



NO. **VLC-S-S-257274**
Court File No. **VANCOUVER REGISTRY**

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

DALTON DELPOPOLO

PLAINTIFF

AND:

NUTRABOLICS, INC.

DEFENDANT

Brought pursuant to the *Class Proceedings Act*, RSBC 1996, c. 50

NOTICE OF CIVIL CLAIM

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 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.

CLAIM OF THE PLAINTIFF

Part 1: STATEMENT OF FACTS

The Parties

1. The plaintiff, Dalton Delpopolo, is a labourer and for the purposes of this action has an address for delivery of 2020-650 West Georgia Street, Vancouver, British Columbia.

2. The defendant, Nutrabolics, Inc., is a company incorporated pursuant to the laws of British Columbia, with a registered and records office at 2707 Clarke Street, Port Moody, British Columbia, V3H 1Z5.

Background & Overview

3. The defendant is a Canadian sports nutrition company that manufactures, distributes, produces, markets, advertises, and sells, among other things, Feed Me Vegan Real Food Protein & Oats bars.

4. At all material times, the defendant marketed, advertised, and labelled the Feed Me Vegan Real Food Protein & Oats bars as vegan and represented that they did not

contain milk or other dairy ingredients, nor did the product labels disclose milk or dairy as an ingredient or warn that the product may contain milk ingredients.

5. On or about January 24, 2024, the plaintiff purchased a Feed Me Vegan Real Food Protein & Oats Bar in the Chocolate Coconut flavour from Popeye's Supplements in Kamloops, British Columbia.

6. The plaintiff has a medically-diagnosed allergy to dairy products and therefore avoids consumption of foods containing milk or milk-derived ingredients, or that warn that they may contain milk ingredients.

7. On or about January 24, 2024, the plaintiff began to consume the Feed Me Vegan Real Food Protein & Oats Bar in the Chocolate Coconut flavour and, after taking several bites, he suffered a severe allergic reaction including symptoms of anaphylaxis, requiring emergency medical treatment.

8. The Feed Me Vegan Real Food Protein & Oats bars, including the bar purchased and consumed by the plaintiff, were the subject of various recalls announced by the Canadian Food Inspection Agency (the "CFIA") between July 12, 2024 and September 20, 2024, as follows:

- a. On July 12, 2024, the CFIA issued a Class 1 food recall for Nutrabolics Feed Me Vegan Real Food Protein & Oats bars in the Frosted Blueberry Cobbler flavour with best before dates up to and including March 15, 2025 due to the presence of undeclared milk ingredients;

- b. On September 6, 2024, the CFIA issued a recall of Nutrabolics Feed Me Vegan Real Food Protein & Oats bars in the Chocolate Coconut flavour with best before dates up to and including November 15, 2025 due to the presence of undeclared milk ingredients; and
- c. On September 20, 2024, the CFIA issued recalls for Nutrabolics Feed Me Vegan Real Food Protein & Oats bars in the Glazed Cranberry Lemon Cake and Caramel Apple Pie flavours with best before dates up to and including April 15, 2025, and expanded the scope of the July 12 and September 6, 2024 recalls to include all bars in the Frosted Blueberry Cobbler and Chocolate Coconut flavours with best before dates up to and including April 15, 2025

(the “Recalled Bar(s)”).

9. The Feed Me Vegan Real Food Protein & Oats Bar in the Chocolate Coconut flavour that the plaintiff purchased and consumed was a Recalled Bar.

10. The defendant’s marketing, advertising and labelling of the Recalled Bars was inaccurate, misleading, and deceptive because they were not vegan and did contain milk ingredients.

11. The plaintiff would not have purchased or consumed any of the Recalled Bars if he had known that they contained milk ingredients.

12. As a result of the defendant's conduct, the plaintiff has suffered injury, loss and damage, including but not limited to:

- a. severe allergic reaction, including anaphylaxis;
- b. psychological injury; and
- c. such other injuries as counsel may advise.

13. The injuries sustained by the plaintiff have caused and continue to cause the plaintiff pain and suffering, loss of enjoyment of life, and permanent disability.

