Form 4.02A

2019

Hfx. No. 489864

SUPREME COURT OF NOVA SCOTIA

BETWEEN:

DAVID MITCHELL and GRETTA HUTTON

PLAINTIFFS

- AND -

BAYER INC., MONSANTO COMPANY, MONSANTO CANADA ULC, MONSANTO CANADA INC.

DEFENDANTS

Proceeding under the *Class Proceedings Act*, S.N.S. 2007, c. 28

NOTICE OF ACTION

TO: BAYER INC.
2920 Matheson Boulevard East,
Mississauga, Ontario, Canada, L4W 5R6

AND TO: MONSANTO COMPANY
800 North Lindbergh Boulevard,
St Louis, Missouri, USA, 63167

AND TO: MONSANTO CANADA ULC
13 - 91029 Range Road 205
Lethbridge County, Alberta, Canada T1J 5P2

AND TO: MONSANTO CANADA INC.
900 – One · Research Road,
Winnipeg, Manitoba, Canada, R3T 6E3

Action has been started against you

The plaintiffs take action against you.

The plaintiffs started the action by filing this notice with the court on the date certified by the prothonotary.

The plaintiffs claim the relief described in the attached statement of claim. The claim is based on the grounds stated in the statement of claim.

Deadline for defending the action

To defend the action, you or your counsel must file a notice of defence with the court no more than the following number of days after the day this notice of action is delivered to you:

• 15 days if delivery is made in Nova Scotia

• 30 days if delivery is made elsewhere in Canada

• 45 days if delivery is made anywhere else.

Judgment against you if you do not defend

The court may grant an order for the relief claimed without further notice, unless you file the notice of defence before the deadline.

You may demand notice of steps in the action

If you do not have a defence to the claim or you do not choose to defend it you may, if you wish to have further notice, file a demand for notice.

If you file a demand for notice, the plaintiffs must notify you before obtaining an order for the relief claimed and, unless the court orders otherwise, you will be entitled to notice of each other step in the action.

Rule 57 - Action for Damages Under $100,000

Civil Procedure Rule 57 limits pretrial and trial procedures in a defended action so it will be more economical. The Rule applies if the plaintiff states the action is within the Rule. Otherwise, the Rule does not apply, except as a possible basis for costs against the plaintiffs.

This action is not within Rule 57.

Filing and delivering documents

Any documents you file with the court must be filed at the office of the Prothonotary, The Law Courts, 1815 Upper Water Street, Halifax, Nova Scotia (telephone #902-424-4900).

When you file a document you must immediately deliver a copy of it to each other party entitled to notice, unless the document is part of an *ex parte* motion, the parties agree delivery is not required, or a judge orders it is not required.

Contact information

The plaintiffs designate the following address:

Wagners Law Firm
1869 Upper Water Street
Suite PH301, Historic Properties
Halifax, Nova Scotia B3J 1S9
Email: classaction@wagners.co

Documents delivered to this address is considered received by the plaintiffs on delivery.

Further contact information is available from the prothonotary.

Proposed place of trial

The plaintiffs propose that, if you defend this action, the trial will be held in Halifax, Nova Scotia.

Signature

Signed this 4th day of July, 2019.

RAYMOND F. WAGNER, Q.C.
Wagners
Counsel for the Plaintiffs

Prothonotary's certificate

I certify that this notice of action, including the attached statement of claim, was filed with the court on July 4, 2019.

Prothonotary
JENNA BENT
Deputy Prothonotary

Form 4.02B

STATEMENT OF CLAIM

Proceeding under the *Class Proceedings Act*, S.N.S. 2007, c. 28

I. DEFINITIONS

1. The capitalized terms used in the Statement of Claim have the meanings and refer to the definitions indicated below:

(a) "Class" and "Class Members" means the Primary and Family Law Classes, defined as:

(i) Primary Class means all persons in Canada who were diagnosed with non-Hodgkin's lymphoma ("NHL") after having used and/or been exposed to Roundup® between 1976 and the date of the judgment certifying this class action;

(ii) "Family Law Class" and "Family Law Class Members" means the spouses (including common-law spouses and same-sex spouses), children, grandchildren, parents, grandparents and siblings of Primary Class Members, and includes all persons within Canada who by reason of his or her relationship to a Primary Class Member have standing pursuant to applicable family law statutes or equivalent legislation or common law in other provinces and territories;

(b) Roundup® is a broad-spectrum herbicide developed, designed, manufactured, marketed, sold, distributed, and promoted by Monsanto and subsequently Bayer, which has glyphosate as its primary active ingredient;

(c) Non-Hodgkin's Lymphoma ("NHL") is a cancer that starts in white blood cells called lymphocytes, which are part of the body's lymphatic system. Among other effects, NHL causes immunodeficiency. Lymphomas can start anywhere in the body where lymph tissue is found, including the lymph nodes, spleen, bone marrow, thymus, adenoids and tonsils and digestive tract. NHL can spread to other parts of the lymph system if not treated and can also spread to other parts of the body, such as the liver, brain, or bone marrow.

II. SUMMARY OF THE CLAIM

2. In 1970, Monsanto discovered the herbicidal properties of glyphosate and commenced distributing it in the U.S.A. in 1974 under the tradename Roundup®. Roundup® has been registered for manufacture, possession, handling, storage, transportation, importation, distribution, and use in Canada since 1976.

3. Glyphosate is a non-selective herbicide that interferes with protein synthesis, killing the plant within days. It is the most commonly used weed killer in Canada and the world. In recent decades, worldwide use has skyrocketed: in 1994, approximately 56.3 million kilograms of glyphosate were used worldwide; by 2014, upwards of 825.8 million kilograms were sprayed.

