

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

Between

Abbey Goertzen

PLAINTIFF

and

Edgewell Personal Care Canada, ULC,  
Edgewell Personal Care Brands LLC,  
Sun Pharmaceuticals LLC,  
Energizer Holdings, Inc.,  
Energizer Canada Inc.,  
Johnson & Johnson Inc.,  
Johnson & Johnson Consumer Inc.,  
Neutrogena LLC

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

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

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

## **Time for response to civil claim**

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

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

## **THE PLAINTIFF'S CLAIM**

### **Part 1: STATEMENT OF FACTS**

#### *Overview*

1. The Defendants design, manufacture, market, distribute and sell sunscreen products in Canada under various trade names including “Banana Boat”, “Neutrogena”, “Aveeno”, and others (collectively, the “**Sunscreen Products**”). From June 2017 onward, the Sunscreen Products manufactured by the Defendants contained the chemical benzene, a known carcinogen hazardous to human health. The Defendants exposed the Plaintiff and Class Members to injury and other losses by their negligence and failure to warn about the dangers of applying the Sunscreen Products containing benzene to their skin. Through this suit, Canadians who used or bought the Sunscreen Products seek to hold the Defendants accountable.

#### *The Parties*

2. The Plaintiff Abbey Goertzen is a resident of British Columbia. She purchased a tube of Neutrogena Sheer Zinc Dry Touch Face Sunscreen SPF 50 in Victoria, B.C. on or about June 7, 2021. She used the product approximately 15 times before ceasing use due to an acne breakout. She would not have purchased the sunscreen if she had known about the benzene in the product.

3. The Plaintiff brings this action on her own behalf and on behalf of all persons in Canada who bought or used the Sunscreen Products (including but not limited to the products as set out

in Schedule 1) for personal, family or household purposes between June 17, 2017 and the date this action is certified as a class proceeding (the “**Class**”, “**Class Members**” and the “**Class Period**”).

4. The Defendant Edgewell Personal Care Canada ULC is a company incorporated pursuant to the laws of British Columbia with an address for service at 1000 – 595 Burrard Street, Vancouver, British Columbia, V7X 1S8.

5. The Defendant Edgewell Personal Care Brands LLC is a company incorporated pursuant to the laws of Delaware with an address for service at 4<sup>th</sup> Floor, 6 Landmark Square, Stamford, Connecticut, 06901.

6. The Defendant Sun Pharmaceuticals LLC is a company incorporated pursuant to the laws of Delaware with an address for service at 3411 Silverside Road Tatnall Building Ste 104, Wilmington, New Castle, Delaware, 19810.

7. Collectively, Edgewell Personal Care Canada ULC, Edgewell Personal Care Brands LLC, and Sun Pharmaceuticals LLC are “**Edgewell**”. These Defendants operate as a joint enterprise. Each of these Defendants is an agent of the other for the purposes of designing, manufacturing, marketing, distributing and selling the Sunscreen Products.

8. The Defendant Energizer Holdings, Inc. is a company incorporated pursuant to the laws of Missouri with an address for service at 120 South Central Ave, Clayton, Missouri, 63105.

9. The Defendant Energizer Canada Inc. is a company incorporated pursuant to the laws of Canada with an address for service at 6733 Mississauga Road, Suite 800, Mississauga, Ontario, L5N 6J5.

10. Collectively, Energizer Holdings, Inc. and Energizer Canada Inc. are “**Energizer**”. These Defendants operate as a joint enterprise. Each of these Defendants is an agent of the other for the purposes of designing, manufacturing, marketing, distributing and selling the Sunscreen Products.

11. Edgewell and Energizer carry on business in British Columbia and Canada through the design, manufacturing, marketing, distribution and sale of their products to residents of B.C. and Canada, including the Banana Boat Sunscreen Products.

12. The Defendant Johnson & Johnson Inc. is an extraprovincial company registered in British Columbia with an address for service at 2600 – 595 Burrard Street, Vancouver, British Columbia, V7X 1L3.

13. The Defendant Johnson & Johnson Consumer Inc. is a company incorporated pursuant to the laws of New Jersey with an address for service at 1 Johnson & Johnson Plaza, New Brunswick, NJ, 08933 0000.

14. The Defendant Neutrogena LLC is a company incorporated pursuant to the laws of Delaware with an address for service at Corporation Trust Center 1209 Orange St, Wilmington, New Castle, DE, 19801.

15. Collectively, Johnson & Johnson Inc., Johnson & Johnson Consumer Inc., and Neutrogena LLC are “**Johnson & Johnson**”. These Defendants operate as a joint enterprise. Each of these Defendants is an agent of the other for the purposes of designing, manufacturing, marketing, distributing and selling the Sunscreen Products.

16. Johnson & Johnson carries on business in British Columbia and Canada through the design, manufacturing, marketing, distribution and sale of its products to residents of B.C. and Canada, including the Neutrogena Sunscreen Products.

### ***Defendants and Their Sunscreen Products***

17. In Canada, sunscreens are classified as non-prescription drugs or natural health products, depending on their active ingredients. They are regulated under the *Food and Drugs Act*, RSC 1985, c F-27 and its *Regulations*.

18. The Defendants designed, manufactured, distributed, marketed and sold the Sunscreen Products in Canada, without disclosing that these products contained benzene, as articulated below.

19. The Defendants represented to consumers that the Sunscreen Products were safe to use.

### ***Benzene***

20. Benzene is a hazardous chemical, a toxic substance, and a human carcinogen. It is included in the List of Toxic Substances in Schedule 1 of the *Canadian Environmental Protection Act*, 1999, SC 1999, c 33. Benzene can be produced both commercially and naturally. It is used extensively in industry as a volatile solvent and intermediate in the production of other chemicals.

21. The danger to humans caused by benzene is widely documented. There is a causal relationship between benzene and the occurrence of various types of leukemia. Direct exposure of benzene on skin can lead to immediate tissue injury and irritation. The long-term health effects of exposure to benzene are severe and include damage to bone marrow and a decrease in red blood cells, which can cause anemia. Acute effects after exposure to benzene include headache, dizziness, drowsiness, confusion, tremors, loss of consciousness, and skin irritation. The effects of chronic exposure include a reduction in both red and white blood cells, as well as an increased risk of cancer.

22. There is no safe exposure level to benzene for humans. Benzene should not be present in any product that is applied to skin.

### ***Benzene in the Sunscreen Products***

23. On May 25, 2021, Valisure LLC, a pharmaceutical industry watchdog, released a report with the subject line “Valisure Citizen Petition on Benzene in Sunscreen and After-sun Care Products” (the “**Valisure Report**”). This report contained the results of tests run by Valisure LLC and ValisureRX LLC on the Defendants’ Sunscreen Products. These tests demonstrated that high levels of benzene were present in specific batches of the Sunscreen Products.

24. Contrary to Health Canada and the FDA’s direction, the benzene levels detected in the Defendants’ Sunscreen Products was as high as 6.77 ppm for Neutrogena products and 0.43 ppm for Banana Boat products, as set out at Schedule 1 to this Notice of Civil Claim.

