



S = 244 861

No.
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between

BRANDON GABRIEL AND MELINDA BIGE

PLAINTIFFS

and

DANONE INC. AND WAL-MART CANADA CORP.

DEFENDANTS

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

NOTICE OF CIVIL CLAIM

(Recalled Plant-Based Beverage Products)

This action has been started by the plaintiffs for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiffs.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiffs and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the plaintiffs,

- (a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,
- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,
- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

THE PLAINTIFFS' CLAIM

Part 1: STATEMENT OF FACTS

Overview

1. In July 2024, the Canadian Food Inspection Agency recalled eighteen Silk and Great Value branded plant-based refrigerated beverages in response to reports that some of these products were contaminated with *Listeria monocytogenes*. By virtue of the contamination of some of the Defendants' recalled plant-based beverage products with *Listeria monocytogenes*, all of the Defendants' recalled plant-based beverage products were inherently suspect, worthless, and unfit for human consumption.

2. Canadians entrust their safety to companies that manufacture and supply their food and beverages. In manufacturing consumable goods that were tainted with *Listeria monocytogenes* and supplying these dangerous goods to the Canadian marketplace, the Defendants breached this trust. Through their conduct, the Defendants were negligent, breached the *Business Practices and Consumer Protection Act*, SBC 2004, c 2 (the "**BPCPA**") and *Sale of Goods Act*, RSBC 1996, c 410 (the "**Sale of Goods Act**") and related provincial enactments, and/or have been unjustly enriched.

The Plaintiffs and Class Members

3. The Plaintiff, Melinda Bige, is a resident of British Columbia. On July 13, 2024, the Plaintiff Bige consumed a Silk brand Almond Unsweetened Vanilla beverage that she had purchased from Choices Supermarket in Parksville, British Columbia a few days previously. A few hours after consuming the Silk brand Almond Unsweetened Vanilla beverage, the Plaintiff Bige began experiencing symptoms consistent with *Listeriosis*. The Plaintiff Bige suffered these symptoms for at least ten days.

4. The Plaintiff, Brandon Gabriel, is a resident of British Columbia. On July 12, 2024, the Plaintiff Gabriel consumed a Silk brand Almond Unsweetened Vanilla beverage that the Plaintiff Bige had purchased for personal and family use. A few hours after consuming the Silk brand Almond Unsweetened Vanilla beverage, the Plaintiff Gabriel began experiencing symptoms consistent with *Listeriosis*. The Plaintiff Gabriel suffered these symptoms for approximately five days.

5. The Plaintiffs bring this claim on their own behalf and on behalf of all individuals and legal persons in Canada, other than Excluded Persons, who belong to one or more of the following overlapping subclasses:

- a) all individuals and legal persons who purchased one or more Recalled Products primarily for purposes other than personal, family or household (the “**Purchaser Subclass**” and the “**Purchaser Subclass Members**”);
- b) all individuals who purchased and/or used one or more Recalled Products primarily for personal, family or household purposes (the “**Consumer Subclass**” and the “**Consumer Subclass Members**”); and
- c) all individuals and the estates of deceased individuals who claim to have suffered personal injury or death as a result of consuming one or more Recalled Products (the “**Personal Injury Subclass**” and the “**Personal Injury Subclass Members**”),

from the date that these products were first offered for sale in Canada until the date that this action is certified as a class proceeding (the “**Class**”, “**Class Members**” and “**Class Period**”).

“**Excluded Persons**” means the Defendants and their past and/or present subsidiaries.

The Purchaser Subclass and the members of the Consumer Subclass who purchased one or more Recalled Products are collectively the “**Economic Subclass**” and the “**Economic Subclass Members**”.

Silk and Great Value branded plant-based beverages recalled by Health Canada pursuant to recall RA-75799 are the “**Recalled Products**”. Attached as Schedule “A” to this Notice of Civil Claim is a list of products confirmed by the Canadian Food Inspection Agency to constitute the Recalled Products as of the date that this pleading was filed. The Plaintiffs will provide further particulars to Schedule “A” to include any additional products that are recalled subsequent to the date on which this Notice of Civil Claim is filed.

In the alternative, the Plaintiffs bring this claim on their own behalf and on behalf of all individuals and legal persons in Canada, other than Excluded Persons and residents of Quebec, who belong to one or more of the overlapping subclasses outlined in paragraph four of this Notice of Civil Claim.

The Defendants

6. The Defendant Danone Inc. ("**Danone**") is a company federally incorporated pursuant to the laws of Canada with an address for service at 100 De Lauzon, Boucherville, Quebec, J4B 1E6. Danone manufactures, distributes, and sells Silk branded plant-based beverages in Canada, including British Columbia.

7. The Defendant Wal-Mart Canada Corp. ("**Walmart**") is a company incorporated pursuant to the laws of Nova Scotia with an address for service at 1300 - 1969 Upper Water Street, Halifax, Nova Scotia, B3J 3R7. Walmart manufactures, distributes, and sells Great Value branded plant-based beverages in Canada, including British Columbia.

Listeria monocytogenes and its Adverse Health Effects on Humans

8. *Listeria monocytogenes* ("**Listeria**") is a pathogenic bacterium that causes the infection *Listeriosis*. Symptoms of *Listeriosis* include vomiting, nausea, fever, aching, severe headaches, and neck stiffness. In severe cases, *Listeriosis* can lead to sepsis, meningitis, paralysis, and even death. Pregnant and elderly individuals and individuals with weakened immune systems are at higher risk of injury from contracting Virus A due to their compromised immune systems and overall vulnerability, which contributes to a 30% higher fatality rate compared to the general population. Infection in pregnant individuals can lead to infection in the newborn, premature delivery, and even stillbirth.

The Defendants' Products were Recalled Due to Listeria Contamination

9. On July 8, 2024, the Canadian Food Inspection Agency recalled 18 different Silk and Great Value branded plant-based beverages that had been distributed to retailers and sold to consumers due to "possible *Listeria monocytogenes* contamination". The Canadian Food Inspection Agency recalled the Defendants' products following reports of illness from individuals who consumed the Recalled Products.

10. On July 9, 2024, Dr. Kieran Moore, Chief Medical Officer of Health for the Province of Ontario, released a statement warning consumers against consuming the Recalled Products and advising that these products should be discarded or returned to the location

from where they were purchased. Dr. Moore confirmed that there were at that time at least five hospitalizations associated with this outbreak investigation.

11. On July 17, 2024, the Public Health Agency of Canada released an advisory confirming that twelve hospitalizations and two deaths had been linked to the Recalled Products. The Agency also stated that the illnesses occurred between August 2023 and July 2024.

The Defendants' Misconduct

12. At all material times, the Defendants designed, manufactured, inspected, stored, packaged, imported, marketed, sold, distributed and/or placed the Recalled Products into the normal stream of commerce. The Defendants knew or ought to have known that the Recalled Products would be sold in Canada (including British Columbia).

13. At all material times, it was reasonably foreseeable that the Plaintiffs and Personal Injury Subclass Members would consume the Recalled Products.

14. At all material times, the Recalled Products, or some of them, were contaminated with *Listeria* and as a result posed a real and substantial danger to individuals consuming the Recalled Products. All Recalled Products were inherently suspect and therefore worthless and unfit for human consumption.

15. At all material times, it was reasonably foreseeable that, in the event of a recall, the advice of public health authorities would be to dispose of any product that is not labelled or is inadequately labelled, such that some purchasers of the Recalled Products would be unable to determine whether the product they purchased was recalled.

16. At all material times, the Defendants failed to adequately implement quality-control measures to detect and prevent contamination of the Recalled Products with *Listeria*.

17. Industry standard manufacturing specifications and procedures for the manufacturing, inspection, storage, packaging, and distribution of consumable goods require that these products be manufactured, inspected, stored, packaged, and/or

distributed in such a manner that these products are not contaminated by *Listeria* and distributed to the public.

18. The Defendants manufactured, inspected, stored, packaged, and/or distributed the Recalled Products in a manner that was inconsistent with industry standard manufacturing specifications and procedures.

19. As a result of the Defendants' failure to manufacture, inspect, store, package, and/or distribute the Recalled Products in accordance with industry standard manufacturing specifications and procedures, some, or all, of the Recalled Products became contaminated with *Listeria*. The Recalled Products were contaminated with *Listeria* when these products left the Defendants' respective facilities.

20. At all material times, the Defendants represented, expressly or by implication, that:

a) the Recalled Products were safe to consume;

and/or omitted to represent, or warn, that:

b) the Recalled Products, or some of them, were contaminated with *Listeria*;
and/or

c) the Recalled Products, or some of them, posed a real and substantial danger to individuals consuming the Recalled Products,

(the "**Misrepresentations**").

21. At all material times, the Defendants knew or ought to have known that:

a) the Recalled Products, or some of them, were contaminated with *Listeria*;
and/or

b) the Recalled Products, or some of them, posed a real and substantial danger to individuals consuming these products.

22. In the alternative, the Defendants failed to address the risk posed by the contamination of Recalled Products with *Listeria* upon discovering the contamination and the risk it poses to individuals consuming the Recalled Products.

23. The Consumer Subclass Members who purchased Recalled Products relied on the Misrepresentations in their decisions to purchase these products.

24. The Consumer Subclass Members who purchased Recalled Products would not have purchased these products had they been aware of the real and substantial danger to human health posed by the contamination of some, or all, of the Recalled Products.

25. The Defendants acquired a portion, or all, of the price paid by Consumer Subclass Members who purchased Recalled Products for these products due to the Defendants' breaches of the *BPCPA* and related extra-provincial consumer protection legislation.

26. The Consumer Subclass Members who purchased the Recalled Products have an interest in some, or all, of the funds received from them by the Defendants, directly or indirectly, for these products.

27. The Economic Subclass Members were the sources of the money acquired by the Defendants, in the form and quantity of some, or all, of the price paid by them and received by the Defendants, directly or indirectly, for the Recalled Products.

28. Some of the Economic Subclass Members purchased Recalled Products directly from the Defendants in order to sell these products to intermediaries and/or consumers for consumption or resale, to consume these products, and/or to make these products available for consumption. These class members made known to the Defendants, directly or indirectly, the purposes for which they purchased the Recalled Products and relied on the Defendants' skill and/or judgment that the Recalled Products would be fit for these purposes.

29. The Plaintiffs have sent a letter to each of the Defendants advising therein that Consumer Subclass Members in Ontario, Prince Edward Island and Alberta seek damages, repayment, restitution and/or punitive damages pursuant to the *Consumer Protection Act* (2002), SO 2002, c 30, Sched. A (the "**Ontario CPA**"), the *Business Practices Act*, RSPEI 1988, c B-7 (the "**PEI BPA**") and the *Consumer Protection Act*, RSA 2000, c C-26.3 (the "**Alberta CPA**"), respectively, due to the Defendants' misconduct, as particularized in this Notice of Civil Claim. This notice was sent on behalf of Consumer

Subclass Members in Ontario, Prince Edward Island and Alberta. In the alternative, the notice requirements in the *Ontario CPA*, *PEI BPA* and *Alberta CPA* are fulfilled by the filing of this Notice of Civil Claim. In the further alternative, the interests of justice warrant dispensing of the notice requirement for Consumer Subclass Members in Ontario pursuant to section 18(15) of the *Ontario CPA*.

30. The Defendants, or some of them, supplied and/or sold the Recalled Products to one or more intermediaries and/or one or more other defendants, who in turn sold these products to the public and/or supplied and/or sold these products to other intermediaries before these products were sold to consumers. None of the contracts between the Defendants, intermediaries and/or Economic Subclass Members for the supply and/or sale of the Recalled Products permitted the Recalled Products to be contaminated with and/or have an undisclosed risk of being contaminated with *Listeria*.

