Amended this 17 day of March 2017
modifié ce

Registrar - Superior Court of Justice
Greffier - Cour Supérieure de Justice

Court File No. 820/17

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

ERIN DAWN CHRISTIANSEN

Plaintiff

- and -

METTRUM LTD.

Defendant

PROCEEDING UNDER THE *CLASS PROCEEDINGS ACT, 1992*

AMENDED STATEMENT OF CLAIM

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. 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 plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, 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.

IF YOU PAY THE PLAINTIFF'S CLAIM, and $10,000.00 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and $100.00 for costs and have the costs assessed by the court.

Date: March 6, 2017

Issued by S. Lafontaine

Local registrar

Address of court office: 150 Bond Street East
Oshawa, ON L1G 0A2

TO: **Mettrum Ltd.**
PO Box 68 Bowmanville,
Bowmanville, Ontario
L1C 3K8

CLAIM

1. The Plaintiff, Erin Dawn Christiansen ("Plaintiff") claims:

    a. an order certifying this proceeding as a class proceeding and appointing the Plaintiff as Representative Plaintiff for the Class (as described below);

    b. $100,000,000.00 in general damages for the Class or such other amount as determined by the Court;

    c. punitive, aggravated and exemplary damages in the amount of $10,000,000.00 or such other amount as this Honourable Court deems just;

    d. a declaration that the Defendant misrepresented the characteristics of its medical marijuana products;

    e. a declaration that the Defendant breached the expressed or implied terms of it contracts with the Class Members;

    f. a declaration that the Defendant violated Part VI of the *Competition Act*;

    g. a declaration that the Defendant engaged in unfair practices contrary to Part III of the *Consumer Protection Act* and the equivalent provisions in the Equivalent Consumer Protection Statutes (as defined below);

    h. declarations that it is not in the interests of justice to require notice be given pursuant to s. 18(15) of the *Consumer Protection Act* (and any equivalent provisions of the Equivalent Consumer Protection Statutes) and waiving any such notice provisions;

    i. an order for the rescission of the purchase of medical marijuana products affected by the recalls as set out below or, if rescission is found not to be possible, an order for damages and/or the recovery of the amount by which the payment for the Recalled Products (as defined below) exceeded the value thereof;

j. an order requiring the Defendant to fund, or otherwise compensate the Class Members for, the costs of operating and administering an adequate system for health monitoring relating to the consumption of the Recalled Products;

k. statutory damages pursuant to the *Competition Act*, the *Consumer Protection Act* and the Equivalent Consumer Protection Statutes in an amount to be determined by this Honourable Court;

l. a declaration that the Defendant breached its implied warranty of quality and fitness contrary to section 15 of the *Sale of Goods Act* (and any equivalent provisions of the Equivalent Sale of Goods Acts as defined below);

m. a declaration that the Defendant was negligent in the cultivation, production, testing, processing manufacture, distribution, marketing and sale of the medical marijuana products affected by the recall as set our below;

n. prejudgment interest compounded and post-judgment interest pursuant to the *Courts of Justice Act*;

o. costs of this action on a substantial indemnity basis, together with applicable Harmonized Value-added Tax thereon in accordance with the *Excise Tax Act*, R.S.C. 1985, c. E-15, as amended;

p. the costs of administering the plan of distribution of the recovery in this action in the sum of $500,000 or such other sum as this Honourable Court deems appropriate; and

q. such further and other relief as may be required by the *Class Proceedings Act, 1992* or as this Honourable Court may deem just.

The Defendant & Background

2. The Defendant, Mettrum Ltd. ("Mettrum" or the "Defendant") is a Health Canada licensed producer of medical marijuana and medical marijuana products. As of January 31, 2017, Mettrum is a wholly-owned subsidiary of Canopy Growth Corporation.

3. This proposed class action relates to the production and sale of medical marijuana products by the Defendant, and the Defendant's subsequent recalls of certain products arising from the use of unauthorized pesticides.

