



No. S-240323  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

Between

BRIAN KABALUK ~~JESSICA SIMPSON~~

PLAINTIFF

and

THE QUAKER OATS COMPANY AND PEPSICO CANADA ULC

DEFENDANTS

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

**AMENDED NOTICE OF CIVIL CLAIM**

(Original Notice of Civil Claim filed on January 16, 2024)

(Recalled Quaker Products)

**This action has been started by the plaintiff 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 plaintiff.

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 plaintiff 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 plaintiff,

- (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 PLAINTIFF'S CLAIM

### Part 1: STATEMENT OF FACTS

#### *Overview*

1. In January 2024, Health Canada and the Canadian Food Inspection Agency recalled dozens of Quaker products in response to reports that some of these products were contaminated with *Salmonella*. By virtue of the contamination of some of Quaker's products with *Salmonella*, all of Quaker's recalled products were inherently suspect, worthless, and unfit for human consumption.

2. Canadians entrust their safety to companies that manufacture and supply their food. In manufacturing consumable goods that were tainted with *Salmonella* and supplying these dangerous goods to the Canadian marketplace, Quaker breached this trust. Through their conduct, Quaker was negligent and breached the *Business Practices and Consumer Protection Act*, SBC 2004, c 2 (the "**BPCPA**") and related provincial enactments, and have been unjustly enriched.

#### *The Plaintiff and Class Members*

~~3. The Plaintiff, Jessica Simpson, is a resident of British Columbia. On January 7, 2024, the Plaintiff's mother purchased a box of Dipps Granola Bars with a UPC of 0 55577 31222 3 and a best before date of June 22, 2024 for personal and family use. A few hours after consuming one of the Dipps Granola Bars that her mother purchased, the Plaintiff began experiencing symptoms consistent with *Salmonella* poisoning. The Plaintiff suffered these symptoms for approximately two days.~~

3. The Plaintiff, Brian Kabaluk, is a senior citizen residing in British Columbia. The Plaintiff purchased Harvest Crunch Original Granola Cereal from Costco on or about June 28, 2023, October 3, 2023 and December 3, 2023 for personal and family use. In November 2023, a few days after consuming Harvest Crunch Original Granola Cereal, the Plaintiff and his wife began experiencing symptoms consistent with *Salmonella* poisoning. The Plaintiff and his wife suffered these symptoms for approximately ten days. In December 2023, a few days after consuming additional Harvest Crunch Original

Granola Cereal, the Plaintiff and his wife again began experiencing symptoms consistent with *Salmonella* poisoning. These symptoms lasted until the end of December and caused the Plaintiff and his wife to cancel their holiday plans in order to recover. On or about January 13, 2024, Costco advised the Plaintiff that the Quaker products he purchased had been recalled.

4. The Plaintiff brings this claim on his ~~her~~ own behalf and on behalf of all individuals and legal persons in Canada 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 eating 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**”, the “**Class Members**” and the “**Class Period**”).

The Purchaser Subclass and the Consumer Subclass are collectively the “**Economic Subclass**” and the “**Economic Subclass Members**”.

Quaker products recalled by the Canadian Food Inspection Agency pursuant to recall RA-73136 due to possible *Salmonella* contamination are the “**Recalled Quaker Products**”. The Recalled Quaker Products and any products containing Recalled Quaker Products 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 Recalled Quaker Products and Recalled Products as of the date that this pleading was filed. The Plaintiff will provide further particulars to Schedule “A” to include products that are recalled subsequent to the date on which this Notice of Civil Claim is filed.



### ***The Defendants***

5. The Defendant The Quaker Oats Company is a company incorporated pursuant to the laws of New Jersey, with an address for service at 820 Bear Tavern Road, West Trenton, New Jersey, 08628, United States.

6. The Defendant PepsiCo Canada ULC is a company incorporated pursuant to the laws of British Columbia, with an address for service at 2400 – 745 Thurlow Street, Vancouver, British Columbia, V6E 0C5, Canada.

7. The Quaker Oats Company and PepsiCo Canada ULC are collectively “**Quaker**”. At all material times, Quaker has manufactured, packaged, distributed and marketed the Recalled Quaker Products in Canada.

