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No.
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between

ADAM ANSARI

PLAINTIFF

and

AGROPECUARIA MALICHITA, S.A. DE C.V.,
SOFIA PRODUCE, LLC d.b.a. TRUFRESH, AND PACIFIC TRELIS FRUIT, LLC

DEFENDANTS

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

NOTICE OF CIVIL CLAIM

(Recalled Cantaloupes)

This action has been started by the plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

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

If you intend to make a counterclaim, you or your lawyer must

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

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

Time for response to civil claim

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

- (a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,

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

THE PLAINTIFF'S CLAIM

Part 1: STATEMENT OF FACTS

Overview

1. In November and December 2023, Health Canada and the Canadian Food Inspection Agency recalled numerous cantaloupe and produce products in response to reports that these products were contaminated with *Salmonella*. The outbreak was traced to the Defendants' facilities in Sonora, México where the Defendants prepare cantaloupes for distribution across Canada and the United States. Hundreds of Canadians have been hospitalized and several have died as a result of consuming the Defendants' *Salmonella*-contaminated cantaloupes, as well as products that were cross-contaminated by these contaminated fruits.

2. Canadians entrust their safety to companies that grow, harvest and distribute food. In growing and harvesting cantaloupes contaminated with *Salmonella* and supplying these dangerous goods to the Canadian marketplace, the Defendants breached this trust. Through their conduct, the Defendants were negligent and breached the *Business Practices and Consumer Protection Act*, SBC 2004, c 2 (the "*BPCPA*") and related provincial enactments, and have been unjustly enriched.

The Plaintiff and Class Members

3. The Plaintiff, Adam Ansari, is a resident of British Columbia. On December 8, 2023, he purchased a fruit cup containing cantaloupe from Save-On-Foods for personal use. A few hours after consuming the cantaloupe, the Plaintiff began experiencing symptoms consistent with *Salmonella* poisoning. The Plaintiff suffered these symptoms for approximately two days.

4. The Plaintiff brings this claim on his own behalf and on behalf of all individuals and legal persons in Canada, excluding Quebec, who belong to one or more of the following overlapping subclasses:

- a) all individuals and legal persons who purchased one or more Recalled Cantaloupe Products primarily for purposes other than personal, family or household (the “**Purchaser Subclass**” and the “**Purchaser Subclass Members**”);
- b) all individuals who purchased and/or used one or more Recalled Cantaloupe Products, Unknown Cantaloupe Products and/or Recalled Produce primarily for personal, family or household purposes (the “**Consumer Subclass**” and the “**Consumer Subclass Members**”); and
- c) all individuals and the estates of deceased individuals who claim to have suffered personal injury or death as a result of eating one or more Recalled Cantaloupe Products or Recalled Produce (the “**Personal Injury Subclass**” and the “**Personal Injury Subclass Members**”),

from the date that these products were first offered for sale in Canada until the date that this action is certified as a class proceeding (the “**Class**”, the “**Class Members**” and the “**Class Period**”).

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

All Malichita-brand cantaloupes offered for sale in Canada between and inclusive of October 11, 2023 and November 14, 2023 and all Rudy-brand cantaloupes offered for sale in Canada between and inclusive of October 10, 2023 and November 24, 2023 are the “**Recalled Cantaloupes**”. The Recalled Cantaloupes and any products containing this fruit are the “**Recalled Cantaloupe Products**”.

All cantaloupes and products containing fresh cantaloupe purchased between and inclusive of October 10, 2023 and December 31, 2023 that were not packaged or labelled, had their packaging or labels removed, or where the packaging or labels did not contain sufficient information to identify whether the products were Recalled Cantaloupe Products are the “**Unknown Cantaloupe Products**”.

All produce and other food items, excluding Recalled Cantaloupe Products and Unknown Cantaloupe Products, that were processed alongside the Recalled Cantaloupe Products and that were subject to a Health Canada recall are the “**Recalled Produce**”.

Attached as Schedule "A" to this Notice of Civil Claim is a list of the products confirmed by Health Canada to constitute Recalled Cantaloupe Products and Recalled Produce as of the date that this pleading was filed. The Plaintiff anticipates amending Schedule "A" to include products that are recalled subsequent to the date on which this Notice of Civil Claim is filed.

The Defendants

5. The Defendant Agropecuaria Malichita, S.A. de C.V. ("**Agropecuaria Malichita**") is a company incorporated pursuant to the laws of the State of Sonora, México, with an address for service at Malecón Malpica 189-1 Col., Centro, Guaymas, Sonora, México, CP 85400.

6. The Defendant Sofia Produce, LLC dba Trufresh ("**Trufresh**") is a company incorporated pursuant to the laws of the State of Arizona, with an address for service at 4928 North Gardner River Way, Tucson, Arizona, 85718, United States.

7. The Defendant Pacific Trellis Fruit, LLC ("**Pacific**") is a company incorporated pursuant to the laws of the State of California, with an address for service at 150N-2710 Gateway Oaks Drive, Sacramento, California, 95833-3505, United States.

The Supply Chain for the Recalled Cantaloupes

8. Agropecuaria Malichita grew the Recalled Cantaloupes on its Antonio Rosales farm in Sonora, México under the brand names "Malichita" and "Rudy". Agropecuaria Malichita delivered the Recalled Cantaloupes to Trufresh and/or Pacific, who in turn distributed the Recalled Cantaloupes to Canada and the United States through importing companies. The importing companies supplied the Recalled Cantaloupes to wholesale food distributors who either sold the Recalled Cantaloupes to consumers or supplied these products to retail stores who in turn sold the Recalled Cantaloupes to consumers.

9. In addition to being sold as fresh produce, the Recalled Cantaloupes were used in the production of Recalled Cantaloupe Products such as fruit cups and fruit trays.

10. Due to improper or non-existent packaging or labelling on some cantaloupes and products containing cantaloupes at the time that Health Canada advised that individuals

should discard Recalled Cantaloupe Products, some purchasers of these products were unable to verify that they purchased a cantaloupe or product containing a cantaloupe that was subject to a recall. These products are the Unknown Cantaloupe Products. Purchasers of Unknown Cantaloupe Products who discarded these products due to the Defendants' misconduct suffered a loss regardless of whether the cantaloupe or product containing a cantaloupe that they purchased was a Recalled Cantaloupe Product.

11. Other products were cross-contaminated with *Salmonella* as a result of being processed alongside the Recalled Cantaloupe Products. For example, fruits and vegetables that were cut and/or packaged in close proximity to Recalled Cantaloupe Products are potentially contaminated and unfit for consumption or sale. These products are the Recalled Produce.

Salmonella and its Adverse Health Effects on Humans

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

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

Timeline of the Salmonella Outbreak

14. Health agencies in Canada and the United States have issued recalls for the Recalled Cantaloupe Products and Recalled Produce, including but not limited to the following:

- a) November 1, 2023: the Canadian Food Inspection Agency (the "CFIA") and Health Canada recalled the Defendants' Malichita-brand cantaloupes

sold in Quebec, Prince Edward Island and Nova Scotia between and inclusive of October 22, 2023 and November 1, 2023 after the CFIA confirmed positive cases of *Salmonella* in some of these cantaloupes;

- b) November 8, 2023: Trufresh, in tandem with the United States Food and Drug Administration (the “**FDA**”), recalled all Malichita-brand cantaloupes sold between and inclusive of October 16, 2023 and October 23, 2023. Cantaloupes that had been distributed to Canada were among the cantaloupes subject to this recall;
- c) November 10, 2023: the CFIA recalled “Groupe Tomapure” and “Fruit Pure” branded cantaloupe products sold in Ontario and Quebec;
- d) November 14, 2023: the CFIA expanded the November 1, 2023 recall to include Recalled Cantaloupes sold in British Columbia, Alberta, New Brunswick and Newfoundland after confirming that cantaloupes contaminated with *Salmonella* were sold in these provinces;
- e) November 14, 2023: the CFIA recalled products containing Recalled Cantaloupes sold through Save-On-Foods and Urban Fare in British Columbia, Alberta, Manitoba, Saskatchewan and the Yukon;
- f) November 15, 2023: Trufresh and the FDA expanded their November 8, 2023 recall to include additional products;
- g) November 18, 2023: the CFIA recalled cantaloupes and cantaloupe products sold in British Columbia, Alberta, and Manitoba under the brand names “Fresh Start Foods”, “Ready-Set-Serve by Markon”, “CFS”, “Kitchen Essential” and “Central Foods Co.”;
- h) November 22, 2023: the CFIA recalled “Yen Bros” branded fruit salads sold in British Columbia;
- i) November 22, 2023: the CFIA recalled “Fresh Start Foods” branded cantaloupes sold in Alberta and British Columbia;

- j) November 24, 2023: the CFIA expanded its November 1, 2023 recall to include Rudy-brand cantaloupes sold between October 10, 2023 and November 24, 2023;
- k) November 30, 2023: the CFIA recalled “Frankly Fresh Street” and “Fresh St. Market” branded freshly cut cantaloupes sold in British Columbia;
- l) November 30, 2023: the CFIA recalled “Mixed Melon Chunks” products sold at 7-Eleven convenience stores in Manitoba;
- m) December 1, 2023: Pacific, in tandem with the FDA, recalled 4,872 cases of Malichita-brand cantaloupes sold in the United States and Canada; and
- n) December 8, 2023: the CFIA recalled fresh cut cantaloupe products sold by Loblaws Companies Limited after test results confirmed some of these products were contaminated with *Salmonella*.

