

SUPREME COURT
OF BRITISH COLUMBIA
VANCOUVER REGISTRY

AUG 23 2019



No. **S-199401**
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between

UTTRA KUMARI KRISHNAN

PLAINTIFF

and

JAMIESON LABORATORIES INC., WN PHARMACEUTICALS LTD., NATURAL FACTORS NUTRITIONAL PRODUCTS LIMITED, VITA HEALTH PRODUCTS INC., SISU, INC., SOBEYS CAPITAL INCORPORATED, REXALL/PHARMA PLUS PHARMACIES LTD., REXALL/PHARMA PLUS PHARMACIES (BC) LTD., REXALL PHARMACY GROUP LTD., MEDICINE SHOPPE CANADA INC., LOBLAW COMPANIES LIMITED, LOBLAWS INC., T&T SUPERMARKET INC., SHOPPERS DRUG MART CORPORATION, SHOPPERS DRUG MART INC., GEORGIA MAIN FOOD GROUP LTD., LONDON DRUGS LIMITED, BUY-LOW FOODS LIMITED PARTNERSHIP, BUY-LOW FOODS LTD., CHOICES MARKET LTD., SAVE-ON-FOODS LIMITED PARTNERSHIP, SAVE-ON-FOODS LTD., QUALITY FOODS LTD., PURE INTEGRATIVE PHARMACY, PHARMASAVE DRUGS LTD., PHARMASAVE DRUGS (NATIONAL) LTD., PHARMASAVE DRUGS (PACIFIC) LTD., PHARMACHOICE CANADA INC., COSTCO WHOLESALE CANADA LTD., AND WAL-MART CANADA CORP.

DEFENDANTS

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

- (c) 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
- (d) 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 were served with the notice of civil claim anywhere in Canada, within 21 days after that service,
- (b) if you were served the notice of civil claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

Part 1: STATEMENT OF FACTS

Nature of the Action

1. Glucosamine is a natural health product and a popular dietary supplement marketed as, among other things, helpful for relieving joint pain and supporting healthy cartilage.
2. Glucosamine is commonly sold in one of two formulations: (1) glucosamine sulfate, bonded with potassium chloride or sodium chloride, or (2) glucosamine hydrochloride. Glucosamine sulfate and glucosamine hydrochloride are distinct chemical compounds.

3. Glucosamine sulfate has been more extensively studied than glucosamine hydrochloride, and certain studies suggest that glucosamine sulfate may be more effective than glucosamine hydrochloride in relieving joint pain.

4. Glucosamine sulfate is hygroscopic and therefore highly unstable. These properties make pure glucosamine sulfate difficult to sell to a consumer market. However, glucosamine sulfate can be stabilized by bonding it with a salt such as sodium chloride or potassium chloride according to various patented processes. However, stabilized glucosamine sulfate is more expensive to produce than glucosamine hydrochloride and, on average, stabilized glucosamine sulfate commands a much higher sales price than glucosamine hydrochloride.

5. Despite being marketed, advertised, and labelled as containing “glucosamine sulfate” or “glucosamine sulfate potassium chloride”, none of the glucosamine sulfate products manufactured, distributed, produced, marketed, advertised or sold by the Defendants actually contain glucosamine sulfate (the “Fake Glucosamine Sulfate Supplements”). Instead, they contain the less expensive and less effective glucosamine hydrochloride mixed with potassium sulfate.

The Parties

The Plaintiff and Class

6. The representative Plaintiff, Ultra Kumari Krishnan, is a resident of Coquitlam, British Columbia.

7. In or around 2009, the Plaintiff began purchasing the “Webber Naturals” brand dietary supplements labelled “JOINT EASE”, “Double Strength”, and “500/400 mg”, and labelled as containing “glucosamine sulfate”, from Shoppers Drug Mart for her own use, on the recommendation of the pharmacist at Shoppers Drug Mart who indicated to her that it was effective in relieving joint pain.

8. Since then, the Plaintiff has continued to purchase the same “Webber Naturals” brand dietary supplement from Shoppers Drug Mart, the Real Canadian Superstore, and most recently, London Drugs. The Plaintiff relied upon the label in order to determine that she was purchasing the correct bottle each time.

9. Subsequent laboratory testing of samples of the “Webber Naturals” brand dietary supplements indicate that they do not contain any glucosamine sulfate.

10. The Plaintiff first learned that the “Webber Naturals” brand dietary supplement did not contain glucosamine sulfate in June 2019. The Plaintiff would not have purchased the “Webber Naturals” brand dietary supplement if she had known the bottles contained a product that was different than indicated on the label.

11. The Plaintiff brings this claim on behalf of herself and on behalf of residents of Canada who, on or after May 6, 2004, purchased a product labeled as containing glucosamine sulfate from, or manufactured by, one or more of the Defendants (the “Class” or the “Class Members”).

The Manufacturers

Jamieson

12. The Defendant, Jamieson Laboratories Inc. (“Jamieson”), is a company incorporated in Ontario with a head office in Toronto, Ontario, and extra-provincially registered in British Columbia with an address for service in British Columbia at Suite 2400, 745 Thurlow Street, Vancouver, British Columbia, V6E 0C5.

13. Jamieson manufactures, distributes, produces, markets, advertises, and sells, among other things, dietary supplements including the Fake Glucosamine Sulfate Supplements under various brands.

WN Pharmaceuticals, Webber Naturals, and Natural Factors

14. The Defendant, WN Pharmaceuticals Ltd. (“WN Pharmaceuticals”), is a company incorporated in British Columbia, with a registered and records office at 800 – 885 West Georgia Street, Vancouver, British Columbia, V6C 3H1.

15. WN Pharmaceuticals manufactures, distributes, produces, markets, and advertises, among other things, dietary supplements, including the Fake Glucosamine Sulfate Supplements, under brands such as “Webber Naturals”, “Kirkland”, “Life”, and “Equate”.

16. The Defendant, Natural Factors Nutritional Products Limited (“Natural Factors”), is a company incorporated in British Columbia with an address at 800 – 885 West Georgia Street, Vancouver, British Columbia, V6C 3H1. Natural Factors is directed or controlled by the same persons as WN Pharmaceuticals.

17. Natural Factors manufactures, distributes, produces, markets, and advertises, among other things, dietary supplements, including the Fake Glucosamine Sulfate Supplements, under the “Natural Factors” brand.

Nature’s Bounty and Sisu

18. The Defendant, Vita Health Products Inc. (“Vita Health”), is a Canadian corporation with a head office at 150 Beghin Ave, Winnipeg, Manitoba, R2J 3W2. Vita Health is a subsidiary of Nature’s Bounty Company Inc.

19. The Defendant, Sisu, Inc. is a company incorporated in British Columbia, with a registered office at Unit 102-7635 North Fraser Way, Burnaby, British Columbia, V5J 0B8. Sisu, Inc. is a subsidiary of Nature’s Bounty Company, Inc.

