

AUG 29 2022



Amended Pursuant to Rule 6-1(1)(a) on August 29, 2022
Original filed on October 20, 2022

No. S2010566
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between

LINDA BOWMAN

PLAINTIFF

and

KIMBERLY-CLARK CORPORATION, KIMBERLY-CLARK INC,
AND KIMBERLY-CLARK CANADA INC.

DEFENDANTS

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

AMENDED NOTICE OF CIVIL CLAIM

(Contaminated Wipes)

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, develop, manufacture, market, label and sell products called Cottonelle Flushable Wipes and Cottonelle Gentle Plus Flushable Wipes (collectively, the “**Wipes**”) in Canada and internationally. Starting in February 2020, certain batches of Wipes were contaminated with a bacterium dangerous to human health, called *pluralibacter gergoviae*, and then sold to consumers on the open market. The affected Wipes were not fit for purpose and are worthless. Through their actions, the Defendants exposed the Plaintiff and Class Members to serious injury including skin infections, related bodily injury, psychological injury and other losses by permitting the contamination of the Wipes with a harmful bacterium. Through this suit, Canadians who used or bought the Wipes seek to hold the Defendants accountable and recover their losses.

The Parties

2. The Plaintiff is a resident of Surrey, British Columbia. She purchased the Wipes from Costco. She used the Wipes on her own body since at least February 2020. As a result of using contaminated Wipes, she developed a skin infection of her gluteal muscles and inflammation of

her cervix shortly after use. She has and will continue to suffer serious personal injury as a result of the contaminated Wipes.

3. The Plaintiff brings this action on her own behalf and on behalf all persons in Canada who used or bought Cottonelle Flushable Wipes® or Cottonelle Gentle Plus Flushable Wipes® manufactured between February 7, 2020 and September 14, 2020 (the “**Class**”, “**Class Members**” and “**Class Period**”) including a subclass of persons who purchased or used the affected Wipes primarily for personal, family or household purposes, and including a subclass of persons who used or bought the Wipes from the Recalled Lots.

*“**Recalled Lots**” means Wipes with a lot number identified by the Defendants as subject to the Recall. The particulars of the Recalled Lots are well-known to the Defendants but not publicized by them at the time of filing.

4. The Defendant Kimberly-Clark Corporation is a company incorporated pursuant to the laws of Delaware with an address for service at 1209 Orange Street, Wilmington, DE 19801 USA.

5. The Defendants Kimberly-Clark Inc. and Kimberly-Clark Canada Inc. are corporations incorporated under the laws of Ontario with an address for service at 50 Burnhamthorpe Road West, Suite #1402, Mississauga Ontario L5B 3Y5 Canada.

6. Collectively, Kimberly-Clark Corporation, Kimberly-Clark Inc., and Kimberly-Clark Canada Inc. are referred to as Kimberly-Clark. Kimberly-Clark carries on business in British Columbia and Canada through the manufacture, sale and marketing of its products to residents of B.C. and Canada, including the Wipes, and the licensing of its intellectual property in this province and country.

Kimberly-Clark and the Wipes

7. Kimberly-Clark manufactures personal care and tissue products, including adult care, baby & child care, family care and feminine care products, and distributes them worldwide. Kimberly-Clark has a number of brands including, Kleenex, Scott, Cottonelle, Huggies, Pull-Ups, GoodNites, Depend and Kotex.

7.8. The Defendants sold the Wipes to the Plaintiff and Class Members through retail stores (the “Retail Stores”). The Defendants and Retail Stores have been correspondingly enriched by the receipt of the purchase price for the Recalled Lots paid by the Plaintiff and Class Members. To the extent that the Retail Stores passed on a portion of the purchase price paid by the Plaintiff and Class Members to the Defendants, the Defendants have been enriched by the amount passed on by the Retail Stores and the amount paid by the Retail Stores for the Recalled Lots. To the extent that the Retail Stores did not pass on a portion of the purchase price paid by the Plaintiff and Class Members to the Defendants, the Defendants have been enriched by the amount paid by the Retail Stores for the Recalled Lots.

