Form 4.02A

2017 **Hfx. No** 460984

SUPREME COURT OF NOVA SCOTIA

BETWEEN:

DAWN RAE DOWNTON

PLAINTIFF

- AND -

ORGANIGRAM HOLDINGS INC. and ORGANIGRAM INC.

DEFENDANTS

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

Notice of Action

TO: ORGANIGRAM HOLDINGS INC.
ORGANIGRAM INC.
35A English Drive
Moncton, New Brunswick, E1E 3X3

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 3, 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 3, 2017.

Prothonotary
SARAH DRYSDALE
Deputy Prothonotary

Form 4.02B

STATEMENT OF CLAIM

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

I. OVERVIEW

1. OrganiGram Holding Inc. (formerly Inform Exploration Corp.) is a TSX Venture Exchange listed company whose wholly owned subsidiary, OrganiGram Inc., is a federally licensed producer of cannabis for medical purposes for Canadian patients. It received its license on March 26, 2014. The Defendants (together referred to herein as "OrganiGram") sell purportedly certified organic medical cannabis to Canadian patients.

2. On October 10, 2014, Ecocert, a Quebec-based organic certification body recognized by the Canadian Food Inspection Agency, approved OrganiGram's organic certification.

3. At the material times, OrganiGram advertised itself as a producer of solely organic medical cannabis. At the material times, OrganiGram marketed itself as providing safe and healthy products that were more stringently manufactured, tested and regulated than non-organic licensed medical cannabis producers. OrganiGram warranted to patients that its products were grown in regulated soil and organic fertilizers, and contained no banned pesticides or other chemicals.

4. On December 28, 2016, OrganiGram recalled five lots of product – dried cannabis and cannabis oil - which tested positive for the presence of myclobutanil and/or bifenazate. Myclobutanil is a fungicidal pesticide that controls fungi growth on cannabis crops. Bifenazate is a pesticide that controls pests, in particular mites, on cannabis crops. Myclobutanil and bifenazate are banned pesticides under the *Pest Control Products Act*, S.C. 2002, c. 28 (the "PCPA"). Under the *Access to Cannabis for Medical Purposes Regulations*, licensed producers are permitted to use only the thirteen pest control products that are currently approved for use on cannabis under the PCPA.

5. When combusted, myclobutanil converts to hydrogen cyanide. Hydrogen cyanide exposure can cause, among other adverse health effects, nausea, vomiting, dizziness, irregular heartbeat, seizure, fainting, and death. Bifenazate is considered toxic when inhaled.

6. On January 9, 2017, OrganiGram initiated a second recall of an additional sixty-nine lots of product containing myclobutanil and/or bifenazate.

7. As of the date of this Statement of Claim, OrganiGram has recalled the lots set out in the attached Schedule "A", which includes all products produced between February 1 and December 16, 2016 (collectively, the "Affected Product"). As the number of affected lots may be determined, Schedule "A" is subject to further amendment.

8. The first recall by OrganiGram was a Type III recall, which is described by Health Canada as a situation in which the use of, or exposure to, a product is not likely to cause any adverse health consequences. The second recall was a Type II recall, which is described by Health Canada as a situation in which the use of, or exposure to, a product may cause temporary adverse health consequences or where the probability of serious adverse health consequences is remote. Health Canada issued a recall alert to the general public following OrganiGram's second recall. Health Canada indicates it has received, to date, one adverse reaction report related to the Affected Product.

9. OrganiGram's organic certification was suspended by Ecocert in January 2017. Following the suspension, OrganiGram continued to hold itself out as a producer of organic cannabis products.

10. The Plaintiff alleges that OrganiGram's design, development, testing, manufacturing, distribution, sale and marketing of its purported organic medical cannabis were negligent.

11. The Plaintiff further alleges that OrganiGram breached the contract it entered into with the Plaintiff and with Class Members to provide a certified organic product free from unauthorized pesticides. The Plaintiff also alleges that OrganiGram's conduct constitutes

breaches of the *Competition Act*, the *Consumer Protection Act*, the *Sale of Goods Act* and the *Food and Drugs Act*.

12. The Plaintiff alleges that the Affected Product is unsafe and harmful to her health and the health of Class Members.

13. As a result of the actions and omissions of OrganiGram, 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 organic cannabis for medical purposes that was free from harmful pesticides.

14. The Plaintiff states that there has been a deprivation of the Plaintiff and a corresponding enrichment of OrganiGram, by reason of the tortious conduct and statutory breaches and breaches of contract described herein. This deprivation and corresponding enrichment is without juridical reason.

