These chemicals can cause birth defects in children if the fetus is exposed in utero to them through absorption and inhalation exposure through the mother.

71. Defendant A&B knew or should have known of the hazardous nature of the teratogenic, genotoxic, and reproductively toxic pesticides, chemicals, and substances applied at its sugar cane fields at Kihei, including their ability to cause birth defects via exposure to pregnant mothers.

72. A&B had a duty to comply with the labeling instructions on the pesticides applied at its sugar cane fields which required that, *inter alia*, pesticides not be applied in a way that will contact workers or other persons, either directly or through drift.

73. A&B had a duty to make sure that the pesticides applied on its sugar cane fields were applied in a manner that did not cause them to harm Dana Fulton and Max Coleman, in utero, respectively, while their mothers resided in Kihei.



74. A&B knew or should have known that the prevailing winds around its sugar cane fields would cause the pesticides and herbicides it applied to drift.

75. These winds could, and did, cause the pesticides applied at A&B's sugar cane fields to drift into the community in the Kihei neighborhood of Hale Piilani, including the Coleman Residence where Lory Marques lived while pregnant with Max Coleman and the Fulton Residence where Elizabeth Fulton lived while pregnant with Dana Fulton.

76. While living at the Coleman Residence, each and every pesticide, chemical, or substance set forth in Paragraph 67 was absorbed into the body of Lory Marques through her skin and through inhalation, and during her pregnancy with Max Coleman these same chemicals were delivered to her infant offspring while in utero.

77. The inhalation and absorption of these pesticides, chemicals, and substances was a result of the application and drifting of those pesticides, chemicals, and substances applied at A&B's sugar cane fields.

78. The exposure of Max Coleman, in utero, to the pesticides listed in Paragraph 67 was foreseeable and could or should have been anticipated by A&B.

79. As a direct and proximate result of the exposure of plaintiff Max Coleman to these teratogenic, genotoxic, and reproductively toxic pesticides, chemicals, and substances, he was caused to sustain severe and permanent injuries.

80. While living at the Fulton Residence, each and every pesticide, chemical, or substance set forth in Paragraph 67 was absorbed into the body of Elizabeth Fulton through her skin and through inhalation, and during her pregnancy with Dana Fulton these same chemicals were delivered to her infant offspring while in utero.

81. The inhalation and absorption of these pesticides, chemicals, and substances was a result of the application and drifting of those pesticides, chemicals, and substances applied at A&B's sugar cane fields.

82. The exposure of Dana Fulton, in utero, to the pesticides listed in Paragraph 67 was foreseeable and could or should have been anticipated by A&B.

83. As a direct and proximate result of the exposure of Plaintiff Dana Fulton to these teratogenic, genotoxic, and reproductively toxic pesticides, chemicals, and substances, she was caused to sustain severe and permanent injuries.

### III. TOLLING/DISCOVERY

84. Plaintiffs Dana Fulton, Elizabeth Fulton, and Terry Fulton did not discover the causal link between Dana's injuries and her exposure, in utero, to the pesticides listed in Paragraphs 32 and 67 until early November, 2017, when they heard radio advertisements describing the link between reproductively toxic pesticide exposure and birth defects. Prior to that date, Plaintiff Dana Fulton believed that her injuries were genetic. After that date, Plaintiff Dana Fulton began to research the causal link between her severe and permanent birth defects, including the underdeveloped right side of her body; tracheoesophageal fistula; paralyzed vocal chords; aortopexy; and the necessitation of a tracheotomy tube for breathing, and learned that those birth defects were commonly associated with in utero exposure to toxic substances in the environment.

85. Plaintiff Max Coleman is a minor, and the statute of limitations for his injuries is tolled pursuant to H.R.S. §657-13. Plaintiff Lory Coleman did not discover the causal link between Max's injuries and her exposure to the pesticides listed in Paragraphs 32 and 67 during

her pregnancy, until early November, 2017, when she heard radio advertisements describing the link between reproductively toxic pesticide exposure and birth defects.

FIRST CLAIM FOR RELIEF

On Behalf of Plaintiff Dana Fulton

(Negligence—Monsanto)

86. Plaintiffs reallege and incorporate herein by reference, paragraphs 1 through 85 herein.

87. At all relevant times, Defendant Monsanto had a duty of care to prevent the migration and drift of dangerous and toxic pesticides, chemicals, and substances.

88. At all relevant times, Defendant Monsanto had a duty to comply with the labeling instructions on the pesticides applied at their fields which required, *inter alia*, that pesticides not be applied in a way that will contact workers or other persons, either directly or through drift.

89. At all relevant times, Defendant Monsanto knew or should have known of the hazardous nature of the teratogenic, genotoxic, and reproductively toxic pesticides, chemicals, and substances applied on their fields, including their ability to cause birth defects via exposure to pregnant mothers.