*Defendants' Misconduct*

25. The Defendants designed, manufactured, marketed, sold and distributed Sunscreen Products containing unsafe levels of benzene from about June 17, 2017.

26. At all material times, the Defendants knew or ought to have known about the risks posed by the presence of benzene in the Sunscreen Products.

27. At all material times, the Defendants failed to implement and observe methods for detecting the presence of benzene prior to releasing the Sunscreen Products into the stream of commerce.

28. The Defendants' Sunscreen Products containing benzene are not safe to use. The Sunscreen Products are dangerous, defective, and not fit for purpose.

29. At all material times, the Defendants failed to ensure that the Sunscreen Products were fit for their intended purpose, both before releasing the Sunscreen Products into the stream of commerce and on an ongoing basis thereafter.

30. At all material times, the Defendants failed to properly investigate claims of adverse effects from customers.

31. The Defendants failed to initiate a recall of the Sunscreen Products, in a timely way or at all.

32. The Defendants have not issued any warnings with respect to the Sunscreen Products containing benzene.

33. The Defendants have not warned users, Health Canada or health care professionals of the risks of using Sunscreen Products containing benzene.

34. At all material times, the Defendants represented to consumers that the Sunscreen Products were safe to use.

35. Class Members, including the Plaintiff, suffered harms and losses as a result of the Defendants' negligence and failure to warn consumers that the Sunscreen Products contained benzene.

36. The Plaintiff and Class Members would not have purchased or used the Sunscreen Products had they been aware of the presence of benzene.

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

37. The *Business Practices and Consumer Protection Act*, SBC 2004, C 2 ("*BPCPA*"), ss 4(3)(a)(i) and (a)(ii) prohibit a supplier of goods from making deceptive representations about the performance characteristics, components, standard, quality, and grade of goods. Despite the presence of dangerous levels of benzene in the Sunscreen Products, the Defendants represented the Sunscreen Products as being safe to use for sun protection, when they were neither safe nor suitable for this use. By failing to inform consumers that the Sunscreen Products were not safe for personal use, the Defendants made a deceptive representation as to the standard and quality of the Sunscreen Products.

38. Section 4(3)(b)(vi) of the *BPCPA* states that a representation that uses ambiguity or that fails to state a material fact is deceptive. The presence of benzene, a carcinogen, in the Sunscreen Products is a material fact that the Defendants had a duty to disclose to the Plaintiff and Class Members. By not doing so, the Defendants deceived the Plaintiff and the Class Members in contravention of the *BPCPA*.

39. Section 8(3) of the *BPCPA* prohibits unconscionable acts and practices. Section 8(3)(b) states that it is an unconscionable act or practice to take advantage of a consumer's inability to protect their own interest due to ignorance. The Plaintiff and Class Members had no way to know that the Sunscreen Products contained benzene or that they were unsafe or unsuitable for personal use.

40. In its role as designer, manufacturer, marketer, distributor and seller of the Sunscreen Products, the Defendants knew or ought to have known that the presence of benzene in the Sunscreen Products without notice to customers or proper disclosure was unconscionable. The Defendants had total control over the design, manufacture and marketing of the Sunscreen

Products. The relationship between the Defendants and the Plaintiff and Class Members who purchased or used the Sunscreen Products was characterized by a fundamental inequality of bargaining power, resulting in a substantially unfair bargain to the Plaintiff and Class Members to the Defendants' benefit as a direct consequence of the Defendants' misconduct.

### **Breaches of the *Competition Act***

41. Under the *Competition Act*, R.S.C., 1985, c. C-34 ("*Competition Act*"), s 52(1), a manufacturer must not make a false or misleading representation. By marketing the Sunscreen Products as safe to use, the Defendants misled consumers into believing the Sunscreen Products were safe for personal use, when they were neither safe nor suitable for this purpose. Having previously established in the marketplace that the Sunscreen Products were safe to use, the Defendants' failure to inform consumers about the presence of benzene misled consumers as to a material aspect of the Sunscreen Products.

### **Breaches of the *Sale of Goods Act***

42. Sections 18(b) and (c) of the *Sale of Goods Act*, RSBC 1996, c 410 ("*Sale of Goods Act*") require sellers to ensure that the goods being purchased by buyers are of merchantable quality and are fit for the ordinary purpose for which they are used. The Sunscreen Products contain benzene, a known human carcinogen, and have therefore caused both short and long-term harm to the Plaintiff and Class Members. The existence of a dangerous chemical in a product meant to protect one's skin makes the Sunscreen Products not of merchantable quality and not fit for their ordinary use.

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

43. From their use of the contaminated Sunscreen Products, Class Members have suffered loss and damage because of the Defendants' misconduct, including but not limited to:

- a. Skin irritation;
- b. Dizziness;
- c. Tremors;



- d. Nausea;
- e. Vomiting;
- f. Headaches;
- g. Drowsiness;
- h. Bone marrow damage;
- i. Leukemia;
- j. Anaemia;
- k. Psychological injury; and
- l. Other injuries that may develop or become known in the future, including cancer.

44. Class Members' injuries have caused and will continue to cause suffering, loss of enjoyment of life, permanent physical disability, loss of earning capacity, past and future, cost of care, past and future, and loss of housekeeping capacity, past and future.

45. Class Members have sustained damages for the cost of medical treatment, including past and future cost of health care services provided by the government of British Columbia and the governments of other provinces and territories. Class Members continue to undergo medical care and treatment and continue to sustain damages. Class Members in other provinces or territories have sustained and will sustain similar damages.

46. As a result of their injuries, Class Members have received and in the future will continue to receive care and services from family members.

## **Part 2: RELIEF SOUGHT**

47. The Plaintiff claims, on her own behalf and on behalf of the Class Members:

- a. an order certifying this action as a class proceeding under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50 (the “*Class Proceedings Act*”);
- b. general damages;
- c. special damages;
- d. past and future damages “in trust” for services provided by family members;
- e. damages under the *Competition Act*, s 36 in the full amount of all Sunscreen Products sold in Canada during the Class Period;
- f. damages under the *BPCPA*, s 171 on behalf of the Plaintiff and Class Members and related enactments from other provinces;
- g. general damages, including for breaches of the *Sale of Goods Act* and related enactments from other provinces;
- h. recovery of health care costs pursuant to the *Health Care Costs Recovery Act*, S.B.C. 2008, c. 27 and similar legislation in other provinces;
- i. pre-judgment and post-judgment interest under the *Court Order Interest Act*, RSBC 1996, c 79; and
- j. such further and other relief as this Honourable Court may deem just.

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

48. The Plaintiff and Class Members plead and rely on the *Negligence Act*, RSBC 1996, c 318, *BPCPA*, *Competition Act*, *Sale of Goods Act*, *Class Proceedings Act*, 1985, c. C-34, the *Limitation Act*, SBC 2012, c 13, the *Court Order Interest Act*, RSBC 1996, c 79, the *Supreme Court Civil Rules*, and related enactments.