8.9. Kimberly-Clark manufactures, distributes, markets and sells through the Retail Stores in Canada including British Columbia the Wipes under the brand name Cottonelle®. Kimberly-Clark publicly recommends using Cottonelle toilet paper and Cottonelle Wipes together. Kimberly-Clark describes the Wipes product on their home page by encouraging consumers to “pair Cottonelle® Brand Toilet Paper and Flushable Wipes for a refreshing clean that makes you feel ahhh-mazing”.

10. Kimberly-Clark promotes the Cottonelle Flushable Wipe as “downtherecare to treat the skin you don’t see like the skin you do” on their product home page. Kimberly-Clark promotes that using the Cottonelle Flushable Wipe will make you “feel confident knowing you’ve upped your down there game”.

9.11. The Wipes are a substance or mixture of substances manufactured, sold or represented for use in cleansing skin.

Kimberly-Clark’s Public Recall

10.12. On October 9, 2020 Kimberly-Clark announced a voluntary product recall of Wipes sold throughout the United States, Canada and the Caribbean manufactured during the period February 7 to September 14, 2020 (the “Recall”). The affected Wipes from the Recalled Lots are interchangeably referred to in this pleading as the “contaminated Wipes”, the “recalled Wipes” or the “affected Wipes”.

~~11.13.~~ Kimberly-Clark purported to notify consumers of the Recall of specified lots of the Wipes via a notice posted on its Cottonelle website, which advised the following:

Kimberly-Clark announced a product recall of its Cottonelle® Flushable Wipes and Cottonelle® GentlePlus Flushable Wipes sold throughout the United States, Canada and the Caribbean, due to the detection of some Cottonelle® Flushable Wipes that do not meet our high quality standards. The recall is limited to specific lots of Cottonelle® Flushable Wipes and Cottonelle® GentlePlus Flushable Wipes manufactured between February 7, 2020 – September 14, 2020. Please check your lot number above to see if your product is included. No other Cottonelle® products are affected by this recall and Flushable Wipes not affected are safe to use.

~~12.14.~~ The Recall was inadequate in terms of timing, scope, and effectiveness. It was insufficient to properly warn consumers, including the Plaintiff and Class Members. The Defendants were on notice earlier and should have acted faster to attempt to warn the public of the danger from the contaminated Wipes.

Kimberly-Clark's Misconduct

~~13.15.~~ From at least February 7, 2020 to September 14, 2020, the Defendants manufactured the Wipes with the presence of the bacterium, *pluralibacter gergoviae*.

~~14.16.~~ The Defendants did not notify consumers of the presence of the bacterium until October 9, 2020 when they issued the Recall. Prior to issuing the Recall, the Defendants marketed the Wipes as being safe to use for personal care, even after becoming aware of complaints and concerns from customers about adverse consequences from use of the Wipes.

~~17.~~ The Wipes manufactured between February 7 and September 14, 2020 (the Recalled Lots) were not safe to use. Those affected Wipes were dangerous, defective, and not fit for purpose.

~~15.18.~~ The Recalled Lots were manufactured under such conditions or circumstances as might contaminate them with dirt or filth (such as *pluralibacter gergoviae*) or render them injurious to health. The Recalled Lots were manufactured in unsanitary conditions because of the presence of *pluralibacter gergoviae* in Line 2 of the Defendants' manufacturing facility.

~~16.19.~~ At all material times, the Defendants failed to implement and observe safeguards to prevent contamination of their products.

~~17-20.~~ At all material times, the Defendants failed to implement and observe methods for detecting the presence of bacterial contamination prior to mass distribution of the WipesRecalled Lots.

~~18-21.~~ At all material times, the Defendants failed to ensure that the WipesRecalled Lots were fit for their intended purpose, both before releasing the WipesRecalled Lots into the stream of commerce and on an ongoing basis thereafter.

~~19-22.~~ At all material times, the Defendants failed to properly investigate claims of adverse effects from customers prior to the Recall.

~~20-23.~~ The Defendants failed to initiate the Recall in a timely or effective way.

~~21-24.~~ At all material times, the Defendants failed to warn customers that the WipesRecalled Lots were contaminated with *pluralibacter gergoviae* with its known adverse consequences on human health.

~~22-25.~~ The Defendants were negligent in their handling of the WipesRecalled Lots and the Recall. They owed a duty of care to the Plaintiff and Class Members as reasonably foreseeable consumers of their personal care products, and they breached that duty, causing harm.

