CANADA

PROVINCE OF QUEBEC
DISTRICT OF QUEBEC

(Class Action)

SUPERIOR COURT

NO: 200-06-000230-196

LILIANE PAQUETTE

Plaintiff

v

MONSANTO CANADA ULC, legal person with its registered office at Dentons Canada LLP, 2900 Manulife Place, 10180-101 Street, Edmonton, Alberta, T5J 3V5;

-and-

MONSANTO COMPANY, legal person with its headquarters and principal place of business at 800 North Lindbergh Boulevard, St Louis, Missouri, USA, 63167;

-and-

BAYER INC, legal person with its registered office at 2920 Matheson Boulevard East, Mississauga, Ontario, L4W 5R6

Defendants

APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION AND TO OBTAIN THE STATUS OF REPRESENTATIVE
(Articles 574 and following of the *Code of Civil Procedure*)

TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN AND FOR THE DISTRICT OF QUEBEC, THE PLAINTIFF RESPECTFULLY STATES THE FOLLOWING:

1. **The Plaintiff seeks from this Honourable Court authorization to institute a class action on behalf of all people forming part of the Class hereinafter described and of which the Plaintiff is a member, namely:**

> All individuals resident in Quebec who were diagnosed with non-Hodgkin's lymphoma after having used and/or been exposed to Roundup® between 1976 and the date of the judgment authorizing this class action and their successors. ("Class Members").

2. **The facts on which the Plaintiff's personal claim against the Defendants is based, are as follows:**

2.1 The Plaintiff is before this Honourable Court because the Defendants have breached their obligations, particularly (i) by misrepresenting the safety of Roundup® and its active ingredient, glyphosate; and, (ii) by failing to properly, adequately, and fairly warn of the risks of using and/or being exposed to Roundup® and its active ingredient, glyphosate, as well the magnitude of these risks.

A. THE DEFENDANTS

2.2 The Defendant Monsanto Company is a Delaware corporation with its headquarters and principal place of business in St Louis, Missouri.

2.3 The Defendant Monsanto Canada ULC is an Alberta corporation with its registered office in Edmonton, Alberta. It is the Canadian division of the Defendant Monsanto Company.

2.4 The Defendant Bayer Inc is a federal corporation with its registered office in Mississauga, Ontario. It is the Canadian subsidiary of Bayer AG.

2.5 On or around June 7, 2018, Bayer AG acquired the Defendants Monsanto Company and Monsanto Canada ULC.

2.6 At all material times, one or more of the Defendants, including their affiliated corporations, were (i) the entity that discovered the herbicidal properties of glyphosate; (ii) the manufacturer of Roundup®; and, (iii) the world's leading producer of glyphosate.

2.7 At all material times, the Defendants were engaged in the business of designing, manufacturing, developing the formula for, preparing, processing, inspecting, testing,

packaging, promoting, marketing, distributing, labelling, and/or selling for a profit, either directly or indirectly through an agent, affiliate, predecessor or subsidiary, Roundup® in Canada.

B. GLYPHOSATE

2.8 Glyphosate is a broad-spectrum, non-selective herbicide that is used worldwide in a wide variety of herbicidal products. It was first synthesized in 1950 as a potential pharmaceutical compound; its herbicidal properties were not discovered until it was re-synthesized and tested in 1970.

2.9 Plants that are treated with glyphosate absorb the systemic herbicide through their leaves. Once absorbed, glyphosate interferes with a plant's ability to form the aromatic amino acids necessary for protein synthesis, typically killing the plant within two to three days. Due to the fact that plants absorb glyphosate, it cannot be completely removed by washing or peeling produce or milling, baking or brewing grains.

C. THE DISCOVERY OF GLYPHOSATE AND DEVELOPMENT OF ROUNDUP®

2.10 After discovering the herbicidal properties of glyphosate in 1970, the Defendants began marketing it in products in 1974 under the brand name Roundup®.

2.11 As the first glyphosate-based herbicide introduced to the market, Roundup® was touted as a technological breakthrough: it could kill almost every weed without causing harm to people or to the environment. Within a few years of its launch, the Defendants were marketing Roundup® in 115 countries.

2.12 From the outset, the Defendants marketed Roundup® as a "safe" general-purpose herbicide for widespread commercial and consumer use. The Defendants continue to market Roundup® as a "safe" herbicide today.

D. REGISTRATION OF ROUNDUP® WITH HEALTH CANADA'S PEST MANAGEMENT REGULATORY AGENCY

2.13 In Canada, the manufacture, possession, handling, storage, transportation, importation, distribution, and use of herbicides, such as Roundup®, are regulated under the *Pest Control Products Act*, SC 2002, c 28. The *Pest Control Products Act* requires that all herbicides be registered with Health Canada's Pest Management Regulatory Agency (the "Agency") prior to their manufacture, possession, handling, storage, transportation, importation, distribution, and/or use, except as otherwise authorized under the Act.

2.14 Herbicides, such as Roundup®, are stringently regulated in Canada to ensure that they pose no more than a minimal risk to human health and the environment. For this reason, as part of its registration process, the Agency requires, among other things, a variety of tests to evaluate the health and environmental risks and the value of the herbicide product. The *Pest Control Products Act* thus requires the Agency to conduct a risk-benefit analysis in determining whether an application for registration should be allowed.

2.15 Registration with the Agency is not an assurance or finding of safety. The determination that the Agency must make when registering or re-evaluating a herbicide product is not that the product is "safe," but rather that the health and environmental risks as well as the value of the herbicide product are acceptable. Pursuant to s 2(2) of the *Pest Control Products Act*, the health or environmental risks of a herbicide product are "acceptable" if there is reasonable certainty that no harm to human health, future generations or the environment will result from exposure to or use of the product, taking into account its conditions or proposed conditions of registration.

2.16 Roundup® has been registered for manufacture, possession, handling, storage, transportation, importation, distribution, and use in Canada since 1976. In 2017, after a regular re-evaluation process, the Agency reapproved Roundup® for manufacture, possession, handling, storage, transportation, importation, distribution, and use in Canada.