### *Negligent Design and Manufacture*

49. At all material times the Defendants owed the Plaintiff and other Class Members a duty of care in designing, developing, testing, and monitoring the Sunscreen Products.

50. At all material times the Defendants owed the Plaintiff and other Class Members a duty of care in manufacturing, monitoring, and selling the Sunscreen Products.

51. Each of the Defendants breached its duty of care to the Plaintiff and other Class Members, particulars of which include, *inter alia*:

- a. failing to conduct adequate tests and clinical trials prior to releasing the Sunscreen Products into the stream of commerce to determine the nature and degree of risks associated with applying the Sunscreen Products to skin;
- b. after the Sunscreen Products were released into the stream of commerce, failing to conduct ongoing tests and clinical trials with long-term follow-up to determine the nature and severity of side effects from drug toxicity associated with the application of the Sunscreen Products, adequately or at all;
- c. failing to implement and observe safeguards to prevent product contamination;
- d. failing to ensure that benzene was not introduced into the Sunscreen Products during their manufacturing process, whether at the lab, manufacturing plant, or elsewhere;
- e. failing to implement and observe methods for detecting the presence of benzene prior to mass distribution of the Sunscreen Products;
- f. failing to properly investigate claims of adverse effects from customers;
- g. failing to ensure that the Sunscreen Products conformed to industry standards and the Defendants' design specifications prior to release into the stream of commerce;

- h. failing to ensure that the Sunscreen Products were fit for their intended purpose, both before releasing them into the stream of commerce and on an ongoing basis thereafter; and
- i. failing to provide Health Canada with complete and accurate clinical and nonclinical data throughout the approval process for the Sunscreen Products and on an ongoing basis subsequent to its approval.

***Failure to Warn***

52. At all material times the Defendants owed the Plaintiff and other Class Members a duty of care and a duty to warn in marketing, labelling, distributing, promoting and selling the Sunscreen Products.

53. Each of the Defendants breached its duty of care to the Plaintiff and other Class Members, particulars of which include, *inter alia*:

- a. failing to warn the Plaintiff and Class Members that the Sunscreen Products included benzene with its known adverse consequence on human health;
- b. failing to warn the Plaintiff and Class Members of the negative short and long-term health effects of exposure to benzene;
- c. failing to provide any, or adequate, updated and current information to Class Members, their health care professionals and/or Health Canada respecting the risks associated with using the Sunscreen Products in a timely manner as such information became available from time to time;
- d. failing to provide complete and accurate information on the product labeling for the Sunscreen Products, in a timely manner or at all;
- e. failing to provide any, or adequate, warning on the product label for the Sunscreen Products of the nature and severity of any foreseeable risk of the side effects of benzene, in a timely manner or at all;

- f. failing to ensure that the Sunscreen Products were fit for their intended purpose, both before releasing it into the stream of commerce and on an ongoing basis thereafter; and
- g. after learning of the presence of benzene in the Sunscreen Products and the dangers of applying this chemical to a person's skin, failing to issue adequate warnings, publicize the problem, recall the Sunscreen Products, and otherwise act properly and in a timely manner to alert Class Members, their health care professionals and/or Health Canada to such risks.

### ***Causation and Damages***

54. As a result of the Defendants' negligence in the design, development, manufacturing, testing, distributing, marketing, monitoring, storing, labelling, promotion and sale of the Sunscreen Products, Class Members have suffered and continue to suffer losses and damages, including:

- a. personal injury;
- b. loss of income earning capacity, past and future;
- c. loss of housekeeping capacity, past and future;
- d. cost of future care;
- e. out of pocket expenses; and
- f. damages "in trust" for service provided by family members, past and future.

55. At all material times, the Defendants were in a close and proximate relationship to Class Members. The damages and losses suffered by Class Members are the reasonably foreseeable consequences of the Defendants' aforementioned negligence and failure to warn.

### ***Competition Act***

56. The *Competition Act* applies to business transacted in Canada.

57. The Defendants have breached the *Competition Act*, s 52, as amended from time to time.

58. The Sunscreen Products are a "product" within the meanings of the *Competition Act*, ss 2 and 52(1).

59. As detailed above, the marketing and sale of the Sunscreen Products in Canada as being safe and suitable for personal use when the Defendants knew or were reckless or willfully blind to the fact that the Sunscreen Products were unsafe and unsuitable was a breach of the *Competition Act*, s 52(1).

60. The marketing by the Defendants that the Sunscreen Products were safe and suitable for personal use was done for the purpose of promoting, directly or indirectly, the supply or use of the Sunscreen Products and for the purpose of promoting, directly or indirectly, the Defendants' business interests. Such marketing by the Defendants was false or misleading in a material respect, as set out above. The Defendants' representations regarding the Sunscreen Products included representations accompanying products, under the *Competition Act*, s 52(2), whether from Canada or from outside Canada under the *Competition Act*, s-s 52(2.1).

61. As a result of the Defendants' breaches of the *Competition Act*, s 52 the Plaintiff and Class Members have suffered loss and damage in an amount equal to the cost of all Sunscreen Products sold during the Class Period, and are entitled to damages in that amount under s 36.

### ***Business Practices and Consumer Protection Act***

62. The Defendants have breached the *BPCPA*.

63. The Plaintiff and Class Members who purchased or used the Sunscreen Products for purposes that are primarily personal, family or household are "consumers" within the meaning of the *BPCPA*, s 1.

64. The Sunscreen Products are "products" within the meaning of the *BPCPA*, s 1.

65. The Defendants are "suppliers" within the meaning of the *BPCPA*, s 1. The *BPCPA* does not require privity of contract between suppliers and consumers.

66. The sale and supply of the Sunscreen Products is a “consumer transaction” within the meaning of the *BPCPA*, s 1. An unconscionable act or practice can occur before, during or after a consumer transaction.

67. By the conduct set out above, the Defendants have breached ss 4-5 and 8-9 of the *BPCPA*. The Defendants’ actions constitute unconscionable business practices. The Defendants knew or ought to have known that their conduct was unconscionable and deceptive.

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

69. In particular, the Defendants have breached the *BPCPA*, s-ss 4-5. In their marketing and sale of the Sunscreen Products, the Defendants have breached *inter alia* s-ss 4(3)(a)(i), (a)(ii), and (b)(vi) by

- a. marketing the Sunscreen Products as safe and suitable for personal use when they were not suitable for that usage;
- b. selling and marketing the Sunscreen Products as safe despite the fact that they contained a harmful or hazardous carcinogen;
- c. representing that the Sunscreen Products have characteristics, uses and/or benefits that they do not have, such as preventing cancer;
- d. advertising that the Sunscreen Products as safe, with the intent not to sell them as advertised;
- e. failing to implement adequate quality control mechanisms to detect any harmful chemicals in the Sunscreen Products; and
- f. failing to inform consumers of the benzene contained within the Sunscreen Products.