4. Roundup® was the first glyphosate-based herbicide introduced to the market, and its success in Canada and worldwide was key to Monsanto's market dominance in the realm of agricultural chemicals and pesticides.

5. At the material times, one or more of the Defendants, including their predecessors, subsidiaries, affiliates and parent companies, were engaged in the business of designing,

developing, testing, manufacturing, marketing, distributing, labelling, and selling, either directly or indirectly, Roundup® in Canada.

6. Monsanto initially, and now Bayer, marketed Roundup® as safe for both humans and the environment, for commercial and consumer use. The Defendants assured the public and government agencies that Roundup® was harmless. In particular, the Defendants represented that Roundup® was safe and fit for proper and intended use and of merchantable quality and did not pose an unreasonable risk to human health.

7. Yet, the Defendants knew and have known (or ought to have known) for decades that Roundup® causes tumors in rodents and that there is evidence of carcinogenicity to humans. Nonetheless, they refused to include a cancer warning or any adequate warning on the label or to instruct users to wear protective clothing or equipment while spraying Roundup®, and they unduly influenced, undermined and discredited scientific research that found their product to be harmful to humans. All of this was for the purpose of safeguarding the enormous profits generated by one of the most widely used herbicides in the world, while disregarding the health and lives of Canadians.

8. Notwithstanding a body of scientific research to the contrary, Monsanto and subsequently Bayer have claimed and continue to claim that Roundup® creates no unreasonable risks to human health. These false and misleading representations regarding the safety of Roundup® are not supported by, or are contrary to, unbiased scientific evidence.

9. As such, the Defendants breached statutory and common law duties to the Plaintiffs and Class who allege that exposure to Roundup® caused the Primary Class Members to

develop NHL and that the Defendants failed to warn them of the risks, for which the Defendants owe damages to the Class.

10. The Defendants' conduct also warrants an award of punitive and exemplary damages as a result of their egregious, outrageous and unlawful conduct, and in particular, their callous disregard for the health, safety and lives of the Plaintiffs and Primary Class Members. The Defendants risked the health and lives of persons who used and/or were exposed to their Roundup® products, choosing profits over safety. The Defendants had full knowledge of the dangers and health risks posed by Roundup® and glyphosate, yet they made conscious decisions to suppress this knowledge and to not retest, redesign, relabel, warn or inform the public, justifying an award of additional damages in a sum which will serve to deter similar conduct in the future.

III. THE PARTIES

A. <u>The Plaintiffs</u>

(i) David Mitchell

11. The Plaintiff, David Mitchell, is a resident of Margaree Valley, Cape Breton, Nova Scotia.

12. From approximately 1988 to 1994, Mr. Mitchell owned and operated a sheep farm in Lunenburg County, Nova Scotia. This farm was approximately 50 acres, plus access ti another 50 acres of his brother's property which was used for hay and pasture requirements. On the farm, he applied Roundup® on an approximate daily basis from April to June each year, using a hand sprayer to spot-spray Roundup® in pastures and along the electric fence enclosing the property. Mr. Mitchell wore lightweight coveralls, gloves and rubber boots when applying Roundup®.

13. Mr. Mitchell chose to purchase and apply Roundup® because it was the only herbicide product he was familiar with at the time. He had seen advertisements for Roundup®, which indicated the product was safe.

14. From approximately 1994 to 2002, Mr. Mitchell sprayed Roundup® on the approximate 400-acre dairy farm he owned and managed in Pictou County, Nova Scotia. He used a hand sprayer to apply Roundup® to emerging weeds in the pastures and along the electric fence lines enclosing the property. He sprayed Roundup® before seeding the pasture land, at times using a no till seeder. The spraying season was mainly in the spring, during which he sprayed Roundup® for approximately two to three months on a daily basis. In the fall, he would also apply Roundup® when renewing any pasture or hay land.

15. From approximately 2003 to 2005, Mr. Mitchell worked on three different dairy farms in New Zealand. There, he used a hand sprayer to apply Roundup® to spot spray the pastures and along the electric fences to keep aggressive weeds and thistles under control. Typically, Mr. Mitchell would spray Roundup® daily, each morning after milking the cows.

16. In 2005, Mr. Mitchell returned to Nova Scotia and bought an orchard and vineyard in Somerset. This property was approximately 120 acres in total, with 30 acres in apple trees and 15 acres for grape production. From 2005 to 2007, he applied Roundup® between the grape trellises and between the rows of apple trees using a large spraying machine. He also used a hand sprayer in the vineyard in areas where the large sprayer could not reach. He typically sprayed Roundup® daily from the early to late spring, and sometimes in the fall if the weed burden was high. On this property, Mr. Mitchell wore a sealed suit for applying Roundup®. He did not wear a mask, except when he mixed and loaded the sprayers.

17. In the spring of 2010, Mr. Mitchell worked on an approximate 30-acre Cranberry Bog in Aylesford, Nova Scotia. He applied Roundup® using a hand sprayer. For this, he wore a light weight suit, a mask, gloves, and rubber boots. He sprayed daily from approximately April to mid-June.

18. During the spring and summer of 2011, Mr. Mitchell worked in the Bear River area of Nova Scotia on a vineyard, planting vines. There, he hand sprayed Roundup® before planting the vines. The summer of 2011 was the last time Mr. Mitchell remembers spraying Roundup®.

19. Over this period of time, Mr. Mitchell was exposed to glyphosate in various ways: he got it on his skin and clothing, and via inhalation during spraying.

20. In approximately July of 2013, Mr. Mitchell underwent a medical examination required for a New Zealand work permit which identified an irregular white blood cell count. He travelled to New Zealand in the fall of 2013, returning to Montreal, Canada, in May of 2014.