4. As a licensed cannabis producer, Mettrum is required to comply with the requirements of the *Access to Cannabis for Medical Purposes Regulations* ("ACMPR") in order to, among other things, lawfully sell medical marijuana to the public. Prior to the promulgation of the ACMPR, the Defendant was required to comply with the requirements of the *Marihuana for Medical Purposes Regulations* ("MMPR").

5. The production and sale of medical marijuana is strictly controlled by Health Canada. Pursuant to section 63(1) of the ACMPR (formerly section 52(1) of the MMPR), the Defendant cannot sell fresh or dried marijuana or cannabis oil unless the applicable requirements of Subdivision D "Good Production Practices" of the ACMPR (formerly Subdivision D of the MMPR) have been met.

6. Pursuant to section 66 of Subdivision D of the ACMPR (formerly section 54 of the MMPR), licensed cannabis producers, including the Defendant, are not permitted to use any pest control products unless the product is one of the 13 such products approved for use on cannabis under the *Pest Control Products Act* ("PCPA"). Licensed cannabis producers cannot sell any medical marijuana products that have been treated with any unapproved pest control products.

7. Licensed producers, including the Defendant, must have adequate controls within their facilities to ensure that unauthorized pest control products are not used. Controls may include, among other things, restricting access to pest control products, monitoring the application of products to fresh or dried marijuana, marijuana plants or seeds, and/or testing for unauthorized pesticide use. The Plaintiff pleads that the Defendant failed to utilize and abide by the foregoing controls as it relates to the Recalled Products.

8. Mettrum represented that it is lawfully entitled to sell its medical marijuana products, that it incorporates and is committed to high standards of quality and industry best practices to meet Health Canada regulations, and that it meets or exceeds international guidelines regarding chemical contaminants. Among other things and according to the Defendant's website and other public statements:

   a. *"Mettrum™ is a Health Canada licensed producer of medicinal cannabis and is committed to ongoing research, regulatory compliance, producing quality products, and providing comprehensive customer service.*

      ...Health Canada has recently implemented new regulations to improve access to medical marijuana patients Canada-wide. As a Licensed Producer, Mettrum operates in compliance with these regulations to meet the needs of our clients."

   b. *"Mettrum uses high standards of quality to meet Health Canada regulations"*

   c. *"We are committed to ongoing research, regulatory compliance, and defining and incorporating industry best practices throughout the production of a broad spectrum of strains of medical cannabis consistent with Health Canada regulations."*

   d. *"Mettrum products are grown under strictly controlled conditions to ensure the finest quality. Our plants are grown in a medical laboratory facility that allows for a tightly controlled growing environment. ...*

      All Mettrum products pass through rigorous quality control processes to ensure they are naturally safe for your consumption and are pharmaceutically tested to ensure the highest quality cannabis."

   e. *"Mettrum utilizes only the highest quality nutrients and state of the art growing techniques. All finished products must meet or exceed international pharmacopoeial guidelines for microbial and*

chemical contaminants, prior to being made available for sale."

9. As a licensed cannabis producer, the Defendant cultivated, produced, tested, processed, manufactured, marketed, distributed and sold a number of medical marijuana products including, among other things, dried cannabis and/or cannabis infused oil(s).

10. Pursuant to s. 3(2) of the ACMPR (formerly section 3(2) of the MMPR), a person may possess fresh or dried medical marijuana or cannabis oil only if he or she is a client of a licensed producer (such as Mettrum) and obtained the marijuana for his or her own medical purposes. A person may become a client of a licensed producer only by providing the licensed producer with a prescribed medical form, issued by a licensed health practitioner, that conforms to section 8 of the ACMPR and submitting a licensed producer specific registration form. Once a person has complied with the foregoing requirements, he or she is able to purchase fresh or dried medical marijuana from that licensed producer pursuant to section 22(4) of the ACMPR.

11. In or around November 2016, and as discussed in greater detail below, the Defendant began a series of recalls regarding a number of its medical marijuana products ("Recalled Products"). The recalls were initiated because it found that some of the products that it had sold contained amounts of two pest control products, which were not authorized for use on medical marijuana plants. The two pest control products were pyrethrins and myclobutanil. The Recalled Products included dried marijuana and cannabis oil.