2.17 The *Pest Control Products Regulations*, SOR/2006-124, generally require that applicants for registration, the Defendants in the case of Roundup®, provide to the Agency, among other things, any information that the Agency may require to evaluate the health and environmental risks and the value of the herbicide product, including the results of any relevant scientific investigations.

2.18 In order to secure registration for Roundup® with the Agency, both initially and during regular re-evaluation processes, the Defendants led a prolonged campaign of misinformation and scientific fraud and deception to convince the Agency that Roundup® was "safe." The Defendants championed falsified data, attacked legitimate studies revealing the dangers of glyphosate, and improperly influenced the evidence that the Agency relied on to approve and reapprove the registration of Roundup®.

E. SCIENTIFIC FRAUD AND DECEPTION UNDERLYING THE MARKETING AND SALE OF ROUNDUP®

2.19 The Agency is not the only target of the Defendants' prolonged campaign of misinformation and scientific fraud and deception. The Defendants have led this campaign of misinformation and scientific fraud and deception worldwide to

convince consumers, farmers, businesses, and government agencies everywhere that Roundup® is safe.

2.20 Relying on early studies that glyphosate could cause cancer in laboratory animals, the US Environmental Protection Agency ("EPA") originally classified glyphosate as "possibly carcinogenic to humans" in 1985. After pressure from the Defendant Monsanto Company, including contrary studies it provided to the EPA, the EPA changed its classification to "evidence of non-carcinogenicity in humans" in 1991. In so classifying glyphosate, however, the EPA emphasized that the classification was based on the evidence available at the time of evaluation and should not be interpreted as a definitive conclusion that glyphosate would not be a carcinogen under any circumstances.

2.21 In addition to pressuring government agencies, the Defendants also concealed the results of relevant scientific investigations from government agencies. For example, the Defendant Monsanto Company led a study titled "Lifetime Carcinogenicity Study in Mice" and dated December 26, 1984. This study demonstrated a statistically significant increase in malignant lymphomas in male mice exposed to glyphosate. No evidence suggests that this study was ever submitted to a government agency.

2.22 On two occasions, the EPA found that the laboratories hired by the Defendant Monsanto Company to test the toxicity of its Roundup® products for US registration purposes (Industrial Bio-Test Laboratories and Craven Laboratories) committed fraud. In the first instance, in 1976, the EPA and the United States Food and Drug Administration found discrepancies between the raw data and the final report relating to the toxicological impacts of glyphosate; invalid toxicology studies; and, "routine falsification of data." In the second instance, in 1991, the EPA found further data falsification.

2.23 In order to convince consumers, farmers, businesses, and government agencies everywhere that Roundup® is safe, the Defendants have also relied on ghostwritten studies. Since 2000, the Defendants have ghostwritten and/or published multiple studies through companies such as Exponent, Inc and the Canadian firm Intertek Group PLC, minimizing any safety concerns related to Roundup® and its active ingredient, glyphosate. These studies include Williams (2000); Williams (2012); Kier & Kirkland (2013); Kier (2015); Bus (2016); Chang (2016); and, the Intertek "independent expert panel" papers. These studies were submitted to and relied upon by the public and government agencies, including the Agency, in assessing the safety of Roundup® and glyphosate. Through these ghostwritten studies, the Defendants have fraudulently represented that independent experts have concluded that Roundup® and glyphosate are safe. In fact, these "independent" experts were paid by the Defendants and failed to disclose the Defendants' significant role in creating the studies.

2.24 In addition to the ghostwritten studies, the Defendants have also (i) ghostwritten editorials for experts such as Robert Tarone and Henry Miller to advocate for the safety of Roundup® and glyphosate in newspapers and magazines; and, (ii) ghostwritten letters by "independent" experts to submit to government agencies reviewing the safety of Roundup® and glyphosate.

2.25 Where the Defendants have not been able to falsify or ghostwrite studies, editorials and letters to misrepresent the safety of Roundup® and glyphosate, they have exercised improper influence. For example, in 2011, Germany's Federal Institute for Risk Assessment began preparing a study on the safety of glyphosate. The Glyphosate Task Force, a consortium of companies that have joined resources and efforts to renew European glyphosate registration, was solely responsible for preparing and submitting the summaries of studies relied upon by Germany's Federal Institute for Risk Assessment. Through the Glyphosate Task Force, the Defendants were able to coopt this study, becoming the sole providers of data and ultimately writing the report, which was rubber-stamped by Germany's Federal Institute for Risk Assessment. The Defendants have used this report, which they wrote, to falsely proclaim the safety of Roundup® and glyphosate.

F. THE IMPORTANCE OF ROUNDUP® TO THE DEFENDANTS' MARKET DOMINANCE

2.26 The success of Roundup® has been essential to the Defendants' market dominance. From the launch of Roundup® in 1974, Roundup® sales were successful and were increasing yearly. To maintain their market dominance and to ward off competition, in advance of their US patent for glyphosate expiring in 2000, the Defendants began the development and sale of genetically engineered Roundup Ready® seeds in 1996. As Roundup Ready® crops are resistant to glyphosate, farmers can apply Roundup® to their fields during the growing season without harming the crops.

2.27 The development and sale of Roundup Ready® seeds allowed the Defendants to expand the market for Roundup® even further. By 2000, the Defendant's biotech Roundup Ready® seeds were planted on more than 80 million acres worldwide.

2.28 Through a strategy of decreased prices, increased production, and the coupling of proprietary Roundup Ready® seeds with Roundup® herbicide, Roundup® became the Defendants' most profitable product and the Defendants secured their dominant share of the glyphosate market. In 2000, Roundup® accounted for nearly $2.8 billion in sales, outselling other herbicides by a margin of five to one and accounting for almost half of the Defendants' revenue.

2.29 Since 2007, Roundup® and other glyphosate-based herbicides have consistently had the highest sales volume of all herbicides sold in Canada, with over 25,000,000 kg of active ingredients sold per year. In 2011, the global consumption of Roundup® and

other glyphosate-based herbicides was estimated at 650,000,000 kg of active ingredients per year and increasing. By 2013, Roundup® and other glyphosate-based herbicides were the most widely used herbicides worldwide. Today, glyphosate remains one of the world's largest herbicides in terms of sales volume.