15. Health Canada is advising Canadians to throw out the Recalled Cantaloupe Products and Recalled Produce or return these products to the location where they were purchased.

16. On December 22, 2023, the Public Health Agency of Canada confirmed that 164 *Salmonella* infections linked to the Defendants’ cantaloupes had been reported in Canada, including 61 hospitalizations and seven deaths.

The Defendants’ Manufacturing of the Recalled Cantaloupes

17. Produce industry standard manufacturing specifications and procedures for the growth, harvest, inspection, storage and packaging of cantaloupes require that cantaloupes be grown, harvested, inspected, stored and/or packaged in such a manner that these products are not contaminated by *Salmonella* and distributed to the public.

18. Agropecuaria Malichita grew, harvested, inspected, stored and/or packaged the Recalled Cantaloupes in a manner that was inconsistent with industry standard manufacturing specifications and procedures. Trufresh and/or Pacific inspected, stored

and/or packaged the Recalled Cantaloupes in a manner that was inconsistent with industry standard manufacturing specifications and procedures.

19. As a result of the Agropecuaria Malichita's failure to grow, harvest, inspect, store and/or package the Recalled Cantaloupes in accordance with industry standard manufacturing specifications and procedures, and/or Trufresh and/or Pacific's failure to inspect, store and/or package the Recalled Cantaloupes in accordance with industry standard manufacturing specifications and procedures, some, or all, of the Recalled Cantaloupes became contaminated with *Salmonella*. These Recalled Cantaloupes were contaminated with Salmonella when these products left the Defendants' facilities.

Defendants' Misconduct

20. At all material times, Agropecuaria Malichita grew, harvested, inspected, stored, packaged, marketed, sold, distributed and/or placed the Recalled Cantaloupes into the stream of commerce.

21. At all material times, Trufresh and Pacific inspected, stored, packaged, marketed, sold, distributed and/or placed the Recalled Cantaloupes into the stream of commerce.

22. At all material times, each of the Recalled Cantaloupe Products contained Recalled Cantaloupes.

23. At all material times, it was reasonably foreseeable that the Recalled Cantaloupes would be used in the production of and/or processed alongside other consumable products such that any *Salmonella* contaminating the Recalled Cantaloupes would be transferred to and would infect other consumable products.

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

25. At all material times, the Recalled Cantaloupe Products and Recalled Produce, or some of them, were contaminated with *Salmonella* and as a result posed a real and substantial danger to individuals consuming the Recalled Cantaloupe Products and

Recalled Produce. All Recalled Cantaloupe Products, Unknown Cantaloupe Products and Recalled Produce were inherently suspect and therefore worthless and unfit for human consumption.

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

27. At all material times, Defendants represented, expressly or by implication, that:

a) the Recalled Cantaloupe Products were safe to consume;

and/or omitted to represent, or warn, that:

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

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

(the “**Misrepresentations**”)

28. At all material times, the Defendants knew or ought to have known that:

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

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

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

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

31. The Plaintiff and Consumer Subclass Members who purchased Recalled Cantaloupe Products would not have purchased these products had they been aware of the real and substantial danger to human health posed by the contamination of some, or all, of the Recalled Cantaloupe Products.

32. The Defendants acquired a portion, or all, of the price paid by the Plaintiff and Consumer Subclass Members who purchased Recalled Cantaloupe Products for these products due to the Defendants' breaches of the *BPCPA* and related consumer protection legislation.

33. The Plaintiff and Economic Subclass Members who purchased Recalled Cantaloupe Products were the sources of the money acquired by the Defendants, in the form and quantity of some, or all, of the price paid by them and received by the Defendants for these products.

34. The Plaintiff and Consumer Subclass Members who purchased Recalled Cantaloupe Products each have an interest in some, or all, of the funds received from them by the Defendants, directly or indirectly, for these products.

35. The Plaintiff has sent a letter to each of the Defendants advising therein that Consumer Subclass Members in Ontario, Prince Edward Island and Alberta seek damages, repayment, restitution and/or punitive damages pursuant to the *Consumer Protection Act* (2002), SO 2002, c 30, Sched. A (the "**Ontario CPA**"), the *Business Practices Act*, RSPEI 1988, c B-7 (the "**PEI BPA**") and the *Consumer Protection Act*, RSA 2000, c C-26.3 (the "**Alberta CPA**"), respectively, due to the Defendants' misconduct, as particularized in this Notice of Civil Claim. This notice was sent on behalf of Consumer Subclass Members in Ontario, Prince Edward Island and Alberta. In the alternative, the notice requirements in the *Ontario CPA*, *PEI BPA* and *Alberta CPA* are fulfilled by the filing of this Notice of Civil Claim. In the further alternative, the

interests of justice warrant dispensing of the notice requirement for Consumer Subclass Members in Ontario pursuant to section 18(15) of the *Ontario CPA*.

36. Agropecuaria Malichita supplied and/or sold the Recalled Cantaloupes to one or more intermediaries, including but not limited to Trufresh and/or Pacific, who in turn sold and/or supplied these products to other intermediaries before the Recalled Cantaloupes were either sold to consumers or used in the production of other goods that were sold to consumers. None of the contracts between the Defendants, intermediaries and/or the Plaintiff and Economic Subclass Members for the supply and/or sale of the Recalled Cantaloupe Products permitted the Recalled Cantaloupe Products to be contaminated with and/or have an undisclosed risk of being contaminated with *Salmonella*.

37. The Defendants have been enriched by the receipt of some, or all, of the price paid by the Plaintiff and Economic Subclass Members who purchased Recalled Cantaloupe Products and received by the Defendants, directly or indirectly, for these products. The Plaintiff and Economic Subclass Members who purchased Recalled Cantaloupe Products have suffered a corresponding deprivation of this same amount.

Harm to the Plaintiff and Class Members

38. As a result of one or more of the Defendants' breaches of the *BPCPA* and related provincial enactments, the Plaintiff and Consumer Subclass Members have suffered loss and/or damage, including but not limited to the cost of purchasing a worthless product.

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

- a) death;
- b) arthritis;
- c) inflammatory bowel syndrome (IBS);

- d) immunological deficiencies;
- e) fever;
- f) chills;
- g) nausea;
- h) vomiting;
- i) diarrhea;
- j) headaches;
- k) abdominal cramps; and/or
- l) other injuries may develop or become known in the future.

40. The Plaintiff and Personal Injury Subclass Members' injuries have and will continue to cause suffering, loss of enjoyment of life, permanent physical disability, loss of past and future earning capacity and/or loss of past and future housekeeping capacity.

41. The Plaintiff and Personal Injury Subclass Members have sustained damages for the cost of medical treatment, including past and future cost of health care services provided by the government of British Columbia and the governments of other provinces and territories. The Plaintiff and Personal Injury Subclass Members continue to undergo medical care and treatment and continue to sustain damages. As a result of their injuries, the Personal Injury Subclass Members have received and in the future will continue to receive care and services from family members.