12. Pyrethrins and myclobutanil are both pesticides. Myclobutanil is generally used to control mildew. Among other things, myclobutanil produces hydrogen cyanide when combusted.

13. Pyrethrins and myclobutanil are not one of the thirteen pest control products that are authorized for use on cannabis plants under the *Pest Control Products Act*. These pesticides

should not have been used in association with, or applied to, medical cannabis plants or medical marijuana products. Exposure to pyrethrins and myclobutanil can cause adverse health effects. Pursuant to the relevant provisions of the ACMPR and/or the MMPR, the Recalled Products should never have been offered for sale, distributed or sold to anyone.

Use of Unapproved Pest Control Products

14. In or about 2014, a Mettrum employee purported to have witnessed Mettrum staff applying myclobutanil to cannabis plants. Mettrum is in fact and in law responsible for the actions of its employees.

15. In or about October 2014, the employee purportedly brought his concerns to the attention of Mettrum, including the Defendant's then CEO Michael Haines. The CEO of Mettrum's parent (Canopy Growth Corporation) has advised that the staff member's concerns were rasied with Mettrum management in October 2014, which "led to an investigation which we are told yielded no proof of wrongdoing."

16. As set out below, the Defendant or its parent (Canopy Growth Corporation) has posted information to its website confirming that Mettrum used a product called Megawash as a foliar spray on marijuana plants. The Defendant or its parent have advised that, in June 2016, it was discovered, through testing in Colorado, that Megawash contained pyrethrins. The Defendant or its parent has advised that the discovery led the Defendant to recall a number of products that had been treated with Megawash. The Defendant has advised in part that, in the course of testing its products, the Defendant further discovered the presence of myclobutanil.

17. Health Canada has advised that during an inspection by it in October 2016 conducted at Mettrum's premises, it was observed that cannabis plants were treated with a product that contained pyrethrins. Health Canada has advised that, as a result, the Defendant then initiated a recall of certain products sold between September 30, 2014 and October 21, 2016.

18. According to the Defendant, when the presence of myclobutanil was discovered in 2016, the Defendant conducted a further investigation or testing that found trace amounts of myclobutanil in other batches. Mettrum has advised that the recall for myclobutanil extends back to January 2016. Mettrum has stated that tests conducted on retained product samples taken prior to 2016 showed no detection of myclobutanil but further indicated, however, that the test results for this period were not conclusive. Mettrum did acknowledge that one of its staff members reported concerns to Mettrum management about suspected myclobutanil use prior to 2016. Mettrum management has advised that it suspects that some staff may have applied myclobutanil in response to a mildew issue in limited areas of the facility.

19. As of February 22, 2017 the Defendant advised that its investigation remained ongoing.

20. As discussed below, the Plaintiff pleads that Mettrum should have had – but did not – controls, tests and processes in place to ensure that unauthorized pest control products or foliar sprays were not used in association with its plants or products. The Plaintiff pleads that, if reasonable and appropriate controls, tests and process were in place in, or if reasonable investigations had been conducted in 2014, in June 2016 or at other times, Mettrum could have prevented the use of unapproved pest control products or could have discovered and disclosed their use immediately or in a more timely manner. By failing to appropriately discover the presence and use of such products, the Defendant exposed class members to the foregoing unapproved pest control products and potential adverse health consequences.

The Recall Notices & Related Disclosures

21. On November 1, 2016, and as part of its initial recall, Mettrum released a media release which provided in part that Mettrum was recalling medical cannabis products that were exposed to a foliar spray containing pyrethrins, which is not registered for use on medical cannabis. Mettrum advised that the recall was defined by Health Canada as a Type III recall, which is defined by Health Canada as a "situation in which the use of, or exposure to, a product is not likely to cause any adverse health consequences."

22. On December 1, 2016, Mettrum released a media release which read in part, as follows:

> *With reference to Mettrum's press release on November 1st, 2016, as a result of further testing and working with the full cooperation of Health Canada, Mettrum plans to voluntarily add a small number of additional product lots to the scope of its existing Type III voluntary withdrawal.*

23. On December 5, 2016, January 7 and January 28, 2017, Mettrum expanded the earlier November Type III recall to include products sold between January 1, 2016 and November 17, 2016, purportedly following subsequent testing that identified lots containing myclobutanil.