~~23-26.~~ Under the *Competition Act*, R.S.C., 1985, c. C-34, s 52(1), a manufacturer must not make a false or misleading representation. By marketing the Wipes as being safe to use, the Defendants misled consumers into believing the WipesRecalled Lots were safe for personal use, when they were neither safe nor suitable for this purpose. Having previously established in the marketplace that the Wipes were safe to use, the Defendants' failure to inform consumers about the presence of the bacterium, *pluralibacter gergoviae*, misled consumers as to a material aspect of the WipesRecalled Lots.

~~24.~~ The *Sale of Goods Act*, RSBC 1996, C 410, ss 18(b) and (c) requires a seller to ensure that the goods being purchased by the consumer are of merchantable quality and durable for the use to which they would be normally put. The Wipes are not safe or suitable for personal use. Using the Wipes causes infection, irritation, abrasion, and scarring to the skin. Even if unused, the Wipes are defective, cannot be safely used, and are worthless.

25-27. The *Business Practices and Consumer Protection Act*, SBC 2004, C 2 (“BPCPA”), s 4(3)(a)(i) and (a)(ii) prohibits a supplier of goods from making deceptive representations about the performance characteristics, components, standard, quality, and grade of goods. The Defendants marketed the Wipes as suitable and safe specifically when used to clean “down there” when the WipesRecalled Lots were neither safe nor suitable for this use. By failing to inform consumers that the WipesRecalled Lots were not safe for personal use, the Defendants made a deceptive representation as to the standard and quality of the WipesRecalled Lots.

26-28. The *BPCPA*, s 4(3)(b)(vi) states that a representation that uses ambiguity or that fails to state a material fact is deceptive. The Defendants had a duty to disclose material facts to the Plaintiff and Class Members regarding bacterial contamination in the WipesRecalled Lots by *pluralibacter gergoviae*.

27-29. The *BPCPA*, s 8(3) 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. Prior to the Recall on October 9, 2020, there was no way for a consumer to determine that the WipesRecalled Lots were not safe or suitable for personal use.

30. In its role as designer, manufacturer, developer, marketer and seller of the Wipes, the Defendants knew or ought to have known that the presence of the bacterium, *pluralibacter gergoviae*, in the WipesRecalled Lots without notice to customers or proper disclosure was unconscionable. The Defendants had total control over the manufacturing and marketing of the Wipes. The relationship between the Defendants and the Plaintiff and Class Members as purchasers of the WipesRecalled Lots 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.

31. The Wipes are cosmetics and their manufacture and sale are governed by the *Food and Drugs Act*, RSC 1985, c F-27, as amended. Under that statute, it is prohibited to sell cosmetics that may cause injury to the health of the user when the cosmetic is used, consists in whole or in part of any filthy or decomposed substance or of any foreign matter, or was manufactured, prepared, preserved, packaged or stored under unsanitary conditions. No person shall

manufacture, prepare, preserve, package or store for sale any cosmetic under unsanitary conditions. It is an offence to breach the mandatory provisions of the statute.

28.32. The Recalled Lots were capable of causing injury to Class Members when they were used because of the presence of *pluarlibacter gergoviae*. The Recalled Lots contained a filthy and foreign substance in the form of the *pluralibacter gergoviae*. The Recalled Lots were manufacturer, prepared, and packaged under unsanitary conditions because of the presence of *pluralibacter gergoviae* at the Defendants' facility. The Recalled Lots were manufactured under unsanitary conditions because of the presence of *pluralibacter gergoviae* at the Defendants' facility. Each of these actions by the Defendants breached the *Food and Drugs Act*, ss 16 and 18. For this reason, the Recalled Lots were prohibited from sale by law in Canada.

29.33. As a result of the Defendants' misconduct and breaches of the *Competition Act*, ~~the *Sale of Goods Act*~~, the *Food and Drugs Acts*, and the *BPCPA*, the Plaintiff and Class Members have suffered damage and loss in the form of payment for a worthless, dangerous product.

