

Form 4.02A

2017

Hfx. No. 4 6 1 3 0 1

SUPREME COURT OF NOVA SCOTIA

BETWEEN:

NEAL PARTINGTON

Court Administration

MAR 13 2017

Halifax, N.S.

PLAINTIFF

- AND -

CANOPY GROWTH CORPORATION,
METTRUM HEALTH CORP and METTRUM LTD.

DEFENDANTS

Proceeding under the *Class Proceedings Act*, S.N.S. 2007, c. 28

Notice of Action

TO: CANOPY GROWTH CORPORATION
1 Hershey Drive
Smiths Falls, ON K7A 0A8

AND TO: METTRUM HEALTH CORP
314 Bennett Road
Bowmanville, ON L1C 3K5

AND TO: METTRUM LTD.
51 Mill Street
#201
Toronto, ON M5A 3C4

Action has been started against you
The plaintiff takes action against you.

The plaintiff started the action by filing this notice with the court on the date certified by the prothonotary.

The plaintiff claims the relief described in the attached statement of claim. The claim is based on the grounds stated in the statement of claim.

Deadline for defending the action

To defend the action, you or your counsel must file a notice of defence with the court no more than the following number of days after the day this notice of action is delivered to you:

- 15 days if delivery is made in Nova Scotia
- 30 days if delivery is made elsewhere in Canada
- 45 days if delivery is made anywhere else.

Judgment against you if you do not defend

The court may grant an order for the relief claimed without further notice, unless you file the notice of defence before the deadline.

You may demand notice of steps in the action

If you do not have a defence to the claim or you do not choose to defend it you may, if you wish to have further notice, file a demand for notice.

If you file a demand for notice, the plaintiff must notify you before obtaining an order for the relief claimed and, unless the court orders otherwise, you will be entitled to notice of each other step in the action.

Rule 57 - Action for Damages Under \$100,000

Civil Procedure Rule 57 limits pretrial and trial procedures in a defended action so it will be more economical. The Rule applies if the plaintiff states the action is within the Rule. Otherwise, the Rule does not apply, except as a possible basis for costs against the plaintiff.

This action is not within Rule 57.

Filing and delivering documents

Any documents you file with the court must be filed at the office of the Prothonotary, 1815 Upper Water Street, Halifax, Nova Scotia (telephone # 424-4900).

When you file a document you must immediately deliver a copy of it to each other party entitled to notice, unless the document is part of an *ex parte* motion, the parties agree delivery is not required, or a judge orders it is not required.

Contact information

The plaintiff designates the following address:

Wagners
1869 Upper Water Street
Suite PH301, Historic Properties
Halifax, N.S. B3J 1S9

Documents delivered to this address are considered received by the plaintiff on delivery.

Further contact information is available from the prothonotary.

Proposed place of trial

The plaintiff proposes that, if you defend this action, the trial will be held in Halifax, Nova Scotia.

Signature

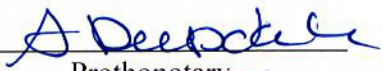
Signed March 13, 2017.



Raymond F. Wagner, Q.C.
Wagners
Counsel for the Plaintiff

Prothonotary's certificate

I certify that this notice of action, including the attached statement of claim, was filed with the court on March 13, 2017.



Prothonotary
SARAH DRYSDALE
Deputy Prothonotary

STATEMENT OF CLAIM

Proceeding under the *Class Proceedings Act*, S.N.S. 2007, c. 28

I. OVERVIEW

1. At the material times, Mettrum Health Corp was a TSX Venture Exchange listed company whose wholly owned subsidiary, Mettrum Ltd., is a federally licensed producer and vendor of medical cannabis under the *Access to Cannabis for Medical Purposes Regulations*, SOR/2016-230. It received its first license on November 1, 2013, and commenced sales of certified medical cannabis to Canadian patients in January of 2014.
2. Canopy Growth Corporation (“Canopy”) is a TSX Venture Exchange listed company offering varied brands and medical cannabis strain varieties in dried and oil extract forms. On January 31, 2017, Mettrum Health Corp became a wholly-owned subsidiary of Canopy upon Canopy’s acquisition of all of Mettrum’s issued and outstanding shares. Canopy has also assumed all liabilities of Mettrum, pursuant to terms of the share acquisition. Hereinafter the Defendants are together referred to as “Mettrum”.
3. At the material times, Mettrum advertised itself as a producer of medical cannabis and as utilizing only the highest quality nutrients and state of the art growing techniques. Mettrum warranted to patients that its finished products met or exceeded international pharmacopoeial guidelines for microbial and chemical contaminants, prior to being made available for sale.
4. In October of 2016, a Health Canada inspection at Mettrum facilities detected that cannabis plants were treated with a product containing pyrethrins, an undeclared pesticide not authorized for use on cannabis plants.
5. As a result, on or about November 1, 2016, Mettrum initiated a voluntary Type III recall for fifteen different types of its medical cannabis products, including one hundred and fifteen lots of dried marijuana and cannabis oil, sold between September 30, 2014 and October 21, 2016. Type III recalls are implemented where the use of, or exposure to, a

