PROPOSED TENTATIVE

This case involves at its core a request for relief based on fears that plaintiffs and putative class members were exposed to "glyphosate" in their jobs as agricultural workers, landscapers, and groundskeepers. Glyphosate is used in commercial Roundup products, and is alleged to be a cause of non-Hodgkin lymphoma (NHL). The issue before the court is whether the court should grant defendant Monsanto Company's demurrer to all three causes of action as advanced in the operative pleading, without leave to amend. The court's task in this endeavor has been made more arduous because the litigation started in federal court, where the federal court granted defendant Monsanto Company's motion to dismiss, with leave to amend; plaintiffs did not file an amended pleading in federal court, but filed with this court the present complaint at issue. After a review of the operative pleading (Part A) and all admissible judicially-noticed documents, including those generated in the predecessor federal litigation (Parts B and D); after an examination of all arguments advanced for and against demurrer (Part C); and after a detailed and protracted exploration of the merits of each argument made (Part E(1) to (5)), the court will 1) partially overrule the demurrer, rejecting some arguments advanced by defendant; and 2) partially sustain the demurrer, finding sufficient defects necessitate an amended pleading (while determining the defects in the second cause of action to be irremediable unless plaintiff can demonstrate otherwise at the hearing). The court summarizes its conclusions in the final section of this order (Part F) for convenience.

A) Operative Pleading

On January 14, 2025, plaintiffs Jonas Perez-Hernandez and Isabel Paz-Hernandez (plaintiffs) filed a class-action complaint against defendants Bayer Aktiengesellschaft (Bayer), Bayer Corporation (Bayer Corp.), and Monsanto Company (Monsanto), advancing the following causes of action: 1) negligence/negligent misrepresentation against all defendants; 2) a violation of the California's Unfair Competition Law (Bus & Prof. Code, § 17200, et seq.) (UCL) against all defendants; and 3) declaratory relief against all defendants. On April 22, 2025, plaintiff voluntarily dismissed Bayer and Bayer Corp. from the lawsuit, leaving Monsanto as the sole remaining defendant.

Plaintiffs are bringing the class-action lawsuit on behalf of agricultural workers, landscapers, and groundskeepers who have had "significant occupational exposure" to the herbicide Roundup, which contains the carcinogen glyphosate, which is linked to "the development of NHL. As a result of plaintiffs' and the proposed class's "exposure to glyphosate," they allegedly are at "an increased risk of developing NHL, although at this time they have not been diagnosed with NHL, and are not under the care of a physician for suspected NHL. Plaintiffs ask defendant Monsanto "to provide medical monitoring for the early detection of NHL and surveillance of development of NHL through a program supervised by this Court." Plaintiffs previously filed suit in the United States District Court, Northern District of California, although the federal court "dismissed on jurisdictional grounds." (¶ 16.) According to plaintiffs, the term "Roundup" refers to all formulations in all Roundup products, including a long list of products outlined in paragraph 25 of the operative pleading.

Representative plaintiffs were employed as agricultural workers in both San Luis Obispo and Santa Barbara Counties, and both claim to have suffered a sustained, long-term exposure to Roundup, generating a reasonable fear that each will develop NHL. Defendant Monsanto is headquartered in Delaware, and has substantial contacts with California. Monsanto was the "entity that discovered and promoted the herbicidal properties of glyphosate and is engaged in the business of designing, developing, manufacturing, testing, packaging, marketing, distributing, labeling, and/or selling Roundup. . . ." (¶ 24.) Monsanto further "discovered glyphosate to be an herbicide in 1970," brought it to market as "Roundup" in 1974, and today "glyphosate is the most used herbicide in the world," with over "90% of glyphosate applied in agricultural settings on field crops." (¶ 30.) In a July 2015 report issued by the International Agency for Research on Cancer (IARC), which is "an intergovernmental government agency within the United Nations' World Health Organization (WHO), IRAC identified glyphosate as "probably carcinogenic to humans. It also found that glyphosate cause DNA and chromosomal damage in humans." (¶ 37.) The Environmental Protection Agency (EPA) has disagreed with the IRAC in a January 20, 2020 re-registration decision on glyphosate, concluding that there "no risks to human health from the current registered uses of glyphosate and that glyphosate is not likely to be carcinogenic to humans." (¶ 38.)

B) Prior Federal Lawsuit

As noted, plaintiff initially brought a class action suit in federal court, advancing the same theories advanced here, with the same remedy (medical monitoring). (*Perez-Hernandez v. Bayer AG*, No. 3:23-CV-04946-VC, MDL NO. 2741 (N.D. Cal, ECF NO. 1.[1]) The federal complaint was ultimately transferred to *In re Roundup Products Liability Litigation* (No. 3:16-md-02741-VC), MDL NO. 2741 and United States District Court Judge Vince Chhabria, who then transferred the matter to the United States District Court, Central District of California, for venue purposes, which then returned the matter to the Northern District and Judge Chhabria. Plaintiffs ultimately filed a first amended complaint, and on September 13, 2024, defendant Monsanto filed a motion to dismiss, which was granted with leave to amend following a hearing on November 8, 2024. Judge Chhabria concluded (*inter alia*) that plaintiffs had failed to allege sufficient facts to support Article III standing for their request for medical monitoring, although the court afforded plaintiffs an opportunity to file an amended pleading. Plaintiffs instead filed the present lawsuit with this court. The parties in the demurrer, in opposition, and in reply have made liberal references to Judge Chhabria's analysis, and the court directed the parties to meet and confer and then submit the relevant district court documents in a supplemental judicial notice request, including orders and transcripts, to help frame the issues before this court.

On October 1, 2025, per the court's directive, the parties submitted these documents.[2] Notably, in the written order contained in Exhibit 8, Judge Chhabria outlined the reasons why he

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[1] There were two other similar putative class action matters before the federal court - *Sheller v. Bayer, AG,* et al., No.3:19-CV-07972 (N.D. Cal), and *Ramirez v. Monsanto Co.,* 3:190CV-2224- VC (N.D. Cal.) For convenience, the court will only reference the *Perez-Hernandez* first amended complaint, at times making vague references to the other two cases only when appropriate.

[2] The parties submitted eight (8) exhibits in total, including a copy of the February 15, 2024, hearing in which Judge Chhabria transferred the matter to the Central District of California for improper venue (Exhibit 1); 2) the first amended complaint filed by plaintiffs after the matter was transferred back to Judge Chhabria (Exhibit 2); 3) Monsanto's motion to dismiss the first amended complaint filed on September 13, 2024 (Exhibit 3); 4) a September

granted Monsanto's motion to dismiss the operative complaint, with leave to amend. Specifically, the court observed that "each complaint is deficient with respect to the 'injury in fact' and 'redressability' elements of standing." The complaints contain "general allegations that plaintiffs were exposed to Roundup and that Roundup increases the risk of developing NHL," but they do not satisfactorily allege "any sense of the magnitude of the increase in risk. . . . This is not to say that plaintiff must always allege precise numbers in a case like this, " although the "allegation must give the Court some meaningful understanding of the magnitude of increase in risk. [Citations.]" Further, according to Judge Chhabria, it was far "less clear" whether plaintiff can address "redressability," for the allegations "certainly fail on that front." That is, plaintiffs had failed to allege "whether monitoring could actually mitigate the harm from any increased risk of developing NHL." The allegations failed to provide the nature of monitoring, how it can detect NHL, and how it will benefit patients. Judge Chhabria observed with particular relevance for our purposes as follows: "As applied here, one could imagine a plaintiff being able to state a claim for medical monitoring under state law, but being unable to satisfy the Article III standing requirements – either because the injury is too speculative or because the connection between the injury and the requested remedy is too attenuated. And the plaintiffs have not provided information about the requirements for stating a claim for medical monitoring. So at least at this stage, it's appropriate to treat the questions discussed here as one of standing." As noted, plaintiffs did not file an amended pleading with the federal court, but filed the pleading at issue here.

C) Arguments Advanced in Demurrer, Opposition, and Reply

Defendant advances a number of arguments in support of its demurrer, with plaintiff challenging each argument in opposition. Defendant filed a reply. All briefing has been examined. The court has rearranged the order of the arguments as advanced in the briefing.

Initially, essentially to all three causes of action, defendant argues that each is barred by its respective statute of limitations, and plaintiffs have failed to provide a sufficient factual basis for any exception to them. Plaintiffs vehemently disagree in opposition, claiming they have adequately alleged two theories of equitable tolling (discovery rule and doctrine of fraudulent concealment), as well as a new accrual date per the continuing violation doctrine.