G. THE INTERNATIONAL AGENCY FOR RESEARCH ON CANCER'S REASSESSMENT OF GLYPHOSATE

2.30 The International Agency for Research on Cancer ("IARC") is an intergovernmental agency forming part of the World Health Organization. Its role is to conduct and coordinate research into the causes of cancer. Its Monographs Programme identifies and publishes information about carcinogenic hazards to humans.

2.31 To date, the IARC Monograph Program has reviewed 980 agents. Of the 980 agents it has reviewed, the IARC has classified 116 agents as known human carcinogens (Group 1); 73 agents as probable human carcinogens (Group 2A); 287 agents as possible human carcinogens (Group 2B); 503 agents as not classifiable as to their carcinogenicity to humans (Group 3); and, one agent as probably not carcinogenic to humans (Group 4).

2.32 The IARC's assessments of agents are performed by panels of international experts (i.e., Working Groups), selected on the basis of their expertise and the absence of actual or apparent conflicts of interest.

2.33 In assessing an agent, the IARC Working Group reviews and considers the following information:

(a) human, experimental, and mechanistic data;

(b) all pertinent epidemiological studies and cancer bioassays; and,

(c) representative mechanistic data.

2.34 The IARC Working Group generally only reviews and considers studies that have been published or accepted for publication in openly available scientific literature. Under some circumstances, the IARC Working Group may review materials that are publicly available and whose content is final if there is sufficient information to permit an evaluation of the quality of the methods and results of the studies (for example, government reports and databases, doctoral theses, etc.).

2.35 In March 2015, a Working Group of 17 independent experts from 11 countries met over the course of eight days at the IARC to reassess the carcinogenicity of several herbicides, including glyphosate. This meeting culminated several months of comprehensive review of the latest available scientific evidence, including studies related to occupational exposure of farmers, tree nursery workers, forestry workers,

and municipal weed-control workers and para-occupational exposure of farming families.

2.36. In its assessment of glyphosate, the Working Group identified several case-control studies – American, Canadian, and Swedish – showing statistically significant increased risks of non-Hodgkin's lymphoma in association with occupational exposure to glyphosate – even after adjustment for other pesticides.

2.37 The Working Group also identified several studies that detected glyphosate in the urine of agricultural workers and in human blood, indicating absorption.

2.38 The Working Group noted strong evidence that glyphosate causes genotoxicity, including several studies linking glyphosate to DNA and chromosomal damage.

2.39 A summary of the Working Group's findings was published in *The Lancet Oncology*. The summary states that glyphosate is a probable human carcinogen (Group 2A).

2.40 On July 29, 2015, the IARC issued its monograph for glyphosate, Monograph 112. This monograph states (i) that there is limited evidence in humans for the carcinogenicity of glyphosate; (ii) that there is a positive association between glyphosate and non-Hodgkin's lymphoma; (iii) that there is sufficient evidence in experimental animals for the carcinogenicity of glyphosate; and, (iv) that glyphosate is probably carcinogenic to humans.

H. THE DEFENDANTS' CONDUCT AFTER THE IARC'S 2015 REASSESSMENT

2.41 Despite the IARC's 2015 findings with respect to glyphosate, the Defendants continue to falsely proclaim the safety of Roundup® and its active ingredient, glyphosate.

2.42 Since the publication of the IARC's 2015 findings with respect to glyphosate, the Defendants have strengthened their efforts to defend Roundup® and glyphosate, and undermine the IARC reassessment. These efforts include:

(i) directing the Joint Glyphosate Task Force to issue a press release sharply criticizing the IARC's reassessment, stating that the IARC's conclusion was "baffling" and falsely claiming that the IARC "did not consider any new or unique research findings when making its decision," excluded certain available scientific information, and adopted a different approach to interpreting the studies;

(ii) writing to the state of California in October 2015 to stop it from warning the public about the carcinogenicity of glyphosate, arguing that the IARC reassessment is mistaken; and,

(iii) ghostwriting and/or publishing multiple studies through Canadian firm Intertek Group PLC that ultimately defended Roundup® and glyphosate.

2.43 Through Intertek Group PLC, the Defendants improperly influenced and/or ghostwrote five studies published in 2016, including a review article. Intertek Group PLC set and coordinated four "independent expert panels" to publish these papers in the journal *Critical Reviews in Toxicology*.

2.44 Each of these five papers published in 2016 claims to have been written by independent experts and states that none of the Defendants' employees or lawyers reviewed the papers prior to publication. However, the Defendants closely followed and controlled the evolution of these articles and even wrote and/or edited passages. The panels put together by Intertek Group PLC did not have the level of independence that the Defendants claimed.

2.45 Ultimately, the 15 researchers making up the four "independent expert panels" put together by Intertek Group PLC unanimously concluded that glyphosate was not a carcinogen. Twelve of these 15 researchers had previously worked as consultants for the Defendants, and two have now admitted that they were paid directly by the Defendants.

2.46 The five papers published in 2016 were noticed and relied upon by government agencies. For example, Health Canada's Pest Management Regulatory Agency cited the papers in its references when it re-approved glyphosate in 2017 – a decision based in large part on studies influenced or written by the Defendants.

I. THE DEFENDANTS HAVE KNOWN FOR DECADES THAT THEY ARE FALSELY PROCLAIMING THE SAFETY OF ROUNDUP®

2.47 The Defendants have known for decades that they are falsely proclaiming the safety of Roundup® and glyphosate.

2.48 In 1996, the New York Attorney General filed a lawsuit against the Defendant Monsanto Company with respect to its false and misleading advertising of Roundup®. Specifically, the lawsuit challenged the Defendant Monsanto Company's general representations that its spray-on glyphosate-based herbicides, including Roundup®, were "safer than table salt" and "practically non-toxic" to mammals, birds, and fish. The New York Attorney General found that the following representations with respect to the human and environmental safety of Roundup®, among others, were deceptive and misleading:

(a) that Roundup® is environmentally friendly, biodegradable, and will not build up in the soil;

(b) that Roundup® biodegrades into naturally occurring elements;

(c) that Roundup® stays where it is applied and does not wash or leach to harm customers' desirable vegetation;

(d) that Roundup® bonds tightly to soil particles, staying where it is applied, and biodegrades into natural products soon after application;

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

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

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

(h) that Roundup® can be used "where kids and pets will play and breaks down into natural material."