31. The Defendants have been enriched by the receipt of some, or all, of the price paid by the Economic Subclass Members and received by the Defendants, directly or indirectly, for the Recalled Products. The Economic Subclass Members have suffered a corresponding deprivation of this same amount.

Harm to the Plaintiffs and Class Members

32. As a result of the Defendants' breaches of the *BPCPA* and related provincial enactments, the Plaintiffs and Consumer Subclass Members have suffered loss and/or damage, including but not limited to personal injuries and/or the cost of purchasing a worthless product.

33. As a result of the Defendants' breaches of the *Sale of Goods Act* and related provincial enactments, the Plaintiff Bige and Economic Subclass Members who purchased Recalled Products directly from the Defendants have suffered loss and/or damage, including but not limited to personal injuries and/or the cost of purchasing a worthless product.

34. As a result of the Defendants' negligent manufacture of the Recalled Products failure to warn, breaches of the *BPCPA* and related provincial enactments, and/or

breaches of the *Sale of Goods Act* and related provincial enactments, the Plaintiffs and Personal Injury Subclass Members have suffered loss and/or damage including but not limited to:

- a) death;
- b) nausea;
- c) vomiting;
- d) fever;
- e) muscle aches;
- f) neck stiffness;
- g) headaches;
- h) fatigue;
- i) insomnia;
- j) anxiety;
- k) depression;
- l) sepsis;
- m) paralysis;
- n) meningitis;
- o) stillbirth;
- p) premature delivery; and/or
- q) other injuries may develop or become known in the future.

35. The Plaintiffs and Personal Injury Subclass Members' injuries have and will continue to cause suffering, loss of enjoyment of life, permanent physical disability, loss of past and future earning capacity and/or loss of past and future housekeeping capacity.

36. The Personal Injury Subclass Members who died as a result of the Defendants' negligent manufacture of the Recalled Products, failure to warn, breaches of the *BPCPA* and related provincial enactments, and/or breaches of the *Sale of Goods Act* and related provincial enactments have suffered loss and/or damage including but not limited to: damages for the person's spouse for loss of consortium, damages for bereavement for family members, damages for loss of care, guidance and companionship, damages for dependency on the deceased's income and service, damages for funeral and other expenses, damages pursuant to various provincial and territorial wrongful death and fatal accident statutes, and damages on behalf of the deceased's estate including pursuant to the various provincial and territorial survival of actions statutes.

37. The Plaintiffs and Personal Injury Subclass Members have sustained damages for the cost of medical treatment, including past and future cost of health care services provided by the government of British Columbia and the governments of other provinces and territories. The Plaintiffs and Personal Injury Subclass Members continue to undergo medical care and treatment and continue to sustain damages. As a result of their injuries, the Personal Injury Subclass Members have received and in the future will continue to receive care and services from family members.

38. The loss and/or damages suffered by the Plaintiffs and Personal Injury Subclass Members were the reasonably foreseeable consequences of the Defendants' negligence, failure to warn, breaches of the *BPCPA* and related provincial enactments, and/or breaches of the *Sale of Goods Act* and related provincial enactments.

Part 2: RELIEF SOUGHT

39. The Plaintiffs claim on their own behalf and on behalf of the Class Members:
- a) an order certifying this action as a class proceeding and appointing them as representative plaintiffs under the *Class Proceedings Act*, RSBC 1996, c 50 (the "***Class Proceedings Act***");
 - b) general and special damages;

- c) damages for the putative class members residing in Quebec in an amount to be determined to compensate them for their losses suffered as a result of the Defendants' conduct according to the principles under articles 1590, 1607 and 1611 of the *Civil Code of Québec*, CQLR c CCQ-1991 (the "**Québec Civil Code**");
- d) a declaration under subsection 172(1)(a) of the *BPCPA* that the Defendants have breached sections 4-5 of the *BPCPA*;
- e) an injunction under subsection 172(1)(b) of the *BPCPA* to restrain further breaches of the *BPCPA* by requiring the Defendants to represent the risk posed by *Listeria* in their marketing and sale of their plant-based beverages going forward;
- f) damages pursuant to section 171 of the *BPCPA*;
- g) a restoration order under subsection 172(3)(a) of the *BPCPA* in an amount equal to some, or all, of the price paid by Consumer Subclass Members in British Columbia who purchased Recalled Products and received by the Defendants, directly or indirectly, for these products;
- h) relief for contraventions of extra-provincial consumer protection legislation (collectively with the *BPCPA*, the "**Consumer Protection Legislation**"), as follows:
 - i. damages including but not limited to amounts paid by Consumer Subclass Members in Alberta for the Recalled Products, or in the alternative restitution of some, or all, of the amounts paid by them and received by the Defendants, directly or indirectly, for these products, as well as punitive damages, pursuant to subsections 7(1), 7(3), 7.2(1), 13(2) and/or 142.1(2) of the *Alberta CPA*;
 - ii. damages including but not limited to amounts paid by Consumer Subclass Members in Saskatchewan for the Recalled Products, or in

the alternative restitution of some, or all, of the amounts paid by them and received by the Defendants, directly or indirectly, for these products, as well as punitive damages, pursuant to subsection 93(1) of *The Consumer Protection and Business Practices Act*, SS 2014, c C-30.2;

- iii. damages including but not limited to amounts paid by Consumer Subclass Members in Manitoba for the Recalled Products, or in the alternative repayment of some, or all, of the amounts paid by them and received by the Defendants, directly or indirectly, for these products, as well as punitive damages, pursuant to subsections 23(2) and/or 23(4) of *The Business Practices Act*, CCSM, c B120;
- iv. damages including but not limited to amounts paid by Consumer Subclass Members in Québec for the Recalled Products and/or repayment of the amount by which payments made by them for the Recalled Products exceed the value of these products, or in the alternative restitution of some, or all, of the amounts paid by them and received by the Defendants, directly or indirectly, for these products, as well as punitive damages, pursuant to section 272 of the *Consumer Protection Act*, CQLR c P-40.1;
- v. damages including but not limited to amounts paid by Consumer Subclass Members in Ontario for the Recalled Products and/or repayment of the amount by which payments made by them for the Recalled Products exceed the value of these products, or in the alternative restitution of some, or all, of the amounts paid by them and received by the Defendants, directly or indirectly, for these products, as well as punitive damages, pursuant to subsections 18(1), 18(2) and/or 18(11) of the *Ontario CPA*;
- vi. damages including but not limited to amounts paid by Consumer Subclass Members in Prince Edward Island for the Recalled Products

and/or repayment of the amount by which payments made by them for the Recalled Products exceed the value of these products, or in the alternative restitution of some, or all, of the amounts paid by them and received by the Defendants, directly or indirectly, for these products, as well as punitive damages, pursuant to subsections 4(1) and/or 4(2) of the *PEI BPA*;

- vii. damages including but not limited to amounts paid by the Consumer Subclass Members in Newfoundland for the Recalled Products, repayment of the amount by which payments made by them for the Recalled Products exceed the value of these products, as well as punitive damages, pursuant to section 10 of the *Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1;
- viii. damages including but not limited to amounts paid by Consumer Subclass Members in New Brunswick for the Recalled Products pursuant to section 15 of the *Consumer Product Warranty and Liability Act*, SNB 1978, c C-18.1;
- ix. damages including but not limited to amounts paid by Consumer Subclass Members in Nova Scotia for the Recalled Products pursuant to the *Consumer Protection Act*, RSNS 1989, c 92;
- x. damages including but not limited to amounts paid by Consumer Subclass Members in the Yukon for the Recalled Products pursuant to the *Consumers Protection Act*, RSY 2002, c 40;
- xi. damages including but not limited to amounts paid by Consumer Subclass Members in the Northwest Territories for the Recalled Products pursuant to the *Consumer Protection Act*, RSNWT 1988, c C-17; and
- xii. damages including but not limited to amounts paid by Consumer Subclass Members in Nunavut for the Recalled Products pursuant to *Consumer Protection Act*, RSNWT (Nu) 1988, c C-17;

- i) damages under section 56 of the *Sale of Goods Act* for breach of one or more implied conditions and/or warranties;
- j) relief for contraventions of extra-provincial sale of goods legislation (collectively with the *Sale of Goods Act*, the “**Sale of Goods Legislation**”), including the corresponding cause of action under the Québec Civil Code, as follows:
 - i. damages for a breach of one or more implied conditions and/or warranties under section 52 of the *Sale of Goods Act*, RSA 2000, c S-2;
 - ii. damages for a breach of one or more implied conditions and/or warranties under section 52 of the *Sale of Goods Act*, RSS 1978, c S-1;
 - iii. damages for a breach of one or more implied conditions and/or warranties under section 54 of the *Sale of Goods Act*, CCSM, c S10;
 - iv. damages for breach of one or more implied conditions and/or warranties under section 51 of the *Sale of Goods Act*, RSO 1990, c S 1;
 - v. damages for a breach of one or more implied conditions and/or warranties under section 53 of the *Sale of Goods Act*, RSPEI 1988, c S-1;
 - vi. damages for a breach of one or more implied conditions and/or warranties under section 54 of the *Sale of Goods Act*, RSNL 1990, c S-6;
 - vii. damages for a breach of one or more implied conditions and/or warranties under section 67 of the *Sale of Goods Act*, RSNB 2016, c 110;

- viii. damages for a breach of one or more implied conditions and/or warranties under section 54 of the *Sale of Goods Act*, RSNS 1989, c 408;
 - ix. damages for a breach of one or more implied conditions and/or warranties under section 50 of the *Sale of Goods Act*, RSY 2002, c 198;
 - x. damages for a breach of one or more implied conditions and/or warranties under section 60 of the *Sale of Goods Act*, RSNWT 1988, c S-2;
 - xi. damages for a breach of one or more implied conditions and/or warranties under section 60 of the *Sale of Goods Act*, RSNWT (Nu) 1988, c S-2; and
 - xii. damages for a breach of the legal warranty of quality under sections 1458 and 1726 of the Québec Civil Code;
- k) in the alternative to damages pursuant to the Sale of Goods Legislation, a declaration that the Defendants have been unjustly enriched by the receipt of some, or all, of the amounts paid by the Economic Subclass Members and received by the Defendants, directly or indirectly, for the Recalled Products;
- l) in the alternative to damages pursuant to the Sale of Goods Legislation, an order that the Defendants account for and make restitution to the Economic Subclass Members equal to the amount by which they have been unjustly enriched, or alternatively disgorgement;
- m) past and future damages “in trust” for services provided by family members of the Personal Injury Subclass Members;
- n) recovery of health care costs pursuant to the *Health Care Cost Recovery Act*, SBC 2008, c 27 (the “**HCCRA**”), and equivalent legislation in other provinces and territories throughout Canada;

- o) damages pursuant to section 2 of the *Family Compensation Act*, RSBC 1996, c 126 (the “**Family Compensation Act**”), and equivalent legislation in other provinces and territories throughout Canada;
- p) punitive damages;
- q) costs for the administration of any court award or judgment obtained in this action;
- r) pre-judgment and post-judgment interest under the *Court Order Interest Act*, RSBC 1996, c 79 (the “**Court Order Interest Act**”) and corresponding provisions under: the *Judgment Interest Act*, RSA 2000, c J-1; *Pre-Judgment Interest Act*, SS 1984-85-86, c P-22.2; *The Court of King’s Bench Act*, CCSM c C280; *Courts of Justice Act*, RSO 1990, c C43; *Civil Code of Quebec*, CQLR c CCQ-1991 (with additional legal indemnity under article 1619 CCQ); *Judicature Act*, RSNB 1973, c J-2; *Judicature Act*, RSNS 1989, c 240; *Judicature Act*, RSPEI 1988 c J-2.1; *Judgment Interest Act*, RSNL 1990, c J-2; *Judicature Act*, RSY 2002, c 128; *Judicature Act*, RSNWT, 1988 c. J-1; and *Rules of the Supreme Court of the Northwest Territories*, NWT Reg (Nu) 010-96; and
- s) such further and other relief as this Honourable Court may deem just.

