Further amended pursuant to Rule 6-1(5) and by consent pursuant to Rule 6-1(2)(ii)
Amended pursuant to the Order of Mr. Justice Branch dated October 24, 2023
Original filed February 28, 2020

No. S-199401

Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

UTTRA KUMARI KRISHNAN AND TOM TROTTIER

PLAINTIFFS

AND:

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

DEFENDANTS

SECOND AMENDED RESPONSE TO CIVIL CLAIM

Filed by: WN Pharmaceuticals Ltd. and Natural Factors Nutritional Products Limited (the "**WN Defendants**" or "**WN**")

PART 1 RESPONSE TO NOTICE OF CIVIL CLAIM FACTS

Division 1 – Defendant's Response to Facts

1. The facts alleged in paragraphs 1 and 16 ~~14~~ of Part 1 of the Third ~~Further~~ Amended Notice of Civil Claim ("**Civil Claim**") are admitted.

2. The facts alleged in paragraphs 2 - 5, 9, 10, 17-19 ~~15-17~~ and 65 - 80 ~~63 - 78~~ of Part 1 of the Civil Claim are denied.

3. The facts alleged in paragraphs 6-8, 11-15, ~~12-13,~~ and 20 - 64 ~~18 - 62~~ of Part 1 of the Civil Claim are outside the knowledge of the WN Defendants.

Division 2 – Defendant's Version of Facts

1. Unless otherwise defined in this Second Amended Response to Civil Claim, and without making any admission thereby, the capitalized terms below have the same meaning as in the Plaintiffs' Civil Claim filed August 23, 2019.

2. The Defendants, WN Pharmaceuticals Ltd. and Natural Factors Nutritional Products Limited ("**Natural Factors**") (collectively the "**WN Defendants**" or "**WN**") manufacture, produce, and distribute natural supplements and health food products across North America. The WN Defendants manufacture and distribute a variety of supplements containing glucosamine sulfate ("**Glucosamine Sulfate Supplements**").

3. The WN Defendants' Glucosamine Sulfate Supplements are sold primarily through retailers, including several of the co-defendant retailers.

4. As detailed below, all of the WN Defendants' Glucosamine Sulfate Supplements, including those alleged by the Plaintiffs to be "Fake Glucosamine Sulfate Supplements", contain glucosamine sulfate. The WN Defendants' Glucosamine Sulfate Supplements undergo rigorous testing and comply with the prescribed standards established by Health Canada.

5. The WN Defendants maintain all required Health Canada licences for their manufacturing and distribution centres.

6. In answer to the whole of the Civil Claim, the WN Defendants deny that there is any legal or factual basis to the Plaintiffs' claims. In particular, and without limiting the foregoing, the WN Defendants deny that they manufacture, distribute, produce, market or advertise Fake Glucosamine Sulfate Supplements.

7. The WN Defendants' Glucosamine Sulfate Supplements contain glucosamine sulfate ~~and not a mechanical mixture of glucosamine hydrochloride molecules and potassium sulfate molecules as alleged by the Plaintiff. Alternatively,~~ . If any of the WN Defendants' Glucosamine Sulfate Supplements contain a mechanical mixture of glucosamine hydrochloride ~~molecules~~ and potassium sulfate ~~molecules~~, ~~which is denied~~, then such mixture is in substance and efficacy no different than glucosamine sulfate, and the use of such a mixture would provide the same benefits as ingesting an equivalent amount of glucosamine sulfate.

Health Canada Content and Labelling Regulations

8. The *Food and Drugs Act*, RSC, 1985, c F-27 ("***Food and Drugs Act***"), regulations promulgated thereunder, including the *Natural Health Products Regulations*, SOR /2003-196 ("***Natural Health Products Regulations***"), and Health Canada publications establish the standards that all drugs, including the WN Defendants' Glucosamine Sulfate Supplements, must satisfy.

9. Pursuant to the *Natural Health Products Regulations*, all natural health products in Canada must have a product license ("**PL**") and a natural product number ("**NPN**"). An NPN is issued by Health Canada following the submission of a product license application ("**PLA**"). A PLA contains information required by Health Canada, including, a listing of ingredients, including medical ingredients, information detailing the safety and efficacy of the product, the proposed text of the label, and description of the testing procedures and methodologies used to verify the identity and the quantity of the medicinal ingredients.

10. Following a review by Health Canada of the PLA, including an assessment by Health Canada into the safety, efficacy and quality of the product, a PL and an NPN may be issued. WN's products, including all of the WN Defendants' Glucosamine Sulfate Supplements sold in Canada, are pursuant to a PL and have an NPN.