2.49 On November 19, 1996, the Defendant Monsanto Company entered into an Assurance of Discontinue with the New York Attorney General in which it agreed, among other things, "to cease and desist from publishing or broadcasting any advertisements [in New York] that represent, directly or by implication" that:

(a) its glyphosate-based herbicide products or any component thereof are safe, non-toxic, harmless or free from risk;

(b) its glyphosate-based herbicide products or any component thereof are biodegradable;

(c) its glyphosate-based herbicide products or any component thereof stay where they are applied under all circumstances and will not move through the environment by any means;

(d) its glyphosate-based herbicide products or any component thereof are "good" for the environment or are "known for their environmental characteristics";

(e) its glyphosate-based herbicide products or any component thereof are safer or less toxic than common consumer products other than herbicides; and,

(f) its glyphosate-based herbicide products or any component thereof might be classified as "practically non-toxic."

2.50 Outside of the state of New York, the Defendants did not alter its advertising in the same manner.

2.51 In 2009, France's highest court ruled that the Defendant Monsanto Company had not been truthful about the safety of Roundup®, affirming an earlier judgment that the Defendant Monsanto Company had falsely advertised Roundup® as "biodegradable" and as leaving "the soil clean."

J. RECENT WORLDWIDE BANS ON THE SALE AND USE OF ROUNDUP®/ GLYPHOSATE

2.52 A number of cities, counties, states, and countries around the world have taken steps to either restrict or ban the sale and/or use of Roundup® and other glyphosate-based herbicides, both before and since the IARC first announced its assessment for glyphosate in March 2015. More cities, counties, states, and countries will likely follow suit as the dangers of using and being exposed to Roundup® become more widely known.

2.53 In April 2014, the Netherlands issued a ban on all glyphosate-based herbicides, including Roundup®. In issuing this ban, Esther Ouwehand, the Dutch Parliamentarian responsible for introducing the successful legislation, stated, "In garden centres, Roundup® is promoted as harmless, but unsuspecting customers have no idea what the risks of this product are. Especially children are sensitive to toxic substances and should therefore not be exposed to it."

2.54 Following the IARC assessment for glyphosate, France banned the private sale of Roundup® and other glyphosate-based herbicides and committed to banning Roundup® and glyphosate-based herbicides for 85 percent of uses.

2.55 Other cities, counties, states, and countries around the world that have taken steps to either restrict or ban the sale and/or use of Roundup® and other glyphosate-based herbicides include more than 400 towns and cities in Argentina; Bermuda; Brussels; Vancouver; the Czech Republic; Denmark; El Salvador; the Indian states of Punjab and Kerala; Italy; Portugal; and, Miami.

K. THE FAULT OF THE DEFENDANTS

2.56 The Defendants, directly or indirectly, caused Roundup® products to be sold, distributed, packaged, labelled, marketed, promoted, used and/or handled by the Plaintiff and the Class Members.

2.57 At all material times, the Defendants had a legal obligation to:

(a) exercise reasonable care in the design, research, manufacture, marketing, advertisement, supply, promotion, packaging, sale, and distribution of Roundup® products;

(b) take all reasonable steps necessary to manufacture, promote, sell, and/or distribute a product that was not unreasonably dangerous to those who use it and/or are exposed to it;

(c) ensure that their Roundup® products were safe and fit for intended and/or reasonably foreseeable use;

(d) conduct appropriate testing to determine that their Roundup® products were fit for intended and/or reasonably foreseeable use;

(e) provide accurate, true, and correct information concerning the risks of using and/or being exposed to Roundup® and its active ingredient, glyphosate;

(f) properly, adequately, and fairly warn of the risks of using and/or being exposed to Roundup® and its active ingredient, glyphosate, as well as the magnitude of these risks;

(g) ensure that users of Roundup® as well as the general public were kept fully and completely informed of all defects and risks associated with Roundup® and its active ingredient, glyphosate, in a timely manner;

(h) monitor, investigate, evaluate and follow up on reports of possible risks associated with Roundup® and/or its active ingredient, glyphosate;

(i) not withhold from government agencies and the general public information relevant to the safety of Roundup® and its active ingredient, glyphosate; and,

(j) not misrepresent or falsely proclaim to government agencies and the general public the safety of Roundup® and its active ingredient, glyphosate.

2.58 The Defendants breached the above-mentioned legal obligation.

2.59 At all material times, the Defendants knew or ought to have known of the dangers, hazards and risks of Roundup® and specifically, the carcinogenic properties of glyphosate.

2.60 At all material times, the Defendants knew or ought to have known that use of or exposure to Roundup® products could cause or be associated with the injuries suffered by the Plaintiff and the Class Members and thus created a dangerous and unreasonable risk of injury to those who use or are exposed to these products, including the Plaintiff.

2.61 The Defendants knew or ought to have known that users of Roundup® as well as the general public were unaware of the risks and the magnitude of the risks associated with the use of and/or exposure to Roundup® and other glyphosate-based herbicides.

2.62 By manufacturing, marketing, promoting, selling, and distributing their defective glyphosate-based herbicide products while (i) knowing or having reason to know of the defects inherent in these products, (ii) knowing or having reason to know that use of and/or exposure to these products creates a significant risk of harm, and (iii) failing to prevent or adequately warn of these defects and risks, the Defendants failed to exercise the standard of care required in the design, research, development, manufacture, testing, marketing, supply, promotion, advertisement, packaging, sale, and distribution of their Roundup® products.