Part 3: LEGAL BASIS

40. The Plaintiffs and Class Members plead and rely on the *Negligence Act*, RSBC 1996, c 318, the Consumer Protection Legislation, the Sale of Goods Legislation, the *Class Proceedings Act*, the *Family Compensation Act* and related extra-provincial enactments, the *HCCRA* and related extra-provincial enactments, the *Court Order Interest Act* and related extra-provincial enactments, the *Food and Drugs Act*, RSC 1985, c F-27 (the “**Food and Drugs Act**”), the *Criminal Code*, RSC 1985, c C-46 (the “**Criminal Code**”), the *Medicare Protection Act*, RSBC 1996, c 286 (the “**Medicare Protection Act**”) and related extra-provincial enactments, the *Court Jurisdiction and Proceedings Transfer*

Act, SBC 2003, c 28 (the “**CJPTA**”), and the Supreme Court Civil Rules, BC Reg 168/2009 and related enactments.

Negligence - Negligent Manufacture

41. At all material times, the Defendants owed a duty of care to the Plaintiffs and Personal Injury Subclass Members as reasonably foreseeable consumers of the Recalled Products to manufacture, inspect, store, package, and/or distribute the Recalled Products in a manner consistent with industry standard manufacturing specifications and procedures such that the Recalled Products would not pose a real and substantial danger to consumers of these products.

42. The Defendants manufactured, inspected, stored, packaged, and/or distributed the Recalled Products in a manner inconsistent with industry standard manufacturing specifications and procedures which resulted in the Recalled Products, or some of them, being contaminated with *Listeria*. The Defendants therefore breached their duty to the Plaintiffs and Personal Injury Subclass Members and were negligent.

Negligence - Failure to Warn

43. Further and in the alternative to the Plaintiffs and Personal Injury Subclass Members’ pleading of negligent manufacture, at all material times the Defendants owed a duty of care to the Plaintiffs and Personal Injury Subclass Members as reasonably foreseeable users of the Recalled Products to warn of the risks associated with the reasonably foreseeable use of these products. In particular, the Defendants owed a duty of care to warn the Plaintiffs and Personal Injury Subclass Members that:

- a) the Recalled Products, or some of them, were contaminated with *Listeria*; and/or
- b) the Recalled Products, or some of them, posed a real and substantial danger to individuals consuming these products.

44. The Defendants knew or ought reasonably to have known that the Recalled Products, or some of them, were defective due to contamination with *Listeria* and that this

defect posed a real and substantial danger to individuals who consumed these products. By not warning the Plaintiffs and Personal Injury Subclass Members, the Defendants were negligent.

Negligence – Causation and Damages

45. As a result of the Defendants' negligent manufacture and/or design of the Recalled Products and/or the Defendants' failure to warn, the Personal Injury Subclass Members have suffered loss and/or damage including but not limited to:

- a) personal injury;
- b) loss of past and future income earning capacity;
- c) loss of past and future housekeeping capacity;
- d) cost of future care;
- e) out of pocket expenses;
- f) damages "in trust" for past and future service provided by family members; and/or
- g) damages pursuant to section 2 of the *Family Compensation Act* and equivalent provisions of related extra-provincial enactments.

46. At all material times the Defendants were in a close and proximate relationship with the Plaintiffs and Personal Injury Subclass Members. The losses and/or damages suffered by the Plaintiffs and Personal Injury Subclass Members were the reasonably foreseeable consequences of the Defendants' negligent manufacture of the Recalled Products and/or the Defendants' failure to warn.

47. Personal Injury Subclass Members resident outside of British Columbia plead and rely on the equivalent provisions of family compensation legislation in their respective provinces and territories, namely: *Survival of Actions Act*, RSA 2000, c S-27; *Fatal Accidents Act*, RSA 2000, c F-8; *The Survival of Actions Act*, SS 1990-91, c S-66.1; *The*

Fatal Accidents Act, RSS 1978, c F-11; *The Fatal Accidents Act*, CCSM c F50; *Family Law Act*, RSO 1990, c F.3; *Survival of Actions Act*, RSPEI 1988, c S-11; *Fatal Accidents Act*, RSPEI 1988, c F-5; *Survival of Actions Act*, RSNL 1990, c S-32; *Fatal Accidents Act*, RSNL 1990, c F-6; *Survival of Actions Act*, RSNB 2011, c 227; *Fatal Accidents Act*, RSNB 2012, c 104; *Survival of Actions Act*, RSNS 1989, c 453; *Fatal Injuries Act*, RSNS 1989, c 163; *Survival of Actions Act*, RSY 2002, c. 212; *Fatal Accidents Act*, RSY 2002, c 86; *Fatal Accidents Act*, RSNWT 1988, c F-3; *Fatal Accidents Act*, RSNWT (Nu) 1988, c F-3 and the *Québec Civil Code*; each as amended from time to time and with regulations in force at material times (the “**Family Compensation Legislation**”).

Breaches of the Québec Civil Code

48. Personal Injury Subclass Members resident in Québec plead and rely on corresponding legal rules of extracontractual liability pursuant to articles 1468 and 1469 of the Québec Civil Code. As the manufacturers, distributors and/or suppliers of the Recalled Products, the Defendants are bound to make reparation for injury caused to the Personal Injury Subclass Members by reason of the defective Recalled Products that failed to provide the security for which the Subclass members were anticipated to enjoy.

49. In the alternative, the Personal Injury Subclass Members resident in Québec plead and rely on corresponding legal rules of extracontractual liability pursuant to article 1457 of the Québec Civil Code. As the manufacturers, distributors and/or suppliers of the Recalled Products, the Defendants are bound to make reparation for injury caused to the Personal Injury Subclass Members by reason of their conduct, which deviates from the general standards incumbent on a reasonable person placed in the same circumstances.

Breaches of the Business Practices and Consumer Protection Act

50. The Defendants have breached the *BPCPA*.

51. The Plaintiffs and Consumer Subclass Members in British Columbia purchased and/or used the Recalled Products for primarily personal, family and/or household purposes and are “consumers” within section 1 of the *BPCPA*.

52. The Defendants are each a “supplier” within the meaning of section 1 of the *BPCPA*.

53. The sale and/or supply of each of the Recalled Products in British Columbia is a “consumer transaction” within the meaning of section 1 of the *BPCPA*.

54. By the conduct set out herein, the Defendants breached sections 4-5 of the *BPCPA*. The Defendants’ actions constitute deceptive acts or practices.

55. Section 5 of the *BPCPA* prohibits suppliers from engaging in deceptive acts or practices in respect of consumer transactions. Once it is alleged that a supplier committed or engaged in a deceptive act or practice, the burden of proof that the deceptive act or practice was not committed or engaged in is on the supplier.

56. By making the Misrepresentations, the Defendants engaged in conduct contrary to, *inter alia*, subsections 4(3)(a)(i)-(ii) and/or (b)(vi) of the *BPCPA*.

57. The Misrepresentations had the capability or tendency of deceiving or misleading the Plaintiffs and Consumer Subclass Members in British Columbia because:

- a) the Recalled Products, or some of them, were contaminated with *Listeria*; and/or
- b) the Recalled Products, or some of them, posed a real and substantial danger to individuals consuming these products.

58. Further or in the alternative, the Defendants’ failure to adequately implement quality-control measures to detect and prevent contamination of the Recalled Products with *Listeria* had the capability or tendency of deceiving or misleading the Plaintiffs and Consumer Subclass Members in British Columbia as to the safety of these products.

59. The Defendants’ conduct breached sections 4-5 of the *BPCPA* irrespective of whether it was contrary to any of the factors enumerated under subsection 4(3) because, pursuant to subsection 4(1)(a), the Defendants’ conduct had the capability, tendency or

effect of deceiving or misleading the Plaintiffs and Consumer Subclass Members in British Columbia.

60. As a result of the Defendants' breaches of sections 4-5 of the *BPCPA*, Consumer Subclass Members in British Columbia who purchased the Recalled Products acquired less value than they expected to acquire when purchasing these products because the Recalled Products, or some of them, were contaminated with *Listeria*. The contamination of some, or all, of the Recalled Products resulted in all of these products being potentially contaminated, inherently suspect and therefore worthless and unfit for consumption.

61. The Consumer Subclass Members in British Columbia who purchased Recalled Products have an interest in, and were the source of, the funds paid by them and received by the Defendants, directly or indirectly, for these products due to the Defendants' breaches of the *BPCPA*.

62. The Plaintiffs and Consumer Subclass Members in British Columbia are entitled to a declaration under subsection 172(1)(a) of the *BPCPA* that the Defendants has breached sections 4-5 of the *BPCPA*.

63. The Plaintiffs and Consumer Subclass Members in British Columbia are entitled to an injunction under subsection 172(1)(b) of the *BPCPA* to restrain further breaches of the *BPCPA* by requiring the Defendants to represent the risk posed by *Listeria* contamination in their marketing and sale of their plant-based beverage products going forward.

64. As a result of the Defendants' breaches of sections 4-5 of the *BPCPA*, the Consumer Subclass Members in British Columbia have suffered loss and/or damage and are entitled to damages pursuant to section 171 of the *BPCPA* including but not limited to the cost of purchasing a worthless product.

65. Further to damages under section 171, the Consumer Subclass Members in British Columbia who purchased Recalled Products are entitled to restoration of some, or all, of the amounts paid by them and received by the Defendants, directly or indirectly, for these products pursuant to subsection 172(3)(a) of the *BPCPA*.

66. Consumer Subclass Members in British Columbia who are also members of the Personal Injury Subclass are further entitled to damages under section 171 of the *BPCPA* including but not limited to:

- a) personal injury;
- b) loss of past and future income earning capacity;
- c) loss of past and future housekeeping capacity;
- d) cost of future care;
- e) out of pocket expenses;
- f) damages “in trust” for past and future service provided by family members; and/or
- g) damages pursuant to section 2 of the *Family Compensation Act*.

67. Consumer Subclass Members in British Columbia who are also members of the Personal Injury Subclass plead and rely on the equivalent provisions of the Family Compensation Legislation in their respective provinces, each as amended from time to time and with regulations in force at material times, as set out above.

68. The Consumer Subclass Members resident outside of British Columbia plead and rely on the equivalent provisions of the Consumer Protection Legislation in their respective provinces, each as amended from time to time and with regulations in force at material times, as set out in Schedule “B” to this Notice of Civil Claim.

Breaches of the Sale of Goods Act

69. The Defendants have breached the *Sale of Goods Act*.

70. The Recalled Products are “goods” within the meaning of section 1 of the *Sale of Goods Act*.

71. Economic Subclass Members resident in British Columbia who purchased Recalled Products directly from the Defendants are “buyers” within the meaning of section 1 of the *Sale of Goods Act*.

72. The Defendants are each a “seller” within the meaning of section 1 of the *Sale of Goods Act*. The Defendants regularly sell the Recalled Products in the course of their respective businesses.

73. The purchase of the Recalled Products by Economic Subclass Members resident in British Columbia directly from the Defendants are each a “sale” within the meaning of section 1 of the *Sale of Goods Act*. The contracts between the Defendants and Economic Subclass Members resident in British Columbia for the Recalled Products are each a “contract of sale” within the meaning of section 1 of the *Sale of Goods Act*.

74. Economic Subclass Members resident in British Columbia who purchased Recalled Products directly from the Defendants made known to the Defendants, expressly or by implication, that they intended to sell the Recalled Products to intermediaries and/or consumers for consumption or resale, and/or that they intended to consume or make available for consumption the Recalled Products, and relied on the Defendants’ skill and/or judgment that the Recalled Products would be fit for these purposes. The Defendants breached the implied condition pursuant to section 18(a) of the *Sale of Goods Act* that the Recalled Products were fit for their intended purpose due to the contamination of some, or all, of the Recalled Products with *Listeria*, which rendered these products unfit for consumption or resale.