70. In addition, the Defendants have breached the *BPCPA*, s-ss 8(3), (b) and (c) by
- a. failing to inform consumers of the material fact that the Sunscreen Products were unsafe and unsuitable for their intended use;
  - b. misrepresenting and falsely advertising that the Sunscreen Products were safe and otherwise suitable for their intended use; and
  - c. failing to recall the Sunscreen Products that contain benzene, in a timely manner or at all.

71. The *BPCPA* s 9 prohibits suppliers from engaging in unconscionable acts or practices in respect of consumer transactions. Once it is alleged that a supplier committed or engaged in an unconscionable act or practice, the burden of proof that the unconscionable act or practice was not committed or engaged in is on the supplier.

72. As a result of the Defendants' breaches of the *BPCPA*, the Plaintiff and Class Members are entitled to damages under the *BPCPA*, s 171.

73. Class Members resident outside of British Columbia plead and rely on *inter alia*: *Consumer Protection Act*, RSA 2000, c C-26.3; *The Consumer Protection and Business Practices Act*, SS 2013, c C-30.2; *Consumer Protection Act*, CCSM c C200; *Consumer Protection Act*, 2002, SO, c 30, Sch A; *Consumer Protection Act*, CQLR c P-40.1; *Consumer Protection Act*, RSNS 1989, c 92; *Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1; *Consumer Product Warranty and Liability Act*, SNB 1978, c C-18.1; *Consumers Protection Act*, RSY 2002, c 40; *Consumer Protection Act*, RSNWT 1988, c C-17; and *Consumer Protection Act*, RSNWT 1988 (Nu), c C-17; each as amended from time to time and with regulations in force at material times, as set out at Schedule 2 to this Notice of Civil Claim.

### ***Sale of Goods Act***

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

75. The Plaintiff and Class Members are "buyers" under s 1 of the *Sale of Goods Act*.



76. The Defendants are “sellers” under s 1 of the *Sale of Goods Act*.
77. The Sunscreen Products are “goods” under s 1 of the *Sale of Goods Act*.
78. The Defendants, as designers, manufacturers, marketers, distributors and sellers of the Sunscreen Products, impliedly warranted that the Sunscreen Products were of merchantable quality and were fit for the ordinary purpose for which they are used.
79. Due to the presence of benzene in the Sunscreen Products, the Sunscreen Products are not of merchantable quality and cannot fulfill their ordinary purpose.
80. Consequently, the Defendants breached the implied warranties by designing, manufacturing, marketing, distributing and selling the Sunscreen Products that contained benzene.
81. The Plaintiff and Class Members are thus entitled to damages for breach of warranty under the *Sale of Goods Act*, s 56.
82. On behalf of Class Members resident outside of British Columbia, the Plaintiff pleads and relies on inter alia: *Sale of Goods Act*, RSO 1990, c S.1; *Sale of Goods Act*, RSS 1978, c S-1; *Sale of Goods Act*, RSA 2000, c S-2; *Sale of Goods Act*, RSNS 1989, c 408; *The Sale of Goods Act*, CCSM c S10; *Sale of Goods Act*, RSNL 1990, c S-6; *Sale of Goods Act*, RSPEI 1988, c S-1; *Sale of Goods Act*, RSY 2002, c 198; *Sale of Goods Act*, RSNWT 1988, c S-2; *Sale of Goods Act*, RSNB 2016, c 110; *Sale of Goods Act*, RSNWT (Nu) 1988, c S-2, as set out at Schedule 3 to this Notice of Civil Claim.

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

83. The province of British Columbia provides coverage for health care services to British Columbia residents through the Medical Services Plan and Health Insurance BC.
84. The Plaintiff, along with any Class Members who have received or will receive medical care as a result of using the Sunscreen Products, are individually each a “beneficiary” within the meaning of the *Medicare Protection Act*, RSBC 1996, c 286 and any amendments.

85. The Plaintiff and Class Members, as a result of having used the Sunscreen Products, have a claim for the recovery of health care costs, past and future, incurred on their behalf by the British Columbia Ministry of Health and by other provincial and territorial governments. In support of a claim for recovery of health care costs incurred by provincial and territorial governments, the Plaintiff pleads the following provincial and territorial statutes:

- a. *Health Care Cost Recovery Act*, SBC 2008, c 27;
- b. *Medicare Protection Act*, RSBC 1996, c 286;
- c. *Pharmaceutical Services Act*, SBC 2012, c 22;
- d. *Hospital Act*, RSA 2000, c H-12;
- e. *Crown's Right of Recovery Act*, SA 2009, c C-35;
- f. *The Health Administration Act*, RSS 1978, c H-0.0001 (formerly known as the *Department of Health Act*);
- g. *Health Services Insurance Act*, CSSM s H35;
- h. *Health Insurance Act*, RSO 1990, c H.6;
- i. *Home Care and Community Services Act*, 1994, SO 1994, c26;
- j. *Health Services Act*, RSNB 1973, c H-3;
- k. *Medical Services Payment Act*, RSNB 1973, c M-7;
- l. *Hospital Services Act*, RSNB 1973, c H-9;
- m. *Family Services Act*, SNB 1980, c F-2.2;
- n. *Hospital and Diagnostic Services Insurance Act*, RSPEI 1988, c H-8;
- o. *Health Services Payment Act*, RSPEI 1988, c H-2;
- p. *Health Services and Insurance Act*, RSNS 1989, c 197;

- q. *Hospital Insurance Agreement Act*, RSN 1990, c H-7;
- r. *Medical Care and Hospital Insurance Act*, SNL 2016, c M-5.01;
- s. *Hospital Insurance and Health and Social Services Administration Act*, RSNWT 1988, c T-3;
- t. *Hospital Insurance and Health and Social Services Administration Act*, RSNWT (Nu) 1988, c T-3;
- u. *Medical Care Act*, RSNWT (Nu) 1988, c M-8;
- v. *Health Insurance Act*, CQLR c A-29; and
- w. *Hospital Insurance Act*, RSQ c A-28.

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

86. The Defendants Edgewell and Energizer are jointly and severally liable for the actions and damages allocable to any of them.

87. The Defendants Johnson & Johnson are jointly and severally liable for the actions and damages allocable to any of them.

### ***Limitation Periods***

88. The Plaintiff or Class Members could not reasonably have known that loss or damage had occurred, that it was caused or contributed to by acts of the Defendants, or that a court proceeding would be an appropriate means to seek to remedy the injury until May 25, 2021. The harm is ongoing.

89. The Plaintiff and Class Members rely on the doctrines of postponement, discoverability, and fraudulent concealment per *Pioneer Corp v Godfrey* to postpone the running of the limitation period until May 25, 2021.

90. The Plaintiff and Class Members plead and rely on and the *Limitation Act*, SBC 2012, c 13, and in particular ss 8 and 21(3). In the alternative, or in addition, the Plaintiff and Class Members rely on the *Limitation Act*, SBC 2012, c 13, s 30 and the *Limitation Act*, RSBC 1996, c 266. In addition, the Plaintiff and Class Members in British Columbia plead and rely on the *Emergency Program Act*, Ministerial Order No. M098 to suspend the running of the limitation period from March 26, 2020 to March 25, 2021.