product is not likely to cause any adverse health consequences. Mettrum advised its customers that pyrethrin is a natural pesticide widely used on both organic and conventional crops in Canada, and is not harmful.

6. Health Canada performed further testing of Mettrum medical cannabis products, and discovered they contained myclobutanil, a fungicidal pesticide not authorized for use on cannabis or other products that might be consumed by smoking. When heated, myclobutanil converts to hydrogen cyanide. According to Health Canada, hydrogen cyanide exposure can cause, among other adverse health effects, nausea, vomiting, dizziness, irregular heartbeat, seizure, fainting, and death.
7. Under the *Access to Cannabis for Medical Purposes Regulations*, licensed producers are permitted to use on cannabis only thirteen pest control products approved under the *Pest Control Products Act*, S.C. 2002, c. 28 (the “PCPA”). Pyrethrin and myclobutanil are not approved or registered for use on medical cannabis under the PCPA.
8. On or about December 1, 2016, Mettrum notified its customers of an expanded recall of three further dried medical cannabis product lots. Mettrum provided no reason for the expanded recall and made no mention of myclobutanil.
9. On or about January 9, 2017, Mettrum notified its customers of an expanded recall of five further different types of its dried cannabis and cannabis oil products. Mettrum provided no reason for the expanded recall and made no mention of myclobutanil.
10. On or about January 28, 2017, Mettrum notified its customers of yet another recall of a further twelve different types of its dried cannabis and cannabis oil products. Again, Mettrum provided no reason for the expanded recall and made no mention of myclobutanil.
11. Approximately one hundred and eighty-five lots of products produced between January 1, 2016 and November 17, 2016 have ultimately been recalled due to the presence of myclobutanil.
12. As of the date of this Statement of Claim, Mettrum has recalled approximately three hundred lots of Mettrum medical cannabis products, set out in the attached Schedule “A”

(collectively, the “Affected Product”). As the number of affected lots may be determined, Schedule “A” is subject to further amendment.

13. Other than Mettrum’s assurance that the presence of pyrethrin did not pose a health risk in the initial recall notice of November 1, 2016, Mettrum has provided no information, explanation or warnings to its customers in the four notices, or to the public at large.
14. On or about February 7, 2017, following Mettrum’s fourth recall, Health Canada issued a recall alert to the general public. On that date, Health Canada indicated it had received ten adverse reaction reports related to the Affected Product.
15. The Plaintiff alleges that Mettrum’s design, development, testing, manufacturing, distribution, sale and marketing of its medical cannabis were negligent.
16. The Plaintiff further alleges that Mettrum breached the contract it entered into with the Plaintiff and with Class Members to provide a certified product free from unauthorized pesticides, and that Mettrum, by its directors, officers, servants and agents, wrongfully and knowingly conspired together to cause the Plaintiff and Class Members to acquire and consume the Affected Product. The Plaintiff also alleges that Mettrum’s conduct constitutes breaches of the *Competition Act*, the *Consumer Protection Act*, the *Sale of Goods Act* and the *Food and Drugs Act*.
17. The Plaintiff alleges that the Affected Product is unsafe and harmful to his health and the health of Class Members.
18. As a result of the actions and omissions of Mettrum, the Plaintiff has suffered loss or damage. Particulars of this loss or damage include financial loss in the form of the consideration paid to receive cannabis for medical purposes that was free from harmful pesticides.
19. The Plaintiff states that there has been a deprivation of the Plaintiff and a corresponding enrichment of Mettrum, by reason of the tortious conduct and statutory breaches and breaches of contract described herein. This deprivation and corresponding enrichment is without juridical reason.