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

II. THE PARTIES

a. The Plaintiff and Class

16. The Plaintiff, Dawn Rae Downton, was diagnosed with inflammatory arthritis (sacroiliitis) in approximately 2000. She experienced severe pain and discomfort, causing interference with her ability to sleep.

17. At the time of her diagnosis, Ms. Downton was not a cannabis user for medical or recreational purposes. The pain and discomfort caused by her inflammatory arthritis led her to explore with her physician alternative pain management options. Ms. Downton's physician prescribed one year's worth of medical cannabis at a dose of 3 grams per day to

manage her chronic pain.

18. Ms. Downton chose to fill her prescription with certified organic medical cannabis produced by OrganiGram. She chose OrganiGram's product because it was held out by OrganiGram as a healthier, safer product than non-organic medical cannabis.

19. Ms. Downton filled her first prescription for medical cannabis on March 17, 2016 by purchasing 30 grams (two 15 gram bottles of dried cannabis) from OrganiGram. She placed the order directly with OrganiGram by telephone. Ms. Downton paid for the product with her credit card.

20. Over the course of her use of the Affected Product, Ms. Downton consumed the product through combustion (smoking) and ingestion.

21. Ms. Downton began to suffer from severe nausea and vomiting within approximately two weeks after first consuming the Affected Product. The severity of the symptoms restricted her ability to stand, walk, or leave the house. She was confined to her home and bed for the majority of the time. Even light household chores became unmanageable. After approximately one month, Ms. Downton temporarily ceased consumption of the Affected Product for approximately one week to ten days. However, she did not notice an improvement in her health, and she thought she could trust that the purported organic cannabis she was consuming would not make her more ill. Unaware of the presence of toxic pesticides in the affected product, she resumed consumption of the Affected Product.

22. Between March and October 2016, when Ms. Downton ceased consumption of the Affected Product, she lost thirty pounds and remained largely bedridden. Prior to consuming the Affected Product, Ms. Downton had no notable history of persistent nausea and vomiting.

23. For eight months, Ms. Downton consumed the Affected Product on a nightly basis. She consumed approximately one half of one gram each night.

24. In October 2016, Ms. Downton attended an appointment with a gastroenterologist regarding her rapidly deteriorating health condition. The specialist advised Ms. Downton that her symptoms were unusual for someone who was not a habitual, longtime cannabis user, for whom such symptoms may otherwise indicate cannabinoid hyperemesis syndrome. Ms. Downton was referred for a diagnostic MRI to obtain further information.

25. Ms. Downton ceased consumption of the Affected Product in October of 2016. Approximately one month after ceasing consumption of the Affected Product, Ms. Downton's symptoms of nausea and vomiting significantly improved.

26. On January 11, 2017, Ms. Downton received an email from OrganiGram advising her as follows:

> "Dear Client:
> You have been identified as an Organigram client who purchased and may have consumed medical marijuana that tested positive for pesticides not registered for use on marijuana under the Pest Control Products Act. Please review the attached document in respect to a voluntary product recall applicable to product purchased through Organigram, and click the link below to confirm you have received and reviewed this documentation.
>
> By clicking the button below, you confirm to have read the attached document and a 20% discount will automatically be placed on your account."

27. Ms. Downton continues to suffer from pain caused by inflammatory arthritis. She is once again unable to sleep through the night. She has lost confidence in licensed producers of cannabis for medical purposes, therefore she is unable to obtain any medical relief from such products.

28. The Plaintiff spent $825.21 on the Affected Product during the time period of March to October of 2016.

29. 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 OrganiGram 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").

30. In this action, the Plaintiff seeks, on her own behalf and on behalf of the Class:

    a) disgorgement of the benefits that accrued to OrganiGram 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

31. The Defendant, OrganiGram Holdings Inc., is a TSX Venture Exchange listed company. Its wholly owned subsidiary, the Defendant OrganiGram Inc., is a federally licensed producer of medical cannabis in Canada. OrganiGram's head office is located at 35A English Drive, Moncton, New Brunswick, E1E 3X3.

32. OrganiGram's manufacturing and production facility is located in Moncton, New Brunswick. OrganiGram is regulated by the *Access to Cannabis for Medical Purposes Regulations*.

33. In corporate filings, OrganiGram states that it is "focused on producing the highest quality, condition specific medical cannabis for patients in Canada".

34. 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 OrganiGram are intended to include its officers, employees, representatives, agents and associates acting on behalf of OrganiGram.

35. 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.

