

COURT FILE NUMBER

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COURT

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE

CALGARY

PLAINTIFF

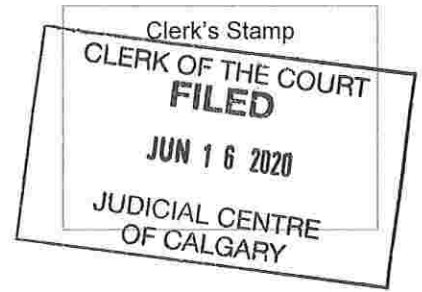
LISA MARIE LANGEVIN

DEFENDANTS

AURORA CANNABIS INC.,  
AURORA CANNABIS  
ENTERPRISES INC., AURORACO,  
ALEAFIA HEALTH INC.,  
EMBLEM CANNABIS  
CORPORATION, ALEAFIACO,  
HEXO CORP., HEXOCO, CRONOS  
GROUP INC., CRONOSCO,  
TILRAY CANADA LTD., HIGH  
PARK HOLDINGS LTD.,  
TILRAYCO, ORGANIGRAM  
HOLDINGS INC.,  
ORGANIGRAMCO, MEDIPHARM  
LABS CORP. AND  
MEDIPHARMCO,

DOCUMENT

**STATEMENT OF CLAIM**



ADDRESS FOR SERVICE AND  
CONTACT INFORMATION OF  
PARTY FILING THIS  
DOCUMENT

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**Brought under the *Class Proceedings Act*, SA 2003, c. C-16.5**

**NOTICE TO DEFENDANT(S)**

You are being sued. You are a defendant.

Go to the end of this document to see what you can do and when you must do it.

**Statement of facts relied on:**

**INTRODUCTION**

1. This is a proposed national consumer protection class proceeding. The Plaintiff alleges that the Defendants marketed medicinal and recreational cannabis products with an advertised content of Tetrahydrocannabinol (“THC”) or Cannabidiol (“CBD”) on the product’s label. The Plaintiff, and others like her, relied upon the Defendants’ stated THC or CBD content to determine the quantity of cannabis to purchase and to consume. The Defendants’ cannabis products were sold to Canadian consumers with THC or CBD content levels that were drastically different from the amount advertised on the label.

2. Many of the cannabis products sold by the Defendants were sold to consumers in containers using plastic bottles or caps that may have rapidly absorbed or degraded the THC or CBD content within them. Consumers purchasing such products consequently purchased products that had significantly lower THC or CBD than the Defendants led them to believe they contained. By over-representing the true amount of THC or CBD in the products, consumers had to either consume substantially more product than they should have in order to obtain the desired effects or, in the alternative, simply consumed the product without obtaining as significant, or any, of the desired effects. Consumers, in such cases, did not receive what the Defendants' labelling stated that they would receive and the Defendants benefitted from this at the expense of the consumers.

3. Other cannabis products were sold to Canadian consumers with THC or CBD content that may have been significantly and materially higher than the amount stated on the product's label. By underrepresenting the true amount of THC or CBD, consumers may have experienced unwanted effects and been placed in significant physical or mental danger.

4. The Plaintiff, on behalf of the proposed class, seeks recovery of the money the Class members spent purchasing the Defendants' products that did not contain what they were advertised to contain. The Plaintiff also seeks compensatory damages for those who suffered physical or mental injuries as a result of the Defendants' mislabeling of their products. The Plaintiff, in addition or in the alternative, seeks a disgorgement of the profits that the Defendants wrongfully made off of the Class by misrepresenting the THC and CBD content in their products.

## **THE PARTIES**

5. Lisa Marie Langevin (the "Plaintiff"), resides in Calgary, Alberta. She purchased a cannabis product manufactured by the Defendant, Tilray, for recreational purposes.

6. The Defendant, Tilray Canada Ltd. ("Tilray"), is a corporation incorporated pursuant to the laws of the Province of British Columbia, with a corporate office in Vancouver, British Columbia, is in the business of the manufacturing and distributing cannabis products for both medicinal and recreational use within Canada. Further or in the alternative, the Defendant High Park Holdings Ltd. ("High Park"), a corporation with its corporate head quarters locating in Toronto, Ontario, and/or the Defendant Tilrayco, being a yet to be identified corporation, are subsidiaries or affiliates of Tilray, and are in the business of the manufacturing and distributing cannabis products for both medicinal and recreational use within Canada. Tilray, High Park and/or Tilrayco individually or collectively manufactured, promoted and distributed the Subject Product, as defined herein, ultimately acquired by the Plaintiff. High Park carries on business under the Trade Mark and style "High Park Company".