Harm to the Plaintiff and Class Members

30.34. From their use of the contaminated Wipes ~~Recalled Lots~~, the Plaintiff and Class Members have suffered loss and damage because of the Defendants' negligence, including but not limited to:

- a. Infection;
- b. Irritation, abrasion, and scaring to the skin;
- c. Psychological injury; and
- d. Other injuries that may develop or become known in the future.

31.35. The Plaintiff and Class Members' injuries have and will continue to cause suffering, loss of enjoyment of life, permanent physical disability, loss of earning capacity, past and future, and loss of housekeeping capacity, past and future.

~~32.~~36. For compromised individuals like the Plaintiff and Class Members, they will be more susceptible to future degenerative changes as a result of having used the ~~Wipes~~Recalled Lots.

~~33.~~37. The Plaintiff and 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. The Plaintiff and 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.

~~34.~~38. As a result of their injuries, the Plaintiff and Class Members have received and in the future will continue to receive care and services from family members.

~~35.~~39. The Plaintiff and Class Members have not accepted, and should not be expected to accept, that only the Recalled Lots were affected. All Wipes manufactured during the Class Period are inherently suspect, and therefore worthless.

Part 2: RELIEF SOUGHT

~~36.~~40. 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 for breach of statutory warranty;~~
- f.e. damages under the *Competition Act*, s 36 in the full amount of all Wipes sold in Canada during the Class Period;

- f. damages under the *Business Practices and Consumer Protection Act*, SBC 2004, c. 2 (“*BPCPA*”), s 171 on behalf of the Plaintiff and Class Members and related enactments from other provinces;
- g. a declaration under the *BPCPA*, s 172(1)(a) that the Defendants have breached *BPCPA*;
- g.h.in the alternative to damages under s 171 of the *BPCPA*, a restoration order under the *BPCPA*, s 172(3)(a);
- h.i. a declaration that the Defendants breached the *Food and Drugs Act* in the manufacture, distribution and sale of the Wipes;
- i.j. restitution in the full amount of all Wipes manufactured and sold in Canada during the Class Period or alternatively disgorgement;
- j.k. recovery of health care costs pursuant to the *Health Care Cost Recovery Act*, S.B.C. 2008, c. 27 and similar legislation in other provinces;
- k.l. pre-judgment and post-judgment interest under the *Court Order Interest Act*, RSBC 1996, c 79; and
- l.m. _____ such further and other relief as this Honourable Court may deem just.

Part 3: LEGAL BASIS

37.41. The Plaintiff and Class Members plead and rely on the *Negligence Act*, RSBC 1996, c 318, *BPCPA*, ~~the *Sale of Goods Act*~~, the *Competition Act*, R.S.C., *Class Proceedings Act*, 1985, c. C-34, the *Limitation Act*, SBC 2012, c 13, the *Court Order Interest Act*, RSBC 1996, c 79, the *Food and Drugs Act*, RSC 1985, c F-27, the *Supreme Court Civil Rules*, and related enactments.

Negligence

~~38.42.~~ At all material times the Defendants, individually or jointly, owed the Plaintiff and other Class Members a duty of care in designing, developing, manufacturing, testing, distributing, monitoring, storing and selling the Recalled LotsWipes.

~~39.43.~~ 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 implement and observe safeguards to prevent product contamination;
- b. failing to implement and observe methods for detecting the presence of bacterial contamination prior to mass distribution of the Recalled LotsWipes;
- c. failing to ensure that the Recalled LotsWipes were fit for their intended purpose, both before releasing it into the stream of commerce and on an ongoing basis thereafter;
- d. failing to properly investigate claims of adverse effects from customers prior to the Recall;
- e. failing to initiate the Recall in a timely or effective way; and
- f. failing to warn the Plaintiff and Class Members that the Recalled LotsWipes included *pluralibacter gergoviae* with its known adverse consequence on human health.

Causation and Damages

~~40.44.~~ As a result of the Defendants' negligence in the design, development, manufacturing, testing, distributing, marketing, monitoring, storing, labelling, promotion and sale of the Recalled LotsWipes, the Plaintiff and other 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.