36. 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

37. OrganiGram owed a duty of care to the Plaintiff and the Class to use reasonable care in designing, developing and testing the Affected Product. OrganiGram 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) OrganiGram 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) OrganiGram inadequately developed or implemented, or alternatively developed or implemented no, quality control measures to ensure that the components utilized in the manufacture of OrganiGram's purported organic 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; and

c) OrganiGram 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

38. OrganiGram 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.

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

a) OrganiGram chose not to conform to industry standards, practices and regulations in the manufacturing of the Affected Product;

b) OrganiGram chose to inadequately inspect its facilities;

c) OrganiGram manufactured its organic 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) OrganiGram hired incompetent personnel and inadequately supervised the personnel manufacturing the Affected Product;

e) OrganiGram 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) OrganiGram continued to manufacture the Affected Product when it knew or ought to have known that its product was not organic and caused or could cause serious adverse health effects in patients.

c. Negligent distribution, marketing and sale

40. OrganiGram owed the Plaintiffs and Class Members a duty of care as follows:

a) To only distribute, market and sell organic medical cannabis if it was, in fact, compliant with organic certification requirements and the *Access to Cannabis for Medical Purposes Regulations*;

b) To inform the Plaintiff and Class Members that the Affected Product was not, in fact, organic, and that ingestion 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.

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

a) OrganiGram misled the Plaintiff and Class Members about the safety and quality of the Affected Product, and the health risks associated with its consumption;

b) OrganiGram 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) OrganiGram 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) OrganiGram 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) OrganiGram misinformed Health Canada by providing it with incomplete and inaccurate information concerning the Affected Product;

f) OrganiGram failed to accurately, candidly, promptly and truthfully disclose to patients the presence of prohibited pesticides in the Affected Product;

g) OrganiGram 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) OrganiGram 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 OrganiGram;

i) OrganiGram 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, OrganiGram 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) OrganiGram represented that the Affected Product was organic, 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) OrganiGram continued to manufacture, market and promote the Affected Product when it knew or ought to have known that its product was not organic and had caused or could cause serious adverse health effects; and,

m) OrganiGram actively advertised and encouraged the sale of its purported organic medical cannabis when it knew or ought to have known that the Affected Product was not organic and was harmful to health.

d. Breach of Contract

42. The Plaintiff and Class Members had a contract with OrganiGram that the latter would provide a medical cannabis product that was certified to be organically grown and free of prohibited pesticides.

43. The Plaintiff says that OrganiGram warranted to the Plaintiff and Class Members that its

organic medical cannabis products were of merchantable quality and fit for use. OrganiGram breached these warranties to the Plaintiff and the Class Members by selling them the Affected Product which was not, in fact, organic, and which was dangerous to patients.

44. In addition, the Plaintiff states that OrganiGram breached an implied contractual term that it would use reasonable care and skill in designing, developing, testing, manufacturing, distributing and selling the Affected Product. OrganiGram did not do so, as described in paragraphs 37-41.

45. The Plaintiff states that the nature of the contract between OrganiGram and patients, who are by definition vulnerable and in poor health, implies a duty of good faith which requires OrganiGram to consider the interest of the Plaintiff as at least equal to its own and not to offer or supply an inherently dangerous product. OrganiGram breached its implied duty of good faith by designing, developing, testing, manufacturing, distributing, selling and marketing a purported organic medical cannabis product which was in fact not organic and contained prohibited pesticides harmful to human health.

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

e. Breach of the Competition Act

39. OrganiGram 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 organic and free of unauthorized pesticides;

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 human health risks associated with consumption of the Affected Product.

40. OrganiGram's representations were material and affected the decisions of the Plaintiff and Class Members to purchase the purportedly organic Affected Product.

41. As a result of the Representations of OrganiGram, the Plaintiff and Class Members suffered loss or damage, including financial loss in the form of the consideration paid to receive organic medical cannabis free from harmful pesticides.

42. The Plaintiff states that OrganiGram's conduct in promoting itself as a provider of organic 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.

43. 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 OrganiGram for the purpose of establishing a breach of s. 52(1) of the *Competition Act*.

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

44. OrganiGram engaged in trade practices specifically declared unlawful under ss. 9 and 10 of the *Food and Drugs 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,* OrganiGram 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.

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

45. 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. OrganiGram 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, OrganiGram breached the conditions or warranties implied by s. 26(3)(d), (e), (f) and (h) of the *CPA.*

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

46. 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 OrganiGram, 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.* OrganiGram represented that the Affected Product was safe, organically grown, and a higher quality, safer and more effective treatment than other similar medical cannabis products manufactured by OrganiGram's competitors.

47. The Plaintiff and Class Members plead that the Affected Product was neither reasonably fit for its intended purpose nor of merchantable quality. Accordingly OrganiGram acted in breach of section 17(a) and (b) of the *Sale of Goods Act.*

i. Waiver of Tort

48. 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.

