

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

**K. K.**

Plaintiff

- and -

**FGF BRANDS INC.**

Defendant

Proceeding under the *Class Proceedings Act, 1992*

**STATEMENT OF CLAIM**

**TO THE DEFENDANT**

**A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU** by the plaintiff. The claim made against you is set out in the following pages.

**IF YOU WISH TO DEFEND THIS PROCEEDING**, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

**IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.**

**TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED** if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date: July 8, 2019

Issued by

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**Local Registrar**

Address of  
court office:

161 Elgin Street  
2<sup>nd</sup> Floor  
Ottawa, ON K2P 2K1

**TO:**           **FGF Brands Inc.**  
1295 Ormont Drive  
Toronto, Ontario  
M9L 2W6

Tel: 1 (905) 761-3333

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## DEFINED TERMS

1. In this Statement of Claim, in addition to the terms that are defined elsewhere herein, the following terms have the following meanings:

(a) “**Naan Product(s)**” means the naan bread products that the **Defendant** formulates, develops, manufactures, packages, labels, distributes, markets, advertises, promotes, and/or sells throughout Canada, including, but not limited to those under the Stonefire brand: (1) Stonefire Original Naan; (2) Stonefire Roasted Garlic Naan; (3) Stonefire Whole Grain Naan; (4) Stonefire Organic Original Naan; (5) Stonefire Sweet Chili Naan; (6) Stonefire Original Mini Naan; (7) Stonefire Ancient Grain Mini Naan; (8) Stonefire Naan Dippers; and (9) Stonefire Naan Rounds (the “Stonefire Naan products”), those under its predecessor, Fabulous Flats/ Fabulous Flat Breads/ International Fabulous Flats, and those under a variety of other store brands such as President’s Choice<sup>1</sup>, Santosh, Reya, Rivaj, and Tando;

(b) “**Class**” or “**Class Members**” means all persons resident in Canada who purchased a **Naan Product**;

(c) “**Class Proceedings Act**” means the *Class Proceedings Act, 1992*, SO 1992, c 6, as amended;

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<sup>1</sup> The Naan Products under the President’s Choice brand include: (1) President’s Choice Traditional Naan Flatbreads, (2) President’s Choice Garlic Naan Flatbreads, (3) President’s Choice Organics Naan Flatbreads, (4) President’s Choice Traditional Mini Naan Flatbreads, (5) President’s Choice Garlic Naan Flatbreads, (6) President’s Choice Traditional Naan Rounds, and (7) President’s Choice Blue Menu Naan Flatbreads.

- (d) “*Sale of Goods Act*” means the *Sale of Goods Act*, RSO 1990, c S.1, as amended, including s. 15;
- (e) “*Consumer Protection Act*” means the *Consumer Protection Act, 2002*, SO 2002, c. 30, Sched. A, as amended, including ss. 8, 11, 14 & 15;
- (f) “**Consumer Protection Legislation**” means:
- (i) The *Business Practices and Consumer Protection Act*, SBC 2004, c.2, as amended, including ss. 4, 5 & 8-10;
  - (ii) The *Consumer Protection Act*, RSA 2000, c C-26.3, as amended, including ss. 5-9 & 13 (Alberta);
  - (iii) The *Consumer Protection and Business Practices Act*, SS 2014, c. C-30.2, as amended, including ss. 5-9, 16, 18-23, 26, & 36 (Saskatchewan);
  - (iv) The *Business Practices Act*, CCSM, c B120, as amended, including ss. 2-9 & 23 (Manitoba);
  - (v) The *Consumer Protection Act*, CQLR c P-40.1 at ss. 41, 215, 216, 218, 219, 220(a), 221(c), (d), & (g), 228, 239 (a), 253, 270 & 272 (Quebec);
  - (vi) The *Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1, as amended, including ss. 7-10, and the *Trade Practices Act*, RSNL 1990, c T-7, as amended, including ss. 5-7 & 14 (Newfoundland);
  - (vii) The *Consumer Product Warranty and Liability Act*, SNB 1978, c 18.1 at ss. 4, 13, 15, & 23 (New Brunswick);
  - (viii) The *Consumer Protection Act*, RSNS 1989, c 92, including ss. 26-29 (Nova Scotia);