7. The Defendant, Aurora Cannabis Inc. ("Aurora"), is a corporation incorporated pursuant to the laws of the Province of British Columbia with a registered corporate office address in Vancouver. Aurora is in the business of the manufacturing and distributing cannabis products for

both medicinal and recreational use. Aurora, or in the alternative the Defendant Aurora Cannabis Enterprises Inc. or the Defendant Auroraco, being a yet to be identified corporation that is a subsidiary or affiliate of Aurora, has a significant number of manufacturing and distribution facilities in Alberta, or elsewhere in Canada, including a flagship 800,000 square-foot facility located in Edmonton (Aurora Sky), as well as other production facilities in Medicine Hat (Aurora Sun) and Cremona (Aurora Mountain).

8. Further, or in the alternative the Defendant Aurora Cannabis Enterprises Inc. and/or Auroraco, being a yet to be identified corporation that is a subsidiary or affiliate of Aurora, is in the business of the manufacturing and distributing cannabis products for both medicinal and recreational use within Canada.

9. The Defendant, Aleafia Health Inc. (“Aleafia”), is a corporation incorporated pursuant to the laws of the Province of British Columbia, and continued into the Province of Ontario, is in the business of the manufacturing and distributing cannabis products for both medicinal and recreational use within Canada. Further or in the alternative, the Defendant Emblem Cannabis Corporation (“Emblem”), a corporation incorporated pursuant to the laws of Canada and/or the Defendant Aleafiaco, being a yet to be identified corporation, are subsidiaries or affiliates of Aleafia, and are in the business of the manufacturing and distributing cannabis products for both medicinal and recreational use within Canada.

10. The Defendant, Hexo Corp. (“Hexo”), is a corporation incorporated pursuant to the laws of the Province of Ontario, is in the business of the manufacturing and distributing cannabis products for both medicinal and recreational use within Canada. Alternatively, the Defendant Hexoco, being a yet to be identified corporation that is a subsidiary or affiliate of Hexo, is in the business of the manufacturing and distributing cannabis products for both medicinal and recreational use within Canada.

11. The Defendant, Cronos Group Inc. (“Cronos”), is a corporation incorporated pursuant to the laws of the Province of Canada, with a corporate office in Toronto, Ontario, is in the business of the manufacturing and distributing cannabis products for both medicinal and recreational use within Canada. Alternatively, the Defendant Cronosco, being a yet to be identified corporation that is a subsidiary or affiliate of Cronos, is in the business of the manufacturing and distributing cannabis products for both medicinal and recreational use within Canada. Cronos, or alternatively Cronosco, carry on business under the name and Trade Mark “Cove”.

12. The Defendant, Organigram Holdings Inc. (“Organigram”), is a corporation incorporated pursuant to the laws of the Province of New Brunswick, with a corporate office in Moncton, New Brunswick, is in the business of the manufacturing and distributing cannabis products for both medicinal and recreational use within Canada. Alternatively, the Defendant Organigramco, being a yet to be identified corporation that is a subsidiary or affiliate of the Defendant Organigram, is in the business of the manufacturing and distributing cannabis products for both medicinal and

recreational use within Canada. Organigram, or alternatively Organigramco, carry on business under the name and style “Edison Cannabis Co.” and “Lift & Co.”.

13. The Defendant, MediPharm Labs Corp. (“MediPharm”), is a corporation incorporated pursuant to the laws of the Province of Ontario, with a corporate office in Barrie, Ontario is in the business of the manufacturing and distributing cannabis products for both medicinal and recreational use within Canada. Alternatively, the Defendant MediPharmco, being a yet to be identified corporation that is a subsidiary or affiliate of MediPharm, is in the business of the manufacturing and distributing cannabis products for both medicinal and recreational use within Canada.

#### **THE PROPOSED CLASS MEMBERS**

14. This action is brought on behalf of the Plaintiff, and other persons resident in Canada who purchased cannabis products that were manufactured, sold, promoted, or distributed by the Defendants, and consumed prior to the labelled expiry date of such products (if any):

- a. On or after June 16, 2010, if such products were used for medicinal purposes; or
- b. On or after October 17, 2018, if such products were used for recreational purposes.

