FORM 5A

Rule 5.02(1)

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMON LAW DIVISION
PERSONAL INJURY LIST - #

BETWEEN

FERDINANDO MAISANO

Plaintiff

and

MONSANTO AUSTRALIA PTY LTD
ACN 006 725 560

Defendant

WRIT AND STATEMENT OF CLAIM

Date of Document:	10 December 2019	Solicitor's Code: 112 579
Filed on behalf of:	The Plaintiff	
Prepared by:		Telephone: (03) 9102 6200
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Melbourne VIC 3000		Ref: 190689

TO THE DEFENDANTS

TAKE NOTICE that this proceeding has been brought against you by the plaintiffs for the claim set out in this writ.

IF YOU INTEND TO DEFEND the proceeding, or if you have a claim against the plaintiffs which you wish to have taken into account at the trial, YOU MUST GIVE NOTICE of your intention by filing an appearance within the proper time for appearance stated below.

YOU OR YOUR SOLICITOR may file the appearance. An appearance is filed by -

(a) filing a "Notice of Appearance" in the Registrar's office in the Supreme Court Registry, 436 Lonsdale Street, Melbourne or, where the writ has been filed in the office of a Registrar out of Melbourne, in the office of that Registrar; and

(b) on the day you file the Notice, serving a copy, sealed by the Court, at the plaintiffs' address for service, which is set out at the end of this writ.

IF YOU FAIL to file an appearance within the proper time, the plaintiffs may OBTAIN JUDGMENT AGAINST YOU on the claim without further notice.

PROPER TIME TO FILE AN APPEARANCE is within days after service on you of this Writ.

PROPER TIME TO FILE AN APPEARANCE is as follows –

(a) where you are served with the writ in Victoria, within 10 days after service;
(b) where you are served with the writ out of Victoria and in another part of Australia, within 21 days after service;
(c) where you are served with the writ in Papua New Guinea, within 28 days after service;
(d) where you are served with the writ in New Zealand under Part 2 of the Trans-Tasman Proceedings Act 2010 of the Commonwealth, within 30 working days (within the meaning of that Act) after service or, if a shorter or longer period has been fixed by the Court under section 13(1)(b) of that Act, the period so fixed;
(e) in any other case, within 42 days after service of the writ.

IF the plaintiffs claim a debt only and you pay that debt, namely, $ 0.00, and $ for legal costs to the plaintiffs or their solicitor within the proper time for appearance, this proceeding will come to an end. Notwithstanding the payment you may have the costs taxed by the Court.

FILED

THIS WRIT is to be served within one year from the date it is filed or within such further period as the Court orders.

STATEMENT OF CLAIM

1. At all material times the defendant was incorporated in the State of New South Wales and is capable of being sued in the State of Victoria pursuant to the provisions of the Corporation Law.

2. The plaintiff is a life-long self-employed farmer, working on his family farms in Lower Crawford, Carngham and Clarkefield in the State of Victoria.

3. This proceeding is commenced as a group proceeding pursuant to Part IVA of the *Supreme Court Act* 1986 (Vic) by the plaintiff on his own behalf and on behalf of:

    a. all persons who at any point in the period 1976 to 2019 (the period) regularly used and were constantly exposed to and came into contact with and were caused to inhale and absorb into their body the defendant's glyphosate based herbicide products labelled "Roundup" (Roundup products) and as a consequence thereof contracted Non-Hodgkins Lymphoma ("NHL").
    b. The legal personal representatives of the estates of any deceased persons who came within sub-paragraph (a) herein during the period.

4. As at the commencement of this proceeding, there are seven or more persons who have claims against the defendant.

5. Since 1976 the plaintiff regularly used and was constantly exposed to and came into contact with and was caused to inhale and absorb into his body the defendant's glyphosate based herbicide products labelled "Roundup" (hereinafter referred to as "Roundup products" and more particularly described in paragraph 4 herein below).