The Proposed Class

14. The plaintiff brings this action on his own behalf, and on behalf of individuals who belong to one or both of the following overlapping subclasses:

- a. All persons in Canada who purchased one or more of the Recalled Bars for purposes that were primarily personal, family or household (the "Economic Subclass" and the "Economic Subclass Members"); and
- b. All persons in Canada and the estates of deceased individuals in Canada who consumed the Recalled Bars and claim to have suffered personal injury or death as a result of consuming one or more of the Recalled Bars (the "Personal Injury Subclass" and the "Personal Injury Subclass Members")

from the date that the Recalled Bars were first offered for sale in Canada until the date of certification (collectively, the "Class" and "Class Members").

Part 2: RELIEF SOUGHT

15. The plaintiff, on his own behalf and on behalf of the Class, claims against the defendant as follows:

- (a) an order pursuant to the *Class Proceedings Act*, RSBC 1996, c. 50 (the “*Class Proceedings Act*”) certifying this action as a class proceeding and appointing the plaintiff as the representative plaintiff;
- (b) relief for contravention of provincial consumer protection legislation, as follows:
 - i. a declaration that the defendant’s act of manufacturing, advertising, offering and selling the Recalled Bars with false and misleading labels constitutes a deceptive act or practice contrary to ss. 4 and 5 of the British Columbia *Business Practices and Consumer Protection Act*, SBC 2004, c. 2 (the “*BPCPA*”) and an order pursuant to s. 172(3) of the *BPCPA* that the defendant restore to the Economic Subclass Members the purchase price collected from them, directly or indirectly, in contravention of the *BPCPA*, and/or damages pursuant to s. 171 of the *BPCPA*;
 - ii. damages including but not limited to restitution of the amounts paid for the Recalled Bars pursuant to s. 13(2) or s. 142.1 of the Alberta *Consumer Protection Act*, RSA 2000, c. C-26.3 (the “*Alberta CPA*”);
 - iii. damages including but not limited to restitution of the amounts paid for the Recalled Bars pursuant to s. 93(1) of the Saskatchewan *Consumer*

Protection and Business Practices Act, SS 2014, c. C-30.2 (the “*Saskatchewan CPA*”);

- iv. damages including but not limited to restitution of the amounts paid for the Recalled Bars pursuant to s. 23(2) of the Manitoba *Business Practices Act*, CCSM, c. B120 (the “*Manitoba CPA*”);
- v. damages including but not limited to restitution of the amounts paid for the Recalled Bars pursuant to s. 18 of the Ontario *Consumer Protection Act, 2002*, SO 2002, c. 30, Sch. A (the “*Ontario CPA*”);
- vi. damages including but not limited to restitution of the amounts paid for the Recalled Bars pursuant to s. 272 of the Quebec *Consumer Protection Act*, CQLR c. P-40.1 (the “*Quebec CPA*”);
- vii. damages including but not limited to restitution of the amounts paid for the Recalled Bars pursuant to s. 4(1) of the Prince Edward Island *Business Practices Act*, RSPEI 1988, c. B-7 (the “*PEI CPA*”); and
- viii. damages including but not limited to restitution of the amounts paid for the Recalled Bars pursuant to s. 10 of the Newfoundland and Labrador *Consumer Protection and Business Practices Act*, SNL 2009, c. C-31.1 (the “*Newfoundland CPA*”);

(c) a declaration that the defendant engaged in conduct contrary to Part VI of the *Competition Act*, RSC 1985, c. C-34 (the “*Competition Act*”);

(d) damages pursuant to s. 36 of the *Competition Act*;

(e) costs of investigation and prosecution of this proceeding pursuant to s. 36 of the *Competition Act*;