75. Further or in the alternative, the Defendants described, expressly or by implication, the Recalled Products as being safe to consume and/or not contaminated with *Listeria*. Due to the contamination of some, or all, of the Recalled Products with *Listeria*, the Recalled Products, or some of them, were not safe to consume. The Defendants accordingly breached the implied condition pursuant to section 18(b) of the *Sale of Goods Act* that the Recalled Products were of merchantable quality.

76. Economic Subclass Members resident in British Columbia who purchased Recalled Products directly from the Defendants are entitled to treat the Defendants' breaches of the implied conditions as to fitness and/or merchantable quality as breaches of warranty and are entitled to damages including but not limited to the cost of purchasing a worthless product pursuant to section 56 of the *Sale of Goods Act*.

77. Economic Subclass Members in British Columbia who are also members of the Personal Injury Subclass are further entitled to damages under the *Sale of Goods Act* including but not limited to:

- a) personal injury;
- b) loss of past and future income earning capacity;
- c) loss of past and future housekeeping capacity;
- d) cost of future care;
- e) out of pocket expenses;
- f) damages "in trust" for past and future service provided by family members; and/or
- g) damages pursuant to section 2 of the *Family Compensation Act*.

78. Economic Subclass Members in British Columbia who are also members of the Personal Injury Subclass plead and rely on the equivalent provisions of the Family Compensation Legislation in their respective provinces, each as amended from time to time and with regulations in force at material times, as set out above.

79. Economic Subclass Members resident outside of British Columbia who purchased Recalled Products directly from the Defendants plead and rely on the equivalent provisions of the Sale of Goods Legislation, as set out in Schedule "C" to this Notice of Civil Claim.

Unjust Enrichment

80. In the alternative to the pleading that the Defendants have breached Sale of Goods Legislation, the Defendants have been unjustly enriched through the sale of Recalled Products.

81. The Defendants have breached the *Food and Drugs Act*.

82. Each of the Recalled Products is “food” within the meaning of section 2 of the *Food and Drugs Act*.

83. Each of the Defendants is a “person” within the meaning of section 2 of the *Criminal Code* and therefore a “person” within the meaning of section 2 of the *Food and Drugs Act*.

84. Section 4(1)(e) of the *Food and Drugs Act* prohibits a person from selling an article of food that was manufactured, prepared, preserved, packaged or stored under unsanitary conditions. Section 7 of the *Food and Drugs Act* prohibits a person from manufacturing, preparing, preserving, packaging or storing for sale any food under unsanitary conditions.

85. By manufacturing, storing and/or packaging the Recalled Products in an unsanitary environment that caused these products to be contaminated with *Listeria*, the Defendants breached sections 4(1)(e) and/or 7 of the *Food and Drugs Act*.

86. Subsection 5(1) prohibits a person from labelling, packaging, treating, processing, selling or advertising any food in a manner that is false, misleading or deceptive or is likely to create an erroneous impression regarding its character, value, quantity, composition, merit or safety.

87. By making the Misrepresentations and/or causing the contaminated Recalled Products to be sold to Canadians, the Defendants breached subsection 5(1) of the *Food and Drugs Act*.

88. The Defendants’ labelling, packaging, treating, processing, selling and/or advertising of the Recalled Products was false, misleading or deceptive, or was likely to

create an erroneous impression regarding its character, value, quantity, composition, merit or safety because:

- a) the Recalled Products, or some of them, were contaminated with *Listeria*; and/or
- b) the Recalled Products, or some of them, posed a real and substantial danger to individuals consuming the Recalled Products.

89. Due to the Defendants' breaches of sections 4(1)(e), 5(1) and/or 7 of the *Food and Drugs Act*, the Recalled Products should never have been offered for sale in Canada. Any contracts for the supply and/or sale of the Recalled Products, including those between:

- a) the Defendants and Economic Subclass Members;
- b) the Defendants and their respective related corporate entities;
- c) the Defendants and intermediaries;
- d) the Defendants;
- e) intermediaries; and/or
- f) intermediaries and Economic Subclass Members,

to the extent that these contracts exist, are illegal, void and/or voidable due to the Defendants' breaches of the *Food and Drugs Act*. There is accordingly no juristic reason for the Defendants to retain the benefits obtained through the sale and/or supply of the Recalled Products.

90. As set out above, the Defendants have been enriched by amounts received from the Economic Subclass Members, directly or indirectly, through the sale of the Recalled Products. The Economic Subclass Members suffered a corresponding deprivation of these same amounts.

91. As a result of their actions, the Defendants have been unjustly enriched. The Economic Subclass Members are entitled to restitution of the benefits received from them by the Defendants, directly or indirectly, through the sale of the Recalled Products.

92. In the alternative, justice and good conscience require that the Defendants disgorge to the Economic Subclass Members an amount attributable to the benefits received by the Defendants through the sale of the Recalled Products to the Economic Subclass Members.

Health Care Costs

93. The Province of British Columbia provides coverage for health care services to British Columbia residents through the Medical Services Plan and Health Insurance BC. Personal Injury Subclass Members in British Columbia are each a “beneficiary” within the meaning of the *Medicare Protection Act* and any amendments.

94. Personal Injury Subclass Members have a claim for the recovery of health care costs, past and future, incurred on their behalf by the British Columbia Ministry of Health and by other provincial and territorial governments. The Plaintiffs plead the following provincial and territorial statutes, as amended, in support of a claim for recovery of health care costs incurred by provincial and territorial governments: *HCCRA*; *Medicare Protection Act*; *Pharmaceutical Services Act*, SBC 2012, c 22; *Hospital Act*, RSA 2000, c H-12; *Crown's Right of Recovery Act*, SA 2009, c C-35; *The Health Administration Act*, RSS 1978, c H-0.0001; *Health Services Insurance Act*, CSSM s H35; *Health Insurance Act*, RSO 1990, c H.6; *Home Care and Community Services Act*, 1994, SO 1994, c 26; *Health Services Act*, RSNB 1973, c H-3; *Medical Services Payment Act*, RSNB 1973, c M-7; *Hospital Services Act*, RSNB 1973, c H-9; *Family Services Act*, SNB 1980, c F-2.2; *Hospital and Diagnostic Services Insurance Act*, RSPEI 1988, c H-8; *Health Services Payment Act*, RSPEI 1988, c H-2; *Health Services and Insurance Act*, RSNS 1989, c 197; *Hospital Insurance Agreement Act*, RSN 1990, c H-7; *Medical Care and Hospital Insurance Act*, SNL 2016, c M-5.01; *Québec Civil Code*; *Hospital Insurance and Health and Social Services Administration Act*, RSNWT 1988, c T-3; *Hospital Insurance and*

Health and Social Services Administration Act, RSNWT (Nu) 1988, c T-3; and *Medical Care Act*, RSNWT (Nu) 1988, c M-8.

Punitive Damages

95. The Defendants' conduct in causing beverages contaminated with *Listeria* to be sold to Canadians was high-handed, outrageous and reckless. That the Defendants sold these contaminated products to consumers for nearly a year before the recall was initiated and that at least a dozen Canadians have been hospitalized and two Canadians have died after consuming the Recalled Products makes the Defendants' conduct particularly worthy of rebuke. Given this reprehensible conduct, the Defendants are liable to pay punitive damages to the Plaintiffs and Class Members.

Joint and Several Liability

96. The Defendants Danone and Walmart are jointly and severally liable for the actions and damages allocable to each of them with respect to the sale and/or use of the Recalled Products in Canada.

Service on the Defendants

97. The Plaintiffs and Class Members have the right to serve this Notice of Civil Claim on the Defendants pursuant to section 10 of the *CJPTA* because there is a real and substantial connection between British Columbia and the facts alleged in this proceeding pursuant to subsections 10(f), (g), (h) and/or (i) of the *CJPTA* as this action:

- a) concerns restitutionary obligations that, to a substantial extent, arose in British Columbia;
- b) concerns a tort committed in British Columbia;
- c) concerns a business carried on in British Columbia; and/or
- d) is a claim for an injunction ordering a party to do or refrain from doing something in relation to movable property in British Columbia.

Plaintiffs' address for service:

Slater Vecchio LLP
1800 - 777 Dunsmuir Street
Vancouver, BC V7Y 1K4

Fax number for service: 604.682.5197

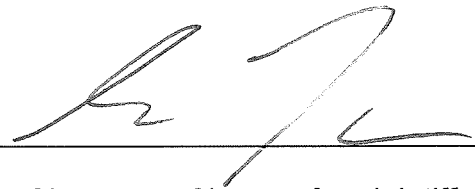
Email address for service: service@slatervecchio.com

Place of trial: Vancouver, BC

The address of the registry is:

800 Smithe Street
Vancouver, BC
V6Z 2E1

Date: July 22, 2024

A handwritten signature in black ink, appearing to be 'Saro Turner', written over a horizontal line.

Signature of lawyer for plaintiffs

Saro Turner

Sam Jaworski

Justin Giovannetti

Slater Vecchio LLP

Rule 7-1 (1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a list of documents in Form 22 that lists

(i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial, and

(b) serve the list on all parties of record.

**ENDORSEMENT ON ORIGINATING PLEADING OR PETITION
FOR SERVICE OUTSIDE BRITISH COLUMBIA**

The Plaintiffs claim the right to serve this pleading on the defendants Danone Inc. and Walmart Canada Corp. outside British Columbia on the ground that the *Court Jurisdiction and Proceedings Transfer Act*, SBC 2003, c 28 (the “**CJPTA**”) applies because there is a real and substantial connection between British Columbia and the facts on which this proceeding is based. The Plaintiffs and Class Members rely on the following grounds, in that this action:

- a) concerns restitutionary obligations that, to a substantial extent, arose in British Columbia (section 10(f) of the *CJPTA*);
- b) concerns a tort committed in British Columbia (section 10(g) of the *CJPTA*);
- c) concerns a business carried on in British Columbia (section 10(h) of the *CJPTA*); and/or
- d) is a claim for an injunction ordering a party to do or refrain from doing something in relation to movable property in British Columbia (section 10(i) of the *CJPTA*).

Appendix

[The following information is provided for data collection purposes only and is of no legal effect.]

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

This is a proposed class proceeding regarding products that were recalled due to the possible contamination with *Listeria*.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

[Check one box below for the case type that best describes this case.]