24. As of February 7, 2017, Health Canada reports that it had received 10 adverse reaction reports related to Mettrum products sold during the period covered by the recall. Health Canada further recommended that anyone affected by the recall immediately stop using the Recalled Products. Moreover, in a notice published in response to the recall, Health Canada stated that:

> *Licensed producers are advised that the use of any "foliar spray" containing, but not limited to, fertilizers, nutrients, or wetting agents applied on fresh or dried marijuana, marijuana plants or seeds is prohibited, as is any other product containing an unauthorized pest control ingredient.*

25. On or about February 22, 2017, Mettrum or its parent posted a series of questions and answers to its website. In that document, Mettrum acknowledged among other things that

pyrethrins and myclobutanil cannot be applied to medical cannabis. It was further acknowledged that "When it is combusted, myclobutanil results in the formation of HCN (hydrogen cyanide), which can have negative impacts on human health at high doses."

26. In an open letter posted on the internet dated February 23, 2017, Canopy Growth Corporation's CEO, Bruce Linton, made a number of statements including the following:

    a. *"In the first weeks, Canopy's management team has taken steps to enhance quality assurance practices and operational controls in order to bring operations up to our world class standard";*

    b. *"Customer safety and trust are always our top priorities, and they are particularly important following the Mettrum product recall";*

    c. *"Restoring confidence in Mettrum requires more than just changes going forward. It requires openness and transparency starting today, to ensure patients understand the recent Mettrum recall"; and,*

    d. *"The application of pest control products not registered for use on cannabis at Mettrum was inexcusable."*

27. In an email to Class Members dated February 23, 2017, Bruce Linton (the CEO of Canopy Growth Corporation) made several further statements, including among other things:

    a. two pest control products not registered for use on cannabis had been applied to products, one of which, myclobutanil, was detected in Mettrum's dried cannabis and cannabis oil products;

    b. that product reliability and open communication were hallmarks of Mettrum's business; and,

    c. that the Defendant's customers chose Mettrum because they wanted quality products from a source that they could trust.

28. Despite issuing the foregoing product recalls, Mettrum has refused to provide refunds to the Class Members (as defined below) for, among other things, any Recalled Products that had been consumed or were not returned.

The Plaintiff & the Class

29. The Plaintiff brings this action on her own behalf and on behalf of anyone who purchased the Recalled Products between September 2014 and November 2016. To the knowledge of Mettrum, the Plaintiff and the other Class Members relied on Mettrum to supply medical marijuana to address a variety of pre-existing health care or medical needs or conditions.

30. The Plaintiff is an individual residing in Thunder Bay, Ontario. The Plaintiff suffers from chronic back pain arising from spina bifida and scoliosis. The Plaintiff was prescribed medical marijuana to treat the pain arising from her conditions.

31. Between March 2016 and November 2016, the Plaintiff arranged and agreed to purchase several orders of medical marijuana products, including Recalled Products, from the Defendant. The Plaintiff estimates that she paid the Defendant in excess of $3,430 for her medical marijuana products between March and November 2016. The Plaintiff consumed the majority of her medical marijuana products through smoking and, to a lesser extent, through vaporization.

32. In or about late May 2016, the Plaintiff began to feel unwell. The Plaintiff experienced symptoms including, among other things, facial swelling, rash, fever, and severe head and body aches. The Plaintiff sought medical attention and was hospitalized.

33. On or after November 1, 2016, the Plaintiff received recall notices from the Defendant regarding both pyrethrins and myclobutanil. The notices advised the Plaintiffs that, among

other things, the Defendant had sold her Recalled Products. Some of the recall notices directed the Plaintiff to not consume (destroy or return) any unused product. Similar recall notices were sent to the other Class Members.

34. The Plaintiff made a number of requests for a refund from Mettrum. These requests were refused. The Plaintiff was advised by Mettrum that, among other things, Mettrum would only replace unused and returned Recalled Products, that she was not entitled to a refund on any consumed Recalled Products and that she was only entitled to a 20% off her next purchase which would have required the Plaintiff to continue to purchase products from Mettrum.