(the “Class” and the “Class period”)

#### **LEGAL STATUS AND REGULATION OF CANNABIS PRODUCT LABELLING IN CANADA**

15. Prior to 2001, cannabis was a Schedule II controlled substance under the *Controlled Drugs and Substances Act*, SC 1996, c. 19 and possession or distribution of cannabis was a criminal offence.

16. In 2001, the Government of Canada provided regulatory changes to Canada’s *Controlled Drugs and Substances Act* through the *Access to Cannabis for Medical Purposes Regulations*, SOR/2001-227. These regulations allowed individuals to purchase and use cannabis products for medicinal purposes if they obtained prescriptions from medical practitioners. Cannabis distribution was permitted only to those persons with valid medical prescriptions; otherwise, cannabis remained a controlled substance and subject to criminal penalties under Schedule II of the *Controlled Drugs and Substances Act*.

17. On October 17, 2018, the Government of Canada legalized possession and distribution of cannabis products through the *Cannabis Act*, SC 2018, c 16 by removing cannabis as a Schedule II controlled substance under the *Controlled Drugs and Substances Act*.

18. Amongst other things, the *Cannabis Act* prohibits the promotion of cannabis products in a manner that is false, misleading, or deceptive, or in a manner that creates a false impression about



its composition, characteristics, potency, purity, or quality. Cannabis may not be packaged or labelled with information that is false, misleading, or deceptive, including information about the characteristics, quantity, composition, concentration, potency, purity, or quality of the product. Correct labelling of cannabis products is important for the safety and well-being of consumers, as well as for protecting the public.

19. Cannabis manufacturing, sale, promotion, and distribution is subject to provincial and federal regulatory oversight; however, all cannabis promotion and labelling is subject to the minimum requirements set out in the Federal *Cannabis Act*.

20. The Defendants are holders of Federal licenses for processing cannabis and are regulated under the Federal *Cannabis Regulations*, SOR/2018-144. The *Cannabis Regulations* require a cannabis licence holder to label their cannabis products with THC and CBD amounts and test every lot of cannabis to confirm the quantity or concentration of THC or CBD is accurate prior to the packaging and labelling the product. Each cannabis product distributed in Canada must be labelled with the name of the manufacturer and the manufacturer's lot number.

21. The *Cannabis Regulations* require that a cannabis license holder, amongst other things, ensure that every lot or batch of cannabis is approved by a quality assurance person before being made available for sale.

22. Section 97 of the *Cannabis Regulations* set out variability limits for cannabis products. These provide that the product described by cannabis labelling must not contain any quantity or concentration of THC or CBD that is more than 15% different than what is provided on the label. The concentration or quantity of THC or CBD in a product distributed to consumers must therefore contain no less than 85% and no more than 115% of the THC or CBD provided on the label. In cases where the THC or CBD advertised is an edible or is divisible into discrete units, variability limits of up to 25% are permitted, but only if the amount labelled is less than 2 mg.

23. All individual cannabis products distributed in Canada may, under the *Cannabis Regulations*, be labelled with an expiry date that the manufacturer, using product data, has determined is appropriate. As of that expiry date, the cannabis product must maintain no less than 80% and no more than 120% of its THC and CBD content, if the product is dried cannabis or fresh cannabis. Cannabis extract or a cannabis topical must not have larger variability limits than those set out in section 97 of the *Cannabis Regulations* as of the expiry date on the product's label. A licence holder must retain documentation confirming which data was relied upon to establish an expiry date for a lot of cannabis products. This documentation must be retained for at least two years after the last sale or distribution of any lot or batch of the cannabis product.

24. The provisions of the *Cannabis Act* and the *Cannabis Regulations* are mandatory minimums that Canadian cannabis users rely upon to ensure that the products they consume are safe and

predictable. Canadians who choose to purchase and consume cannabis do so trusting that these minimum standards are followed by cannabis manufacturers, promoters, distributors, and sellers.

