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Titre : Defendants' Joint Application for leave to adduce relevant evidence and to examine the Applicant

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CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

N° : 500-06-001399-258

SUPERIOR COURT
(Class Actions Division)

ALAIN BESTAVROS

Applicant

v.

BAYER INC.
and
THE SCOTTS COMPANY, LLC
and
BAYER CROPSCIENCE INC.
and
SCOTTS CANADA LTD

Defendants

**DEFENDANTS' JOINT APPLICATION FOR LEAVE TO ADDUCE RELEVANT
EVIDENCE AND TO EXAMINE THE APPLICANT**
(Articles 12 and 574(3) CCP)

**TO THE HONOURABLE ENRICO FORLINI, J.S.C., ACTING AS THE DESIGNATED
JUDGE IN THE PRESENT CASE, DEFENDANTS RESPECTFULLY SUBMIT THE
FOLLOWING:**

I. INTRODUCTION

1. The Defendants hereby seek leave of this Honourable Court to adduce as relevant evidence i) the sworn statement of James Guard, Global Commercial Lead for the Roundup Consumer Lawn & Garden at Bayer CropScience LLC, along with the exhibits attached in support thereof, and ii) the sworn statement of Geneviève Potvin, Director, Regulatory Affairs & Stakeholder Relations, at Scotts Canada Ltd., along with the exhibits attached in support thereof. The Defendants also seek leave to examine the applicant Alain Bestavros (the "**Applicant**"), for a maximum of forty-five (45) minutes;
2. The Defendants respectfully submit that this relevant evidence will complete the evidence already filed by the Applicant in support of the Application for Authorization (as defined hereafter) and will more importantly: i) allow this Court to undertake an informed analysis to evaluate the criteria set forth in article 575 of the *Code of Civil Procedure* (the "**CCP**"), and ii) aim to demonstrate that the

Application for Authorization fails to meet the criteria set forth in articles 575(2) and 575(4) CCP;

II. DESCRIPTION OF APPLICANT'S CLAIM

3. On or about July 22, 2025, the Applicant filed an *Application for authorization to institute a class action and to be granted representative status*, against the Defendants Bayer Inc., Bayer CropScience Inc., Scotts Canada Ltd. and The Scotts Company, LLC (the “**Application for Authorization**”);

4. The Applicant wishes to institute a class action on behalf of the following class:

“Tous les consommateurs domiciliés ou ayant été domiciliés (sic) au Québec qui ont acheté le produit « Roundup Advanced » depuis le 22 juillet 2022;

“All consumers domiciled or having been domiciled in Quebec who purchased the product “Roundup Advanced” since July 22, 2022;

Ou tout autre Groupe déterminé par cette honorable Cour.”

Or any other Group determined by this Honourable Court.”

5. In summary, the Applicant alleges that the Defendants advertise and market the herbicide *Roundup Advanced* as an improved version of the original glyphosate-based *Roundup* herbicide, and deliberately use *Roundup*'s reputation to sell *Roundup Advanced*;

6. The Applicant argues that the prominent use of the term “Advanced” on the *Roundup Advanced* product gives the consumer a false impression of a product that is technologically and chemically superior, or more effective, than the original *Roundup* formula¹;

7. The Applicant alleges that the Defendants breached sections 215, 218, 219, 220 and 228 of the *Consumer Protection Act*, and under sections 36 and 52 of the *Competition Act*;

8. As a result, the Applicant proposes to bring a class action for reduction of his correlative obligation and that of the putative class members, as well as for compensatory damages and punitive damages against the Defendants;

III. RELEVANCE AND NECESSITY OF THE PROPOSED EVIDENCE

9. The criteria that this Honourable Court must consider in deciding whether or not to grant the Application for Authorization are set out in article 575 CCP;

¹ Application for Authorization, para. 19.