11. The *Food and Drugs Act*, the regulations contained thereunder, and the PLA procedure, prescribe the chemical composition and standards that are applicabfle to supplements in Canada, including those that the WN Defendants' Glucosamine Sulfate Supplements must satisfy, by referencing the United States ~~and European~~ Pharmacopeia, among others.

12. The WN Defendants' Glucosamine Sulfate Supplements, including the products alleged by the Plaintiffs as "Fake Glucosamine Sulfate Supplements", are all manufactured to the standard of, and tested as against and satisfy, the United States ~~and European~~ Pharmacopeia, an accepted and prescribed Health Canada standard.

13. Further, the *Food and Drugs Act*, and the regulations contained thereunder, dictate~~s~~ how products, including the WN Defendants' Glucosamine Sulfate Supplements must be labelled in respect of chemical composition, ingredients, dosages, indications, usage, and purposes. The WN Defendants' Glucosamine Sulfate Supplements, including the products alleged by the Plaintiffs to be "Fake Glucosamine Sulfate Supplements", conform with those requirements.

13.1 Specifically, among other things, s 10(2) of the *Food and Drugs Act* states that "no person shall label, package, sell or advertise any substance in such a manner that it is likely to be mistaken for [a] drug, unless the substance complies" with a standard for the drug set out in Schedule B of the *Food and Drugs Act*, including the United States Pharmacopoeia. Further, s 93 of the *Natural Health Products Regulations*, requires all labels for natural health products to include the "common name" of each medicinal ingredient contained within the natural health product.

13.2 The United States Pharmacopeia sets quality, purity, strength, and identity standards for natural health products and other products by publishing documentary standards in the form of monographs and developing reference standards for manufacturers like WN to test their products against to ensure that they meet published specifications. The United States Pharmacopeia, which Health Canada references and adopts, sets an internationally recognized standard for describing pharmacological ingredients.

13.3 Monographs published by Health Canada state that glucosamine sulfate is the common name for the medicinal ingredient contained in the WN Defendants' Glucosamine Sulfate Supplements. Health Canada, the *Food and Drugs Act*, the *Natural Health Products Regulations,* and the United States Pharmacopeia, or any or all of them, required WN to include the common name glucosamine sulfate on the labels for the WN Defendants' Glucosamine Sulfate Supplements.

Stringent Testing on Raw Materials and Finished Products

14. The WN Defendants did not manufacture or produce the glucosamine sulfate component of the WN Defendants' Glucosamine Sulfate Supplements. The WN Defendants contract for and purchase raw glucosamine sulfate from independent, third party suppliers for its Glucosamine Sulfate Supplements. All shipments of glucosamine sulfate received by its suppliers are each accompanied by a certificate of analysis which contains the results of supplier testing to verify the contents and chemical composition of the raw glucosamine sulfate delivered.

15. Upon receipt of the raw glucosamine sulfate and prior to any use of the raw material, the WN Defendants conduct their own testing on the raw materials to ensure that the raw glucosamine sulfate conforms with Health Canada prescribed standards. At all material times, the raw glucosamine sulfate used by the WN Defendants in the manufacture of its Glucosamine Sulfate Supplements met the required Health Canada standards.

16. Following the process in which the WN Defendants manufacture Glucosamine Sulfate Supplements, the WN Defendants complete further testing of the final manufactured supplement to ensure that it continues to satisfy Health Canada standards. The WN Defendants have tested every batch and lot of their Glucosamine Sulfate Supplements, including the alleged "Fake Glucosamine Sulfate Supplements", to ensure compliance with Health Canada requirements, and in particular to verify each batch and lot's chemical composition.

17. At all material times, the manufacturing process and the chemical composition of the WN Defendants' Glucosamine Sulfate Supplements were compliant with the *Food and Drug Act*, regulations promulgated thereunder and the applicable standards, including the United States ~~and European~~ Pharmacopeia.

Glucosamine Hydrochloride and Glucosamine Sulfate - Raw Material Pricing

18. In response to paragraph ~~70~~ 69 of the Civil Claim, the Plaintiffs are mistaken, and no such motive exists for behaviour alleged in the Civil Claim. The opposite is true. Specifically, raw glucosamine sulfate used in the manufacturing of the WN Defendants' Glucosamine Sulfate Products commands a lower price in the market than glucosamine hydrochloride.