### PLAINTIFF'S EXPERIENCE

25. On or around February 13, 2020, the Plaintiff attended the retail business of Canna Cabana in Calgary, Alberta, located at #610, 20 Crowfoot Crescent NW and purchased a 28.2 g (30 mL) bottle of cannabis product manufactured and distributed by Tilray under the brand Canaca – TenUp (10:0), with a manufacturer's listed lot number of N0000005915, and a labelled THC content of 10.4 mg/mL, as well as a labelled CBD content of <0.1 mg/ml (the "Subject Product"). The name of the product (TenUp 10:0) suggests that the product is supposed to contain 10 mg/mL of THC and no mg/mL of CBD. The cost of the bottle was approximately \$36. The Subject Product was packaged on February 3, 2019 and did not have an expiry date. The labelling of the Subject Product is provided below:





26. The Plaintiff had not previously used cannabis and was curious about it. While at Canna Cabana she spoke with the staff and was recommended to try the Subject Product as a first-time user. She was warned that if she overdid the dosage she could experience negative health effects including, in particular, a common phenomenon known as “greening out” that leads a cannabis user, amongst other things, to experience severe nausea, dizziness, or feelings of anxiety.

27. After ingesting the Subject Product, the Plaintiff did not notice any psychotropic effects whatsoever. The Plaintiff tried the Subject Product four times over a roughly one month period, gradually, and anxiously, increasing the dosage. She continued to have no psychotropic effects and did not feel any other well-known “side effects” – such as feelings of sleepiness.

28. Not knowing what to expect, the Plaintiff spoke with a friend of hers, Dr. Darren Clark, who has a PhD, a strong scientific background, and is familiar with cannabis. Dr. Clark explained that the Plaintiff should have felt the effects from consuming the Subject Product in the amounts recommended by the staff at Canna Cabana. Dr. Clark tried the Subject Product herself, and also failed to notice any effects.

29. As neither the Plaintiff nor Dr. Clark felt any effects of the Subject Product, Dr. Clark became suspicious about the integrity of the Subject Product. Dr. Clark had heard that plastic can liners could leech cannabinoids from beverages in studies completed in the United States. She



suspected that a similar issue could have affected the Subject Product, which was sold in a plastic vial with a plastic lid.

30. Suspecting that the Subject Product was defective, Dr. Clark spoke with Dr. Shaun Mesher, a colleague of hers who had a PhD in biochemistry, and he agreed that the Subject Product may have integrity issues, based on Dr. Clark's and the Plaintiff's experience, as well as the plastic vial in which the Subject Product was stored. Dr. Mesher arranged to have the Subject Product sent to a laboratory for testing.

31. After laboratory testing, it was discovered that the Subject Product only had 46% of the labelled amount of active THC in the oil. A different bottle from the same Tilray lot number of the Subject Product, but that was packaged on March 2, 2019, was subsequently tested. The testing revealed that the bottle had 79% of the THC listed on the label in the oil, representing a very wide range of variance between different bottles ostensibly from the same lot. The Subject Product and the other product tested were also both well outside of the generous variability limits provided in the *Cannabis Regulations*.

32. Dr. Mesher investigated the striking mislabelling and lot variability further, sending a number of cannabis samples from other cannabis products to the laboratory for testing. The results were surprising. A significant number of the samples sent for testing were outside the variability limits provided for under the *Cannabis Regulations*, including the following samples:

- a. Edison Cannabis Co., (an Organigram or Organigramco product), lot number 3140. This had an advertised THC potency of 10.4 mg/ml but on testing was revealed to have THC potency of only 7.36 mg/ml (71% of the labelled amount).
- b. Northern Harvest, lot number A36501-925. This had an advertised THC potency of 19.89 mg/ml but on testing was revealed to have THC potency of only 12.81 mg/ml (64% of the labelled amount).
- c. Cove (a Cronos or Cronosco product) – Reflect Hybrid, lot number 0297E. This had an advertised THC potency of 18 mg/ml but on testing was revealed to have THC potency of 21.16 mg/ml (118% more than the labelled amount).
- d. MediPharm Labs, lot number 19ABQ-01F. This had an advertised THC potency of 24.5 mg/ml but on testing was revealed to have THC potency of 29.04 mg/ml (119% more than the labelled amount).
- e. AgMedica Bioscience – Vertical, lot number INC-02-19192-01. This had an advertised THC potency of 20.64 mg/ml but on testing was revealed to have THC potency of only 9.8 mg/ml (54% of the labelled amount).