A personal injury arising out of:

a motor vehicle accident

medical malpractice

another cause

A dispute concerning:

contaminated sites

construction defects

real property (real estate)

personal property

the provision of goods or services or other general commercial matters

investment losses

the lending of money

an employment relationship

a will or other issues concerning the probate of an estate

a matter not listed here

Part 3: THIS CLAIM INVOLVES:

[Check all boxes below that apply to this case]

a class action

maritime law

aboriginal law

constitutional law

conflict of laws

none of the above

do not know

Part 4:

Court Jurisdiction and Proceedings Transfer Act, SBC 2003, c 28

Limitation Act, SBC 2012, c 13

Court Order Interest Act, RSBC 1996, c 79

Business Practices and Consumer Protection Act, SBC 2004, c 2

Food and Drugs Act, RSC 1985, c F-27

Sale of Goods Act, RSBC 1996, c 410

SCHEDULE "A"

Product	UPC / Code	Best Before
Great Value Almond Beverage Unsweetened Original	6 81131 34208 7	All best before dates from up to and including 24 OC 04
Great Value Almond Beverage Original	6 81131 34209 4	All best before dates from up to and including 24 OC 04
Great Value Almond Beverage Vanilla	6 81131 34210 0	All best before dates from up to and including 24 OC 04
Silk Almond & Coconut Unsweetened	0 25293 00250 0	All best before dates from up to and including 24 OC 04
Silk Almond Original	0 25293 00100 8	All best before dates from up to and including 24 OC 04
Silk Almond Dark Chocolate	0 25293 00135 0	All best before dates from up to and including 24 OC 04
Silk Almond Unsweetened	0 25293 00150 3	All best before dates from up to and including 24 OC 04
Silk Almond Unsweetened Vanilla	0 25293 00188 6	All best before dates from up to and including 24 OC 04
Silk Almond Vanilla	0 25293 00168 8	All best before dates from up to and including 24 OC 04
Silk Coconut Original	0 25293 00152 7	All best before dates from up to and including 24 OC 04
Silk Coconut Unsweetened	0 25293 00244 9	All best before dates from up to and including 24 OC 04

Silk Oat Original	0 36632 07240 5	All best before dates from up to and including 24 OC 04
Silk Oat Vanilla	0 36632 07241 2	All best before dates from up to and including 24 OC 04
Silk Oat Dark Chocolate	0 36632 07239 9	All best before dates from up to and including 24 OC 04
Silk Oat Unsweetened	0 36632 07532 1	All best before dates from up to and including 24 OC 04
Silk Oat Unsweetened Vanilla	0 56800 72749 4	All best before dates from up to and including 24 OC 04
Silk Almond & Cashew Unsweetened	0 36632 07235 1	All best before dates from up to and including 24 OC 04
Silk Almond & Cashew Unsweetened Vanilla	0 36632 07234 4	All best before dates from up to and including 24 OC 04

SCHEDULE “B”
Consumer Protection Legislation

Alberta

1. The Defendants have breached the *Consumer Protection Act*, RSA 2000, c C-26.3 (the “***Alberta CPA***”). Consumer Subclass Members in Alberta are “consumers” within the meaning of section 1 of the *Alberta CPA*. The Recalled Products are “goods” within the meaning of section 1. The Defendants are each a “supplier” within the meaning of section 1. The supply of each of the Recalled Products in Alberta is a “consumer transaction” within the meaning of section 1.

2. By reason of making the Misrepresentations and/or failing to adequately implement quality-control measures to detect and prevent contamination of the Recalled Products, the Defendants breached sections 5-6 of the *Alberta CPA*. The Defendants’ actions are in violation of subsections 6(2)(c), 6(4)(a), 6(4)(c) and/or 6(4)(e) and constitute “unfair practices”.

3. As a result of the Defendants’ breaches of the *Alberta CPA*, Consumer Subclass Members in Alberta are entitled to damages including but not limited to amounts paid by them for the Recalled Products pursuant to subsections 7(1), 7(3), 13(2)(b) and/or 142.1(2)(a). In the alternative, Consumer Subclass Members in Alberta are entitled to restitution of some, or all, of the amounts paid by them and received by the Defendants, directly or indirectly, for the Recalled Products pursuant to subsections 13(2)(d)(ii) and/or 142.1(2)(c)(ii). Further, the Defendants are liable to pay punitive damages to Consumer Subclass Members in Alberta pursuant to subsections 7.2(1), 13(2)(c) and/or 142.1(2)(b).

4. Consumer Subclass Members in Alberta who are also members of the Personal Injury Subclass are further entitled to damages under sections 13 and/or 142.1(1) of the *Alberta CPA* for their personal injuries.

5. The Defendants cannot rely on any arbitration clause, if any such clause exists, due to section 16 of the *Alberta CPA* which invalidates any such clause between a

“supplier” and a “consumer” in respect of a “consumer transaction” rendering such a clause void and unenforceable.

6. Consumer Subclass Members in Alberta further plead that the notice requirement pursuant to subsection 7.1(1) of the *Alberta CPA* is fulfilled by the delivery of written notice to the Defendants as set out in the Notice of Civil Claim, or in the alternative by the filing of this Notice of Civil Claim.

Saskatchewan

7. The Defendants have breached *The Consumer Protection and Business Practices Act*, SS 2013, c C-30.2 (the “***Saskatchewan CPBPA***”). Consumer Subclass Members in Saskatchewan are “consumers” within the meaning of section 2 of the *Saskatchewan CPBPA*. The Recalled Products are “goods” within the meaning of section 2. The Defendants are each a “supplier” within the meaning of section 2. The supply of the Recalled Products in Saskatchewan are “transactions involving goods and services” within the meaning of sections 2 and 5.

8. By reason of making the Misrepresentations and/or failing to adequately implement quality-control measures to detect and prevent contamination of the Recalled Products, the Defendants breached sections 6-9 of the *Saskatchewan CPBPA*. The Defendants’ actions are in violation of subsections 6(a), 7(a), 7(c), and/or 7(o) and constitute “unfair practices”.

9. As a result of the Defendants’ breaches of the *Saskatchewan CPBPA*, Consumer Subclass Members in Saskatchewan are entitled to damages including but not limited to amounts paid by them for the Recalled Products pursuant to subsection 93(1)(b). In the alternative, Consumer Subclass Members in Saskatchewan are entitled to restitution of some, or all, of the amounts paid by them and received by the Defendants, directly or indirectly, for the Recalled Products pursuant to subsection 93(1)(a). Further, the Defendants are liable to pay punitive damages to the Consumer Subclass Members in Saskatchewan pursuant to subsection 93(1)(b).

10. The Defendants cannot rely on any arbitration clause or class action waiver, if any such clause or waiver exists, due to section 101 of the *Saskatchewan CPBPA* which invalidates any such clause or waiver, rendering it void.

11. Consumer Subclass Members in Saskatchewan who are also members of the Personal Injury Subclass are further entitled to damages under sections 91 and/or 93 of the *Saskatchewan CPBPA* for their personal injuries.

Manitoba

12. The Defendants have breached *The Business Practices Act*, CCSM, c B120 (the "***Manitoba BPA***"). Consumer Subclass Members in Manitoba are each a "consumer" within the meaning of section 1 of the *Manitoba BPA*. The Recalled Products are "goods" within the meaning of section 1. The Defendants are each a "supplier" within the meaning of section 1. The supply of each of the Recalled Products in Manitoba is a "consumer transaction" within the meaning of section 1.

13. By reason of making the Misrepresentations and/or failing to adequately implement quality-control measures to detect and prevent contamination of the Recalled Products, the Defendants breached section 2 of the *Manitoba BPA*. The Defendants' actions are in violation of subsections 2(1)(a)-(b), 2(3)(a), 2(3)(c) and/or 2(3)(p) and constitute "unfair business practices".

14. As a result of the Defendants' breaches of the *Manitoba BPA*, Consumer Subclass Members in Manitoba are entitled to damages including but not limited to amounts paid by them for the Recalled Products pursuant to subsection 23(2)(a). In the alternative, Consumer Subclass Members in Manitoba are entitled to repayment of the amount by which the payments made by them and received by the Defendants, directly or indirectly, for the Recalled Products exceed the value of these products pursuant to subsection 23(2)(d). Further, the Defendants are liable to pay punitive damages to the Consumer Subclass Members in Manitoba pursuant to subsection 23(4).

15. Consumer Subclass Members in Manitoba who are also members of the Personal Injury Subclass are further entitled to damages under section 23 of the *Manitoba BPA* for their personal injuries.

Québec

16. The Defendants have breached the *Consumer Protection Act*, CQRL c P 40-1 (the "**Québec CPA**"). Consumer Subclass Members in Québec are "consumers" within the meaning of section 1(e) of the *Québec CPA*. The Recalled Products are "goods" within the meaning of section 1(d) of the *Québec CPA*. The Defendants are each doing business as "merchant" within the meaning of the *Québec CPA*. The supply of each of the Recalled Products in Québec constitutes a consumer contract within the meaning of section 2 of the *Québec CPA*.

17. By reason of the Defendants' conduct, the Defendants have breached sections 219 and 228 of the *Québec CPA*. The Defendants' actions constitute "prohibited business practices" under section 219.

18. By their omissions and actions, the Defendants breached their duty to provide goods forming the object of the contract fit for the purposes for which they are used and free of latent defects pursuant to articles 37, 53, and 54 of the *Québec CPA* and/or to provide goods forming the object of the contract in a durable condition in normal use for a reasonable length of time pursuant to articles 38, 53 and 54 of the *Québec CPA*.

19. As a result of the Defendants' breaches of the *Québec CPA*, Consumer Subclass Members in Québec are entitled to recover damages, including but not limited to amounts paid by them for the Recalled Products, as well as punitive damages under section 272 of the *Québec CPA*.

20. Consumer Subclass Members in Québec who are also members of the Personal Injury Subclass are further entitled to damages under section 272 of the *Québec CPA* for their personal injuries.

21. The Defendants cannot rely on any arbitration clause or class action waiver, if any such clause or waiver exists, due to section 11.1 of the *Québec CPA*, which invalidates and prohibits any such clause or waiver, rendering it void.

Ontario

22. The Defendants have breached the *Consumer Protection Act*, 2002, SO 2002, c 30, Sched A (the "**Ontario CPA**"). Consumer Subclass Members in Ontario are "consumers" within the meaning of section 1 of the *Ontario CPA*. The Recalled Products are "goods" within the meaning of section 1. The Defendants are each a "supplier" within the meaning of section 1. The supply of each of the Recalled Products in Ontario constitutes a "consumer transaction" within the meaning of section 1. The Defendants made "representations" within the meaning of section 1.

23. By reason of making the Misrepresentations and/or failing to adequately implement quality-control measures to detect and prevent contamination of the Recalled Products, the Defendants breached sections 14 and 17 of the *Ontario CPA*. The Defendants' actions are in violation of subsections 14(1), 14(2)(1), 14(2)(3) and/or 14(2)(14) and constitute "unfair business practices" in breach of section 17.

24. As a result of the Defendants' breaches of the *Ontario CPA*, Consumer Subclass Members in Ontario are entitled to damages including but not limited to amounts paid by them for the Recalled Products pursuant to subsection 18(2). Further or in the alternative, Consumer Subclass Members in Ontario are entitled to repayment of the amount by which the payments made by them for the Recalled Products exceed the value of these products pursuant to subsection 18(2). In the alternative, the Consumer Subclass Members in Ontario are entitled to restitution of some, or all, of the amounts paid by them and received by the Defendants, directly or indirectly, for the Recalled Products pursuant to subsection 18(1). Further, the Defendants are liable to pay punitive damages to the Consumer Subclass Members in Ontario pursuant to subsection 18(11).

25. Consumer Subclass Members in Ontario who are also members of the Personal Injury Subclass are further entitled to damages under section 18 of the *Ontario CPA* for their personal injuries.

26. The Defendants cannot rely on any arbitration clause or class action waiver, if any such clause or waiver exists, due to sections 7 and 8 of the *Ontario CPA*, which provide the right to begin or be a member of a class proceeding in respect to a consumer agreement and invalidates any clause or waiver that seeks to limit this right.

27. Consumer Subclass Members in Ontario further plead that the notice requirement pursuant to subsection 18(3) of the *Ontario CPA* is fulfilled by the delivery of written notice to the Defendants as set out in the Notice of Civil Claim, or in the alternative by the filing of this Notice of Civil Claim. In the further alternative, Consumer Subclass Members in Ontario plead that the Court should disregard the requirement for notice pursuant to subsection 18(15) of the *Ontario CPA*.

Prince Edward Island

28. The Defendants have breached the *Business Practices Act*, RSPEI 1988, c B-7 (the "***PEI BPA***"). Consumer Subclass Members in Prince Edward Island are "consumers" within the meaning of section 1 of the *PEI BPA*. The Recalled Products are "goods" within the meaning of section 1. The Defendants made "consumer representations" within the meaning of section 1.

29. By reason of making the Misrepresentations and/or failing to adequately implement quality-control measures to detect and prevent contamination of the Recalled Products, the Defendants breached sections 2 and 3 of the *PEI BPA*. The Defendants' actions are in violation of subsections 2(a)(i), 2(a)(iii) and/or 2(a)(xiii) and constitute "unfair practices" in breach of section 3.