90. At all relevant times, Defendant Monsanto knew or should have known that it was foreseeable that their failure to prevent the migration and drift of those toxic pesticides would cause harm to Dana Fulton, in utero, who lived in a neighborhood adjacent to and downwind from Monsanto's Mokulele fields where those toxic pesticides were applied.

91. Despite these duties, Defendant Monsanto failed to prevent the migration and drift of dangerous pesticides, and failed to comply with the labeling instructions on the pesticides



applied on their fields which required, *inter alia*, that pesticides not be applied in a way that will expose workers or other persons, either directly or through drift.

92. As a direct and proximate result of the breach of these duties, Dana Fulton, in utero, was exposed to teratogenic, genotoxic, and reproductively toxic pesticides, chemicals, and substances Defendant Monsanto caused to be negligently applied to their fields, and which they negligently allowed to migrate and drift and be inhaled and absorbed by Elizabeth Fulton and her infant offspring, Dana Fulton, while in utero.

93. As a direct and proximate result of Defendant Monsanto's negligence, and the exposure of Elizabeth Fulton and her daughter Dana Fulton, in utero, to these teratogenic, genotoxic, and reproductively toxic pesticides, chemicals, and substances, Dana Fulton was severely and permanently injured, and sustained severe physical, psychological, and emotional injury and distress, was forced to endure extensive pain, was subjected to permanent and debilitating injuries, all to her general damage in an amount subject to proof at trial.

94. As a further result of Defendant Monsanto's breaches and negligence, Dana Fulton has incurred and will incur in the future medical and related expenses in an amount to be determined at trial.

95. As a further result of Defendants Monsanto's breaches and negligence, Dana Fulton has and will suffer lost income and/or earning capacity in an amount to be determined at trial.

96. Defendants Monsanto's conduct as alleged herein has been undertaken with reckless disregard for the foreseeable consequences to Dana Fulton. Their conduct therefore justifies an award of exemplary or punitive damages in an amount to be proven at the trial of this matter.

SECOND CLAIM FOR RELIEF

On Behalf of Plaintiff Max Coleman

(Negligence—Monsanto)

97. Plaintiffs reallege and incorporate herein by reference, paragraphs 1 through 96 herein.

98. At all relevant times, Defendant Monsanto had a duty of care to prevent the migration and drift of dangerous and toxic pesticides, chemicals, and substances.

99. At all relevant times, Defendant Monsanto had a duty to comply with the labeling instructions on the pesticides applied at their fields which required, *inter alia*, that pesticides not be applied in a way that will contact workers or other persons, either directly or through drift.

100. At all relevant times, Defendant Monsanto knew or should have known of the hazardous nature of the teratogenic, genotoxic, and reproductively toxic pesticides, chemicals, and substances applied on their fields, including their ability to cause birth defects via exposure to pregnant mothers.

101. At all relevant times, Defendant Monsanto knew or should have known that it was foreseeable that their failure to prevent the migration and drift of those toxic pesticides would cause harm to Max Coleman, in utero, who lived in a neighborhood adjacent to and downwind from Monsanto's Mokulele fields where those toxic pesticides were applied.

102. Despite these duties, Defendant Monsanto failed to prevent the migration and drift of dangerous pesticides, and failed to comply with the labeling instructions on the pesticides applied on their fields which required, *inter alia*, that pesticides not be applied in a way that will contact workers or other persons, either directly or through drift.

103. As a direct and proximate result of the breach of these duties, Max Coleman, in utero, was exposed to teratogenic, genotoxic, and reproductively toxic pesticides, chemicals, and substances Defendant Monsanto caused to be negligently applied to their fields, and which they negligently allowed to migrate and drift and be inhaled and absorbed by Lory Marques and her infant offspring, Max Coleman, while in utero.

104. As a direct and proximate result of Defendant Monsanto's negligence, and the exposure of Lory Marques and her son Max Coleman, in utero, to these teratogenic, genotoxic, and reproductively toxic pesticides, chemicals, and substances, Max Coleman was severely and permanently injured, and sustained severe physical, psychological, and emotional injury and distress, was forced to endure extensive pain, was subjected to permanent and debilitating injuries, all to his general damage in an amount subject to proof at trial.

105. As a further result of Defendant Monsanto's breaches and negligence, Max Coleman has incurred and will incur in the future medical and related expenses in an amount to be determined at trial.

106. As a further result of Defendants Monsanto's breaches and negligence, Max Coleman has and will suffer lost income and/or earning capacity in an amount to be determined at trial.

107. Defendants Monsanto's conduct as alleged herein has been undertaken with reckless disregard for the foreseeable consequences to Max Coleman. Their conduct therefore justifies an award of exemplary or punitive damages in an amount to be proven at the trial of this matter.

### THIRD CLAIM FOR RELIEF

On Behalf of Plaintiff Dana Fulton



(Negligence—A&B)

108. Plaintiffs reallege and incorporate herein by reference, paragraphs 1 through 107 herein.

109. At all relevant times, Defendant A&B had a duty of care to prevent the migration and drift of dangerous and toxic pesticides, chemicals, and substances.