Defendant also claims that there is no difference between the standing rules required under Article III of the federal Constitution, as articulated by Judge Chhabria, and state law rules associated with a "claim" for medical monitoring, meaning (so it appears) the court should follow Judge Chhabria's lead, as discussed above. Defendant relies on *Muha v. Experian Information Solutions, Inc*. (2024) 106 Cal.App.5th 199 for this proposition. According to defendant, while Judge Chhabria's decision properly defines Article III standing in federal courts, it also defines the rules associated with California standing, under the authority of *Potter*

19, 2024 order to show cause issued by Judge Chhabria, directing the parties to address whether plaintiffs have Article III standing (Exhibit 4); 5) plaintiffs' response to the order to show cause (Exhibit 5); 6) Monsanto's reply to the order to show cause (Exhibit 6); 7) a copy of the October 31, 2024 order to show cause hearing before Judge Chhabria (Exhibit 7); and 8) a copy of the written order dismissing the complaint with leave to amend (Exhibit 8). The court grants the supplement request for judicial notice of these documents. While the court has read all documentation submitted, it will focus on Judge Chhabria's written order in Exhibit 8, as that reflects his analysis of the relevant issues at play here.

v. Firestone Tire & Rubber Co. (1993) 6 Cal.4th 965, which explored under "what circumstances" a toxic exposure plaintiff may recover medical monitoring damages in a negligence action. (*Id.* at p. 1005.) *Potter* involved a case of "toxic exposure" brought by four landowners living adjacent to a landfill, in which defendant disposed "of its toxic waste," exposing the landowners to "prolonged exposure to certain carcinogens. While none of the landowners currently suffers from any cancerous or precancerous condition, each faces an enhanced but unquantified risk of developing cancer in the future due to exposure." (*Id.* at p. 975.) The *Potter* court adopted the reasoning in *Miranda v. Shell Oil Co*. (1993) 17 Cal.App.4th 1651, concluding that medical monitoring was appropriate under the following circumstances (and as relevant for our purposes – with emphasis added):

> ". . . . [W]e believe the *Miranda* court's analysis appropriately recognizes that medical science may necessarily and properly intervene in the absence of a physical injury ***where there is a significant but not necessarily likely risk of serious disease***, Accordingly, consistent with *Miranda* [citation], and the cases cited above, we hold that the cost of medical monitoring is a compensable item of damages where the proofs demonstrate, through reliable medical expert testimony, that the need for future monitoring is a compensable item of damages where the proofs demonstrate, ***through reliable medical expert testimony,*** that the need for future monitoring is a reasonably certain consequence of a plaintiff's toxic exposure and that the recommended monitoring is reasonable. In determining the reasonableness and necessity of monitoring, the following factors are relevant: (1) the significance and extent of the plaintiff's exposure to chemicals; (2) the toxicity of the chemicals; (3) the relative increase in the chance of onset of disease in the exposed plaintiff as a result of the exposure, when compared to (a) the plaintiff's chances of developing the disease had he or she not been exposed, and (b) the chances of the members of the public at large of developing the disease; (4) the seriousness of the disease for which the plaintiff is at risk; and (5) the clinical value of early detection and diagnosis. Under this holding, ***it is for the trier of fact to decide*** on the basis of competent medical testimony, whether and to what extent the particular plaintiff's exposure to toxic chemicals in a given situation justifies future periodic medical monitoring.
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> We are confident that our holding will not, as Firestone and amici curiae warn, open the floodgates of litigation. The five factors provide substantial evidentiary burdens for toxic exposure plaintiffs and do not, as Firestone insists, allow medical monitoring damages to be based 'solely upon a showing of an increased but unquantified risk resulting from exposure to toxic chemicals.' Moreover, toxic exposure plaintiffs may recover "only ***if the evidence*** establishes the necessity, as a direct consequence of the exposure in issue, for specific monitoring beyond that which an individual should pursue as a matter of general good sense and foresight." [Citation.] Thus there can be no recovery for preventative medical care and checkups to which members of the public at large should prudently submit. [Citation.] Finally, contrary to the protestations of Firestone and amici curiae, medical monitoring costs are not speculative because they are based upon the specific dollar costs of reasonable and necessary periodic examinations."

Defendant insists that the five *Potter* factors indicated above are pleading requirements, in line with Article III standing principles, something plaintiff has not satisfied. Specifically,

defendant argues in the end that three (3) of the five (5) *Potter* factors have not been pleaded with adequate sufficiency. Plaintiffs in opposition contend initially that 1) Judge Chhabria agreed that the standing rules in federal court "may" be different than the standing rules in California; 2) in one of the earlier federal lawsuits, defendant settled and agreed to pay for medical monitoring (Roundup MDL (N.D. May 23, 2021) ECF No. 13090), demonstrating (as far as plaintiffs are concerned), that medical monitoring has been found acceptable and appropriate in the past[3]; and 3) plaintiffs have pleaded sufficient allegations showing medical monitoring is reasonable, insisting that the "*Potter* factors raise factual issues relevant for the trier of fact" only, and are therefore "inappropriate" at the pleading stage (p. 14 of Opposition), although arguing in the alternative that the pleading contains sufficient allegations to withstand demurrer.

Additionally, defendant challenges all three cause of action individually (i.e., separate and apart from the *Potter* standing question noted above). Defendant claims that plaintiff has failed to allege sufficient facts in support of the first cause of action labelled "negligence/negligent misrepresentation," focusing exclusively on allegations that support negligence misrepresentation rather than common law negligence. Defendant argues that plaintiffs have failed to allege 1) any false or misleading statements or omissions with factual specificity; and 2) actual reliance on any false or misleading statements, also with factual specificity. Defendant also argues that plaintiffs have failed to allege a "plausible" UCL claim. as they fail to plead an economici injury, the *sine qua non* for the cause of action. Finally, defendant contends the declaratory relief cause of action is "improper and duplicative," as it duplicates all requests for damages, meaning the other causes of action are adequate to address plaintiffs' claims. Plaintiffs disagree with each argument, claiming 1) they have adequately alleged a common law negligence cause of action ; and 2) they have adequately alleged a UCL cause of action because they are entitled to medical monitoring damages, they have adequately alleged plaintiffs' deceptive misconduct and adequate reliance on the misconduct, Finally, plaintiffs contend as to the declaratory relief cause of action that they alleged more than damages, asking for equitable relief within the purview of the scope of declaratory relief.

D) Request for Judicial Notice/Opposition

Separate and apart from the supplemental documents submitted by both parties following the court's September 8, 2025, order, discussed above, defendant asks the court to take judicial notices of Exhibits A to FF, which consists of excerpts from various Environmental Protection Agency's (EPA's) reports and letters (Exhibits A, B, C, D, F, and G); a publication from the International Agency For Research on Cancer (Exhibit E); documents from the federal litigation mentioned above ((Exhibit H); excerpts from numerous studies cited by plaintiff in the complaint (Exhibits I, J, K, L, M, N, O, P, Q, R, S, T, U, and V); and electronic and newspaper and magazine articles from various web-based sources (Exhibits W, X, Y, Z, AA, BB, CC, DD, EE, and FF).

The court overrules all objections plaintiff has advanced to Exhibit E, as well as Exhibits I to V, as they are expressly referenced in the complaint, and grants defendant's judicial notice request. The court wants to make clear that it is not taking judicial notice of the truth of those

[3] The court finds this fact useful as background information, but not particularly compelling in and of itself, as each case must be examined separately on its own merits.

documents, only their existence. (See, e.g., *Water Audit California v. Merced Irrigation Dist.* (2025) 111 Cal.App.5th 1147, 1168 [when judicial notice is taken of a document, the truthfulness and proper interpretation of the document are disputable].)

Plaintiff objects to Exhibits A to D, F, and G. Exhibit A is a "Glyphosate Issue Paper: Evaluation of Carcinogenic Potential," issued December 12, 2017 from the EPA's Office of Pesticide Programs); Exhibit B is a list of registered products with the EPA, which includes Roundup; Exhibit C is a "Glyphosate Issue Paper: Evaluation of Carcinogenic Potential," issued from the EPA's Office of Pesticide Programs on September 12, 2016; and exhibit D consists of relevant excerpts from the EPA's September 1993 Reregistration Eligibility Decision for Glyphosate. Exhibit F is a letter from the EPA to the registrant, dated August 7, 2019, indicating it will no longer accept Proposition 65 labelling for the chemical glyphosate. And Exhibit G is an April 8, 2022, letter from the EPA to the Office of Environmental Health Hazard Assessment California Environmental Protection Agency, regarding proposed labelling language for certain glyphosate products. The court overrules plaintiffs' objections, and takes judicial notice of official documents issued by the EPA as a government agency (Exhibits A, B, C, and D), as well as letters authored by the EPA. (See, e.g., *People v. Castillo* (2010) 49 Cal.4th 145, 157.), In so doing, the court is not taking judicial notice of the truth of critical matters asserted in those documents. (*Mangini v. R.J. Reynolds Tobacco Co.* (1994) 7 Cal.4th 1057, 1063.)

The court denies defendant's request to take judicial notice of the articles contained in Exhibits W, X, Y, Z, AA, BB, CC, DD, EE, and FF, because the existence of the article is irrelevant, and the truth of its contents is not judicially noticeable. (*In re Noreen G.*(2010) 181 Cal.App.4th 1359, 1389, fn. 13, citing *Mangini v. R.J. Reynolds Tobacco Co., supra,* 7 Cal.4th at p. 1063.)

E) Merits

The court will address the merits of each challenge advanced by defendant, although as noted above the court has rearranged the order of each argument as outlined in the demurrer.

1) Statute of Limitations

Defendant seems to contend that the first cause of action (negligence/negligent misrepresentation) is barred by the applicable two-year statute of limitations period.[4] Plaintiffs

[4] The court focuses its analysis on the first cause of action for negligence/negligent misrepresentation because defendant makes no mention in its demurrer of any statute of limitations bar with regard to the UCL or declaratory relief causes of action.That being said, under established precedent, all UCL claims are subject to a four-year statute of limitations, even when the limitations period for the predicate violation is shorter. (*Cortez v. Purolator Air Filtration Products Co*. (2000) 23 Cal.4th 163, 179; Bus & Prof. Code, § 17208.) The statute of limitations period for a declaratory relief cause of action depends on the right or obligation sought to be enforced. (*Howard Jarvis Taxpayers Assn. v. City of La Habra* (2001) 25 Cal.4th 809, 821.) An action for declaratory relief may be brought before a cause of action on the underlying obligation is breached, but in no event later than the applicable time period following the breach. (*Snyder v. California Ins. Guarantee Assn* (2014) 229 Cal.App.4th 1196, 1208.) Under this authority, the declaratory relief cause of action accrues when the second cause of action accrued, as the latter is the basis for the former. The court will assume that if defendant's demurrer is successful as to

concede in opposition that an action for injury based on exposure to a hazardous or toxic substance (the first cause of action) must be brought within two years from the date of injury (or two years after the plaintiff became aware of, or reasonably should have become aware of, an injury). (Code Civ. Proc., § 340.8, subd. (a).) Here, defendant contends that plaintiff's claims are nineteen (19) years old (presumably when the plaintiff were first exposed to Roundup), based on facial allegations in the complaint. Plaintiff does not contest this portrayal, but argues that the statute of limitations was equitably "tolled" based on any of three exceptions to the bar – the discovery rule , fraudulent concealment, and the "continuing violation doctrine."