20. The Plaintiff claims a remedy in restitution on the basis that the interest of the Plaintiff in the safety of medical cannabis he purchased makes it just and equitable that Mettrum should retain no benefit from the misconduct pleaded.

II. THE PARTIES

a. The Plaintiff and Class

21. The Plaintiff, Neal Partington, is currently a resident of Nova Scotia. He suffers from chronic upper back and neck pain resulting from years of playing rugby. Mr. Partington is a self-employed house painter. His chronic pain hindered his ability to work for extended periods, or would leave him debilitated after a long day of work. Among other therapies, Mr. Partington took over-the-counter pain medications to deal with his chronic pain.
22. In exploration of alternative pain management options, Mr. Partington's family physician referred him to participate in a pain study at McGill University. The study used Mettrum as its sole medical cannabis provider, for both oil and dried medical cannabis products. Over the course of the study, Mr. Partington was prescribed varying dosages of the products. For dried medical cannabis, he was prescribed 3 to 5 grams daily. Oil cannabis products were to be consumed on an escalating scale, increasing the dose from 0.25 to 4 milliliters per day to manage his chronic pain.
23. Mr. Partington received a license and filled his first prescription for medical cannabis in or about May of 2016. He placed his orders directly with Mettrum over the phone. Mr. Partington paid for the product out of his pocket, as it was not covered by private or public health insurance.
24. Mr. Partington consumed the Affected Product through combustion (smoking) and ingestion.
25. Mr. Partington began to suffer from severe nausea, dizziness and vomiting very shortly after first consuming the Affected Product. He was unable to keep food down, and the

severity of his symptoms hindered his ability to stand, walk, or leave the house. Over the period of his consumption of the Affected Product, Mr. Partington attended multiple medical appointments and the emergency room on various occasions. He was referred to medical specialists and underwent various diagnostic tests, yet received no confirmed diagnosis to explain his nausea and violent illness. The severity and persistence of his symptoms over the period of his consumption rendered Mr. Partington unable to work steadily as a house painter. Prior to consuming the Affected Product, Mr. Partington had no notable history of persistent nausea and vomiting.

26. Mr. Partington consumed the Affected Product until November 1, 2016, when he received notice from Mettrum of possible contamination. Until that time, he had not connected his symptoms with consumption of the Affected Product, as he thought he could trust that the cannabis he was consuming for medical purposes was safe, regulated and intended to be therapeutic.
27. For approximately six months, Mr. Partington consumed varying dosages of the affected product, ranging from 3 to 5 grams of dried cannabis to 0.25 to 4 mL of cannabis oil, daily.
28. Mr. Partington continues to suffer from chronic pain in his neck and upper back. He has lost confidence in Mettrum as a licensed producer of cannabis for medical purposes, and no longer uses its products to obtain any medical relief.
29. The Plaintiff spent approximately \$1000.00 on the Affected Product between May and November of 2016.
30. The Plaintiff brings a class action pursuant to the *Class Proceedings Act*, S.N.S. 2007, c. 28 (the “Act”) on behalf of all persons and entities who purchased from Mettrum cannabis for medical purposes that has been the subject of a voluntary or involuntary recall as of the date of the order certifying the action (the “Class”).
31. In this action, the Plaintiff seeks, on his own behalf and on behalf of the Class:
 - a) disgorgement of the benefits that accrued to Mettrum as a result of its wrongful acts and omissions; and

- b) damages in the form of total funds required to establish a medical monitoring process for the benefit of the Class Members.

b. The Defendants

- 32. The Defendant, Canopy Growth Corporation, is a TSX Venture Exchange listed company that acquired all of the issued and outstanding shares of the Defendant Mettrum Health Corp on or about January 31, 2017. Canopy's head office is located at 1 Hershey Drive, Smiths Falls, Ontario, K7A 0A8.
- 33. The Defendant, Mettrum Health Corp, now a wholly-owned subsidiary of Canopy, has a head office located at 314 Bennett Road, Bowmanville, Ontario, L1C 3K5. Its subsidiary, the Defendant Mettrum Ltd., is a federally licensed producer of medical cannabis in Canada.
- 34. Mettrum's manufacturing and production facilities are located in Bowmanville and Clearview, Ontario. Mettrum is regulated by the *Access to Cannabis for Medical Purposes Regulations*.
- 35. The Plaintiff states that the Defendants are responsible, jointly and severally, for the injuries and damages suffered by the Plaintiff and Class Members. References to Mettrum are intended to include its officers, employees, representatives, agents and associates acting on behalf of Mettrum.
- 36. The Defendants are wholly responsible for all the acts and omissions of any predecessor or subsidiary companies by virtue of having succeeded or acquired those companies and by virtue of having assumed the obligations of those companies.
- 37. Further, the Plaintiff pleads that, by virtue of the acts described herein, each of the Defendants is vicariously liable for the acts and omissions of the other for the following reasons:
 - a) Each was the agent of the other;
 - b) Each Defendant's business was operated so that it was inextricably interwoven