2.63 Despite the Defendants' ability and means to investigate, study, and test their Roundup® products and to provide adequate warnings of the risks associated with them, the Defendants have failed to do so. Instead, the Defendants have wrongfully concealed information and have made further false and/or misleading statements with respect to the safety of Roundup® and its active ingredient, glyphosate.

2.64 The Plaintiff's and the Class Members' damages were caused by the acts, omissions and/or faults of the Defendants. Such acts, omissions and/or faults include, but are not limited to, the following:

(a) the Defendants failed to undertake sufficient studies and conduct the necessary tests to determine whether Roundup® products and glyphosate-based herbicides were safe to those using them and/or exposed to them, fit for their intended purpose in agriculture and horticulture, and of merchantable quality;

(b) the Defendants manufactured, produced, promoted, formulated, created, developed, designed, sold, and/or distributed their Roundup® products without thorough and adequate pre- and post-market testing;

(c) the Defendants failed to adequately test their Roundup® products in a manner that would fully disclose the magnitude of the risks associated with their use and exposure, including, but not limited to, the increased risk of developing injuries;

(d) the Defendants manufactured, produced, promoted, formulated, created, developed, designed, sold, and/or distributed their Roundup® products while negligently and/or intentionally concealing and failing to disclose the results of trials, tests, and studies of exposure to glyphosate, and, consequently, the risk of serious harm associated with use of and exposure to the Defendants' Roundup® products;

(e) the Defendants failed to use reasonable and prudent care in the design, research, manufacture, and development of their Roundup® products so as to

avoid the risk of serious harm associated with the prevalent use of Roundup®/glyphosate as a herbicide;

(f) the Defendants failed to design and manufacture their Roundup® products so as to ensure they were at least as safe and effective as other herbicides on the market;

(g) the Defendants failed to provide adequate instructions, guidelines, and safety precautions to those persons who the Defendants could reasonably foresee would use and/or be exposed to their Roundup® products;

(h) the Defendants, both before and after their Roundup® products were approved by Health Canada's Pest Management Regulatory Agency, failed to give the Agency complete and accurate information as it became available;

(i) the Defendants failed to disclose to the Plaintiff, the Class Members, users of their Roundup® products, consumers, and the general public the increased risks associated with use of and exposure to their Roundup® products and their active ingredient, glyphosate, including, but not limited to, the increased risk of developing injuries;

(j) the Defendants failed to provide the Plaintiff, the Class Members, and the Agency with proper, adequate, and/or fair warning of the increased risks associated with use of and exposure to their Roundup® products and their active ingredient, glyphosate, including, but not limited to, the increased risk of developing injuries;

(k) the Defendants failed to warn the Plaintiff, the Class Members, users of their Roundup® products, consumers, and the general public that their Roundup® products' risk of harm was unreasonable and that there were safer and effective alternative herbicides available to the Plaintiff, the Class Members, and other consumers;

(l) the Defendants failed to adequately monitor, investigate, evaluate and follow up on reports of possible risks associated with Roundup® and/or its active ingredient, glyphosate;

(m) the Defendants failed to provide any or any adequate updated and/or current information to the Plaintiff, the Class Members, and/or the Agency with respect to the increased risks associated with Roundup® and its active ingredient, glyphosate, as such information became available from time to time;

(n) the Defendants failed to provide adequate warnings of the increased risks associated with their Roundup® products and their active ingredient, glyphosate, on their Material Safety Data Sheets (MSDS);

(o) the Defendants, after becoming aware of the increased risks associated with their Roundup® products and their active ingredient, glyphosate, failed to issue adequate warnings, timely recall their Roundup® products, publicize the problems, and otherwise act properly and in a timely manner to alert the public;

(p) the Defendants systematically suppressed or downplayed contrary evidence about the risks associated with their Roundup® products and other glyphosate-based herbicides;

(q) the Defendants made false and/or misleading statements concerning the safety of Roundup® and its active ingredient, glyphosate;

(r) the Defendants represented that their Roundup® products were safe and fit for their intended use when, in fact, the Defendants knew or ought to have known that their products were not safe or fit for their intended purpose;

(s) the Defendants declined to make any changes to Roundup® products' labelling or other promotional materials that would alert users, consumers, and the general public of the risks associated with use of and/or exposure to Roundup® and its active ingredient, glyphosate;

(t) the Defendants advertised, marketed, and recommended the use of their Roundup® products while concealing and failing to disclose or warn of the dangers they knew to be associated with or caused by the use of or exposure to Roundup® and its active ingredient, glyphosate;

(u) the Defendants misrepresented the state of research, opinion and medical literature pertaining to the safety of Roundup® and other glyphosate-based herbicides;

(v) the Defendants continued to disseminate information to its consumers that indicated or implied that the Defendants' Roundup® products were safe for use in the agricultural and horticultural industries; and,

(w) the Defendants failed to timely cease the manufacture, marketing, sale and/or distribution of their Roundup® products when they knew or ought to have known that these products were associated with an increased risk of developing injuries.

2.65 The Defendants knew or ought to have known that it was foreseeable that those using and/or exposed to their Roundup® products would suffer injuries as a result of the Defendants' failure to exercise the standard of care required in the manufacturing, marketing, promotion, labelling, distribution, and sale of their Roundup® products.

L. THE PLAINTIFF'S EXPERIENCE AND DAMAGES

2.66 The Plaintiff was exposed to Roundup® from approximately 1997 to 2005 in l'Assomption, Quebec while working and living on a dairy farm where Roundup® was used to eradicate weeds when sowing.

2.67 Although the Plaintiff did not apply Roundup® to the fields (the Plaintiff's ex-boyfriend applied the Roundup®), in her work on the farm, the Plaintiff frequently handled Roundup® and/or came into physical contact with crops that had been sprayed with Roundup®.

2.68 The Plaintiff was also exposed to Roundup® by living on the farm. The fields surrounding the farm house were sprayed with Roundup®. When the windows of the farm house were open, the Plaintiff would frequently breathe in Roundup®.

2.69 In 2005, the Plaintiff was diagnosed with stage four chronic lymphocytic leukemia, a type of non-Hodgkin's lymphoma.