The Plaintiffs' Test Results are Flawed and Incorrectly Interpreted

~~19. In response to paragraph 72 of the Civil Claim, the WN Defendants' Glucosamine Sulfate Supplements are not a mechanical mixture of glucosamine hydrochloride molecules and potassium sulfate molecules. Any testing completed by the Plaintiff in this regard was either done incorrectly or was interpreted incorrectly.~~

20. All of the WN Defendants' Glucosamine Sulfate Supplements, including the product alleged by the Plaintiffs to be "Fake Glucosamine Sulfate Supplements", undergo rigorous testing both on the raw component materials and the finished products. All WN test results conform with the prescribed standards required by the *Food and Drugs Act* and Health Canada for both content and chemical composition.

Glucosamine Sulfate is Not More Effective Than Glucosamine Hydrochloride

21. In response to paragraph ~~70~~ 69 of the Civil Claim, wherein the Plaintiffs state~~s~~ that "as compared to glucosamine hydrochloride, glucosamine sulfate ***may*** be more effective;" the WN Defendants deny that glucosamine sulfate is more effective than glucosamine hydrochloride mixed with potassium suflate.

22. The Plaintiffs' allegation that glucosamine hydrochloride "may be less effective" than glucosamine sulfate is contradicted by scientific studies which illustrate that there is no clinical difference between glucosamine sulfate and glucosamine hydrochloride mixed with potassium suflate.

Division 3 – Additional Facts

1. See Division 2, above.

PART 2 RESPONSE TO RELIEF SOUGHT

1. The Defendants consent to the granting of the relief sought in **NONE** of the paragraphs of Part 2 of the Civil Claim.

2. The Defendants oppose the granting of the relief sought in **ALL** of the paragraphs of Part 2 of the Civil Claim.

3. The Defendants take no position on the granting of the relief sought in **NONE** of the paragraphs of Part 2 of the Civil Claim.

PART 3 LEGAL BASIS

1. The WN Defendants deny that the Plaintiffs and/or the Class Members have suffered any loss as alleged in the Civil Claim, or at all.

2. The WN Defendants have never manufactured, distributed, produced, marketed, or advertised Fake Glucosamine Sulfate Supplements as alleged by the Plaintiffs or at all.

3. Further, even if the WN Defendants' Glucosamine Sulfate Supplements contain glucosamine hydrochloride mixed with potassium suflate, ~~which is denied,~~ there is no difference in the efficacy of the two compounds, and the purchase and use of glucosamine hydrochloride mixed with potassium suflate would have resulted in no damage to the Plaintiffs or any of the Class Members.

No Breach of Contract

4. To the extent that this cause of action is plead as against the WN Defendants, the WN Defendants deny that any contract, implied or expressed exists between them and the Plaintiffs or any of the Class Members. The WN Defendants do not have any contractual relationship with the Plaintiffs or any of the Class Members.

5. Further, even if such contract, express or implied, exists between WN and the Plaintiff or any of the Class Members, the WN Glucosamine Sulfate Supplements contain glucosamine sulfate as defined and directed by Health Canada and the applicable legislation and regulations, so there has been no breach of contract, express or implied, by the WN Defendants.

6. Further, the WN Defendants deny that the Plaintiffs and/or the Class Members have suffered any harm. In the alternative, if the Plaintiffs or any of the Class Members suffered harm, which is denied, such harm was not caused by the WN Defendants and was much less than the Plaintiffs have ~~has~~ alleged.

No Claim in Negligent Misrepresentation

7. Generally, the WN Defendants did not owe a duty of care to the Plaintiffs, or any of the Class Members, as alleged or at all. In the alternative, if the WN Defendants owed a duty of care to the Plaintiffs or any of the Class Members, which is denied, the WN Defendants did not breach that duty of care. In the further alternative, if the WN Defendants did breach any duty of care owed to the Plaintiffs and/or the Class Members, which is denied, the Plaintiffs and/or the Class Members have suffered no foreseeable damage.

8. Specifically, the WN Defendants' representations regarding the contents of their Glucosamine Sulfate Supplements are accurate. The WN Defendants have made no misrepresentations, whether as alleged in the Civil Claim or at all.

9. The WN Defendants have exercised the reasonable care, skill and diligence required of a natural health product manufacturer and labelled their Glucosamine Sulfate Supplements in compliance with the *Food and Drugs Act*, and all regulations promulgated thereunder. This *Act* and regulations, in fact, proscribe how glucosamine sulfate supplements must be labelled, and the WN Defendants have labelled their Glucosamine Sulfate Supplements as required and directed by the *Act* and regulations.