30. As a result of the Defendants' breaches of the *PEI BPA*, Consumer Subclass Members in Prince Edward Island are entitled to damages including but not limited to amounts paid by them for the Recalled Products pursuant to subsection 4(1). Further or in the alternative, Consumer Subclass Members in Prince Edward Island are entitled to

repayment of the amount by which the payments made by them for the Recalled Products exceed the value of these products pursuant to subsection 4(1). In the alternative, Consumer Subclass Members in Prince Edward Island are entitled to restitution of some, or all, of the amounts paid by them and received by the Defendants, directly or indirectly, for the Recalled Products pursuant to subsection 4(1). Further, the Defendants are liable to pay punitive damages to the Consumer Subclass Members in Prince Edward Island pursuant to subsection 4(2).

31. Consumer Subclass Members in Prince Edward Island who are also members of the Personal Injury Subclass are further entitled to damages under section 4 of the *PEI BPA* for their personal injuries.

32. Consumer Subclass Members in Prince Edward Island further plead that the notice requirement pursuant to subsection 4(5) of the *PEI BPA* is fulfilled by the delivery of written notice to the Defendants as set out in the Notice of Civil Claim, or in the alternative by the filing of this Notice of Civil Claim.

Newfoundland and Labrador

33. The Defendants have breached the *Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1 (the "***Newfoundland CPBPA***"). Consumer Subclass Members in Newfoundland are "consumers" within the meaning of section 2 of the *Newfoundland CPBPA*. The Recalled Products are "goods" within the meaning of section 2. The Defendants are each a "supplier" within the meaning of section 2. The supply of the Recalled Products in Newfoundland constitutes a "consumer transaction" within the meaning of section 2.

34. By reason of making the Misrepresentations and/or failing to adequately implement quality-control measures to detect and prevent contamination of the Recalled Products, the Defendants breached sections 7 and 9 of the *Newfoundland CPBPA*. The Defendants' actions are in violation of subsections 7(1)(a), 7(1)(c) and/or 7(1)(w) and constitute "unfair business practices" under section 9.

35. As a result of the Defendants' breaches of the *Newfoundland CPBPA*, Consumer Subclass Members in Newfoundland are entitled to damages including but not limited to the amounts paid by them for the Recalled Products pursuant to subsection 10(2)(b). Further, the Consumer Subclass Members in Newfoundland are entitled to repayment of the amount by which the payments made by them and received by the Defendants, directly or indirectly, for the Recalled Products exceed the value of these products pursuant to subsection 10(2)(e). Further, the Defendants are liable to pay punitive damages to the Consumer Subclass Members in Newfoundland pursuant to subsection 10(2)(b).

36. Consumer Subclass Members in Newfoundland who are also members of the Personal Injury Subclass are further entitled to damages under section 10 of the *Newfoundland CPBPA* for their personal injuries.

37. The Defendants cannot rely on any arbitration clause or class action waiver, if any such clause or waiver exists, due to section 3 of the *Newfoundland CPBPA*, which invalidates any such clause or waiver, rendering it void.

New Brunswick

38. The Defendants have breached the *Consumer Product Warranty and Liability Act*, SNB 1978, c C-18.1 (the "***New Brunswick CPWLA***"). The Defendants are each a "seller" within the meaning of section 1 of the *New Brunswick CPWLA*. Each of the Recalled Products is a "consumer product" within the meaning of section 1. The contracts between the Defendants, intermediaries and Consumer Subclass Members in New Brunswick for the sale and/or supply of the Recalled Products are each a "contract for the sale or supply of a consumer product" within the meaning of section 1.

39. By reason of making the Misrepresentations and/or failing to adequately implement quality-control measures to detect and prevent contamination of the Recalled Products, the Defendants breached sections 10 and 11 of the *New Brunswick CPWLA*. The Defendants breached the implied warranty as to quality pursuant to subsections

10(1)(a)-(b), the implied warranty as to fitness under section 11 and the implied warranty as to durability under section 12.

40. Section 23 of the *New Brunswick CPWLA* prescribes that any person who is not a party to a contract with the seller but who has suffered a consumer loss because of a breach of one or more warranties by the seller may recover damages against the seller if the loss was reasonably foreseeable at the time of the contract as liable to result from the breach. Consumer Subclass Members in New Brunswick can therefore recover damages, including but not limited to the amounts paid by them for the Recalled Products for the loss incurred as a result of the Defendants' breach or breaches of warranties particularized above pursuant to section 15.

41. Consumer Subclass Members in New Brunswick who are also members of the Personal Injury Subclass are further entitled to damages under sections 15 and 23 of the *New Brunswick CPWLA* for their personal injuries.

Nova Scotia

42. The Defendants have breached the *Consumer Protection Act*, RSNS 1989, c 92 (the "***Nova Scotia CPA***"). The Recalled Products are "goods" within the meaning of section 2 of the *Nova Scotia CPA*. The Defendants are each a "seller" within the meaning of section 2. The contract for sale of each of the Recalled Products in Nova Scotia is a "customer sale" within the meaning of section 26. The Consumer Subclass Members in Nova Scotia are "purchasers" within the meaning of section 26.

43. By reason of making the Misrepresentations and/or failing to adequately implement quality-control measures to detect and prevent contamination of the Recalled Products, the Defendants breached subsection 26 of the *Nova Scotia CPA*. The Defendants breached the implied conditions that the Recalled Products would be reasonably fit for their intended purpose and/or of merchantable quality pursuant to subsections 26(3)(e) and 26(3)(f), respectively. As a result of the contamination of some, or all, of the Recalled Products with *Listeria*, the Defendants breached the express conditions as to the safety of the Recalled Products.

44. Consumer Subclass Members in Nova Scotia are therefore entitled to recover damages including but not limited to the amounts paid by them for the Recalled Products.

45. Consumer Subclass Members in Nova Scotia who are also members of the Personal Injury Subclass are further entitled to damages for their personal injuries.

Yukon

46. The Defendants have breached the *Consumers Protection Act*, RSY 2002, c 40 (the "***Yukon CPA***"). Consumer Subclass Members are each a "buyer" within the meaning of section 1 of the *Yukon CPA*. The Recalled Products are "goods" within the meaning of section 1. The Defendants are each a "seller" within the meaning of section 1. The purchase of each of the Recalled Products by the Consumer Subclass Members in Yukon constitutes a "retail sale" within the meaning of section 1.

47. By reason of making the Misrepresentations and/or failing to adequately implement quality-control measures to detect and prevent contamination of the Recalled Products, the Defendants breached the implied condition that the Recalled Products would be of merchantable quality and/or fit for their intended purpose pursuant to subsections 58(1)(e) and/or 58(1)(h), respectively, of the *Yukon CPA*.

48. Consumer Subclass Members in Yukon are therefore entitled to recover damages including but not limited to the amounts paid by them for the Recalled Products.

49. Consumer Subclass Members in Yukon who are also members of the Personal Injury Subclass are further entitled to damages for their personal injuries.

Northwest Territories

50. The Defendants have breached the *Consumer Protection Act*, RSNWT 1988, c C-17 (the "***Northwest Territories CPA***"). Consumer Subclass Members in the Northwest Territories are each a "buyer" within the meaning of section 1 of the *Northwest Territories CPA*. The Recalled Products are "goods" within the meaning of section 1. The Defendants are each a "seller" within the meaning of section 1. The purchase of each of

the Recalled Products by the Consumer Subclass Members in the Northwest Territories constitutes a “retail sale” within the meaning of section 1.

51. By reason of making the Misrepresentations and/or failing to adequately implement quality-control measures to detect and prevent contamination of the Recalled Products, the Defendants breached the implied condition that the Recalled Products would be of merchantable quality and/or fit for their intended purpose pursuant to subsections 70(1)(e) and/or 70(1)(h), respectively, of the *Northwest Territories CPA*.

52. Consumer Subclass Members in the Northwest Territories are therefore entitled to recover damages including but not limited to the amounts paid by them for the Recalled Products.

53. Consumer Subclass Members in Northwest Territories who are also members of the Personal Injury Subclass are further entitled to for their personal injuries.

Nunavut

54. The Defendants have breached the *Consumer Protection Act*, RSNWT (Nu) 1988, c C-17 (the “***Nunavut CPA***”). Consumer Subclass Members in Nunavut are each a “buyer” within the meaning of section 1 of the *Nunavut CPA*. The Recalled Products are “goods” within the meaning of section 1. The Defendants are each a “seller” within the meaning of section 1. The purchase of each of the Recalled Products by the Consumer Subclass Members in Nunavut constitutes a “retail sale” within the meaning of section 1.

55. By reason of making the Misrepresentations and/or failing to adequately implement quality-control measures to detect and prevent contamination of the Recalled Products, the Defendants breached the implied condition that the Recalled Products would be of merchantable quality and/or fit for their intended purpose pursuant to subsections 70(1)(e) and/or 70(1)(h), respectively, of the *Nunavut CPA*.

56. Consumer Subclass Members in Nunavut are therefore entitled to recover damages including but not limited to the amounts paid by them for the Recalled Products.

57. Consumer Subclass Members in Nunavut who are also members of the Personal Injury Subclass are further entitled to damages for their personal injuries.

SCHEDULE "C"

Sale of Goods Legislation

Alberta

1. The Recalled Products are "goods" within the meaning of section 1 of the *Sale of Goods Act*, RSA 2000, c S-2 (the "***Alberta Sale of Goods Act***"). Economic Subclass Members resident in Alberta who purchased Recalled Products directly from the Defendants are "buyers" within the meaning of section 1 of the *Alberta Sale of Goods Act*. The Defendants are each a "seller" within the meaning of section 1 of the *Alberta Sale of Goods Act*. The Defendants regularly sell the Recalled Products in the course of their respective businesses. The purchase of the Recalled Products by Economic Subclass Members resident in Alberta from the Defendants are each a "sale" within the meaning of section 1 of the *Alberta Sale of Goods Act*. The contracts between Economic Subclass Members resident in Alberta and the Defendants for the Recalled Products are each a "contract of sale" within the meaning of section 1 of the *Alberta Sale of Goods Act*.

2. Economic Subclass Members resident in Alberta who purchased Recalled Products directly from the Defendants made known to the Defendants, expressly or by implication, that they intended to sell the Recalled Products to intermediaries and/or consumers for consumption or resale, and/or that they intended to consume or make available for consumption the Recalled Products, and relied on the Defendants' skill and/or judgment that the Recalled Products would be fit for these purposes. The Defendants breached the implied condition pursuant to section 16(2) of the *Alberta Sale of Goods Act* that the Recalled Products were fit for their intended purpose due to the contamination of some, or all, of the Recalled Products with *Listeria*, which rendered these products unfit for consumption or resale.

3. Further or in the alternative, the Defendants described, expressly or by implication, the Recalled Products as being safe to consume and/or not contaminated with *Listeria*. Due to the contamination of some, or all, of the Recalled Products with *Listeria*, the Recalled Products, or some of them, were not safe to consume. The Defendants

accordingly breached the implied condition pursuant to section 16(4) of the *Alberta Sale of Goods Act* that the Recalled Products were of merchantable quality.

4. Economic Subclass Members resident in Alberta who purchased Recalled Products directly from the Defendants are entitled to treat the Defendants' breaches of the implied conditions as to fitness and/or merchantable quality as breaches of warranty and are entitled to damages pursuant to section 52 of the *Alberta Sale of Goods Act*.