21. In September of 2014, after a series of diagnostic tests, including a bone marrow test, Mr. Mitchell was diagnosed with Waldenstrom's Macroglobulinemia, a type of NHL.

22. Mr. Mitchell was placed on watchful wait for treatment. In 2017, he underwent approximately six months of immunotherapy in Halifax, Nova Scotia. Approximately six months thereafter, he underwent five months of chemotherapy.

23. As a result of his diagnosis and treatment Mr. Mitchell has experienced stomach upset, anemia, fatigue, weakness, night sweats, headaches, ringing in the ears, nosebleeds,

exertional dyspnea, peripheral neuropathy, and nausea during and after chemotherapy. His life expectancy has also been reduced as a result of his diagnosis.

24. Mr. Mitchell did not know the nature and magnitude of the injuries and harm that could result from his use of and/or exposure to Roundup® and glyphosate as the product is intended.

25. As a proximate result of the Defendants' wrongful acts and omissions in placing Roundup® on the market without adequate warnings of the risks associated with its use and of the carcinogenic nature of glyphosate, Mr. Mitchell has suffered, and continues to suffer, serious personal injuries, mental anguish and severe emotional distress and pain and suffering. Mr. Mitchell has also suffered pecuniary damages including but not limited to cost of care and lost income arising from his diagnosis and treatment.

(ii) Gretta Hutton

26. The Plaintiff, Gretta Hutton, is a resident of Severn, Ontario.

27. In October 2007, Ms. Hutton purchased a horse farm in Severn, Ontario. The farm is 46-acres, consisting of a hayfield of approximately 10 acres and an area of approximately 20 acres upon which a house, farm structures and pastures are located. The remainder of the farm property is wooded. Upon purchase, the farm was rundown and neglected, and was overgrown with weeds of various types.

28. In May of 2008, Ms. Hutton purchased 1L of Roundup® at Home Depot. Shortly thereafter she began spraying Roundup® on her farm to control weeds.

29. Ms. Hutton chose to purchase Roundup® because it was the only herbicide product she was familiar with at the time. She had seen advertisements, which indicated the product was safe.

30. Ms. Hutton initially used a Roundup® hand sprayer to apply the product. Once the Roundup® hand sprayer clogged, Ms. Hutton used other similar-type hand sprayers to apply the product.

31. Ms. Hutton used Roundup® on an as-needed basis. When walking through her property, she would spot-spray whenever she saw weeds. She would spray burdocks, which were approximately waist high in most areas. During the growing season, from approximately May to mid-November, she applied Roundup® on an approximately weekly basis.

32. Each growing season, Ms. Hutton sprayed her property to rid of weeds on an as-needed-basis, which was at least monthly, typically more. She last sprayed Roundup® in November of 2013, as by May of 2014, she was too ill care for her property.

33. Monsanto had marketed Roundup® as safe and provided minimal warnings about avoiding contact with the product. Thus, Ms. Hutton did not wear protective gear when applying Roundup®. When spraying, she wore jeans, a T-shirt or long-sleeved shirt, and running shoes. She typically wore gloves when using the Roundup® hand sprayer. When hand-mixing the Roundup® concentrate with water, she did not wear gloves, measuring the Roundup® using measuring instruments from her kitchen.

34. Ms. Hutton was exposed to glyphosate in various ways: she got it on her skin and on her clothing, and via inhalation during spraying.

35. In early 2014, Ms. Hutton attended various appointments with her family physician, reporting stomach upset, low energy, fatigue, head rushes, and nausea. As a result, between March and May of 2014, Ms. Hutton underwent extensive diagnostic testing.

36. On or about May 7, 2014, Ms. Hutton was diagnosed with Mantle cell lymphoma (MCL), a type of NHL. This was later staged as Stage IV MCL, indicating the lymphoma had spread widely into at least one organ outside the lymph system.

37. On or about May 15, 2014, Ms. Hutton attended an appointment with her oncologist. The initial treatment plan was to initiate chemotherapy treatment plus Rituximab maintenance. Ms. Hutton was later accepted as eligible to participate in a clinical trial ongoing in Hamilton, Ontario. She began this treatment in early June 2014.

38. Between June 2014 to present, Ms. Hutton has continued with the clinical trial cycles in 8-week intervals. Her diagnosis of NHL and associated treatment have caused her serious side effects, including but not limited to neutropenia, stomach upset, low energy, fatigue, muscle, bone and joint pain, head rushes, nausea, and heart palpitations. Her life expectancy has also been reduced as a result of her diagnosis.

39. Ms. Hutton did not know the nature and magnitude of the injuries and harm that could result from her use of and/or exposure to Roundup® and glyphosate as the product is intended.

40. As a proximate result of the Defendants' wrongful acts and omissions in placing Roundup® on the market without adequate warnings of the risks associated with its use and of the carcinogenic nature of glyphosate, Ms. Hutton has suffered, and continues to suffer, serious personal injuries, mental anguish and severe emotional distress and pain and

suffering. Ms. Hutton has also suffered pecuniary damages including but not limited to cost of care and lost income arising from taking an extended leave from work and returning to reduced hours as a result of her diagnosis and related treatment.

B. The Defendants

41. The Defendant, Bayer Inc. is a corporation incorporated pursuant to the *Canada Business Corporations Act*, with a registered office at 2920 Matheson Boulevard East, Mississauga, Ontario, L4W 5R6. Bayer Inc. is the Canadian subsidiary of Bayer Aktiengesellschaft ("Bayer AG", collectively "Bayer").

42. Bayer Inc. is in the business of designing, developing, testing, manufacturing, inspecting, marketing, distributing, labelling and selling chemicals, crop science and life science technology, including the agricultural herbicide Roundup®.