10. Article 574, paragraph 3 CCP provides that the court may allow relevant evidence to be adduced at the authorization stage;
11. The evidence that the Defendants seek leave to adduce is both relevant to the authorization criteria and necessary to permit this Honourable Court to assess whether those criteria are met;
12. The Application for Authorization provides an incomplete and inaccurate depiction of the facts at issue and the context relevant to the proposed causes of action;
13. In fact, the Application for Authorization incorrectly alleges that:
 - (i) In Canada, the Defendants began marketing *Roundup Advanced* on or about May 4, 2021;²
 - (ii) The Defendants purportedly used the reputation of *Roundup* to market *Roundup Advanced*, which allegedly contains no active ingredients that make it an “Advanced” product;³
 - (iii) *Roundup Advanced* is supposedly merely a form of vinegar;⁴
 - (iv) The only two components present in *Roundup Advanced* are acetic acid and citric acid;⁵
 - (v) There is allegedly not enough difference to make it worthwhile to pay more for Roundup Advanced than to buy the cheapest vinegar you can find on the market;⁶
 - (vi) The Defendants supposedly failed to state clearly that *Roundup Advanced* does not attack weed roots;⁷
14. These incomplete, inaccurate and unfounded allegations need to be rectified. For this reason, it is imperative that the Defendants be authorized to complete the partial elements alleged by the Applicant in the Application for Authorization;

A. Sworn statement of James Guard and supporting exhibits

15. In order to allow this Court to determine whether Applicant meets the criterion set out by article 575(2) CCP, it is essential that this Honourable Court allow the Defendants to adduce as evidence the sworn statement of James Guard, Global Commercial Lead for the Roundup Consumer Lawn & Garden at Bayer

² Application for Authorization, para. 15.

³ Application for Authorization, paras. 18 and 30.

⁴ Application for Authorization, paras. 23, 25-27 and 49.

⁵ Application for Authorization, para. 24.

⁶ Application for Authorization, para. 36; Exhibit P-13.

⁷ Application for Authorization, para. 58.

CropScience LLC, a draft copy of which is attached as **Exhibit BC-1**, along with Exhibits JG-1, JG-2, JG-3 and JG-4 appended to the sworn statement;

16. The Defendants respectfully submit that the sworn statement of James Guard, as well as the appended exhibits, if authorized, will complete the picture concerning the relevant facts and make clear the obvious falsity of certain allegations made in the Application for Authorization by demonstrating that:
 - (i) The Defendants began marketing and distributing *Roundup Advanced* products in Canada, including Quebec, since at least as early as 2020;
 - (ii) *Roundup Advanced* is not merely a form of vinegar and contains other chemical components aside from acetic acid and citric acid;
 - (iii) The term “Acetic acid” appears prominently on the label of the various forms of *Roundup Advanced* bottles, as well as on the *Roundup* website;
 - (iv) The product information relating to *Roundup Advanced* is easily accessible online and on the *Roundup Advanced* label;
 - (v) The *Roundup Advanced* products at issue, as well as their labels, have been approved by Health Canada’s Pest Management Regulatory Agency, with no issue as to the “Advanced” nomenclature;
 - (vi) The Defendants did not claim that *Roundup Advanced* attacks weed roots;
17. Exhibit JG-1 includes the details relating to the *Roundup Advanced* products at issue, namely *Roundup Advanced Ready-to-Use* and *Roundup Advanced Ready-to-Use Pump ‘n Go*, and Exhibit JG-2 consists of label transcripts, approved by Health Canada’s Pest Management Regulatory Agency, for these same products. These documents are all available publicly through Health Canada’s pesticide product information database.
18. Exhibit JG-3 consists of *Statement of Product Specification* forms submitted to and approved by Health Canada, showing the complete and exact chemical composition of the *Roundup Advanced* products at issue, namely *Roundup Advanced Ready-to-Use* and *Roundup Advanced Ready-to-Use Pump ‘n Go*;
19. However, given the confidential and highly sensitive nature of the data on the chemical composition of the *Roundup Advanced* products, the Defendants respectfully request that a redacted version of the Exhibit JG-3 be filed in the public record, omitting the relative percentage of each chemical element composing the *Roundup Advanced* products;
20. Pursuant to article 12 CCP, the Court may make an exception to the open courts principle and issue a confidentiality and sealing order if the protection of substantial and legitimate interests requires it;