### *Service*

91. The Plaintiff and Class Members have the right to serve this Notice of Civil Claim on the Defendants pursuant to the *Court Jurisdiction and Proceedings Transfer Act*, SBC 2003, c 28, s 10 (*CJPTA*), because there is a real and substantial connection between British Columbia and the facts on which this proceeding is based.

92. The Plaintiff and Class Members rely on the following grounds, in that this action concerns:

- a. a tort committed in British Columbia (*CJPTA*, s 10(g));
- b. restitutionary obligations that, to a substantial extent, arose in British Columbia (*CJPTA*, s 10(f)); and
- c. a business carried on in British Columbia (*CJPTA*, s 10(h)).

Plaintiff's address for service:

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

Fax number for service: 604.682.5197

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

Place of trial: Vancouver, BC

The address of the registry is:

800 Smithe Street  
Vancouver, BC  
V6Z 2E1

Date: July 15, 2021

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Signature of lawyer for plaintiff

Anthony A Vecchio QC

Slater Vecchio LLP

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

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

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

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

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

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

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

The plaintiff claims the right to serve this pleading on the defendants Edgewell Personal Care Brands LLC, Sun Pharmaceuticals LLC, Energizer Holdings, Inc, Energizer Canada Inc., Johnson & Johnson Consumer Inc., and Neutrogena LLC outside British Columbia on the ground that the *Court Jurisdiction and Proceedings Transfer Act*, SBC 2003, c 28, s 10 (*CJPTA*) applies because there is a real and substantial connection between British Columbia and the facts on which this proceeding is based. The Plaintiff and Class Members rely on the following grounds, in that this action concerns:

- a tort committed in British Columbia (*CJPTA*, s 10(g));
- restitutionary obligations that, to a substantial extent, arose in British Columbia (*CJPTA*, s 10(f)); and
- business carried on in British Columbia (*CJPTA*, s 10(h)).

## Appendix

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

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

This is a proposed class proceeding regarding undisclosed side effects of Banana Boat and Neutrogena Sunscreen Products.

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

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

A personal injury arising out of:

a motor vehicle accident

medical malpractice

another cause

A dispute concerning:

contaminated sites

construction defects

real property (real estate)

personal property

the provision of goods or services or other general commercial matters

investment losses

the lending of money

an employment relationship

a will or other issues concerning the probate of an estate

a matter not listed here

**Part 3: THIS CLAIM INVOLVES:**

*[Check all boxes below that apply to this case]*

a class action

maritime law

aboriginal law

constitutional law

conflict of laws

none of the above

do not know

**Part 4:**

Limitation Act, SBC 2012, c 13, Court Order Interest Act, RSBC 1996, c 79, Negligence Act, RSBC 1996, c 318.



**SCHEDULE 1**

<b>BRAND NAME</b>	<b>TYPE</b>	<b>DESCRIPTION</b>	<b>BENZENE AVG PPM</b>
<b>Neutrogena - Spray</b>			
Neutrogena	Spray	Ultra Sheer Weightless Sunscreen Spray, SPF 100+	6.26; 6.77*
Neutrogena	Spray	Ultra Sheer Weightless Sunscreen Spray, SPF 70	5.96
Neutrogena	Spray	Ultra Sheer Weightless Sunscreen Spray, SPF 70	5.76
Neutrogena	Spray	Ultra Sheer Weightless Sunscreen Spray, SPF 70	5.30
Neutrogena	Spray	Beach Defense Oil-Free Body Sunscreen Spray - SPF 100	5.20; 5.59*
Neutrogena	Spray	Invisible Daily Defense Body Sunscreen Broad Spectrum SPF 60+	4.65; 5.27*
Neutrogena	Spray	Ultra Sheer Weightless Sunscreen Spray, SPF 100+	4.11; 6.00**
Neutrogena	Spray	Beach Defense Oil-Free Body Sunscreen Spray - SPF 100	4.01; 4.00*
Neutrogena	Spray	Beach Defense Spray Body Sunscreen SPF 50	3.52; 3.71*
Neutrogena	Spray	Beach Defense Oil-Free Body Sunscreen Spray - SPF 100	3.08; 2.64*
Neutrogena	Spray	Invisible Daily Defense Body Sunscreen Broad Spectrum SPF 60+	1.99; 1.66*
Neutrogena	Spray	Ultra Sheer Weightless Sunscreen Spray, SPF 100+	1.44; 1.06*
Neutrogena	Spray	Ultra Sheer Weightless Sunscreen Spray, SPF 70	0.87
Neutrogena	Spray	Ultra Sheer Weightless Sunscreen Spray, SPF 100+	0.77
Neutrogena	Spray	Ultra Sheer Weightless Sunscreen Spray, SPF 100+	0.73
Neutrogena	Spray	CoolDry Sport Water-Resistant Sunscreen Spray SPF 70	0.66
Neutrogena	Spray	Ultra Sheer Body Mist Sunscreen Broad Spectrum SPF 30 Spray	0.49
Neutrogena	Spray	Beach Defense Oil-Free Body Sunscreen Spray - SPF 100	0.41

Neutrogena	Spray	Ultra Sheer Weightless Sunscreen Spray, SPF 100+	0.37; 0.38*
Neutrogena	Spray	Ultra Sheer Weightless Sunscreen Spray, SPF 70	0.18
Neutrogena	Spray	Ultra Sheer Body Mist Sunscreen Broad Spectrum SPF 45	0.15
Neutrogena	Spray	CoolDry Sport Water-Resistant Sunscreen Spray SPF 50	0.13
Neutrogena	Spray	Ultra Sheer Weightless Sunscreen Spray, SPF 70	< 0.1
<b>Neutrogena - Lotion</b>			
Neutrogena	Lotion	Ultra Sheer Dry-Touch Water Resistant Sunscreen SPF 70	0.13
Neutrogena	Lotion	Sheer Zinc Dry-Touch Face Sunscreen SPF 50	< 0.1
<b>Banana Boat – Spray</b>			
Banana Boat	Spray	Kids Max Protect & Play Sunscreen C- Spray SPF 100	0.41; 0.43*
Banana Boat	Spray	UltraMist Deep Tanning Dry Oil Continuous Clear Spray SPF 4	0.36
Banana Boat	Spray	Kids Max Protect & Play Sunscreen C- Spray SPF 100	0.19
Banana Boat	Spray	Ultra Sport Clear Sunscreen Spray SPF 100	0.15
Banana Boat	Spray	Kids Max Protect & Play Sunscreen C- Spray SPF 100	0.11
Banana Boat	Spray	Simply Protect Kids Sunscreen Spray SPF 50+	< 0.1
Banana Boat	Spray	Protective Dry Oil Clear Sunscreen Spray with Coconut Oil SPF 15	< 0.1
Banana Boat	Spray	Ultra Defense Ultra Mist Clear Sunscreen Spray SPF 100	< 0.1
Banana Boat	Spray	Kids Sport Sunscreen Lotion Spray SPF 50	< 0.1
<b>Aveeno - Spray</b>			
Aveeno	Spray	Protect + Refresh aerosol sunscreen	<i>unknown</i>

**Note:** a single asterisk “\*” denotes data generated by the Chemical and Biophysical Instrumentation Center at Yale University from a sample from the same lot and specific product package. Two asterisks “\*\*” denotes data generated by Boston Analytical from a sample of the same lot and specific product package.