20. Vita Health and Sisu, Inc. manufacture, distribute, produce, market, and advertise, among other things, dietary supplements including the Fake Glucosamine Sulfate Supplements under various brands, including “Nature’s Bounty” and “Sisu”.

The Retailers

Sobeys, Safeway, Thrifty Foods and FreshCo

21. The Defendant, Sobeys Capital Incorporated (“Sobeys”), is a company incorporated in Nova Scotia and extra-provincially registered in British Columbia with an address for service in British Columbia at Suite 2300, Bentall 5, 550 Burrard St., Vancouver, British Columbia, V6C 2B5.

22. Sobeys carries on a food retailing business throughout Canada. Sobeys owns, affiliates or franchises approximately 1,500 retail food stores and pharmacies throughout Canada, under various brands or “banners”, including Safeway, Thrifty Foods, and FreshCo, among others. In

this operation, Sobeys distributes, markets, advertises and sells dietary supplements, including the Fake Glucosamine Sulfate Supplements, under various brands.

23. At its stores operated by affiliates or franchisees, Sobeys requires its affiliates or franchisees to purchase all merchandise, including the Fake Glucosamine Sulfate Supplements, from Sobeys. Sobeys also dictates the policies, marketing plans and operating standards used by the affiliates and franchisees. Sobeys' business is inextricably interwoven with that of its affiliates and franchisees and each affiliate or franchisee is the agent of Sobeys, and vice versa, for the purposes of the distribution, marketing, advertising, and sale of the Fake Glucosamine Sulfate Supplements. Sobeys exerts complete control over the selection, supply and quality control of the dietary supplements to be sold by its franchisees or affiliates, including the Fake Glucosamine Sulfate Supplements, and is therefore either directly or vicariously liable for the damages resulting from or caused by the sale of the Fake Glucosamine Sulfate Supplements.

Rexall and Medicine Shoppe

24. The Defendant, Rexall/Pharma Plus Pharmacies Ltd., is a company incorporated in Ontario with a head office in Toronto, Ontario, and extra-provincially registered in British Columbia with an address for service at 1600 – 925 West Georgia Street, Vancouver, British Columbia, V6C 3L2. Rexall/Pharma Plus Pharmacies Ltd. operates a chain of pharmacies in Canada owned by McKesson Canada Corporation.

25. The Defendant, Rexall/Pharma Plus Pharmacies (BC) Ltd., is a company incorporated in British Columbia, with a registered and records office at Suite 2600, Three Bentall Centre, 595 Burrard Street, P.O. Box 49314, Vancouver, British Columbia, V7X 1L3. Rexall/Pharma Plus Pharmacies (BC) Ltd. is controlled by McKesson Canada Corporation.

26. The Defendant, Rexall Pharmacy Group Ltd., is a company incorporated in Ontario with a head office in Toronto, Ontario, and extra-provincially registered in British Columbia with an address for service at Suite 2600 – 595 Burrard Street, Three Bentall Centre, Vancouver, British Columbia, V7X 1L3. Rexall Pharmacy Group Ltd. is owned by McKesson Canada Corporation.

27. The Defendant, Medicine Shoppe Canada Inc. (“Medicine Shoppe”), is a company incorporated in Alberta with a head office at 1600, 10104-103 Ave, Edmonton, Alberta, T5J 0H8.

Medicine Shoppe operates a network of pharmacies in Canada and is owned by McKesson Canada Corporation.

28. Rexall/Pharma Plus Pharmacies Ltd., Rexall/Pharma Plus Pharmacies (BC) Ltd., and Rexall Pharmacy Group Ltd. (hereinafter collectively referred to as “Rexall”), and Medicine Shoppe distribute, market, advertise and sell, among other things, dietary supplements including the Fake Glucosamine Sulfate Supplements under brands such as “Jamieson”, “Webber”, “Nature’s Bounty”, and “Rexall”.

Loblaws, T&T, Shoppers Drug Mart, No Frills, Real Canadian Superstore and City Market

29. The Defendant, Loblaw Companies Limited, is a Canadian corporation with its principal place of business in Brampton, Ontario, and extra-provincially registered in British Columbia with an address for service in British Columbia at 3189 Grandview Hwy, Vancouver, British Columbia, V5M 2E9.

30. The Defendant, Loblaws Inc., is a company incorporated in Ontario and extra-provincially registered in British Columbia with an address for service at 3189 Grandview Hwy, Vancouver, British Columbia, V5M 2E9. It is a wholly owned subsidiary of Loblaw Companies Limited.

31. The businesses of each of Loblaws Companies Limited and Loblaws Inc. (hereinafter collectively referred to as “Loblaws”) are inextricably interwoven with that of the other and each is the agent of the other for the purpose of distributing, marketing, advertising and selling the Fake Glucosamine Sulfate Supplements.

32. Loblaws carries on a food retailing business throughout Canada. Loblaws owns or franchises approximately 1085 retail food stores across Canada, under various brands or “banners”, including No Frills, Real Canadian Superstore, and City Market, among others. In this operation, Loblaws distributes, markets, advertises and sells, among other things, dietary supplements, including the Fake Glucosamine Sulfate Supplements, under brands such as “Jamieson”, “Webber”, and “Exact”.

33. The Defendant, T&T Supermarket Inc. (“T&T”), is a company incorporated in British Columbia with a registered office at 3189 Grandview Highway, Vancouver, British Columbia, V5M 2E9. T&T is a subsidiary of Loblaws Inc. T&T operates retail food stores in British Columbia and markets, advertises and sells the Fake Glucosamine Sulfate Supplements. The businesses of each of Loblaws and T&T are inextricably interwoven with that of the other and each is the agent of the other for the purpose of distributing, marketing, advertising, and selling the Fake Glucosamine Sulfate Supplements.

34. At its stores operated by franchisees, Loblaws requires its franchisees to purchase all merchandise, including the Fake Glucosamine Sulfate Supplements, from Loblaws. Loblaws also dictates the policies, marketing plans and operating standards used by the franchisees. Loblaws’ business is inextricably interwoven with that of its franchisees and each franchisee is the agent of Loblaws, and vice versa, for the purposes of the distribution, marketing, advertising and sale of the Fake Glucosamine Sulfate Supplements. Loblaws exerts complete control over the selection, supply and quality control of the dietary supplements to be sold by its franchisees, including the Fake Glucosamine Sulfate Supplements, and is therefore either directly or vicariously liable for the damages resulting from or caused by the sale of the Fake Glucosamine Sulfate Supplements.

35. The Defendant, Shoppers Drug Mart Corporation, is a Canadian corporation based in Toronto, Ontario. Shoppers Drug Mart Corporation is a wholly owned subsidiary of Loblaws Companies Limited.