- (f) a declaration that the defendant was unjustly enriched by the receipt of the amounts paid by the Economic Subclass Members and received by the defendant, directly or indirectly, for the Recalled Bars and an order that the defendant account for and make restitution to the Economic Subclass Members in an amount equal to the amount by which the defendant has been unjustly enriched or, alternatively, disgorgement;
- (g) general damages for:
 - i. pain, suffering, and loss of enjoyment of life;
 - ii. past wage loss;
 - iii. future wage loss and loss of earning capacity; and
 - iv. future care;
- (h) special damages;
- (i) aggravated and punitive damages;
- (j) damages pursuant to s. 2 of the *Family Compensation Act*, RSBC 1996, c. 126 (the “*Family Compensation Act*”) and equivalent legislation in other provinces and territories throughout Canada;
- (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) an order pursuant to s. 29 of the *Class Proceedings Act*, directing an aggregate assessment of damages for the Economic Subclass;
- (m) the costs of the administration of any court award or judgment obtained in this action;

- (n) interest pursuant to the *Court Order Interest Act*, RSBC 1996, c. 79; and
- (o) such further and other relief as this Honourable Court may deem just.

Part 3: LEGAL BASIS

Negligence

16. At all material times, the defendant owed a duty of care to the plaintiff and other Class Members to ensure that the Recalled Bars were safe for human consumption, were free of undisclosed allergens or other undisclosed ingredients, and were accurately named, labelled, and marketed in compliance with all applicable statutes and regulations.

17. The defendant breached the duty of care owed to the plaintiff and other Class Members by, *inter alia*:

- a. failing to ensure that the Recalled Bars were safe for consumption;
- b. manufacturing and/or marketing a product that was not fit the purpose for which it was intended;
- c. failing to properly test, inspect, and monitor the Recalled Bars;
- d. failing to implement or follow adequate quality control measures;
- e. failing to ensure the Recalled Bars were manufactured to product standards;

- f. employing inadequately trained personnel in the design and/or manufacture of the Recalled Bars;
 - g. failing to disclose the presence of milk and/or other dairy ingredients in the Recalled Bars;
 - h. failing to warn consumers of the possibility that the Recalled Bars may contain milk allergens or dairy allergens;
 - i. failing to implement a timely recall of the Recalled Bars once the risks were known to them;
 - j. failing to warn consumers of the risks associated with the Recalled Bars in a timely manner or at all;
 - k. failing to comply with applicable statutory and regulatory requirements; and
 - l. such further and other particulars of negligence as may be determined prior to trial.
18. The defendant knew or ought to have known that consumers, including the plaintiff and other Class Members, would rely on the labelling and marketing of the Recalled Bars, would consume the Recalled Bars, and could suffer serious injury, illness or death if the Recalled Bars contained undisclosed allergens.

19. As a result of the defendant's negligence, the plaintiff and other Personal Injury Subclass Members suffered injury, loss, and damage, including severe allergic reactions, illness, and/or death.

20. Where Personal Injury Subclass Members died as a result of consuming the Recalled Bars, their dependants are entitled to recover damages pursuant to the *Family Compensation Act*, RSBC 1996, c. 126 and equivalent legislation in other provinces and territories, including:

- a. damages for loss of care, guidance, and companionship;
- b. loss of financial support and household services;
- c. funeral and related expenses; and
- d. such further losses as may be proven at trial.

Negligent Misrepresentation

21. The defendant owed a duty of care to the plaintiff and other Class Members to ensure that its representations regarding the content of the Recalled Bars were accurate.

22. The defendant represented to the plaintiff and other Class Members, by way of marketing and advertisement, including statements on the labels of the Recalled Bars, that the Recalled Bars were vegan, did not contain any milk or other dairy ingredients, and were free of undeclared allergens.

23. The defendant's representations were false and misleading. The Recalled Bars contained undeclared milk ingredients and were not vegan, contrary to the representations made on their labels and in marketing materials.

24. The defendant made these representations negligently, without taking reasonable care to ensure their truth or accuracy and knew or should have known that consumers would rely upon them.

25. The defendant's representations were material to the plaintiff's and Economic Subclass Members' decision to purchase the Recalled Bars, and the plaintiff and Economic Subclass Members reasonably relied upon the labels and marketing of the Recalled Bars in making their decision to purchase the Recalled Bars.

26. As a result of their reliance on the defendant's false and misleading representations, the plaintiff and other Economic Subclass Members suffered loss and damage, including but not limited to the purchase price of the Recalled Bars.