Saskatchewan

5. The Recalled Products are "goods" within the meaning of section 2(1) of the *Sale of Goods Act*, RSS 1978, c S-1 (the "**Saskatchewan Sale of Goods Act**"). Economic Subclass Members resident in Saskatchewan who purchased Recalled Products directly from the Defendants are "buyers" within the meaning of section 2(1) of the *Saskatchewan Sale of Goods Act*. The Defendants are each a "seller" within the meaning of section 2(1) of the *Saskatchewan Sale of Goods Act*. The Defendants regularly sell the Recalled Products in the course of their respective businesses. The purchase of the Recalled Products by Economic Subclass Members resident in Saskatchewan directly from the Defendants are each a "sale" within the meaning of section 2(1) of the *Saskatchewan Sale of Goods Act*. The contracts between Economic Subclass Members resident in Saskatchewan and the Defendants for the Recalled Products are each a "contract of sale" within the meaning of section 2(1) of the *Saskatchewan Sale of Goods Act*.

6. Economic Subclass Members resident in Saskatchewan who purchased Recalled Products directly from the Defendants made known to the Defendants, expressly or by implication, that they intended to sell the Recalled Products to intermediaries and/or consumers for consumption or resale, and/or that they intended to consume or make available for consumption the Recalled Products, and relied on the Defendants' skill and/or judgment that the Recalled Products would be fit for these purposes. The Defendants breached the implied condition pursuant to section 16(1) of the *Saskatchewan Sale of Goods Act* that the Recalled Products were fit for their intended purpose due to the contamination of some, or all, of the Recalled Products with *Listeria*, which rendered these products unfit for consumption or resale.

7. Further or in the alternative, the Defendants described, expressly or by implication, the Recalled Products as being safe to consume and/or not contaminated with *Listeria*. Due to the contamination of some, or all, of the Recalled Products with *Listeria*, the Recalled Products, or some of them, were not safe to consume. The Defendants accordingly breached the implied condition pursuant to section 16(2) of the *Saskatchewan Sale of Goods Act* that the Recalled Products were of merchantable quality.

8. Economic Subclass Members resident in Saskatchewan who purchased Recalled Products directly from the Defendants are entitled to treat the Defendants' breaches of the implied conditions as to fitness and/or merchantable quality as breaches of warranty and are entitled to damages pursuant to section 52 of the *Saskatchewan Sale of Goods Act*.

Manitoba

9. The Recalled Products are "goods" within the meaning of section 1 of the *Sale of Goods Act*, CCSM c S10 (the "***Manitoba Sale of Goods Act***"). Economic Subclass Members resident in Manitoba who purchased Recalled Products directly from the Defendants are "buyers" within the meaning of section 1 of the *Manitoba Sale of Goods Act*. The Defendants are each a "seller" within the meaning of section 1 of the *Manitoba Sale of Goods Act*. The Defendants regularly sell the Recalled Products in the course of their respective businesses. The purchase of the Recalled Products by Economic Subclass Members resident in Manitoba directly from the Defendants are each a "sale" within the meaning of section 1 of the *Manitoba Sale of Goods Act*. The contracts between Economic Subclass Members resident in Manitoba and the Defendants for the Recalled Products are each a "contract of sale" within the meaning of section 1 of the *Manitoba Sale of Goods Act*.

10. Economic Subclass Members resident in Manitoba who purchased Recalled Products directly from the Defendants made known to the Defendants, expressly or by implication, that they intended to sell the Recalled Products to intermediaries and/or consumers for consumption or resale, and/or that they intended to consume or make

available for consumption the Recalled Products, and relied on the Defendants' skill and/or judgment that the Recalled Products would be fit for these purposes. The Defendants breached the implied condition pursuant to section 16(a) of the *Manitoba Sale of Goods Act* that the Recalled Products were fit for their intended purpose due to the contamination of some, or all, of the Recalled Products with *Listeria*, which rendered these products unfit for consumption or resale.

11. Further or in the alternative, the Defendants described, expressly or by implication, the Recalled Products as being safe to consume and/or not contaminated with *Listeria*. Due to the contamination of some, or all, of the Recalled Products with *Listeria*, the Recalled Products, or some of them, were not safe to consume. The Defendants accordingly breached the implied condition pursuant to section 16(b) of the *Manitoba Sale of Goods Act* that the Recalled Products were of merchantable quality.

12. Economic Subclass Members resident in Manitoba who purchased Recalled Products directly from the Defendants are entitled to treat the Defendants' breaches of the implied conditions as to fitness and/or merchantable quality as breaches of warranty and are entitled to damages pursuant to section 54 of the *Manitoba Sale of Goods Act*.

Québec

13. Economic Subclass Members who are resident in the province of Québec who purchased Recalled Products made known to the Defendants, expressly or by implication, that they intended to sell the Recalled Products to intermediaries and/or consumers for consumption or resale, and/or that they intended to consume or make available for consumption the Recalled Products, and relied on the Defendants' skill and/or judgment that the Recalled Products would be fit for these purposes.

14. As the manufacturers, distributors and/or suppliers of the Recalled Products, the Defendants are bound to warrant the Recalled Products, including that they are free of any latent defect that would render them unfit for the purpose for which they were purchased or acquired by the Economic Subclass Members.

15. As professional sellers of the Recalled Products, there is a presumption in favour of the Economic Subclass Members that the Defendants were aware that the Recalled Products were impacted by the defect at the moment that the contract of sale was concluded with the members of the Economic Subclass.

16. The Defendants accordingly breached the legal warranty of quality pursuant to articles 1458 and 1726 of the *Québec Civil Code* that the Recalled Products were fit for the purposes for which they were acquired by the Economic Subclass.

17. In the alternative, the Economic Subclass Members resident in Québec plead and rely on corresponding legal rules of extracontractual liability pursuant to article 1457 of the *Québec Civil Code*. As the manufacturers, distributors and/or suppliers of the Recalled Products, the Defendants are bound to make reparation for injury caused to the Personal Injury Subclass Members by reason of their conduct, which deviates from the general standards incumbent on a reasonable person placed in the same circumstances.

Ontario

18. The Recalled Products are “goods” within the meaning of section 1 of the *Sale of Goods Act*, RSO 1990, c S 1 (the “**Ontario Sale of Goods Act**”). Economic Subclass Members resident in Ontario who purchased Recalled Products directly from the Defendants are “buyers” within the meaning of section 1 of the *Ontario Sale of Goods Act*. The Defendants are each a “seller” within the meaning of section 1 of the *Ontario Sale of Goods Act*. The Defendants regularly sell the Recalled Products in the course of their respective businesses. The purchase of the Recalled Products by Economic Subclass Members resident in Ontario directly from the Defendants are each a “sale” within the meaning of section 1 of the *Ontario Sale of Goods Act*. The contracts between Economic Subclass Members resident in Ontario and the Defendants for the Recalled Products are each a “contract of sale” within the meaning of section 1 of the *Ontario Sale of Goods Act*.

19. Economic Subclass Members resident in Ontario who purchased Recalled Products directly from the Defendants made known to the Defendants, expressly or by implication, that they intended to sell the Recalled Products to intermediaries and/or

consumers for consumption or resale, and/or that they intended to consume or make available for consumption the Recalled Products, and relied on the Defendants' skill and/or judgment that the Recalled Products would be fit for these purposes. The Defendants breached the implied condition pursuant to section 15(1) of the *Ontario Sale of Goods Act* that the Recalled Products were fit for their intended purpose due to the contamination of some, or all, of the Recalled Products with *Listeria*, which rendered these products unfit for consumption or resale.

20. Further or in the alternative, the Defendants described, expressly or by implication, the Recalled Products as being safe to consume and/or not contaminated with *Listeria*. Due to the contamination of some, or all, of the Recalled Products with *Listeria*, the Recalled Products, or some of them, were not safe to consume. The Defendants accordingly breached the implied condition pursuant to section 15(2) of the *Ontario Sale of Goods Act* that the Recalled Products were of merchantable quality.

21. Economic Subclass Members resident in Ontario who purchased Recalled Products directly from the Defendants are entitled to treat the Defendants' breaches of the implied conditions as to fitness and/or merchantable quality as breaches of warranty and are entitled to damages pursuant to section 51 of the *Ontario Sale of Goods Act*.

Prince Edward Island

22. The Recalled Products are "goods" within the meaning of section 1 of the *Sale of Goods Act*, RSPEI 1988, c S-1 (the "***PEI Sale of Goods Act***"). Economic Subclass Members resident in Prince Edward Island who purchased Recalled Products directly from the Defendants are "buyers" within the meaning of section 1 of the *PEI Sale of Goods Act*. The Defendants are each a "seller" within the meaning of section 1 of the *PEI Sale of Goods Act*. The Defendants regularly sell the Recalled Products in the course of their respective businesses. The purchase of the Recalled Products by Economic Subclass Members resident in Prince Edward Island directly from the Defendants are each a "sale" within the meaning of section 1 of the *PEI Sale of Goods Act*. The contracts between Economic Subclass Members resident in Prince Edward Island and the Defendants for

the Recalled Products are each a “contract of sale” within the meaning of section 1 of the *PEI Sale of Goods Act*.

23. Economic Subclass Members resident in Prince Edward Island who purchased Recalled Products directly from the Defendants made known to the Defendants, expressly or by implication, that they intended to sell the Recalled Products to intermediaries and/or consumers for consumption or resale, and/or that they intended to consume or make available for consumption the Recalled Products, and relied on the Defendants’ skill and/or judgment that the Recalled Products would be fit for these purposes. The Defendants breached the implied condition pursuant to section 16(a) of the *PEI Sale of Goods Act* that the Recalled Products were fit for their intended purpose due to the contamination of some, or all, of the Recalled Products with *Listeria*, which rendered these products unfit for consumption or resale.

24. Further or in the alternative, the Defendants described, expressly or by implication, the Recalled Products as being safe to consume and/or not contaminated with *Listeria*. Due to the contamination of some, or all, of the Recalled Products with *Listeria*, the Recalled Products, or some of them, were not safe to consume. The Defendants accordingly breached the implied condition pursuant to section 16(b) of the *PEI Sale of Goods Act* that the Recalled Products were of merchantable quality.

25. Economic Subclass Members resident in Prince Edward Island who purchased Recalled Products directly from the Defendants are entitled to treat the Defendant’s breaches of the implied conditions as to fitness and/or merchantable quality as breaches of warranty and are entitled to damages pursuant to section 53 of the *PEI Sale of Goods Act*.

Newfoundland and Labrador

26. The Recalled Products are “goods” within the meaning of section 2 of the *Sale of Goods Act*, RSNL 1990, c S-6 (the “***Newfoundland Sale of Goods Act***”). Economic Subclass Members resident in Newfoundland who purchased Recalled Products directly from the Defendants are “buyers” within the meaning of section 2 of the *Newfoundland Sale of Goods Act*. The Defendants are each a “seller” within the meaning of section 2 of

the *Newfoundland Sale of Goods Act*. The Defendants regularly sell the Recalled Products in the course of their respective businesses. The purchase of the Recalled Products by Economic Subclass Members resident in Newfoundland directly from the Defendants are each a “sale” within the meaning of section 2 of the *Newfoundland Sale of Goods Act*. The contracts between Economic Subclass Members resident in Newfoundland and the Defendants for the Recalled Products are each a “contract of sale” within the meaning of section 2 of the *Newfoundland Sale of Goods Act*.

27. Economic Subclass Members resident in Newfoundland who purchased Recalled Products directly from the Defendants made known to the Defendants, expressly or by implication, that they intended to sell the Recalled Products to intermediaries and/or consumers for consumption or resale, and/or that they intended to consume or make available for consumption the Recalled Products, and relied on the Defendants’ skill and/or judgment that the Recalled Products would be fit for these purposes. The Defendants breached the implied condition pursuant to section 16(a) of the *Newfoundland Sale of Goods Act* that the Recalled Products were fit for their intended purpose due to the contamination of some, or all, of the Recalled Products with *Listeria*, which rendered these products unfit for consumption or resale.