36. The Defendant, Shoppers Drug Mart Inc., is a Canadian corporation, with a head office in Toronto, Ontario, and extra-provincially registered in British Columbia with an address for service in British Columbia at 3189 Grandview Highway, Vancouver, British Columbia, V5M 2E9. Shoppers Drug Mart Inc. is a subsidiary of Shoppers Drug Mart Corporation.

37. The businesses of each of Loblaw Companies Limited, Shoppers Drug Mart Corporation, and Shoppers Drug Mart Inc. (hereinafter collectively referred to as “Shoppers Drug Mart”) are inextricably interwoven with that of the other and each is the agent of the other for the purposes of distributing, marketing, advertising, and selling the Fake Glucosamine Sulfate Supplements.

38. Shoppers Drug Mart operates a retail pharmacy chain with over 1,300 stores across Canada. It markets, advertises, and sells, among other things, the Fake Glucosamine Sulfate Supplements under various brands, such as “the Root of Life” and “Life”.

39. Most of the Shoppers Drug Mart pharmacies are owned and operated by “associates”. Shoppers Drug Mart requires its associates to purchase all merchandise, including the Fake Glucosamine Sulfate Supplements, from Shoppers Drug Mart exclusively, and to adhere to common marketing and operating policies. Shoppers Drug Mart’s business is inextricably interwoven with that of its associates and each associate is the agent of Shoppers Drug Mart, and vice versa, for the purposes of the distribution, marketing, advertising, and sale of the Fake Glucosamine Sulfate Supplements. Shoppers Drug Mart exerts complete control over the selection, supply, and quality control of the dietary supplements to be sold by its associates, including the Fake Glucosamine Sulfate Supplements, and is therefore either directly or vicariously liable for the damages resulting from or caused by the sale of the Fake Glucosamine Sulfate Supplements.

London Drugs, Fresh Street Market, and IGA

40. The Defendant, Georgia Main Food Group Ltd. (“Georgia Main”), is a company incorporated in British Columbia, with a registered and records office at 1800 – 510 West Georgia St., Vancouver, British Columbia, V6B 0M3. Georgia Main is a subsidiary of H.Y. Louie Co.

41. Georgia Main operates a food retail business in British Columbia, under the brands Fresh Street Market and IGA. As part of this operation, Georgia Main distributes, markets, advertises and sells, among other things, dietary supplements including the Fake Glucosamine Sulfate Supplements, under various brands.

42. All or most of the Fresh Street Market and IGA stores are franchise stores. Georgia Main requires its franchisees to purchase all merchandise, including the Fake Glucosamine Sulfate Supplements, from Georgia Main, and dictates the policies, marketing plans and operating standards used by the franchisees. Georgia Main’s business is inextricably interwoven with that of its franchisees and each franchisee is the agent of Georgia Main, and vice versa, for the purposes of the distribution, marketing, advertising and sale of the Fake Glucosamine Sulfate Supplements.

Georgia Main Food exerts complete control over the selection, supply, and quality control of the dietary supplements to be sold by its franchisees or affiliates, including the Fake Glucosamine Sulfate Supplements, and is therefore either directly or vicariously liable for the damages resulting from or caused by the sale of the Fake Glucosamine Sulfate Supplements.

43. The Defendant, London Drugs Limited (“London Drugs”), is a company incorporated in British Columbia, with a registered and records office at Suite 1800 – 510 West Georgia Street, Vancouver, British Columbia, V6B 0M3. London Drugs is a subsidiary of H.Y. Louie Co.

44. London Drugs operates a retail store chain, with approximately 78 stores across British Columbia, Alberta, Saskatchewan, and Manitoba. It markets, advertises, and sells, among things, dietary supplements, including the Fake Glucosamine Sulfate Supplements under brands such as “Webber Naturals” and “Jamieson”.

Buy-Low Foods, Nesters Market, Meinhardt Fine Foods, Choices, Save-On-Foods, Quality Foods and Pure

45. The Defendant, Buy-Low Foods Limited Partnership (“Buy-Low Foods LP”), is a British Columbia limited partnership, with a registered office at 1800 – 1067 West Cordova Street, Vancouver, British Columbia, V6C 1C7.

46. The Defendant, Buy-Low Foods Ltd., is British Columbia company with a registered office at 1800 – 1067 West Cordova Street, Vancouver, British Columbia, V6C 1C7. Buy-Low Foods Ltd. is a general partner of Buy-Low Foods LP. Buy-Low Foods Ltd. is a subsidiary of Jim Pattison Group Inc.

47. Buy-Low Foods LP is a wholesale food distributor to approximately 1,800 retail stores in Canada. Buy-Low Foods LP also sells directly to consumers at its own store locations and under brands or “banners”, including Nesters Market, Meinhardt Fine Foods, and Choices Market, among others. Buy-Low Foods LP distributes, markets, advertises, and sells, among other things, dietary supplements including the Fake Glucosamine Sulfate Supplements under various brands.

48. The Defendant, Choices Market Ltd. (“Choices”) is a British Columbia company with its registered office at 1800 – 1067 West Cordova Street, Vancouver, British Columbia, V6C 1C7.

Choices is a subsidiary of Buy-Low Foods LP. Buy-Low Foods LP is liable for the conduct of Choices, including its conduct prior to being owned by Buy-Low Foods LP. Choices operates approximately 11 retail food stores in British Columbia, and markets, advertises, and sells, among other things, dietary supplements including the Fake Glucosamine Sulfate Supplements under various brands.

49. The Defendant, Save-On-Foods Limited Partnership (“Save-On-Foods LP”), is a British Columbia limited partnership.

50. The Defendant, Save-On-Foods Ltd., is a British Columbia company with a registered address at 1800 – 1067 West Cordova St., Vancouver, British Columbia, V6C 1C7. Save-On-Foods Ltd. is a general partner of Save-On-Foods LP and an indirect subsidiary of Jim Pattison Group Inc.

51. Save-On-Foods LP operates approximately 150 stores across Western Canada, under its own banner and under various brands or “banners”, including PriceSmart Foods and Urban Fare. Save-On-Foods LP markets, advertises and sells, among other things, dietary supplements including the Fake Glucosamine Sulfate Supplements under various brands.

52. The Defendant, Quality Foods Ltd. (“Quality Foods”), is a British Columbia company with a registered office at 1800 – 1067 West Cordova St., Vancouver, British Columbia, V6C 1C7. Quality Foods is a subsidiary of Jim Pattison Group Inc. Quality Foods operates approximately 13 retail food stores in British Columbia and distributes, markets, advertises and sells, among other things, dietary supplements including the Fake Glucosamine Sulfate Supplements under various brands.

53. The Defendant, Pure Integrative Pharmacy (“Pure”), is a proprietorship in British Columbia with a head office at Unit B, 622 Bute Street, Vancouver, British Columbia, V6E 3M1. Pure is a division of Jim Pattison Group Inc. Pure operates a chain of pharmacy stores in British Columbia and markets, advertises and sells, among other things, dietary supplements including the Fake Glucosamine Sulfate Supplements under various brands.