- (ix) The *Business Practices Act*, RSPEI 1988, c B-7, as amended, including ss. 2-4 (Prince Edward Island);
  - (x) The *Consumers Protection Act*, RSY 2002, c 40, as amended, including ss. 58 & 86 (Yukon);
  - (xi) The *Consumer Protection Act*, RSNWT 1988, c C-17, as amended, including ss. 70 & 71 (Northwest Territories); and
  - (xii) The *Consumer Protection Act*, RSNWT (Nu) 1988, c C-17, as amended, including ss. 70 & 71 (Nunavut);
- (g) “**Competition Act**” means the *Competition Act*, RSC 1985, c C-34, as amended, including ss. 36 & 52;
- (h) “**Consumer Packaging and Labelling Act**” means the *Consumer Packaging and Labelling Act*, R.S.C. 1985, c C-38, as amended, including ss. 7, 9 & 20;
- (i) “**Defendant**” or “**FGF**” means FGF Brands Inc.;
- (j) “**Plaintiff**” means K. K.; and
- (k) “**Representation(s)**” means the **Defendant’s** false, misleading or deceptive representations, claims, and statements that their **Naan Products** are baked in a tandoor oven.

## THE CLAIM

2. The proposed Representative Plaintiff claims on his own behalf and on behalf of the members of the Class of persons as defined in paragraph 5 below (the “Class”) as against FGF Brands Inc. (the “Defendant”):

- (a) An order pursuant to the *Class Proceedings Act* certifying this action as a class proceeding and appointing the Plaintiff as Representative Plaintiff for the Class Members;
- (b) A declaration that in representing that the Naan Products were baked in a tandoor oven, the Defendant committed the following:
  - (i) Negligence;
  - (ii) Fraudulent or negligent misrepresentation;
  - (iii) Civil fraud;
  - (iv) Fraudulent concealment;
  - (v) Breach of warranty;
- (c) A declaration that in representing that the Naan Products were baked in a tandoor oven, the Defendant:
  - (i) Breached the *Sale of Goods Act* (in terms of the duties as to fitness for a particular purpose and condition of merchantability);
  - (ii) Made representations that were false, misleading, deceptive, and unconscionable, amounting to unfair practices in violation of the *Consumer*

*Protection Act* and the parallel provisions of the Consumer Protection Legislation as well as the *Competition Act*;

- (iii) Breached the *Consumer Packaging and Labelling Act* (in applying, selling, importing and/or advertising “false or misleading representations” onto the Naan Products and in selling, importing or advertising the Naan Products such that consumers might reasonably be misled with respect to the quality of the product);
- (d) A declaration that this Statement of Claim is considered as notice given by the Plaintiff on her own behalf and on behalf of “person similarly situated” and is sufficient to give notice to the Defendant on behalf of all Class Members;
- (e) In the alternative, a declaration, if necessary, that it is in the interests of justice to waive the notice requirement under Part III and s. 101 of the *Consumer Protection Act* and the parallel provisions of the Consumer Protection Legislation;
- (f) General damages in an amount to be determined in the aggregate for the Class Members;
- (g) Special damages in an amount that this Honourable Court deems appropriate to compensate Class Members for, *inter alia*, the purchase price of the Naan Products, or otherwise, the overpayment (premium price) of the Naan Products;
- (h) Punitive (exemplary) and aggravated damages in the aggregate in an amount that this Honourable Court deems appropriate;

- (i) An order that Class Members are entitled to a refund of the purchase price of their Naan Products, including, but not limited to sales taxes, based *inter alia* on revocation of acceptance and rescission or, in the alternative, the diminished value of the Naan Products;
- (j) In the alternative, an order for an accounting of revenues received by the Defendant resulting from the sale of the Naan Products;
- (k) A declaration that any funds received by the Defendant through the sale of its Naan Products are held in trust for the benefit of the Plaintiff and Class Members;
- (l) Restitution and/or a refund of all monies paid to or received by the Defendant from the sale of their Naan Products to members of the Class on the basis of unjust enrichment;
- (m) In addition, or in the alternative, restitution and/or a refund of all monies paid to or received by the Defendant from the sale of their Naan Products to members of the Class on the basis of *quantum valebant*;
- (n) An interim interlocutory and permanent order restraining the Defendant from continuing to sell the Naan Products until the false, misleading, and deceptive representations are removed from their packaging and labelling and from any other form of misleading marketing, advertisement, or promotion, including on the Defendant's websites;