### ***Salmonella and its Adverse Health Effects on Humans***

8. *Salmonella* is a bacterium generally found in the digestive tracts of humans and animals. Individuals who consume food or water contaminated with *Salmonella* can develop *Salmonellosis*, an infection that causes symptoms such as fever, chills, nausea, vomiting, diarrhea, headaches and abdominal cramps. Symptoms of *Salmonellosis* generally develop within six to 72 hours of exposure and last for four to seven days. The most common source of *Salmonella* infections among humans is the consumption of food or water that came into contact with feces contaminated with *Salmonella*.

9. *Salmonellosis* can cause severe complications in vulnerable groups, including older adults, young children, pregnant women and individuals with weakened immune systems. The most severe cases of *Salmonellosis* can lead to arthritis, inflammatory bowel syndrome, immunological deficiencies and even death.

### ***Timeline of the Salmonella Outbreak***

10. On December 15, 2023, the Food and Drug Administration, in conjunction with Quaker, announced the recall of Quaker granola bars and granola cereals due to potential contamination with *Salmonella*.

11. On January 11, 2024, the Food and Drug Administration and Quaker announced an expansion of the December 15<sup>th</sup> recall to include additional cereals and bars.

12. On January 11, 2024, the Canadian Food Inspection Agency, in conjunction with Quaker, announced the recall of 38 different Quaker granola bars and granola cereal products sold in Canada due to potential contamination with *Salmonella*. The Canadian Food Inspection Agency has announced that they are conducting a food safety investigation in the matter.

13. On January 12, 2024, the Canadian Food Inspection Agency recalled a number of products, including various parfait and yogurt bowls, sold through Loblaw, Metro and Sobeys that contained potentially contaminated Quaker products.

14. On January 15, 2024, the Canadian Food Inspection Agency recalled additional fruit and yogurt parfait products sold through Urban Fare that contained potentially contaminated Quaker products.

#### ***Quaker's Manufacturing of the Recalled Quaker Products***

15. Industry standard manufacturing specifications and procedures for the manufacturing, inspection, storage and packaging of consumable goods require that these products be manufactured, inspected, stored and/or packaged in such a manner that these products are not contaminated by *Salmonella* and distributed to the public.

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

17. As a result of Quaker's failure to manufacture, inspect, store and/or package the Recalled Quaker Products in accordance with industry standard manufacturing specifications and procedures, some, or all, of the Recalled Quaker Products became contaminated with *Salmonella*. These Recalled Quaker Products were contaminated with *Salmonella* when these products left Quaker's facilities.

18. In addition to being sold to consumers, some of the Recalled Quaker Products were used in the production of Recalled Products such as parfait and yogurt bowls.

***Defendants' Misconduct***

19. At all material times, Quaker manufactured, inspected, stored, packaged, marketed, sold, distributed and/or placed the Recalled Quaker Products into the stream of commerce.

20. At all material times, each of the Recalled Products contained Recalled Quaker Products.

21. At all material times, it was reasonably foreseeable that the Recalled Quaker Products would be used in the production of other consumable products such that any *Salmonella* contaminating the Recalled Quaker Products would be transferred to and would infect other consumable products.

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

23. At all material times, the Recalled Products, or some of them, were contaminated with *Salmonella* 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.

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

25. At all material times, Quaker 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 *Salmonella*; and/or

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

(the “**Misrepresentations**”)

26. At all material times, Quaker knew or ought to have known that:

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

27. In the alternative, Quaker failed to address the risk posed by the contamination of Recalled Products with *Salmonella* upon discovering the contamination and the risk it poses to individuals eating the Recalled Products.

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

29. 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.

30. Quaker acquired a portion, or all, of the price paid by Consumer Subclass Members who purchased Recalled Products for these products due to Quaker’s breaches of the *BPCPA* and related consumer protection legislation.

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

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

33. The Plaintiff has sent a letter to Quaker 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 Quaker's 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*.

34. Quaker supplied and/or sold the Recalled Quaker Products to one or more intermediaries, who in turn sold these products to the public, used these products in the production of other goods, or supplied and/or sold these products to other intermediaries before these products were sold to consumers and/or used in the production of other goods sold to consumers. None of the contracts between Quaker, 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 *Salmonella*.

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

### ***Harm to the Plaintiff and Class Members***

36. As a result of Quaker's breaches of the *BPCPA* and related provincial enactments, the Plaintiff 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.