2.70 Since the Plaintiff's 2005 diagnosis, the Plaintiff has not been able to work and has had to undergo several rounds of chemotherapy – some that worked, some that did not work, and some that caused the Plaintiff serious side effects.

2.71 The Plaintiff did not know the nature and extent of the injuries that could result from the intended use of and/or exposure to Roundup® and its active ingredient, glyphosate.

2.72 The injuries, harm and economic losses suffered by the Plaintiff were caused by the acts, omissions and/or faults of the Defendants, their servants, their agents and their mandataries.

2.73 In all of the circumstances of this case, the Defendants applied callous and reckless disregard for the health and safety of the Plaintiff. The Defendants regularly risked the lives of those who used and/or were exposed to their Roundup® products, including the Plaintiff, with full knowledge of the dangers of these products. The Defendants made conscious decisions not to redesign, relabel, warn or inform the

unsuspecting public, including the Plaintiff. The Defendants' conduct therefore warrants an award of punitive damages.

2.74 As a proximate result of the Defendants' wrongful acts and omissions in placing their defective Roundup® products on the market without adequate warnings of the risks associated with them and of the carcinogenic nature of glyphosate, the Plaintiff has suffered, and continues to suffer, serious personal injuries and pain and suffering. The Plaintiff has also suffered, and continues to suffer, pecuniary damages of a nature and amount to be particularized prior to trial.

3. The facts giving rise to personal claims by each Class Member against the Defendants are:

3.1 Each Class Member is entitled to claim from the Defendants solidarily the reimbursement of the damages he/she suffered as well as punitive damages for the grounds alleged in paragraph 2 of this Application.

4. The composition of the Class makes it difficult or impracticable to apply the rules for mandates to take part in judicial proceedings on behalf of others or for consolidation of proceedings:

4.1 The Class is composed of an indeterminate number of people resident in Quebec who were diagnosed with non-Hodgkin's lymphoma after having used and/or been exposed to Roundup® between 1976 and the date of the judgment authorizing this class action.

4.2 As Roundup® and other glyphosate-based herbicides are the most widely used herbicides worldwide, the size of the Class in this action is likely very large. The Class Members are so numerous that the consolidation of proceedings into one action would simply not be practical.

4.3 The Class Members are located all across the province of Quebec.

4.4 Given that medical diagnoses are confidential, the Plaintiff does not know the identify of the Class Members.

4.5 It would be difficult – if not impossible – to obtain a mandate from each Class Member and to consolidate all of the proceedings into one action.

4.6 Deterrence of the Defendants in order for them to modify their behaviours, policies, and procedures also militates in favour of a class action here.

4.7 A class action is the appropriate means for resolving efficiently and equitably the current litigation without excessively bogging down the Court and the justice system

with a multitude of individual actions as well as to avoid the risk of contradictory decisions on the same facts and questions.

4.8 All of the Class Members have in common the fact that they suffered damages resulting from the fault of the Defendants: (i) misrepresenting the safety of Roundup® and its active ingredient, glyphosate; and, (ii) failing to properly, adequately, and fairly warn of the risks of using and/or being exposed to Roundup® and its active ingredient, glyphosate, as well as the magnitude of these risks.

4.9 The determination of the identical, similar or related issues of law or fact presented in this Application will allow for the advancement of this action even if individual questions should remain to be decided.

4.10 Thus, the condition provided at paragraph 575(3) of the *Code of Civil Procedure*, regarding the composition of the Class in order for the Court to authorize the class action, is met.

5. The identical, similar or related questions of law or fact between each Class Member and the Defendants that the Plaintiff wishes to have decided by the class action are:

5.1 Does the Roundup and its active ingredient, glyphosate, offer the security that the public is normally entitled to expect?

5.2 Did the Defendants misrepresent the safety of Round® and its active ingredient, glyphosate?

5.3 Did the Defendants fail to properly, adequately, and fairly warn of the risks of using and/or being exposed to Roundup® and its active ingredient, glyphosate, as well as the magnitude of these risks?

5.4 If the answer to the question in paragraph 5.1 is "yes," does this misrepresentation constitute a fault resulting in the Defendants' solidary liability towards the Class Members?

5.5 If the answer to the question in paragraph 5.2 is "yes," does this failure to properly, adequately, and fairly warn of the risks constitute a fault resulting in the Defendants' solidary liability towards the Class Members?

5.6 Is there a causal link between the fault and the damages?

5.7 If the Defendants are liable towards the Class Members, are the Class Members entitled:

(a) to receive compensation for their physical injuries?

(b) to receive compensation for their economic injuries?

(c) to receive moral damages?

(d) to receive punitive damages? If yes, what is the appropriate amount of punitive damages to which the Class Members are entitled?

6. The questions of law or fact that are particular to each of the Class Members consist of:

6.1 Identifying the physical and economical injuries as well as the moral damages suffered by each Class Member and determining the quantum of compensation to which each Class Member is entitled.

7. It is expedient that the bringing of a class action for the benefit of the Class Members be authorized.

8. The nature of the recourse which the Plaintiff wishes to exercise on behalf of the Class Members is:

An action for damages based on the responsibility of a manufacturer of a herbicide product.

9. The conclusions sought by the Plaintiff against the Defendants are as follows:

GRANT the Plaintiff's class action against the Defendants for all Class Members;

CONDEMN the Defendants, solidarily, to pay the Plaintiff an amount for non-pecuniary damages, to be determined at trial, as well as interest at the legal rate and the additional indemnity provided for at article 1619 of the *Civil Code of Québec*, from the date of service of the Application for Authorization to Institute a Class Action and to Obtain the Status of Representative;

CONDEMN the Defendants, solidarily, to pay the Plaintiff an amount for pecuniary damages, to be determined at trial, as well as interest at the legal rate and the additional indemnity provided for at article 1619 of the *Civil Code of Québec*, from the date of service of the Application for Authorization to Institute a Class Action and to Obtain the Status of Representative;

CONDEMN the Defendants, solidarily, to pay each Class Member an amount for non-pecuniary damages, to be determined at trial, as well as interest at the legal rate

and the additional indemnity provided for at article 1619 of the *Civil Code of Québec*, from the date of service of the Application for Authorization to Institute a Class Action and to Obtain the Status of Representative;