## SCHEDULE 2

### Ontario

1. The Defendants have breached the *Ontario CPA*. Class Members in Ontario are "consumers" within the meaning of the *Ontario CPA*, s 1. The Sunscreen Products are "goods" within the meaning of the *Ontario CPA*. The Defendants are each a "supplier" within the meaning of the *Ontario CPA*. The purchase of Sunscreen Products is a "consumer transaction", and involves a "consumer agreement" within the meaning of the *Ontario CPA*.

2. By reason of the Defendants' conduct, the Defendants have breached the *Ontario CPA*, ss 14-15 and 17. The Defendants' actions constitute unfair and unconscionable business practices. As a result of the Defendants' breaches of the *Ontario CPA* the Class Members in Ontario are entitled to an award of damages under the *Ontario CPA*, s 18.

### Alberta

3. The Defendants have breached the *Alberta CPA*. The Class Members in Alberta are "consumers" within the meaning of the *Alberta CPA*, s 1. The Sunscreen Products are "goods" within the meaning of the *Alberta CPA*. The Defendants are "suppliers" within the meaning of the *Alberta CPA*. The purchase of Sunscreen Products is a "consumer transaction" within the meaning of the *Alberta CPA*.

4. By reason of the Defendants' conduct, the Defendants have breached the *Alberta CPA*, ss 5-6. The Defendants' actions constitute unfair practices. As a result of the Defendants' breaches of the *Alberta CPA* the Class Members in Alberta are entitled to an award of damages, or alternatively, restitution under the *Alberta CPA*, s 7(3).

### Quebec

5. The Defendants have breached the *Quebec CPA*. The Class Members in Quebec are "consumers" ("consommateurs") within the meaning of the *Quebec CPA*. The Sunscreen Products are "goods" ("biens") within the meaning of the *Quebec CPA*. The Defendants are each a "manufacturer" ("fabricant") and a "merchant" ("commerçant") within the meaning of

the *Quebec CPA*. The purchase of Sunscreen Products is a "contract for goods or services entered into between a consumer and a merchant in the course of his business" ("contrat conclu entre un consommateur et un commerçant dans le cours des activités de son commerce et ayant pour objet un bien ou un service") within the meaning of the *Quebec CPA*.

6. By reason of the Defendants' conduct, the Defendants have breached the *Quebec CPA* articles 219, 220, 221, 222, 228, 229, 233, and 253. The Defendants' actions constitute unfair and unconscionable business practices. As a result of the Defendants' breaches of the *Quebec CPA* the Class Members in Quebec are entitled to an award of damages under the *Quebec CPA* article 272.

### **Saskatchewan**

7. The Defendants have breached *The CPABPA* of Saskatchewan. The Class Members in Saskatchewan are "consumers" within the meaning of *The CPABPA* of Saskatchewan, ss 2 and 10(1). The Sunscreen Products are "goods" within the meaning of s 2 *The CPABPA* of Saskatchewan and "consumer products" within the meaning of s 10(1). The Defendants are each a "supplier" within the meaning of s 2 of *The CPABPA* of Saskatchewan, a "manufacturer" within the meaning of s 10(1) of *The CPABPA* of Saskatchewan, and a "retail seller" within the meaning of s 10(1) of *The CPABPA* of Saskatchewan. The purchase of Sunscreen Products further constitutes a "sale" within the meaning of s 10(1) of *The CPABPA* of Saskatchewan.

8. By reason of the Defendants' conduct, the Defendants have breached *The CPABPA* of Saskatchewan, ss 6-10, 16, 18-22, and 24-25. The Defendants' actions constitute unfair practices and the Defendants breached implied, express, and statutory warranties. As a result of the Defendants' breaches of *The CPABPA* of Saskatchewan the Class Members in Saskatchewan are entitled to an award of damages, including those provided for under ss 28 and 35-36 of *The CPABPA* of Saskatchewan, or alternatively, restitution under *The CPABPA* of Saskatchewan, s 93.

### **Manitoba**

9. The Defendants have breached *The CPA* of Manitoba. The Class Members in Manitoba are "buyers" within the meaning of *The CPA* of Manitoba, s 1. The Sunscreen Products are "goods" within the meaning of *The CPA* of Manitoba. The Defendants are each a "seller" within

the meaning *The CPA* of Manitoba. The payment for Sunscreen Products is a "retail sale" or "sale" within the meaning of *The CPA* of Manitoba.

10. By reason of the Defendants' conduct, the Defendants have breached *The CPA* of Manitoba, ss 58(1)(e)-(f) and (h), 58(4)-(5), and 58(7)-(8). The Defendants' breached the *Act* because the Sunscreen Products are not of merchantable quality and the Defendants misrepresented the quality of the Sunscreen Products. As a result of the Defendants' breaches of *The CPA* of Manitoba, the Class Members in Manitoba are entitled to an award of damages under *The CPA* of Manitoba, 58.1 and 58.2(1), or alternatively, restitution under *The CPA* of Manitoba, s 136.1(2)-(4).

### **Nova Scotia**

11. The Defendants have breached the *Nova Scotia CPA*. The Class Members in Nova Scotia are "buyers" within the meaning of the *Nova Scotia CPA*, s 2 or "purchasers" within the meaning of s 26(2). The Sunscreen Products are "goods" within the meaning of the *Nova Scotia CPA*, s 2. The Defendants are each a "seller" within the meaning of the *Nova Scotia CPA*, s 2. The purchase of Sunscreen Products is a "consumer sale" within the meaning of s 26(1) of the *Nova Scotia CPA*.

12. By reason of the Defendants' conduct, the Defendants have breached the *Nova Scotia CPA*, ss 26(3)(d) and (f) and 26(5). The Defendants breached the *Act* because the Defendants' Sunscreen Products did not fit their descriptions and were not of merchantable quality. As a result of the Defendants' breaches of the *Nova Scotia CPA* the Class Members in Nova Scotia are entitled to an award of damages.

### **Newfoundland**

13. The Defendants have breached the *Newfoundland CPABPA*. The Class Members in Newfoundland are "consumers" within the meaning of the *Newfoundland CPABPA*, s 2. The Sunscreen Products are "goods" within the meaning of the *Newfoundland CPABPA*. The Defendants are "suppliers" within the meaning of the *Newfoundland CPABPA*.

14. By reason of the Defendants' conduct, the Defendants have breached the *Newfoundland CPABPA*, ss 7-9. The Defendants' actions constitute unfair and unconscionable business practices. As a result of the Defendants' breaches of the *Newfoundland CPABPA*, the Class

Members in Newfoundland are entitled to an award of damages under the *Newfoundland CPABPA*, s 10.