43. In or about June of 2018, Bayer acquired the Defendants Monsanto Company, Monsanto Canada ULC and Monsanto Canada Inc. (collectively "Monsanto"), as part of its crop science division.

44. The Defendant, Monsanto Company, was a corporation incorporated pursuant to the laws of the State of Delaware, U.S.A. Monsanto Company was an American agrochemical and agricultural biotechnology corporation that, commencing in the 1970s, designed, developed, tested, manufactured, inspected, marketed, distributed, labelled and sold the glyphosate-based herbicide Roundup®. It was the parent company of the Defendants, Monsanto Canada Inc. and Monsanto Canada, ULC.

45. Monsanto Canada, ULC, was an Alberta corporation with its registered office at 13 - 91029 Range Road 205, Lethbridge County, Alberta, Canada, T1J 5P2.

46. Monsanto Canada Inc. was a corporation incorporated pursuant to the *Canada Business Corporations Act* with its registered office at 900 - One Research Road, Winnipeg, Manitoba, R3T 6E3. It was discontinued after it was acquired by Bayer in 2018.

47. References to the Defendants named herein are intended to include their predecessors, affiliates, subsidiaries and parent companies.

48. The Defendants are wholly responsible for all the acts and omissions of any predecessor, subsidiary or parent companies by virtue of having succeeded or acquired those companies and by virtue of having assumed the obligations of those companies. The businesses of the Defendants and of their subsidiaries, affiliates and parent companies are inextricably interwoven and each is the agent of the other for the purposes of the design, development, testing, manufacture, marketing and sale of Roundup® in Canada. The Canadian subsidiaries of the foreign Defendants participated in and furthered the objectives of the parent companies by knowingly modifying their behaviour in accordance with instructions received from their respective parent companies and thereby acted as agents in breaching the standard of care and are liable for such acts.

49. The Plaintiffs state that the Defendants are responsible, jointly and severally, for the injuries and damages suffered by the Plaintiffs and Class Members. The Defendants named herein are jointly and severally liable for the actions of, and damages allocable to, all members of their respective corporate families including predecessors, affiliates, subsidiaries and parent companies. The acts alleged in this claim to have been done by each corporate Defendant were authorized, ordered and done by each corporate Defendant's officers, directors, agents, employees or representatives while engaged in the management, direction, control or transaction of its business affairs.

50. The Plaintiffs plead that, by virtue of the acts described herein, each of the Defendants is vicariously liable for the acts and omissions of the other for the following reasons:

(a) each was the agent of the other;

(b) each Defendant's business was operated so that it was inextricably interwoven with the business of the other;

(c) the Defendants entered into a common advertising and business plan to distribute and sell Roundup®;

(d) each Defendant intended that the businesses be run as one business organization; and

(e) the Defendants are related, associated or affiliated.

IV. ROUNDUP®

51. Roundup® is a widely-used herbicide with glyphosate as its primary active ingredient. Formulations include a variety of other active ingredients and co-formulants, such as surfactants which cause membrane degradation to help glyphosate enter cells, and other additives that extend the product's shelf life.

52. Roundup® is one of the most widely used herbicides worldwide. It is used in agriculture and forestry, for household use on lawns and gardens, and for weeds in industrial areas.

A. Glyphosate – The Defendants' Knowledge of Glyphosate's Carcinogenicity

53. In 1985, the U.S. Environmental Protection Agency ("EPA") initially classified glyphosate as "possibly carcinogenic to humans," based on tumors in laboratory animals.

54. In 1991, after Monsanto exploited deep connections within the EPA and presented their own contrary studies on carcinogenicity, the EPA altered its classification to Group E, classifying glyphosate as non-carcinogenic in humans. This allowed glyphosate to become the most widely used herbicide worldwide. Roundup®'s success has been essential to the Defendants' dominance in the market.

55. Since 2000, the Defendants have ghostwritten and/or published various studies through consulting companies in order to undermine safety concerns related to Roundup® and glyphosate. Such studies were submitted to the public and government agencies.

56. In a 2001 study performed on Monsanto's behalf, British toxicologist James Parry concluded that, according to recently published studies at the time, "glyphosate is capable of producing genotoxicity" (i.e. having a destructive effect on a cell's genetic material) and suggested performing additional studies. Monsanto did not carry out the studies suggested.

57. In 2001, scientific studies revealed that the surfactants in Roundup® formulations increase the absorption of glyphosate in human skin. Following a Monsanto study on dermal absorption of the formulated Roundup® product precipitated by the surfactant ("TNO Study"), Monsanto scientists expressed concerns with continuing such studies due to the potential for the results to significantly raise Roundup® risk evaluations, resulting in a much higher dermal penetration than seen before. In 2002 Monsanto ceased further study of these programs, including the TNO Study, that were evaluating the absorption of glyphosate and formulations (including surfactants).

58. In 2003, a Monsanto Executive noted in correspondence between various Monsanto personnel who were discussing two Monsanto rat studies, one evaluating acute toxicity via

inhalation, that "[b]ased on the mortality data seen in those studies, it is not outside the realm of possibilities that the 3 deaths were treatment – related."

59. In 2008, internal emails revealed that a Monsanto employee had stated that Monsanto "needs solid data for ADME[1] arising from dermal exposure." This employee further communicated that movement of glyphosate in the blood flow from dermal contact is different to that through oral or intravenous exposure, and that dermal exposure is the greatest risk of exposure for operators. With this information, and despite the recommendation for further investigation, Monsanto declined to do the requested additional testing on dermal absorption.

60. In 2014, the UK and Denmark requested dermal absorption studies. In email correspondence, Monsanto EU Regulatory Affairs Specialist noted "If we use the default value we do not pass the risk assessment."