37. As a result of Quaker's negligent manufacture of the Recalled Products, failure to warn and/or breaches of the *BPCPA* and related provincial enactments, the Plaintiff and Personal Injury Subclass Members have suffered loss and/or damage including but not limited to:

- a) death;
- b) arthritis;
- c) inflammatory bowel syndrome (IBS);
- d) immunological deficiencies;
- e) fever;
- f) chills;
- g) nausea;
- h) vomiting;
- i) diarrhea;
- j) headaches;
- k) abdominal cramps; and/or
- l) other injuries may develop or become known in the future.

38. The Plaintiff 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.

39. The Plaintiff 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 Plaintiff 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.

40. The loss and/or damages suffered by the Plaintiff and Personal Injury Subclass Members were the reasonably foreseeable consequences of Quaker's negligence and/or failure to warn.

## **Part 2: RELIEF SOUGHT**

41. The Plaintiff claims on his ~~her~~-own behalf and on behalf of the Class Members:

- a) an order certifying this action as a class proceeding under the *Class Proceedings Act*, RSBC 1996, c 50 (the "***Class Proceedings Act***");
- b) general and special damages;
- c) a declaration under subsection 172(1)(a) of the *BPCPA* that Quaker has breached sections 4-5 of the *BPCPA*;
- d) an injunction under subsection 172(1)(b) of the *BPCPA* to restrain further breaches of the *BPCPA* by requiring Quaker to represent the risk posed by *Salmonella* in its marketing and sale of its products going forward;
- e) damages pursuant to section 171 of the *BPCPA*;
- f) 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 Quaker, directly or indirectly, for these products;
- g) relief for contraventions of extra-provincial 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 Quaker, 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 Quaker, 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 Quaker, 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 Quebec 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 Quaker, 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 Quaker, 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 Quaker, 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;
- h) a declaration that Quaker has been unjustly enriched by the receipt of some, or all, of the amounts paid by the Economic Subclass Members and received by Quaker, directly or indirectly, for the Recalled Products;
- i) an order that Quaker account for and make restitution to the Economic Subclass Members equal to the amount by which they have been unjustly enriched, or alternatively disgorgement;
- j) past and future damages “in trust” for services provided by family members of the Personal Injury Subclass Members;
- k) 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;
- l) 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;
- m) punitive damages;
- n) pre-judgment and post-judgment interest under the *Court Order Interest Act*, RSBC 1996, c 79 (the “**Court Order Interest Act**”); and
- o) such further and other relief as this Honourable Court may deem just.

### **Part 3: LEGAL BASIS**

42. The Plaintiff and Class Members plead and rely on the *Negligence Act*, RSBC 1996, c 318, the *BPCPA* and related extra-provincial enactments, 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**”), the Supreme Court Civil Rules, BC Reg 168/2009 and related enactments.

### ***Negligent Manufacture***

43. At all material times, Quaker owed a duty of care to the Plaintiff and Personal Injury Subclass Members as reasonably foreseeable consumers of the Recalled Products to manufacture, inspect, store and package the Recalled Quaker 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.

44. Quaker manufactured, inspected, stored and/or packaged the Recalled Quaker 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 *Salmonella*. Quaker therefore breached their duty to the Plaintiff and Personal Injury Subclass Members and was negligent.

45. As a result of Quaker’s negligent manufacture of the Recalled Quaker Products, 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 Quaker was in a close and proximate relationship with the Plaintiff and Personal Injury Subclass Members. The losses and/or damages suffered by the Plaintiff and Personal Injury Subclass Members were the reasonably foreseeable consequences of Quaker’s negligent manufacture of the Recalled Quaker Products.

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 *Civil Code of Quebec*, CQLR c CCQ-1991; each as amended from time to time and with regulations in force at material times.

### ***Failure to Warn***

48. Further and in the alternative to the Plaintiff and Personal Injury Subclass Members’ pleading of negligent manufacture, at all material times Quaker owed a duty of care to the Plaintiff and Personal Injury Subclass Members as reasonably foreseeable consumers of the Recalled Products to warn of the risks associated with the reasonably foreseeable use of the Recalled Products. In particular, Quaker owed a duty of care to warn the Plaintiff and Personal Injury Subclass Members that:

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

49. Quaker knew or ought reasonably to have known that the Recalled Products, or some of them, were contaminated with *Salmonella* and that this contamination posed a real and substantial danger to individuals who consumed these products. By not warning the Plaintiff and Personal Injury Subclass Members, Quaker was negligent.