### **New Brunswick**

15. The Defendants have breached the *New Brunswick CPWLA*. Class Members in New Brunswick are "buyers" within the meaning of the *New Brunswick CPWLA*, s 1. The Sunscreen Products are "consumer products" within the meaning of the *New Brunswick CPWLA*. The Defendants are each a "distributor" and "seller" within the meaning of the *New Brunswick CPWLA*. The purchase of Sunscreen Products is a "contract for the sale or supply of a consumer product", and involves a "contract" within the meaning of the *New Brunswick CPWLA*.

16. By reason of the Defendants' conduct, the Defendants have breached the *New Brunswick CPWLA*, ss 4, 10-12, and 27. The Defendants' made warranties about their Sunscreen Products that were not true and the Sunscreen Products were dangerously defective. As a result of the Defendants' breaches of the *New Brunswick CPWLA* the Class Members in New Brunswick are entitled to an award of damages under the *New Brunswick CPWLA*, ss 13 and 15-17.

### **Yukon**

17. The Defendants have breached the *Yukon CPA*. The Class Members in Yukon are "buyers" within the meaning of the *Yukon CPA*, s 1. The Sunscreen Products are "goods" within the meaning of the *Yukon CPA*. The Defendants are each a "seller" within the meaning of the *Yukon CPA*. The purchase of Sunscreen Products is a "sale" or "retail sale", and involves a "sale of goods" within the meaning of the *Yukon CPA*.

18. By reason of the Defendants' conduct, the Defendants have breached the *Yukon CPA*, ss 58(1)(e)-(f) and (h) and 58(2)-(7). The Defendants' Sunscreen Products are not of merchantable quality and do not correspond to the description under which they are sold. As a result of the Defendants' breaches of the *Yukon CPA* the Class Members in Yukon are entitled to an award of damages under the *Yukon CPA*.

### **Nunavut**

19. The Defendants have breached the *Nunavut CPA*. The Class Members in Nunavut are "buyers" within the meaning of the *Nunavut CPA*, s 1. The Sunscreen Products are "goods"

within the meaning of the *Nunavut CPA*. The Defendants are each a “seller” within the meaning of the *Nunavut CPA*. The purchase of a Sunscreen Product is a “sale”, "retail sale", or “sale of goods” within the meaning of the *Nunavut CPA*.

20. By reason of the Defendants' conduct, the Defendants have breached the *Nunavut CPA*, s 70(e)-(f) and (h). The Defendants' Sunscreen Products are not of merchantable quality and do not correspond to the description under which they are sold. As a result of the Defendants' breaches of the *Nunavut CPA* the Class Members in Nunavut are entitled to an award of damages under the *Nunavut CPA*.

### **Northwest Territories**

21. The Defendants have breached the *Northwest Territories CPA*. The Class Members in Northwest Territories are "buyers" within the meaning of the *Northwest Territories CPA*, s 1. The Sunscreen Products are "goods" within the meaning of the *Northwest Territories CPA*. The Defendants are each a “seller” within the meaning of the *Northwest Territories CPA*. The purchase of Sunscreen Products is a “sale”, "retail sale", or “sale of goods” within the meaning of the *Northwest Territories CPA*.

22. By reason of the Defendants' conduct, the Defendants have breached the *Northwest Territories CPA*, s 70(e)-(f) and (h). The Defendants' Sunscreen Products are not of merchantable quality and do not correspond to the description under which they are sold. As a result of the Defendants' breaches of the *Northwest Territories CPA* the Class Members in Northwest Territories are entitled to an award of damages under the *Northwest Territories CPA*.

### SCHEDULE 3

#### **Ontario**

1. The Defendants have breached the *Ontario SGA*. Class Members in Ontario are "buyers" within the meaning of the *Ontario SGA*, s 1(1). The Sunscreen Products are "goods" within the meaning of the *Ontario SGA*. The Defendants are each a "seller" within the meaning of the *Ontario SGA*. The purchase of Sunscreen Products is a "sale", and involves a "contract of sale" within the meaning of the *Ontario SGA*.

2. By reason of the Defendants' conduct, the Defendants have breached the *Ontario SGA*, ss 14 and 15. The Defendants' Sunscreen Products did not match the descriptions under which they were sold and the Defendants breached their implied conditions and warranties as to the quality and fitness of the Sunscreen Products. As a result of the Defendants' breaches of the *Ontario SGA* the Class Members in Ontario are entitled to an award of damages under the *Ontario SGA*, ss 51 and 52.

#### **Alberta**

3. The Defendants have breached the *Alberta SGA*. Class Members in Alberta are "buyers" within the meaning of the *Alberta SGA*, s 1. The Sunscreen Products are "goods" within the meaning of the *Alberta SGA*. The Defendants are each a "seller" within the meaning of the *Alberta SGA*. The purchase of Sunscreen Products is a "sale", and involves a "contract of sale" within the meaning of the *Alberta SGA*.

4. By reason of the Defendants' conduct, the Defendants have breached the *Alberta SGA*, ss 15 and 16. The Defendants' Sunscreen Products did not match the descriptions under which they were sold and the Defendants breached their implied conditions and warranties as to the quality and fitness of the Sunscreen Products. As a result of the Defendants' breaches of the *Alberta SGA* the Class Members in Alberta are entitled to an award of damages under the *Alberta SGA*, ss 52 and 53.

#### **Saskatchewan**

5. The Defendants have breached the *Saskatchewan SGA*. Class Members in Saskatchewan are "buyers" within the meaning of the *Saskatchewan SGA*, s 2. The Sunscreen Products are



"goods" within the meaning of the *Saskatchewan SGA*. The Defendants are each a "seller" within the meaning of the *Saskatchewan SGA*. The purchase of Sunscreen Products is a "sale", and involves a "contract of sale" within the meaning of the *Saskatchewan SGA*.

6. By reason of the Defendants' conduct, the Defendants have breached the *Saskatchewan SGA*, ss 15 and 16. The Defendants' Sunscreen Products did not match the descriptions under which they were sold and the Defendants breached their implied conditions and warranties as to the quality and fitness of the Sunscreen Products. As a result of the Defendants' breaches of the *Saskatchewan SGA* the Class Members in Saskatchewan are entitled to an award of damages under the *Saskatchewan SGA*, ss 52 and 53.

### **Manitoba**

7. The Defendants have breached *The Sale of Goods Act* of Manitoba. Class Members in Manitoba are "buyers" within the meaning of *The Sale of Goods Act* of Manitoba, s 1. The Sunscreen Products are "goods" within the meaning of *The Sale of Goods Act* of Manitoba. The Defendants are each a "seller" within the meaning of *The Sale of Goods Act* of Manitoba. The purchase of Sunscreen Products is a "sale", and involves a "contract of sale" within the meaning of *The Sale of Goods Act* of Manitoba.

