Court File No. 699/19

ONTARIO
SUPERIOR COURT OF JUSTICE

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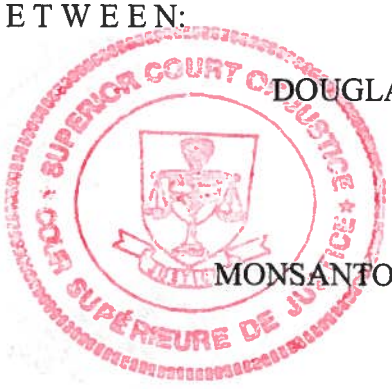

DOUGLAS WALKER and ROBERTA WALKER

Plaintiffs

and

MONSANTO CANADA ULC, MONSANTO COMPANY, and BAYER INC

Defendants

Proceeding under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiffs. The Claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the Plaintiffs' lawyer or, where the Plaintiffs do not have a lawyer, serve it on the Plaintiffs, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date April 4, 2019 Issued by _____
Local Registrar

Address of court office: London Courthouse
80 Dundas Street
London, ON N6A 6A3

TO: **MONSANTO CANADA ULC**
Dentons Canada LLP
2900 Manulife Place
10180-101 Street
Edmonton, AB T5J 3V5

AND TO: **MONSANTO COMPANY**
800 North Lindbergh Blvd
St Louis, MO 63167
USA

AND TO: **BAYER INC**
2920 Matheson Boulevard East
Mississauga, ON L4W 5R6

CLAIM

1. The following definitions apply for the purpose of this Statement of Claim:

   (a) **"Agency"** means Health Canada's Pest Management Regulatory Agency;

   (b) **"Class"** and/or **"Class Members"** means all individuals resident in Canada (excluding residents of 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 certification order;

   (c) **"EPA"** means the US Environmental Protection Agency;

   (d) **"Family Class"** and **"Family Class Members"** means all individuals who are a living spouse, child, grandchild, parent, grandparent, or sibling of a **Class Member**;

   (e) **"IARC"** means the International Agency for Research on Cancer; and,

   (f) **"Roundup®"** means any glyphosate-containing herbicide product marketed by one or more of the Defendants.

RELIEF CLAIMED

2. The Plaintiff Douglas Walker ("Doug Walker"), on his own behalf and on behalf of all Class Members, seeks:

   (a) an order certifying this action as a class proceeding and appointing him as the representative plaintiff of the proposed Class pursuant to the *Class Proceedings Act, 1992*, SO 1992, c 6;

(b) a declaration that the Defendants breached their duty of care to Doug Walker and Class Members;

(c) general damages in the amount of $500,000,000;

(d) special damages in an amount to be determined;

(e) exemplary, punitive, and aggravated damages in the amount of $20,000,000;

(f) a reference to decide any issues not decided at the trial of the common issues;

(g) the costs of administration and notice, plus applicable taxes, pursuant to s 26(9) of the *Class Proceedings Act, 1992*, SO 1992, c 6;

(h) the costs of this proceeding pursuant to the *Class Proceedings Act, 1992*, SO 1992, c 6, the *Courts of Justice Act*, RSO 1990, c C 43, and the *Rules of Civil Procedure*, RRO 1990, Reg 194;

(i) prejudgment and post-judgment interest in accordance with the *Courts of Justice Act*, RSO 1990, c C 43; and,

(j) such further and other relief as to this Honourable Court may seem just.

3. The Plaintiff Roberta Walker ("Roberta Walker"), on her own behalf and on behalf of all Family Class Members, seeks:

(a) an order certifying this action as a class proceeding and appointing her as the representative plaintiff of the proposed Family Class pursuant to the *Class Proceedings Act, 1992*, SO 1992, c 6;

(b) damages pursuant to the *Family Law Act*, RSO 1990, c F3, s 61, and similar legislation in other provinces as listed in Schedule "A", where applicable, in the amount of $50,000,000 or such other amount as this Honourable Court finds appropriate;

(c) exemplary, punitive, and aggravated damages in the amount of $2,000,000;

(d) special damages in an amount to be determined;

(e) the costs of administration and notice, plus applicable taxes, pursuant to s 26(9) of the *Class Proceedings Act, 1992*, SO 1992, c 6;

(f) the costs of this proceeding pursuant to the *Class Proceedings Act, 1992*, SO 1992, c 6, the *Courts of Justice Act*, RSO 1990, c C 43, and the *Rules of Civil Procedure*, RRO 1990, Reg 194;

(g) prejudgment and post-judgment interest in accordance with the *Courts of Justice Act*, RSO 1990, c C 43; and,

(h) such further and other relief as to this Honourable Court may seem just.