PARTICULARS

a. At all material times the dominant Roundup products regularly used by the plaintiff, being Roundup CT and Roundup Ultra Max were;

i. used year round on a regular basis;

ii. used mixed and applied in accordance with the defendant's instructions;

iii. inhaled by breathing; and

iv. absorbed through his skin.

b. The plaintiff inhaled and absorbed when mixing Roundup products for the purposes of dilution.

c. The plaintiff inhaled and absorbed when applying Roundup products on his farm and share-cropping acreage to crops, lawn and plants.

d. The plaintiff inhaled and absorbed when working in the vicinity of persons using Roundup products, such as fellow sharecroppers from time to time and adjacent farmers to the plaintiff's farm.

Full particulars of which will be provided prior to the trial of this matter.

6. At all times material throughout the period the defendant designed, developed, manufactured, tested, packaged, promoted marketed, advertised, distributed, labelled and sold Roundup products throughout Australia.

PARTICULARS

"Roundup products" refers to all formulations of the defendant's products including but not limited to Roundup Custom Herbicide, Roundup D-Pak herbicide, Roundup Dry Concentrate, Roundup Export Herbicide, RoundupFence & Hard Edger 1, Roundup Garden Foam, Roundup Weed & GrassKiller, Roundup Grass and Weed Killer, Roundup Herbicide, Roundup Original 2k herbicide, Roundup Original II Herbicide, Roundup Pro Concentrate, Roundup Prody Herbicide, Roundup Promax, Roundup Quik Stik

Grass and Weed Killer, Roundup Quikpro Herbicide, Roundup Rainfast Concentrate Weed & Grass Killer, Roundup Rainfast Super Concentrate Wee & Grass Killer, Roundup Ready-To-Use Extended Control Weed & Grass Killer 1 Plus Weed Preventer, Roundup Reay-To-Use Weed and Grass Killer, Roundup Ready-To-Use Weed and Grass Killer 2, Roundup Ultra Dry, Roundup Ultra Herbicide, Roundup Ultramax, Roundup VM Herbicide, Roundup Weed & Grass Killer Concentrate, Roundup Weed & Grass Killer Concentrate Plus, Roundup Weed & Grass Killer Super Concentrate, Roundup Weed & Grass Killer1 Ready-to-Use, Roundup WSD Water Soluble Dry Herbicide, Roundup All Purpose Concentrate Weed Killer, Roundup Concentrate Advance Weedkiller, Roundup CT or any other formulation containing the active ingredient glyphosate.

The defendant is and was at all times material a related entity to the Monsanto Company (Monsanto US), its parent company, incorporated and headquartered in the United States of America (USA) until 7 June 2018 when Monsanto US and its related entities were acquired by Bayer AG of Germany. The Roundup products to which the plaintiff was exposed to and which he used were designed, developed and tested by the defendant's then parent company, Monsanto US and/or one of its subsidiaries and/or related entities.

In the USA the manufacture, formulation and distribution of herbicides, such as Roundup products, are regulated under the *Federal Insecticide, Fungicide and Rodentcide Act* (FIFRA). 7 U.S.C. § 136 *et seq*. FIFRA requires all pesticides be registered with the USA Environmental Protection Agency (EPA) prior to the distribution, sale or use except as described by FIFRA 7 U.S.C. §136a(a). The EPA requires a variety of tests as part of the registration process to evaluate the products potential for exposure

to pesticides, toxicity to people and other potential non-target organisms and other adverse effects on the environment. The determination the EPA makes in registering a product is not that the product is "safe", but rather that use of the product is in accordance with its labelled directions "will not generally cause unreasonable adverse effects on the environment." 7 U.S.C. § 136 (a)(c)(5)(D). FIFRA defines "unreasonable adverse effects on the environment" to mean "any unreasonable risk to man or the environment, taking into account the economic, social and environmental costs and benefits of the use of the pesticide" 7 U.S.C. § 136 (bb). Accordingly, FIFRA requires the EPA to make a risk benefit analysis in determining whether a registration should be granted or allowed to be continued to be sold in commerce. The EPA determination was and is dependent upon the health and safety testing of pesticide products. Monsanto US conducted or caused to be conducted the health and safety testing for the Roundup products submitted to and relied upon by the EPA for registration.