The general rules that frame the inquiry are settled. "The statute of limitations defense ' "may be asserted by general demurrer if the complaint shows on its face that the statute bars the action." ' (*Mitchell v. State Dept. of Public Health* (2016) 1 Cal.App.5th 1000, 1007.) The face of the complaint suggests that plaintiffs were first exposed 19 years ago, and the lawsuit was filed January 14, 2025. The two-year statute of limitations (and the four-year statute of limitations bar for UCL) is implicated based on the facial allegations of the operative pleading.

It is also settled that equitable exceptions to the statute of limitations bar exist. The first and most common is the discovery rule, which is expressly incorporated into Code of Civil Procedure section 340.8. The discovery rule postpones the accrual of a cause of action until plaintiff discovers, or has reasons to discover, the cause of action. (*Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797. 807.) A plaintiff has reason to discover a cause of action when he or she has reason at least to suspect a factual basis for its elements. (*Ibid.*) In order to rely on the discovery rule, however, a plaintiff whose complaint shows on its face that his or her claim would be barred without the benefit of the discovery must "specifically plead facts" to show (1) the time and manner of discovery and (2) the inability to have made earlier discovery despite reasonable diligence. In assessing the sufficiency of allegations of delayed discovery, the court places the burden on plaintiff to show diligence; conclusory allegations will not withstand demurrer. (*Id*. at p. 808.) "The discovery related facts should be pleaded in detail to allow the court to determine whether the fraud should have been discovered sooner." (*Cansino v. Bank of America* (2014) 224 Cal.App.4th 1462, 1472.)

There is a second equitable tolling exception based on the doctrine of fraudulent concealment -- where a defendant, through deceptive conduct, has caused a claim to grow stale. (*Aryeh v. Canon Business Solutions, Inc*. (2013) 55 Cal.4th 1185, 1192; see also *Regents of University of California v. Superior Court* (20 Cal.4th 509, 533.) The doctrine applies to any type of case. (*Snapp & Associates Ins. Services, Inc. v. Robertson* (2002) 96 Cal.App.4th 884, 890, disapproved of on grounds in *Aryeh, supra.*) Because fraud provides the basis for tolling, the same pleading and proof for fraud is required i.e., plaintiff must plead the substantive elements of fact and an excuse of late discovery with factual specificity. (*Snapp, supra*, at p. 890)

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the first cause of action, it would be successful to the remaining causes of action. This is reflected in the ultimate conclusions reached by the court.

Indeed, the doctrine of fraudulent concealment is a "close cousin of the [delayed] discovery rule (*Bernson v. Browning-Ferris* (1994) 7 Cal.4th 926, 931), and courts have found no reason why the pleading requirements for delayed discovery should not also apply to the doctrine of fraudulent concealment. (*Fuller v. First Franklin Financial Corp*. (2013) 216 Cal.App.4th 955, 962.) Indeed, as observed in *Community Cause v. Boatwright* (1981) 124 Cal.App.3d 888, when a plaintiff alleges tolling under a fraudulent concealment theory, the same pleading requirements, with factual specificity, are required as in fraud cases, as follows: 1) the substantive elements of fraud; (2) an excuse for the late discovery of the facts. Fraud includes substantive elements in addition to violation of a duty to disclose, including the defendant's intent to defraud the plaintiff. (*Thrifty Payless, Inc. v. The Americana at Brand, LLC* (2013) 218 Cal.App.4th 1230, 1239.) Negligent failure to disclose will be insufficient to satisfy the fraudulent concealment doctrine form of tolling. (*Community Cause, supra,* at p. 901.)

Finally, as identified by plaintiff in opposition, the continuing violation doctrine aggregates a series of wrongs or injuries for purposes of the statute of limitations, treating the limitations period as accruing for all of them upon commission or sufferance of the last of them. (*Ayreh, supra*, 55 Cal.4th at p. 1182; see p. 1199 [the continuing violation doctrine renders an entire course of conduct actionable, while the theory of continuous accrual supports recovery for damages arising from those breaches failing withing the limitations period]; *Richards v. CH2M Hill, Inc*. (2001) 26 Cal.4th 798, 811-818,) The continuing violation doctrine recognizes that some injuries are the product of a series of small harms, any one of which may not be actionable on its own. It should be acknowledged that unlike equitable tolling with regard to the other doctrines noted above, the continuing violation doctrine affects a cause of action's accrual date. (*Aryeh, supra,* at p. 1192; *Mitchell v. State Dept. of Public Health* (2016) 1 Cal.App.5th 1000, 1011.) Plaintiff must plead facts that show defendant's actions were sufficiently similar in kind, occurred with reasonable frequency, and have not acquired a degree or permanence to demonstrate application of the continuing violation doctrine. (*Willis v. City of Carlsbad* (2020) 48 Cal.App.5th 1104, 1124-1125.)

With this detailed background, the court finds that plaintiff has ***not*** adequately alleged specific facts to support tolling under the discovery rule or the doctrine of fraudulent concealment. Paragraphs 84 to 89 of the operative complaint attempt to explain why the statute of limitations is tolled. As for the discovery rule, however, the court finds no factual allegations (let alone specific factual allegations) indicating when plaintiff actually learned of the alleged misconduct (i.e., the time and manner of discovery), and the inability to discover the issue earlier despite reasonable diligence. Notably, plaintiff acknowledges that it was put on notice of the potential problems with Roundup ***at least following a 2019 jury verdict***, despite the fact that defendant made the same claims about Roundup's safety both before the 2019 lawsuit and thereafter (at least according to plaintiffs). Plaintiffs fail to explain, other than in conclusory language, why it was reasonable to continue to rely on these same contentions of safety and wait another six years before filing this lawsuit despite the fact it was aware that a jury had expressly

rejected Monsanto's representations. Put another way, plaintiffs fail to explain why they were not put on notice to at least investigate or act with diligence.[5] Further, in Paragraph 86, plaintiff claims that Monsanto continued to be "negligent" by not warning about Roundup's NHL risk; negligence, however, is not the appropriate standard when relying on the doctrine of fraudulent concealment in this context. (*Community Cause, supra*, at p 901.) Plaintiff in fact overlooks the factual pleading requirements for fraudulent concealment, and notably the requirement that plaintiff must plead when the fraud was discovered, the circumstances in which it was discovered, and that plaintiff was not at fault for failing to discover or "had not actual or presumptive knowledge of facts sufficient to put him on inquiry." (*Community Cause, supra,* 124 Cal.App.3d at p. 900.) Again, if plaintiff knew or constructively knew that defendant was found liable in 2019 despite its continuing representations to the contrary, plaintiffs arguably had knowledge of sufficient facts to put them on inquiry. No explanation is given. The court is not concluding that plaintiff cannot provide adequate explanations – it is saying simply that plaintiffs have not addressed the issue at all. This is a fatal deficiency.

The same conclusion exists when the court examines the issue through the prism of the continuing violation doctrine. Initially, while plaintiff mentions this doctrine in opposition, it is not mentioned in the operative pleading at all. Paragraph 89 of the complaint makes that clear: "Accordingly, Defendants are precluded by the discovery rule and/or doctrine of fraudulent concealment from relying upon any statute of limitations." If plaintiff is relying on this doctrine, it should be evident in the complaint. It is not. More fundamentally, as was true in *Ayreh*, nothing in the operative pleading alleges the presence of factors that might warrant application of the continuing violation doctrine. We are not told, for example, whether the exposure was based on a number of discrete, independently actionable wrongs.

The court sustains the demurrer to all three causes of action based on a statute of limitations bar, with leave to amend.

*2) Has Plaintiff Pleaded Sufficient Allegations to Advance a Medical Monitoring remedy as to all Three Causes of Action**?***

The court wishes to make two points at the outset. Initially, the court is aware that the claim for medical monitoring, and more specifically defendant's challenges to plaintiff's request

[5] In light of this, plaintiff arguably was placed on reasonable notice that it should at least investigate any basis for liability. That is, if plaintiffs were aware of defendant's potential liability in 2019, it does not follow that plaintiffs can simply place their head in the sand and do nothing for six years (at least without further explanation). As our high court in *Fox* made clear, plaintiff must act when he or she has reason at least to suspect a factual basis for the elements of a cause of action. Plaintiffs have not pleaded why they could reasonably continue to rely on defendant's representations in light of the objective proof of defendant's liability in 2019. More must be pleaded, all with factual specificity.

for that remedy, are associated more generally with the elements of the first cause of action for "negligence/negligent misrepresentation," the second cause of action for a UCL violation, and the third for declaratory relief causes of action, and could be analyzed in association with defendant's specific challenges to each of these causes of action, as discussed below. The court, given the ubiquity of plaintiff's request (it permeates all three causes of action), has decided to examine the issue separately from its analysis associated with the three causes of action specifically, as outlined below. This allows the court and the parties to focus on this issue with greater precision.