Pharmasave and Pharmachoice

54. The Defendant, Pharmasave Drugs Ltd., is a Canadian corporation with a head office at 200 – 8120 128th Street, Surrey, British Columbia, V3W 1R1, and extra-provincially registered in British Columbia.

55. The Defendant, Pharmasave Drugs (National) Ltd., is a Canadian corporation with a head office at Suite 2400, 745 Thurlow Street, Vancouver, British Columbia, V6E 0C5, and extra-provincially registered in British Columbia.

56. The Defendant, Pharmasave Drugs (Pacific) Ltd., is a company incorporated in British Columbia, with a registered and records office at 700, 401 West Georgia Street, Vancouver, British Columbia, V6B 5A1. Pharmasave Drugs (Pacific) Ltd. is a regional office of Pharmasave Drugs (National) Ltd.

57. The businesses of each of Pharmasave Drugs Ltd., Pharmasave Drugs (National) Ltd., and Pharmasave Drugs (Pacific) Ltd. (hereinafter collectively referred to as “Pharmasave”) are inextricably interwoven with that of the other and each is the agent of the other for the purposes of distributing, marketing, advertising, and selling the Fake Glucosamine Sulfate Supplements.

58. Pharmasave is a pharmacy and drugstore retailer with over 650 stores across Canada. Pharmasave distributes, markets, advertises, and sells, among other things, dietary supplements including the Fake Glucosamine Sulfate Supplements under various brands.

59. All or most Pharmasave locations are franchises. Pharmasave requires its franchisees to purchase all merchandise, including the Fake Glucosamine Sulfate Supplements, from Pharmasave. Pharmasave also dictates the policies, marketing plans and operating standards used by the franchisees. Pharmasave’s business is inextricably interwoven with that of its franchisees and each franchisee is the agent of Pharmasave, and vice versa, for the purposes of the distribution, marketing, advertising, and sale of the Fake Glucosamine Sulfate Supplements. Pharmasave exerts complete control over the selection, supply, and quality control of the dietary supplements to be sold by its franchisees, including the Fake Glucosamine Sulfate Supplements, and is therefore either directly or vicariously liable for the damages resulting from or caused by the sale of the Fake Glucosamine Sulfate Supplements.

60. The Defendant, Pharmachoice Canada Inc. (“Pharmachoice”), is a Canadian corporation with a registered office at 401 – 475 2nd Avenue South, Saskatoon, Saskatchewan, S7K 1P4.

61. Pharmachoice is the management group for approximately 800 independently owned Pharmachoice pharmacies across Canada. Member pharmacies purchase their merchandise, including the Fake Glucosamine Sulfate Supplements, through Pharmachoice. Member pharmacies also employ a centralized advertising program operated by Pharmachoice. Pharmachoice’s business is inextricably interwoven with that of each member pharmacy and each member pharmacy is the agent of Pharmachoice and vice versa, for the purposes of the distribution, marketing, advertising and sale of the Fake Glucosamine Sulfate Supplements. Pharmachoice exerts complete control over the selection, supply and quality control of the dietary supplements to be sold by its member pharmacies, including the Fake Glucosamine Sulfate Supplements, and is therefore either directly or vicariously liable for the damages resulting from or caused by the sale of the Fake Glucosamine Sulfate Supplements.

Costco

62. The Defendant, Costco Wholesale Canada Ltd. (“Costco”), is a Canadian corporation with a head office in Ottawa, Ontario, and extra-provincially registered in British Columbia with an address for service in British Columbia at 300 – 10991 Shellbridge Way, Richmond, British Columbia, V6X 3C6. Costco is controlled by Costco Wholesale Corporation.

63. Costco is a retailer operating a chain of warehouse clubs, with approximately 100 locations in Canada. It markets, advertises, and sells, among other things, dietary supplements including the Fake Glucosamine Sulfate Supplements under various brands, such as “Kirkland” and “Webber Naturals”.

Wal-Mart

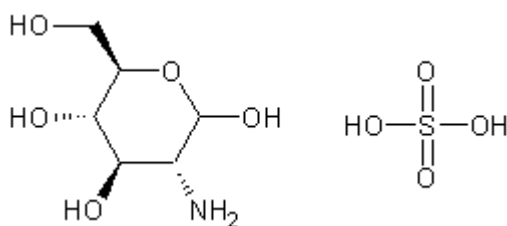
64. The Defendant, Wal-Mart Canada Corp. (“Wal-Mart”), is a company incorporated in Nova Scotia, extra-provincially registered in British Columbia with an address for service in British Columbia at Suite 2600 – 595 Burrard Street, Three Bentall Centre, Vancouver, British Columbia, V7X 1L3.

65. Wal-Mart operates a large retail department store chain with over 400 store locations across Canada. It markets, advertises, and sells, among other things, dietary supplements including the Fake Glucosamine Sulfate Supplements under various brands, such as “Jamieson”, “Webber Naturals”, “Equate”, “Nature’s Bounty”, and “Doctor’s Best”.

The Fake Glucosamine Sulfate Supplements

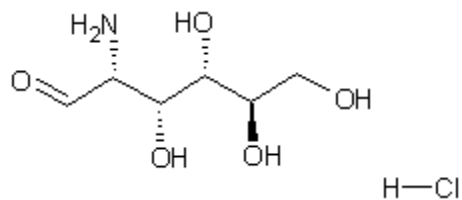
66. As mentioned, glucosamine is commonly sold in two distinct chemical forms: glucosamine sulfate or glucosamine hydrochloride.

67. Pursuant to the Natural Health Products Ingredients Database (NHPID) maintained by Health Canada, the proper chemical name for glucosamine sulfate is 2-Amino-2-deoxy-D-glucose sulfate, with a molecular formula of $C_6H_{13}NO_5 \cdot xH_2SO_4$, and structure of:



68. Glucosamine sulfate potassium chloride is glucosamine sulfate bonded with potassium chloride. Pursuant to the NHPID, Glucosamine sulfate potassium chloride, necessarily contains glucosamine sulfate as a sub-ingredient, and has a molecular formula of $C_6H_{13}NO_5 \cdot xH_2SO_4 \cdot yKCl$.

69. Pursuant to the NHPID, the proper chemical name for glucosamine hydrochloride is 2-Amino-2-deoxy-beta-D-glucopyranose hydrochloride, with a molecular formula of $C_6H_{13}NO_5 \cdot HCl$ and structure of:



70. Although both glucosamine sulfate and glucosamine hydrochloride are advertised and marketed as helpful for joint health, they have distinct treatment in the scientific literature. As compared to glucosamine hydrochloride, glucosamine sulfate:

- (a) has been more extensively studied;
- (b) may be more effective;
- (c) is more expensive to produce; and
- (d) commands a higher sale price.