Roundup products were first registered in Australia in or around 1976 and undertaken through each individual State and Territory. Registration was dependent on the materials submitted to EPA and those supplied to them by the defendant. On 15 March 1995 of the National Registration Authority for Agricultural and Veterinary Chemicals (NRA), the predecessor to the Australian Pesticides and Vetinary Medicines Authority (APVMA) took over from the States and Territories Registration of agvet chemical products. On registration of Roundup products the defendant proceeded to or caused Roundup products to be packaged promoted, marketed, advertised, distributed, labelled and sold throughout Australia.

The Roundup products to which the plaintiff was exposed to and which he used is and were at all times material packaged, marketed,

advertised, distributed, labelled and sold throughout Australia by the defendant and/or its agents and/or distributors.

Further particulars will be provided prior to trial and after discovery and interrogation.

7. Glyphosate has been found to be carcinogenic, linked to causing various forms of cancer, and including in particular Non-Hodgkins Lymphoma and diffuse stage IV AES large B-cell lymphoma (DLBCL). As such, Roundup products are dangerous to human health and unfit to be marketed and sold in commerce, particularly without proper warnings and directions as to the dangers associated with their use.

8. Throughout the period the defendant knew or ought to have known that the use of Roundup products were dangerous for the plaintiff to use and were capable of causing serious injury to the plaintiff and in particular cause DNA and chromosomal damage in human cells, cancer, kidney disease, infertility and nerve damage among other devastating illnesses.

PARTICULARS

The defendant, Monsanto US and Bayer AG are in possession of a substantial body of internal and external studies, laboratory test results, documents, reports, surveys and correspondence evidencing its knowledge of the inherent dangers of the use and exposure to its Roundup products.

Further, in 1996 the New York Attorney General (NYAG) files a lawsuit against Monsanto US based on false and misleading advertising of Roundup products (*Attorney General of the State of New York, In the Matter of Monsanto Company, Assurance of Discontinuance Pursuant to Executive Law § 63(15) (Nov. 1996).* Specifically, the lawsuit challenged Monsanto's general representations that its spray-on glyphosate based herbicides , including Roundup products, were "safer than table salt" and

practically non-toxic" to mammals, birds and fish. On 19 November 1996 Monsanto US entered into an Assurance of Discontinuance with the NYAG, in which Monsanto US agreed, amongst other things, "to cease and desist from publishing or broadcasting any advertisements (in New York) that represent directly or by implication that inter alia, its glyphosate-containing pesticide products or any component thereof are safe, non-toxic, harmless or free from risk.

Further as early as the 1970's the defendant was or should have been aware of glyphosates carcinogenic properties.

a. In 1976 on seeking initial registration of Roundup by the EPA, Monsanto US hired Industrial Bio-Test Laboratories (IBT) to perform and evaluate pesticide toxicology studies relating to Roundup products. IBT performed about 30 tests on glyphosate and glyphosate containing products including 9 of the 15 residue studies needed to register Roundup. In 1976 the United States Food and Drug Administration (FDA) performed an inspection on IBT that revealed discrepancies between the raw data and the final report relating to the toxicology impacts of glyphosate. The EPA subsequently audited IBT and it too found the toxicology studies conducted for Roundup to be invalid. An EPA reviewer stated, after finding "routine falsification of data" at IBT that it was "hard to believe the scientific integrity when they said they took specimens of the uterus from male rabbits" Three IBT executives were convicted of fraud in 1983.
b. On 4 March 1985 a group of the EPA's Toxicology Branch published a memorandum classifying glyphosate as a Category C oncogene. Category C oncogenes are possible human oncogenes with limited evidence of carcinogenicity.

c. In 1986 the EPA issued a Registration Standard for glyphosate (NTIS PB87-103214). The registration standard required additional phytotoxicity, environmental fat, toxicology, product chemistry and residue chemistry studies. The relevant data used in this registration was supplied by Monsanto US.

d. In October 1991, the EPA published a memorandum entitled "Second Peer Review of Glyphosate". The memorandum changed glyphosates classification to Group E (evidence of non-carcinogenicity for humans). Two peer reviews committee members did not concur with the conclusion of the committee and one member refused to sign. Also in so classifying glyphosate the EPA noted "It should be emphasised, however, that designation of an agent in Group E is based on the available evidence at the time of evaluation and should not be interpreted as a definitive conclusion that the agent will not be carcinogenic under any circumstances."