10. Further, the WN Defendants deny that the Plaintiffs and/or the Class Members relied on the labels of the WN Defendants' Glucosamine Sulfate Supplements as alleged at paragraphs 6 to ~~11~~ 13 of the Third ~~Further~~ Amended Notice of Civil Claim or at all.

11. Further, and without limiting the generality of the WN Defendants' denial, the WN Defendants deny that they breached the standard of care expected of a natural health supplement manufacturer, producer and distributer. The WN Defendants took all reasonable and required steps to test and confirm the contents of their Glucosamine Sulfate Supplements and to ensure that they satisfied the legislated content and labelling requirements.

12. As noted above, the WN Defendants deny that the Plaintiffs and/or the Class Members suffered harm. In the alternative, if the Plaintiffs or any of the Class Members suffered harm, which is denied, such harm was not caused by the WN Defendants and any such harm was not foreseeable and was much less significant than the Plaintiff has alleged.

13. The WN Defendants did not owe a duty of care to the Plaintiffs and/or the Class Members, as alleged or at all, or:

(a) In the alternative, if such duty of care did exist, which is denied, the WN Defendants did not breach such duty of care, as alleged or at all; or

(b) In further alternative, if the WN Defendants did breach such duty of care, which is denied, the Plaintiffs and/or the Class Members did not suffer damages, as alleged or at all.

14. There is no tortious conduct or basis on which the Plaintiffs and/or the Class Members can elect to plead waiver of tort or to seek to recover the benefits alleged to have accrued to the WN Defendants.

No Breach of the *Food and Drugs Act* and the *Natural Health Products Regulations*

15. The WN Defendants' Glucosamine Sulfate Supplements are manufactured, tested and labelled in compliance with the *Food and Drugs Act*, all regulations promulgated thereunder, and conform with all requirements as detailed therein.

No Breach of the *Business Practices and Consumer Protection Act*, SBC 2004, c 2 ("*BPCPA*") and Equivalent Provincial Consumer Protection Legislation

16. The WN Defendants deny the applicability of the *BPCPA* and Equivalent Provincial Consumer Protection Legislation. The Defendant, Natural Factors, specifically denies that it carries on or engages in the business of selling glucosamine sulphate directly to the Plaintiffs or the Class Members.

17. In the alternative, to the extent that such statutes apply, which is denied, the WN Defendants have not breached the *BPCPA* and Equivalent Provincial Consumer Protection Legislation, as alleged or at all. Further, the WN Defendants deny that the Class Members provided statutorily required notice to the WN Defendants pursuant to:

(a) The Alberta *Consumer Protection Act*; the

(b) Ontario *Consumer Protection Act, 2002*; and

(c) Similar notice requirements of the Equivalent Provincial Consumer Protection Legislation; and

The WN Defendants deny that it is in the interests of justice for the Court to disregard the notice requirements of the Alberta *Consumer Protection Act*, the Ontario *Consumer Protection Act, 2002*, or any similar provisions of the Equivalent Provincial Consumer Protection Legislation.

18. The WN Defendants' Glucosamine Sulfate Supplements are manufactured, tested and labelled in direct compliance with the *Food and Drugs Act*. The WN Defendants have not contravened section 4(1) or 5(1) of the *BPCPA* (or Equivalent Provincial Consumer Protection Legislation) by engaging in deceptive acts or practices through the mislabelling of the WN Defendants' Glucosamine Sulfate Supplements as alleged by the Plaintiffs, or at all.

18.1 Further, and in the alternative, the requirements of Health Canada, s 10(2) of the *Food and Drugs Act*, and s 93 of the *Natural Health Products Regulations* result in a direct operational conflict with the *BPCPA* and Equivalent Provincial Consumer Protection Legislation including, but not limited to:

(a) Section 4 of the *BPCPA*;

(b) Section 6 of the *Alberta Consumer Protection Act*;

(c) Sections 6-7(a) of the Saskatchewan *Consumer Protection and Business Practices Act*;

(d) Sections 2(1) and 2(3)(a) of the Manitoba *Business Practices Act*;

(e) Section 14 of the Ontario *Consumer Protection Act, 2002*;

(f) Sections 40-41, 215, 219, and 221(a) of the Quebec *Consumer Protection Act*;

(g) Section 2(a) of the Prince Edward Island *Business Practices Act*; and

(h) Section 7(1) of the Newfoundland and Labrador *Consumer Protection and Business Practices Act*.