71. All of the products manufactured, distributed, produced, marketed, and advertised by Jamieson, WN Pharmaceuticals, Natural Factors, Vita Health, and Sisu, Inc., (collectively, the “Defendant Manufacturers”) as glucosamine sulfate, and all of the products distributed, marketed, advertised, and sold by Jamieson, Sobeys, Rexall, Medicine Shoppe, Loblaws, T&T, Shoppers Drug Mart, Georgia Main, London Drugs, Buy-Low Foods LP, Buy-Low Foods Ltd., Choices, Save-On-Foods LP, Save-On-Foods Ltd., Quality Foods Ltd., Pure, Pharmasave, Pharmachoice, Costco, and Wal-Mart (collectively, the “Defendant Retailers”) as glucosamine sulfate, do not contain any glucosamine sulfate, and are Fake Glucosamine Sulphate Supplements.

72. Fourier-transform infrared spectroscopy tests of samples of the Fake Glucosamine Sulfate Supplements indicate that they do not contain glucosamine sulfate. Instead, the Fake Glucosamine Sulfate Supplements contain a mixture of two components, glucosamine hydrochloride and potassium sulfate. These two components remain separate in the Fake Glucosamine Sulfate Supplements. A mechanical mixture of glucosamine hydrochloride molecules and potassium sulfate molecules does not produce glucosamine sulfate molecules.

Marketing, Advertising, and Sale of the Fake Glucosamine Sulfate Supplements

73. The Defendants market and advertise the Fake Glucosamine Sulfate Supplements as containing glucosamine sulfate. Product labels, on each of the Fake Glucosamine Sulfate Supplements, describe the dietary supplement as “glucosamine sulfate” and list glucosamine sulfate as a medicinal ingredient. By way of examples only:

- (a) The label on Jamieson’s “Glucosamine Regular Strength” states that “Each caplet contains: Glucosamine Sulfate...500 mg. (Glucosamine sulfate KCl derived from Shrimp and Crab exoskeleton)”
- (b) The label on WN Pharmaceuticals’ “Webber Naturals” brand reads “Glucosamine Chondroitin Sulfate” and states that “Each caplet contains: Glucosamine Sulfate... 500 mg. (684 mg of glucosamine sulfate potassium chloride from shrimp/crab exoskeleton providing 500 mg of glucosamine sulfate)”
- (c) The label on the Nature’s Bounty “Sisu” brand reads “Glucosamine Sulfate” and states that “Each caplet contains: Glucosamine Sulfate ... 500 mg. (derived from Glucosamine sulfate • KCl from shellfish exoskeleton)”
- (d) Costco sells a “Kirkland” brand dietary supplement manufactured by WN Pharmaceuticals labelled “Glucosamine Sulfate”, which states that “Each caplet contains: Glucosamine Sulfate... 500 mg (684 mg of glucosamine sulfate potassium chloride from shrimp/crab exoskeleton providing 500 mg of glucosamine sulfate)”
- (e) Loblaws sells at, *inter alia*, its Real Canadian Superstore locations, an “Exact” branded dietary supplement manufactured by WN Pharmaceuticals labelled “Glucosamine Sulfate & Chondroitin Sulfate”, which states that “Each caplet contains: Glucosamine Sulfate (glucosamine sulfate potassium chloride from shrimp/crab exoskeleton) 500 mg, ...”

74. The marketing and advertising are untrue, inaccurate, or misleading because the Fake Glucosamine Sulfate Supplements do not contain glucosamine sulfate. This is a deceptive act or practice, and further, the Defendants are negligent in marketing and advertising the Fake Glucosamine Sulfate Supplements as containing glucosamine sulfate.

75. In promoting the use of the Fake Glucosamine Sulfate Supplements, the Defendants knowingly or recklessly market and advertise the Fake Glucosamine Sulfate Supplements as containing glucosamine sulfate.

76. The Defendant Retailers offered the Fake Glucosamine Sulfate Supplements for sale, with a displayed price, and the Plaintiff and Class Members accepted the Defendant Retailers' offer by paying the listed purchase price for the Fake Glucosamine Sulfate Supplements to the Defendant Retailers.

77. In deciding to purchase the Fake Glucosamine Sulfate Supplements, the Plaintiff and Class Members relied upon the marketing, advertising, and product labels, including the products' names and ingredients, which indicated that the product contained glucosamine sulfate. However, the Fake Glucosamine Sulfate Supplements contained no glucosamine sulfate.

Damage to the Plaintiff and Class

78. The Plaintiff and Class Members suffered loss or damage as a result of purchasing the Fake Glucosamine Sulfate Supplements, through the payment of the purchase price for glucosamine sulfate which they never in fact received. The Fake Glucosamine Sulfate Supplements that the Plaintiff and Class Members received were falsely or misleadingly marketed and advertised as containing glucosamine sulfate, but actually contained different, undisclosed compounds, in violation of the *Competition Act*, RSC 1985, c. 19, and the labelling requirements of the *Food and Drugs Act*, RSC 1985, c. F-27, and the *Natural Health Products Regulation*, SOR/2003-196. The Fake Glucosamine Sulfate Supplements are worthless to the Plaintiff and Class Members, or in the alternative, have considerably less value than the glucosamine sulfate the Plaintiff and Class Members ought to have received.

79. The damages are capable of being quantified on an aggregate basis as the payments made by the Class Members. All amounts payable to the Class on account of damages and disgorgements should be calculated on an aggregate basis pursuant to section 24 of the *Class Proceedings Act*, or otherwise.

80. The Defendants' conduct was high-handed, outrageous, reckless, wanton, entirely without care, deliberate, callous, disgraceful, willful, and in contumelious disregard of the rights of the Plaintiff and the Class Members, and as such renders the Defendants liable to pay aggravated, exemplary and punitive damages, and disgorge their ill-gotten gains.

81. Further, the Defendants have been unjustly enriched by the receipt of payments by the Plaintiff and Class Members, and the Plaintiff and Class Members have suffered a corresponding deprivation. Since the payments were made as a result of the Defendants' wrongful acts, and the payments were made for glucosamine sulfate which the Plaintiff and Class Members did not receive, there is and can be no juridical reason justifying the Defendants retaining the payment. The Plaintiff and the Class Members are entitled to claim and recover based on equitable and restitutionary principles.

Part 2: RELIEF SOUGHT

82. An order certifying this action as a class proceeding against the Defendants and appointing the Plaintiff as representative plaintiff in respect of the Class.