e. In 1991 Monsanto US hired Craven Laboratories (CL) to perform pesticide and herbicide studies for Roundup products. in the same year, the owners of CL and three of its employees were indicted and later convicted of fraudulent laboratory practices in the testing of pesticides and herbicides, which tests underlie Monsanto US registration of Roundup products.

f. In addition to the toxicity of the active molecule, many studies, both internal and external to Monsanto US support the hypothesis that the glyphosate formulations found in Roundup products are more toxic and dangerous that glyphosate alone. As early as 1991, evidence existed demonstrating that glyphosate formulations were significantly more toxic that glyphosate alone

g. In 2002 Julie Marc published a study entitled "Pesticide Roundup Provokes Cell Division Dysfunction at the level of CDK1/Cyclin B Activation." (http://pubs.acs.org/doi/full/10.1021/tx015543g.) The study found that Roundup products caused delays in the cell cycles of sea urchins, while the same concentrations of glyphosate alone proved ineffective and did not alter cell cycles.

h. In 2004, Julie Marc published a study entitled "Glyphosate-based pesticides affect cell cycle regulation." (http://onlinelibrary.wiley.com/doi/10.1016/j.biolcel.2003.11.010/epdf.) The study demonstrated a molecular link between glyphosate –based products and cell cycle dysregulation which in turn can result in cancer.

i. In 2005 Francisco Peixoto published a study showing that Roundup's effects on rat liver mitochondria are much more toxic and harmful than same concentrations of glyphosate alone.

j. The results of these studies were confirmed in peer reviewed studies that were known to the defendant and Monsanto US

k. In March 2015 the United Nation's International Agency for Research on Cancer (IARC) reassessed glyphosate. The summary was published in *The Lancet Oncology* reported that glyphosate is a Group 2A agent and probably carcinogenic in humans. The IARC working group also found that glyphosate caused DNA and chromosomal damage in human cells. The IARC working group also reviewed a USA Agricultural Health Study, consisting of a prospective cohort of 57,311 licensed pesticide applicators in Iowa and North Carolina. The results supported an association between glyphosate exposure and Multiple

Myeloma, Hairy Cell Leukaemia and Chronic Lymphatic Leukaemia in addition to several other cancers.

l. An internal Monsanto US dated 6 August 2016 between Ashley Roberts of Intertek, a testing laboratory retained and used by Monsanto US and Donna Farmer, Monsanto US's chief toxicologist, stated when referring to a Roundup product "He asked if we need to give any consideration to exposures of formulants in the commercial product, at least in the applicators? I was under the impression that these were inert, but reading a response this morning in the Ecologist makes it sound like it is the combination that is toxic!!! Right?" the response is "Ashley, I think the short answer is no. the focus of this is what we see frequently. Just focus on the glyphosate, not the formula." To which Ashley replies "That said, the surfactant in the formulation will come up in the tumor promotion skin study, because we think it played a role there."

Further particulars will be provided prior to trial and after discovery and interrogation.

9. At all material and relevant times the defendant knew or ought to have known that persons such as the plaintiff:

   a. Would use Roundup products;
   b. Be exposed to and mix, dilute, apply, work with and inhale Roundup products;
   c. Were at risk of developing serious medical conditions such as leukaemia, myeloma, Non-Hodgkins Lymphoma and DLBCL among other devastating illnesses.

PARTICULARS

The defendant, Monsanto US and Bayer AG are in possession of a substantial body of internal and external studies, laboratory test results, documents, reports, surveys and correspondence

evidencing its knowledge of the inherent dangers of the use and exposure to its Roundup products.

Further the plaintiff refers to and repeats the particulars referred to in paragraph 6 herein.

Further particulars will be provided prior to trial and after discovery and interrogation.

10. The defendant failed to warn the plaintiff that the use of Roundup products was dangerous and capable causing him and each of the group members' serious injuries, loss and damage.

11. At all times material the plaintiff followed all safety and precautionary warnings during the course of use of the defendant's Roundup products.

PARTICULARS

The labelling of the Roundup Products used provided application, preparation and safety directions. The label safety directions stated "Avoid contact with eyes and skin. Wash hands after use." To the best of his ability the plaintiff complied with all Roundup Product directions.