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

Sale of Goods Act

42. — ~~The Defendants have breached the *Sale of Goods Act*.~~

43. — ~~The Plaintiff and Class Members are “buyers” within the meaning of the *Sale of Goods Act*, s 1.~~

44. — ~~The Defendants are “sellers” within the meaning of the *Sale of Goods Act*, s 1.~~

45. — ~~The Wipes are “goods” within the meaning of the *Sale of Goods Act*, s 1.~~

46. — ~~The Defendants, as the manufacturer, marketer, distributor and/or seller of the Wipes, impliedly warranted that the Wipes were of merchantable quality and that the Wipes were fit for the ordinary purpose for which they are used.~~

47. — ~~As a result of the bacterial contamination contained in the Wipes, the Wipes cannot perform their ordinary purpose and are not of merchantable quality.~~

48. — ~~The Defendant breached its implied warranties by manufacturing, marketing, distributing and/or selling the Wipes that consisted of harmful or hazardous bacteria.~~

49. — The Plaintiff and Class Members are entitled to damages for breach of warranty under the *Sale of Goods Act*, s 56.

50. — 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; *Consumer Product Warranty and Liability Act*, SNB 1978, c C 18.1; *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.

Competition Act

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

52.47. Kimberly Clark has breached the *Competition Act*, s 52, as amended from time to time.

53.48. Wipes are a "product" within the meanings of the *Competition Act*, ss 2 and 52(1).

54.49. As set out above, the marketing and sale of the Wipes 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 Recalled Lots Wipes were unsafe and unsuitable was a breach of the *Competition Act*, s 52(1). The marketing by the Defendants that the Recalled Lots Wipes were safe and suitable for personal use was done for the purpose of promoting, directly or indirectly, the supply or use of the Recalled Lots Wipes 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 Recalled Lots Wipes 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).

55.50. 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 Wipes sold during the Class Period, and are entitled to damages in that amount under s 36.

Breach of the Business Practices and Consumer Protection Act

~~56~~.51. The Defendants have breached the *BPCPA*.

~~57~~.52. The Plaintiff and Class Members who purchased or used the Wipes for purposes that are primarily personal, family or household are “consumers” within the meaning of the *BPCPA*, s 1.

~~58~~.53. The Wipes are “products” within the meaning of the *BPCPA*, s 1.

~~59~~.54. The Defendants are “suppliers” within the meaning of the *BPCPA*, s 1. The *BPCPA* does not require privity of contract between suppliers and consumers.

~~60~~.55. The sale and supply of the Wipes 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.

~~61~~.56. 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.

~~62~~.57. 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.

~~63~~.58. In particular, the Defendants have breached the *BPCPA*, s-ss 4-5. In their marketing and sale of the Recalled LotsWipes, the Defendants have breached *inter alia* s-ss 4(3)(a)(i), (a)(ii), and (b)(vi) by

- a. marketing the Recalled LotsWipes as safe and suitable for personal use when they were not suitable for that usage;
- b. selling and marketing the Recalled LotsWipes with a defect that consisted of harmful or hazardous bacteria;

- c. representing that the Recalled LotsWipes have characteristics, uses and/or benefits that they do not have;
- d. advertising the Recalled LotsWipes as safe, hygienic, clean and/or refreshing, with the intent not to sell them as advertised;
- e. failing to implement adequate quality control mechanisms to detect and prevent the bacterial contamination in the Recalled LotsWipes; and
- f. failing to inform consumers of the bacterial contamination contained within the Recalled LotsWipes.

~~64~~59. 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 Recalled LotsWipes were unsafe and unsuitable for their intended use;
- b. misrepresenting and falsely advertising that the Recalled LotsWipes were safe and otherwise suitable for their intended use; and
- c. failing to do a timely recall of the Recalled LotsWipes that were suspected to be contaminated.

~~65~~60. 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.

~~66~~61. As a result of the Defendants' breaches of the *BPCPA*, the Plaintiff and Class Members are entitled to damages under the *BPCPA*, s 171, a declaratory order under s 172(1)(a) and, in the alternative to damages under s 171, a restoration order under s 172(3)(a).

~~67~~62. 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 Act*, RSPEI 1988, c C-19; *Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1; *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 in Schedule A to this Notice of Civil Claim.

Breach of the Food and Drugs Act

63. The Wipes are each a “cosmetic” under s 2 of the *Food and Drugs Act*.

64. The Defendants manufactured, prepared, preserved, packaged or stored the Recalled Lots for sale under “unsanitary conditions” (under s 2 of the *Food and Drugs Act*) contrary to s 18 of the *Food and Drugs Act*.