8. By reason of the Defendants' conduct, the Defendants have breached *The Sale of Goods Act* of Manitoba, ss 15 and 16. The Defendants' Sunscreen Products did not match the descriptions under which they were sold and the Defendants breached their implied conditions and warranties as to the quality and fitness of the Sunscreen Products. As a result of the Defendants' breaches of *The Sale of Goods Act* of Manitoba the Class Members in Manitoba are entitled to an award of damages under *The Sale of Goods Act* of Manitoba, ss 54 and 55.

### **Nova Scotia**

9. The Defendants have breached the *Nova Scotia SGA*. Class Members in Nova Scotia are "buyers" within the meaning of the *Nova Scotia SGA*, s 2. The Sunscreen Products are "goods" within the meaning of the *Nova Scotia SGA*. The Defendants are each a "seller" within the meaning of the *Nova Scotia SGA*. The purchase of Sunscreen Products is a "sale", and involves a "contract of sale" within the meaning of the *Nova Scotia SGA*.

10. By reason of the Defendants' conduct, the Defendants have breached the *Nova Scotia SGA*, ss 16 and 17. The Defendants' Sunscreen Products did not match the descriptions under which they were sold and the Defendants breached their implied conditions and warranties as to the quality and fitness of the Sunscreen Products. As a result of the Defendants' breaches of the *Nova Scotia SGA* the Class Members in Nova Scotia are entitled to an award of damages under the *Nova Scotia SGA*, ss 54 and 55.

### **Newfoundland**

11. The Defendants have breached the *Newfoundland SGA*. Class Members in Newfoundland are "buyers" within the meaning of the *Newfoundland SGA*, s 2(1). The Sunscreen Products are "goods" within the meaning of the *Newfoundland SGA*. The Defendants are each a "seller" within the meaning of the *Newfoundland SGA*. The purchase of Sunscreen Products is a "sale", and involves a "contract of sale" within the meaning of the *Newfoundland SGA*.

12. By reason of the Defendants' conduct, the Defendants have breached the *Newfoundland SGA*, ss 15 and 16. The Defendants' Sunscreen Products did not match the descriptions under which they were sold and the Defendants breached their implied conditions and warranties as to the quality and fitness of the Sunscreen Products. As a result of the Defendants' breaches of the *Newfoundland SGA* the Class Members in Newfoundland are entitled to an award of damages under the *Newfoundland SGA*, ss 54 and 55.

### **New Brunswick**

13. The Defendants have breached the *New Brunswick SGA*. Class Members in New Brunswick are "buyers" within the meaning of the *New Brunswick SGA*, s 1. The Sunscreen Products are "goods" within the meaning of the *New Brunswick SGA*. The Defendants are each a "seller" within the meaning of the *New Brunswick SGA*. The purchase of Sunscreen Products is a "sale", and involves a "contract of sale" within the meaning of the *New Brunswick SGA*.

14. By reason of the Defendants' conduct, the Defendants have breached the *New Brunswick SGA*, ss 19 and 20. The Defendants' Sunscreen Products did not match the descriptions under which they were sold and the Defendants breached their implied conditions and warranties as to the quality and fitness of the Sunscreen Products. As a result of the Defendants' breaches of the

*New Brunswick SGA* the Class Members in New Brunswick are entitled to an award of damages under the *New Brunswick SGA*, ss 67-70.

### **Prince Edward Island**

15. The Defendants have breached the *Prince Edward Island SGA*. Class Members in Prince Edward Island are "buyers" within the meaning of the *Prince Edward Island SGA*, s 1. The Sunscreen Products are "goods" within the meaning of the *Prince Edward Island SGA*. The Defendants are each a "seller" within the meaning of the *Prince Edward Island SGA*. The purchase of Sunscreen Products is a "sale", and involves a "contract of sale" within the meaning of the *Prince Edward Island SGA*.

16. By reason of the Defendants' conduct, the Defendants have breached the *Prince Edward Island SGA*, ss 15 and 16. The Defendants' Sunscreen Products did not match the descriptions under which they were sold and the Defendants breached their implied conditions and warranties as to the quality and fitness of the Sunscreen Products. As a result of the Defendants' breaches of the *Prince Edward Island SGA* the Class Members in Prince Edward Island are entitled to an award of damages under the *Prince Edward Island SGA*, ss 53 and 54.

### **Yukon**

17. The Defendants have breached the *Yukon SGA*. Class Members in Yukon are "buyers" within the meaning of the *Yukon SGA*, s 1(1). The Sunscreen Products are "goods" within the meaning of the *Yukon SGA*. The Defendants are each a "seller" within the meaning of the *Yukon SGA*. The purchase of Sunscreen Products is a "sale", and involves a "contract of sale" within the meaning of the *Yukon SGA*.

18. By reason of the Defendants' conduct, the Defendants have breached the *Yukon SGA*, ss 14 and 15. The Defendants' Sunscreen Products did not match the descriptions under which they were sold and the Defendants breached their implied conditions and warranties as to the quality and fitness of the Sunscreen Products. As a result of the Defendants' breaches of the *Yukon SGA* the Class Members in Yukon are entitled to an award of damages under the *Yukon SGA*, ss 50 and 51.

## **Nunavut**

19. The Defendants have breached the *Nunavut SGA*. Class Members in Nunavut are "buyers" within the meaning of the *Nunavut SGA*, s 1(1). The Sunscreen Products are "goods" within the meaning of the *Nunavut SGA*. The Defendants are each a "seller" within the meaning of the *Nunavut SGA*. The purchase of Sunscreen Products is a "sale", and involves a "contract of sale" within the meaning of the *Nunavut SGA*.

20. By reason of the Defendants' conduct, the Defendants have breached the *Nunavut SGA*, ss 17 and 18. The Defendants' Sunscreen Products did not match the descriptions under which they were sold and the Defendants breached their implied conditions and warranties as to the quality and fitness of the Sunscreen Products. As a result of the Defendants' breaches of the *Nunavut SGA* the Class Members in Nunavut are entitled to an award of damages under the *Nunavut SGA*, ss 55, 60, and 62-63.

## **Northwest Territories**

21. The Defendants have breached the *Northwest Territories SGA*. Class Members in Northwest Territories are "buyers" within the meaning of the *Northwest Territories SGA*, s 1(1). The Sunscreen Products are "goods" within the meaning of the *Northwest Territories SGA*. The Defendants are each a "seller" within the meaning of the *Northwest Territories SGA*. The purchase of Sunscreen Products is a "sale", and involves a "contract of sale" within the meaning of the *Northwest Territories SGA*.

22. By reason of the Defendants' conduct, the Defendants have breached the *Northwest Territories SGA*, ss 17 and 18. The Defendants' Sunscreen Products did not match the descriptions under which they were sold and the Defendants breached their implied conditions and warranties as to the quality and fitness of the Sunscreen Products. As a result of the Defendants' breaches of the *Northwest Territories SGA* the Class Members in Northwest Territories are entitled to an award of damages under the *Northwest Territories SGA*, ss 55, 60, and 62-63.