12. During the entire time that the plaintiff was exposed to Roundup products, the plaintiff and each of the group members did not know that exposure to the defendant's Roundup products was injurious to his health or the health of others.

13. By reason his exposure to, contact with and inhalation and absorption of Roundup products as hereinbefore alleged, the plaintiff suffered injuries, loss and damage.

PARTICULARS

Diffuse stage IV AES large B-cell lymphoma (DLBCL), with immunohistochemistry consistent with germinal centre B cell type (GCB).

Nodal site involvement including cervical, right axillary, paraaortic/prevascular, bilateral paratracheal, portacaval, coeliac axis and external iliac lymph nodes.
Nodal involvement with spleen, marrow of the spine, as well as right piriform sinus.
Elevated lactate dehydrogenase (LDH).
Systolic heart murmur.
Low energy levels.
Chest pain.
Shortness of breath.
Hypertension.
Skin lesions.
Granuloma annulare.
Candidiasis.
Papilloma.
Erectile dysfunction.
Psychological reaction marked by depression and anxiety.

PARTICULARS OF LOSS AND DAMAGE

The plaintiff has incurred medical and like expenses details of which will be provided prior to the trial of this action

PARTICULARS OF LOSS OR EARNINGS AND EARNING CAPACITY

The plaintiff is aged 77, born in Bianco, Italy, on 19 March 1942.

The plaintiff ceased working on his farm, in about 2000.

The plaintiff claims loss of income and profit for periods after ceasing work up to retirement age. Full particulars will be provided prior to the hearing of this matter.

The plaintiff suffers from an incurable and progressive disease. Full particulars of the plaintiff's claim for future economic loss will be provided prior to the hearing of this matter.

14. The plaintiff and each of the group members suffered injuries, loss and damages as aforesaid by reason of the negligence of the defendant, its servants or agents.

PARTICULARS

a. Exposing the plaintiff and/or causing him through the use of Roundup products to come into contact with glyphosate.
b. Causing the plaintiff to inhale and/or absorb glyphosate and/or other dangerous chemicals.
c. Exposing or subjecting the plaintiff to the unnecessary risk of inhaling and/or absorbing Roundup products and their active ingredient glyphosate.
d. Allowing the plaintiff to carry out his work duties and use of Roundup products when it knew and/or ought to have known either by itself, its servants and/or agents that their use was capable of causing injury or death as a result of its inhalation and/or absorption.
e. Failing to warn the plaintiff that he should use adequate protective clothing, apparel and/or equipment to wear and/or use:
    i. Whilst work with or near Roundup products;
    ii. Whilst handling Roundup products;
    iii. Whilst working in or near any place where Roundup products had been applied.
f. Failing to warn persons such as the plaintiff that the use of Roundup products were potentially dangerous to health.
g. Falling to advise or properly advise persons likely to use Roundup products such as the plaintiff used that they should wear appropriate respiratory and other protection.
h. Failing to advise persons likely to use Roundup products such as the plaintiff of the techniques available to reduce exposure and absorption of Roundup products.
i. Failing to ensure adequate advice/warnings were placed on Roundup products to warn persons such as the plaintiff that the inhalation and absorption of Roundup products was potentially dangerous to health.
j. Failing to ensure that:
    a. salesmen; and

b. distributors

of Roundup products were properly informed of the dangers of the use of Roundup products and were instructed to pass on such information to those purchasing and/or using Roundup products.

k. Failing to insert in advertising material relating to Roundup products warnings and/or adequate warnings referring to:
    a. The potential dangers to health consequent upon inhaling and/or absorbing Roundup products;
    b. The need for caution when persons using Roundup products to prevent inhaling and/or absorbing Roundup products;
    c. The need for adequate respiratory and other protection when using Roundup products.

l. Failing to instruct the plaintiff adequately or at all in relation to:
    i. The safe handling of Roundup; and
    ii. The dangers of exposure to Roundup.

m. Failing to have any or any adequate awareness of the dangers of exposing the plaintiff to Roundup products in any form.

n. Failing to keep abreast of the known industrial and medical research and literature relating to the dangers of the use of Roundup products.