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

Part 2: RELIEF SOUGHT

43. The Plaintiff claims on his own behalf and on behalf of the Class Members:

- a) an order certifying this action as a class proceeding under the *Class Proceedings Act*, RSBC 1996, c 50 (the “***Class Proceedings Act***”);
- b) general and special damages;
- c) a declaration under subsection 172(1)(a) of the *BPCPA* that the Defendants have breached sections 4-5 of the *BPCPA*;
- d) an injunction under subsection 172(1)(b) of the *BPCPA* to restrain further breaches of the *BPCPA* by requiring the Defendants to represent the risk posed by *Salmonella* in their marketing and sale of their cantaloupe products going forward;
- e) damages pursuant to section 171 of the *BPCPA*;
- f) a restoration order under subsection 172(3)(a) of the *BPCPA* in an amount equal to some, or all, of the price paid by the Plaintiff and Consumer Subclass Members in British Columbia who purchased Recalled Cantaloupe Products and received by the Defendants, directly or indirectly, for these products;
- g) relief for contraventions of extra-provincial consumer protection legislation, as follows:
 - i. damages including but not limited to the amounts paid by Consumer Subclass Members in Alberta for the Recalled Cantaloupe Products, Unknown Cantaloupe Products and Recalled Produce, or in the alternative restitution of some, or all, of the amounts paid by Consumer Subclass Members in Alberta who purchased Recalled Cantaloupe Products and received by the Defendants, directly or indirectly, for these products, as well as punitive damages, pursuant to subsections 7(1), 7(3), 7.2(1), 13(2) and/or 142.1(2) of the *Alberta CPA*;
 - ii. damages including but not limited to the amounts paid by Consumer Subclass Members in Saskatchewan for the Recalled Cantaloupe

Products, Unknown Cantaloupe Products and Recalled Produce, or in the alternative restitution of some, or all, of the amounts paid by Consumer Subclass Members in Saskatchewan who purchased Recalled Cantaloupe Products and received by the Defendants, directly or indirectly, for these products, as well as punitive damages, pursuant to subsection 93(1) of *The Consumer Protection and Business Practices Act*, SS 2014, c C-30.2;

- iii. damages including but not limited to the amounts paid by Consumer Subclass Members in Manitoba for the Recalled Cantaloupe Products, Unknown Cantaloupe Products and Recalled Produce, or in the alternative repayment of some, or all, of the amounts paid by Consumer Subclass Members in Manitoba who purchased Recalled Cantaloupe Products and received by the Defendants, directly or indirectly, for these products, as well as punitive damages, pursuant to subsections 23(2) and/or 23(4) of *The Business Practices Act*, CCSM, c B120;
- iv. damages including but not limited to the amounts paid by Consumer Subclass Members in Ontario for the Recalled Cantaloupe Products, Unknown Cantaloupe Products and Recalled Produce and/or repayment of the amount by which payments made by Consumer Subclass Members in Ontario who purchased Recalled Cantaloupe Products exceed the value of these products, or in the alternative restitution of some, or all, of the amounts paid by Consumer Subclass Members in Ontario who purchased Recalled Cantaloupe Products and received by the Defendants, directly or indirectly, for these products, as well as punitive damages, pursuant to subsections 18(1), 18(2) and/or 18(11) of the *Ontario CPA*;
- v. damages including but not limited to the amounts paid by the Consumer Subclass Members in Prince Edward Island for the Recalled Cantaloupe Products, Unknown Cantaloupe Products and

Recalled Produce and/or repayment of the amount by which the payments made by Consumer Subclass Members in Prince Edward Island who purchased Recalled Cantaloupe Products exceed the value of these products, or in the alternative restitution of some, or all, of the amounts paid by Consumer Subclass Members in Prince Edward Island who purchased Recalled Cantaloupe Products and received by the Defendants, directly or indirectly, for these products, as well as punitive damages, pursuant to subsections 4(1) and/or 4(2) of the *PEI BPA*;

- vi. damages including but not limited to the amounts paid by the Consumer Subclass Members in Newfoundland for the Recalled Cantaloupe Products, Unknown Cantaloupe Products and Recalled Produce, repayment of the amount by which the payments made by Consumer Subclass Members in Newfoundland who purchased Recalled Cantaloupe Products and received by the Defendants, directly or indirectly, exceed the value of these products, as well as punitive damages pursuant to section 10 of the *Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1;
- vii. damages including but not limited to the amounts paid by Consumer Subclass Members in New Brunswick for the Recalled Cantaloupe Products, Unknown Cantaloupe Products and Recalled Produce pursuant to section 15 of the *Consumer Product Warranty and Liability Act*, SNB 1978, c C-18.1;
- viii. damages including but not limited to the amounts paid by Consumer Subclass Members in Nova Scotia for the Recalled Cantaloupe Products, Unknown Cantaloupe Products and Recalled Produce pursuant to the *Consumer Protection Act*, RSNS 1989, c 92;
- ix. damages including but not limited to the amounts paid by Consumer Subclass Members in the Yukon for the Recalled Cantaloupe

Products, Unknown Cantaloupe Products and Recalled Produce pursuant to the *Consumers Protection Act*, RSY 2002, c 40;

- x. damages including but not limited to the amounts paid by Consumer Subclass Members in the Northwest Territories for the Recalled Cantaloupe Products, Unknown Cantaloupe Products and Recalled Produce pursuant to the *Consumer Protection Act*, RSNWT 1988, c C-17; and
- xi. damages including but not limited to the amounts paid by Consumer Subclass Members in Nunavut for the Recalled Cantaloupe Products, Unknown Cantaloupe Products and Recalled Produce pursuant to *Consumer Protection Act*, RSNWT (Nu) 1988, c C-17;
- h) a declaration that the Defendants have been unjustly enriched by the receipt of some, or all, of the amounts paid by the Plaintiff and Economic Subclass Members who purchased the Recalled Cantaloupe Products and received by the Defendants, directly or indirectly, for these products;
- i) an order that the Defendants account for and make restitution to the Plaintiff and Economic Subclass Members who purchased Recalled Cantaloupe Products equal to the amount by which they have been unjustly enriched, or alternatively disgorgement;
- j) past and future damages “in trust” for services provided by family members of the Personal Injury Subclass Members;
- k) recovery of health care costs pursuant to the *Health Care Cost Recovery Act*, SBC 2008, c 27 (the “**HCCRA**”), and equivalent legislation in other provinces and territories throughout Canada;
- l) damages pursuant to section 2 of the *Family Compensation Act*, RSBC 1996, c 126 (the “**Family Compensation Act**”), and equivalent legislation in other provinces and territories throughout Canada;
- m) punitive damages;

- n) pre-judgment and post-judgment interest under the *Court Order Interest Act*, RSBC 1996, c 79 (the “**Court Order Interest Act**”); and
- o) such further and other relief as this Honourable Court may deem just.

Part 3: LEGAL BASIS

44. The Plaintiff and Class Members plead and rely on the *Negligence Act*, RSBC 1996, c 318, the *BPCPA* and related extra-provincial enactments, the *Class Proceedings Act*, the *Family Compensation Act* and related extra-provincial enactments, the *HCCRA* and related extra-provincial enactments, the *Court Order Interest Act* and related extra-provincial enactments, the *Food and Drugs Act*, RSC 1985, c F-27 (the “**Food and Drugs Act**”), the *Criminal Code*, RSC 1985, c C-46 (the “**Criminal Code**”), the *Medicare Protection Act*, RSBC 1996, c 286 (the “**Medicare Protection Act**”) and related extra-provincial enactments, the *Court Jurisdiction and Proceedings Transfer Act*, SBC 2003, c 28 (the “**CJPTA**”), the Supreme Court Civil Rules, BC Reg 168/2009 and related enactments.

Negligent Manufacture

45. At all material times, Agropecuaria Malichita owed a duty of care to the Plaintiff and Personal Injury Subclass Members as reasonably foreseeable consumers of the Recalled Cantaloupe Products and Recalled Produce to grow, harvest, inspect, store and package the Recalled Cantaloupes in a manner consistent with industry standard manufacturing specifications and procedures such that the Recalled Cantaloupe Products and Recalled Produce would not pose a real and substantial danger to consumers of these products.

46. Agropecuaria Malichita grew, harvested, inspected, stored and/or packaged the Recalled Cantaloupes in a manner inconsistent with industry standard manufacturing specifications and procedures which resulted in the Recalled Cantaloupe Products and Recalled Produce, or some of them, being contaminated with *Salmonella*. Agropecuaria Malichita therefore breached its duty to the Plaintiff and Personal Injury Subclass Members and was negligent.

47. At all material times, Trufresh and Pacific owed a duty of care to the Plaintiff and Personal Injury Subclass Members as reasonably foreseeable consumers of the Recalled Cantaloupe Products and Recalled Produce to inspect, store and/or package the Recalled Cantaloupes in a manner consistent with industry standard manufacturing specifications and procedures such that the Recalled Cantaloupe Products and Recalled Produce would not pose a real and substantial danger to consumers of these products.