61. In 2015, the World Health Organization's ("WHO") International Agency for Research on Cancer ("IARC") issued a report classifying glyphosate as "probably carcinogenic to humans" (Group 2A), based on "limited" evidence of cancer in humans from studies of real-world exposures and "sufficient" evidence of carcinogenicity in experimental animals. IARC also concluded that there was "strong" evidence for genotoxicity, both for "pure" glyphosate and for glyphosate formulations. Epidemiologic studies specifically linked Roundup® exposure to an increased risk of NHL. Similar results were reported in studies of different glyphosate-based formulations as well as "pure" glyphosate used in different geographical regions at different times.

[1] absorption, distribution, metabolism, and excretion.

62. The IARC evaluation was based on the systematic review and statistical analysis of all publicly available and pertinent peer-reviewed toxicologic and epidemiologic literature (approximately 1000 studies) on glyphosate and NHL, undertaken over a 12-month period by a Working Group of 17 independent expert scientists. Data from all studies combined showed a statistically significant association between NHL and exposure to glyphosate.

63. The IARC issued its monograph for glyphosate in 2015. In summary, Monograph 112 states that: (i) there is evidence in humans for the carcinogenicity of glyphosate; (ii) a positive association was observed between glyphosate and NHL; (iii) there is evidence in experimental animals for the carcinogenicity of glyphosate; and, overall, (iv) glyphosate is probably carcinogenic to humans (Group 2A).

64. Notwithstanding the IARC's 2015 findings, the Defendants continue to falsely proclaim that Roundup® and its active ingredient, glyphosate, are safe and non-carcinogenic.

65. The Defendants have attempted to undermine the IARC evaluation in various ways.

66. The Defendants improperly influenced and/or ghostwrote five studies published in the supplemental issue of the journal *Critical Reviews in Toxicology* in 2016. The studies reviewed the 2015 decision of the IARC, and refuted glyphosate's cancer risks. The studies claim to have been written by independent experts. No conflicts of interest were disclosed at the time of publication, contrary to the Declaration of Interest (DOI) statement. It was later revealed that a majority of the researchers had previously worked as consultants for Monsanto, and at least two of the scientists who authored the paper, Dr. John Acquavella and Dr. Larry Kier, were paid directly by, and acted as consultants to, Monsanto for this

review. Also contrary to the DOI statement, Dr. William Heydens, a Monsanto employee, extensively edited and reviewed the article prior to publication.

67. Monsanto's false and misleading statements in the DOI served a critical purpose: to unduly influence, undermine and discredit scientific research that found its product to be harmful to humans, and manipulate public opinion to bury health concerns and promote sales. Monsanto knowingly and for its own benefit sought to discredit the IARC's determination, providing false and inaccurate information about the independence of the result, misleading the public, regulatory agencies and the scientific community.

68. In response to a regulatory decision by the European Food Safety Authority ("EFSA") that glyphosate is "unlikely to pose a carcinogenic hazard to humans," in 2015, numerous expert scientists published an article in support of IARC's methodologies and findings. Since 2015, several more publications have added weight to the body of evidence supporting glyphosate's carcinogenicity. A February 2018 meta-analysis of studies on glyphosate suggested a compelling link between exposures to GBH [glyphosate-based herbicides] and increased risk of NHL. A February 2019 University of Washington study found that glyphosate increased the risk of NHL by as much as 41%.

B. Regulation of Roundup® - Deceit to Regulatory Bodies

69. In Canada, the *Pest Control Products Act*, SC 2002, c 28 ("*PCPA*") regulates the manufacture, possession, handling, storage, transportation, importation, distribution, and use of herbicides, including Roundup®.

70. All herbicides must be registered with Health Canada's Pest Management Regulatory Agency ("PMRA"). The *PCPA* requires that the PMRA conduct a risk-benefit analysis in

determining whether an application for registering a herbicide should be allowed. The PMRA then determines if the health and environmental risks as well as the value of the herbicide product are acceptable.

71. Pursuant to the *Pest Control Products Regulations*, SOR/2006-124 (the "Regulations"), in order to register a herbicide, applicants must provide the PMRA any information it may require to evaluate the health and environmental risks and the value of the herbicide, including results of relevant scientific investigations.

72. Roundup® has been approved and registered since 1976 in Canada. In 2015, and again in 2017, the PMRA reapproved Roundup® as part of its regular re-evaluation process.

73. Despite the 2015 IARC report's conclusion that glyphosate is a probable human carcinogen, other government regulators, including the U.S. EPA and the E.U. EFSA, have approved and re-approved Roundup®, maintaining there is no conclusive link between glyphosate and cancer.

74. The Defendants' deceit, scientific fraud, and lack of transparency about the safety of glyphosate have allowed them to continue selling Roundup® in Canada. For instance, the five studies published in the 2016 supplemental issue of the journal *Critical Reviews in Toxicology*, described above, were relied upon by government agencies in their review and approval of Roundup®. The PMRA cited these biased and inaccurate studies when it re-approved glyphosate in 2017.

75. In response to the PMRA's 2017 re-evaluation decision on glyphosate, Health Canada received eight notices of objection, and concerns were raised publicly about the validity of the scientific information relied upon. In January of 2019, despite these objections and

despite the science invalidating the PMRA's re-evaluation, Health Canada concluded the PMRA's 2017 decision will stand. However, as a result of the re-evaluation of glyphosate, the PMRA required further risk-reduction measures in addition to those already listed on glyphosate product labels, including the following for protecting human health:

(a) glyphosate is not to be applied using hand-wicking or hand-daubing methods;

(b) a restricted-entry interval (REI) of 12 hours is required for agricultural uses;

(c) a statement is required indicating that the product is to be applied only when the potential for drift to areas of human habitation or areas of human activity, such as houses, cottages, schools and recreational areas, is minimal.