Second, and contrary to defendant's argument, the court finds that it is not productive to compare and contrast the principles associated with Article III standing in federal court to the standing rules that one can glean from *Potter* and progeny for purpose of standing under California law. The case primarily relied upon by defendant (*Muha v. Experian Information Solutions, supra*) itself acknowledged and recognized that California courts are not constrained by the "case or controversy provisions of Article III of the United States Constitution," although they have borrowed from the injury-in-fact prong of Article III test developed for standing in federal courts. Defendant notably does not provide any authority to show that the standards in this context are coterminous, and there is no need for any finely tuned comparison, for there already exists a well-established line of authority to the effect that the two generally are not the same. (See, e.g., *Jasmine Networks, Inc. v. Superior Court* (2009) 180 Cal.App.4th 980, 990 [comparing history of standing under California and federal law]; see also *Lee v. Kim* (2019) 41 Cal.App.5th 705, 723 [while California law of standing generally asks only whether the plaintiff is the "real party in interest, standing in federal court involves different consideration, mainly a line of causation between defendant's action and the plaintiffs alleged harm that is more than attenuated].) It is enough to say for our immediate purposes that the two schemes are similar, and that they possess common characteristics, but are not the same jot-for-jot. (See, e.g., *Weatherford v. City of San Ramon* (2017) 2 Cal.5th 1241, 1247 [in making the threshold inquiry about standing, a party must show he or she "is sufficiently interested as a prerequisite to deciding, on the merits," the claims advanced; in making this threshold determination, "our inquiry differs somewhat from the standing analysis employed in federal courts," for unlike the federal Constitution, our state Constitution has no case or controversy requirement imposing an independent jurisdictional limitation on our standing doctrine]; see also *Grosset v. Wenaas* (2008) 42 Cal.4th 1100, 1117, fn. 13 [Article III of the federal Constitution imposes a case-or-controversy limitation on federal court jurisdiction, separate from the merits, requiring a party requesting standing to allege such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues; there is no similar requirement in our state Constitution].) It is sufficient to say that a federal court's Article III determination does not foreclose a California court from determining whether plaintiff has adequately alleged standing under California law. Indeed, after some thought, this court has concluded that whether plaintiff's medical monitoring request has been adequately alleged under

California law can be made after an unadorned application and assessment of *Potter* and progeny, keeping in mind the history of California's pleading rules, without the need for Procrustean comparisons with Article III standing rules as articulated and identified by Judge Chhabria in the antecedent federal litigation.

With this background, the court agrees at least in part with the observations made by the federal court in *Riva v. Pepsico, Inc*. (N.D. Cal. 2015) 82 F.Supp.3d 1045, that the "fact and causation of injury are necessary elements of" plaintiff's case, and under California law, whether "under either a negligence or a strict liability theory of products liability, to recover from a manufacturer, a plaintiff must prove that a defect caused injury." The court nevertheless finds that the *Potter* factors clearly indicate what is needed in the medical monitoring context ***to prove*** a sufficient risk of harm and proximate causation of damage" at trial (*id*. at p. 1056), but is not per se dispositive about pleading medical monitoring as a remedy. Indeed, as plaintiff contends in opposition, medical monitoring is not a separate tort - it is part of the damage's calculation for negligence, as outlined in *Potter.* (See, e.g., *Lockheed Martin Corp. v. Superior Court* (2003) 29 Cal.4th 1096, 1105.) And under well-established rules, general allegations of negligence, including duty, breach, proximate causation, and resulting injury and damages (which by logic would include *Potter's* medical monitoring as a form of damages for a negligence cause of action) suffice to state a cause of action. (*Hoyem v. Manhattan Beach City Sch. Dist.* (1978) 22 Cal.3d 508, 514.) Nothing in *Potter* can be read to suggest that this venerable rule is inapplicable when medical monitoring is alleged as a possible damages remedy in association with a tort cause of action.

Of course, what is considered a sufficient "general allegation" depends on its context, for it should be remembered that medical monitoring as a remedy was crafted as an exception to the general rule that physical injury is traditionally required for a tort remedy associated with negligence. Indeed, as our high court indicated in *Lockheed Martin Corp. supra*, 29 Cal.4th at pages 1108 and 1109, "***evidence of exposure*** alone cannot support a finding that medical monitoring is a reasonably necessary response," citing *Potter*. That is, general allegations can support medical monitoring, but the type, scope, and form of those general allegations must be framed and conditioned by the nature of the required inquiry, which, per *Potter,* is framed by the five factors identified by our high court. *Potter* indicated that medical monitoring must be additional or different from anything previously required (*id*. at p. 1105), and it follows that general allegations offered to support a request for medical monitoring must reflect (and be moored to) that reality. In the court's view, while plaintiff is not required to plead the *Potter* factors with the same factually specificity as would be required for fraud, as an example, the adequacy of the general allegations to support medical monitoring remedy must be framed by the factors identified in *Potter*, as they provide relevant directional guidance. Put another way, there is a difference between specific evidentiary pleading and general allegation pleading; nevertheless, while plaintiff need not plead specific facts to support each factor, the general allegations must show that medical monitoring is reasonable *under the circumstances*, taking

into account the significance and extent of plaintiffs' exposure, the toxicity of exposure, the relative increase in plaintiff's chance of getting the disease (making it significant even if not necessarily likely), as compared to those not exposed, the seriousness of the disease that may result, and the medical benefit of early detection, keeping in mind (ultimately) that there is difference between proving negligence at trial and pleading negligence in the operative pleading. This interpretation comports with *Potter'*s directive that these factors, which are ultimately evidentiary burdens ***at trial***, can still act as appropriate filtering devices to stem the potential floodgates of litigation. (*Id.* at p. 1069.) This reading also comports with *Potter*'s concern that medical monitoring damages must be based upon a showing of an increased but unquantified risk resulting from exposure to toxic chemicals, as medical monitoring is appropriate only when normal individual pursuits of good health care, pursued as a byproduct of good sense and general foresight, are not enough. In the end, while the *Potter* factors do not have to be pleaded with factual specificity, the general allegations offered in the operative pleading must be sufficient to show that the medical monitoring remedy is reasonable to the class as whole. The heavy lifting (the bulwark of evidence) remains not a pleading issue, but an issue developed through discovery, and assessed at a class certification hearing, summary judgment, and/or trial.

With these observations, the court is not persuaded by the parties' extreme positions on the subject. Plaintiffs claim, for example, that the *Potter* factors have no relevance or significance at the pleading stage, for *Potter* made it clear that they were for the trier of fact to weigh. That is true, but *Potter* did not involve a demurrer, but a trial, and it is axiomatic that a case does not stand for a proposition not considered. (*People v. Avila* (2006) 38 Cal.4th 491, 566.) There is no reason to conclude that the *Potter* factors are irrelevant at the pleading stage. Nor are plaintiffs correct in arguing that defendant's only authority to show that plaintiff must quantify the *Potter* factors is Judge Chhabria. The cases cited by Judge Chhabria in his order (contained as Exhibit 8) should disabuse plaintiffs of this contention.

Defendant for its part insists that factual specificity for each *Potter* factor is required. This argument ignores our high court's determination that medical monitoring is not a separate tort, but is part of the damages' inquiry associated with negligence, and thus seemingly subject to the pleading rules for negligence (as noted above). It also ignores our high court's admonitions that "no per se categorical bar exists to a court's finding of medical monitoring claims appropriate for class treatment, so long as any individual issues the claims present are manageable," meaning the factual predicate is ultimately examined not at the pleading stage, but at time of class certification. (*Lockheed Martin Corp., supra,* 29 Cal.4th at p. 110.) Indeed, as *Lockheed Martin Corp*. observed, it is most "unlikely" that all plaintiffs in a class action suit would have received the same exposure to the same toxin; "duration of exposure . . . will vary among class members . . . , as the class would include numerous people" who lived in the area for a short time, during a lengthy class period. (*Id*. at p. 1109.) The *Lockheed* court seemed to underscore the need for factual specificity at a class certification hearing, not in a complaint. (*Ibid*.) Defendant's argument runs the real risk of doing the very thing condemned by *Lockheed*

Martin Corp. -- creating a categorical bar to class action suits involving medical monitoring by requiring very specific factual pleading, when the real issues of evidence should be determined at the class certification stage. The *Potter* allegations guide the court in determination whether the general allegations support the reasonableness of medical monitoring, but should not be used as a pleading cudgel that would bar class action suits at the outset. While there should be sufficient facts to support the reasonableness of the claim, there seems no need to require specific evidence, something appropriately required at a certification hearing or trial.

Defendant identifies three alleged defects in plaintiff's pleading that indicates the court should sustain the demurrer to all three causes of action (as they all ask for medical monitoring as a form of damages), based on lack of standing (or perhaps more appropriately, a failure to allege a reasonable basis for medical monitoring). Defendant claims specifically that plaintiff has failed to plead sufficient facts to support *Potter* factors 1, 3, and 5, which, respectively, require the following: 1) the significance and extent of the plaintiff's exposure to chemicals; 3) the relative increase in the chance or onset of disease in the exposed plaintiffs as a result of exposure; and 5) the clinical value of early detection and diagnosis. (*Potter, supra,* 6 Cal.5th at p. 1009.) As to the first factor, according to defendant, plaintiffs have only alleged exposure to Roundup "over a period of 19 years." They have not alleged "how many times, at what levels, or in what manner they were exposed," nor "what their exposure levels mean of risk." As for the third factor, defendant contends plaintiffs have failed to allege anything regarding their chances of developing NHL had they not been exposed, and do not allege "the chances of the members of the public at large developing NHL"; plaintiffs have failed to allege any quantitative or even qualitative increased risk to individuals of developing NHL As to the fifth factor, according to defendants, plaintiffs have failed to allege the clinical value of early detection and diagnosis "because they do not plausibly allege that test exists to discovery NHL prior to the onset of symptoms." Indeed, according to defendant, plaintiff is required to plead the frequency of screenings or the frequency of screenings currently available, and thus what role a court-ordered medical monitoring would play redressing the alleged injuries.