35. The Plaintiff and the Class Members relied on Mettrum, as noted above, to supply medical marijuana to address a variety of health care needs including, but not limited to, pain management. As a result of the recall, many Class Members were unable to obtain, or delayed in obtaining, the medical marijuana products from the Defendant necessary to, among other things, treat their pre-existing conditions in a timely manner.

36. Mettrum knew that it was selling the products in question to the Class Members for the express purpose of treating a number of pre-existing health conditions. The Plaintiff and the Class Members would never have purchased the Recalled Products if they knew that Mettrum had used unapproved pest control products on the Recalled Products and/or that the Recalled Products did not meet all relevant Health Canada regulations.

Breach of Contract

37. It was an express or implied term of Mettrum's uniform contracts with the Class Members that the Recalled Products were safe and complied with all relevant Health Canada regulations and requirements regarding the cultivation, production, testing, processing and

sale of medical marijuana. Mettrum was not permitted by law to sell medical marijuana that had been treated with unauthorized pest control products. Mettrum breached its contracts with the Class Members by, among other things, selling the Recalled Products which had been treated with unauthorized pest control products and by failing to refund Class Members the purchase price of the Recalled Products. As a result of the Defendant's breaches of contract, the Class Members suffered the damages set out below.

Sale of Goods Act & Equivalent Sale of Goods Statutes

38. At all times relevant to this action, the Plaintiff and the other Class Members resident in Ontario were buyers and the Defendant was a seller for the purposes of the *Sale of Goods Act* RSO 1990, c S.1.

39. At all times relevant to this action, Class Members resident in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Prince Edward Island, and Saskatchewan were buyers located in those provinces for the purposes of the respective sale of goods acts of those provinces (the "Equivalent Sale of Goods Acts"). The Defendant carried on business in those Provinces and was a seller for the purposes of the Equivalent Sales of Goods Acts.

40. The Recalled Products are goods for the purposes of the *Sale of Goods Act* and for the purposes of the Equivalent Sale of Goods Acts.

41. The Defendant expressly or impliedly warranted to the Plaintiff and the Class Members that the Recalled Products were reasonably fit or safe for human consumption and the Recalled Products complied with or exceeded the relevant Health Canada regulations regarding the production, testing and sale of medical marijuana, and that the Recalled Products were of merchantable and/or acceptable quality. The Plaintiff relied on the Defendant's skill and

judgment to cultivate, produce, test, process, manufacture, distribute, market and sell medical marijuana products that were safe and complied with all relevant regulations and requirements.

42. Despite and/or contrary to the foregoing warranties and the Representations, and as further set out above, the Recalled Products were sold to the Plaintiff and the Class Members when they were in fact not reasonably fit or safe for human consumption, did not comply with the relevant Health Canada regulations, and were not of merchantable and/or acceptable quality.

43. As a result of the Defendant's breaches of the *Sale of Goods Act* and of the Equivalent Sale of Goods Acts, the Class Members suffered damages.

Representations

44. The Defendant made, approved or authorized a number of consistent, common and uniform Representations (whether express, implied or by omission) in, among other things, their written promotional materials, media releases, internet, social media and print media advertising, website(s), and other marketing materials in relation to the safety and/or quality of its medical marijuana products. As used in this Statement of Claim, the term "Representations" includes the following common and consistent representations made by the Defendant (whether expressly, implied or by omission) to the effect that:

    a. its medical marijuana products, including the Recalled Products, were safe for human consumption;

    b. its medical marijuana products, including the Recalled Products, complied with the relevant Health Canada regulations regarding the cultivation, production, testing, processing, manufacture distribution, marketing, and/or sale ~~production~~, for medical marijuana; and

c. it was lawfully entitled to sell its medical marijuana products, and in particular the Recalled Products.

45. As noted above, the Representations include representations by omission. In the circumstances and given the nature of its business and what the Defendant did expressly represent about its products and its ability to sell medical marijuana products, the Defendant should have advised, but failed to advise, the Class Members about the use of the unauthorized pesticides as referred to above.