50. As a result of Quaker's failure to warn particularized above, 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.

51. At all material times Quaker was in a close and proximate relationship with the Plaintiff and Personal Injury Subclass Members. The losses and/or damages suffered by the Plaintiff and Personal Injury Subclass Members were the reasonably foreseeable consequences of Quaker's failure to warn.

### ***Breaches of the Business Practices and Consumer Protection Act***

52. Quaker has breached the *BPCPA*.

53. The Plaintiff 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*.

54. Quaker is a “supplier” within the meaning of section 1 of the *BPCPA*.

55. 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*.

56. By the conduct set out herein, Quaker breached sections 4-5 of the *BPCPA*. Quaker’s actions constitute deceptive acts or practices.

57. 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.

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

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

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

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

60. Further or in the alternative, Quaker’s failure to adequately implement quality-control measures to detect and prevent contamination of the Recalled Quaker Products, and accordingly the Recalled Products, with *Salmonella* had the capability or tendency of deceiving or misleading the Plaintiff and Consumer Subclass Members in British Columbia as to the safety of these products.

61. Quaker's 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), Quaker's conduct had the capability, tendency or effect of deceiving or misleading the Plaintiff and Consumer Subclass Members in British Columbia.

62. As a result of Quaker's breaches of sections 4-5 of the *BPCPA*, Consumer Subclass Members in British Columbia who purchased Recalled Products acquired less value than they expected to acquire when purchasing these products by virtue of the contamination of some, or all, of these products with *Salmonella* which resulted in all of these products being potentially contaminated, inherently suspect and therefore worthless and unfit for human consumption.

63. 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 Quaker, directly or indirectly, for these products due to Quaker's breaches of the *BPCPA*.

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

65. The Plaintiff 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 Quaker to represent the risk posed by *Salmonella* in its marketing and sale of its products going forward.

66. As a result of Quaker's breaches of sections 4-5 of the *BPCPA*, the Consumer Subclass Members in British Columbia who purchased Recalled Products 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.

67. 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 Quaker, directly or indirectly, for these products pursuant to subsection 172(3)(a) of the *BPCPA*.

68. The 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* for, *inter alia*:

- 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*.

69. 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 and territories, namely: *Alberta CPA*; *The Consumer Protection and Business Practices Act*, SS 2013, c C-30.2; *The Consumer Protection Act*, CCSM c C200; *Consumer Protection Act*, CQLR c P-40.1; *Ontario CPA*; *PEI BPA*; *Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1; *Consumer Product Warranty and Liability Act*, SNB 1978, c C-18.1; *Consumer Protection Act*, RSNS 1989, c 92; *Consumers Protection Act*, RSY 2002, c 40; *Consumer Protection Act*, RSNWT 1988, c C-17; and the *Consumer Protection Act*, RSNWT (Nu) 1988, c C-17; 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.

### ***Unjust Enrichment***

70. Quaker has breached the *Food and Drugs Act*.

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

72. Quaker 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*.

73. 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.

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

75. 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.

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

77. Quaker’s labelling, packaging, treating, processing, selling and/or advertising of the Recalled Quaker Products, and accordingly 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 *Salmonella*; and/or
- b) the Recalled Products, or some of them, posed a real and substantial danger to individuals consuming the Recalled Products.



78. Due to Quaker's 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) Quaker and Economic Subclass Members;
- b) Quaker and its related corporate entities;
- c) Quaker and intermediaries;
- d) intermediaries; and/or
- e) intermediaries and Economic Subclass Members,

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

79. As set out above, Quaker has 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.

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

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

### ***Health Care Costs***

82. The Province of British Columbia provides coverage for health care services to British Columbia residents through the Medical Services Plan and Health Insurance BC.

83. Personal Injury Subclass Members in British Columbia are each a “beneficiary” within the meaning of the *Medicare Protection Act* and any amendments.

84. 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 Plaintiff pleads 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; *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; the *Civil Code of Quebec*, CQLR c CCQ-1991 and the *Medical Care Act*, RSNWT (Nu) 1988, c M-8.

### ***Punitive Damages***

85. Quaker’s conduct in causing food contaminated with *Salmonella* to be sold to Canadians was high-handed, outrageous and reckless. Given this reprehensible conduct, Quaker is liable to pay punitive damages to the Plaintiff and Class Members as a result.

### ***Joint and Several Liability***

86. The Quaker Oats Company and Pepsico Canada ULC are jointly and severally liable for the actions and damages allocable to either of them with respect to the sale and/or use of the Recalled Products in Canada.