THE PARTIES

The Plaintiffs, the Class and the Family Class

4. Doug Walker is an individual and small business owner residing in Wheatley, Ontario. He was exposed to Roundup® from approximately 1989 to 1999 in Ontario through his employment as a warehouse manager at Morris Grows Supply Ltd and was diagnosed with diffuse large B-cell non-Hodgkin's lymphoma in March 2018.

5. Doug Walker seeks to represent the following class ("the Class") of which he is a member:

> All individuals resident in Canada (excluding residents of 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 certification order ("Class Members").

6. Roberta Walker is Doug Walker's spouse. She resides with Doug Walker in Wheatley, Ontario and brings this action pursuant to the *Family Law Act*.

7. Roberta Walker seeks to represent the following class ("the Family Class") of which she is a member:

> All individuals who are a living spouse, child, grandchild, parent, grandparent, or sibling of a Class Member ("Family Class Members")s.

The Defendants

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

9. 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.

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

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

12. 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.

13. 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.

THE FACTS

Glyphosate

14. 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.

15. 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.

The Discovery of Glyphosate and Development of Roundup®

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

17. 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.

18. 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.

Registration of Roundup® with Health Canada's Pest Management Regulatory Agency

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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®.

Scientific Fraud and Deception Underlying the Marketing and Sale of Roundup®

25. 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.

26. 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.

27. 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.

28. 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.

29. 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.

30. 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.

31. 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.

The Importance of Roundup® to the Defendants' Market Dominance

32. 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.

33. 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.

34. 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.

35. 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.

The International Agency for Research on Cancer's Reassessment of Glyphosate

36. 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.

37. 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).

38. 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.

39. 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.

40. 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.).

41. 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.

42. 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.

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

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

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

46. 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.

The Defendants' Conduct After the IARC's 2015 Reassessment

47. 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.

48. 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.

49. 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*.

50. 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.

51. 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.

52. 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.

The Defendants Have Known for Decades that They Are Falsely Proclaiming the Safety of Roundup®

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

54. 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."

55. 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."

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

57. 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."

Recent Worldwide Bans on the Sale and Use of Roundup®/Glyphosate

58. 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.

59. 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."

60. 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.

61. 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.

The Plaintiffs' Experiences

62. Doug Walker was exposed to Roundup® from approximately 1989 to 1999 in Ontario through his employment as a warehouse manager at Morris Grows Supply Ltd.

63. At all material times, Morris Grows Supply Ltd was a distributor of Roundup®. It would purchase pallet loads of 10-litre jugs of Roundup® from the Defendants and resell them to farmers, through its retail store, and to commercial distributors.

64. Doug Walker frequently came into contact with Roundup® when unloading pallets of Roundup® at Morris Grows Supply Ltd's warehouse. He would frequently come across jugs of Roundup® that had been crushed during transport or that were not properly sealed due to a manufacturing issue.

65. Doug Walker was also exposed to Roundup® when delivering pallets of Roundup® to greenhouse growers, orchards, and cash-crop farmers. Frequently, the greenhouse growers, orchards, and cash-crop farmers would be spraying Roundup® during these deliveries.

66. Doug Walker also came into contact with Roundup® when recycling empty Roundup® containers at Morris Grows Supply Ltd's warehouse.

67. At all material times, when handling jugs that contained or previously contained Roundup®, Doug Walker fully complied with all Workplace Hazardous Materials Information System (WHMIS) standards as well as all instructions listed on the Material Safety Data Sheet (MSDS) for Roundup®. Doug Walker believes that between approximately 1989 and 1999, the Material Safety Data Sheets (MSDS) for Roundup® only called for the use of gloves when handling the product. Despite this, Doug Walker preferred to also wear a respirator or self-contained breathing apparatus when dealing with spills of any herbicide product or chemical.