76. Regulatory decisions should be based on complete, credible, independent science. The Defendants knowingly and for their own commercial benefit presented academic studies to the PMRA and other government regulators, holding the scientific studies out as independent, when in fact, they were written or heavily influenced by the Defendants. The Defendants attempted to undermine studies revealing the dangers and risks of glyphosate, improperly influencing evidence the PMRA relied upon to approve and re-approve registration of Roundup®.

77. Various cities, counties, states, and countries have issued outright bans on glyphosate, imposed restrictions on its use or have issued statements of intention to ban or restrict glyphosate-based herbicides, including Roundup®, over health concerns and ongoing Roundup® cancer litigation.

V. CAUSES OF ACTION

78. At all material times, the Defendants owed legal duties to the Plaintiffs and Class Members to, *inter alia*:

(a) take all reasonable and necessary steps to design, develop, test, market, distribute and sell a product that did not pose an unreasonable risk to health and/or was not unreasonably dangerous to those who use and/or are exposed to Roundup®;

(b) carry out appropriate, thorough, unbiased and ongoing research and testing to ensure Roundup® products were safe and fit for intended and/or reasonably foreseeable use;

(c) take reasonable care in designing, developing, testing, marketing, distributing, and selling Roundup®;

(d) develop and promote safe use, handling and application guidelines and warnings for Roundup®;

(e) investigate, evaluate and disclose reports, studies and findings of possible risks associated with Roundup®;

(f) adequately warn of adverse health risks associated with Roundup®;

(g) offer accurate, correct, true and non-misleading information regarding the risks of using and/or being exposed to Roundup®;

(h) not misrepresent, deceive or mislead the public, regulatory agencies and the scientific community of the safety of Roundup® and ensure that users of Roundup®, the public, regulatory agencies and the scientific community were kept

fully informed of all information relevant to the safety of Roundup® and of the risks associated with Roundup® in a timely manner.

79. The Defendants breached the above-identified duties as follows.

A. <u>Negligent Design, Development and Testing</u>

80. At the material times, the Defendants owed a duty of care to the Plaintiffs and Class to use reasonable care in designing, developing and testing Roundup®. The Defendants breached the applicable standard of care by negligently designing, developing and testing Roundup®. Such negligence includes, but is not limited to, the following:

(a) the Defendants chose not to exercise reasonable care in designing, developing, testing Roundup® products;

(b) the Defendants did not take all reasonable and necessary steps to design, develop and test a product that was not unreasonably dangerous or which did not pose an unreasonable risk to health to those who use and/or are exposed to Roundup®;

(c) the Defendants did not design Roundup® products to ensure they were at least as safe as other herbicides on the market;

(d) the Defendants manufactured, distributed, marketed and sold Roundup® without adequate pre- and post-market testing;

(e) the Defendants did not carry out appropriate, sufficient and ongoing testing to ensure Roundup® was safe, not harmful, and was fit for intended and/or reasonably foreseeable use and of merchantable quality;

(f) the Defendants intentionally concealed and chose not to disclose the results of tests, investigations and studies regarding exposure to glyphosate, and the risk of serious harm associated with use of and exposure to Roundup®;

(g) the Defendants chose not to further test, investigate and evaluate reports of possible risks associated with Roundup® with transparency and scientific integrity; and

(h) such further and other particulars as may be provided prior to the trial of this action.

81. There existed alternative designs for effective herbicides which were safer and economically feasible to manufacture.

B. <u>Negligent Distribution, Marketing and Sale</u>

82. The Defendants owed the Plaintiffs and Class Members a duty of care as follows:

(a) to only distribute, market and sell Roundup® products if they are safe, non-toxic, harmless, free from unreasonable risk and fit for intended and/or reasonably foreseeable use;

(b) to provide truthful and accurate information concerning the risks of using and/or being exposed to Roundup® and glyphosate, including the severity of those risks;

(c) to adequately and fairly warn of the risks of using and/or being exposed to Roundup®;

(d) to take reasonably necessary and appropriate steps to ensure that Health Canada and other regulatory agencies were fully and regularly informed, in a timely manner, of all the potential adverse health risks associated with Roundup®; and

(e) to not misrepresent or falsely claim to regulatory agencies and the general public the safety of Roundup®.

83. The Defendants were negligent in the distribution, marketing and sale of Roundup®. Such negligence includes, but is not limited to, the following:

(a) the Defendants misled the Plaintiffs and Class Members about the safety of Roundup®, and the health risks associated with using and being exposed to Roundup®;

(b) the Defendants marketed, distributed and sold Roundup® while knowing or having reason to know that use of and/or exposure to Roundup® creates a significant risk of harm;

(c) the Defendants took no steps to remove Roundup® from the market once it became aware (or through reasonable diligence, could have become aware) of the health risks associated with using and being exposed to Roundup®;

(d) the Defendants allowed the Plaintiffs and Class to continue to purchase and use Roundup® after it was aware (or through reasonable diligence, could have become aware) that it posed an unreasonable risk to health to those who use and/or are exposed to Roundup®;

(e) the Defendants misinformed Health Canada and other regulatory bodies by providing incomplete, inaccurate, biased and deceitful information about Roundup® and glyphosate, and chose not to give the PMRA complete, accurate and unbiased information as it became available;

(f) the Defendants chose not to accurately, candidly, promptly and truthfully disclose to the Plaintiffs and Class Members that use of and/or exposure to Roundup® products creates a significant risk of harm;

(g) the Defendants provided the Plaintiffs and Class Members with no warnings concerning the health risks associated with use of and/or exposure to Roundup®;