**Service on the Defendants**

87. The Plaintiff and Class Members have the right to serve this Notice of Civil Claim on Quaker 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.

Plaintiff's address for service:

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

Fax number for service: 604.682.5197

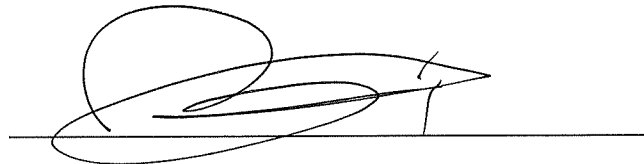
Email address for service: [service@slatervecchio.com](mailto:service@slatervecchio.com)

Place of trial: Vancouver, BC

The address of the registry is:

800 Smithe Street  
Vancouver, BC  
V6Z 2E1

Date: August 21, 2024



Signature of lawyer for plaintiff

For: Anthony A Vecchio KC  
Saro Turner  
Sam Jaworski

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 plaintiff claims the right to serve this pleading on the defendants THE QUAKER OATS COMPANY AND PEPSICO CANADA ULC 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 Plaintiff 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 presence of *Salmonella*.

### 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*

*Privacy Act, RSBC 1996, C 373*

**SCHEDULE "A"**

<b>Product</b>	<b>UPC / Code</b>	<b>Best Before</b>
<b>Recalled Quaker Products</b>		
Treat Bars – Berry Bar	0 55577 11041 6	All best before dates from January 11, 2024 up to and including July 09, 2024
Harvest Crunch Original Granola Cereal	0 55577 10540 5	All best before dates from January 11, 2024 up to and including July 09, 2024
Harvest Crunch Dark Chocolate Cranberry Almond Granola Cereal	0 55577 10541 2	All best before dates from January 11, 2024 up to and including July 09, 2024
Harvest Crunch Raisin Almond Granola Cereal	0 55577 10542 9	All best before dates from January 11, 2024 up to and including July 09, 2024
Harvest Crunch Light and Crisp Honey Nut Granola Cereal	0 55577 10543 6	All best before dates from January 11, 2024 up to and including July 09, 2024
Harvest Crunch Light & Crisp Raisin Almond Granola Cereal	0 55577 10544 3	All best before dates from January 11, 2024 up to and including July 09, 2024
Harvest Crunch Apple Crumble Granola Cereal	0 55577 10549 8	All best before dates from January 11, 2024 up to and including July 09, 2024
Harvest Crunch Original Granola Cereal	0 55577 31255 1	All best before dates from January 11, 2024 up to and including July 09, 2024
Harvest Crunch Original Granola Cereal	0 55577 10550 4	All best before dates from January 11, 2024 up to and including July 09, 2024
Harvest Crunch Canadian Maple Cereal	0 55577 10551 1	All best before dates from January 11, 2024 up to and including July 09, 2024
Harvest Crunch Cereal Light and Crisp Honey Nut Value Pack	0 55577 10552 8	All best before dates from January 11, 2024 up to and including July 09, 2024

Chewy Chocolate Chip Granola Bars	0 55577 12010 1	All best before dates from January 11, 2024 up to and including September 07, 2024
Chewy S'mores Granola Bars	0 55577 12011 8	All best before dates from January 11, 2024 up to and including September 07, 2024
Chewy Rocky Road Granola Bars	0 55577 12012 5	All best before dates from January 11, 2024 up to and including September 07, 2024
Chewy Apple Fruit Crumble Granola Bars	0 55577 12014 9	All best before dates from January 11, 2024 up to and including September 07, 2024
Chewy Fruit Crumble Peach Granola Bars	0 55577 12015 6	All best before dates from January 11, 2024 up to and including July 09, 2024
Chewy Caramel Chocolate Granola Bars	0 55577 12017 0	All best before dates from January 11, 2024 up to and including July 09, 2024
Chewy Fruit Crumble Strawberry Granola Bars	0 55577 12019 4	All best before dates from January 11, 2024 up to and including July 09, 2024
Chewy Chocolate Chip Granola Bars	0 55577 12020 0	All best before dates from January 11, 2024 up to and including September 07, 2024
Chewy Smore's Granola Bars	0 55577 12021 7	All best before dates from January 11, 2024 up to and including September 07, 2024
Chewy Chocolatey Fun Granola Bars	0 55577 12023 1	All best before dates from January 11, 2024 up to and including July 09, 2024