CONDEMN the Defendants, solidarily, to pay each Class Member an amount for pecuniary damages, to be determined at trial, as well as interest at the legal rate and the additional indemnity provided for at article 1619 of the *Civil Code of Québec*, from the date of service of the Application for Authorization to Institute a Class Action and to Obtain the Status of Representative;

CONDEMN the Defendants, solidarily, to pay to the Plaintiff and the Class Members the amount of $10,000,000 as punitive damages as well as interest at the legal rate and the additional indemnity provided for at article 1619 of the *Civil Code of Québec*, from the date of service of the Application for Authorization to Institute a Class Action and to Obtain the Status of Representative;

ORDER collective recovery of the claims for non-pecuniary and punitive damages for all Class Members and individual liquidation of the claims of Class Members in accordance with articles 595 to 598 of the *Code of Civil Procedure*;

ORDER collective recovery of the claims for pecuniary damages for all Class Members and individual liquidation of the claims of Class Members in accordance with articles 595 to 598 of the *Code of Civil Procedure*, and, alternatively, order the individual recovery of claims for pecuniary damages for all Class Members in accordance with articles 599 to 601 of the *Code of Civil Procedure*;

THE WHOLE with judicial costs, including fees for notices and experts.

10. The Plaintiff requests that she be ascribed the status of Representative.

11. **The Plaintiff is in a position to properly represent the Class Members for the following reasons:**

11.1 The Plaintiff is a member of the Class.

11.2 The Plaintiff is prepared to pursue this action in the interest of the Class Members she seeks to represent and is determined to see this action through to its conclusion.

11.3 The Plaintiff mandated the undersigned lawyers who have significant experience in class action matters.

11.4 The Plaintiff, with the assistance of the undersigned lawyers, is available to invest all the time and effort required in order to accomplish all of the formalities and tasks necessary for the advancement of this class action.

11.5 The Plaintiff collaborated and is prepared to collaborate with the undersigned lawyers in all steps of the process. The Plaintiff is also prepared to provide information necessary to ensure the advancement of this class action.

11.6 The Plaintiff has mandated the undersigned lawyers to obtain all information relevant to this action and intends to keep herself informed of developments.

11.7 The Plaintiff has the capacity and interest to properly represent the Class Members.

11.8 While the Plaintiff could have filed an individual application, she prefers to bring this class action in order to help the other Class Members.

11.9 The Plaintiff seeks to facilitate access to justice for the Class Members.

11.10 The Plaintiff is acting in good faith for the sole objective of asserting her rights as well as those of the Class Members.

11.11 The Plaintiff is thus able to ensure proper representation of the members in the sense of paragraph 575(4) of the *Code of Civil Procedure*.

12. The Plaintiff proposes that this class action be brought before the Superior Court of the district of Quebec for the following reasons:

12.1 None of the Defendants have a domicile or residence in the province of Quebec.

12.2 The district of Quebec is the most appropriate considering (i) that Class Members are located all over the province; and, (ii) that numerous Class Members reside in the district of Quebec.

12.3 The Plaintiff's lawyers have their offices in the district of Quebec.

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

GRANT this Application for Authorization to Institute a Class Action and to Obtain the Status of Representative;

AUTHORIZE this class action as follows:

> An action for damages based on the responsibility of a manufacturer of a herbicide product;

APPOINT the Plaintiff Liliane Paquette as Representative of the Class herein described as:

> All individuals resident in Quebec who were diagnosed with non-Hodgkin's lymphoma after having used and/or been exposed to Roundup® between 1976 and the date of the judgment authorizing this class action and their successors;

IDENTIFY the principal questions of law and fact to be dealt with collectively as follows:

(1) Does the Roundup and its active ingredient, glyphosate, offer the security that the public is normally entitled to expect?

(2) Did the Defendants misrepresent the safety of Round® and its active ingredient, glyphosate?

(3) Did the Defendants fail to properly, adequately, and fairly warn of the risks of using and/or being exposed to Roundup® and its active ingredient, glyphosate, as well as the magnitude of these risks?

(4) If the answer to the question in paragraph 5.1 is "yes," does this misrepresentation constitute a fault resulting in the Defendants' solidary liability towards the Class Members?

(5) If the answer to the question in paragraph 5.2 is "yes," does this failure to properly, adequately, and fairly warn of the risks constitute a fault resulting in the Defendants' solidary liability towards the Class Members?

(6) Is there a causal link between the fault and the damages?

(7) If the Defendants are liable towards the Class Members, are the Class Members entitled:

(a) to receive compensation for their physical injuries?

(b) to receive compensation for their economic injuries?

(c) to receive moral damages?

(d) to receive punitive damages? If yes, what is the appropriate amount of punitive damages to which the Class Members are entitled?

IDENTIFY the principal questions of law and fact to be dealt with each Class Members as follows:

Identifying the physical and economical injuries as well as the moral damages suffered by each Class Member and determining the quantum of compensation to which each Class Member is entitled.

IDENTIFY as follows the conclusions sought in relation to the above-mentioned questions of law and fact:

> **GRANT** the Plaintiff's class action against the Defendants for all Class Members;
>
> **CONDEMN** the Defendants, solidarily, to pay the Plaintiff an amount for non-pecuniary damages, to be determined at trial, as well as interest at the legal rate and the additional indemnity provided for at article 1619 of the *Civil Code of Québec*, from the date of service of the Application for Authorization to Institute a Class Action and to Obtain the Status of Representative;
>
> **CONDEMN** the Defendants, solidarily, to pay the Plaintiff an amount for pecuniary damages, to be determined at trial, as well as interest at the legal rate and the additional indemnity provided for at article 1619 of the *Civil Code of Québec*, from the date of service of the Application for Authorization to Institute a Class Action and to Obtain the Status of Representative;
>
> **CONDEMN** the Defendants, solidarily, to pay each Class Member an amount for non-pecuniary damages, to be determined at trial, as well as interest at the legal rate and the additional indemnity provided for at article 1619 of the *Civil Code of Québec*, from the date of service of the Application for Authorization to Institute a Class Action and to Obtain the Status of Representative;
>
> **CONDEMN** the Defendants, solidarily, to pay each Class Member an amount for pecuniary damages, to be determined at trial, as well as interest at the legal rate and the additional indemnity provided for at article 1619 of the *Civil Code of Québec*, from the date of service of the Application for