o. Withholding from the plaintiff known industrial and medical research and literature relating to the dangers of the use of Roundup products.

p. Failing to heed the warning given during the period by the United Nations World Health Authority as to the dangers of exposure to and or inhalation and/or absorption of Roundup products.

q. Failing to disseminate information concerning the use and dangers of exposure to Roundup products within a reasonable time of the information coming to hand.

r. Failing to warn the plaintiff that use of Roundup products could cause Non-Hodgkin's Lymphoma and DLBCL.

s. Failing to educate the plaintiff of the dangers of using Roundup products.

t. Failing to exercise any reasonable care in the manufacture, distribution and/or supply of Roundup products.

u. Manufacturing, distributing and/or supplying Roundup products without ensuring so far as was possible in the utilization of Roundup products there would be no emanation of glyphosate and/or other toxic ingredients from the products.

v. Manufacturing, distributing and/or supplying an intrinsically dangerous products.

w. Failing to take any reasonable care for the safety and wellbeing of the plaintiff.

x. Withholding from the plaintiff knowledge and information then known to the defendant identifying use of Roundup products as being potentially dangerous to his health and safety.

y. Manufacturing, producing, promoting, formulating, creating and/or designing Roundup products without thoroughly testing them.

z. Failing to test Roundup products sufficiently, adequately and/or properly.

aa. Not conducting sufficient testing programmes to determine whether or not Roundup products were safe for use, in that the defendant knew or ought to have known that its Roundup products were and are unsafe and unfit for use by reason of the dangers to its users.

bb. Not conducting sufficient testing programmes and studies to determine the carcinogenic qualities of Roundup products even after the defendant had knowledge that its Roundup products is was and were carcinogenic.

cc. Failing to conduct sufficient testing programs to determine the safety of "inert" ingredients and/or adjuvants contained within Roundup products and the propensity of these ingredients to render Roundup products toxic, increase the toxicity of Roundup products, whether or not "inert" ingredients and/or adjuvants were safe for use.

dd. Negligently failing to adequately and correctly warn the plaintiff, the public, the medical and agricultural professionals and the licencing Government authorities of the dangers of Roundup products.

ee. Failing to provide adequate cautions and warnings to protect the health and safety of users , handlers, applicators and persons who would reasonably and foreseeably come into contact with Roundup products,

ff. Negligently marketing, advertising and recommending use of Roundup products without sufficient knowledge as to its dangerous propensities.

gg. Negligently:

i. Designing;

ii. Manufacturing;

iii. Producing; and

iv. Formulating

Roundup products in a manners that is and was dangerous to its users.

hh. Conceal information from the plaintiff knowing that Roundup products are and were dangerous and unsafe for use.

ii. Improperly concealing from and/or misrepresenting information to the plaintiff, scientific and medical professionals and all relevant Government authorities concerning the severity of risks and dangers of Roundup products compared to other forms of herbicides.

jj. Negligently selling Roundup products with false and/or misleading and/or inadequate labelling and warnings.

15. Despite the defendant knowing or ought to know that is Roundup products caused, or could cause, unreasonably dangerous side effects associated with their use, the defendant, during the period, continued to market, manufacture, distribute and/or sell Roundup products to consumers, including the plaintiff.

PARTICULARS

The defendant, Monsanto US and Bayer AG are in possession of a substantial body of internal and external studies, laboratory test results, documents, reports, surveys and correspondence evidencing its knowledge of the inherent dangers of the use and exposure to its Roundup products.

Further the plaintiff refers to and repeats the particulars referred to in paragraph 6 herein.

Further particulars will be provided prior to trial and after discovery and interrogation.

16. Further, at all times material the defendant's Roundup products supplied to the plaintiff had a safety defect within the meaning of the provisions of s.9 of Schedule 2 of the *Competition and Consumer Act* 2010 (Commonwealth).

PARTICULARS

The safety defect is constituted by, but not limited to Roundup products formulation which was known or ought to have been known to the defendant, Monsanto US and Bayer AG by reason of their own internal studies, laboratory test results, documents, reports, surveys and correspondence evidencing its knowledge of the safety defects inherent in the use of and exposure to its Roundup products. Further, the defendant was well aware of a significant body of external and independent studies, laboratory test results, documents, reports, surveys and correspondence evidencing the safety defects inherent in the use of and exposure to its Roundup products.