65. The Defendants sold the Recalled Lots notwithstanding that (a) they were capable of causing injury to the health of the user when the cosmetic is used, (b) they consisted in whole or in part of any filthy or decomposed substance or of any foreign matter, and (c) that they were manufactured, prepared, preserved, packaged or stored under unsanitary conditions, each contrary to s 16 of the *Food and Drugs Act*. The Recalled Lots were prohibited from sale in Canada as a result of the breaches of the *Food and Drugs Act*.

Unjust Enrichment

~~68.~~66. As set out above, the Defendants have been enriched by the amounts paid by the Plaintiff and Class Members and received by the Defendants for the Recalled Lots, and by the amounts paid by the Retail Stores to the Defendants for the Recalled Wipes.

~~69.~~67. The Plaintiff and Class Members have been deprived by the payment of those amounts for the Recalled Lots.

~~70.~~68. There is no juristic reason why the Defendants should have received or should retain these benefits. In particular, the breaches of each or any of the *Competition Act*, s 52, ~~the *Sales of Goods Act* s 18,~~ the *Food and Drugs Act*, ss 16, 18 and 31, or an implied warranty of fitness, and the doctrine of illegality, negate any juristic reason why the Defendants should have received or

should retain these benefits. In particular, these breaches void or make voidable any contracts under which the Plaintiff or Class Members purchased the Wipes Recalled Lots, and any contracts between the Defendants and Retail Stores pertaining to the supply, distribution and/or sale of the Recalled Lots.

71.69. As a result of their actions, the Defendants have been unjustly enriched. The Plaintiff and Class Members are entitled to restitution of the benefits received by the Defendants on account of the sale of the Wipes Recalled Lots in Canada.

72.70. In the alternative, justice and good conscience require that the Defendants disgorge to the Plaintiff and Class Members an amount attributable to the benefits received by them on account of the sale of the Wipes Recalled Lots in Canada.

Health Care Costs

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

74.72. The Plaintiff is a “beneficiary” within the meaning of the *Medicare Protection Act*, R.S.B.C. 1996, c. 286 and any amendments, as are all Class Members who have received or will receive medical care on account of the Wipes Recalled Lots.

75.73. The Plaintiff and Class Members have a claim for the recovery of health care costs, past and future, incurred on their behalf by the British Columbia Ministry of Health and by other provincial and territorial governments. The Plaintiff pleads the following provincial and territorial statutes, as amended, in support of a claim for recovery of health care costs incurred by provincial governments:

- 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

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

Limitation Periods

77.75. 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 October 9, 2020. The harm is ongoing.

78.76. 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 October 9, 2020.

79.77. 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.

Service

80.78. 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.

81.79. 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

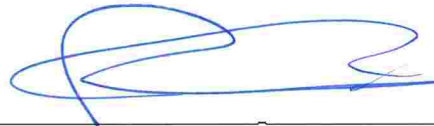
Email address for service: service@slatervecchio.com

Place of trial: Vancouver, BC

The address of the registry is:

800 Smithe Street
Vancouver, BC
V6Z 2E1

Date: August 29, 2022



Signature of lawyer for plaintiff

For: Anthony A Vecchio QC

Slater Vecchio LLP

and

Mathew Good

Mathew P Good Law Corp

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 defendant Teva Branded Pharmaceutical Products R&D, Inc. 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 Cottonelle Wipes.

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.

APPENDIX A

Ontario

1. The Defendants have breached the *Ontario Consumer Protection Act, 2002*, SO 2002, c. 30, Sched. A [*Ontario CPA*]. Class Members in Ontario are "consumers" within the meaning of the *Ontario CPA*, s 1. The Wipes are "goods" within the meaning of the *Ontario CPA*, s.1. The Defendants are each a "supplier" within the meaning of the *Ontario CPA*. The sales of Wipes is a "consumer transaction" within the meaning of the *Ontario CPA*. The Defendants made "representations" about the safety and purpose of the Wipes within the meaning of the *Ontario CPA*.