In support, defendants rely on *Riva v. Pepsico, Inc*., *supra*, 82 F.Supp.3d 1045. There, defendant challenged the pleading (which asked for medical monitoring) under factors 1, 2, and 3 of Potter (the second being the toxicity of chemicals). The district court granted a motion to dismiss, determining that plaintiff had failed to plead that medical monitoring was reasonable under the circumstances (that is, the general allegations were insufficient to lead the court to conclude as a pleading matter that medical monitoring was reasonable). As for the first *Potter* factor, plaintiffs claimed that an ingredient in PepsiOne – 4-Mel, which has been found to cause lung tumors in laboratory animals – should give rise to medical monitoring. One named plaintiff had alleged that he drank an "unspecified amount of Pepsi One 2 to 3 times per week," while another plaintiff claimed she drank 3 to 4 cans of Diet Pepsi per day. Plaintiffs were attempting to represent a class of all persons who purchased Diet Pepsi or Pepsi One within a four-year period, regardless of consumption amount. According to the *Riva* court: "What is missing is any

allegation of what the significance of this exposure to 4-Mel is" – plaintiffs claim there is an increased risk above "threshold amounts" but failed "to allege what threshold level of exposure creates the increased risk." According to the *Riva* court, plaintiffs "have provided no context as to the significance and extent of exposure to make the necessarily ultimate showing that "the need for future monitoring is a reasonably certain consequence of [the] toxic exposure." (*Riva, supra,* at p. 1057.) More specifically, plaintiffs failed to plead "a credible risk of bronchioloalveolar cancer resulting from the human consumption of cola products at the levels alleged by the named plaintiffs." (*Ibid.*)

As for the second *Potter* factor – the toxicity of chemicals – plaintiff relied on the fact 4-Mel was on the Proposition 65 list of known carcinogens, that a toxicologist had stated that there is no safe level of 4-Mel, and that advocacy groups have called for the FDA to ban 4-Mel. Plaintiffs further alleged that the US National Toxicology Program (NTP) study found clear evidence of carcinogenic activity of 4-mel "in male and female B6C3F mice based on increased incidences of alveolar bronchial neoplasms," and given this, claimed plaintiffs, "medical monitoring can be viably administrated to screen for this specific form of lung cancer, and they tout the benefits of early detection of bronchioloalveolar cancer." (*Id.* at p. 1059.) This was not enough, according to the *Riva* court, for the *Riva* plaintiffs "are not mice, and there is nothing in the FAC, or the studies incorporated by reference, to suggest that 4-Mel causes this specific form of lung cancer in humans. Critically, the NTP study specifically suggests the cancer the mice experienced would not result in other species . . . ." (*Ibid*.) "Nor have the Plaintiffs demonstrated what level of exposure in humans increases the risk bronchioalveolar cancer to above a none-speculative, credible level. As noted, even considering the rodent studies, the levels allegedly consumed by the named Plaintiff herein would not appear to come close to the equivalent exposure in those studies." (*Id.* at p. 1060.)

As for the third factor (the relative increase in chances of disease), the *Riva* court noted that "the articles cited by the Riva Plaintiffs in their FAC show that there are many sources of consumption of 4-Mel, including 'baked goods, confectionary, extruded breakfast cereals, instantaneous soups, and dark beers' as well as "soy sauce and coffee." The studies offered have concluded that the "levels of [4-Mel] in commercial cola soft drinks are similar to those in coffee." According to the *Riva* court, the many alternative sources of 4-Mel "is problematic to the establishing of any causation between the Pepsi products at issue and the Riva Plaintiffs' alleged consumption of 4-Mel 'at or above certain threshold levels' (whatever those threshold levels, if any, may be). . . . Where the pleadings reveal so many commonly consumed foods with similar levels of 4-Mel, it is implausible to conclude that any alleged increased risk of cancer is more likely than not caused by drinking Pepsi One or Diet Pepsi." (*Id.* at p. 1062.) The *Riva* court identified the pleading problems as follows: ". . .The specific problem here is not the general value of animal studies but the lack of any factual content to show that 4-Mel causes bronchioloalveolar cancer in humans and the failure to plead that the levels of consumption alleged herein are sufficient to trigger credible risk of such cancer."

To give the *Riva* decision context, it is useful to compare it with another case – not explored by the parties but mentioned in Judge Chhabria's order discussed above. In *Navarro v. ExxonMobil Corp*. (C.D. Cal. 2023), 2023 WL 7107135, plaintiffs sued defendant based on operations of an oil refinery, when equipment malfunctions within the refinery's catalytic cracking unit caused flammable hydrocarbons to flow unexpectedly into an electrostatic precipitator unit where they ignited. "The resulting over-pressurization allegedly released certain material into the air in nearby neighborhoods." Plaintiffs requested medical monitoring, based on possible future injury in light of the chemical exposure. Defendant attacked the pleading, claiming plaintiffs had failed to allege an injury-in-fact along the lines of *Riva*. The *Navarro* court disagreed. Defendant's "attempt to hold [plaintiffs] to a higher standard than required at the pleading stage. It argues that the 'authorities make clear that general allegations that exposure to toxic substances can cause serious disease are not sufficient to establish standing at the pleading stage absent allegations connecting the particular plaintiff to a credible risk of substantial harm.' [Citations.] But [the operative pleading] contains allegations far beyond the threadbare allegations the court[] in *Riva* . . . found insufficient to establish standing."

First, plaintiff alleges that the "the soil and groundwater contamination remains today and includes 'harmful contaminants, including benzene, toluene, xylenes, and other volatile organic compounds and petroleum products,' that 'have consistently volatized into gases and vapors that migrate into the soil above the groundwater" where Navarro's home is located and, in the community, surrounding the Refinery." Plaintiff "alleges in greater detail that the emissions from the Refinery pose a substantial and unreasonable risk of harm to his health and the health of others in the community, asserting, for example, that exposure to benzene, toluene, and xylenes has been demonstrated to affect the body's neurological, cardiovascular, digestive, immunological, integument, reproductive/developmental, and respiratory systems, and the chemicals may cause or increase the risk of developing a wide array of diseases such as leukemia, anemia, lymphoma, multiple myeloma, and arrhythmias. [Citation.] [Plaintiff] alleges that airborne contaminants emanating from the Refinery include 'emissions of diesel particulate matter ('DPM'), volatile organic compounds ('VOCs') such as benzene, and toxic metals such as hexavalent chromium." [Citation]. He asserts that DPM, benzene, and hexavalent chromium have been listed as carcinogens under California's Safe Drinking Water and Toxic Enforcement Act of 1986 (Prop 65) and as toxic air contaminants by the California Air Resources Board (CARB). [Citation.] He alleges that the 'cocktail of toxic air contaminants emanating from the Refinery that includes DPM, benzene, and hexavalent chromium is above thresholds for acceptable exposure and poses an unacceptable health risk to those living within striking distance of the airborne plumes of toxic contamination." [Citation.] He also alleges that 'the individual toxic effects of each contaminant add together to produce a biological effect that is the sum of the effects of the individual contaminants" and that "the sum of the cancer risks for the Refinery's emissions of hexavalent chromium, diesel particulate matter, and benzene are in excess of 10 in 1,000,000 in the community." [Citations.]" (*Navarro, supra,* at p. 2.)

Additionally, plaintiff "alleges that a 1998 assessment . . . found that over 30 human epidemiological studies have investigated the potential carcinogenicity of diesel exhaust" and the studies found that on average, 'long-term occupational exposures to diesel exhaust were associated with a 40 percent increase in the relative risk of lung cancer.' [Citation.] The [operative pleading] also alleges that TORC submitted a Voluntary Risk Reduction Plan to the South Coast Air Quality Management District that identified sources of emissions for toxic air contaminants at the Refinery and demonstrated an elevated cancer risk for those living in the adjacent community. [Citation.] It alleges that '[a] 1 in 1 million cancer risk is the generally accepted de minimis level for cancer risk. However, the VRRP shows [Navarro's] property clearly within the boundary line of a 10 in 1 million contour map of elevated cancer due to of emissions from the Refinery. Some areas in the community are within a 25 in 1 million or 50 in 1 million contour map of elevated cancer risk due to emissions from the Refinery."[Citation.] "It further alleges that the Refinery's emission of hexavalent chromium increased four-fold from 2016 to 2019 and that his property and the property of others in the community are 'in a geographic zone where concentrations of airborne benzene, diesel exhaust particulates, and hexavalent chromium from Refinery operations exceed California or Federal guidelines for human exposure due to elevated cancer risk." [Citation.] "]Plaintiff] makes additional relevant allegations, see id. ¶¶ 23-27, 29. These allegations are not speculative and sufficiently allege – at least at this stage of the proceeding – that the increased risk of harm is credible and not conjectural. Navarro has alleged an injury in fact sufficient to establish standing at the pleading stage."

Plaintiff here attempts to counter defendants' arguments in opposition First, as for the significance of exposure, plaintiff indicates that it has alleged exposure for 19 years "as agricultural workers." Additionally, it points to paragraph 42(h) of the operative pleading, where plaintiff alleges that there are "studies which go to establishing the carcinogenicity of glyphosate, including literature concluding glyphosate exposure for more than days results in an odds ratio of 2.6 for developing HNL" (i.e., the ratio of developing NHL "in one group (exposed to glyphosate) compared to the odds of it occurring in another"), with studies all involving humans. According to plaintiff, unlike *Riva* which involved studies involving mice, the citation in paragraph 42(h) suggests a "significant" causal link between glyphosate and NHL in humans sufficient to overcome challenge at the pleading stage. This study is Exhibit P of the judicially noticed documents.[6]

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[6] Exhibit P contains a paper authored by Mikael Erickson, Lennar Hardell, Michael Carlberg, and Mans Akerman, from the Departments of Oncology and Department of Pathology from two University Hospitals in Sweden, tilted "Pesticide Exposure as risk fact for non-Hodgkin lymphoma including histopathological subgroup analysis." The study involved a population-based case control study, involving patients aged 18-74 years old with newly diagnosed NHL, and involved a total of 1.163 subjects. The conclusions reached for our purposes were as follows: "In our study . . . [u]specified NHL was significantly associated with MCPA, glyphosate and mercurial seed dressing. . . ." "Glyphosate was associated with a ***statistically significant*** increased OR for lymphoma in our study, and the result was strengthened by a tendency to dose-response effect as show in Table II." Table II indicated that an exposure of glyphosate of more than 10 days raised an odds ratio (OR) increase of 2.36 percent, with a

Plaintiff also claims that its general allegations are sufficient to satisfy the third *Potter* factor – the relative increase in the chance of onset of the disease in the exposed plaintiff as a result of the exposure. According the plaintiffs in opposition, they "cite studies qualifying the increased risk of contracting NHL and other cancers due to various exposures to glyphosate, using non-exposed humans as control group." Plaintiff cites to paragraph 42(e), which is Exhibit M of plaintiff's judicial noticed documents. According to plaintiff, defendant's quarrel goes to weight or credibility, which are appropriate only at the evidentiary stage.[7]