Chewy Fruity Fun Granola Bars	0 55577 12024 8	All best before dates from January 11, 2024 up to and including July 09, 2024
Chewy Fruity Fun Granola Bars	0 55577 33107 1	All best before dates from January 11, 2024 up to and including July 09, 2024
Chewy Chocolate Chip Granola Bars	0 55577 78177 7	All best before dates from January 11, 2024 up to and including September 07, 2024
Dipps Caramel Nut Granola Bars	0 55577 10970 0	All best before dates from January 11, 2024 up to and including October 07, 2024
Dipps Chocolate Chip Granola Bars	0 55577 10971 7	All best before dates from January 11, 2024 up to and including October 07, 2024
Dipps Rainbow Chip Granola Bars	0 55577 10972 4	All best before dates from January 11, 2024 up to and including October 07, 2024
Dipps Chocolate Fudge Granola Bars	0 55577 10973 1	All best before dates from January 11, 2024 up to and including October 07, 2024
Dipps Peanut Butter Granola Bars	0 55577 10974 8	All best before dates from January 11, 2024 up to and including October 07, 2024
Dipps Cookies and Cream Granola Bars	0 55577 10979 3	All best before dates from January 11, 2024 up to and including October 07, 2024
Dipps Salted Butterscotch Crunch Granola Bars	0 55577 10980 9	All best before dates from January 11, 2024 up to and including October 07, 2024
Dipps Granola Bars Variety Pack	0 55577 31253 7	All best before dates from January 11, 2024 up to and including October 07, 2024
Dipps Granola Bars	0 55577 31222 3	All best before dates from January 11, 2024 up to and including October 07, 2024

Yogurt Strawberry Granola Bars	0 55577 10743 0	All best before dates from January 11, 2024 up to and including October 07, 2024
Yogurt Vanilla Granola Bars	0 55577 10744 7	All best before dates from January 11, 2024 up to and including October 07, 2024
Yogurt Blueberry Granola Bars	0 55577 10757 4	All best before dates from January 11, 2024 up to and including October 07, 2024
Yogurt Variety Pack – Strawberry, Blueberry, Vanilla Granola Bars	0 55577 31131 8	All best before dates from January 11, 2024 up to and including October 07, 2024
Yogurt Variety Pack Granola Bars	0 55577 31221 6	All best before dates from January 11, 2024 up to and including October 07, 2024
<b>Other Recalled Products</b>		
Loblaw Dragon Fruit Parfait	Contains 244327	All best before dates up to and including 2024.JA13
Loblaw Mango Parfait	Contains 244326	All best before dates up to and including 2024.JA13
Loblaw Blueberry Yogurt Parfait with Almond Granola	Contains 234550	All best before dates up to and including 2024.JA13
Loblaw Honey Greek Yogurt Parfait with Berry and Almond Granola	Contains 255275	All best before dates up to and including 2024.JA13
Loblaw Greek Yogurt Parfait with Acai and Almond Granola	Contains 250145	All best before dates up to and including 2024.JA13
Loblaw Acai Mixed with Berry Parfait and Almond Granola	Contains 250131	All best before dates up to and including 2024.JA13
Loblaw Yogurt Parfait Strawberry, “Blueberrie” and Almond Granola	Contains 252233	All best before dates up to and including 2024.JA13
Loblaw Yogurt and Peach Parfait with Almond Granola	Contains 250262	All best before dates up to and including 2024.JA13
Loblaw Yogurt Raspberry Banana Parfait with Almond Granola	Contains 250148	All best before dates up to and including 2024.JA13
Loblaw Yogurt and Strawberries Parfait with Almond Granola	Contains 231027	All best before dates up to and including 2024.JA13