Further the plaintiff refers to and repeats the particulars referred to in paragraph 6 herein.

Further particulars will be provided prior to trial and after discovery and interrogation.

The inhalation and absorption of Roundup products caused serious illness including but not limited to DNA and chromosomal damage in human cells, leukaemia, cancer, kidney disease, infertility and nerve damage.

17. By reason of the aforementioned and the defendant's supply and or making available to the plaintiff and each of the group members Roundup products that at all times material had a safety defect thereby causing the plaintiff injury, loss and damage, the defendant is liable to compensate the plaintiff and each of the group members for his

loss suffered as a consequence of his injury and damage pursuant to the provisions of s.138 of Schedule 2 of the *Competition and Consumer Act* 2010 (Commonwealth).

18. Further and/or in the alternative, the defendant during the period knew that the inhalation and absorption of Roundup products could cause serious illness including but not limited to DNA and chromosomal damage in human cells, cancer, kidney disease, infertility and nerve damage. The defendant knew that persons such as the plaintiff who used Roundup products were at risk of such illness and diseases. Nevertheless in wanton and contumelious disregard of the plaintiff and his health the defendant chose to continue to manufacture, distribute and sell Roundup products without adequate warnings as to the dangers of their use and in fact during the period actively attempted to suppress, adversely influence and/or distort information relating to the dangers to health consequent upon exposure to the use of Roundup products. As a consequence of the above the plaintiff claims punitive damages against the defendant.

PARTICULARS

The defendant continues to market and sell for public use Roundup products.

Further in or around 2018 the defendant issued or caused to be issued a leaflet setting out safety directions and precautions for use of Roundup CT and Roundup Ultra Max including the warning "... Repeated exposure may cause allergic disorders. Avoid contact with eyes and skin ... wear cotton overalls buttoned to the neck and wrist (or equivalent clothing), elbow length PVC gloves and face shield or goggles ... wash hands after use. After each day's use, wash gloves, face shield or goggles and contaminated clothing." The defendant had such knowledge and belief during the plaintiff's exposure to Roundup products, but it deliberately, intentionally or with a reckless and contumelious disregard of the plaintiff's interests it chose not to inform him thereof and in so doing aggravated and increased the plaintiff's injury and suffering.

Further the plaintiff refers to and repeats the particulars referred to in paragraph 6 herein.

COMMON QUESTIONS

19. The questions of law or fact common to the claims of the plaintiff and each of the group members are:
    a. Whether a duty of care was owed to the plaintiff and the group members and if so the content of that duty.
    b. Whether the defendant committed the acts and/or engaged in the conduct alleged in the statement of claim.
    c. Whether the defendant committed the wrongs alleged in the statement of claim.
    d. Whether the plaintiff and the group members were consumers within the meaning of the *Competition and Consumer Act 2010* (Commonwealth).
    e. Whether the plaintiff's and the group members' NHL and similar conditions were causally related to their use of Roundup products.
    f. Did the defendant breach its common law duty of care.
    g. If the defendant breached its common law duty of care, was such breach a cause of any of the losses suffered by the plaintiff.
    h. What are the principles for identifying and measuring losses suffered by the plaintiff and group members as a result of the conduct and actions of the defendant as alleged in the statement of claim.

THE PLAINTIFF CLAIMS:

1. Damages.
2. Against the defendant punitive damages.

J. B. RICHARDS QC

D. C. DEALEHR

Carbone Lawyers

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CARBONE LAWYERS
Solicitors for the Plaintiff

1. Place of trial - Melbourne.

2. Mode of trial - Judge alone.

3. This writ was filed for the plaintiff by Carbone Lawyers of 302 King Street, Melbourne VIC 3000.

4. The addresses of the plaintiff is 17 Robertson Street, Toorak VIC 3142.

5. The address for service of the Plaintiffs is care of Carbone Lawyers, 302 King Street, Melbourne VIC 3000. Email address for service of the plaintiff is john.karantzis@carbonelawyers.com.au,.

6. The addresses of the defendant is 12/600 St Kilda Road, Melbourne, Victoria.