21. The public disclosure of the exact chemical composition of the *Roundup Advanced* products would prejudice the Defendants, as it would allow competitors to have access to the precise formula for these products;
22. The substantial and legitimate interests to be protected goes beyond the Defendants' commercial interests, namely because there is an important public interest in protecting trade secrets and competitively sensitive information. Specifically, the exact chemical composition of the *Roundup Advanced* products constitutes a trade secret of Bayer CropScience Inc., is not publicly known, and is competitively sensitive information. Public disclosure of this formula would cause significant commercial prejudice to Bayer CropScience Inc., as it would notably enable competitors to replicate *Roundup Advanced* products, thereby eliminating Bayer CropScience Inc's competitive advantage;
23. As noted above, the *Statement of Product Specification* forms in Exhibit JG-3 were submitted to and approved by Health Canada, however these forms are confidential at Health Canada pursuant to section 43(4) and (5) of the *Pest Control Products Act*. This designation reinforces the confidential nature of these forms;
24. The confidentiality and sealing order sought is therefore proportional and essential to prevent the serious risk of public disclosure of information that constitutes a trade secret and protect Bayer CropScience Inc. from having its competitors access highly sensitive information relating to the chemical formula for *Roundup Advanced* products;
25. Exhibit JG-4 includes excerpts taken from the *Roundup* Canadian website, available before and during the time that Applicant allegedly conducted his online research and purchased the *Roundup Advanced* product (i.e. September 4, 2024);
26. Certain excerpts from Exhibit JG-4 complete the incomplete Exhibit P-9 filed by Applicant in support of the Application for Authorization;
27. These excerpts (Exhibit JG-4) are publicly available on the following pages of the *Roundup* Canadian website:
 - o *Roundup Product Selection Guide*⁸ (English) / *Guide de sélection des produits Roundup*⁹ (French)
 - o *Roundup Advanced Weed Control Ready-To-Use Pump n' Go Spray (5L)*¹⁰ (English) / *Roundup Advanced suppression des mauvaises herbes et des graminées à pulvériser avec applicateur Pump N Go (5L)*¹¹ (French)

⁸ <https://roundup.com/en-ca/product-selection-guide/roundup-product-selection-guide.html>

⁹ <https://roundup.com/fr-ca/guide-de-s%C3%A9lection-de-produits/roundup-product-selection-guide.html>

¹⁰ <https://roundup.com/en-ca/shop/shop-all/5024304.html>

¹¹ <https://roundup.com/fr-ca/magasiner/tous-les-produits/roundup-advanced-weed-control.html?srsId=AfmBOoadOuPYZfk8Ep2qUS-TUcVwryLo-i04ypfov5FDSL-MCh8oCrc>

28. The draft sworn statement attached as Exhibit BC-1, along with its supporting exhibits, present neutral, objective facts that are crucial to the Court's filtering role at the authorization stage, and are both relevant and necessary to demonstrate that the facts alleged in the Application for Authorization do not justify the conclusions sought (575(2) CCP);

B. Excerpts from the Government of Canada website

29. It is also essential that this Honourable Court allow the Defendants to adduce as evidence various excerpts from the Government of Canada website, attached as **Exhibit BC-2**, summarizing Health Canada's regulatory process for evaluating, registering and monitoring pesticides in Canada;
30. These excerpts show that Health Canada's Pest Management Regulatory Agency is responsible for this regulatory process, which notably includes ensuring that pesticides meet all prescribed requirements while effectively preventing or managing pests, as well as reviewing and approving labels;
31. This publicly available information presents neutral, objective facts that are crucial to the Court's filtering role at the authorization stage, and are both relevant and necessary to demonstrate that the facts alleged in the Application for Authorization do not justify the conclusions sought (575(2) CCP);

C. Sworn statement of Geneviève Potvin and supporting exhibits

32. The sworn statement of Geneviève Potvin likewise meets the criterion set out in article 575(2) CCP. In particular, it clarifies the relationship between Bayer Inc. and Bayer CropScience Inc. (collectively, "**Bayer**"), on the one hand, and Scotts Canada Ltd. and The Scotts Company, LLC (collectively, "**Scotts**"), on the other hand, and it provides necessary and relevant facts concerning the product labels and advertisements used to market Roundup Advanced at Canadian retailers and independent garden centers. These critical facts are not addressed by the Application for Authorization and demonstrate that, regardless of the merits of the Applications claims, Scotts is not a proper party to this proceeding;
33. In particular, the sworn statement of Geneviève Potvin clarifies that:
- (i) Roundup Advanced is a registered trademark of Monsanto Technology LLC, an affiliate of Bayer (Exhibit GP-1);
 - (ii) The Scotts Company, LLC merely acts as an agent for Monsanto Company ("**Monsanto**"), an affiliate of Bayer CropScience Inc. (Exhibit GP-2) in connection with the distribution of the *Roundup Advanced* products;
 - (iii) Bayer CropScience Inc. is the registrant with Health Canada for *Roundup Advanced* Products;