(h) the Defendants provided the Plaintiffs and Class Members with inadequate and incomplete information about the safety of Roundup® and the health risks associated with use of and/or exposure to Roundup®;

(i) the Defendants actively and in an orchestrated manner suppressed and sought to discredit evidence about the risks associated with Roundup® and glyphosate-based herbicides;

(j) the Defendants misrepresented the state of scientific research, opinion and medical literature regarding the safety of Roundup® and other glyphosate-based herbicides;

(k) the Defendants chose not to provide adequate instructions, guidelines, and safety precautions to those persons who the Defendants could reasonably foresee would use and/or be exposed to Roundup®;

(l) the Defendants provided inaccurate and incomplete information to the Plaintiffs and Class Members about the safety of Roundup® and the health risks associated with use of and/or exposure Roundup® in its marketing materials including its product labels, Material Safety Data Sheets, information pamphlets, advertisements, website, and in information provided to users of Roundup®;

(m) after becoming aware of the increased risks associated with Roundup®, the Defendants chose not to:

(i) issue proper and satisfactory warnings of the risks associated with Roundup® use and exposure;

(ii) recall Roundup® products in a timely manner; or

(iii) announce the risks or otherwise act in a timely manner to warn the public, including the Plaintiffs and Class Members and health regulators;

(n) the Defendants represented that Roundup® was safe and fit for its intended purpose and of merchantable quality when they knew or ought to have known that these representations were false;

(o) the Defendants wrongfully and deceitfully concealed information, misrepresented the state of research and medical literature and made false and/or misleading statements with respect to the safety of Roundup® and glyphosate;

(p) the Defendants chose to continue to manufacture, advertise, market and promote use of Roundup® indicating that it is safe for use when they know or ought to have known that Roundup® and its active ingredient glyphosate had caused or could cause serious adverse health effects; and

(q) such further and other particulars as may be provided prior to the trial of this action.

84. The negligence of the Defendants in the design, development and testing, and their negligence in the distribution, marketing and sale of Roundup® created a substantial

likelihood of harm for the Plaintiffs and Class. The harm and damages suffered by the Plaintiffs and Class Members were caused by the acts and omissions of the Defendants.

85. The Defendants' common law duties are also informed by the *PCPA* and Regulations. The *PCPA* and Regulations impose obligations on the Defendants. They require the Defendants to provide any information that the Minister may require to evaluate the health and environmental risks of Roundup®. They require the Defendants to keep up with new developments in the scientific literature, conduct further testing as necessary, and promptly take corrective actions, including issuing warnings or recall, if new information becomes available which later alters the risk profile of Roundup®.

86. The Defendants created a dangerous and unreasonable risk of injury and harm to individuals who use and/or are exposed to Roundup®. At the material times, the Defendants knew or ought to have known of the dangers and risks of Roundup®, including that glyphosate is carcinogenic, and that the use of or exposure to Roundup® could cause or be associated with the injuries suffered by the Plaintiffs and Class Members. The Defendants knew or ought to have known that it was foreseeable that those using and/or being exposed to Roundup® would suffer injuries and damages as a result of the Defendants' failure to exercise reasonable care.

C. **Breach of Contract**

87. When the Plaintiffs and Class Members purchased Roundup®, they entered into a contract with the Defendants that the latter would provide a herbicide product that was safe for use and which was not unreasonably dangerous or which did not pose an unreasonable risk to health to those who use and/or are exposed to Roundup®.

88. The Plaintiffs say that the Defendants warranted and continue to warrant to the Plaintiffs and Class Members that Roundup® products are safe and of merchantable quality and fit for use. The Defendants breached these warranties to the Plaintiffs and the Class Members by selling them Roundup® products which are not, in fact, safe for use.

89. In addition, the Plaintiffs state that the Defendants breached an implied contractual term that they would use reasonable care and skill in designing, developing, testing, distributing, marketing and selling Roundup®. The Defendants did not do so, as described above in paragraphs 80 - 83.

D. Breach of the *Competition Act*, R.S.C. 1985, c. C-34

90. The Defendants knowingly or recklessly made false and misleading representations to the public regarding the safety of Roundup® and glyphosate and are thus liable under section 52 of the *Competition Act*, R.S.C. 1985, c. C-34 for knowingly or recklessly making a representation to the public that is false or misleading in a material respect, entitling the Plaintiffs and Class to recover damages pursuant to section 36.

91. These representations include, but are not limited to, the following (the "Representations"):

(a) that Roundup® and its active ingredient glyphosate are safe for use, and are non-toxic, harmless or free from risk;

(b) that glyphosate is less toxic to rats than table salt following acute oral ingestion;

(c) that glyphosate's safety margin is much greater than required;

(d) that the Defendants' herbicides carry a toxicity category rating of "practically non-toxic" as it pertains to mammals, birds, and fish; and

(e) presenting Roundup® as a safe product for commercial, agricultural and residential use and representing that it will not cause any harmful effects to people or the environment, while failing to inform of the human health risks associated with use of and exposure to Roundup®.

92. The Defendants' Representations were material, false and misleading, and they affected the decisions of the Plaintiffs and Class Members to purchase and use Roundup®. The Plaintiffs and Class Members relied on the Representations.

93. As a result of the Representations, the Plaintiffs and Class Members suffered loss or damage, including financial loss in the form of the consideration paid to purchase Roundup®.

94. The Plaintiffs state that the Defendants' conduct in promoting their business interests, and in knowingly or recklessly making representations to the public that were false or misleading in material respects, is contrary to s. 52(1) of the *Competition Act*, and the Plaintiffs and Class Members have a statutory cause of action pursuant to s. 36 of the *Competition Act* to recover the amount equal to the loss of damage proved to have been suffered, together with the full cost of investigation and of proceedings under s. 36.