- f. Aurora Sativa Drops, lot number 1102019000120. This had an advertised THC potency of 24.7 mg/ml but on testing was revealed to have THC potency of only 13.37 mg/ml (54% of the labelled amount).
- g. Organigram – Edison, lot number 5111. This had an advertised CBD potency of 9.69 mg/ml but on testing was revealed to have CBD potency of only 5 mg/ml (52% of the labelled amount).

### **THE DEFENDANTS' FALSE AND MISLEADING LABELLING OF CANNABIS PRODUCTS**

33. The Plaintiff, on the basis of the information she obtained from Dr. Mesher's testing, believes that there is a pervasive mislabelling of cannabis products in the Canadian market.

34. During the Class period, the Defendants manufactured and distributed cannabis products with labels that are false or misleading – with a significant portion of these products being sold to consumers with THC or CBD quantities that were well outside of the variability limits allowed for by the *Cannabis Regulations*. Consequently, the Class purchased and consumed products that, in a significant number of cases, contained either much more or much less THC or CBD than they intended to consume.

35. Only a small fraction of the cannabis products purchased by the Class are subject to Health Canada recalls. During the Class period the Defendants have routinely and systemically failed properly to label their cannabis products, resulting in pervasive overdosing and underdosing of THC or CBD by consumers.

36. None of the samples listed at paragraph 38 above were recalled by Health Canada.

37. The Class members otherwise have received no notice that the THC or CBD quantities in the cannabis products that they purchased and consumed were mislabelled by the Defendants. Even when Health Canada recalls of the Class members' cannabis products were issued to warn of mislabelling, these recalls were often only received after the Class had consumed the Defendants' cannabis products.

### **BREACH OF CONTRACT AND BREACH OF CONSUMER PROTECTION LEGISLATION**

38. The Defendants, or some of them, are or were sellers of consumer goods. The Plaintiff and the Class purchased cannabis products from the Defendants under contracts of purchase and sale – including, in particular, by online purchases from the Defendants' respective websites.

### ***Sale not in Accordance with the Product's Description***

39. The Plaintiff and the Class relied upon the implied condition in a consumer contract that goods sold by description will correspond to that description, as set out in the following provincial and territorial *Sale of Goods Acts*, including:

- a. *Sale of Goods Act*, RSBC 1996, c 410, s 17(1);
- b. *Sale of Goods Act*, RSA 2000, c S-02, s 15;
- c. *Sale of Goods Act*, RSS 1978, c S-1, s 15;
- d. *Sale of Goods Act*, CCSM, c S.10, s 15;
- e. *Sale of Goods Act*, RSO 1990, c S.1, s 14;
- f. *Sale of Goods Act*, RSNB 1973, c S-1, s 15;
- g. *Sale of Goods Act*, RSNS 1989, c 408, s 16;
- h. *Sale of Goods Act*, RSPEI 1988, c S-1, s 15;
- i. *Sale of Goods Act*, RSNL 1990, c S-6, s 15(1);
- j. *Sale of Goods Act*, RSNWT 1988, c S-2, s 17(a);
- k. *Sale of Goods Act*, RSY 2002, c 1987, s 15(b);
- l. *Sale of Goods Act*, RSNWT 1988, c S-2, s 17(a); and
- m. *Sale of Goods Act*, RSNWT 1988 (Nu), c S-2, s 17(a).

40. The Defendants breached the condition that the actual items provided to the Class would correspond with the description of the cannabis product provided to them, including, in particular, the quantity of THC and CBD expected and, consequently, the Class did not receive the benefit of the contract that they intended.

### ***Products were not of Merchantable Quality***

41. An implied statutory term of the contracts between the Defendants and the Class members was that the cannabis products would be of merchantable quality and fit for their intended purpose, as set out in the following provincial and territorial *Sale of Goods Acts*:

- a. *Sale of Goods Act*, RSBC 1996, c 410, s 18(b);
- b. *Sale of Goods Act*, RSA 2000, c S-02, s 16(4);
- c. *Sale of Goods Act*, RSS 1978, c S-1, s 16.2;
- d. *Sale of Goods Act*, CCSM, c S.10, s 16(b);
- e. *Sale of Goods Act*, RSO 1990, c S.1, s 15.2;

- f. *Sale of Goods Act*, RSNB 1973, c S-1, s 15;
- g. *Sale of Goods Act*, RSNS 1989, c 408, s 17(b);
- h. *Sale of Goods Act*, RSPEI 1988, c S-1, s 16(b);
- i. *Sale of Goods Act*, RSNL 1990, c S-6, s 16(c);
- j. *Sale of Goods Act*, RSNWT 1988, c S-2, s 18(1)(b);
- k. *Sale of Goods Act*, RSY 2002, c 1987, s 15(b);
- l. *Sale of Goods Act*, RSNWT 1988, c S-2, s 18(1)(b); and
- m. *Sale of Goods Act*, RSNWT 1988 (Nu), c S-2, s 18(1)(b).