18.2 In the further alternative, if there is no direct operational conflict, which is denied, the *BPCPA* and Equivalent Provincial Consumer Protection Legislation frustrate the purpose of the *Food and Drugs Act* and *Natural Health Products Regulations*.

18.3 Under the circumstances, and due to the applicability of the doctrine of paramountcy, the provisions of the *BPCPA* and Equivalent Provincial Consumer Protection Legislation referred to and relied upon by the Plaintiffs are rendered inoperative to the extent of the conflict and are of no force and effect.

No Breach of the *Sale of Goods Act*, RSBC 1996, c 410 ("*Sale of Goods Act*") and Equivalent Provincial Sale of Goods Legislation

19. The WN Defendants deny the applicability of the *Sale of Goods Act* and Equivalent Provincial Sale of Goods Legislation.

20. In the alternative, to the extent that this cause of action is plead as against the WN Defendants, there was no express or implied contract between the WN Defendants and the Plaintiffs or any of the Class Members, as alleged or at all.

21. Further, if any such express or implied contract exists between the WN Defendants and the Plaintiffs or any of the Class Members, which is denied, the WN Defendants did not breach the express or implied contract. As stated above, at all times the WN Defendants' Glucosamine Sulfate Supplements contained glucosamine sulfate and conformed with the Health Canada requirements as stipulated in the *Food and Drugs Act* and associated regulations.

No Breach of the *Competition Act*, RSC 1985, c C-34 ("*Competition Act*")

22. The WN Defendants did not breach the *Competition Act*. The WN Defendants' Glucosamine Sulfate Supplements are manufactured, tested and then labelled in direct compliance with the *Food and Drugs Act*. The WN Defendants did not make any false or misleading representations to the Plaintiffs, the Class Members or the public in respect of the contents of the Glucosamine Sulfate Supplements.

23. The Plaintiffs and the Class Members are not entitled to damages arising from the *Competition Act* or otherwise. Alternatively, there were no damages. In the further alternative, if there were damages, which is denied, they were not caused by the WN Defendants and such damages were much less than those alleged in the Civil Claim.

23.1 Further, to the extent that any relevant provisions of the *Food and Drugs Act* and the *Competition Act* are in conflict, the provisions of the *Food and Drugs Act* apply based on the stated purposes of the legislation and based on the principle that specific legislation overrides general legislation, pursuant to the maxim *generalia specialbus non derogant*.

No Harm or Damages

24. In response to the entire Civil Claim, the Plaintiffs and Class Members have not suffered any loss or damage whether as alleged or at all. For greater certainty, as set out above, the WN Defendants deny all liability, including under any of the consumer protection statutes, and in particular under the *BPCPA* and Equivalent Provincial Consumer Protection Legislation, the *Sale of Goods Act* and Equivalent Provincial Sale of Goods Legislation, and the *Competition Act*, in relation to losses, damages or additional investigation costs.

25. In the alternative, if any damages were suffered by the Plaintiffs and/or the Class Members, which is denied, any such damages are not capable of being quantified on an aggregate basis.

26. Further, or in the alternative, the damages claimed by the Plaintiffs and the Class Members are excessive, remote, not reasonably foreseeable, and not recoverable at law.

27. Further, or in the alternative, if the Plaintiffs and/or the Class Members suffered any loss or damages, which is denied, neither the WN Defendants' conduct nor such loss or damage give rise to an award of punitive or aggravated damages.

All Claims are Statute-Barred

28. Further, the claims of the Plaintiffs and the Class Members are statute-barred, in whole or in part, under provincial and territorial legislation, as the Plaintiffs and the Class Members' claims were brought outside of the limitations or prescribed periods in the provincial legislation applicable to their claims. The WN Defendants plead and rely on sections 6 and 21 of the *Limitation Act*, SBC 2012, c 13, and equivalent legislation in other Canadian provinces and territories, including, but not limited to:

(a) Section 3(1) of the *Limitations Act*, RSA 2000, c L-12;

(b) Sections 5-7 of *The Limitations Act*, SS 2004, c L-16.1;

(c) Sections 6-10 of *The Limitation Act*, CCSM c L150;

(d) Sections 4-5 and 15 of the *Limitations Act*, 2002, SO 2002, c 24, Sch B;

(e) Article 2922 and 2925 of the *Civil Code of Québec*, CQLR c CCQ-1991;

(f) Sections 5 and 15 of *Limitation of Actions Act*, SNB 2009, c L-8.5;

(g) Sections 8-9 of the *Limitation of Actions Act*, SNS 2014, c 35;

(h) Sections 2(b) and 2(g) of the *Statute of Limitations*, RSPEI 1988, c S-7;

(i) Sections 6-7 of the *Limitations Act*, SNL 1995, c L-16.1;

(j) Sections 2(b) and 2(j) of the *Limitation of Actions Act*, RSY 2002, c 139; and

(k) Sections 2(b) and 2(j) of the *Limitation of Actions Act*, RSNWT (Nu) 1988, c L-8;

(collectively, the "**Provincial Limitation Legislation**").