- (o) An order directing a reference or such other directions as may be necessary to determine issues not determined at the trial of the common issues;
- (p) An order compelling the creation of a plan of distribution pursuant to ss. 23, 24, 25 and 26 of the *Class Proceedings Act* and the parallel provisions of the Consumer Protection Legislation;
- (q) Pre-judgment and post-judgment interest on the foregoing sums in the amount of 2% per month, compounded monthly, or alternatively, pursuant to ss. 128, 129, and 130 of the *Courts of Justice Act*;
- (r) Costs of notice and administration of the plan of distribution of recovery in this action plus applicable taxes pursuant to s. 26 (9) of the *Class Proceedings Act*;
- (s) Costs of this action on a substantial indemnity basis including any and all applicable taxes payable thereon; and
- (t) Such further and other relief as counsel may advise and/or this Honourable Court may deem just and appropriate in the circumstances.

## **THE PARTIES**

### **The Representative Plaintiff**

3. The Plaintiff is an individual residing in the city of Newmarket, in the province of Ontario.

4. Over the last several years, the Plaintiff has purchased many Naan Products including, but not limited to, Stonefire Roasted Garlic Naan after being exposed to the Defendant's Representation.

### **The Class**

5. The Plaintiff seeks to represent the following class of which he is a member (the "Proposed Class"):

All persons resident in Canada who purchased a Naan Product.

### **The Defendant**

6. The Defendant, FGF Brands Inc. (hereinafter "FGF")<sup>2</sup>, is a Canadian corporation with its principal place of business in Toronto, Ontario.

7. The Defendant formulates, develops, manufactures, packages, labels, distributes, markets, advertises, promotes, and/or sells the Naan Products throughout Canada, including within the province of Ontario. It, or its wholly-owned subsidiary, 2441674 Ontario Inc., is the registrant and/or current owner of the following trade-marks in Canada:

- a) "FABULOUS FLATBREAD" (TMA529774), which was filed on October 27, 1997;
- b) "FABULOUS FLATS" (TMA720452), which was filed on February 12, 2007;
- c) "INTERNATIONAL FABULOUS FLATS" (TMA715269), which was filed on September 24, 2007;
- d) "REYA" (TMA798514), which was filed on May 12, 2010;
- e) "STONE FIRE" (TMA862176), which was filed on October 5, 2010;

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<sup>2</sup> The term "FGF" stands for "Functional Gourmet Foods".

- f) “TANDO” (TMA880857), which was filed on February 15, 2011;
  - g) “STONEFIRE” (TMA833318), which was filed on September 21, 2011;
  - h) “RIVAJ” (TMA903503), which was filed on July 10, 2012;
  - i) “SANTOSH” (TMA881809), which was filed on July 10, 2012;
  - j) “STONEFIRE AUTHENTIC FLATBREADS” (TMA875030), which was filed on January 22, 2013;
  - k) “STONEFIRE” (TMA927808), which was filed on February 20, 2013;
  - l) “FGF BRANDS” (TMA981540), which was filed on September 1, 2016;
8. The Defendant is also the applicant and owner of the following patents:
- a) “SYSTEM AND METHOD FOR PREPARING NAAN BREAD” (CA 2650928), which was filed on September 29, 2006;
  - b) “METHOD OF PREPARING FLAT BREAD” (CA 2762103), which was filed on September 29, 2006;
  - c) “SYSTEM AND METHOD FOR PREPARING NAAN BREAD” (CA 2857839), which was filed on September 29, 2006;
  - d) “BOTTOM ACCESS DOLLIES FOR CONVEYOR OVEN” (CA 2730651), which was filed on July 16, 2008;
  - e) “INTERMEDIATE PANEL CEILING FOR CONVEYOR OVEN” (CA 2730654), which was filed on July 16, 2008;

### **THE NATURE OF THE CLAIM**

9. This class proceeding concerns the Defendant’s misrepresentation that its Naan Products are baked in a tandoor oven, when in reality they are not.

#### **I. Naan and the Tandoor Oven**

10. Naan is a type of leavened flatbread common in Indian and other South and Central Asian cuisine, often served alongside curries. Traditionally, naan is baked in a tandoor oven, which is a small oven consisting of a clay or stone heating surface, surrounded with insulation (traditionally sand), and an outer housing (traditionally stone masonry or earth housing). A tandoor is cylindrical and narrows at the top to retain heat, with the cooking chamber being vertical above the heat source. Heat is provided from a fire source at the bottom of the tandoor, typically burning charcoal or wood, and the oven is heated to a temperature often in excess of 700 degrees Fahrenheit. Once the oven is heated, the raw naan is placed by hand on the hot inner wall of the tandoor for approximately one to two minutes, before being briefly moved closer to the heat source at the bottom of the tandoor and removed by hand for serving. Given the difficulties and degree of individual attention required, generally only one or two pieces of naan can be cooked at a time in a tandoor oven.