Finally, plaintiffs claim they have adequately alleged the clinical value of early detection – the fifth *Potte*r factor. Central to plaintiff's riposte is the common-sense notion to the effect that early detection is obvious and widely recognized, relying on a similar statement made in *Potter*. (*Potter, supra,* 6 Cal.4th at p. 1008.) That of, course, cannot be the unadorned standard, for the *Potter* court also emphasized that there must be necessity as a direct consequence of the exposure at issue, for specific monitoring must be beyond that which an individual should pursue as a matter of general good sense and foresight. Plaintiff points to paragraphs 14, 69, and notably paragraphs 70 to 74.[8]

As noted above, in the court's view, while there is no requirement that plaintiff must plead facts with any heightened standard in mind, plaintiff must plead sufficiently robust general allegations that demonstrate medical monitoring is facially reasonable, keeping in mind that the allegations must show more (in terms of *Potter*) of an increased but unqualified risk resulting

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confidence interval ranging between 1.04 to 5.37 percent. The authors go on as follows: "Furthermore, a meta-analysis combining that study with an investigation on hairy-cell leukemia, a rare NHL variant, showed an OR for glyphosate of 3.04 (95 % CI 1.08-8.52) [Fn. Omitted] Recent findings from other groups also associated glyphosate with different B-cell malignancies such a lymphomas and myeloma." (All footnotes omitted.)

[7] Exhibit M is an electronic paper, dated 2003 from AJ De Roos, and others, entitled "Interactive assessment of multiple pesticides as risk factors for non-Hodgkin's lymphoma among men." The study involved an analysis of 47 insecticides and herbicides, and the study included those who worked on farms. The authors reported results using both a more conventional logistic regression model and a more conservative hierarchical regression model that took into account values estimating the prior distributions of the other pesticides. Using the logistic regression model, the odds ratio for those exposed to glyphosate was 2.1, with a 95% confidence interval of 1.1 to 4.0. The following is included in the study. "Glyphosate, commercially sold as Roundup, is a commonly used herbicide in the United States, both on crops and on non-cropland areas. An association of glyphosate with NHL was observed in another case-control study, but the establish was based on only four exposed cases. A recent study across a large region of Canada found an increased risk of NHL associated with glyphosate use that increased by the number of days used per year. These few suggestive findings provide some impetus for further investigation into the potential health effects of glyphosate, even though one review concluded that the active ingredient is non-carcinogenic and non-toxic." (All footnotes omitted.)

[8] For example, in paragraph 73, plaintiffs allege as follow: "In addition, separate from treatment of those who already have symptoms of NHL, which are detectable by general practitioners, technology, analytical tools, and monitoring procedures exist and are readily available to provide for detecting signs of the development of NHL for Calls Members who may not present with readily observable NHL symptoms but who may nevertheless be at a significantly increased risk of developing the disease. These technologies and monitoring procedures are accepted and widely used by the scientific and medical community and include but are not limited to blood and genetic tests which predict increase risks of developing NHL"

from exposure, necessitating monitoring beyond that which an individual should pursue as a matter of general good sense and foresight, as dictated and framed by the five factors in *Potter* (also as noted above). As observed in the case *Potter* relied upon – *Miranda v. Shell Oil, supra*, 17 Cal.App.4th 1651 – the ultimate test is whether future medical surveillance is needed for monitoring as result of reasonable consequence of the exposure. (*Id*. at p. 1657.) More than exposure must be shown – the general allegations must reveal more than possible, conjectural, detriment. (*Id*. at p. 1657.)

With these standards in mind, the court has examined the allegations in the operative pleading, as well as documents judicially noticed, the parties' arguments, and the relevant case law. The court is troubled by plaintiffs' efforts to camouflage critical information, relegating crucial evidence to judicially noticed documents. Further, the court freely admits it is no expert in assessing the nature and quality of the expert studies that have been provided. Nevertheless, after some thought, it seems to the court that this case is not as threadbare as was the case in *Riva*, although at the same time it is not as developed as was the case in *Navarro*. Judge Chhabria found the pleading in the federal litigation deficient, posing the following hypothetical questions: "Does exposure to Roundup increase the hypothetical risk to 1.1 in 100? 2 in 100? 5 in 100? This is not to say that plaintiff must always allege precise numbers in a case like this. But the allegations must give the Court some meaningful understanding of the magnitude or increase in risk." At no point in his written order, however, did Judge Chhabria actually address the impact of the two exhibits identified here – Exhibits M, and most notably Exhibit P, which provide at least in part "some meaningful understanding of the magnitude or increase in risk," as recounted in footnotes 6 and 7, *ante*.[9] Admittedly the evidence is far from compelling, and the

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[9] Defendant in reply does not expressly address all aspects of Exhibits M and P. It observes somewhat cursorily that plaintiff is "misrepresenting the studies." For example, defendant argues that with regard to Exhibit P, plaintiff ignores the fact the author found "no significant odds ratio for exposure to glyphosate when controlling for other pesticide exposure," citing to Table VII. Overlooked by defendant, however, are the following observations made by the author of Exhibit P, as recounted in footnote 6, *ante*: "***Glyphosate was associated with a statistically significant increased OR for lymphoma in our study***, and the result was strengthened by a tendency to dose-response effect as shown in Table II.. . . ." "For the latency period 1-10, for glyphosate OR 1.11 (95 % CI .24 -5.08 was obtained." For the latency period of less than 10 years, for glyphosate Or 2.26 (95 % CA 1.16 -4.40)." Defendant does not address these conclusion in reply, and what impact they have on the present calculus.

As for Exhibit M (known as the De Roos study), defendant argues that plaintiff fails to mention that it "adjusted for other pesticide exposure," and that De Roos found "no statistically significant increase in risk from exposure to glyphosate." But defendant overlooks and does not address the impact of the following representations made in the De Roos study:1) "in an analysis of the number of 'potentially carcinogenic' pesticides, NHL incidents increased by the number of pesticides used by the subject. Subjects who reported using any five or more 'potentially carcinogenic' pesticides were twice as likely to be NHL cases than controls, compared to those using no pesticides. The results for 'potentially carcinogenic' pesticides were highly sensitive to removal of certain pesticides from the count, including," among others, glyphosate. "For example, removal of glyphosate from the count resulted in a lack of trend for increasing number of 'potentially carcinogenic' pesticides . . . ."; 2) under the category "Results," it was reported that "use of several individual pesticides was associated with increased NHL incident, including . . . herbicides atrazine, glyphosate, and sodium chlorate. A subanalysis of the these 'potentially carcinogenic' pesticides suggested a positive trend of risk with of risk ***with exposure to increasing numbers***."; and 3 "An association of glyphosate with NHL was observed in another case-control study, but the estimate was based on only four exposed

issue seems close. The court, however, is not charged with credibility determinations at this stage, and must keep in mind the express admonitions of *Potter* - recovery of medical monitoring damages are not dependent upon a showing that a particular cancer or disease is reasonably certain to occur in the future. The court cannot say that the increases in risk discussed in Exhibits M and P are insignificant ***for pleading purposes***. Nor does the court find insufficient the allegation that plaintiffs worked as agricultural workers in the field for 19 years, particularly when coupled with the following explanation in the operative pleading that plaintiffs' work involved "significant occupational exposure to Roundup . . .," as well as the allegation that Roundup products used for 'commercial and industrial use" (the nature of plaintiffs' occupations) "are often in a concentrated form that contain more elevated levels of glyphosate produced is applied in agricultural settings . . . ." (¶ 10.) These allegations collectively provide some context that was wholly absent in *Riva*, meaning plaintiffs (in light of the Exhibits M and most notably Exhibit P, and these other allegations), have indicated they are subject to a significant risk of danger based on the alleged exposure, even if it is unlikely that cancer may actually develop. The operative pleading, taken as a whole, while far from compelling, has enough traction in the court's view to overcome demurrer.

The court is not persuaded by defendant's reliance in reply on *In re Roundup Prods. Liability Litigation* (N.D. 2024) 737 F.Supp. 3d 898, 903-904, ***at least for pleading purposes***. There, defendant filed a motion to exclude the testimony of an expert via a motion *in limine*, under the standards associated with *Daubert v. Merrell Dow Pharmaceuticals, Inc*. (1993) 509 U.S. 579, which the court granted. The court made the following observations in this regard: "But, in this context, exposure to other pesticides is the major confounder, and people with high exposure to glyphosate (who tend to be agricultural workers or landscapers) are likely have more exposure to other pesticides, not less. [Citation.] That means that when [the expert] isolated unadjusted, 'high exposure' data from McDuffie and Eriksson, she may have *increased* the effect of confounders on the meta-risk ratio. At the very least, it isn't likely she reduced their effect." Nothing in this language suggests that plaintiff has to plead and account for the presence or absence of any "confounders" in order to overcome demurrer. Indeed, the court noted that problems arise when "one starts to drill down into the details" (*id.* at p. 904) – something a court does not attempt at the pleading stage. That nature of the inquiry is more properly associated

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cases. A recent study across a large region of Cana found an increased risk of NHL associated with glyphosate use that increased by the number of days used per year . . ."

The court cannot make credibility determinations on demurrer, and the court is required to accept as true h facts alleged in the text of the complaint and facts appearing in attached exhibits, looking at the entirety of the pleading, including all aspects of the exhibits. (*Sarale v. Pacific Gas & Electric Co*. (2010) 189 Cal.App.4th 225, 245.) Where a complaint is in some respects uncertain, ambiguities can be clarified under modern discovery procedures. (*Chen v. Berenjian* (2019) 33 Cal.App.5th 811, 822.) Whether these studies can act as a sufficient predicate for expert testimony on the factual issues identified in *Potter* for purposes of trial is an inquiry separate and distinct from any pleading requirement, particularly given the technical nature of the studies. Exhibits P and M therefore remain relevant for purposes of determining whether plaintiff has advanced sufficient allegations in the operative pleading to support medical monitoring.

with the expert's methodology, through a motion *in limine* or for purposes of summary judgment or trial, rather than any rigid requirement at the pleading stage.