83. As against each of the Defendant Retailers:

- (a) damages for breach of the sales contracts between the Defendant Retailers and the Class;
- (b) damages for breach of conditions or warranty;
- (c) restitution of the purchase price paid by the Class members for the Fake Glucosamine Sulfate Supplements on the grounds of total failure of consideration;
- (d) a declaration that the Defendant Retailers have each been unjustly enriched by the receipt of payment for the Fake Glucosamine Sulfate Supplements and an order that the Defendant Retailers account for and make restitution to the Class in an amount equal to the payment; and
- (e) relief for contraventions of consumer protection legislation, as follows:
 - i. a declaration that the Defendant Retailers' act of selling the Fake Glucosamine Sulfate Supplements with false labels constitutes a "deceptive act or practice", contrary to s. 4(1) and 5(1) 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 Retailers restore to the Class Members the purchase price collected from them in contravention of the *BPCPA* or, in the alternative, damages under s. 171 of the *BPCPA*;

- ii. restitution to the Class Members of the purchase price they paid for the Fake Glucosamine Sulfate Supplements or, in the alternative, damages pursuant to s. 13(2) or s. 142.1 of the Alberta *Consumer Protection Act*, RSA 2000, c. C-26.3;
- iii. restitution to the Class Members of the purchase price they paid for the Fake Glucosamine Sulfate Supplements or, in the alternative, damages pursuant to s. 93(1) of the Saskatchewan *Consumer Protection and Business Practices Act*, SS 2014, c. C-30.2;
- iv. repayment to the Class Members of the purchase price they paid for the Fake Glucosamine Sulfate Supplements or, in the alternative, damages pursuant to s. 23(2) of the Manitoba *Business Practices Act*, CCSM, c. B120;
- v. rescission of the sales agreements between the Defendant Retailers and the Class Members, and repayment of the purchase price paid by the Class Members for the Fake Glucosamine Sulfate Supplements, pursuant to s. 18(1) of the Ontario *Consumer Protection Act, 2002*, SO 2002, c. 30, Sch. A, or, in the alternative, an order for damages pursuant to s. 18(2) of the Ontario *Consumer Protection Act*;
- vi. repayment to the Class Members of the purchase price they paid for the Fake Glucosamine Sulfate Supplements or, in the alternative, compensatory damages, pursuant to s. 272 of the Quebec *Consumer Protection Act*, CQLR c. P-40.1;
- vii. repayment to the Class Members of the purchase price they paid for the Fake Glucosamine Sulfate Supplements, pursuant to s. 17(1) of the New Brunswick *Consumer Product Warranty and Liability Act*, SBC 1978, c. C-

18.1 or, in the alternative, damages under s. 15 of the New Brunswick *Consumer Product Warranty and Liability Act*;

viii. rescission of the sales agreements between the Defendant Retailers and the Class Members and return of the purchase price paid by the Class Members for the Fake Glucosamine Sulfate Supplements or, in the alternative, damages, pursuant to s. 4(1) of the P.E.I. *Business Practices Act*, RSPEI 1988, c. B-7; and

ix. repayment to the Class Members of the purchase price they paid for the Fake Glucosamine Sulfate Supplements, or, in the alternative, damages, pursuant to s. 10 of the Newfoundland and Labrador *Consumer Protection and Business Practices Act*, SNL 2009, c. C-31.1;

84. A declaration that the Defendants engaged in conduct contrary to Part VI of the *Competition Act*.

85. Damages under s. 36(1) of the *Competition Act*.

86. Costs of investigation and prosecution of this proceeding pursuant to section 36 of the *Competition Act*.

87. Damages for the Defendants' negligent misrepresentation.

88. Disgorgement of the benefit obtained by Defendants as a result of their tortious conduct, on the grounds of waiver of tort.

89. Punitive, aggravated, and exemplary damages.

90. Costs for the administration of any court award or judgment obtained in this action.

91. Interest pursuant to the *Court Order Interest Act*, RSBC 1996, c. 79.

92. Such further and other relief as this Honourable Court deems just.

Part 3: LEGAL BASIS

Restitutionary Claims

Money Had and Received/Total Failure of Consideration

93. The Defendant Retailers entered into sales contracts with the Plaintiff and each of the Class Members. The essential terms of the sales contracts were that, in exchange for the Plaintiff and Class Members paying the purchase price to the Defendant Retailers, for the Fake Glucosamine Sulfate Supplements, the Defendant Retailers would supply the Plaintiff and Class Members with glucosamine sulfate.

94. The Plaintiff and Class Members paid the purchase price as required by the sales contracts.

95. However, the Plaintiff and Class Members never received any glucosamine sulfate from the Defendant Retailers in return. The Plaintiff and Class Members have not received any part of the benefit they bargained for under the sales contracts.

96. This total failure of consideration entitles the Plaintiff and Class Members to restitution of the purchase price they paid under the sales contracts.

Unjust Enrichment

97. The Plaintiff and Class Members have been deprived by the payment of the purchase price for the Fake Glucosamine Sulfate Supplements. The Defendant Retailers have been correspondingly enriched by the receipt of that purchase price.

98. There is no juristic reason for the enrichment. The sales contracts, between the Defendant Retailers and the Class Members, including the Plaintiff, were contracts for the sale and purchase of glucosamine sulfate, and the Fake Glucosamine Sulfate Supplements contained no glucosamine sulfate. The contracts do not provide a juristic reason for the retention of money in exchange for the delivery of product that contains no glucosamine sulfate.

Contractual Claims

99. The Defendant Retailers fundamentally breached their contracts with the Class Members, including the Plaintiff. By failing to supply the Plaintiff and Class members with glucosamine sulfate, the Defendant Retailers failed to perform their primary obligation under the contracts and deprived the Plaintiff and Class Members of substantially the whole benefit of the contracts.

100. The Defendant Retailers also breached an implied condition in the sales contracts with the Class Members to the effect that the Fake Glucosamine Sulfate Supplements, which were sold by way of the description on the product label, were required to correspond with that description. In this regard, the Plaintiff and Class Members additionally rely upon the sale of goods legislation applicable, in particular:

- (a) s. 17 of the British Columbia *Sale of Goods Act*, RSBC 1996, c. 410;
- (b) s. 15 of the Alberta *Sale of Goods Act*, RSA 2000, c. S-2;
- (c) s. 15 of the Saskatchewan *Sale of Goods Act*, RSS 1978, c. S-1;
- (d) s. 15 of the Manitoba *Sale of Goods Act*, CCSM, c. S10;
- (e) s. 14 of the Ontario *Sale of Goods Act*, RSO 1990, c. S. 1;
- (f) s. 19 of the New Brunswick *Sale of Goods Act*, RSNB 2016, c. 110;
- (g) s. 16 of the Nova Scotia *Sale of Goods Act*, RSNS 1989, c. 408;
- (h) s. 15 of the P.E.I. *Sale of Goods Act*, RSPEI 1988, c. S-1;
- (i) s. 15(1) of the Newfoundland and Labrador *Sale of Goods Act*, RSNL 1990, c. S-6;
- (j) s. 14 of the Yukon *Sale of Goods Act*, RSY 2002, c. 198;
- (k) s. 17(a) of the Northwest Territories *Sale of Goods Act*, RSNWT 1988, c. S-2; and
- (l) s. 17 of the Nunavut *Sale of Goods Act*, RSNWT (Nu) 1988, c S-2.