48. Trufresh and Pacific inspected, stored and/or packaged the Recalled Cantaloupes in a manner inconsistent with industry standard manufacturing specifications and procedures which resulted in the Recalled Cantaloupe Products and Recalled Produce, or some of them, being contaminated with *Salmonella*. Trufresh and Pacific therefore breached the duty of care owed by them to the Plaintiff and Personal Injury Subclass Members and were negligent.

49. As a result of one or more of the Defendants' negligent manufacture of Recalled Cantaloupes, the Personal Injury Subclass Members have suffered loss and/or damage including but not limited to:

- a) personal injury;
- b) loss of past and future income earning capacity;
- c) loss of past and future housekeeping capacity;
- d) cost of future care;
- e) out of pocket expenses;
- f) damages "in trust" for past and future service provided by family members; and/or
- g) damages pursuant to section 2 of the *Family Compensation Act* and equivalent provisions of related extra-provincial enactments.

50. At all material times each of the Defendants was in a close and proximate relationship with the Plaintiff and Personal Injury Subclass Members. The losses and/or

damages suffered by the Plaintiff and Personal Injury Subclass Members were the reasonably foreseeable consequences of the Defendants' negligent manufacture of the Recalled Cantaloupes.

Failure to Warn

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

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

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

53. As a result of the Defendants' failure to warn particularized above, the Personal Injury Subclass Members have suffered loss and/or damage including but not limited to:

- a) personal injury;
- b) loss of past and future income earning capacity;
- c) loss of past and future housekeeping capacity;
- d) cost of future care;

- e) out of pocket expenses;
- f) damages “in trust” for past and future service provided by family members; and/or
- g) damages pursuant to section 2 of the *Family Compensation Act* and equivalent provisions of related extra-provincial enactments.

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

55. Personal Injury Subclass Members resident outside of British Columbia plead and rely on the equivalent provisions of family compensation legislation in their respective provinces and territories, namely: *Survival of Actions Act*, RSA 2000, c S-27; *Fatal Accidents Act*, RSA 2000, c F-8; *The Survival of Actions Act*, SS 1990-91, c S-66.1; *The Fatal Accidents Act*, RSS 1978, c F-11; *The Fatal Accidents Act*, CCSM c F50; *Family Law Act*, RSO 1990, c F.3; *Survival of Actions Act*, RSPEI 1988, c S-11; *Fatal Accidents Act*, RSPEI 1988, c F-5; *Survival of Actions Act*, RSNL 1990, c S-32; *Fatal Accidents Act*, RSNL 1990, c F-6; *Survival of Actions Act*, RSNB 2011, c 227; *Fatal Accidents Act*, RSNB 2012, c 104; *Survival of Actions Act*, RSNS 1989, c 453; *Fatal Injuries Act*, RSNS 1989, c 163; *Survival of Actions Act*, RSY 2002, c. 212; *Fatal Accidents Act*, RSY 2002, c 86; *Fatal Accidents Act*, RSNWT 1988, c F-3; and *Fatal Accidents Act*, RSNWT (Nu) 1988, c F-3; each as amended from time to time and with regulations in force at material times.

Breaches of the Business Practices and Consumer Protection Act

56. The Defendants have breached the *BPCPA*.

57. The Plaintiff and Consumer Subclass Members in British Columbia purchased and/or used the Recalled Cantaloupe Products, Unknown Cantaloupe Products and Recalled Produce for primarily personal, family and/or household purposes and are “consumers” within section 1 of the *BPCPA*.

58. The Defendants are each a “supplier” within the meaning of section 1 of the *BPCPA*.

59. The sale and/or supply of each of the Recalled Cantaloupe Products, Unknown Cantaloupe Products and Recalled Produce in British Columbia is a “consumer transaction” within the meaning of section 1 of the *BPCPA*.

60. By the conduct set out herein, the Defendants breached sections 4-5 of the *BPCPA*. The Defendants’ actions constitute deceptive acts or practices.

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

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

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

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

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

65. The Defendants’ conduct breached sections 4-5 of the *BPCPA* irrespective of whether it was contrary to any of the factors enumerated under subsection 4(3)

because, pursuant to subsection 4(1)(a), the Defendants' conduct had the capability, tendency or effect of deceiving or misleading the Plaintiff and Consumer Subclass Members in British Columbia.

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

67. The Consumer Subclass Members in British Columbia who purchased Recalled Cantaloupe Products have an interest in, and were the source of, the funds paid by them and received by the Defendants, directly or indirectly, for these products due to the Defendants' breaches of the *BPCPA*.

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

69. The Plaintiff and Consumer Subclass Members in British Columbia are entitled to an injunction under subsection 172(1)(b) of the *BPCPA* to restrain further breaches of the *BPCPA* by requiring the Defendants to represent the risk posed by *Salmonella* in their marketing and sale of their cantaloupe products going forward.

70. As a result of the Defendants' breaches of sections 4-5 of the *BPCPA*, the Plaintiff and Consumer Subclass Members in British Columbia have suffered loss and/or damage and are entitled to damages pursuant to section 171 of the *BPCPA* including but not limited to the cost of purchasing a worthless product.

71. Further to damages under section 171, the Plaintiff and Consumer Subclass Members in British Columbia who purchased Recalled Cantaloupe Products are entitled to restoration of some, or all, of the amounts paid by them and received by the

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

72. The Consumer Subclass Members in British Columbia who are also members of the Personal Injury Subclass are further entitled to damages under section 171 of the *BPCPA* for, *inter alia*:

- a) personal injury;
- b) loss of past and future income earning capacity;
- c) loss of past and future housekeeping capacity;
- d) cost of future care;
- e) out of pocket expenses;
- f) damages “in trust” for past and future service provided by family members; and/or
- g) damages pursuant to section 2 of the *Family Compensation Act*.

73. The Consumer Subclass Members resident outside of British Columbia plead and rely on the equivalent provisions of the consumer protection legislation in their respective provinces and territories, namely: *Alberta CPA*; *The Consumer Protection and Business Practices Act*, SS 2013, c C-30.2; *The Consumer Protection Act*, CCSM c C200; *Ontario CPA*; *PEI BPA*; *Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1; *Consumer Product Warranty and Liability Act*, SNB 1978, c C-18.1; *Consumer Protection Act*, RSNS 1989, c 92; *Consumers Protection Act*, RSY 2002, c 40; *Consumer Protection Act*, RSNWT 1988, c C-17; and *Consumer Protection Act*, RSNWT (Nu) 1988, c C-17; each as amended from time to time and with regulations in force at material times, as set out in Schedule “B” to this Notice of Civil Claim.

Unjust Enrichment

74. The Defendants have breached the *Food and Drugs Act*.

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

76. The Defendants are each a “person” within the meaning of section 2 of the *Criminal Code* and therefore a “person” within the meaning of section 2 of the *Food and Drugs Act*.

77. Section 4(1)(e) of the *Food and Drugs Act* prohibits a person from selling an article of food that was manufactured, prepared, preserved, packaged or stored under unsanitary conditions. Section 7 of the *Food and Drugs Act* prohibits a person from manufacturing, preparing, preserving, packaging or storing for sale any food under unsanitary conditions.

78. By manufacturing, growing, harvesting, storing and/or packaging the Recalled Cantaloupes in an unsanitary environment that caused these cantaloupes to be contaminated with *Salmonella*, Agropecuaria Malichita breached sections 4(1)(e) and/or 7 of the *Food and Drugs Act*. By manufacturing, storing and/or packaging the Recalled Cantaloupes in an unsanitary environment that caused these cantaloupes to be contaminated with *Salmonella*, Trufresh and/or Pacific breached sections 4(1)(e) and/or 7 of the *Food and Drugs Act*.

79. Subsection 5(1) prohibits a person from labelling, packaging, treating, processing, selling or advertising any food in a manner that is false, misleading or deceptive or is likely to create an erroneous impression regarding its character, value, quantity, composition, merit or safety.

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

81. The Defendants’ labelling, packaging, treating, processing, selling and/or advertising of the Recalled Cantaloupes, and accordingly the Recalled Cantaloupe Products, was false, misleading or deceptive, or was likely to create an erroneous

impression regarding its character, value, quantity, composition, merit or safety because:

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

82. Due to the Defendants' breaches of sections 4(1)(e), 5(1) and/or 7 of the *Food and Drugs Act*, the Recalled Cantaloupe Products should never have been offered for sale in Canada. Any contracts for the supply and/or sale of the Recalled Cantaloupe Products, including those between:

- a) the Defendants and Economic Subclass Members who purchased Recalled Cantaloupe Products;
- b) the Defendants;
- c) the Defendants and intermediaries;
- d) intermediaries; and/or
- e) intermediaries and the Plaintiff and Economic Subclass Members who purchased Recalled Cantaloupe Products,

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

83. As set out above, the Defendants have been enriched by amounts received from the Plaintiff and Economic Subclass Members who purchased Recalled Cantaloupe Products, directly or indirectly, through the sale of these products. The Plaintiff and Economic Subclass Members who purchased Recalled Cantaloupe Products suffered a corresponding deprivation of these same amounts.