The allegations associated with the fifth *Potter* factor, while also less than complete, do not change the court's opinion. It is true that some of the allegations are vague, and do not address exactly how monitoring is to occur, the type of test of tests contemplated, or for how long. But paragraph 73, for example, does indicate that such tests exist, that they are routine, and that they are practicable. The court sees no reason why this allegation is insufficient. Nothing in the case law this court can find requires plaintiff to plead the existence of any specific tests, or any specific testing methodologies. No doubt *Potter* requires an assessment of the "clinical value of early detection and diagnosis." But even *Riva*, the case relied upon by defendant, found no problem with plaintiff's allegation "that bronchioloalveolar cancer is serious disease for which there is clinical value of ear detection and diagnosis." (*Id.* at p. 1056.) The same seems true here.[10]

For all of these reasons, the court overrules defendant's demurrer based on its claim that plaintiff has failed to allege a sufficient factual basis for medical monitoring, as guided by the five-part test articulated by our high court in *Potter*. No doubt plaintiff's complaint is not model to follow, and the question is close. But the court in the end is simply not willing at this time, on this pleading, to preclude plaintiffs from attempting to make their case for medical monitoring under *Potter*. Plaintiffs have stated a sufficient beneficial interest in medical monitoring at the pleading stage to overcome demurrer. Whether plaintiffs will be able to survive other challenges is beyond the scope of this order.

3) Has Plaintiff Adequately Alleged a sufficient Basis for the UCL Cause of Action?

Just because the court has concluded that plaintiff has adequately pleaded a sufficient factual basis for medical monitoring to overcome demurrer does not mean medical monitoring is an appropriate remedy for plaintiffs' UCL cause of action. Plaintiffs make it clear in the body of the UCL cause of action, in paragraph 119, that defendant "should pay for the costs of medical screening, diagnostic and/or surveillance programs and services to be provided to Plaintiffs and the Class, to prevent or mitigate the injury otherwise resulting from the Roundup exposure, as appropriate according to proof, through an appropriate program approved by the Court and administered under its ongoing supervision."

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[10] It is true that Judge Chhabria in his November 8, 2024 order, found that the complaint failed to explain how monitoring could mitigate the harm form an increased risk of developing NHL. Here, paragraph 73 of the operative pleading (and its associated paragraphs) sufficiently apprises the reader that early detection (through monitoring) can be the best way to survive. Defendant in reply claims that plaintiffs "effectively admit" that no test for early detection exists. Nothing in paragraph 73 amounts to such admission. It may be true that no reasonable test exists – but in light of these allegations, that is an issue of fact that cannot be resolved at the demurrer stage.

The UCL prohibits unfair competition, including unlawful, unfair and fraudulent business acts. (*Korea Supply Co. v. Lockheed Martin Corp.* (2002) 119 Cal.App.4th 1134, 1143.) Although a UCL claim involves borrowing violations from other laws by making them independently actionable as unfair competitive practices, a plaintiff must show he or she has suffered actual injury in order to pursue a UCL action. (Bus & Prof. Code, 17204.) A private plaintiff must make a twofold showing; he or she must demonstrate injury in fact ***and*** a loss of money or property caused by unfair competition. (*Peterson v. Cellco Partnership* (2008) 164 Cal.App.4th 1583, 1590.) The remedies available to restitution and injunctive relief (and civil penalties, which are not at issue here). (*Madrid v. Perot System Corp.* (2005) 130 Cal.App.4th 440, 452.) The UCL is not an all-purpose substitute for a tort of contract action. (*Ibid*.) In the context of UCL, "restitution" is limited to the *return* of property or funds in which the plaintiff has an ownership interest. (*Id*. at p. 453 see *De La Torre v. CashCall, Inc*. (2018) 5 Cal.5th 966, 993 ["Private individuals like plaintiffs may win restitution or injunctive relief, but they cannot obtain damages or attorney fees," citing *Madrid* favorably]; see also *Korea Supply, supra*, 29 Cal.4th at pp. 1144-1145 ["We defined an order for 'restitution' as one compelling a UCL to return money obtained through an unfair business practice to those persons in interest from whom the property was taken]; *Cortez v. Purolator Air Filtration products Co.* (2000) 23 Cal.4th 163, 173 [damages are not available under the UCL].)

Plaintiffs do not allege any restitution remedy – that is, the return of money obtained through an unfair business practice to plaintiffs from whom the property was taken. In fact, plaintiff's request for medical monitoring is a form of damages that appears anathema to the UCL (*Potter, supra*, 6 Cal.4th at p. 1004-1005 [medical monitoring areas is a claim for future damages in a negligence action].) Plaintiffs have not alleged they purchased monitoring services, and need to be recompensed for such services. Nor is there any basis for a UCL theory under a benefit-of-the-bargain theory following allegations of breach of contract for purposes of special damages. (See, e.g., *Moore v. Centrelake Medical Group, Inc*. (2022) 83 Cal.App.5th 515, 531 [" We need not decide whether appellants [] who did not allege they had purchased monitoring services, adequately pleaded UCL standing under their monitoring-costs theory. As explained above, they adequately pleaded UCL standing under their benefit-of-the-bargain theory"].) It does not appear to the court that plaintiff can adequately allege a UCL remedy under this authority, as plaintiffs seem to equate the UCL with the first cause of action, which is inappropriate.

Accordingly, unless plaintiff can convince the court at the hearing that it can amend the UCL cause of action to allege an appropriate remedy as authorized under the statutory scheme, which seems unlikely, the court will sustain the demurrer without leave to amend.

4) *Has Plaintiff Properly Pleaded the Elements of "Negligence/Negligent Misrepresentation" in the First Cause of Action?*

Defendant contends – separate and apart from any "standing" issue associated with medical monitoring as discussed above and associated with damages – that plaintiff has failed to allege, for purposes of negligent misrepresentation, the following: 1) adequate reliance and how defendant's conduct caused or contributed to his alleged injuries, with factual specificity; and 2) defendant's negligent misrepresentations with any factual specificity. At no time does defendant argue that plaintiff has failed to state a common law negligence cause of action. Plaintiff in opposition does not address defendant's arguments as to negligent misrepresentation, arguing it has adequately advanced a claim for common law negligence.

In order to frame the issues and provide resolution, the court will address the impact of the plaintiff's label of "negligence/negligent misrepresentation" in describing the first cause of action. The label is problematic for two reasons. First, while the parties' briefing generally addresses the first cause of action, defendant demurs to the negligent misrepresentation allegations, while in opposition, plaintiff argues the first cause of action survives demurrer based on the common law negligence allegations. More fatally, the parties seem to be of the view that these two theories of liability are the same. They are not, as they represent different primary rights.

For example, a common law negligence cause of action, with a request for medical monitoring damages, involves traditional elements of duty, breach of duty, causation, and damages. Of course, the duty is to provide a product without a carcinogenic, the breach of that duty is in fact providing the product in that state, which exposed plaintiff to and caused a reasonable fear cancer, necessitating medical monitoring. As noted above, common law negligence only requires general allegations for pleading purposes, not factual specificity. (4 Witkin, Cal. Procedure (6th ed. 2021) Pleading, § 601 ["Negligence may be pleaded in general terms . . . . This rule is established by a long line of decisions."].) As also noted, at no time does defendant indicate that plaintiff has failed to allege a common law negligence cause of action.

Negligent misrepresentation is a different animal. "The elements of a cause of action for fraud and a cause of action for negligent misrepresentation ***are very similar***. Pursuant to Civil Code section 1710, both torts are defined as deceit [something not a concern for common law negligence]. However, the state of mind requirements are different. 'Fraud is an intentional tort, the elements of which are (1) misrepresentation; (2) knowledge of falsity; (3) intent to defraud, i.e., to induce reliance; (4) justifiable reliance; and (5) resulting damage. [Citation.]' [Citation.] Negligent misrepresentation lacks the element of intent to deceive. Therefore, ' "[w]here the defendant makes false statements, honestly believing that they are true, but without reasonable ground for such belief, he may be liable for negligent misrepresentation, a form of deceit." [Citation.]' [Citations.]" (*Intrieri v. Superior Court* (2004) 117 Cal.App.4th 72, 85–86; see *Moncada v. West Coast Quartz Corp.* (2013) 221 Cal.App.4th 768, 781.) Negligent misrepresentation in this context would require plaintiff to show that defendant made a false statement (e.g., Roundup was safe), even if defendant honestly believed the statement to be true but without any reasonable ground to do so, with plaintiff justifiably relying on the

representations and the product culminating in its use and plaintiff's exposure, with attendant damages (in this case, involving a reasonable fear of cancer, necessitating medical monitoring). Note the elemental differences with common law negligence – false statements and justifiable reliance, which are not present in common law negligence. In other words, the two causes of action involve different primary rights, as plaintiff seeks to recover damages based on two separate and distinct obligations. (See, e.g., *Lilienthal & Fowler v. Superior Court* (1993) 12 Cal.App.4th 1848, 1854.) Not insignificantly, case law clearly requires that while common law negligence can be pleaded generally, as noted above, the elements of negligent misrepresentation ***must be pleaded with factual specificity***. (See, e.g., *Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645 ["[F]raud must be pled specifically; general and conclusory allegations do not suffice. [Citations.] . . . 'This particularity requirement necessitates pleading *facts* which "show how, when, where, to whom, and by what means the representations were tendered." ' "]; *Foster v. Sexton* (2021) 61 Cal.App.5th 998, 1028 [negligent misrepresentation must be pled with specificity].) Additionally, in the case of a corporate defendant, "the plaintiff must 'allege the names of the persons who made the allegedly fraudulent representations, their authority to speak, to whom they spoke, what they said or wrote, and when it was said or written.' " (*Lazar*, at p. 645.) Not insignificantly, allegations of reliance must be specifically pleaded. (*National Union Fire Ins. Co. of Pittsburg, PA v. Cambridge Integrated Services Group, Inc*. (2009) 171 Cal.App.4th 35, 50.)