110. At all relevant times, Defendant A&B had a duty to comply with the labeling instructions on the pesticides applied at their fields which required, *inter alia*, that pesticides not be applied in a way that will contact workers or other persons, either directly or through drift.

111. At all relevant times, Defendant A&B knew or should have known of the hazardous nature of the teratogenic, genotoxic, and reproductively toxic pesticides, chemicals, and substances applied on their fields, including their ability to cause birth defects via exposure to pregnant mothers.

112. At all relevant times, Defendant A&B knew or should have known that it was foreseeable that their failure to prevent the migration and drift of those toxic pesticides would cause harm to Dana Fulton, in utero, who lived in a neighborhood adjacent to and downwind from A&B's Central Valley Kihei fields where those toxic pesticides were applied.

113. Despite these duties, Defendant A&B failed to prevent the migration and drift of dangerous pesticides, and failed to comply with the labeling instructions on the pesticides applied on their fields which required, *inter alia*, that pesticides not be applied in a way that will contact workers or other persons, either directly or through drift.

114. As a direct and proximate result of the breach of these duties, Dana Fulton, in utero, was exposed to teratogenic, genotoxic, and reproductively toxic pesticides, chemicals, and substances Defendant A&B caused to be negligently applied to their fields, and which they

negligently allowed to migrate and drift and be inhaled and absorbed by Elizabeth Fulton and her infant offspring, Dana Fulton, while in utero.

115. As a direct and proximate result of Defendant A&B's negligence, and the exposure of Elizabeth Fulton and her daughter Dana Fulton, in utero, to these teratogenic, genotoxic, and reproductively toxic pesticides, chemicals, and substances, Dana Fulton was severely and permanently injured, and sustained severe physical, psychological, and emotional injury and distress, was forced to endure extensive pain, was subjected to permanent and debilitating injuries, all to her general damage in an amount subject to proof at trial.

116. As a further result of Defendant A&B's breaches and negligence, Dana Fulton has incurred and will incur in the future medical and related expenses in an amount to be determined at trial.

117. As a further result of Defendant A&B's breaches and negligence, Dana Fulton has and will suffer lost income and/or earning capacity in an amount to be determined at trial.

118. Defendants A&B's conduct as alleged herein has been undertaken with reckless disregard for the foreseeable consequences to Dana Fulton. Their conduct therefore justifies an award of exemplary or punitive damages in an amount to be proven at the trial of this matter.

#### FOURTH CLAIM FOR RELIEF

On Behalf of Plaintiff Max Coleman

(Negligence—A&B)

119. Plaintiffs reallege and incorporate herein by reference, paragraphs 1 through 118 herein.

120. At all relevant times, Defendant A&B had a duty of care to prevent the migration and drift of dangerous and toxic pesticides, chemicals, and substances.

121. At all relevant times, Defendant A&B had a duty to comply with the labeling instructions on the pesticides applied at their fields which required, *inter alia*, that pesticides not be applied in a way that will contact workers or other persons, either directly or through drift.

122. At all relevant times, Defendant A&B knew or should have known of the hazardous nature of the teratogenic, genotoxic, and reproductively toxic pesticides, chemicals, and substances applied on their fields, including their ability to cause birth defects via exposure to pregnant mothers.

123. At all relevant times, Defendant A&B knew or should have known that it was foreseeable that their failure to prevent the migration and drift of those toxic pesticides would cause harm to Max Coleman, in utero, who lived in a neighborhood adjacent to and downwind from A&B's Central Valley Kihei fields where those toxic pesticides were applied.

124. Despite these duties, Defendant A&B failed to prevent the migration and drift of dangerous pesticides, and failed to comply with the labeling instructions on the pesticides applied on their fields which required, *inter alia*, that pesticides not be applied in a way that will contact workers or other persons, either directly or through drift.

125. As a direct and proximate result of the breach of these duties, Max Coleman, in utero, was exposed to teratogenic, genotoxic, and reproductively toxic pesticides, chemicals, and substances Defendant A&B caused to be negligently applied to their fields, and which they negligently allowed to migrate and drift and be inhaled and absorbed by Lory Marques and her infant offspring, Max Coleman, while in utero.

126. As a direct and proximate result of Defendant A&B's negligence, and the exposure of Lory Marques and her son Max Coleman, in utero, to these teratogenic, genotoxic, and reproductively toxic pesticides, chemicals, and substances, Max Coleman was severely and



permanently injured, and sustained severe physical, psychological, and emotional injury and distress, was forced to endure extensive pain, was subjected to permanent and debilitating injuries, all to her general damage in an amount subject to proof at trial.

127. As a further result of Defendant A&B's breaches and negligence, Max Coleman has incurred and will incur in the future medical and related expenses in an amount to be determined at trial.