68. In or around January or February of 2018, Doug Walker noticed a pea-sized lump in his cheek. In two weeks, this pea-sized lump grew to the size of a marble. Shortly afterwards, a lump appeared in the side of his throat.

69. Doug Walker sought medical attention for the lumps in his cheek and throat. The lump in his throat turned out to be a swollen lymph node. Doug Walker underwent surgery to remove the lymph node in the side of his throat. The lump in his cheek could not be removed due to its proximity to many nerves.

70. In March 2018, Doug Walker was diagnosed with diffuse large B-cell non-Hodgkin's lymphoma.

71. In 2018, Doug Walker underwent chemotherapy for five months to treat his diffuse large B-cell non-Hodgkin's lymphoma. During his chemotherapy treatment, he was very ill and at times, not able to work.

72. Doug Walker's diffuse large B-cell non-Hodgkin's lymphoma diagnosis had, and continues to have, devastating effects on Roberta Walker.

73. During Doug Walker's five months of chemotherapy treatments, Roberta Walker had to be home all of the time to care for him. The chemotherapy treatments made Doug Walker very ill; he slept almost constantly during the five months of treatments. In order to care for Doug Walker and drive him to Windsor, Ontario for his treatments, Roberta Walker had to take paid time off from work (approximately 15 weeks). She was also not able to attend her brother's funeral in Nova Scotia because she had to stay home to look after Doug Walker.

74. Doug Walker's diffuse large B-cell non-Hodgkin's lymphoma diagnosis had, and continues to have, devastating effects on Roberta Walker's mental health. As a result of Doug Walker's diagnosis, Roberta Walker had to be placed on anxiety medication and undergo counselling. Roberta Walker continues to suffer from anxiety in relation to Doug Walker's diagnosis and is constantly checking for new lumps on him.

CAUSES OF ACTION

Negligence

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

76. At all material times, the Defendants owed a duty of care to Doug Walker and Class Members 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.

77. The Defendants negligently breached their duty of care.

78. 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.

79. 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 Doug Walker 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 Doug Walker and the Class Members.

80. 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.

81. 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.

82. 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.

83. Doug Walker states that his damages and the Class Members' damages were caused by the negligence of the Defendants. Such negligence includes, but is 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 Doug Walker, 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 Doug Walker, 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 Doug Walker, 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 Doug Walker, 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 Doug Walker, 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.

84. 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.

85. Doug Walker and the Class Members 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.

86. The injuries, harm, and economic losses suffered by the Plaintiffs, the Class Members, and the Family Class Members were caused by the negligence of the Defendants, their servants and their agents.

87. In all of the circumstances of this case, the Defendants applied callous and reckless disregard for the health and safety of Doug Walker and the Class Members. The Defendants regularly risked the lives of those who used and/or were exposed to their Roundup® products, including Doug Walker and the Class Members, 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 Doug Walker and the Class Members. The Defendants' conduct therefore warrants an award of exemplary, punitive, and aggravated damages.

88. 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, Doug Walker and the Class Members have suffered, and continue to suffer, serious personal injuries and pain

and suffering. Doug Walker and the Class Members have also suffered, and continue to suffer, special damages of a nature and amount to be particularized prior to trial.

89. 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, Roberta Walker and the Family Class Members have suffered, and continue to suffer, damages, including loss of care, guidance and companionship as well as financial expenses and special damages of a nature and amount to be particularized prior to trial.

90. Some of the expenses related to the medical treatment that Doug Walker and the Class Members have undergone, and will continue to undergo, have been borne by the various provincial health insurers, including the Ontario Health Insurance Plan (OHIP). As a result of the Defendants' negligence, the various provincial health insurers have suffered and will continue to suffer damages for which they are entitled to be compensated by virtue of their right of subrogation in respect of all past and future insured services. These subrogated interests are asserted by the Plaintiffs, the Class Members, and the Family Class Members pleading and relying upon the statutes listed in Schedule "B."