49. 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.

50. As a result of OrganiGram'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 OrganiGram, or the net income received by OrganiGram or a percent of the proceeds from the sale of the Affected Product as a result of OrganiGram's conduct.

51. 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 OrganiGram cannot in good conscience retain it;
(b) the integrity of the supply of regulated, organic medical cannabis to patients would be undermined if the court did not impose an effective remedy;
(c) absent OrganiGram's wrongful conduct, the Affected Product could not have been marketed, nor would OrganiGram have received any revenue from its purchase by patients; and
(d) OrganiGram engaged in wrongful conduct by putting into the marketplace health products marketed to patients as organic and healthy, when in fact it was neither.

j. Unjust enrichment

52. The Plaintiff and Class Members did not receive a product of the quality, nature or fitness that had been represented by OrganiGram or that the Plaintiff and Class Members, as reasonable consumers and patients, expected.

53. By reason of the wrongdoing described herein, there has been a deprivation of the Plaintiffs and Class Members and a corresponding enrichment of OrganiGram. This deprivation and corresponding enrichment is without juridical reason.

IV. RELIEF REQUESTED

a. Restitution

54. 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 OrganiGram should retain no benefit from the breaches pleaded herein.

55. The Plaintiff also states that the total unlawful gain obtained by OrganiGram from Class Members necessarily reflects the total loss suffered by the Class, and is ascertainable from the business records of OrganiGram without resort to individual inquiries. For greater certainty, the Plaintiff does not advance claims for personal injuries.

b. Punitive Damages

56. The Plaintiff and Class Members plead that OrganiGram 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.

57. The Plaintiff and Class Members claim that such an election is appropriate for the following reasons, among others:

Blameworthiness of OrganiGram'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) OrganiGram has concealed or attempted to cover up its misconduct;
(d) OrganiGram is and has been aware that its conduct is wrong;
(e) when the recalls occurred, OrganiGram sought further sales of its products to Class Members by offering a discount and/or credit;
(f) the interest violated by OrganiGram 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 OrganiGram for improvement, not impairment, of their health;

Proportionate to Need for Deterrence

(h) the misconduct of a certified organic, 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; and

Proportionate to Advantage Gained

(j) OrganiGram received significant financial gains from their misconduct;

58. 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 OrganiGram from the Plaintiff and Class Members;

(e) An order directing OrganiGram 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 3rd day of March, 2017.

RAYMOND F. WAGNER, Q.C.
Wagners
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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 II recall initiated on January 9, 2017

186
196
568
612
614
631
0484 4120 9186 4217
0632 9020 5186 1584
0698 3979 5670 4013
0835 2499 3080 3152
1039 6743 0096 3064
1128 2207 5306 8356
1214 4385 7876 4963
1248 8565 0909 0116
1392 2140 59402203
1530 5385 8865 0723
1692 8722 7100 7769
1798 3262 0332 9024
1869 8785 4606 7699
2030 8854 6974 3698
2425 5257 9734 5279
2707 7316 6422 8456
2724 3857 7503 4219
2832 0173 5225 2831
3017 4730 1276 8084
3353 1673 3760 8098
3457 1488 3880 0879
3659 5990 7510 5577
3676 2712 8761 2809
3732 6805 4306 4209
4257 5804 1380 5978
4546 3441 5773 5387
4617 9711 2847 2539
4709 0039 8177 6510
4865 2707 2710 2013
4979 9968 5040 4225
5044 0498 7172 7996
5167 2552 4451 3242
5556 5590 5362 5049
5560 8059 3978 5025
5692 9617 0958 9847

5908 6644 8564 0243
5916 2665 7125 6723
6093 0421 1532 2816
6338 1409 1316 9568
6642 5297 9577 0719
6677 6317 7798 5134
6699 6144 5961 2305
6952 1539 1506 3684
7347 1403 5310 8248
7889 4737 3645 1644
7942 5711 8236 3848
7960 7185 3171 4982
7998 0446 5884 4992
8343 9021 8073 9701
8522 6652 7965 8394
8573 8735 4099 6063
8702 3966 6164 2065
8721 7829 4773 5980
8757 8743 2054 3792
8923 5206 8182 7901
8988 3254 9463 8382
9018 0053 5952 4151
9073 9120 9510 9254
9430 1622 3667 6094
9464 9903 4263 4784
9572 8784 0739 8911
9653 4459 4335 1330
9670 7459 2887 2510

Recalled lots – Type III recall initiated on December 28, 2016

3648 0303 4839 6093
7890 3697 2268 9876
569
611
661