128. As a further result of Defendant A&B's breaches and negligence, Max Coleman has and will suffer lost income and/or earning capacity in an amount to be determined at trial.

129. Defendants A&B's conduct as alleged herein has been undertaken with reckless disregard for the foreseeable consequences to Max Coleman. Their conduct therefore justifies an award of exemplary or punitive damages in an amount to be proven at the trial of this matter.

#### FIFTH CLAIM FOR RELIEF

On Behalf of Plaintiff Dana Fulton

(Strict Liability/Abnormally Dangerous Activity—Monsanto)

130. Plaintiffs reallege and incorporate herein by reference, paragraphs 1 through 129 herein.

131. The use and application of pesticides, including restricted use pesticides at Defendant Monsanto's GE Fields is an abnormally dangerous activity because Monsanto cannot eliminate the risks of those pesticides migrating and drifting even when they exercise the utmost care.

132. The use and application of pesticides, including restricted use pesticides, at Defendant Monsanto's GE fields, carries with it a high degree of risk that foreseeable persons, like Dana Fulton, in utero, will be harmed by the drifting and migration of those pesticides, and

that such harm will be great; specifically with regards to Plaintiff Dana Fulton, that harm is her development of the birth defects and other injuries which have severely and permanently disabled her.

133. The use and application of pesticides, including restricted use pesticides, to Defendant Monsanto's GE Fields, adversely impacted the health of Dana Fulton, in utero, and others who live in the drift zone created by the use and application of pesticides at Monsanto's GE fields.

134. Specifically, the use and application of inherently dangerous pesticides, including restricted use pesticides, at Defendant Monsanto's Mokulele field caused the routine migration and drift of those pesticides into the Hale Piilani neighborhood of Kihei, where Elizabeth Fulton lived before and while pregnant with Dana Fulton.

135. It is inappropriate to use and apply teratogenic, genotoxic, and reproductively toxic pesticides, chemicals, and substances, including restricted use pesticides, at Defendant Monsanto's GE fields, considering those fields are in such close proximity to the nearby communities of Kihei, and in light of Defendant Monsanto's knowledge of the routine and persistent trade winds which blow from their respective fields towards the nearby community of Kihei, which allow for the drift and migration of those teratogenic, genotoxic, and reproductively toxic pesticides, chemicals, and substances.

136. The inherently dangerous attributes of the teratogenic, genotoxic, and reproductively toxic pesticides, including restricted use pesticides, used and applied at Defendant Monsanto's GE fields, and their ability to cause catastrophic birth defects in children, combined with these Defendants' knowledge of the routine and persistent trade winds which blow from their respective fields towards the nearby community of Kihei, is not outweighed by any value

that those teratogenic, genotoxic, and reproductively toxic pesticides, including restricted use pesticides, have to the community.

137. As a result, Defendant Monsanto is strictly liable for the damages to Dana Fulton arising from the use of these inherently dangerous teratogenic, genotoxic, and reproductively toxic pesticides, chemicals, and other substances at its fields.

138. Defendant Monsanto's conduct as alleged herein has been undertaken with reckless disregard for the foreseeable consequences to Dana Fulton. Their conduct therefore justifies an award of exemplary or punitive damages in an amount to be proven at the trial of this matter.

#### SIXTH CLAIM FOR RELIEF

On Behalf of Plaintiff Dana Fulton

(Strict Liability/Abnormally Dangerous Activity—A&B)

139. Plaintiffs reallege and incorporate herein by reference, paragraphs 1 through 138 herein.

140. The use and application of pesticides, including restricted use pesticides at Defendant A&B's fields is an abnormally dangerous activity because A&B cannot eliminate the risks of those pesticides migrating and drifting even when they exercise the utmost care.

141. The use and application of pesticides, including restricted use pesticides, at Defendant A&B's fields, carries with it a high degree of risk that foreseeable persons, like Dana Fulton, in utero, will be harmed by the drifting and migration of those pesticides, and that such harm will be great; specifically with regards to Plaintiff Dana Fulton, that harm is the development of the birth defects and other injuries which have severely and permanently disabled her.



142. The use and application of pesticides, including restricted use pesticides, to Defendant A&B's Fields, adversely impacted the health of Dana Fulton, in utero, and others who live in the drift zone created by the use and application of pesticides at A&B's Fields.

143. Specifically, the use and application of inherently dangerous pesticides, including restricted use pesticides, at Defendant A&B's field caused the routine migration and drift of those pesticides into the Hale Piilani neighborhood of Kihei, where Elizabeth Fulton lived before and while pregnant with Dana Fulton.

144. It is inappropriate to use and apply teratogenic, genotoxic, and reproductively toxic pesticides, chemicals, and substances, including restricted use pesticides, at Defendant A&B's fields, considering those fields are in such close proximity to the nearby communities of Kihei, and in light of Defendant A&B's knowledge of the routine and persistent trade winds which blow from their respective fields towards the nearby community of Kihei, which allow for the drift and migration of those teratogenic, genotoxic, and reproductively toxic pesticides, chemicals, and substances.