Breach of Provincial Consumer Protection Legislation

British Columbia

27. The defendant supplied, and continues to supply, goods to consumers in Canada, and solicits, offers, advertises, and promotes the sale of its products, including the Recalled Bars. As such, the defendant is a supplier within the meaning of s. 1 of the *BPCPA*.

28. The Economic Subclass Members are consumers within the meaning of s. 1 of the *BPCPA*.

29. The purchase and consumption of the Recalled Bars by Economic Subclass Members was for purposes that were primarily personal, family or household. As such, the sale and/or supply of each of the Recalled Bars is a consumer transaction within the meaning of s. 1 of the *BPCPA*.

30. The defendant's actions of manufacturing, distributing, marketing, advertising, offering, and selling the Recalled Bars with the false and misleading representations on the label that the Recalled Bars were vegan and did not contain any milk ingredients constitutes a deceptive act or practice within the meaning of s. 4 of the *BPCPA* contrary to s. 5 of the *BPCPA*.

31. The representations that the Recalled Bars were vegan and did not contain any milk ingredients had the capability, tendency, or effect of deceiving or misleading the plaintiff and other Economic Subclass Members because the Recalled Bars were not vegan and did contain milk ingredients.

32. The defendants benefitted from the consumer transactions in which it made the false and misleading representations and as a result of the defendant's deceptive acts and practices, the plaintiff and other Economic Subclass Members have suffered loss and damages.

33. The plaintiff and Economic Subclass Members in British Columbia are entitled to damages and/or restoration of the purchase price acquired from them, directly or

indirectly, in violation of the *BPCPA*, pursuant to ss. 171 and/or s. 172 of the *BPCPA*, respectively.

34. In addition to the *BPCPA*, the plaintiff pleads and relies on the equivalent provisions of the provincial consumer protection statutes below with respect to Class Members outside of British Columbia.

Alberta

35. Pursuant to s. 1(1) of the *Alberta CPA*:

- a. the defendant is a supplier;
- b. Economic Subclass Members in Alberta are consumers;
- c. the Recalled Bars are goods; and
- d. the supply of the Recalled Bars to Economic Subclass Members in Alberta constitute consumer transactions.

36. The defendant's actions of manufacturing, distributing, marketing, advertising, offering, and selling the Recalled Bars with the false and misleading representations on the label that the Recalled Bars were vegan and did not contain any milk ingredients constitutes an unfair practice within the meaning of ss. 5 and 6 of the *Alberta CPA* contrary to s. 6 of the *Alberta CPA*.

37. As a result of the defendant's breaches of the *Alberta CPA*, Economic Subclass Members in Alberta suffered loss and damage and are entitled to injunctive and

declaratory relief and damages, including but not limited to restoration of the amounts paid by them for the Recalled Bars, pursuant to ss. 13 and 142.1 of the *Alberta CPA*.

38. The plaintiff pleads that the notice requirement pursuant to s. 7.1(1) of the *Alberta CPA* is fulfilled by the filing and serving of this notice of civil claim. Alternatively, it is in the interests of justice for the Court to disregard the notice requirements pursuant to s. 7.2(3) of the *Alberta CPA*.

Saskatchewan

39. Pursuant to s. 2 of the *Saskatchewan CPA*:

- a. the defendant is a supplier;
- b. Economic Subclass Members in Saskatchewan are consumers;
- c. the Recalled Bars are goods; and
- d. the supply of the Recalled Bars to Economic Subclass Members in Saskatchewan constitute transactions involving goods or services within the meaning of ss. 2 and 5 of the *Saskatchewan CPA*.

40. The defendant's actions of manufacturing, distributing, advertising, marketing, offering, and selling the Recalled Bars with the false and misleading representations on the label that the Recalled Bars were vegan and did not contain any milk ingredients constitute unfair practices within the meaning of ss. 6 and 7 of the *Saskatchewan CPA* contrary to s. 8 of the *Saskatchewan CPA*.

41. As a result of the defendant's breaches of the *Saskatchewan CPA*, Economic Subclass Members in Saskatchewan suffered loss and damage and are entitled to injunctive and declaratory relief damages, including but not limited to restoration of the amounts paid by them for the Recalled Bars, pursuant to s. 93 of the *Saskatchewan CPA*.