- with the business of the other;
- c) The Defendants entered into a common advertising and business plan to distribute and sell the Affected Product;
- d) Each Defendant intended that the businesses be run as one business organization; and
- e) The Defendants are related, associated or affiliated.

III. CAUSES OF ACTION

a. Negligent design, development and testing

38. Mettrum owed a duty of care to the Plaintiff and the Class to use reasonable care in designing, developing and testing the Affected Product. Mettrum breached the applicable standard of care by negligently designing, developing and testing the Affected Product. Such negligence includes, but is not limited to, the following:

- a) Mettrum established inadequate controls within its facility to ensure that unauthorized pest control products were not used, including but not limited to restricting access to pest control products, monitoring the application of products to its cannabis products, and testing for unauthorized pesticide use;
- b) Mettrum inadequately developed or implemented, or alternatively developed or implemented no, quality control measures to ensure that the components utilized in the manufacture of Mettrum's products corresponded with their description, were free of any prohibited contaminants or substances that could be harmful to patients, complied with applicable regulations, and were safe for consumption by patients;
- c) Mettrum inadequately developed or implemented, or alternatively developed or implemented no, reasonable testing or screening procedures to ensure prompt detection in its products of any prohibited pesticides, contaminants or substances; and

- d) Such further and other particulars as may be provided prior to the trial of this action.

b. Negligent manufacturing

39. Mettrum owed the Plaintiff and Class Members a duty of care as follows:

- a) to conform to industry standards, practices and regulations in the manufacturing of the Affected Product;
- b) to conduct adequate and routine inspections of the facilities where the Affected Product was being manufactured, to ensure that unauthorized pesticides were not being used; and
- c) to have adequate and appropriate quality control methods in place at the facilities where the Affected Product was being manufactured, to ensure that unauthorized pesticides were not being used.

40. Mettrum was negligent in the manufacturing of the Affected Product. Such negligence includes, but is not limited to the following:

- a) Mettrum chose not to conform to industry standards, practices and regulations in the manufacturing of the Affected Product;
- b) Mettrum chose to inadequately inspect its facilities;
- c) Mettrum manufactured its medical cannabis product without having in place adequate quality control protocols with respect to all components and steps in the process of manufacture of the Affected Product, or in disregard of those protocols;
- d) Mettrum hired incompetent personnel and failed to adequately supervise the personnel manufacturing the Affected Product;

- e) Mettrum took no immediate steps to modify its manufacturing practices once it became aware of the presence of prohibited pesticides in the Affected Product; and,
- f) Mettrum continued to manufacture the Affected Product when it knew or ought to have known that its product caused or could cause serious adverse health effects in patients.

c. Negligent distribution, marketing and sale

41. Mettrum owed the Plaintiff and Class Members a duty of care as follows:

- a) to only distribute, market and sell medical cannabis if it was, in fact, compliant with certification requirements and the *Access to Cannabis for Medical Purposes Regulations*;
- b) to inform the Plaintiff and Class Members that consumption of the Affected Product exposed them to harm;
- c) to take reasonably necessary and appropriate steps to ensure that prescribing physicians were apprised and fully and regularly informed of all the adverse health risks associated with the Affected Product; and
- d) to inform Health Canada and other regulating agencies fully, properly, and in a timely manner of the adverse health risks associated with consumption of the Affected Product.