46. The Defendant was in a proximate and special relationship with the Plaintiff and the Class Members by virtue of, among other things:

a. The Defendant's knowledge of the ~~that~~ fact that the Class Members were purchasing a product to treat a number of pre-existing health conditions and were otherwise in a vulnerable position;

b. That the Class Members chose to purchase the Recalled Products from the Defendant because they wanted quality medical marijuana products from a source they could trust;

c. The Defendant's skill, experience and expertise in the cultivation, production, testing, processing manufacture, distribution, marketing and sale of the Recalled Products;

d. The fact that Class Members had no means of knowing or investigating the use of unapproved pest control products in relation to the Recalled Products;

e. The fact that Class Members' license to purchase medical marijuana was not-transferable and was linked to Mettrum; and,

f. The need for Class Members to rely on the Representations and integrity of the Defendant in respect of the Recalled Products and their attributes.

47. The Defendant owed a duty of care to the Plaintiff and the Class Members. It was intended by the Defendant and reasonably foreseeable that the Class Members would reasonably rely upon the Representations when purchasing the Recalled Products and would suffer the damages described below as a result.

48. The Representations were false and were made negligently.

49. The Plaintiff and Class Members reasonably relied on the Representations in deciding whether to purchase the Recalled Products from the Defendant. Among other things, their reliance can be inferred on a class-wide basis from the purchase of the Recalled Products.

50. The Plaintiff and the Class Members suffered damages as a result of relying on the Representations in purchasing the Recalled Products. The Defendants are liable to pay damages to the Class Members.

Negligence

51. The Defendant owed a duty of care to the Plaintiff and the other Class Members to ensure that its products were safe, were not treated with or exposed to unauthorized pesticides, and otherwise complied with all relevant Health Canada regulations. The Defendant breached this duty by, among other things:

    a. Using pest control products and/or other products not approved for use on medical marijuana plants contrary to the ACMPR or the MMPR, which products could cause adverse health consequences;

    b. Failing to have systems in place to ensure that unauthorized pest control products or products containing unauthorized pest control products were not purchased, or located, stored or used at Mettrum's facilities;

c. Failing to adequately monitor, test or screen the pest control products or other products used in association with the Recalled Products to ensure they did not include any unapproved pest control products;

d. Failing properly, adequately or at all to test its medical marijuana plants and products for pesticides and/or any other prohibited substances before distributing or selling the Recalled Products to the Class;

e. Failing to conduct a reasonable, appropriate and timely investigation in 2014 (or earlier) or thereafter generally and, more specifically, in response to report(s) that an unauthorized pest control product has been used in association with its products;

f. Continuing to sell Recalled Products to the Class Members after it knew or should have known that its products had been treated with unapproved pest control products.

g. Failing to warn the Class Members that the Recalled Products had been exposed to dangerous and/or unapproved pest control products contrary to the provisions of the ACMPR or the MMPR.

52. As a result of the foregoing breaches of the Defendant's duty of care, the Class Members suffered damages.

Breach of the Competition Act

53. The Defendant made the Representations to the public and in so doing breached s. 52 of the *Competition Act* as the Representations:

a. were made for the purpose of promoting the supply or use of the medical marijuana products for the business interests of the Defendant;

b. were made to the public; and

c. were false and misleading in a material respect.

54. Pursuant to s. 36 of the *Competition Act*, the Defendant is liable to pay the damages resulting from its breach of s. 52 thereof.

Consumer Protection Act & Equivalent Consumer Protection Statutes

55. At all times relevant to this action, the Plaintiff and Class Members resident in Ontario were consumers and the Defendant was a supplier for the purposes of the *Consumer Protection Act*.

56. At all times relevant to this action, Class Members resident in British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, Prince Edward Island, Nova Scotia and Newfoundland and Labrador were consumers located in those provinces for the purposes of the respective consumer protection statues of those provinces, which are set out below at subparagraphs 69 (f), (h), (i), (j), (k), (l), (m), (n), (o) and (p) (the "Equivalent Consumer Protection Statutes"). The Defendant carried on business in those Provinces and was, among other things, a supplier for the purposes of the Equivalent Consumer Protection Statutes.