Manitoba

42. Pursuant to s. 1 of the *Manitoba CPA*:

- a. the defendant is a supplier;
- b. Economic Subclass Members in Manitoba are consumers;
- c. the Recalled Bars are goods; and
- d. the supply of the Recalled Bars to Economic Subclass Members in Manitoba constitute consumer transactions.

43. The defendant's actions of manufacturing, distributing, advertising, marketing, offering, and selling the Recalled Bars with the false and misleading representations on the label that the Recalled Bars were vegan and did not contain any milk ingredients constitute unfair business practices within the meaning of s. 2 of the *Manitoba CPA* contrary to s. 5 of the *Manitoba CPA*.

44. As a result of the defendant's breaches of the *Manitoba CPA*, Economic Subclass Members in Manitoba suffered loss and damage and are entitled to injunctive and

declaratory relief and damages, including but not limited to restoration of the amounts paid by them for the Recalled Bars, pursuant to s. 23 of the *Manitoba CPA*.

Quebec

45. Pursuant to the *Quebec CPA*:

- a. the defendant is a manufacturer and merchant within the meaning of s. 1;
- b. Economic Subclass Members in Quebec are consumers within the meaning of s. 1;
- c. the Recalled Bars are goods within the meaning of s. 1; and
- d. the supply of the Recalled Bars to Economic Subclass Members in Quebec constitute consumer contracts within the meaning of s. 2.

46. The defendant's actions of manufacturing, distributing, marketing, advertising, offering, and selling the Recalled Bars with the false and misleading representations on the label that the Recalled Bars were vegan and did not contain any milk ingredients constitute prohibited practices within the meaning of s. 215 of the *Quebec CPA* contrary to ss. 219, 221 and 228 of the *Quebec CPA*, and constitute breaches of the statutory warranties prescribed by ss. 37, 40 and 41 of the *Quebec CPA*.

47. As a result of the defendant's breaches of the *Quebec CPA*, Economic Subclass Members in Quebec suffered loss and damage and are entitled to damages, including

but not limited to restoration of the amounts paid by them for the Recalled Bars, pursuant to s. 272 of the *Quebec CPA*.

Ontario

48. Pursuant to s. 1 of the *Ontario CPA*:

- a. the defendant is a supplier;
- b. Economic Subclass Members in Ontario are consumers;
- c. the Recalled Bars are goods; and
- d. the supply of the Recalled Bars to Economic Subclass Members in Ontario constitute consumer transactions.

49. The defendant's actions of manufacturing, distributing, advertising, marketing, offering, and selling the Recalled Bars with the false and misleading representations on the label that the Recalled Bars were vegan and did not contain any milk ingredients constitute unfair business practices within the meaning of s. 14 contrary to s. 17 of the *Ontario CPA*.

50. As a result of the defendant's breaches of the *Ontario CPA*, Economic Subclass Members in Ontario suffered loss and damage and are entitled to injunctive and declaratory relief and damages, including but not limited to restoration of the amounts paid by them for the Recalled Bars, pursuant to s. 18 of the *Ontario CPA*.

51. The plaintiff pleads that the notice requirement pursuant to s. 18(3) of the *Ontario CPA* is fulfilled by the filing and serving of this notice of civil claim. Alternatively, it is in the interest of justice for the Court to disregard the notice requirement pursuant to ss. 18(15) and 101 of the *Ontario CPA*.

Prince Edward Island

52. Pursuant to s. 1 of the *PEI CPA*:

- a. Economic Subclass Members in Prince Edward Island are consumers;
- b. the Recalled Bars are goods; and
- c. the defendant made consumer representations with respect to the Recalled Bars.

53. The defendant's actions of manufacturing, distributing, advertising, marketing, offering, and selling the Recalled Bars with the false and misleading representations on the label that the Recalled Bars were vegan and did not contain any milk ingredients constitute unfair practices within the meaning of s. 2 of the *PEI CPA* contrary to s. 3 of the *PEI CPA*.