84. As a result of their actions, the Defendants have been unjustly enriched. The Plaintiff and Economic Subclass Members who purchased Recalled Cantaloupe Products are entitled to restitution of the benefits received from them by the Defendants, directly or indirectly, on account of the sale of these products in Canada.

85. In the alternative, justice and good conscience require that the Defendants disgorge to the Plaintiff and Economic Subclass Members who purchased Recalled Cantaloupe Products an amount attributable to the benefits received by them on account of the sale of these products in Canada.

Health Care Costs

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

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

88. Personal Injury Subclass Members have a claim for the recovery of health care costs, past and future, incurred on their behalf by the British Columbia Ministry of Health and by other provincial and territorial governments. The Plaintiff pleads the following provincial and territorial statutes, as amended, in support of a claim for recovery of health care costs incurred by provincial and territorial governments: *HCCRA*; *Medicare Protection Act*; *Pharmaceutical Services Act*, SBC 2012, c 22; *Hospital Act*, RSA 2000, c H-12; *Crown's Right of Recovery Act*, SA 2009, c C-35; *The Health Administration Act*, RSS 1978, c H-0.0001; *Health Services Insurance Act*, CSSM s H35; *Health Insurance Act*, RSO 1990, c H.6; *Home Care and Community Services Act*, 1994, SO 1994, c 26; *Health Services Act*, RSNB 1973, c H-3; *Medical Services Payment Act*, RSNB 1973, c M-7; *Hospital Services Act*, RSNB 1973, c H-9; *Family Services Act*, SNB 1980, c F-2.2; *Hospital and Diagnostic Services Insurance Act*, RSPEI 1988, c H-8; *Health Services Payment Act*, RSPEI 1988, c H-2; *Health Services and Insurance Act*, RSNS 1989, c 197; *Hospital Insurance Agreement Act*, RSN 1990, c H-7; *Medical Care and Hospital Insurance Act*, SNL 2016, c M-5.01; *Hospital Insurance and Health and Social Services*

Administration Act, RSNWT 1988, c T-3; *Hospital Insurance and Health and Social Services Administration Act*, RSNWT (Nu) 1988, c T-3; and the *Medical Care Act*, RSNWT (Nu) 1988, c M-8.

Punitive Damages

89. The Defendants' conduct in causing food contaminated with *Salmonella* to be sold to Canadians, in particular when the contamination of the Recalled Cantaloupe Products and Recalled Produce has led to dozens of hospitalizations and several deaths and in Canada, was high-handed, outrageous and reckless. Given this reprehensible conduct, the Defendants are liable to pay punitive damages to the Plaintiff and Class Members as a result.

Joint and Several Liability

90. The Defendants are jointly and severally liable for the actions and damages allocable to either of them with respect to the sale and/or use of the Recalled Cantaloupe Products, Unknown Cantaloupe Products and Recalled Produce in Canada.

Service on the Defendants

91. The Plaintiff and Class Members have the right to serve this Notice of Civil Claim on the Defendants pursuant to section 10 of the *CJPTA* because there is a real and substantial connection between British Columbia and the facts alleged in this proceeding pursuant to subsections 10(f), (g), (h) and/or (i) of the *CJPTA* as this action:

- a) concerns restitutionary obligations that, to a substantial extent, arose in British Columbia;
- b) concerns a tort committed in British Columbia;
- c) concerns a business carried on in British Columbia; and/or
- d) is a claim for an injunction ordering a party to do or refrain from doing something in relation to movable property in British Columbia.

Plaintiff's address for service:

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

Fax number for service: 604.682.5197

Email address for service: service@slatervecchio.com

Place of trial: Vancouver, BC

The address of the registry is:

800 Smithe Street
Vancouver, BC
V6Z 2E1

Date: January 5, 2024



Signature of lawyer for plaintiff

Anthony A Vecchio KC
Sam Jaworski
Justin Giovannetti
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 AGROPECUARIA MALICHITA, S.A. DE C.V., SOFIA PRODUCE, LLC DBA TRUFRESH and PACIFIC TRELIS FRUIT, LLC outside British Columbia on the ground that the *Court Jurisdiction and Proceedings Transfer Act*, SBC 2003, c 28 (the "**CJPTA**") applies because there is a real and substantial connection between British Columbia and the facts on which this proceeding is based. The Plaintiff and Class Members rely on the following grounds, in that this action:

- a) concerns restitutionary obligations that, to a substantial extent, arose in British Columbia (section 10(f) of the *CJPTA*);
- b) concerns a tort committed in British Columbia (section 10(g) of the *CJPTA*);
- c) concerns a business carried on in British Columbia (section 10(h) of the *CJPTA*); and/or
- d) is a claim for an injunction ordering a party to do or refrain from doing something in relation to movable property in British Columbia (section 10(i) of the *CJPTA*).

Appendix

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

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

This is a proposed class proceeding regarding salmonella poisoning from cantaloupes.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

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

A personal injury arising out of:

a motor vehicle accident

medical malpractice

another cause

A dispute concerning:

contaminated sites

construction defects

real property (real estate)

personal property

the provision of goods or services or other general commercial matters

investment losses

the lending of money

an employment relationship

a will or other issues concerning the probate of an estate

a matter not listed here

Part 3: THIS CLAIM INVOLVES:

[Check all boxes below that apply to this case]

a class action

maritime law

aboriginal law

constitutional law

conflict of laws

none of the above

do not know

Part 4:

Court Jurisdiction and Proceedings Transfer Act, SBC 2003, c 28

Limitation Act, SBC 2012, c 13

Court Order Interest Act, RSBC 1996, c 79

Privacy Act, RSBC 1996, C 373

SCHEDULE "A"

Product	UPC/Code
The Recalled Cantaloupes and Recalled Cantaloupe Products	
Malichita Cantaloupes	n/a
Rudy Cantaloupes	n/a
Fruit Pure Fruit Salad	X0019731, X0019868
Groupe Tomapure Cantaloupe Plater	X0019717, X0019784, X0019851
Cantaloupe Pieces	X0019716
Save on Foods Cantaloupe	PLU 19494
Save on Foods Fruit Salad	PLU 67741
Save on Foods Fruit Tray	PLU 24376, PLU 51346, PLU 22424
Urban Fare Fruit Platter	PLU 39341, PLU 8936, PLU 8937, PLU 76971
Urban Fare Half Cantaloupe w/ Fruit	PLU 64868
Urban Fare Fruit Salad	PLU 74687
Urban Fare Cantaloupe Chunks	PLU 16136
Urban Fare Blueberry Melon Blast Smoothie	PLU 48432
Central Foods Co. JIT DNATA Salad- Fruit Dry Pack Combo	6 28962 63187 1
Central Foods Co. JIT Cantaloupe - Halves 6LB	6 28962 67015 3
Central Foods Co. Cantaloupe Chunk 3/4" 3X6LB	6 28962 67014 6
Fresh Start Foods Salad-Fruit Deluxe Pres. Free	6 20868 10881 8
Fresh Start Foods Salad-Fruit Deluxe 24 LBS (Fruit Salad Deluxe)	6 20868 10786 3
Fresh Start Foods Salad-Fruit Deluxe 8 LBS	6 20868 10785 6
Fresh Start Foods Salad-Fruit Deluxe .5"x5" No Grapes	6 20868 10788 7
Fresh Start Foods Fruit Salad Dice 1/2 IN 1x24LB	6 20868 17475 2
Fresh Start Foods Salad-Fruit Del. Med Cut 3/4" P. Free	6 20868 11513 7
Fresh Start Foods Salad-Fruit Del Diced Small	6 20868 12111 4