- (iv) Monsanto is the owner, developer and holder of title of Roundup Advanced and is the exclusive owner of all rights, patents, licenses and trademarks associated to it;
 - (v) Scotts cannot hold itself out as authorized to make on behalf of Monsanto any oral or written warranty regarding Roundup Advanced, without written consent of Monsanto; and
 - (vi) Monsanto is solely responsible for ensuring all Roundup Advanced labels comply with applicable laws and regulations and must review and approve any material change in consumer communication or any other marketing tactic that impacts consumer perception.
34. Exhibits GP-3 and GP-4 contain English and French copies of labels, sell sheets, and banners, as approved by Monsanto. The sell sheets and banners are distributed to Canadian retailers and independent garden centers for display to consumers. Critically, these exhibits clearly show the information presented to consumers, which clearly undermines Applicant's claims that the Defendants misled or otherwise concealed Roundup Advanced's chemical composition or misled consumers as to the differences between it and the original Roundup;

D. Examination of the Applicant

35. In addition to the filing of the sworn statements of James Guard and Geneviève Potvin and the exhibits attached to them, the Defendants hereby seek permission to examine the Applicant for a maximum of forty-five (45) minutes prior to the authorization hearing on the Application for Authorization;
36. The examination of the Applicant is both relevant and necessary in allowing this Honourable Court to verify if the criteria set out by article 575 CCP are met, and more specifically, if the facts alleged in the Application for Authorization justify the conclusions sought (575(2) CCP), and if the Applicant is in a position to properly represent the class members (575(4) CCP);
37. More specifically, the Defendants seek leave to examine the Applicant on the following subjects:
- (i) The circumstances surrounding the purchase of *Roundup* and *Roundup Advanced* by the Applicant;
 - (ii) The extent of the Applicant's research prior to purchasing the *Roundup Advanced* product;
 - (iii) The Applicant's ability to adequately act as class representative;

38. The examination would allow the Court to assess whether the criteria set out in article 575 CCP are met;
39. The allegations contained in the Application for Authorization indicate that the Applicant purchased a one-litre bottle of *Roundup Advanced* on September 4, 2024¹², but there is no allegation pertaining to the circumstances surrounding the purchase of this product;
40. Moreover, the Application for Authorization contains a general allegation comparing the *Roundup* product to the *Roundup Advanced* product¹³, along with comparative images of these two products,¹⁴ without ever explaining the circumstances surrounding the purchase of the *Roundup* product by the Applicant;
41. These circumstances, including the date of purchase, the consultation of the product label, and other information relating to the Applicant's purchase experience, are essential in determining if the Applicant has an arguable case for false or misleading representations;
42. It is also necessary for the Court to understand the extent of research conducted by the Applicant prior to purchasing the *Roundup Advanced* product. In fact, the Applicant alleges that while researching online, he was made aware of the original *Roundup*'s reputation and discovered *Roundup Advanced*, which he believed was an improved version.¹⁵ However, there is no allegation describing, even minimally, the extent of research conducted by the Applicant in regards to the *Roundup* and *Roundup Advanced* products;
43. This is essential to determine if the Applicant consulted the online information available on the *Roundup* website prior to purchasing *Roundup Advanced*, and more generally, if the Applicant has an arguable case against the Defendants for false or misleading representations;
44. Finally, other than alleging that the Applicant has "excellent knowledge of the facts giving rise to his and the members' claims" (our translation),¹⁶ the Application for Authorization does not include any detail relating to the Applicant's knowledge of the *Roundup Advanced* label when he purchased the product;
45. For these reasons, it is essential that this Honourable Court allow the Defendants to examine the Applicant. This will provide the Court with indispensable and otherwise unavailable information allowing it to verify if the criteria set out by article 575 CCP are met;

¹² Application for Authorization, paras. 43 and 44; Exhibit P-14.

¹³ Application for Authorization, para 53.

¹⁴ Exhibit P-15.

¹⁵ Application for Authorization, paras. 40 and 42.

¹⁶ Application for Authorization, para. 83 c).

46. The requested examination complies with the criteria of relevance and proportionality due to its limited nature in terms of duration and scope, focusing solely on three (3) specific and limited topics;

IV. CONCLUSION

47. Without leave to adduce the proposed relevant evidence and to examine the Applicant, the Defendants would be prevented from fully making their defence to contest the Application for Authorization and demonstrate that the facts alleged do not appear to justify the conclusions sought against them, and that the Applicant is in no position to properly represent the class members;
48. It is thus in the interest of justice that leave to file the requested relevant evidence be granted;
49. Such proposed evidence complies with the criteria of relevance and proportionality and provided for in articles 18 and 19 of the CCP.