57. The Plaintiff state that the Representations constituted unfair, unconscionable and/or otherwise prohibited practices under the Consumer Protection Act and Equivalent Consumer Protection Statutes, given that, among other things, the Defendant knew, or ought to have known, that:

    a. the Representations were false, misleading and deceptive;

    b. the Recalled Products did not have the characteristics, uses, benefits or qualities as set out in the Representations;

    c. the Recalled Products were not of the particular standard, quality or grade as set out in the Representations;

    d. the Representations used exaggeration, innuendo and/or ambiguity as to a material fact and failed to state a material fact in respect of the Recalled Products;

e. the Class Members were unable to receive all expected benefits from the Recalled Products;

f. the consumer transactions were excessively one-sided in favour of the Defendant; and/or

g. the terms of the consumer transactions were so adverse to the Class Members as to be inequitable.

58. The Representations were made on or before the date that the Plaintiff and other Class Members entered into the agreements to purchase the Recalled Products.

59. The Plaintiff and Class Members are entitled to rescission of the purchase price for the Recalled Products as well as damages pursuant to s. 18 of the *Consumer Protection Act* and equivalent provisions of the Equivalent Consumer Protection Statutes.

60. The Plaintiff states that this Statement of Claim is, pursuant to section 18(3) of the *Consumer Protection Notice Act,* notice of her intention to seek rescission on her own behalf and on behalf of the Class Members under section 18(1) of the *Consumer Protection Act* or recovery under subsection (2), if rescission is not possible.

61. In the alternative, the Plaintiff pleads that she and the Class Members are entitled, to the extent necessary, to a waiver of any notice requirements under the *Consumer Protection Act* or of the Equivalent Consumer Protection Statutes.

62. As a result of the Defendant's breaches of the *Consumer Protection Act* and of the Equivalent Consumer Protection Statutes, the Class Members suffered damages.

Damages

63. As a result of the Defendant's conduct and failures as noted above, the Class Members have suffered damages including, but not limited to, the following:

a. damages equivalent to the purchase price paid for the Recalled Products;

b. lost time, lost income, and other expenses incurred in relation to the recalls, the Recalled Products, and any health monitoring necessary or appropriate relating to the consumption of the Recalled Products;

c. an amount necessary to fund an adequate system for health monitoring for the Class;

d. damages for any adverse health consequences; and,

e. damages, expenses and inconvenience associated with obtaining replacement medical marijuana for the Recalled Products improperly supplied by the Defendant and the delays in obtaining medical marijuana products resulting from the recalls.

64. The Plaintiff pleads that the Class Members' damages were sustained in Ontario and in the rest of Canada.

Punitive Damages

65. The Defendant's conduct described above was deliberate, unlawful, arrogant, high-handed, outrageous, reckless, secretive, callous, willful, and disgraceful and in contemptuous disregard of the rights and interests of the Class Members and the public. Among other things, the Defendant should have prevented and tested for the use of unauthorized pesticides, and should have investigated and disclosed same long before it did in fact. The Defendant is liable to pay punitive and aggravated damages.

Unjust Enrichment

66. The Defendant caused the Plaintiff and the Class Members to pay for a product that they should not have purchased and would not have purchased if they had known the facts as set out above. As a result, the Defendant was enriched. The Plaintiff and the Class Members suffered a deprivation corresponding to the Defendant's enrichment. There is no juristic

reason for the Defendant's enrichment and the Class Members' corresponding deprivation. The Class Members are entitled to restitution for the Defendant's unjust enrichment.

Waiver of Tort

67. In the alternative to damages, the Plaintiff pleads that the Class is entitled to claim "waiver of tort" and thereby to claim an accounting or other such restitutionary remedy for disgorgement of the revenues generated by the Defendant as a result of the wrongful sale of the Recalled Products and subsequent refusal to refund the purchase price of the Recalled Products to the Class Members.