101. The Plaintiff and Class members exercise their right, arising from the Defendant Retailers' breaches, to treat the sales contracts as repudiated. The Plaintiff and Class Members are entitled to a full refund of the purchase price they paid to the Defendant Retailers under the repudiated sales contracts.

102. In the alternative, the Plaintiff and Class members are entitled to damages for the loss the Plaintiff and Class Members suffered as a result of the Defendant Retailers' breaches.

Tort Claims and Claims Related to Tort

Negligent Misrepresentation

103. The Defendants owed a duty of care to the Plaintiff and Class Members to ensure that their representations regarding the content of the Fake Glucosamine Sulfate Supplements were accurate.

104. The Defendants represented to the Plaintiff and Class Members, by way of marketing and advertisement, including statements on the labels of the Fake Glucosamine Sulfate Supplements, that the Fake Glucosamine Sulfate Supplements were comprised of and contained glucosamine sulfate. These representations were untrue.

105. The Defendants failed to take adequate steps to ensure the accuracy of their representations regarding the content of the Fake Glucosamine Sulfate Supplements.

106. The representations were material to the Plaintiff and Class Members' decision to purchase the Fake Glucosamine Sulfate Supplements, and the Plaintiff and Class Members reasonably relied upon the labels of the Fake Glucosamine Sulfate Supplements in making their decision to purchase the Fake Glucosamine Sulfate Supplements.

107. The Plaintiff and Class Members suffered loss or damage as a result of relying on the Defendants' representations, through the payment of a purchase price for the Fake Glucosamine Sulfate Supplements which they would not have purchased but for the Defendants' false representations.

Waiver of Tort

108. In the alternative, the Plaintiff and Class Members elect to waive the tort and seek to recover the benefits accrued by the Defendants as a result of their tortious conduct.

109. The Defendants accrued a benefit, namely the collection of the purchase price for the Fake Glucosamine Sulfate Supplements from the Plaintiff and Class Members, as a result of their tortious conduct. The Plaintiff and Class Members are entitled to a disgorgement of the benefit obtained by the Defendants.

Statutory Claims

Competition Act

110. The Defendants breached s. 52(1) of the *Competition Act*, RSC 1985, c. C-34, by knowingly or recklessly making false or misleading representations to the public that the Fake Glucosamine Sulfate Supplements contained glucosamine sulfate.

111. As a result of the Defendants' false or misleading representations, the Plaintiff and Class Members suffered loss or damage by paying the purchase price for dietary supplements labelled as containing glucosamine sulfate but never receiving any glucosamine sulfate. The Plaintiff and Class Members are therefore entitled to damages from the Defendants pursuant to s. 36(1) of the *Competition Act*, including the cost of investigation.

Consumer Protection Statutes

112. The Plaintiff and Class Members plead and rely on consumer protection legislation in Alberta, British Columbia., Saskatchewan, Ontario, Quebec, New Brunswick, Prince Edward Island, or Newfoundland and Labrador.

British Columbia

113. The Defendant Retailers' supply of the Fake Glucosamine Sulfate Supplements to the Plaintiff and Class Members for purposes that were primarily personal, family or household were "consumer transactions" within the meaning of s. 1 of the *BPCPA*.

114. The Defendant Retailers' action of selling the Fake Glucosamine Sulfate Supplements with the false or misleading representations on the label that the supplements contained glucosamine sulfate is a "deceptive act or practice" within the meaning of s. 4 of the *BPCPA*.

115. The Plaintiff and the Class Members are entitled, under s. 172 of the *BPCPA*, to the restoration of the purchase price acquired from them in violation of the *BPCPA*, or, alternatively, to damages under s. 171 for the losses they suffered.

Alberta

116. The Defendant Retailers' supply of the Fake Glucosamine Sulfate Supplements to Class Members were "consumer transactions" within the meaning of s. 1(1) of the *Alberta Consumer Protection Act*.

117. The Defendant Retailers' action of selling the Fake Glucosamine Sulfate Supplements with the false or misleading representations on the label that the supplements contained glucosamine sulfate is an "unfair practice" within the meaning of s. 6 of the *Alberta Consumer Protection Act*.

118. The Class Members suffered loss or damage due to the Defendant Retailers' unfair practice, in the form of paying the purchase price for "glucosamine sulfate", but receiving no glucosamine sulfate, and the Class Members are entitled to either the restitution of the purchase price they paid for the Fake Glucosamine Sulfate Supplements or, in the alternative, damages pursuant to s. 13(2) or s. 142(2) of the *Alberta Consumer Protection Act*.

Saskatchewan

119. The Defendant Retailers' supply of the Fake Glucosamine Sulfate Supplements to Class Members were "transactions involving goods or services" within the meaning of s. 5 and s. 2 of the *Saskatchewan Consumer Protection and Business Practices Act*.

120. By selling the Fake Glucosamine Sulfate Supplements with the false or misleading representations on the product label that the supplements contained glucosamine sulfate when it did not, the Defendant Retailers engaged in an unfair practice within the meaning of s. 6 and s. 7(a) of the Saskatchewan *Consumer Protection and Business Practices Act*.

121. The Class Members are entitled to restitution of the purchase price they paid or, in the alternative, damages in the amount of the purchase price they paid, pursuant to s. 93(1) of the Saskatchewan *Consumer Protection and Business Practices Act*.

Manitoba

122. The Defendant Retailers' supply of the Fake Glucosamine Sulfate Supplements to Class Members were "consumer transactions" within the meaning of s. 1 of the Manitoba *Business Practices Act*.

123. The Defendant Retailers' representations on the label of the Fake Glucosamine Sulfate Supplements that the supplements contained glucosamine sulfate when it did not, were false or misleading and are "unfair business practices" within the meaning of s. 2(1) and 2(3)(a) of the Manitoba *Business Practices Act*.

124. The Class Members are entitled to repayment of the full purchase price or, in the alternative, damages for loss in the amount of the purchase price paid for the Fake Glucosamine Sulfate Supplements, pursuant to s. 23(2) of the Manitoba *Business Practices Act*.

Ontario

125. The Defendant Retailers' supply of the Fake Glucosamine Sulfate Supplements to Class Members for personal, family or household purposes were "consumer transactions" within the meaning of s. 1 of the Ontario *Consumer Protection Act, 2002*.

126. The Defendant Retailers' representations on the label of the Fake Glucosamine Sulfate Supplements that the product contained glucosamine sulfate when it did not, were false or misleading and are "unfair practices" within the meaning of s. 14 of the Ontario *Consumer Protection Act, 2002*.

127. The Class Members are entitled to repayment of the full purchase price or, in the alternative, damages for the loss suffered in the amount of the purchase price paid, pursuant to s. 18 of the Ontario *Consumer Protection Act, 2002*.