Fresh Start Foods CIVEO Fruit Salad Deluxe	6 20868 19883 3
Kitchen Essentials Salad-Fruit Deluxe K.E Pres Free	6 20868 20473 2
Kitchen Essentials Salad-Fruit Deluxe Kitchen Essentials	6 20868 10875 7
Fresh Start Foods Fruit-Asst Peeled Halved	6 20868 12458 7
Fresh Start Foods Cantaloupe-Spears	6 20868 11511 3
Fresh Start Foods Cantaloupe-Parallel Cut 3/8"	6 20868 12445 7
Fresh Start Foods Cantaloupe Peeled / Halved	6 20868 20577 7
Fresh Start Foods Fruit-Asst-Parallel Cut 3/8"	6 20868 12457 0
Fresh Start Foods Salad-Fruit Deluxe Parfait Cup	6 20868 13347 3
Fresh Start Foods Fruit, Assorted 3/4" 3/6LB	6 20868 15213 2
Fresh Start Foods Tray-Fruit w/Grapes	6 20868 11506 6
Fresh Start Foods Cantaloupe-Halves	6 20868 12444 0
Fresh Start Foods Cantaloupe Dice 1/2 IN 1x24 LB	6 20868 12101 5
Fresh Start Foods Cantaloupe Chunk 3/4"	6 20868 15997 8
Fresh Start Foods Cantaloupe-Chunks Diced 1/2"	6 20868 10776 4
Fresh Start Foods Cantaloupe-Chunks 1"-1.5"	6 20868 12100 8
Fresh Start Foods Cantaloupe Chunks 6 LBS	6 20868 45155 6
Fresh Start Foods Cantaloupe - Balls 6 LBS	6 20868 12825 0
Fresh Start Foods Salad-Fruit Med Cut 6 LBS	6 20868 45181 5
Fresh Start Foods JIT Cantaloupe Chunk (Dry Pack) - 6LB	6 28962 67011 5
Fresh Start Foods Cantaloupe Spears 155CT	6 20868 15347 4
Fresh Start Foods Salad Melon Assorted	6 20868 15344 3
Ready-Set-Serve by Markon Salad-Fruit Del. 1/8 LB MKN	6 11628 91404 6
Salad-Fruit Del. 1/32 LB MKN	6 11628 91397 1
Salad-Fruit 1/14 LBS MKN	6 11628 98020 1
Fresh Start Foods Cantaloupe 3 Count	6 20868 12079 7
Yen Bros Fruit Salad	n/a

7-Eleven Mixed Melon Chunks	4 21401 02179 9
Frankly Fresh Salads Fresh Cantaloupe Chunks	7 76525 90012 4, 7 76525 90016 2
Frankly Fresh Salads Fresh Fruit Salad	7 76525 90010 0, 7 76525 90205 0, 7 76525 90014 8
Frankly Fresh Salads Deluxe Fresh Fruit Platter	7 76525 90955 4
Fresh St. Market Fresh Cantaloupe Chunks	0 76525 90916 6, 0 76525 90924 1
Fresh St. Market Deluxe Fresh Fruit Salad	0 76525 90920 3, 0 76525 90927 2
Fresh St. Market Exotic Fruit Salad	0 76525 90967 8
Fresh St. Market Exotic Fruit Tray	0 76525 90930 2
Loblaws Cantaloupe	Contains 252270
Loblaws Cantaloupe Cubed Small	Contains 237100
Loblaws Cantaloupe Halves	Contains 255520
Loblaws Cantaloupe Slices	Contains 237108
Fortinos Cantaloupe Slices	Contains 230097
Loblaws Cantaloupe Spears	Contains 242292
Loblaws Fruit Salad Large	Contains 250569
Loblaws Fruit Salad Small	Contains 250565
Loblaws Fruit Snack Tray	Contains 257853
Loblaws Fruit Spears	Contains 242203
Loblaws Fruit Tray for Two	Contains 257790
Fortinos Large Fresh Fruit Salad	Contains 252265
Loblaws Large Fruit Platter with Dip	Contains 213800
Fortinos Large Fruit Tray	Contains 257960
Loblaws Mixed Melon	Contains 242269
Loblaws Mixed Leon Cubed Large	Contains 250568
Loblaws Party Size Fruit Tray	Contains 255775
Loblaws Platter Fruit and Grapes Large	Contains 242210
Loblaws Platter Fruit and Grapes Small	Contains 242211
Fortinos Sliced Fruit Tray	Contains 258161
Fortinos Small Cantaloupe	Contains 258138
Loblaws Small Fresh Fruit Salad	Contains 252231
Loblaws Small Fruit Platter with Dip	Contains 252208

Fortinos Small Fruit Tray	Contains 257972
Fortinos Small Mixed Melon	Contains 258137
Loblaws Snack Cup Fresh Fruit	Contains 257044
Loblaws Tri-pack Fruit Tray	Contains 259870
Loblaws Tropical Tri Pack Fruit Tray	Contains 250011
The Recalled Produce	
Urban Fare Mixed Melon Chunks	PLU 79542
Central Foods Co. JIT Honeydew Halves 6LB	6 28962 67017 7
Central Foods Co. JIT Pineapple - Halved 6LB	6 28962 67019 1
Central Foods Co. Honeydew Chunk 3/4" 3X6LB	6 28962 67016 0
Central Foods Co. Pineapple Chunk 3/4" 3X6LB	6 28962 67018 4
Central Foods Co. JIT Watermelon Chunks 6LB	6 28962 67003 0
Fresh Start Foods Pineapple-Spears 8 LBS	6 20868 12108 4
GFS Honeydew Dice 1/2 IN	6 20868 12106 0
GFS Honeydew-Diced 1/2"	6 20868 10781 8
Pineapple-Chunks 3/8	6 28962 63505 6
Salad-Fruit Del No Pineapple 1/32 LB	6 28962 63508 7
Fresh Start Foods JIT Honeydew Chunks 6 LBS	6 20868 45183 9
Fresh Start Foods Honeydew-Balls 6 LBS	6 28962 63075 1
Fresh Start Foods Watermelon-Halved	6 20868 12110 7
Fresh Start Foods Watermelon-Chunks 6 LBS	6 20868 12109 1
Fresh Start Foods Pineapple-Parallel Slice 3/8"	6 20868 12449 5
Fresh Start Foods JIT Salsa Pineapple Picant FRSH	6 20868 21806 7
Fresh Start Foods Honeydew-Parallel Slice 3/8"	6 20868 12447 1
Fresh Start Foods Honeydew Peeled/Halved	6 20868 20576 0
Fresh Start Foods Honeydew-Halves	6 20868 12446 4
Fresh Start Foods Honeydew Chunks	6 20868 63082 8
Fresh Start Foods Pineapple - Peeled Whole 7 CT	6 20868 13159 5
Fresh Start Foods Pineapple-Halved	6 20868 12448 8
Fresh Start Foods Pineapple Whole Peeled 6x585G	6 28962 65011 7

Fresh Start Foods Honeydew Chunk 3/4"	6 20868 15998 5
Fresh Start Foods Pineapple-Chunk 8 LBS	6 20868 10765 8
Fresh Start Foods Richmond BC) JIT Pineapple Chunks (Dry Pack) 6 LB	6 28962 67012 2
Fresh Start Foods Honeydew Spears 155CT	6 20868 15351 1
Fresh Start Foods Pineapple Parallel 30G	6 20868 15345 0
Fresh Start Foods JIT Pineapple Premium Chunk 6LB	6 20868 17142 3
Fresh Start Foods Pineapple Spears 155CT	6 20868 15349 8
Fresh Start Foods Watermelon Spears 155CT	6 20868 15353 5
Fresh Start Foods Watermelon Triangle 155CT	6 20868 15355 9
Fresh Start Foods Watermelon Wedge Skin On	6 20868 17164 2
Fresh Start Foods Pineapple - Peeled Cored 21lbs	6 20868 20581 4
7-Eleven Mixed Melon Chunks	4 21401 02179 9

SCHEDULE "B"

Extra-Provincial Consumer Protection Legislation

Alberta

1. The Defendants have breached the *Consumer Protection Act*, RSA 2000, c C-26.3 (the "***Alberta CPA***"). Consumer Subclass Members in Alberta are "consumers" within the meaning of section 1 of the *Alberta CPA*. The Recalled Cantaloupe Products, Unknown Cantaloupe Products and Recalled Produce are "goods" within the meaning of section 1. The Defendants are each a "supplier" within the meaning of section 1. The supply of each of the Recalled Cantaloupe Products, Unknown Cantaloupe Products and Recalled Produce is a "consumer transaction" within the meaning of section 1.
2. By reason of making the Misrepresentations and/or failing to adequately implement quality-control measures to detect and prevent contamination of the Recalled Cantaloupes, the Defendants have breached sections 5-6 of the *Alberta CPA*. The Defendants' actions are in violation of subsections 6(2)(c), 6(4)(a), 6(4)(c) and/or 6(4)(e) and constitute "unfair practices".
3. As a result of the Defendants' breaches of the *Alberta CPA*, Consumer Subclass Members in Alberta are entitled to damages including but not limited to the amounts paid by them for the Recalled Cantaloupe Products, Unknown Cantaloupe Products and Recalled Produce pursuant to subsections 7(1), 13(2)(b) and/or 142.1(2)(a). In the alternative, Consumer Subclass Members in Alberta who purchased Recalled Cantaloupe Products are entitled to restitution of some, or all, of the amounts paid by them and received by the Defendants, directly or indirectly, for these products pursuant to subsections 13(2)(d)(ii) and/or 142.1(2)(c). Further, the Defendants are liable to pay punitive damages to Consumer Subclass Members in Alberta pursuant to subsections 7.2(1), 13(2)(c) and/or 142.1(2)(b).
4. The Defendants cannot rely on any arbitration clause, if any such clause exists, due to section 16 of the *Alberta CPA* which invalidates any such clause between a

“supplier” and a “consumer” in respect of a “consumer transaction” rendering such a clause void and unenforceable.