FOR THESE REASONS, MAY IT PLEASE THIS HONORABLE COURT TO:

GRANT the present *Application for leave to adduce relevant evidence and to examine the applicant*;

AUTHORIZE the defendants to file into the public record an executed sworn statement substantially similar to the draft sworn statement communicated as **Exhibit BC-1** hereto, along with its supporting Exhibit JG-1, Exhibit JG-2, Exhibit JG-3 with the chemical composition redacted, and Exhibit JG-4, within 30 days of the judgment on the present application;

AUTHORIZE the defendants to file under seal an unredacted version of the *Statement of Product Specification* forms (Exhibit JG-3), within 30 days of the judgment on the present application;

AUTHORIZE the defendants to file into the public record the various excerpts from the Government of Canada website communicated as Exhibit **Exhibit BC-2** hereto;

AUTHORIZE the defendants to file an executed sworn statement substantially similar to the draft sworn statement communicated as **Exhibit SC-1** hereto, along with its supporting Exhibits GP-1, GP-2, GP-3 and GP-4, within 30 days of the judgment on the present application;

AUTHORIZE the examination of the applicant, Mr. Alain Bestavros, on the following topics:

- (i) The circumstances surrounding the purchase of *Roundup* and *Roundup Advanced* by the Applicant;

- (ii) The extent of the Applicant's research prior to purchasing the *Roundup Advanced* product;
- (iii) The Applicant's ability to adequately to act as a class representative;

ORDER that the examination of the applicant, Mr. Alain Bestavros, be limited to forty-five (45) minutes and take place at a date a time to be determined by the Court;

THE WHOLE without legal costs, save in case of contestation.

Montréal, February 20, 2026

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ALAIN BESTAVROS

TAKE NOTICE that the *Defendants' Joint Application for Leave to Adduce Relevant Evidence and to Examine the Applicant* (Article 574(3) CCP) shall be presented before the Honorable Enrico Forlini, J.C.S., of the Superior Court of Québec, sitting in and for the district of Montreal, at a time and place to be determined by the Court.

Montréal, February 20, 2026

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**PROVINCE OF QUEBEC
DISTRICT OF MONTREAL**

N° : 500-06-001399-258

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ALAIN BESTAVROS

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v.

BAYER INC.
and
THE SCOTTS COMPANY, LLC
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BAYER CROPSCIENCE INC.
and
SCOTTS CANADA LTD

Defendants

**LIST OF EXHIBITS IN SUPPORT OF THE DEFENDANTS' JOINT APPLICATION
FOR LEAVE TO ADDUCE RELEVANT EVIDENCE**
(Article 574(3) CCP)

Exhibit BC-1: Draft Sworn Statement of James Guard
Exhibit BC-2: Excerpts from the Government of Canada website
Exhibit SC-1: Draft Sworn Statement of Geneviève Potvin

Montréal, February 20, 2026

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Objet: NOTIFICATION: Defendants' Joint Application for leave to adduce relevant evidence and to examine the Applicant/Alain Bestavros vs. Bayer Inc. and The Scotts Company et al./500-06-001399-258/Our file: G10076546 [GWLG-ACTIVE_CA.FID31240234]
Pièces jointes: Application for leave to adduce relevant evidence and to examine the Applicant.pdf

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DATE: February 20, 2026

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IDENTIFICATION OF THE FILE AND NATURE OF THE DOCUMENT TRANSMITTED:

Court file no	500-06-001399-258
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Nature of the document	Defendants' Joint Application for leave to adduce relevant evidence and to examine the Applicant
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Objet: Relayé : NOTIFICATION: Defendants' Joint Application for leave to adduce relevant evidence and to examine the Applicant/Alain Bestavros vs. Bayer Inc. and The Scotts Company et al./500-06-001399-258/Our file: G10076546 [GWLG-ACTIVE_CA.FID31240234]

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ALAIN BESTAVROS
Applicant
v.
BAYER INC.
and
THE SCOTTS COMPANY, LLC
and
BAYER CROPSCIENCE INC.
and
SCOTTS CANADA LTD
Defendants

BL0052

**DEFENDANTS' JOINT APPLICATION FOR LEAVE
TO ADDUCE RELEVANT EVIDENCE AND TO EXAMINE THE
APPLICANT, NOTICE OF PRESENTATION AND LIST OF
EXHIBITS**

ORIGINAL

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