Loblaw Acai Blend, Kiwi, Strawberry Parfait and Almond Granola	Contains 250143	All best before dates up to and including 2024.JA13
Metro Mixed Berry Yogurt Parfait w/Almonds	Variable	All codes sold up to and including January 12, 2024
Metro Mixed Berry Greek Yogurt Parfait w/Almonds	Variable	All codes sold up to and including January 12, 2024
Sobeys Yogurt Bowl Banana	PLU 35281	All best before dates up to and including 2024JA15
Sobeys Yogurt Bowl Mx Berry	PLU 35283	All best before dates up to and including 2024JA15
Sobeys Nutty Yogurt Berry	PLU 54557	All best before dates up to and including 2024JA15
Sobeys Nutty Greek Yogurt Bowl	PLU 16349	All best before dates up to and including 2024JA15
Sobeys Yogurt Bowl Plain With Granola	PLU 35282	All best before dates up to and including 2024JA15
Sobeys Yogurt Bowl Stwbry	PLU 35285	All best before dates up to and including 2024JA15
Sobeys Greek Yogurt Banana	PLU 45891	All best before dates up to and including 2024JA15
Sobeys GRK Yog Bowl Mx Berry	PLU 46071	All best before dates up to and including 2024JA15
Sobeys GRK Yog Bowl Stwbry	PLU 46072	All best before dates up to and including 2024JA15
Sobeys Greek Yogurt Bowl Plain With Granola	PLU 46070	All best before dates up to and including 2024JA15
Sobeys Yogurt Granola Fruit Cup	PLU 54568	All best before dates up to and including 2024JA15
Sobeys Greek Yogurt Fruit Bowl	PLU 16352	All best before dates up to and including 2024JA15
Sobeys Yogurt Bowl Banana	PLU 22267	All best before dates up to and including 2024.JA15
Sobeys Yogurt Bowl Mixed Berry	PLU 21891	All best before dates up to and including 2024.JA15



Sobeys Greek Yogurt Bowl Mixed Berry	PLU 22268	All best before dates up to and including 2024.JA15
Sobeys Parfait S/Bry Granola	PLU 28231	All best before dates up to and including 2024JA14
Sobeys Parfait S/BryGran Sml	PLU 28233	All best before dates up to and including 2024JA14
Sobeys Parfait Rasp Granola	PLU 28235	All best before dates up to and including 2024JA14
Sobeys Parfait Mxd Bry Gran	PLU 28236	All best before dates up to and including 2024JA14
Sobeys Parfait Rasp Granola	PLU 28257	All best before dates up to and including 2024JA14
Sobeys Mxd Berry Gran Parf	PLU 29192	All best before dates up to and including 2024JA14
Urban Fare UF Chia Tropical Fruit Parfait	0 288779 908998	All best before dates up to and including 2024/JA/19
Urban Fare Yogurt Parfait	0 280385 706999	All best before dates up to and including 2024/JA/18

## SCHEDULE "B"

### Extra-Provincial Consumer Protection Legislation

#### *Alberta*

1. Quaker has 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. Quaker is 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, Quaker breached sections 5-6 of the *Alberta CPA*. Quaker's 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 Quaker's 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), 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 Quaker, directly or indirectly, for the Recalled Products pursuant to subsections 13(2)(d)(ii) and/or 142.1(2)(c). Further, Quaker is 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. Quaker 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.

5. The Plaintiff further pleads that the notice requirement pursuant to subsection 7.1(1) of the *Alberta CPA* is fulfilled by the delivery of written notice to Quaker as set out in the Notice of Civil Claim, or in the alternative by the filing of this Notice of Civil Claim.

### ***Saskatchewan***

6. Quaker has 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. Quaker is 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.

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

8. As a result of Quaker’s 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 Quaker, directly or indirectly, for the Recalled Products pursuant to subsection 93(1)(a). Further, Quaker is liable to pay punitive damages to the Consumer Subclass Members in Saskatchewan pursuant to subsection 93(1)(b).

9. Quaker 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.

### ***Manitoba***

10. Quaker has 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. Quaker is 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.

11. By reason of making the Misrepresentations and/or failing to adequately implement quality-control measures to detect and prevent contamination of the Recalled Products, Quaker breached section 2 of the *Manitoba BPA*. Quaker’s 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”.

12. As a result of Quaker’s 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 Quaker, directly or indirectly, for the Recalled Products exceed the value of these products due to their potential contamination with *Salmonella* pursuant to subsection 23(2)(d). Further, Quaker is liable to pay punitive damages to the Consumer Subclass Members in Manitoba pursuant to subsection 23(4).

### ***Quebec***

13. Quaker has 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*. Quaker is doing business as “merchant” within the meaning of the *Québec CPA*. The supply of each of the Recalled Products in Quebec thus constitutes a consumer contract within the meaning of section 2 of the *Québec CPA*.

14. By reason of Quaker’s conduct, Quaker has breached sections 219 and 228 of the *Québec CPA*. Quaker’s actions constitute “prohibited business practices” under section 219.

15. By their omissions and actions, Quaker 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 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*.