28. Further or in the alternative, the Defendants described, expressly or by implication, the Recalled Products as being safe to consume and/or not contaminated with *Listeria*. Due to the contamination of some, or all, of the Recalled Products with *Listeria*, the Recalled Products, or some of them, were not safe to consume. The Defendants accordingly breached the implied condition pursuant to section 16(c) of the *Newfoundland Sale of Goods Act* that the Recalled Products were of merchantable quality.

29. Economic Subclass Members resident in Newfoundland who purchased Recalled Products directly from the Defendants are entitled to treat the Defendants’ breaches of the implied conditions as to fitness and/or merchantable quality as breaches of warranty and are entitled to damages pursuant to section 54 of the *Newfoundland Sale of Goods Act*.

New Brunswick

30. The Recalled Products are “goods” within the meaning of section 1 of the *Sale of Goods Act*, RSNB 2016, c 110 (the “***New Brunswick Sale of Goods Act***”). The Economic Subclass Members resident in New Brunswick who purchased Recalled Products from the Defendants are “buyers” within the meaning of section 1 of the *New Brunswick Sale of Goods Act*. The Defendants are each a “seller” within the meaning of section 1 of the *New Brunswick Sale of Goods Act*. The Defendants regularly sell the Recalled Products in the course of their respective businesses. The purchase of the Recalled Products by Economic Subclass Members resident in New Brunswick directly from the Defendants are each a “sale” within the meaning of section 1 of the *New Brunswick Sale of Goods Act*. The contracts between Economic Subclass Members resident in New Brunswick and the Defendants for the Recalled Products are each a “contract of sale” within the meaning of section 1 of the *New Brunswick Sale of Goods Act*.

31. Economic Subclass Members resident in New Brunswick who purchased Recalled Products directly from the Defendants made known to the Defendants, expressly or by implication, that they intended to sell the Recalled Products to intermediaries and/or consumers for consumption or resale, and/or that they intended to consume or make available for consumption the Recalled Products, and relied on the Defendants’ skill and/or judgment that the Recalled Products would be fit for these purposes. The Defendants breached the implied condition pursuant to section 20(a) of the *New Brunswick Sale of Goods Act* that the Recalled Products were fit for their intended purpose due to the contamination of some, or all, of the Recalled Products with *Listeria*, which rendered these products unfit for consumption or resale.

32. Further or in the alternative, the Defendants described, expressly or by implication, the Recalled Products as being safe to consume and/or not contaminated with *Listeria*. Due to the contamination of some, or all, of the Recalled Products with *Listeria*, the Recalled Products, or some of them, were not safe to consume. The Defendants accordingly breached the implied condition pursuant to section 20(b) of the *New Brunswick Sale of Goods Act* that the Recalled Products were of merchantable quality.

33. Economic Subclass Members resident in New Brunswick who purchased Recalled Products directly from the Defendants are entitled to treat the Defendants' breaches of the implied conditions as to fitness and/or merchantable quality as breaches of warranty and are entitled to damages pursuant to section 67 of the *New Brunswick Sale of Goods Act*.

Nova Scotia

34. The Recalled Products are "goods" within the meaning of section 2 of the *Sale of Goods Act*, RSNS 1989, c 408 (the "***Nova Scotia Sale of Goods Act***"). The Economic Subclass Members resident in Nova Scotia who purchased Recalled Products Directly from the Defendants are "buyers" within the meaning of section 2 of the *Nova Scotia Sale of Goods Act*. The Defendants are each a "seller" within the meaning of section 2 of the *Nova Scotia Sale of Goods Act*. The Defendants regularly sell the Recalled Products in the course of their respective businesses. The purchase of the Recalled Products by Economic Subclass Members resident in Nova Scotia directly from the Defendants are each a "sale" within the meaning of section 2 of the *Nova Scotia Sale of Goods Act*. The contracts between Economic Subclass Members resident in Nova Scotia and the Defendants for the Recalled Products are each a "contract of sale" within the meaning of section 2 of the *Nova Scotia Sale of Goods Act*.

35. Economic Subclass Members resident in Nova Scotia who purchased Recalled Products directly from the Defendants made known to the Defendants, expressly or by implication, that they intended to sell the Recalled Products to intermediaries and/or consumers for consumption or resale, and/or that they intended to consume or make available for consumption the Recalled Products, and relied on the Defendants' skill and/or judgment that the Recalled Products would be fit for these purposes. The Defendants breached the implied condition pursuant to section 17(a) of the *Nova Scotia Sale of Goods Act* that the Recalled Products were fit for their intended purpose due to the contamination of some, or all, of the Recalled Products with *Listeria*, which rendered these products unfit for consumption or resale.

36. Further or in the alternative, the Defendants described, expressly or by implication, the Recalled Products as being safe to consume and/or not contaminated with *Listeria*. Due to the contamination of some, or all, of the Recalled Products with *Listeria*, the Recalled Products, or some of them, were not safe to consume. The Defendants accordingly breached the implied condition pursuant to section 17(b) of the *Nova Scotia Sale of Goods Act* that the Recalled Products were of merchantable quality.

37. Economic Subclass Members resident in Nova Scotia who purchased Recalled Products directly from the Defendants are entitled to treat the Defendants' breaches of the implied conditions as to fitness and/or merchantable quality as breaches of warranty and are entitled to damages pursuant to section 54 of the *Nova Scotia Sale of Goods Act*.

Yukon

38. The Recalled Products are "goods" within the meaning of section 1 of the *Sale of Goods Act*, RSY 2002, c 198 (the "***Yukon Sale of Goods Act***"). Economic Subclass Members resident in Yukon who purchased Recalled Products directly from the Defendants are "buyers" within the meaning of section 1 of the *Yukon Sale of Goods Act*. The Defendants are each a "seller" within the meaning of section 1 of the *Yukon Sale of Goods Act*. The Defendants regularly sell the Recalled Products in the course of their respective businesses. The purchase of the Recalled Products by Economic Subclass Members resident in Yukon directly from the Defendants are each a "sale" within the meaning of section 1 of the *Yukon Sale of Goods Act*. The contracts between Economic Subclass Members resident in Yukon and the Defendants for the Recalled Products are each a "contract of sale" within the meaning of section 1 of the *Yukon Sale of Goods Act*.

39. Economic Subclass Members resident in Yukon who purchased Recalled Products directly from the Defendants made known to the Defendants, expressly or by implication, that they intended to sell the Recalled Products to intermediaries and/or consumers for consumption or resale, and/or that they intended to consume or make available for consumption the Recalled Products, and relied on the Defendants' skill and/or judgment that the Recalled Products would be fit for these purposes. The Defendants breached the implied condition pursuant to section 15(a) of the *Yukon Sale*

of *Goods Act* that the Recalled Products were fit for their intended purpose due to the contamination of some, or all, of the Recalled Products with *Listeria*, which rendered these products unfit for consumption or resale.

40. Further or in the alternative, the Defendants described, expressly or by implication, the Recalled Products as being safe to consume and/or not contaminated with *Listeria*. Due to the contamination of some, or all, of the Recalled Products with *Listeria*, the Recalled Products, or some of them, were not safe to consume. The Defendants accordingly breached the implied condition pursuant to section 15(b) of the *Yukon Sale of Goods Act* that the Recalled Products were of merchantable quality.

41. Economic Subclass Members resident in Yukon who purchased Recalled Products directly from the Defendants are entitled to treat the Defendants' breaches of the implied conditions as to fitness and/or merchantable quality as breaches of warranty and are entitled to damages pursuant to section 50 of the *Yukon Sale of Goods Act*.

Northwest Territories

42. The Recalled Products are "goods" within the meaning of section 1 of the *Sale of Goods Act*, RSNWT 1988, c S-2 (the "***NWT Sale of Goods Act***"). Economic Subclass Members resident in Northwest Territories who purchased Recalled Products directly from the Defendants are "buyers" within the meaning of section 1 of the *NWT Sale of Goods Act*. The Defendants are each a "seller" within the meaning of section 1 of the *NWT Sale of Goods Act*. The Defendants regularly sell the Recalled Products in the course of their respective businesses. The purchase of the Recalled Products by Economic Subclass Members resident in Northwest Territories directly from the Defendants are each a "sale" within the meaning of section 1 of the *NWT Sale of Goods Act*. The contracts between Economic Subclass Members resident in Northwest Territories and the Defendants for the Recalled Products are each a "contract of sale" within the meaning of section 1 of the *NWT Sale of Goods Act*.

43. Economic Subclass Members resident in Northwest Territories who purchased Recalled Products directly from the Defendants made known to the Defendants, expressly or by implication, that they intended to sell the Recalled Products to

intermediaries and/or consumers for consumption or resale, and/or that they intended to consume or make available for consumption the Recalled Products, and relied on the Defendants' skill and/or judgment that the Recalled Products would be fit for these purposes. The Defendants breached the implied condition pursuant to section 18(a) of the *NWT Sale of Goods Act* that the Recalled Products were fit for their intended purpose due to the contamination of some, or all, of the Recalled Products with *Listeria*, which rendered these products unfit for consumption or resale.

44. Further or in the alternative, the Defendants described, expressly or by implication, the Recalled Products as being safe to consume and/or not contaminated with *Listeria*. Due to the contamination of some, or all, of the Recalled Products with *Listeria*, the Recalled Products, or some of them, were not safe to consume. The Defendants accordingly breached the implied condition pursuant to section 18(b) of the *NWT Sale of Goods Act* that the Recalled Products were of merchantable quality.

45. Economic Subclass Members resident in Northwest Territories who purchased Recalled Products directly from the Defendants are entitled to treat the Defendants' breaches of the implied conditions as to fitness and/or merchantable quality as breaches of warranty and are entitled to damages pursuant to section 60 of the *NWT Sale of Goods Act*.

Nunavut

46. The Recalled Products are "goods" within the meaning of section 1 of the *Sale of Goods Act*, RSNWT (Nu) 1988, c S-2 (the "***Nunavut Sale of Goods Act***"). The Economic Subclass Members resident in Nunavut who purchased Recalled Products directly from the Defendants are "buyers" within the meaning of section 1 of the *Nunavut Sale of Goods Act*. The Defendants are each a "seller" within the meaning of section 1 of the *Nunavut Sale of Goods Act*. The Defendants regularly sell the Recalled Products in the course of their respective businesses. The purchase of the Recalled Products by Economic Subclass Members resident in Nunavut directly from the Defendants are each a "sale" within the meaning of section 1 of the *Nunavut Sale of Goods Act*. The contracts between Economic Subclass Members resident in Nunavut and the Defendants for the Recalled

Products are each a “contract of sale” within the meaning of section 1 of the *Nunavut Sale of Goods Act*.

47. Economic Subclass Members resident in Nunavut who purchased Recalled Products directly from the Defendants made known to the Defendants, expressly or by implication, that they intended to sell the Recalled Products to intermediaries and/or consumers for consumption or resale, and/or that they intended to consume or make available for consumption the Recalled Products, and relied on the Defendants’ skill and/or judgment that the Recalled Products would be fit for these purposes. The Defendants breached the implied condition pursuant to section 18(a) of the *Nunavut Sale of Goods Act* that the Recalled Products were fit for their intended purpose due to the contamination of some, or all, of the Recalled Products with *Listeria*, which rendered these products unfit for consumption or resale.

48. Further or in the alternative, the Defendants described, expressly or by implication, the Recalled Products as being safe to consume and/or not contaminated with *Listeria*. Due to the contamination of some, or all, of the Recalled Products with *Listeria*, the Recalled Products, or some of them, were not safe to consume. The Defendants accordingly breached the implied condition pursuant to section 18(b) of the *Nunavut Sale of Goods Act* that the Recalled Products were of merchantable quality.

49. Economic Subclass Members resident in Nunavut who purchased Recalled Products directly from the Defendants are entitled to treat the Defendants’ breaches of the implied conditions as to fitness and/or merchantable quality as breaches of warranty and are entitled to damages pursuant to section 60 of the *Nunavut Sale of Goods Act*.