91. The Plaintiffs plead and rely upon the provisions of the *Negligence Act*, RSO 1990, c N 1.

SERVICE OUTSIDE OF ONTARIO

92. The Plaintiffs plead and rely on rule 17.02 (g) and (p) of the *Rules of Civil Procedure*, RRO 1990, Reg 194 allowing for service *ex juris* on the Defendants Monsanto Canada ULC and Monsanto Company. Specifically, pursuant to rule 17.02(g) and (p), this originating process may be served outside Ontario without a court order because this proceeding

consists of claims in respect of torts committed in Ontario and claims against persons carrying on business in Ontario.

PLACE OF TRIAL

93. The Plaintiffs propose that this action be tried in London, Ontario.

(Date of issue)

APR 0 4 2019

MCKENZIE LAKE LAWYERS LLP
140 Fullarton Street, Suite 1800
London, ON N6A 5P2

Michael J Peerless (LSO # 34127P)
Matthew D Baer (LSO # 48227K)
Chelsea Smith (LSO # 71843N)
Tel: 519-672-5666
Fax: 519-672-2674

Lawyers for the Plaintiffs

SCHEDULE "A"

PROVINCIAL LEGISLATION: FAMILY MEMBER CLAIMS

Alberta: *Tort-feasors Act*, RSA 2000, c T-5; *Fatal Accidents Act*, RSA 2000, c F-8.

Manitoba: *The Fatal Accidents Act*, RSM 1987, c F50.

New Brunswick: *Fatal Accidents Act*, RSNB 2012, c 104.

Newfoundland and Labrador: *Fatal Accidents Act*, RSN 1990, c F-6.

Nova Scotia: *Fatal Injuries Act*, RSNS 1989, c 163.

Ontario: *Family Law Act*, RSO 1990, c F3.

Prince Edward Island: *Fatal Accidents Act*, RSPEI 1988, c F-5.

Saskatchewan: *The Fatal Accidents Act*, RSS 1978, c F-11.

Yukon: *Fatal Accidents Act*, RSY 2002, c 86.

SCHEDULE "B"

PROVINCIAL LEGISLATION: SUBROGATED INTERESTS OF PROVINCIAL HEALTH INSURERS

Alberta: *Crown's Right of Recovery Act*, SA 2009, c C-35.

British Columbia: *Health Care Costs Recovery Act*, SBC 2008, c 27.

Manitoba: *The Health Services Insurance Act*, RSM 1987, c H35.

New Brunswick: *Hospital Services Act*, RSNB 1973, c H-9; *Medical Services Payment Act*, RSNB 1973, c M-7.

Newfoundland and Labrador: *Medical Care and Hospital Insurance Act*, SN 2016, c M-5.01.

Northwest Territories: *Hospital Insurance and Health and Social Services Administration Act*, RSNWT 1988, c T-3.

Nova Scotia: *Health Services and Insurance Act*, RSNS 1989, c 197.

Nunavut: *Hospital Insurance and Health and Social Services Administration Act*, RSNWT (Nu) 1988, c T-3.

Ontario: *Health Insurance Act*, RSO 1990, c H6.

Prince Edward Island: *Health Services Payment Act*, RSPEI 1988, c H-2; *Hospital and Diagnostic Services Insurance Act*, RSPEI 1988, c H-8.

Saskatchewan: *The Health Administration Act*, RSS 1978, c H-0.0001.

Yukon: *Hospital Insurance Services Act*, RSY 2002, c 112; *Health Care Insurance Plan Act*, RSY 2002, c 107.

DOUGLAS WALKER et al
Plaintiffs

-and-

MONSANTO CANADA ULC et al
Defendants

Court File No. 698/19

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
LONDON

STATEMENT OF CLAIM

MCKENZIE LAKE LAWYERS LLP
140 Fullarton Street, Suite 1800
London, ON N6A 5P2

Michael J Peerless (LSO # 34127P)
Matthew D Baer (LSO # 48227K)
Chelsea Smith (LSO # 71843N)
Tel: 519-672-5666
Fax: 519-672-2674

Lawyers for the Plaintiffs