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

Saskatchewan

6. The Defendants have breached *The Consumer Protection and Business Practices Act*, SS 2013, c C-30.2 (the “**Saskatchewan CPBPA**”). Consumer Subclass Members in Saskatchewan are “consumers” within the meaning of section 2 of the *Saskatchewan CPBPA*. The Recalled Cantaloupe Products, Unknown Cantaloupe Products and Recalled Produce are “goods” within the meaning of section 2. The Defendants are each a “supplier” within the meaning of section 2. The supply of the Recalled Cantaloupe Products, Unknown Cantaloupe Products and Recalled Produce are “transactions involving goods and services” within the meaning of sections 2 and 5.

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

8. As a result of the Defendants’ breaches of the *Saskatchewan CPBPA*, Consumer Subclass Members in Saskatchewan are entitled to damages including but not limited to the amounts paid by them for the Recalled Cantaloupe Products, Unknown Cantaloupe Products and Recalled Produce pursuant to subsection 93(1)(b). In the alternative, Consumer Subclass Members in Saskatchewan who purchased Recalled Cantaloupe Products are entitled to restitution of some, or all, of the amounts paid by them and received by the Defendants, directly or indirectly, for these products pursuant to subsection 93(1)(a). Further, the Defendants are liable to pay punitive

damages to the Consumer Subclass Members in Saskatchewan pursuant to subsection 93(1)(b).

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

Manitoba

10. The Defendants have breached *The Business Practices Act*, CCSM, c B120 (the "***Manitoba BPA***"). Consumer Subclass Members in Manitoba are each a "consumer" within the meaning of section 1 of the *Manitoba BPA*. The Recalled Cantaloupe Products, Unknown Cantaloupe Products and Recalled Produce are "goods" within the meaning of section 1. The Defendants are each a "supplier" within the meaning of section 1. The supply of each of the Recalled Cantaloupe Products, Unknown Cantaloupe Products and Recalled Produce is a "consumer transaction" within the meaning of section 1.

11. By reason of making the Misrepresentations and/or failing to adequately implement quality-control measures to detect and prevent contamination of the Recalled Cantaloupes, the Defendants have breached section 2 of the *Manitoba BPA*. The Defendants' actions are in violation of subsections 2(1)(a)-(b), 2(3)(a), 2(3)(c) and/or 2(3)(p) and constitute "unfair business practices".

12. As a result of the Defendants' breaches of the *Manitoba BPA*, Consumer Subclass Members in Manitoba are entitled to damages including but not limited to the amounts paid by them for the Recalled Cantaloupe Products, Unknown Cantaloupe Products and Recalled Produce pursuant to subsection 23(2)(a). In the alternative, Consumer Subclass Members in Manitoba who purchased Recalled Cantaloupe Products are entitled to repayment of the amount by which the payments made by them and received by the Defendants, directly or indirectly, for these products exceed the value of these products due to their potential contamination with *Salmonella* pursuant to subsection 23(2)(d). Further, the Defendants are liable to pay punitive

damages to the Consumer Subclass Members in Manitoba pursuant to subsection 23(4).

Ontario

13. The Defendants have breached the *Consumer Protection Act*, 2002, SO 2002, c 30, Sched A (the "**Ontario CPA**"). Consumer Subclass Members in Ontario are "consumers" within the meaning of section 1 of the *Ontario CPA*. The Recalled Cantaloupe Products, Unknown Cantaloupe Products and Recalled Produce are "goods" within the meaning of section 1. The Defendants are each a "supplier" within the meaning of section 1. The supply of each of the Recalled Cantaloupe Products, Unknown Cantaloupe Products and Recalled Produce constitutes a "consumer transaction" within the meaning of section 1. The Defendants made "representations" within the meaning of section 1.

14. By reason of making the Misrepresentations and/or failing to adequately implement quality-control measures to detect and prevent contamination of the Recalled Cantaloupes, the Defendants have breached sections 14 and 17 of the *Ontario CPA*. The Defendants' actions are in violation of subsections 14(1), 14(2)(1), 14(2)(3) and/or 14(2)(14) and constitute "unfair business practices" in breach of section 17.

15. As a result of the Defendants' breaches of the *Ontario CPA*, Consumer Subclass Members in Ontario are entitled to damages including but not limited to the amounts paid by them for the Recalled Cantaloupe Products, Unknown Cantaloupe Products and Recalled Produce pursuant to subsection 18(2). Further or in the alternative, the Consumer Subclass Members in Ontario who purchased Recalled Cantaloupe Products are entitled to repayment of the amount by which the payments made by them for these products exceed the value of these products due to their potential contamination with *Salmonella* pursuant to subsection 18(2). In the alternative, the Consumer Subclass Members in Ontario who purchased Recalled Cantaloupe Products are entitled to restitution of some, or all, of the amounts paid by them and received by the Defendants, directly or indirectly, for these products pursuant

to subsection 18(1). Further, the Defendants are liable to pay punitive damages to the Consumer Subclass Members in Ontario pursuant to subsection 18(11).

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

17. The Plaintiff further pleads that the notice requirement pursuant to subsection 18(3) of the *Ontario CPA* is fulfilled by the delivery of written notice to the Defendants as set out in the Notice of Civil Claim, or in the alternative by the filing of this Notice of Civil Claim. In the further alternative, the Plaintiff pleads that the Court should disregard the requirement for notice pursuant to subsection 18(15) of the *Ontario CPA*.

Prince Edward Island

18. The Defendants have breached the *Business Practices Act*, RSPEI 1988, c B-7 (the "***PEI BPA***"). Consumer Subclass Members in Prince Edward Island are "consumers" within the meaning of section 1 of the *PEI BPA*. The Recalled Cantaloupe Products, Unknown Cantaloupe Products and Recalled Produce are "goods" within the meaning of section 1. The Defendants made "consumer representations" within the meaning of section 1.

19. By reason of making the Misrepresentations and/or failing to adequately implement quality-control measures to detect and prevent contamination of the Recalled Cantaloupes, the Defendants have breached sections 2 and 3 of the *PEI BPA*. The Defendants' actions are in violation of subsections 2(a)(i), 2(a)(iii) and/or 2(a)(xiii) and constitute "unfair practices" in breach of section 3.

20. As a result of the Defendants' breaches of the *PEI BPA*, Consumer Subclass Members in Prince Edward Island are entitled to damages including but not limited to the amounts paid by them for the Recalled Cantaloupe Products, Unknown Cantaloupe Products and Recalled Produce pursuant to subsection 4(1). Further or in the

alternative, Consumer Subclass Members in Prince Edward Island who purchased Recalled Cantaloupe Products are entitled to repayment of the amount by which the payments made by them for these products exceed the value of these products due to their potential contamination with *Salmonella* pursuant to subsection 4(1). In the alternative, Consumer Subclass Members in Prince Edward Island who purchased Recalled Cantaloupe Products are entitled to restitution of some, or all, of the amounts paid by them and received by the Defendants, directly or indirectly, for these products pursuant to subsection 4(1). Further, the Defendants are liable to pay punitive damages to the Consumer Subclass Members in Prince Edward Island pursuant to subsection 4(2).

21. The Plaintiff further pleads that the notice requirement pursuant to subsection 4(5) of the *PEI BPA* is fulfilled by the delivery of written notice to the Defendants as set out in the Notice of Civil Claim, or in the alternative by the filing of this Notice of Civil Claim.