145. The inherently dangerous attributes of the teratogenic, genotoxic, and reproductively toxic pesticides, including restricted use pesticides, used and applied at Defendant A&B's fields, and their ability to cause catastrophic birth defects in children, combined with these Defendants' knowledge of the routine and persistent trade winds which blow from their respective fields towards the nearby community of Kihei, is not outweighed by any value that those teratogenic, genotoxic, and reproductively toxic pesticides, including restricted use pesticides, have to the community.

146. As a result, Defendant A&B is strictly liable for the damages to Dana Fulton arising from the use of these inherently dangerous teratogenic, genotoxic, and reproductively toxic pesticides, chemicals, and other substances at its fields.

147. Defendant A&B's conduct as alleged herein has been undertaken with reckless disregard for the foreseeable consequences to Dana Fulton. Their conduct therefore justifies an award of exemplary or punitive damages in an amount to be proven at the trial of this matter.

SEVENTH CLAIM FOR RELIEF

On Behalf of Plaintiff Max Coleman

(Strict Liability/Abnormally Dangerous Activity—Monsanto)

148. Plaintiffs reallege and incorporate herein by reference, paragraphs 1 through 147 herein.

149. The use and application of pesticides, including restricted use pesticides at Defendant Monsanto's GE Fields is an abnormally dangerous activity because Monsanto cannot eliminate the risks of those pesticides migrating and drifting even when they exercise the utmost care.

150. The use and application of pesticides, including restricted use pesticides, at Defendant Monsanto's GE fields, carries with it a high degree of risk that foreseeable persons, like Max Coleman, in utero, will be harmed by the drifting and migration of those pesticides, and that such harm will be great; specifically with regards to Plaintiff Max Coleman, that harm is his development of the birth defects and other injuries which have severely and permanently disabled him.

151. The use and application of pesticides, including restricted use pesticides, to Defendant Monsanto's GE Fields, adversely impacted the health of Max Coleman, in utero, and

others who live in the drift zone created by the use and application of pesticides at Monsanto's GE fields.

152. Specifically, the use and application of inherently dangerous pesticides, including restricted use pesticides, at Defendant Monsanto's Mokulele field caused the routine migration and drift of those pesticides into the Hale Piilani neighborhood of Kihei, where Lory Marques lived before and while pregnant with Max Coleman.

153. It is inappropriate to use and apply teratogenic, genotoxic, and reproductively toxic pesticides, chemicals, and substances, including restricted use pesticides, at Defendant Monsanto's GE fields, considering those fields are in such close proximity to the nearby communities of Kihei, and in light of Defendant Monsanto's knowledge of the routine and persistent trade winds which blow from their respective fields towards the nearby community of Kihei, which allow for the drift and migration of those teratogenic, genotoxic, and reproductively toxic pesticides, chemicals, and substances.

154. The inherently dangerous attributes of the teratogenic, genotoxic, and reproductively toxic pesticides, including restricted use pesticides, used and applied at Defendant Monsanto's GE fields, and their ability to cause catastrophic birth defects in children, combined with these Defendants' knowledge of the routine and persistent trade winds which blow from their respective fields towards the nearby community of Kihei, is not outweighed by any value that those teratogenic, genotoxic, and reproductively toxic pesticides, including restricted use pesticides, have to the community.

155. As a result, Defendant Monsanto is strictly liable for the damages to Max Coleman arising from the use of these inherently dangerous teratogenic, genotoxic, and reproductively toxic pesticides, chemicals, and other substances at its fields.



156. Defendant Monsanto's conduct as alleged herein has been undertaken with reckless disregard for the foreseeable consequences to Max Coleman. Their conduct therefore justifies an award of exemplary or punitive damages in an amount to be proven at the trial of this matter.

EIGHTH CLAIM FOR RELIEF

On Behalf of Plaintiff Max Coleman

(Strict Liability/Abnormally Dangerous Activity—A&B)

157. Plaintiffs reallege and incorporate herein by reference, paragraphs 1 through 156 herein.

158. The use and application of pesticides, including restricted use pesticides at Defendant A&B's fields is an abnormally dangerous activity because A&B cannot eliminate the risks of those pesticides migrating and drifting even when they exercise the utmost care.

159. The use and application of pesticides, including restricted use pesticides, at Defendant A&B's fields, carries with it a high degree of risk that foreseeable persons, like Max Coleman, in utero, will be harmed by the drifting and migration of those pesticides, and that such harm will be great; specifically with regards to Plaintiff Max Coleman, that harm is his development of the birth defects and other injuries which have severely and permanently disabled him.

160. The use and application of pesticides, including restricted use pesticides, to Defendant A&B's Fields, adversely impacted the health of Max Coleman, in utero, and others who live in the drift zone created by the use and application of pesticides at A&B's Fields.