42. Mettrum was negligent in the distribution, marketing and sale of the Affected Product. Such negligence includes, but is not limited to the following:

- a) Mettrum misled the Plaintiff and Class Members about the safety and quality of the Affected Product, and the health risks associated with its consumption;
- b) Mettrum took no immediate steps to remove the Affected Product from the market once it became aware (or through reasonable diligence, could have

become aware) of the presence of prohibited pesticides, contaminants or substances;

- c) Mettrum allowed the Class to continue to purchase and consume the Affected Product after it was aware (or through reasonable diligence, could have become aware) of the presence of prohibited pesticides;
- d) Mettrum inadequately devised and implemented, or devised and implemented no, reasonable procedures to ensure that complaints in relation to the Affected Product were thoroughly and accurately recorded and transmitted in order to become aware of the potential presence of any prohibited pesticides, contaminants or substances;
- e) Mettrum misinformed Health Canada by providing it with incomplete and inaccurate information concerning the Affected Product;
- f) Mettrum chose not to accurately, candidly, promptly and truthfully disclose to patients the presence of prohibited pesticides in the Affected Product;
- g) Mettrum provided the Plaintiff and Class Members with no or inadequate warnings concerning the health risks associated with consumption of medical cannabis containing prohibited pesticides;
- h) Mettrum provided the Plaintiff and Class Members with inadequate and incomplete updates and current information about the safety and quality of the Affected Product and the health risks associated with its consumption, as such information became known to Mettrum;
- i) Mettrum provided inaccurate and incomplete information to the Plaintiff and Class Members about the safety and quality of the Affected product and the health risks associated with its consumption in its marketing materials, package labels, patient information pamphlets, information provided to prescribing physicians, and in information provided to patients by phone and email;

- j) after determining that the Affected Product contained prohibited pesticides and presented adverse health risks, Mettrum failed to issue adequate warnings, recall the Affected Products in a timely manner, publicize the risks and otherwise act properly and in a timely manner to alert the public, including warning the Plaintiff and Class Members and their physicians and health regulators;
- k) Mettrum represented that the Affected Product was safe and fit for its intended purpose and of merchantable quality when it knew or ought to have known that these representations were false;
- l) Mettrum continued to manufacture, market and promote the Affected Product when it knew or ought to have known that its product had caused or could cause serious adverse health effects; and,
- m) Mettrum actively advertised and encouraged the sale of its medical cannabis when it knew or ought to have known that the Affected Product could be harmful to health.

d. Breach of Contract

- 43. The Plaintiff and Class Members had a contract with Mettrum that the latter would provide a medical cannabis product that was certified to be free of prohibited pesticides.
- 44. The Plaintiff says that Mettrum warranted to the Plaintiff and Class Members that its medical cannabis products were of merchantable quality and fit for use. Mettrum breached these warranties to the Plaintiff and the Class Members by selling them the Affected Product which was dangerous to patients.
- 45. In addition, the Plaintiff states that Mettrum breached an implied contractual term that it would use reasonable care and skill in designing, developing, testing, manufacturing, distributing and selling the Affected Product. Mettrum did not do so, as described above in paragraphs 38 - 42.
- 46. The Plaintiff states that the nature of the contract between Mettrum and patients, who are

by definition vulnerable and in poor health, implies a duty of good faith which requires Mettrum to consider the interest of the Plaintiff as at least equal to its own and not to offer or supply an inherently dangerous product. Mettrum breached its implied duty of good faith by designing, developing, testing, manufacturing, distributing, selling and marketing a medical cannabis product which contained prohibited pesticides harmful to human health.

47. The Plaintiff further states that in selling the Affected Product, which was not safe but which was inherently dangerous, Mettrum committed fundamental breach of contract.

e. Conspiracy

48. During the class period Mettrum, by its directors, officers, servants and agents, wrongfully, unlawfully, maliciously and lacking *bona fides*, conspired and agreed together, the one with the other and with persons unknown, as hereinafter set out.
49. The Plaintiff pleads that Mettrum's conspiracy involved both lawful and unlawful means with the predominant purpose of causing the Plaintiff and Class Members to acquire and consume its medical cannabis products when it knew or should have known that the Affected Product could contain prohibited pesticides harmful to human health.
50. Mettrum conspired to unlawfully market, distribute, advertise and sell its medical cannabis product, intending that its conduct be directed towards the Plaintiff and Class Members, when it knew or should have known that in the circumstances, injury and damage to the Plaintiff and Class Members - including financial loss in the form of the consideration paid to receive medical cannabis free from harmful pesticides - was likely to result. Mettrum derived substantial compensation and revenues from the conspiracy.
51. As a result of the conspiracy, the Plaintiff and the Class Members have suffered damage and loss, including financial loss in the form of the consideration paid to receive medical cannabis free from harmful pesticides.
52. Some, but not all, of Mettrum's concerns, motivations and intentions in engaging in the conspiracy were to:

- a) increase the sales of its product and its profits;
- b) increase or hold its market share;
- c) avoid adverse publicity;
- d) place its profits above the safety of the Plaintiff and Class Members;
- e) maintain brand trust and corporate image, particularly as a certified licensed producer, and maintain certification;
- f) avoid alerting the Plaintiff, Class Members and Health Canada, health practitioners and the public to the true nature of its products;
- g) cause the Plaintiff and Class Members to purchase at a premium, and use, and continue to purchase at a premium, and use, its medical cannabis product and thereby suffer harm.