Quebec

128. Class Members who purchased the Fake Glucosamine Sulfate Supplements for any purposes other than their business are “consumers” within the meaning of s. 1(a) of the Quebec *Consumer Protection Act*.

129. The Defendant Retailers’ failure to provide glucosamine sulfate in the Fake Glucosamine Sulfate Supplements is a breach of the statutory warranties prescribed by s. 40 of the Quebec *Consumer Protection Act* that goods must conform to the description made of them in the contract, and s. 41 of the Quebec *Consumer Protection Act* that the goods provided must conform to advertisements regarding them made by the merchant or manufacturer.

130. The Defendant Retailers’ representations on the label of the Fake Glucosamine Sulfate Supplements that the product contained glucosamine sulfate when it did not were false or misleading and are “prohibited practices” within the meaning of ss. 215, 219 and 221(a) of the Quebec *Consumer Protection Act*.

131. As a result of the Defendant Retailers’ breaches of the Quebec *Consumer Protection Act*, the Class Members are entitled to the repayment of the purchase price they paid for the Fake Glucosamine Sulfate Supplements, either as a contractual remedy, or, in the alternative, compensatory damages, pursuant to s. 272 of the Quebec *Consumer Protection Act*.

New Brunswick

132. Class Members who purchased the Fake Glucosamine Sulfate Supplements from the Defendant Retailers’ for non-business purposes entered into “contracts for the sale or supply of a consumer product” within the meaning of s. 1 of the New Brunswick *Consumer Product Warranty and Liability Act*, SNB 1978, c. C-18.1.

133. By offering the Fake Glucosamine Sulfate Supplements for sale with a label indicating that the supplements contained glucosamine sulfate, the Defendant Retailers made a written statement

that the product in fact consisted of glucosamine sulfate, which is an express warranty within the meaning of s. 4(1)(b) of the New Brunswick *Consumer Product Warranty and Liability Act*. The Defendant Retailers committed a major breach of that express warranty by supplying a product that did not contain glucosamine sulfate.

134. The Class Members are entitled to reject the Fake Glucosamine Sulfate Supplements, pursuant to s. 16(2), and recover the full purchase price they paid, pursuant to s. 17(1) of the New Brunswick *Consumer Product Warranty and Liability Act*. In the alternative, the Class Members are entitled to recover damages for their loss, in the amount of the purchase price paid, pursuant to s. 15 of the New Brunswick *Consumer Product Warranty and Liability Act*.

Prince Edward Island

135. The Defendant Retailers' offering of the Fake Glucosamine Sulfate Supplements for sale with a label indicating that the product contained glucosamine sulfate was a representation made for the purpose of receiving consideration for the Fake Glucosamine Sulfate Supplements and is a "consumer representation" within the meaning of s. 1 of the Prince Edward Island *Business Practices Act*.

136. The Defendant Retailers' "consumer representation" was false or misleading and constitutes an "unfair practice" pursuant to s. 2(a) of the Prince Edward Island *Business Practices Act*.

137. The Defendant Retailers' false or misleading consumer representation induced Class Members to purchase the Fake Glucosamine Sulfate Supplements. Class Members who purchased the Fake Glucosamine Sulfate Supplements for any purpose other than carrying on a business are entitled to rescission of their sales agreements, and subsequent return of the purchase price or, in the alternative, damages for their loss in the amount of the return of the purchase price, pursuant to s. 4(1) of the Prince Edward Island *Business Practices Act*.

Newfoundland and Labrador

138. The Defendant Retailers' supply of the Fake Glucosamine Sulfate Supplements to the Class Members who purchased the Fake Glucosamine Sulfate Supplements for personal, family or

household purposes was a “consumer transaction” within the meaning of s. 2 of the Newfoundland and Labrador *Consumer Protection and Business Practices Act*.

139. The Defendant Retailers’ representation on the label of the Fake Glucosamine Sulfate Supplements that the product contained glucosamine sulfate when it did not had the effect, or might reasonably have had the effect, of deceiving or misleading consumers and is an “unfair business practice” within the meaning of s. 7(1) of the Newfoundland and Labrador *Consumer Protection and Business Practices Act*.

140. The Class Members are entitled to a refund of the purchase price or, in the alternative, damages in the amount of the return of the purchase price, pursuant to s. 10 of the Newfoundland and Labrador *Consumer Protection and Business Practices Act*.

Aggravated and Punitive Damages

141. The Plaintiff asserts that the Defendants' conduct was high-handed, outrageous, reckless, wanton, entirely without care, deliberate, callous, disgraceful, willful and in contumelious disregard of the Plaintiff’s rights and the rights of the Class Members, and as such renders the Defendants liable to pay aggravated and punitive damages.

Jurisdiction

142. There is a real and substantial connection between British Columbia and the facts alleged in this proceeding. The Plaintiff and the other Class Members plead and rely upon the *Court Jurisdiction and Proceedings Transfer Act*, RSBC 2003, c 28 (“*CJPTA*”) in respect of the defendants. Without limiting the foregoing, a real and substantial connection between British Columbia and the facts alleged in this proceeding exists pursuant to sections 10 (f) – (h) of the *CJPTA* because this proceeding:

- (a) concerns restitutionary obligations that, to a substantial extent, arose in British Columbia;
- (b) concerns a tort committed in British Columbia; and
- (c) concerns a business carried on in British Columbia.

Plaintiff's address for service:

Bennett Munteer LLP
400 - 856 Homer Street
Vancouver, BC V6B 2W5
mm@hbmlaw.com

Place of trial: Vancouver, BC

The address of the registry is:

800 Smithe Street
Vancouver, BC
V6Z 2E1

Date: 23/AUG/2019



Signature of lawyer for Plaintiff

David G.A. Jones
Jonathan Fung

Paul R. Bennett
Mark W. Munteer

Co-Counsel for the
Plaintiff

Co-Counsel for the
Plaintiff

Camp Fiorante
Matthews Mogerman
LLP

Bennett Munteer
LLP

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

The Plaintiff, Ultra Kumari Krishnan, claims the right to serve this pleading on the Defendants outside British Columbia on the ground that there is a real and substantial connection between British Columbia and the facts alleged in this proceeding and the Plaintiff and other Class Members plead and rely upon the *CJPTA* in respect of these Defendants. Without limiting the foregoing, a real and substantial connection between British Columbia and the facts alleged in this proceeding exists pursuant to ss.10 (f) – (h) *CJPTA* because this proceeding:

- (f) concerns restitutionary obligations that, to a substantial extent, arose in British Columbia;
- (g) concerns a tort committed in British Columbia; and
- (h) concerns a business carried on in British Columbia.

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.

APPENDIX

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

This is a claim for damages arising out of the Defendants' sale of dietary supplements falsely labelled as containing glucosamine sulfate.

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:

Competition Act, RSC 1985, c. C-34

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

Class Proceeding Act, RSBC 1996, c 50

Court Order Interest Act, RSBC 1996, c 79