161. Specifically, the use and application of inherently dangerous pesticides, including restricted use pesticides, at Defendant A&B's field caused the routine migration and drift of

those pesticides into the Hale Piilani neighborhood of Kihei, where Lory Marques lived before and while pregnant with Max Coleman.

162. It is inappropriate to use and apply teratogenic, genotoxic, and reproductively toxic pesticides, chemicals, and substances, including restricted use pesticides, at Defendant A&B's fields, considering those fields are in such close proximity to the nearby communities of Kihei, and in light of Defendant A&B's knowledge of the routine and persistent trade winds which blow from their respective fields towards the nearby community of Kihei, which allow for the drift and migration of those teratogenic, genotoxic, and reproductively toxic pesticides, chemicals, and substances.

163. The inherently dangerous attributes of the teratogenic, genotoxic, and reproductively toxic pesticides, including restricted use pesticides, used and applied at Defendant A&B's fields, and their ability to cause catastrophic birth defects in children, combined with these Defendants' knowledge of the routine and persistent trade winds which blow from their respective fields towards the nearby community of Kihei, is not outweighed by any value that those teratogenic, genotoxic, and reproductively toxic pesticides, including restricted use pesticides, have to the community.

164. As a result, Defendant A&B is strictly liable for the damages to Max Coleman arising from the use of these inherently dangerous teratogenic, genotoxic, and reproductively toxic pesticides, chemicals, and other substances at its fields.

165. Defendant A&B's conduct as alleged herein has been undertaken with reckless disregard for the foreseeable consequences to Max Coleman. Their conduct therefore justifies an award of exemplary or punitive damages in an amount to be proven at the trial of this matter.

#### NINTH CLAIM FOR RELIEF

On Behalf of Plaintiffs Elizabeth Fulton, Terry Fulton, and Dana Fulton

(Negligent Infliction of Emotional Distress—Monsanto)

166. Plaintiffs reallege and incorporate herein by reference, paragraphs 1 through 165 herein.

167. Defendant Monsanto owed a duty to Elizabeth Fulton, Terry Fulton and Dana Fulton to not cause serious mental distress as a result of the use and application of teratogenic, genotoxic, and reproductively toxic pesticides, including restricted use pesticides, on and at its respective fields.

168. Defendant Monsanto breached that duty by negligently causing the use and application of teratogenic, genotoxic, and reproductively toxic pesticides, including restricted use pesticides, at its respective fields, to drift to and be inhaled and absorbed by Elizabeth Fulton while she resided at the Fulton Residence while pregnant with Dana Fulton.

169. Defendant Monsanto's conduct resulted in serious mental distress for Elizabeth and Terry Fulton and their daughter, Dana Fulton.

#### TENTH CLAIM FOR RELIEF

On Behalf of Plaintiffs Elizabeth Fulton, Terry Fulton, and Dana Fulton

(Negligent Infliction of Emotional Distress—A&B)

170. Plaintiffs reallege and incorporate herein by reference, paragraphs 1 through 169 herein.

171. Defendant A&B owed a duty to Elizabeth Fulton, Terry Fulton, and Dana Fulton to not cause serious mental distress as a result of the use and application of teratogenic, genotoxic, and reproductively toxic pesticides, including restricted use pesticides, on and at their respective fields.



172. Defendant A&B breached that duty by negligently causing the use and application of teratogenic, genotoxic, and reproductively toxic pesticides, including restricted use pesticides, at their respective fields, to drift to and be inhaled and absorbed by Elizabeth Fulton while she resided at the Fulton Residence while pregnant with Dana Fulton.

173. Defendant A&B's conduct resulted in serious mental distress for Elizabeth and Terry Fulton and their daughter, Dana Fulton.

#### ELEVENTH CLAIM FOR RELIEF

On Behalf of Plaintiffs Lory Marques and Max Coleman

(Negligent Infliction of Emotional Distress—Monsanto)

174. Plaintiffs reallege and incorporate herein by reference, paragraphs 1 through 173 herein.

175. Defendant Monsanto owed a duty to Lory Marques and Max Coleman to not cause serious mental distress as a result of the use and application of teratogenic, genotoxic, and reproductively toxic pesticides, including restricted use pesticides, on and at its respective fields.

176. Defendant Monsanto breached that duty by negligently causing the use and application of teratogenic, genotoxic, and reproductively toxic pesticides, including restricted use pesticides, at its respective fields, to drift to and be inhaled and absorbed by Lory Marques while she resided at the Coleman Residence while pregnant with Max Coleman.

177. Defendant Monsanto's conduct resulted in serious mental distress for Lory Marques and her son, Max Coleman.

#### TWELFTH CLAIM FOR RELIEF

On Behalf of Plaintiffs Lory Marques and Max Coleman

(Negligent Infliction of Emotional Distress—A&B)

178. Plaintiffs reallege and incorporate herein by reference, paragraphs 1 through 177 herein.

179. Defendant A&B owed a duty to Lory Marques and Max Coleman to not cause serious mental distress as a result of the use and application of teratogenic, genotoxic, and reproductively toxic pesticides, including restricted use pesticides, on and at its respective fields.