42. The Defendants warranted to the Class that their cannabis products would be as advertised and fit for their intended purpose.

43. Cannabis products that contain THC or CBD quantities that are significantly above or below their labelled amounts are not of merchantable quality and are not fit for their intended purpose – whether for medicinal or recreational use. Consequently, the Defendants breached their implied warranty to the Class and deprived the Class of the benefit of the contract that they intended.

#### **COMMON LAW MISREPRESENTATION**

44. The Defendants owed a duty to the Class to ensure that representations made about their cannabis products were accurate and not misleading.

45. The Defendants knew, or ought to have known through reasonable diligence, that the representations they made about the THC or CBD quantities on their cannabis products on the products' labels were inaccurate or misleading.

46. The Class members reasonably relied upon the representations made by the Defendants as to the quantities of THC or CBD in the Defendants' cannabis products – including, in particular, by reasonably expecting that the Defendants would comply with the statutory and regulatory requirements governing cannabis labelling as set out in the *Cannabis Act* and the *Cannabis Regulations*.

47. The Defendants knew, or ought to have known, that the Class members would rely upon their labelling when making consumer decisions about which cannabis products to purchase and how much of such products they would consume at any given time.

48. The Class members could not with reasonable diligence determine the actual THC or CBD levels in the Defendants' cannabis products and detrimentally relied upon the Defendants' representations made about their products on the product labelling. The Class members, if they



knew of the Defendants' misrepresentations would either have not purchased the Defendants' products or would have consumed the products differently.

49. The Defendants financially benefitted from their misrepresentations at the expense of the Class members.

#### **STATUTORY MISREPRESENTATION CLAIMS AND CONSUMER PROTECTION LEGISLATION**

50. The Defendants were under statutory obligations in accordance with consumer protection legislation, including in the Province of Alberta, not to engage in unfair or deceptive business practices, including an obligation not to materially mislead Class members when marketing, promoting, selling, or advertising their cannabis products.

51. Specifically, the Defendants marketed, promoted, sold, or advertised cannabis products that represented quantities of THC or CBD that were materially different from the actual quantities of THC or CBD in the cannabis products purchased by the Class members.

52. By engaging in such unfair or deceptive business practices, the Defendants breached their statutory obligations under consumer protection legislation, including the following:

- a. *Business Practices and Consumer Protection Act*, SBC 2004, c 2, ss 4-5;
- b. *Consumer Protection Act*, RSA 2000, c C-26.3, s 6(4);
- c. *Consumer Protection and Business Practices Act*, SS, c C-30.2, ss 6-8;
- d. *Business Practices Act*, CCSM, c B120, ss 2, 3, and 5;
- e. *Consumer Protection Act*, SO 2002, c 30, ss 14 and 17;
- f. *Business Practices Act*, RSPEI 1988, c B-7, ss 2 and 3; and
- g. *Consumer Protection and Business Practices Act*, SNL 12009, c C-31.1, s 7 and 9.

53. The Plaintiff claims on her own behalf, and on behalf of the Class if they so elect, a right to rescind her contract with the Defendants and for the return of the value of the cannabis products purchased as a result of the Defendants' unfair or deceptive business practices.

#### **BREACH OF COMPETITION ACT**

54. The representations made by the Defendants about the quantities of THC and CBD on their cannabis products' labels are false or misleading in a material respect based both on the literal meaning and the general impression conveyed by the representations.

55. In making these false or misleading representations, the Defendants breached s. 52 of the *Competition Act*, RSC 1985, c. C-34, as these representations were made when promoting the Defendants cannabis products and were made knowingly or recklessly to the public.