16. As a result of Quaker’s 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*.

17. Quaker 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***

18. Quaker has 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. Quaker is 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. Quaker made “representations” within the meaning of section 1.

19. By reason of making the Misrepresentations and/or failing to adequately implement quality-control measures to detect and prevent contamination of the Recalled Products, Quaker breached sections 14 and 17 of the *Ontario CPA*. Quaker's 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.

20. As a result of Quaker's 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 due to their potential contamination with *Salmonella* 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 Quaker, directly or indirectly, for the Recalled Products pursuant to subsection 18(1). Further, Quaker is liable to pay punitive damages to the Consumer Subclass Members in Ontario pursuant to subsection 18(11).

21. Quaker 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.

22. The Plaintiff further pleads that the notice requirement pursuant to subsection 18(3) of the *Ontario CPA* is fulfilled by the delivery of written notice to Quaker 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, the Plaintiff pleads that the Court should disregard the requirement for notice pursuant to subsection 18(15) of the *Ontario CPA*.

### ***Prince Edward Island***

23. Quaker has 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. Quaker made "consumer representations" within the meaning of section 1.

24. By reason of making the Misrepresentations and/or failing to adequately implement quality-control measures to detect and prevent contamination of the Recalled Products, Quaker breached sections 2 and 3 of the *PEI BPA*. Quaker's 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.

25. As a result of Quaker's 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 due to their potential contamination with *Salmonella* 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 Quaker, directly or indirectly, for the Recalled Products pursuant to subsection 4(1). Further, Quaker is liable to pay punitive damages to the Consumer Subclass Members in Prince Edward Island pursuant to subsection 4(2).

26. The Plaintiff further pleads that the notice requirement pursuant to subsection 4(5) of the *PEI BPA* is fulfilled by the delivery of written notice to Quaker 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***

27. Quaker has 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. Quaker is

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.

28. By reason of making the Misrepresentations and/or failing to adequately implement quality-control measures to detect and prevent contamination of the Recalled Products, Quaker breached sections 7 and 9 of the *Newfoundland CPBPA*. Quaker’s 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.

29. As a result of Quaker’s 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 Quaker, directly or indirectly, for the Recalled Products exceed the value of these products pursuant to subsection 10(2)(e). Further, Quaker is liable to pay punitive damages to the Consumer Subclass Members in Newfoundland pursuant to subsection 10(2)(b).

30. Quaker 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***

31. Quaker has breached the *Consumer Product Warranty and Liability Act*, SNB 1978, c C-18.1 (the “***New Brunswick CPWLA***”). Quaker is 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 Quaker, intermediaries and Consumer Subclass Members in New Brunswick for the sale and/or supply of these products are each a “contract for the sale or supply of a consumer product” within the meaning of section 1.



32. By reason of making the Misrepresentations and/or failing to adequately implement quality-control measures to detect and prevent contamination of the Recalled Products, Quaker breached sections 10 and 11 of the *New Brunswick CPWLA*. Quaker 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.

33. 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 Quaker's breach or breaches of warranties particularized above pursuant to section 15.

### ***Nova Scotia***

34. Quaker has 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*. Quaker is 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.

35. By reason of making the Misrepresentations and/or failing to adequately implement quality-control measures to detect and prevent contamination of the Recalled Products, Quaker breached subsections 26 and 28A(1). Quaker 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. The Misrepresentations constitute express warranties pursuant to subsection 28A(1)(b) which, pursuant to subsection 28A(3), form part of the contract for

sale and each subsequent purchaser has the same rights under the express warranty as if they were the original purchaser. As a result of the contamination of some, or all, of the Recalled Products with *Salmonella*, Quaker breached the express warranty as to the safety of the Recalled Products.

36. 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.

### ***Yukon***

37. Quaker has 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. Quaker is 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.

38. By reason of making the Misrepresentations and/or failing to adequately implement quality-control measures to detect and prevent contamination of the Recalled Products, Quaker 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*.

39. 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.

### ***Northwest Territories***

40. Quaker has 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. Quaker is 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.

41. By reason of making the Misrepresentations and/or failing to adequately implement quality-control measures to detect and prevent contamination of the Recalled Products, Quaker 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*.

42. 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.

### ***Nunavut***

43. Quaker has 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. Quaker is 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.

44. By reason of making the Misrepresentations and/or failing to adequately implement quality-control measures to detect and prevent contamination of the Recalled Products, Quaker 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*.

45. 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.