53. In furtherance of the conspiracy, the following are some, but not all, of the acts carried out by Mettrum:

- a) misleading the Plaintiff and Class Members, health practitioners and others about the efficacy, safety and effect of the Affected Product; and
- b) refusing to issue correcting information or to stop selling its medical cannabis products even after it was determined that the product contained prohibited pesticides.

f. Breach of the Competition Act

54. Mettrum knowingly or recklessly made false and misleading representations to the public. These representations include, but are not limited to, the following (the “Representations”):

- a) stating that the Affected Product was free of unauthorized pesticides, contaminants or substances;

- b) stating that the Affected Product was compliant with the *Access to Cannabis for Medical Purposes Regulations*; and
 - c) presenting the Affected Product as a safe product for patients while failing to inform them of the health risks associated with consumption of the Affected Product.
55. Mettrum's representations were material and affected the decisions of the Plaintiff and Class Members to purchase the Affected Product.
56. As a result of the Representations of Mettrum, the Plaintiff and Class Members suffered loss or damage, including financial loss in the form of the consideration paid to receive medical cannabis free from harmful pesticides.
57. The Plaintiff states that Mettrum's conduct in promoting itself as a provider of medical cannabis and in promoting its business interests, and in knowingly or recklessly making representations to the public that were false or misleading in material respects, is contrary to s. 52(1) and (1.1) of the *Competition Act*, R.S.C. 1985, c C-34, as amended, and the Plaintiff and Class Members have a statutory cause of action pursuant to s. 36 of the *Competition Act* to recover the amount equal to the loss of damage proved to have been suffered, together with the full cost of investigation and of proceedings under s. 36.
58. The Plaintiff and Class Members also rely on s. 52(1.1) of the *Competition Act* and plead that it is unnecessary to show actual reliance on the misleading representations of Mettrum for the purpose of establishing a breach of s. 52(1) of the *Competition Act*.

g. Breach of the Food and Drugs Act, R.S. 1985, c. F-27

59. Mettrum engaged in unfair trade practices specifically declared unlawful under ss. 9 and 10 of the *Food and Drug Act*, R.S. 1985, c. F-27 by labelling, packaging, treating, processing, selling and advertising the Affected Product in a manner that was false, misleading and deceptive as to the characteristics of the Affected Product. In addition, contrary to sections 8 and 11 of the *Food and Drugs Act*, Mettrum sold to the Plaintiff and Class Members medical cannabis products that were, or that included ingredients that were, manufactured,

prepared, preserved, packaged or stored under unsanitary conditions and were contaminated with prohibited pesticides.

h. Breach of the Consumer Protection Act, R.S.N.S. 1989, c. 92

60. The Plaintiff and Class Members plead and rely upon the *Consumer Protection Act*, R.S.N.S. 1989, c. 92 (“CPA”) and equivalent legislation in other provinces. Mettrum is a “seller” within the meaning of s. 2 of the CPA. The Plaintiff and Class Members are “buyers” within the meaning of s. 2 of the CPA and “purchasers” within the meaning of s. 26(2) of the CPA. In selling the Affected Product to the Plaintiff and Class Members in the manner described in this claim, Mettrum breached the conditions or warranties implied by s. 26(3)(d), (e), (f) and (h) of the CPA.

i. Breach of the Sale of Goods Act, R.S.N.S. 1989, c. 408

61. The Plaintiff and Class Members plead and rely upon the *Sale of Goods Act*, R.S.N.S. 1989, c. 408, and equivalent legislation in other provinces. The Plaintiff and Class Members constitute “buyers” within the meaning of s. 2(b). They purchased the Affected Product from Mettrum, a “seller” within the meaning of s. 2(m), pursuant to contracts of sale within the meaning of s. 2(c) of the *Sale of Goods Act*. Mettrum represented that the Affected Product was safe, and a higher quality, safer and more effective treatment than other similar medical cannabis products manufactured by Mettrum’s competitors.
62. The Plaintiff and Class Members plead that the Affected Product was neither reasonably fit for its intended purpose nor of merchantable quality. Accordingly Mettrum acted in breach of section 17(a) and (b) of the *Sale of Goods Act*

j. Waiver of Tort

63. The Plaintiff and Class Members plead “waiver of tort” as a cause of action giving rise to the remedies of constructive trust, disgorgement and accounting, and that those remedies can be determined at a trial of common issues without the involvement of any individual class member and after liability has been determined pursuant to waiver of tort.