180. Defendant A&B breached that duty by negligently causing the use and application of teratogenic, genotoxic, and reproductively toxic pesticides, including restricted use pesticides, at its respective fields, to drift to and be inhaled and absorbed by Lory Marques while she resided at the Coleman Residence while pregnant with Max Coleman.

181. Defendant A&B's conduct resulted in serious mental distress for Lory Marques and her son, Max Coleman.

#### THIRTEENTH CLAIM FOR RELIEF

On Behalf of Plaintiffs Elizabeth Fulton, Terry Fulton, and Dana Fulton

(Intentional Infliction of Emotional Distress—Monsanto)

182. Plaintiffs reallege and incorporate herein by reference, paragraphs 1 through 181 herein.

183. Defendant Monsanto recklessly applied and caused to be applied to their respective fields inherently dangerous teratogenic, genotoxic, and reproductively toxic pesticides, including restricted use pesticides.

184. Defendant Monsanto acted outrageously in applying and causing to be applied to their respective fields inherently dangerous teratogenic, genotoxic, and reproductively toxic pesticides, including restricted use pesticides, which they knew would drift into the nearby

communities, including Kihei and the Fulton Residence where Elizabeth Fulton resided while pregnant with Dana Fulton.

185. Defendant Monsanto caused extreme emotional distress to Elizabeth Fulton, Terry Fulton and Dana Fulton by outrageously applying and causing to be applied to their respective fields inherently dangerous teratogenic, genotoxic, and reproductively toxic pesticides, including restricted use pesticides, which they knew would drift into the nearby communities, including Kihei and the Fulton Residence where Elizabeth Fulton resided while pregnant with Dana Fulton

186. Defendant Monsanto is liable for the intentional infliction of emotional distress that Elizabeth, Terry, and Dana Fulton suffered and continue to suffer.

#### FOURTEENTH CLAIM FOR RELIEF

On Behalf of Plaintiffs Elizabeth Fulton, Terry Fulton and Dana Fulton

(Intentional Infliction of Emotional Distress—A&B)

187. Plaintiffs reallege and incorporate herein by reference, paragraphs 1 through 186 herein.

188. Defendant A&B recklessly applied and caused to be applied to their respective fields inherently dangerous teratogenic, genotoxic, and reproductively toxic pesticides, including restricted use pesticides.

189. Defendant A&B acted outrageously in applying and causing to be applied to their respective fields inherently dangerous teratogenic, genotoxic, and reproductively toxic pesticides, including restricted use pesticides, which they knew would drift into the nearby communities, including Kihei and the Fulton Residence where Elizabeth Fulton resided while pregnant with Dana Fulton.



190. Defendant A&B caused extreme emotional distress to Elizabeth and Terry Fulton and Dana Fulton by outrageously applying and causing to be applied to their respective fields inherently dangerous teratogenic, genotoxic, and reproductively toxic pesticides, including restricted use pesticides, which they knew would drift into the nearby communities, including Kihei and the Fulton Residence where Elizabeth Fulton resided while pregnant with Dana Fulton

191. Defendant A&B is liable for the intentional infliction of emotional distress that Elizabeth, Terry and Dana Fulton suffered and continue to suffer.

FIFTEENTH CLAIM FOR RELIEF

On Behalf of Plaintiffs Lory Marques and Max Coleman

(Intentional Infliction of Emotional Distress—Monsanto)

192. Plaintiffs reallege and incorporate herein by reference, paragraphs 1 through 191 herein.

193. Defendant Monsanto recklessly applied and caused to be applied to their respective fields inherently dangerous teratogenic, genotoxic, and reproductively toxic pesticides, including restricted use pesticides.

194. Defendant Monsanto acted outrageously in applying and causing to be applied to their respective fields inherently dangerous teratogenic, genotoxic, and reproductively toxic pesticides, including restricted use pesticides, which they knew would drift into the nearby communities, including Kihei and the Coleman Residence where Lory Marques resided while pregnant with Max Coleman.

195. Defendant Monsanto caused extreme emotional distress to Lory Marques and Max Coleman by outrageously applying and causing to be applied to their respective fields inherently dangerous teratogenic, genotoxic, and reproductively toxic pesticides, including

restricted use pesticides, which they knew would drift into the nearby communities, including Kihei and the Coleman Residence where Lory Marques resided while pregnant with Max Coleman.

196. Defendant Monsanto is liable for the intentional infliction of emotional distress that Lory Marques and Max Coleman suffered and continue to suffer.