2. By reason of the Defendants' conduct, the Defendants have breached the *Ontario CPA*, ss 14 and 17. The Defendants' actions constitute unfair 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, including those provided for under the *Ontario CPA*, s 18, or alternatively, restitution under the *Ontario CPA*, s 117.

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

Alberta

4. The Defendants have breached the *Consumer Protection Act, RSA 2000*, c C-26.3 [*Alberta CPA*]. The Class Members in Alberta are "consumers" within the meaning of the *Alberta CPA*, s 1. The Wipes are "goods" within the meaning of the *Alberta CPA*. The Defendants are each a "supplier" within the meaning of the *Alberta CPA*. The sale of Wipes is a "consumer transaction" within the meaning of the *Alberta CPA*.

5. 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 including those provided for under the *Alberta CPA*, s 7(1), or alternatively, restitution under the *Alberta CPA*, s 7(3).

6. The Defendants cannot rely on any arbitration clause, if any such clause exists, due to the *Alberta CPA* s 16, which invalidates any such clause between a “supplier” and a “consumer” in respect of a “consumer transaction”, rendering it void and unenforceable.

Saskatchewan

7. The Defendants have breached *The Consumer Protection and Business Practices Act, SS 2013, c C-30.2 [Saskatchewan CPABPA]*. The Class Members in Saskatchewan are "consumers" within the meaning of the *Saskatchewan CPABPA*, s 2. The Wipes are "goods" within the meaning of s 2 of the *Saskatchewan CPABPA*. The Defendants are each a "supplier" within the meaning of s 2 of the *Saskatchewan CPABPA*.

8. By reason of the Defendants’ conduct, the Defendants have breached the *Saskatchewan CPABPA*, ss 6-9. The Defendants’ actions constitute unfair practices. As a result of the Defendants’ breaches of the *Saskatchewan CPABPA* the Class Members in Saskatchewan are entitled to an award of damages, including those provided for under s 28 of the *Saskatchewan CPABPA*, or alternatively, restitution under the *Saskatchewan CPABPA*, s 93.

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

Manitoba

10. The Defendants have breached the *Business Practices Act CCSM c. B120 [Manitoba BPA]*. The Class Members in Manitoba are "consumers" within the meaning of the *Manitoba BPA*, s 1. The Wipes are "goods" within the meaning of the *Manitoba BPA*. The Defendants are each a "supplier" within the meaning of the *Manitoba BPA*. The Defendants engaged in “unfair business practices” within the meaning of the *Manitoba BPA*.

11. By reason of the Defendants' conduct, the Defendants have breached the *Manitoba BPA*, ss 2-8. The Defendants' actions constitute unfair business practices. As a result of the Defendants' breaches of the *Manitoba BPA* the Class Members in Manitoba are entitled to an award of damages, including those provided for under the *Manitoba BPA*, ss 23 and 24.

Newfoundland

12. The Defendants have breached the Consumer Protection and Business Practices Act, SNL 2009, c C-31.1 [*Newfoundland CPABPA*]. The Class Members in Newfoundland are "consumers" within the meaning of the *Newfoundland CPABPA*, s 2. The Wipes are "goods" within the meaning of the *Newfoundland CPABPA*. The Defendants are "suppliers" within the meaning of the *Newfoundland CPABPA*. The sale of Wipes is a "consumer transaction" within the meaning of the *Newfoundland CPABPA*.

13. By reason of the Defendants' conduct, the Defendants have breached the *Newfoundland CPABPA*, ss 7 and 9. The Defendants' actions constitute unfair 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, including those provided for under the *Newfoundland CPABPA*, s 10.

Prince Edward Island

14. The Defendants have breached the *Business Practices Act*, RSPEI 1988, c B-7 [*PEI BPA*]. Class Members in Prince Edward Island are "consumers" within the meaning of the *PEI BPA* s 1. The Wipes are "goods" within the meaning of the *PEI BPA* s 1. The Defendants made "consumer representations" within the meaning of the *PEI BPA* s 1.

15. By reason of the Defendants' conduct, the Defendants have breached the *PEI BPA*, s 2(a) by engaging in "unfair practices". As a result of the Defendants' breaches of the *PEI BPA*, the Class Members in Prince Edward Island are entitled to an award of damages, including those provided for under the *PEI BPA*, s 4.