54. As a result of the defendant's breaches of the *PEI CPA*, Economic Subclass Members in Prince Edward Island suffered loss and damage and are entitled to damages, including but not limited to restoration of the amounts paid by them for the Recalled Bars, pursuant to s. 4 of the *PEI CPA*.

Newfoundland and Labrador

55. Pursuant to s. 1 of the *Newfoundland CPA*:

- a. the defendant is a supplier;
- b. Economic Subclass Members in Newfoundland and Labrador are consumers;
- c. the Recalled Bars are goods; and
- d. the supply of the Recalled Bars to Economic Subclass Members in Newfoundland and Labrador constitute consumer transactions.

56. The defendant's actions of manufacturing, distributing, advertising, marketing, offering, and selling the Recalled Bars with the false and misleading representations on the label that the Recalled Bars were vegan and did not contain any milk ingredients constitute unfair business practices within the meaning of s. 7 of the *Newfoundland CPA* contrary to s. 9 of the *Newfoundland CPA*.

57. As a result of the defendant's breaches of the *Newfoundland CPA*, Economic Subclass Members in Newfoundland and Labrador suffered loss and damage and are entitled to injunctive and declaratory relief and damages, including but not limited to restoration of the amounts paid by them for the Recalled Bars, pursuant to s. 10 of the *Newfoundland CPA*.

Breach of the *Competition Act*

58. By representing that the Recalled Bars were vegan and did not contain any milk ingredients, the defendant breached s. 52 of the *Competition Act* as the defendant's representations and omissions:

- a. were made to the public;
- b. were made for the purpose of promoting, directly or indirectly, the business interests of the defendant;
- c. were made knowingly or recklessly; and
- d. were false and misleading in a material respect.

59. The plaintiff and Economic Subclass Members relied on the defendant's misrepresentations to their detriment. But for the defendant's representation that the Recalled Bars were vegan and its failure to disclose that the Recalled Bars contained milk ingredients, the plaintiff would not have purchased or consumed the product.

60. The plaintiff and Economic Subclass Members suffered damages as a result of the defendant's unlawful breach of s. 52 of the *Competition Act* and seek those damages, as well as the costs of investigation, pursuant to s. 36 of the *Competition Act*.

Unjust Enrichment

61. Further, or in the alternative, the plaintiff and Economic Subclass Members are entitled to recover under common law restitutionary principles.

62. The plaintiff and Economic Subclass Members have been deprived of the payment of the purchase price for the Recalled Bars and the defendant has been correspondingly enriched by the receipt of that purchase price, directly or indirectly.

63. There is no juristic reason for the defendant's enrichment. In particular:

- a. the sales contracts between the defendant and the Economic Subclass Members, including the plaintiff, were contracts for the purchase and sale of vegan protein bars and the Recalled Bars were not vegan and as such the contracts do not provide a juristic reason for the retention of money in exchange for a product that is not vegan.
- b. the enrichment was not conferred by way of a valid contract as the consideration received was fundamentally different than what was bargained for;
- c. any purchase contracts are void or voidable and cannot constitute a juristic reason as they were tainted by the defendant's breaches of:
 - i. the *Competition Act*;
 - ii. the *BPCPA* and equivalent consumer protection legislation in other provinces; and
 - iii. the *Food and Drugs Act*, RSC 1985, c. F-27 (the "*FDA*"), as:

1. the Recalled Bars are food within the meaning of s. 2 of the *FDA*;
 2. the defendant is a person within the meaning of s. 2 of the *FDA*;
 3. the defendant labelled, packaged, treated, processed, sold, and/or advertised the Recalled Bars in a manner that was false, misleading, deceptive, and/or was likely to create an erroneous impression regarding its character, value, quantity, composition, merit, and/or safety in breach of s. 5(1) of the *FDA*, as the Recalled Bars were not vegan and contained undisclosed milk ingredients;
 - d. the enrichment was procured through wrongful and unlawful conduct, including the statutory breaches referenced above; and
 - e. there is no statutory, equitable or common law basis to justify the defendant retaining the benefit.
64. As there is no juristic reason justifying the defendant's enrichment, the defendant must disgorge profits and make restitution to the Economic Subclass Members.