Authorization to Institute a Class Action and to Obtain the Status of Representative;

CONDEMN the Defendants, solidarily, to pay to the Plaintiff and the Class Members the amount of $10,000,000 as punitive damages as well as interest at the legal rate and the additional indemnity provided for at article 1619 of the *Civil Code of Québec*, from the date of service of the Application for Authorization to Institute a Class Action and to Obtain the Status of Representative;

ORDER collective recovery of the claims for non-pecuniary and punitive damages for all Class Members and individual liquidation of the claims of Class Members in accordance with articles 595 to 598 of the *Code of Civil Procedure*;

ORDER collective recovery of the claims for pecuniary damages for all Class Members and individual liquidation of the claims of Class Members in accordance with articles 595 to 598 of the *Code of Civil Procedure*, and, alternatively, order the individual recovery of claims for pecuniary damages for all Class Members in accordance with articles 599 to 601 of the *Code of Civil Procedure*;

THE WHOLE with judicial costs, including fees for notices and experts.

DECLARE that any Class Member who has not requested his/her exclusion from the Class be bound by any judgment to be rendered on the class action, in accordance with the law;

FIX the deadline for exclusion at thirty (30) days after the date of the notice to Class Members, at the expiry of which Class Members who have not requested their exclusion will be bound by any judgment to be rendered;

ORDER the publication of a notice to Class Members, in accordance with article 576 of the *Code of Civil Procedure*, in a manner and form to be determined by this Honourable Court;

REFER the record to the Chief Justice so that he may fix the district in which this class action is to be brought and the judge before whom it will be heard;

ORDER that in the event that this class action is to be brought in another district, the clerk of this Honourable Court shall, upon receiving the decision of the Chief Justice, transmit the present record to the clerk of the designated district;

THE WHOLE with judicial costs, including expert fees and notice publication fees.

QUEBEC, May 21, 2019

Dussault Lemay Beauchesne.

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SUMMONS
(articles 145 and following CCP)

Filing of a Judicial Application

Take notice that the Plaintiff has filed this originating application in the office of the court of Quebec in the judicial district of Quebec.

Defendant's Answer

You must answer the application in writing, personally or through a lawyer, at the courthouse of Quebec situated at 300 Jean-Lesage Boulevard, Quebec, QC G1K 8K6, district of Quebec within 15 days of service of the application or, if you have no domicile, residence or establishment in Quebec, within 30 days. The answer must be notified to the Plaintiff's lawyer or, if the Plaintiff is not represented, to the Plaintiff.

Failure to Answer

If you fail to answer within the time limit of 15 or 30 days, as applicable, a default judgement may be rendered against you without further notice and you may, according to the circumstances, be required to pay the legal costs.

Content of Answer

In your answer, you must state your intention to:

- negotiate a settlement;
- propose mediation to resolve the dispute;
- defend the application and, in the cases required by the *Code of Civil Procedure*, cooperate with the Plaintiff in preparing the case protocol that is to govern the conduct of the proceeding. The protocol must be filed with the court office in the district specified above within 45 days after service of the summons or, in family matters or if you have no domicile, residence or establishment in Québec, within 3 months after service;
- propose a settlement conference.

The answer to the summons must include your contact information and, if you are represented by a lawyer, the lawyer's name and contact information.

Change of Judicial District

You may ask the court to refer the originating application to the district of your domicile or residence, or of your elected domicile or the district designated by an agreement with the plaintiff.

If the application pertains to an employment contract, consumer contract or insurance contract, or to the exercise of a hypothecary right on an immovable serving as your main residence, and if you are the employee, consumer, insured person, beneficiary of the insurance contract or hypothecary debtor, you may ask for a referral to the district of your domicile or residence or the district where the immovable is situated or the loss occurred. The request must be filed with the special clerk of the district of territorial jurisdiction after it has been notified to the other parties and to the office of the court already seized of the originating application.

Transfer of Application to Small Claims Division

If you qualify to act as a plaintiff under the rules governing the recovery of small claims, you may also contact the clerk of the court to request that the application be processed according to those rules. If you make this request, the plaintiff's legal costs will not exceed those prescribed for the recovery of small claims.

Calling to a Case Management Conference

Within 20 days after the case protocol mentioned above is filed, the court may call you to a case management conference to ensure the orderly progress of the proceeding. Failing this, the protocol is presumed to be accepted.

Exhibits Supporting the Application

In support of the originating application, the Plaintiff intends to use the following exhibits:

EXHIBIT P-1	Documents with respect to Roundup® and its active ingredient, glyphosate;
EXHIBIT P-2	Various communications sent by the Defendants;
EXHIBIT P-3	The summary of the IARC Working Group's findings published in *The Lancet Oncology*;
EXHIBIT P-4	Various newspaper articles about Roundup® and its active ingredient, glyphosate.

These exhibits are available on request.

Notice of Presentation of an Application

If the application is an application in the course of a proceeding or an application under Book III, V, excepting an application in family matters mentioned in article 409, or VI of the Code, the establishment of a case protocol is not required; however, the application must be accompanied by a notice stating the date and time it is to be presented.

QUEBEC, May 21, 2019

Dussault Lemay Beauchesne.

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SUPERIOR COURT (CLASS ACTION)
PROVINCE OF QUEBEC
DISTRICT OF QUEBEC
NO : 200-06-000230-196

LILIANE PAQUETTE

Plaintiff

v.

MONSANTO CANADA ULC
and
MONSANTO COMPANY
and
BAYER INC.

Defendants

APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION AND TO OBTAIN THE STATUS OF REPRESENTATIVE
(Articles 574 and following of the Code of Civil Procedure)

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