64. The Plaintiff and Class Members further state that there is a reasonable likelihood that s. 32 of the *Class Proceedings Act* will be satisfied and an aggregate assessment made if the Plaintiff is otherwise successful at the trial of common issues.
65. As a result of Mettrum's conduct described here, the Plaintiff and Class Members reserve the right to elect at or after the trial of the common issues to waive wrongs attracting a remedy in damages and to have damages assessed in an amount equal to the gross revenues earned by Mettrum, or the net income received by the Mettrum or a percent of the proceeds from the sale of the Affected Product as a result of Mettrum's conduct.
66. The Plaintiff and Class Members claim that such an election is appropriate for the following reasons, among others:
- (a) revenue was acquired in a manner in which Mettrum cannot in good conscience retain it;
 - (b) the integrity of the supply of medical cannabis to patients would be undermined if the court did not impose an effective remedy;
 - (c) absent Mettrum's wrongful conduct, the Affected Product could not have been marketed, nor would Mettrum have received any revenue from its purchase by consumers; and
 - (d) Mettrum engaged in wrongful conduct by putting into the marketplace health product marketed to patients as healthy, when in fact it was not.

k. Unjust enrichment

67. The Plaintiff and Class Members did not receive a product of the quality, nature or fitness that had been represented by Mettrum or that the Plaintiff and Class Members, as reasonable consumers and patients, expected.
68. By reason of the wrongdoing described herein, there has been a deprivation of the Plaintiff and Class Members and a corresponding enrichment of Mettrum. This deprivation and corresponding enrichment is without juridical reason.

IV. RELIEF REQUESTED

a. Restitution

69. The Plaintiff claims a remedy in restitution on the basis that the interest of the Plaintiff in the safety of the medical cannabis industry makes it just and equitable that Mettrum should retain no benefit from the breaches pleaded herein.
70. The Plaintiff also states that the total unlawful gain obtained by Mettrum from Class Members necessarily reflects the total loss suffered by the Class, and is ascertainable from the business records of Mettrum without resort to individual inquiries. For greater certainty, the Plaintiff does not advance claims for personal injuries.

b. Punitive Damages

71. The Plaintiff and Class Members plead that Mettrum has acted in such a high-handed, wanton and reckless or deliberate manner, without due regard to public health and safety as to warrant an award of punitive damages, in accordance with the goals of retribution, denunciation, and deterrence.
72. The Plaintiff and Class Members claim that such an election is appropriate for the following reasons, among others:

Blameworthiness of Mettrum's Conduct

- (a) the intent and motive is to profit from sales;
- (b) the outrageous conduct has persisted over a lengthy period of time;
- (c) Mettrum has concealed or attempted to cover up its misconduct;
- (d) Mettrum is and has been aware that its conduct is wrong;
- (e) When the recalls occurred, Mettrum sought further sales of its products to Class Members by offering a discount;
- (f) the interest violated by Mettrum is deeply personal to the Plaintiff and Class Members, specifically their bodily and mental integrity and their health;

Vulnerability of Class

- (g) the Plaintiff and Class Members are medical patients relying on Mettrum for improvement, not impairment, of their health;

Proportionate to Need for Deterrence

- (h) the misconduct of a licensed producer of medical cannabis must not be repeated by other licensed producers, or condoned;

Proportionate to Other Penalties

- (i) there have been no other penalties at law or alternatively, the penalties are inadequate to the objectives;

Proportionate to Advantage Gained

- (j) Mettrum received significant financial gains from their misconduct.