56. The Plaintiff, on behalf of herself and the Class, claims damages pursuant to s. 36(1) of the *Competition Act*, including the costs of the Plaintiff investigating the Defendants' breach of s. 52 and the full costs of these proceedings.

#### **NEGLIGENCE IN PRODUCT LABELLING**

57. The Defendants, as manufacturers or distributors of a potentially dangerous product if mislabelled, owed a duty of care to the Plaintiff and Class members to keep them safe and to ensure that the labelling of their cannabis products was accurate. The Defendants owed a duty to the Class to protect them against physical and financial harm caused by the mislabelling of their potentially dangerous cannabis products.

58. The Defendants breached the duty of care owed to the Class members by:

- a. Failing to develop and implement a system that ensured that the labelling of their cannabis products was accurate and consistent;
- b. Failing to test each individual lot of cannabis product to ensure that the labelling matched the actual THC or CBD content;
- c. Failing to place cannabis products in appropriate storage containers that would prevent the increase or decrease of THC or CBD content in the cannabis products over time;
- d. Failing to research or test the extent to which THC or CBD may be absorbed into storage containers;
- e. Failing to research, test, or establish appropriate, or any, expiry dates for cannabis products;
- f. Failing to complete post-sale studies of their cannabis products to confirm that the amount of THC or CBD was accurate for each lot of cannabis products sold to the Class;
- g. Otherwise failing to comply with statutory and regulatory standards that were incumbent upon them, particularly those found in the *Cannabis Regulations*; and
- h. Such other particulars of negligence as may become apparent and counsel may advise.

59. The Defendants knew, or ought to have known, that if they did not exercise an appropriate level of care the Class could suffer damages, as particularized below.

## **BREACH OF DUTY TO WARN**

60. The Defendants, as manufacturers or distributors of a potentially dangerous product, owed a duty to the Class to warn them if their products were mislabelled and to complete recalls of all such products if they were mislabelled by an appreciable amount. The risk to the Class members of mislabelling of THC or CBD content in cannabis products includes a real risk of serious physical injury or even death.

61. The Defendants breached their duty to warn the Class by:

- a. Failing to correct the mislabelling in a timely manner, if the mislabelling was corrected at all;
- b. Failing to warn Class members through a notification through Health Canada advising that the labelling of their cannabis products was or could be inaccurate;
- c. Failing to communicate to the Class the existence of potentially mislabelled cannabis products through their websites or other means reasonably likely to reach the Class members;
- d. In the event that mislabelling was communicated to the Class members, by failing to advise of the extent of the mislabelling; and
- e. Such other particulars of a breach of the duty to warn as may become apparent and counsel may advise.

62. The Defendants knew, or ought to have known, that if they did not adequately warn the Class of the dangers of mislabelled products that the Class could suffer damages, as particularized below.

## **DAMAGES CAUSED BY THE DEFENDANTS' MISLABELLING OF CANNABIS PRODUCTS**

63. The health consequences of overconsuming cannabis as a result of an underreported labelling of THC can be very serious. THC overdoses can cause a number of health conditions, including:

- a. Extreme anxiety or panic attacks;
- b. Psychotic reactions leading to a loss of touch with reality, paranoia, hallucinations, delusions, or a loss of personal identity;
- c. Heart conditions, including an elevated heart rate, chest pain, or a heart attack;
- d. Uncontrollable shaking or seizures;
- e. High blood pressure;
- f. Serious and prolonged headaches;
- g. Impaired brain development (particularly in those under the age of 21);



- h. Magnification of the symptoms of alcohol consumption or adversely interacting with other drugs, including prescription medications, with potentially lethal consequences; and
- i. Decreased judgment, perception and coordination that can lead to serious injuries or even death.

64. A significant consequence of the Defendants' mislabelling of the THC or CBD content in their cannabis products is the creation of confusion as to what the appropriate quantity of THC or CBD consumption is for that individual consumer. Over time, consumers calibrate their THC or CBD use based upon previous experiences. In order properly to calibrate this usage, they rely upon accurate THC and CBD labelling. If there is a significant discrepancy between the labelled amount and the consumed amount, the consumer will mistakenly calibrate his or her usage to that amount. This is particularly dangerous when the amount of THC or CBD consumed is significantly overreported on the label as the consumer will then expect to be able to consume a significantly larger portion of THC or CBD in the future without an adverse reaction. This can lead to future overdoses even though the amount consumed at a particular time was actually a much smaller dose. It may also lead to the consumer purchasing much more cannabis than he or she requires in the future.