SIXTEENTH CLAIM FOR RELIEF

On Behalf of Plaintiffs Lory Marques and Max Coleman

(Intentional Infliction of Emotional Distress—A&B)

197. Plaintiffs reallege and incorporate herein by reference, paragraphs 1 through 196 herein.

198. Defendant A&B recklessly applied and caused to be applied to their respective fields inherently dangerous teratogenic, genotoxic, and reproductively toxic pesticides, including restricted use pesticides.


199. Defendant A&B acted outrageously in applying and causing to be applied to their respective fields inherently dangerous teratogenic, genotoxic, and reproductively toxic pesticides, including restricted use pesticides, which they knew would drift into the nearby communities, including Kihei and the Coleman Residence where Lory Marques resided while pregnant with Max Coleman.

200. Defendant A&B caused extreme emotional distress to Lory Marques and Max Coleman by outrageously applying and causing to be applied to their respective fields inherently dangerous teratogenic, genotoxic, and reproductively toxic pesticides, including restricted use pesticides, which they knew would drift into the nearby communities, including Kihei and the Coleman Residence where Lory Marques resided while pregnant with Max Coleman.

201. Defendant A&B is liable for the intentional infliction of emotional distress that Lory Marques and Max Coleman suffered and continue to suffer.

WHEREFORE, Plaintiffs demand judgment against Defendants in an amount of damages that is within the minimum jurisdictional limits of this Court, as follows:

1. General damages as are proven at the time of trial;
2. Special damages as are proven at the time of trial;
3. Punitive damages as are proven at the time of trial;
4. For costs incurred herein; and
5. For such other and further relief as may be deemed just and equitable in the premises, including, but not limited to, prejudgment interest.



L. RICHARD DeROBERTIS  
ILANA K. WAXMAN  
ALLISON M. AOKI  
ALYSSA R. SEGAWA  
Attorneys for Plaintiffs



IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII


DANA FULTON, ELIZABETH FULTON, ) CIVIL NO. \_\_\_\_\_  
TERRY FULTON, and LORY MARQUES, ) (Toxic Tort/Personal Injury)  
individually and as Next Friend for MAX )  
COLEMAN, a Minor, )  
 ) **DEMAND FOR JURY TRIAL**  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
BAYER A.G., et al., )  
 )  
 )  
Defendants. )  
 )

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DEMAND FOR JURY TRIAL

Plaintiffs, by and through their undersigned counsel, hereby demand trial by jury on all issues so triable herein.

DATED: Honolulu, Hawai'i, OCT 24 2019

  
\_\_\_\_\_  
L. RICHARD DeROBERTIS  
ILANA K. WAXMAN  
ALLISON M. AOKI  
ALYSSA R. SEGAWA  
Attorneys for Plaintiffs

**EXHIBIT “A”**

Attachment 1



Google Earth

Data Sourced from UHM

1 mi





# **EXHIBIT “B”**



Attachment 2



Google Earth

Data SIO, NOAA, U.S. Navy, NGA, GEBCO

 Coleman Residence  
363a Kaiolohia St

 Monsanto Mokulele

 Fulton Residence

1000 ft





# **EXHIBIT “C”**



Attachment 3



Coleman Residence

363a Kaiolohia St

Fulton Residence

A&B Central Valley Fields

Google Earth

2000 ft





IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAI'I

DANA FULTON, ELIZABETH FULTON,  
TERRY FULTON, and LORY MARQUES,  
individually and as Next Friend for MAX  
COLEMAN, a Minor,

Plaintiffs,

vs.

1) BAYER A.G.;

2) MONSANTO COMPANY, a Delaware  
corporation;

3) MONSANTO HAWAII PRODUCTION  
CO., LLC.;

4) ALEXANDER & BALDWIN, INC., a  
Hawaii corporation; and

5) DOES 1 to 10,

Defendants.

) CIVIL NO. 19-1-0369(3)  
) (Toxic Tort/Personal Injury)

) **SUMMONS**

) Complex Litigation  
) Judge: Honorable \_\_\_\_\_  
) Trial Date: Not assigned

S U M M O N S

STATE OF HAWAI'I

To the above-named Defendants:

You are hereby summoned and required to file with the court and serve upon GALIHER DeROBERTIS & WAXMAN LLP, Plaintiffs' attorneys, whose address is 820 Mililani Street, Suite 505, Honolulu, Hawai'i 96813-2935, an answer to the Complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the date of

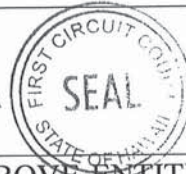
service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint.

This summons shall not be personally delivered between 10:00 p.m. and 6:00 a.m. on premises not open to the general public, unless a judge of the above-entitled court permits, in writing on this summons, personal delivery during those hours.

A failure to obey this summons may result in an entry of default and default judgment against the disobeying person or party.

DATED: Wailuku, Hawai`i, OCT 24 2019 \_\_\_\_\_

N. MIYATA



\_\_\_\_\_  
CLERK OF THE ABOVE-ENTITLED COURT

EX OFFICIO