73. The Plaintiff further claims the following relief:

- (a) An order certifying the proceeding as a class proceeding;
- (b) An order for an aggregate monetary award pursuant to s. 32 of the *Class Proceedings Act*;
- (c) An accounting for and disgorgement of profits or revenues, or a constructive trust over same;
- (d) Damages equal to the total unlawful gain obtained by Mettrum from the Plaintiff and Class Members;
- (e) An order directing Mettrum to pay an amount equal to the loss or damage proved to have been suffered because of the breach of the *Competition Act* plus an amount equal to the full cost of any investigation of the matter and of proceedings under s. 36;
- (f) Damages in the form of total funds required to establish a medical monitoring process for the benefit of the Class Members;
- (g) Exemplary or punitive damages; and

(h) Such other directions or relief that the court considers appropriate.

DATED at Halifax, in the Province of Nova Scotia, this 13th day of March, 2017.



RAYMOND F. WAGNER, Q.C.

Wagners

1869 Upper Water Street

Suite PH301, Historic Properties

Halifax, NS B3J 1S9

Tel: 902-425-7330

Email: raywagner@wagners.co

Solicitor for the Plaintiff

Schedule "A"

Recalled lots – Type III recall initiated on November 1, 2016

Mettrum Red 2 – 15 grams / 45970 / 2015-05-06
Mettrum Orange 2 – 15 grams / 49156 / 2015-06-17
Mettrum Red 2 – 15 grams / 52189 / 2015-07-23
Mettrum Blue 1 – 15 grams / 45970 / 2015-05-06
Mettrum Green 1 – 15 grams / 49156 / 2015-06-17
Mettrum Red 2 – 15 grams / 55374 / 2015-08-25
Mettrum Red 2 – 15 grams / 62774 / 2015-10-29
Mettrum Blue 1 – 5 grams / 62774 / 2015-10-29
Mettrum Red Cannabis Oil – 40ml / 81385 / 2016-03-17
Mettrum Orange 2 – 15 grams / 90324 / 2016-04-21
Mettrum Yellow Cannabis Oil – 40ml / 90324 / 2016-04-21
Mettrum Red 2 – 15 grams / 98266 / 2016-05-21
Mettrum Yellow Cannabis Oil – 40ml / 98266 / 2016-05-21
Mettrum Red 1 – 5 grams / 107479 / 2016-06-16
Mettrum Yellow Cannabis Oil – 40ml / 117701 / 2016-07-20

Recalled lots – Type III recall initiated on December 5, 2016

Mettrum Red 2 – 15 grams / A00570-9936 / 125585 / 2016-08-10
Mettrum Red 2 – 5 grams / A00571-9938 / 130296 / 2016-08-23
Mettrum Blue 1 – 5 grams / A00616-10008 / 138530 / 2016-09-14

Recalled lots – Type III recall initiated on January 9, 2017

Mettrum Red 1 – 5 grams / A00385-9709 / 90324 / 2016-04-21
Mettrum Yellow Cannabis Oil – 40ml / A00603-9989 / 138530 / 2016-09-14
Mettrum Yellow Cannabis Oil – 40ml / AA00646-10050 / 151066 / 2016-10-14
Mettrum Blue Cannabis Oil – 40ml / AA00715-10147 / 163574 / 2016-11-10
Mettrum Yellow Cannabis Oil – 40ml / AA00789-10247 / 181743 / 2016-12-21

Recalled lots – Type III recall initiated on January 28, 2017

Mettrum Blue Cannabis Oil – 40ml / AA00784-10245 / 181743 / 2016-12-21
Mettrum Orange 3 – 15 grams / AA00283-9596 / 75082 / 2016-02-04
Mettrum Orange 3 – 15 grams / AA00283-9596 / 81385 / 2016-03-17
Mettrum Green 4 – 15 grams / AA00288-9613 / 75082 / 2016-02-04
Mettrum Yellow Cannabis Oil – 40ml / AA00352-9657 / 81385 / 2016-03-17
Mettrum Red Cannabis Oil – 40ml / AA00369-9676 / 81385 / 2016-03-17
Mettrum Orange 2 – 15 grams / AA00374-9681 / 90324 / 2016-04-21
Mettrum Blue Cannabis Oil – 40ml / AA00375-9680 / 91385 / 2016-03-17
Mettrum Blue Cannabis Oil – 40ml / AA00508-9842 / 107749 / 2016-06-16
Mettrum Blue Cannabis Oil – 40ml / AA00534-9884 / 117701 / 2016-07-20
Mettrum Red Indica Cannabis Oil – 40ml / AA00676-10102 / 163574 / 2016-11-10
Mettrum Red Sativa Cannabis Oil – 40ml / AA00685-10113 / 163574 / 2016-11-10