68. The Plaintiff claims that the Class Members' entitlement to such an election is appropriate for, among other things, the following reasons:

    a. Revenue was acquired in a manner in which the Defendant cannot in good conscience retain;

    b. The integrity of the marketplace would be undermined if an accounting was not required;

    c. Absent the Defendant's tortious conduct the Recalled Products could not have been marketed nor would the Defendant have received any revenue for them; and

    d. The Defendant engaged in wrongful conduct by putting into the marketplace a potentially dangerous health product that it was not in fact permitted to sell.

Statutes

69. The Plaintiff pleads and relies upon the following statutes:

    a) Access to Cannabis for Medical Purposes Regulations, SOR/2016-230, sections 18, 63(1) and 66;

    b) Marihuana for Medical Purposes Regulations, SOR/2013-119, sections 6, 52 and 54

    c) Class Proceedings Act, 1992 S.O. 1992, c. 6, as amended;

d) Competition Act, R.S. 1985, c. C-34, as amended, and the regulations thereto, sections 36(1) and 52(1);

e) Consumer Protection Act 2002, S.O. 2002, c. 30, as amended, and the regulations thereto, sections 2, 5, 9(1), 9(2), 14, 15, 16, 17, 18, and 19;

f) Fair Trading Act, R.S.A. 2000, c. F-2 as amended, and the regulations thereto, sections 5, 6, 7, 7.2, 7.3, and 13;

g) The Food and Drugs Act R.S.C., 1985, C. F-27 ss. 8-10;

h) Business Practices and Consumer Protection Act, S.B.C. 2004, c. 2 as amended, and the regulations thereto, sections 4, 5, 8, 9, 10, 171, and 172;

i) The Business Practices Act, C.C.S.M. c. B120 as amended, and the regulations thereto, sections 2, 3, 4, 5, 6, 8, and 23;

j) Trade Practices Act, R.S.N.L 1990, c T-7 as amended, and the regulations thereto, sections 5, 6, 7, and 14;

k) Consumer Protection and Business Practices Act, S.N.L. 2009, c. C-31.1 as amended, and the regulations thereto, sections 7, 8, 9, and 10;

l) Consumer Protection Act, C.Q.L.R. c. P-40.1 as amended, and the regulations thereto, sections 53, 215, 218, 219, 220, 221, 222, 228, 239, 252, 253, 271, and 272;

m) The Consumer Protection Act, S.S. 1996, c. C-30.1 as amended, and the regulations thereto, sections 5, 6, 7, 8, 14, and 16;

n) The Consumer Protection and Business Practices Act, S.S. 2014, c. C-30.2 as amended, and the regulations thereto, sections 2, 4, 6-16, 19-22, 24-33, 36, 37, 39, 91 and 93;

o) Business Practices Act, RSPEI 1988, c B-&, as amended, and the regulations thereto, sections 1, 2, 3 and 4;

p) The Consumer Protection Act, RSNS 1989, c. 92 as amended, and the regulations thereto, section 28;

q) Sales of Goods Act, RSA 2000, c S-2 as amended, section 16;

r) Sale of Goods Act, RSO 1990, c. S.1 as amended, section 15;

s) The Sale of Goods Act, CCSM 2000, c S10 as amended, section 16;

t) Sale of Goods Act, RSBC 1996, c 410, as amended, section 18;

u) Sale of Goods Act, RSNB 1973, c S-1 as amended, section 15;

v) Sale of Goods Act, RSNL 1990, c S-6 as amended, section 16;

w) Sale of Goods Act, RSNS 1989, c 408 as amended, section 17;

x) Sale of Goods Act, RSPEI 1988, c S-1 as amended, section 16;

y) Sale of Goods Act, RSS 1978, c. S-1 as amended, section 16;

z) Negligence Act, R.S.O. 1990, c. N.1, as amended and the equivalent Provincial and Territorial legislation.

The Plaintiff proposes that this action be tried in ~~Toronto~~ Oshawa, Ontario.

Date: March 6, 2017

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ERIN DAWN CHRISTIANSEN -and- **METTRUM LTD.**

Plaintiff Defendant

Court File No. 820/17

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceeding commenced at Oshawa

AMENDED STATEMENT OF CLAIM

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