95. The Plaintiffs and Class Members also rely on s. 52(1.1) of the *Competition Act* and plead that it is unnecessary to show actual reliance on the misleading representations of the Defendants for the purpose of establishing a breach of s. 52(1) of the *Competition Act*.

VI. DAMAGES

96. As a result of the Defendants' common law tortious conduct and statutory breaches, the Plaintiffs and Primary Class have suffered and will continue to suffer injuries and damages

including, but not limited to, damages for personal injuries, mental anguish and severe emotional distress associated with the personal injury, pain and suffering, diminished enjoyment of life, loss of employment income and benefits, possible death, and special damages and expenses, including but not limited to cost of care arising from the need for lifelong medical treatment.

97. As a result of the Defendants' conduct described above, the Family Law Class have suffered damages, including but not limited to:

(a) actual expenses reasonably incurred for the benefit of Primary Class Members;

(b) travelling expenses incurred while visiting Primary Class Members during treatment or recovery;

(c) loss of income or the value of services provided for Primary Class Members where services, including nursing and housekeeping, have been provided; and

(d) compensation for loss of support, guidance, care, and companionship that they might reasonably have expected to receive from Primary Class Members.

98. As a result, the Plaintiffs and Class Members have suffered loss and damage in an amount not yet known but to be determined.

A. Punitive and Exemplary Damages

99. The Plaintiffs claim punitive and exemplary damages as a result of the egregious, outrageous and unlawful conduct of the Defendants, in particular, the Defendants' use of their market dominance, deception, and misrepresentations to profit from Roundup® use and sale. The Defendants were aware that their actions would have a significant adverse

impact on the proposed Class. The conduct of the Defendants was high-handed, reckless, without care, deliberate and in disregard of the Plaintiffs' and Class Members' health, safety and rights. An award of punitive damages in this case would accord with the goals of retribution, denunciation and deterrence.

100. The Defendants' conduct is blameworthy: it is driven by the intent and motive to profit from sales, from which significant financial gains have been made, and has persisted over a lengthy period of time. The Defendants have concealed and attempted to cover up their misconduct and have been aware that such conduct is wrong. The interest violated by the Defendants is deeply personal to the Plaintiffs and Class, specifically their bodily and mental integrity and their health.

101. In particular, the Defendants' conduct in research, development, testing, obtaining regulatory licenses, distribution, marketing and sale of Roundup® after obtaining knowledge that Roundup® and glyphosate posed a risk to health, showed complete indifference to or a conscious disregard for the safety of others justifying an award of additional damages in a sum which will serve to deter similar conduct in the future.

VII. RELIEF SOUGHT BY THE PLAINTIFFS

102. The Plaintiffs claim on behalf of themselves and the proposed Class:

(a) an Order certifying this action as a class proceeding and appointing them as Representative Plaintiffs for the Class Members under the *Class Proceedings Act*;

(b) a declaration that the Defendants owed a duty of care to the Plaintiffs and Class Members with respect to design, development, testing, distribution, marketing and sale of Roundup® in Canada;

(c) a declaration that the Defendants breached their duties of care with respect to design, development, testing, distribution, marketing and sale of Roundup® in Canada;

(d) a declaration that the Defendants were negligent in their design, development, testing, distribution, marketing and sale of Roundup® in Canada;

(e) a declaration that the Defendants breached contractual terms to provide a herbicide product that was safe for use and which was not unreasonably dangerous or which did not pose an unreasonable risk to health of Primary Class Members;

(f) a declaration that the Defendants' conduct in promoting their business interests, and in knowingly or recklessly making representations to the public that were false or misleading in material respects, is contrary to s. 52(1) of the *Competition Act*, R.S.C. 1985, c. C-34;

(g) a declaration that each of the Defendants is vicariously liable for the acts and omissions of its officers, directors, agents, employees and representatives;

(h) pecuniary and special damages for the Class;

(i) non-pecuniary damages for the Class;

(j) damages pursuant to the applicable family law statutes or equivalent legislation or common law in other provinces and territories for each Family Law Class Member;

(k) punitive and exemplary damages;

(l) the costs of administering requisite notice programs and distributing all monies received to Class Members;

(m) recovery of health care costs incurred by the Nova Scotia Department of Health pursuant to the *Health Services and Insurance Act*, R.S.N.S. 1989, c. 197, and by other provincial and territorial jurisdictions pursuant to comparable legislation in the other provinces and territories;

(n) pre-judgment interest and post-judgment interest, compounded, or pursuant to the *Judicature Act*, R.S.N.S., 1989, c. 240;

(o) costs on a substantial indemnity basis, plus applicable taxes; and

(p) such further and other relief as this Honourable Court deems just.

VIII. STATUTES RELIED UPON

103. The Plaintiffs rely upon the following statutes and regulations:

(a) *Class Proceedings Act*, S.N.S. 2007, c. 28;

(b) *Competition Act*, R.S.C. 1985, c. C-34;

(c) *Fatal Injuries Act*, R.S.N.S. 1989, c. 163 and equivalent legislation in other provinces and territories;

(d) *Health Services and Insurance Act*, R.S.N.S. 1989, c. 197 and equivalent legislation in other provinces and territories;

(e) *Judicature Act*, R.S.N.S., 1989, c. 240;

(f) *Pest Control Products Act*, S.C. 2002, c. 28;

(g) *Pest Control Products Regulations*, SOR/2006-124;

(h) *Survival of Actions Act*, R.S.N.S. 1989, c. 453 and equivalent legislation in other provinces and territories.

PLACE OF TRIAL: Halifax, Nova Scotia

DATED at Halifax, Nova Scotia this 4th day of July, 2019.

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