Aggravated and Punitive Damages

65. The defendant's conduct was high-handed, outrageous, reckless, wanton, entirely without care, and a contemptuous regard of the plaintiff's rights and rights of the Class Members, and as such the defendant is liable to pay aggravated and punitive damages.

Health Care Costs Recovery Act

66. The plaintiff is a beneficiary as defined in s. 1 of the *HCCRA* who has received health care services as defined in s. 2(1) of the *HCCRA*.

67. The plaintiff and Personal Injury Subclass Members claim for the recovery of health care costs incurred on their behalf by the British Columbia Ministry of Health, pursuant to s. 3 of the *HCCRA*, and by other provincial and territorial governments and the equivalent legislation from the other provinces and territories including:

- a. the *Crown's Right of Recovery Act*, SA 2009, c C-35 with respect to Personal Injury Subclass Members in Alberta;
- b. *The Health Administration Act*, RSS 1978, c. H-0.0001 with respect to Personal Injury Subclass Members in Saskatchewan;
- c. the *Hospital Insurance Act*, CQLR c A-28 with respect to Personal Injury Subclass Members in Quebec;
- d. the *Health Insurance Act*, RSO 1990, c. H.6 with respect to Personal Injury Subclass Members in Ontario;

- e. the *Health Services Act*, RSNB 2014, c 112 with respect to Personal Injury Subclass Members in New Brunswick;
- f. the *Health Services and Insurance Act*, RSNS 1989, c. 197 with respect to Personal Injury Subclass Members in Nova Scotia;
- g. the *Health Services Payment Act*, RSPEI 1988, c H-2 with respect to Personal Injury Subclass Members in Prince Edward Island;
- h. the *Hospital Insurance Agreement Act*, RSNL 1990, c H-7 with respect to Personal Injury Subclass Members in Newfoundland and Labrador;
- i. the *Health Care Insurance Plan Act*, RSY 2002, c 107 with respect to Personal Injury Subclass Members in the Yukon;
- j. the *Hospital Insurance and Health and Social Services Administration Act*, RSNWT 1988, c T-3 with respect to Personal Injury Subclass Members in the Northwest Territories; and
- k. the *Hospital Insurance and Health and Social Services Administration Act*, RSNWT (Nu) 1988, c T-3 with respect to Personal Injury Subclass Members in Nunavut.

Plaintiff's address for service:	Murphy Battista LLP #2020 – 650 West Georgia Street Vancouver, BC V6B 4N7
E-mail address for service:	service@murphybattista.com
Place of trial:	Vancouver, British Columbia
The address of the registry is:	800 Smithe Street Vancouver, British Columbia V6Z 2E1

Dated: September 25, 2025



Signature of lawyers for the plaintiff
Irina Kordic & Elizabeth A. Emery

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) service the list on all parties of record.

APPENDIX

Part 1: **CONCISE SUMMARY OF NATURE OF CLAIM:**

This action arises from the manufacture, distribution, and sale of protein bars that were represented and marketed as vegan and free from milk ingredients (the “Recalled Bars”), but which were subsequently recalled due to the presence of undisclosed milk ingredients. The plaintiff seeks to certify this proceeding as a class action on behalf of two classes: (a) all persons in Canada who purchased one or more of the Recalled Bars for purposes that were primarily personal, family, or household (the “Economic Subclass”); and (b) all persons in Canada, and the estates of deceased individuals in Canada, who consumed the Recalled Bars and claim to have suffered personal injury or death as a result (the “Personal Injury Subclass”). The plaintiff alleges that the defendant is liable in negligence, for breaches of provincial consumer protection legislation and the federal *Competition Act*, and in unjust enrichment, and seeks damages and other relief on behalf of class members.

Part 2: **THIS CLAIM ARISES FROM THE FOLLOWING:**

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:**

- ☒ a class action
- ☐ maritime law
- ☐ aboriginal law
- ☐ constitutional law
- ☐ conflict of laws
- ☐ none of the above
- ☐ do not know

Part 4:

1. *Business Practices and Consumer Protection Act*, SBC 2004, c. 2;
2. *Class Proceedings Act*, RSBC 1996, c. 50; and
3. *Competition Act*, RSC 1985, c. C-34.