Newfoundland and Labrador

22. The Defendants have breached the *Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1 (the "***Newfoundland CPBPA***"). Consumer Subclass Members in Newfoundland are "consumers" within the meaning of section 2 of the *Newfoundland CPBPA*. The Recalled Cantaloupe Products, Unknown Cantaloupe Products and Recalled Produce are "goods" within the meaning of section 2. The Defendants are each a "supplier" within the meaning of section 2. The supply of the Recalled Cantaloupe Products constitutes a "consumer transaction" within the meaning of section 2.

23. By reason of making the Misrepresentations and/or failing to adequately implement quality-control measures to detect and prevent contamination of the Recalled Cantaloupes, the Defendants have breached sections 7 and 9 of the *Newfoundland CPBPA*. The Defendants' actions are in violation of subsections 7(1)(a), 7(1)(c) and/or 7(1)(w) and constitute "unfair business practices" under section 9.

24. As a result of the Defendants' breaches of the *Newfoundland CPBPA*, Consumer Subclass Members in Newfoundland are entitled to damages including but not limited to the amounts paid by them for the Recalled Cantaloupe Products, Unknown Cantaloupe Products and Recalled Produce pursuant to subsection 10(2)(b). Further, the Consumer Subclass Members in Newfoundland who purchased Recalled Cantaloupe Products are entitled to repayment of the amount by which the payments made by them and received by the Defendants, directly or indirectly, for these products exceed the value of these products pursuant to subsection 10(2)(e). Further, the Defendants are liable to pay punitive damages to the Consumer Subclass Members in Newfoundland pursuant to subsection 10(2)(b).

25. The Defendants cannot rely on any arbitration clause or class action waiver, if any such clause or waiver exists, due to section 3 of the *Newfoundland CPBPA*, which invalidates any such clause or waiver rendering it void.

New Brunswick

26. The Defendants have breached the *Consumer Product Warranty and Liability Act*, SNB 1978, c C-18.1 (the "***New Brunswick CPWLA***"). The Defendants are each a "seller" within the meaning of section 1 of the *New Brunswick CPWLA*. Each of the Recalled Cantaloupe Products, Unknown Cantaloupe Products and Recalled Produce is a "consumer product" within the meaning of section 1. The contracts between the Defendants, intermediaries and Consumer Subclass Members in New Brunswick for the sale and/or supply of these products are each a "contract for the sale or supply of a consumer product" within the meaning of section 1.

27. By reason of making the Misrepresentations and/or failing to adequately implement quality-control measures to detect and prevent contamination of the Recalled Cantaloupes, the Defendants have breached sections 10 and 11 of the *New Brunswick CPWLA*. The Defendants breached the implied warranty as to quality pursuant to subsections 10(1)(a)-(b), the implied warranty as to fitness under section 11 and the implied warranty as to durability under section 12.

28. Section 23 of the *New Brunswick CPWLA* prescribes that any person who is not a party to a contract with the seller but who has suffered a consumer loss because of a breach of one or more warranties by the seller may recover damages against the seller if the loss was reasonably foreseeable at the time of the contract as liable to result from the breach. Consumer Subclass Members in New Brunswick can therefore recover damages, including but not limited to the amounts paid by them for the Recalled Cantaloupe Products, Unknown Cantaloupe Products and Recalled Produce, for the loss incurred as a result of the Defendants' breach or breaches of warranties particularized above pursuant to section 15.

Nova Scotia

29. The Defendants have breached the *Consumer Protection Act*, RSNS 1989, c 92 (the "***Nova Scotia CPA***"). The Recalled Cantaloupe Products, Unknown Cantaloupe Products and Recalled Produce are "goods" within the meaning of section 2 of the *Nova Scotia CPA*. The Defendants are each a "seller" within the meaning of section 2. The contract for sale of each of the Recalled Cantaloupe Products, Unknown Cantaloupe Products and Recalled Produce is a "customer sale" within the meaning of section 26. The Consumer Subclass Members in Nova Scotia are "purchasers" within the meaning of section 26.

30. By reason of making the Misrepresentations and/or failing to adequately implement quality-control measures to detect and prevent contamination of the Recalled Cantaloupes, the Defendants have breached subsections 26 and 28A(1). The Defendants breached the implied conditions that the Recalled Cantaloupe Products would be reasonably fit for their intended purpose and/or of merchantable quality pursuant to subsections 26(3)(e) and 26(3)(f), respectively. The Misrepresentations constitute express warranties pursuant to subsection 28A(1)(b) which, pursuant to subsection 28A(3), form part of the contract for sale and each subsequent purchaser has the same rights under the express warranty as if they were the original purchaser. As a result of the contamination of some, or all, of the Recalled Cantaloupe Products

with *Salmonella*, the Defendants breached the express warranty as to the safety of the Recalled Cantaloupe Products.

31. Consumer Subclass Members in Nova Scotia are therefore entitled to recover damages including but not limited to the amounts paid by them for the Recalled Cantaloupe Products, Unknown Cantaloupe Products and Recalled Produce.

Yukon

32. The Defendants have breached the *Consumers Protection Act*, RSY 2002, c 40 (the "***Yukon CPA***"). Consumer Subclass Members are each a "buyer" within the meaning of section 1 of the *Yukon CPA*. The Recalled Cantaloupe Products, Unknown Cantaloupe Products and Recalled Produce are "goods" within the meaning of section 1. The Defendants are each a "seller" within the meaning of section 1. The purchase of each of the Recalled Cantaloupe Products, Unknown Cantaloupe Products and Recalled Produce by the Consumer Subclass Members in Yukon constitutes a "retail sale" within the meaning of section 1.

33. By reason of making the Misrepresentations and/or failing to adequately implement quality-control measures to detect and prevent contamination of the Recalled Cantaloupes, the Defendants have breached the implied condition that the Recalled Cantaloupe Products would be of merchantable quality and/or fit for their intended purpose pursuant to subsections 58(1)(e) and/or 58(1)(h), respectively, of the *Yukon CPA*.

34. Consumer Subclass Members in Yukon are therefore entitled to recover damages including but not limited to the amounts paid by them for the Recalled Cantaloupe Products, Unknown Cantaloupe Products and Recalled Produce.

Northwest Territories

35. The Defendants have breached the *Consumer Protection Act*, RSNWT 1988, c C-17 (the "***Northwest Territories CPA***"). Consumer Subclass Members in the Northwest Territories are each a "buyer" within the meaning of section 1 of the

Northwest Territories CPA. The Recalled Cantaloupe Products, Unknown Cantaloupe Products and Recalled Produce are “goods” within the meaning of section 1. The Defendants are each a “seller” within the meaning of section 1. The purchase of each of the Recalled Cantaloupe Products, Unknown Cantaloupe Products and Recalled Produce by the Consumer Subclass Members in the Northwest Territories constitutes a “retail sale” within the meaning of section 1.

36. By reason of making the Misrepresentations and/or failing to adequately implement quality-control measures to detect and prevent contamination of the Recalled Cantaloupes, the Defendants have breached the implied condition that the Recalled Cantaloupe Products would be of merchantable quality and/or fit for their intended purpose pursuant to subsections 70(1)(e) and/or 70(1)(h), respectively, of the *Northwest Territories CPA*.

37. Consumer Subclass Members in the Northwest Territories are therefore entitled to recover damages including but not limited to the amounts paid by them for the Recalled Cantaloupe Products, Unknown Cantaloupe Products and Recalled Produce.

Nunavut

38. The Defendants have breached the *Consumer Protection Act*, RSNWT (Nu) 1988, c C-17 (the “***Nunavut CPA***”). Consumer Subclass Members in Nunavut are each a “buyer” within the meaning of section 1 of the *Nunavut CPA*. The Recalled Cantaloupe Products, Unknown Cantaloupe Products and Recalled Produce are “goods” within the meaning of section 1. The Defendants are each a “seller” within the meaning of section 1. The purchase of each of the Recalled Cantaloupe Products, Unknown Cantaloupe Products and Recalled Produce by the Consumer Subclass Members in Nunavut constitutes a “retail sale” within the meaning of section 1.

39. By reason of making the Misrepresentations and/or failing to adequately implement quality-control measures to detect and prevent contamination of the Recalled Cantaloupes, the Defendants have breached the implied condition that the Recalled Cantaloupe Products would be of merchantable quality and/or fit for their intended

purpose pursuant to subsections 70(1)(e) and/or 70(1)(h), respectively, of the *Nunavut CPA*.

40. Consumer Subclass Members in Nunavut are therefore entitled to recover damages including but not limited to the amounts paid by them for the Recalled Cantaloupe Products, Unknown Cantaloupe Products and Recalled Produce.