The court finds that defendant's common law negligence cause of action survives challenge (in fact, it seems clear to the court that other than defendant's challenge to the medical monitoring damages, as discussed above, defendant does not challenge any other allegations offered to support the common law negligence cause of action). Accordingly, common law negligence survives as part of the first cause of action.

However, the court also finds that defendant's negligent misrepresentation theory, also contained in the first cause of action (which in reality should be pleaded as a separate cause of action given its separate primary right status), does not survive demurrer. Plaintiff in opposition fails to address the standards for negligence misrepresentation at all, focusing exclusively on the standards for common law negligence. And there is nothing in the operative complaint that details with specificity the nature of the factual misstatements, and how plaintiffs relied on them for purposes of causing damage. For this theory, more must be pleaded.

The court concludes with the following observations. A demurrer is usually inappropriate when only a portion of cause of action is defective; a demurrer must dispose of the entire cause of action. A motion to strike is considered the appropriate procedural vehicle to challenge only a part of a cause of action is at issue. (*PH I, Inc. v. Superior Court* (1993) 33 Cal.App.4th 1680, 1682-1683.) Of course, plaintiff has not filed a motion to strike. However, when there are two primary rights (amounting to two separate causes of action) alleged in the same cause of action, courts can disregard the fact that plaintiff combined both into one cause of action. That was the general thrust of *Lilienthal*, cited above. True, *Lilienthal* involved a summary adjudication

motion, but the same logic applies equally well to a demurrer, and the court is persuaded *Lilienthal* applies in this context. (See *Skrbina v. Fleming Companies* (1996) 45 Cal.App.4th 1353, 1364 [if plaintiff alleges that defendant's single wrongful act invaded two different primary rights, he has stated two causes of action, and this is so even though the two invasions are pleaded in a single count of the complaint; permitting demurrer when multiple primary rights were alleged in single cause of action].) Accordingly, the court overrules defendant's demurrer to the common law negligence portion of the first cause of action; at the same time, the court sustains defendant's demurrer to the negligent misrepresentation portion of the first cause of action, as it involves a separate primary right, for the reasons discussed above. Leave to amend is granted. For clarity plaintiff should separate negligence from negligent misrepresentation in any future pleading.

5) Has Plaintiff Adequately Pleaded the Elements of a Declaratory Relief Cause of Action (the Third)?

Defendant claims a demurrer to the third cause of action for declaratory relief is appropriate because the claim is "improper and duplicative." According to defendant, the request for medical monitoring costs – damages – is inappropriate when made through a declaratory relief cause of action, making the cause of action inappropriate and superfluous. (See, e.g., *General of America Ins. Co. v. Lilly* (1968) 258 Cal.App.2d 465, 470 [declaratory relief should not be used for the purpose of anticipating and determining an issue which can be determined in the main act; that is, when the action can be decidedly wholly in the main action, declaratory relief is unnecessary; the availability of another form of relief that is adequate will usually justify refusal to grant declaratory relief[]; see also *Fox Paine & Co., LLC v. Twin City Fire Ins. Co*. (2024) 104 Cal.App.5th 173, 1053 [declaratory relief does not afford a litigant with a second cause of action for the determination of identical issues].)

The world of declaratory relief is not as black and white as defendant argues. The court has determined that the first cause of action for common law negligence survives, along with the "damages" element comprising of medical monitoring. Unquestionably damages are at the center of a request for medical monitoring, as indicated by *Potter*. (See, e.g., *Zinser v. Accufix Research Institute, Inc.* (9th Cir. 2001) 253 F.3d 1180, 1195, *opinion amended on denial of reh'g* (9th Cir. 2001) 273 F.3d 1266 ["Many courts, including California state courts, have recognized that medical monitoring relief is appropriate only as an element of damages after independent proof of liability"].) But plaintiffs ask for more than damages in the operative pleading (in the declaratory relief cause of action). In paragraph 125, plaintiff asks the court to administer and oversee an "appropriate program approved by the Court ***and administered under its ongoing supervision***." That is, plaintiff asks the court in essence for some form of injunctive relief, an equitable remedy, administered on a future basis with court oversight. Nothing in *Potter* suggests such a request for declaratory relief is impermissible when made in association with a request for medical monitoring damages, and defendant points to no California that

indicates it is. True, in an application for declaratory relief, a party seeking an injunction must still plead and prove entitlement to the future relief. But as determined above, in association with the common law negligence portion of the first cause of action, plaintiff has adequately pleaded grounds for medical monitoring. Plaintiffs request court oversight in the future, based on future events, which is only in part based on a finding of past liability.

Courts may provide declaratory relief under Code of Civil Procedure section 1060 if the relief sought would ***also*** govern the future conduct of parties. (*Ossedou Technologies of America, Inc. v. DiscoveryOrtho Partners, LLC* (2010) 191 Cal.App.4th 357, 372.) That is particularly true when the pleaded allegations do not amount solely to a backward-looking enterprise for purposes of relief, as is the case here. (*Ibid.*) Put another way, while no doubt plaintiffs are seeking monetary damages, they also are seeking a court-established monitoring program in the future solely for purposes of diagnosing disease. This is a recognized form of equitable relief. (*O'Connor v. Boeing North American, Inc.* (C.D. Cal. 1997) 180 F.R.D. 359, 378, fn. 23.) As the action progresses it may become apparent that damages will predominate over claims for injunctive (and thus declaratory relief), rendering declaratory relief negligible. We are at the pleading stage, however, and that determination cannot be made at this time. (See, e.g., *Shapiro v. San Diego City Council* (2002) 96 Cal.App.4th 904, 913 [declaratory relief not moot when "issues remain as to the degree of compliance" in the future].) At this point the court cannot say resolution of the future controversy would have little practical effect in terms of altering behavior, meaning the demurrer is inappropriate. (See, e.g., *Meyer v. Sporing Spectrum,* L.(2009) 45 Cal.4th 634, 648.) Indeed, any doubt regarding the propriety of declaratory relief should be resolved in favor of the relief. (*Warren v. Kaiser Foundation Health Plan, Inc.* (1975) 47 Cal.App.3d 678, 683.)

For these reasons, the court overrules defendant's demurrer to the declaratory relief cause of action.

F) Summary

- The court grants the parties' stipulated request to take judicial notice of the eight (8) exhibits filed on October 1, 2025, in response to the court's September 8, 2025 order.
- The court grants defendant's request to take judicial notice of Exhibits A, B, C, D, E, F, G, H, I, J, K,, L, M, N, O, P, Q, R, S, T, U, and V; the court takes judicial notice of the existence of these documents, but not the truth of their contents.
- The court denies defendant's request to take judicial notice of Exhibits W, X, Y, Z, AA, BB, CC, DD, EE, and FF.
- The court overrules the demurrer on the following grounds:
    - The court rejects defendant's claim that plaintiffs have failed adequately to plead a basis for medical monitoring. Defendant claims plaintiffs have no "standing" to advance the remedy of medical monitoring, relying initially on Judge Chhabria's decision under Article III standing principles when he

granted defendant's motion to dismiss with leave to amend. The court does not find that California's standing rules are necessarily coextensive with Article III principles; the court finds that *Potter* was silent on the pleading requirements for medical monitoring, and in line with the general rules associated with negligence pleading, general allegations offered in the operative pleading are sufficiently robust as conditioned by the five *Potter* factors to survive demurrer. In making this determination the court finds that plaintiff's pleading is not a model of clarity, and also finds the issue to be close; the operative pleading nevertheless survives based on the contents of judicially noticed documents, using the five *Potter* factors as a general template rather than a rigid pleading rubric. Whether plaintiffs will be able to offer sufficient expert evidence in the future is beyond the scope of this order.

- The court rejects defendant's claim that the third cause of action for declaratory relief is improper and duplicative of the first cause of action (at least as pleaded). The court is not willing to say at this time, at the pleading stage, that declaratory relief is inappropriate, based on plaintiffs' request for ***future*** court oversight. That may ultimately be the case, but that determination cannot be made at the pleading stage.

- The court sustains the demurrer for the following reasons:
  - As to the first, second, and third causes of action, plaintiff has failed to articulate a specific factual basis for equitable tolling under either the discovery rule or the fraudulent concealment doctrine (or articulated sufficient facts to support a different accrual date under the continuing violation doctrine) to overcome any statute of limitations bar based on a facial reading of the operative pleading. Leave to amend is granted.
  - As to the first cause of action for "negligence/negligent misrepresentation," the court finds (separate and apart from any request for medical monitoring) that as pleaded the cause of action is fundamentally and fatally confusing, as plaintiff (and the parties) seem to equate common law negligence with negligent misrepresentation. They are separate torts based on separate primary rights, with the latter related to fraud, ***not*** common law negligence. The briefing reflects the confusion. Defendant challenges the negligent misrepresentation portion of the first cause of action, while plaintiff attempts to support the common law negligence portion of the cause of action. The court finds that the common law negligence portion of the first cause of action withstands demurrer (and thus can stay as is), but concludes that the negligent misrepresentation portion of the first cause of action does not. The court therefore sustains the demurrer as to the negligent misrepresentation portion of the first cause of action, as plaintiff has failed to allege the elements with factual specificity, with leave to amend. Plaintiff should separate the two causes of action in any future pleading.
  - As to the second cause of action, plaintiffs have failed to allege that they are entitled to any appropriate remedy under the UCL, which does not include damages (including medical monitoring); plaintiff seems to be using this cause of action as way to replicate the first cause of action, which is improper. Unless plaintiff can convince the court at the hearing that an amendment can

be made in this regard, which seems unlikely, the court will sustain the demurrer ***without*** leave to amend.

- The parties are directed to appear at the hearing either in person or by Zoom.