65. In addition, consumers that purchase cannabis products with THC or CBD that are overreported obtain a "watered-down" product at full price, potentially requiring them to purchase additional quantities to obtain the intended effect.

66. The Class members suffered some or all of the above noted damages as a direct result of the actions of the Defendants in mislabelling and misrepresenting the THC or CBD quantities in their cannabis products.

#### **UNJUST ENRICHMENT**

67. The Defendants were unjustly enriched by their conduct as set out above, including conduct that was in breach of sale of goods legislation, consumer protection legislation, the *Competition Act*, the *Cannabis Act*, and other applicable statutory and common law.

68. The Defendants were enriched by financially profiting from the sale of goods that the Class members would not have purchased but for the misleading representations of the Defendants. The Class members suffered a financial deprivation corresponding to the Defendants' enrichment and there was no juristic reason for the Defendants' enrichment and the Class members' corresponding deprivation.

69. The Class members are entitled to a remedy in the form of restitution or disgorgement of the profits the Defendants earned as a result of their illicit actions.



## **WAIVER OF TORT**

70. In the alternative, the Plaintiff and the Class members claim disgorgement of the benefits received by the Defendants in accordance with the doctrine of waiver of tort – including a disgorgement of all ill-gotten profits made by the Defendants as a result of their wrongdoing, as described above.

71. The Defendants benefitted from their wrongdoing, including through their misleading labelling of THC and CBD content in their cannabis products, and benefited from the increased profits as a result of this misleading labelling.

72. The Defendants should not be permitted to retain the profits derived from their wrongdoing and an award of compensatory damages alone to the Class members would not deter the Defendants from future misconduct.

## **PUNITIVE DAMAGES**

73. The wrongful acts committed by the Defendants are of such a reprehensible nature as to warrant an award of aggravated and/or punitive damages. The wrongful acts committed by the Defendants were malicious and reprehensible and depart to a marked degree from the standards expected of manufacturers and distributors of consumer goods. The Defendants, in particular, demonstrated indifference to the potential danger to the lives of the Class members through the mislabelling of their products. The Defendants knew that their mislabelling could have serious repercussions for the Class and took few, if any, steps to protect the Class or warn them to the danger they faced. They did so in order to protect their profits and avoid product recalls.

74. Aggravated and punitive damages are appropriate in order to deter the Defendants, or those similarly situated, from taking such wrongful actions in the future.

## **SERVICE OUTSIDE ALBERTA**

75. Pursuant to Rule 11.25 of the Alberta *Rules of Court*, there is a real and substantial connection between this action and Alberta supporting service of this Claim outside Alberta and the grounds for service of the Statement of Claim outside of Alberta are herein made out, including:

- a. The Plaintiff and many of the Class members reside in Alberta;
- b. The Defendants marketed and sold their cannabis products to Class members in Alberta;
- c. Many of the contracts between the Class members and the Defendants were made in Alberta;
- d. Many of the causes of action in this claim are governed by the laws of Alberta; and

- e. The Plaintiff's damages, and the damages suffered by many of the Class members, were suffered in Alberta.

**Remedy sought:**

76. The Plaintiff claims on her behalf, and on behalf of the proposed Class:
- a. An order certifying this action as a class proceeding and appointing the Plaintiff as the representative plaintiff;
  - b. An accounting of all revenues that the Defendants have received from the sale of their cannabis products from June 9, 2018 to the date of certification of this action;
  - c. Judgment, including judgment on an aggregate basis pursuant to Division 2 of the *Class Proceedings Act*, SA 2003, c. C-16.5, for breach of contract, compensatory damages, statutory breach, and unjust enrichment in the amount of \$500,000,000, or such other amount as may be proven at trial;
  - d. Punitive damages in the amount of \$5,000,000 against each of the Defendants;
  - e. Interest pursuant to the *Judgment Interest Act*, RSA 2000, c. J-1;
  - f. Costs of this action; and
  - g. Such further and other relief as this Court may deem just and appropriate.

**NOTICE TO THE DEFENDANT(S)**

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of Queen's Bench at Calgary, Alberta, AND serving your statement of defence or a demand for notice on the Plaintiffs' address for service.

**WARNING**

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the Plaintiff(s) against you.