28.1 Specifically, the Plaintiffs' claims are subject to a basic limitation period of two, three, or six years under the Provincial Limitation Legislation. Claims for purchases of WN's Glucosamine Sulfate Supplements outside the applicable basic limitation period are presumptively time-barred, including:

(a) Tort and consumer protection claims of the Plaintiffs and Class Members in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New

Brunswick, Newfoundland, and Nova Scotia which arose prior to August 23, 2017 are statute-barred;

(b) Tort claims of Class Members in Prince Edward Island, the Yukon, the Northwest Territories, and Nunavut which arose prior to August 23, 2013 are statute-barred;

(c) Consumer protection claims of Class Members in Prince Edward Island, the Yukon, the Northwest Territories, and Nunavut which arose prior to August 23, 2017 are statute-barred; and

(d) Tort and consumer protection claims of Class Members in Quebec which arose prior to August 23, 2016 are statute-barred.

29. Commencing in or about 2012, or in the alternative, no later August 23, 2017, the Plaintiffs and the Class Members had sufficient knowledge of the relevant material facts for a potential claim against WN to be discoverable. The knowledge of counsel for the Plaintiffs and the Class Members with respect to a potential claim against WN is imputed to the Plaintiffs and the Class Members for the purpose of calculating limitations.

30. Further, and specific to the Plaintiffs' claims pursuant to the *Competition Act,* the claims of the Plaintiffs and the Class Members asserted under the *Competition Act* are statute-barred pursuant to section 36(4) of the *Competition Act* as these claims were brought more than two years after the day on which the alleged conduct was engaged in.

31. Finally, discoverability does not apply to claims asserted under the *Competition Act*, or, in the alternative, the claims of the Plaintiffs and the Class Members were discovered commencing in or about 2012 or, in the alternative, no later than August 23, 2017.

Class Proceeding is Inappropriate

32. The cause of action and claims raised by the Plaintiffs will necessitate specific evidence as to the circumstances of each Class Member and are a matter of individual inquiry.

33. The Plaintiffs fails to meet the requisite test for certifying this action as a class proceeding. Further particulars and defences will be raised should the Plaintiffs present an application to have their ~~her~~ action certified as a class proceeding pursuant to the *Class Proceedings Act*, RSBC 1996, c 50.

33.1 The Plaintiffs, or each of them, are not a suitable representative plaintiff and lack the requisite capacity, knowledge and information to perform the duties of a representative plaintiff, to meet the responsibilities and obligations of a representative plaintiff, and to meaningfully respond to examination questions and information requests.

34. In the alternative, the class period must be reduced to the basic limitation period in the applicable Provincial Limitation Legislation. The proposed class includes individuals who purchased WN's Glucosamine Sulfate Supplements as far back as May 4, 2004, well before the applicable basic limitation period across Canada.

Defendant's address for service:

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Date:
~~February 28, 2020~~ March 10, 2025

Signature of Lawyer for Defendants
Lawyer: ~~Gavin Price~~ Kajal Ervin

This SECOND AMENDED RESPONSE TO CIVIL CLAIM is prepared by Gavin Price, ~~and~~ Kajal Ervin, Charlotte Stokes, and Joseph Heap of the firm of Jensen Shawa Solomon Duguid Hawkes LLP whose place of business is 304 - 8th Avenue SW, Calgary, Alberta, T2P 1C2 (Phone: 403.571.1520, Fax: 403.571.1528, Email: ~~hawkesr@jssbarristers.ca~~ priceg@jssbarristers.ca and ervink@jssbarristers.ca) (File No: 14684.001) and ~~Scott Lamb~~ Anna Sekunova of the firm of Clark Wilson LLP whose place of business is 900 – 885 West Georgia Street, Vancouver, British Columbia, V6C 3H1 (Phone: 604.891.7784, Fax: 604.687.6314, Email: ~~slamb@cwilson.com~~ asekunova@cwilson.com).

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.