11. A traditional tandoor is shown below:



12. Tandoori naan is cooked at exceptionally high temperatures, often over 700° F. The naan is placed on the heated inner surface of the tandoor, where it is cooked for one to two minutes. After that time, the naan is moved closer to the heat source at the bottom of the tandoor, where it is finished for approximately thirty seconds, before being removed. Naan cooking on the vertical wall of a tandoor is shown below:



13. Many believe that there is no substitute for the flavour imparted by baking naan with a traditional stone or clay oven. Because of the small size of a tandoor oven, its structural components, and its labour-intensive cooking process (each of which limit the amount of naan that can be made at once), naan is generally made in relatively small quantities – typically one or two at a time – in North American bakeries and restaurants. Modern tandoors used in these settings maintain the traditional core characteristics of a stone or clay interior, with insulation and a cylindrical shape narrowing at the top, as shown below:



14. Because of the labour-intensive nature of naan production, requiring the baker's undivided attention for each piece of naan, naan is not suitable for mass production, even in modern tandoor-style ovens. "It needs to be baked at blistering high temperatures, not something that's easy to do commercially without drying up in the insides, rendering them unappealing soon afterward."<sup>3</sup>

15. The naan baking process involves slapping the raw naan dough onto the inside walls of the tandoor, where the dough will cook, which necessitates bakers placing their arms through the narrow opening at the top of the tandoor. Because tandoor cooking chambers often exceed 700° F, bakers must move cautiously to avoid severe burns from the baking chamber. It is this baking

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<sup>3</sup> Marina Strauss, *The world is flatbread for bakery behind PC naan*, The Globe and Mail, Published October 9, 2006, <http://www.theglobeandmail.com/report-on-business/the-world-is-flatbread-for-bakery-behind-pc-naan/article18174686/>.

process and the need for continuous human attention that impedes large-scale commercial production of naan. Typically, a baker using a tandoor can only bake one or two pieces of naan at a time.

16. For all of these reasons, naan has never before been considered a bread product that a consumer can purchase at the store. In North America, naan has been traditionally consumed at restaurants as, unless home cooks have access to a tandoor oven, they are not able to enjoy hot naan bread with a meal.

## **II. The Naan Products**

17. Beginning in 2005, the Defendant has been claiming to have solved the mass-produced tandoor naan problem. In 2005, the Naan Products became widely available in grocery stores and supermarkets, as FGF began mass producing and selling what it describes as traditional, tandoor-baked naan. The Defendant began selling a wide variety of naan products and labelling them as “tandoor oven baked” or “Tandoor Oven-Baked to Honor 2,000 Years of Tradition”.

18. In March 2011, the Stonefire brand was launched – previously, the Defendant had been selling the Naan Products under the Fabulous Flats and Fabulous Flat Breads brand.

19. Over the last 14 years, the Defendant has offered its Naan Products under a variety of different brand names. These have included their own brands, such as Stonefire and Fabulous Flats as well as a variety of in-store brand names, including, but not limited to President’s Choice, at grocery stores and supermarkets across North America and Canada. Regardless of the brand, however, the packaging for each Naan Product specifically informed prospective purchasers that

the naan was “Tandoor Baked” and “Tandoor Oven-Baked to Honor 2,000 Years of Tradition.”

The Naan Products include:

a) Stonefire Original Naan:



b) Stonefire Roasted Garlic Naan:



c) Stonefire Whole Grain Naan:



d) Stonefire Organic Original Naan:



e) Stonefire Sweet Chili Naan:



f) Stonefire Original Mini Naan:



g) Stonefire Ancient Grain Mini Naan:



h) Stonefire Naan Dippers:



i) Stonefire Naan Rounds:



j) President's Choice Traditional Naan Flatbreads, President's Choice Garlic Naan Flatbreads, President's Choice Organics Naan Flatbreads, President's Choice Traditional Mini Naan Flatbreads, President's Choice Garlic Naan Flatbreads, President's Choice Traditional Naan Rounds, President's Choice Blue Menu Naan Flatbreads







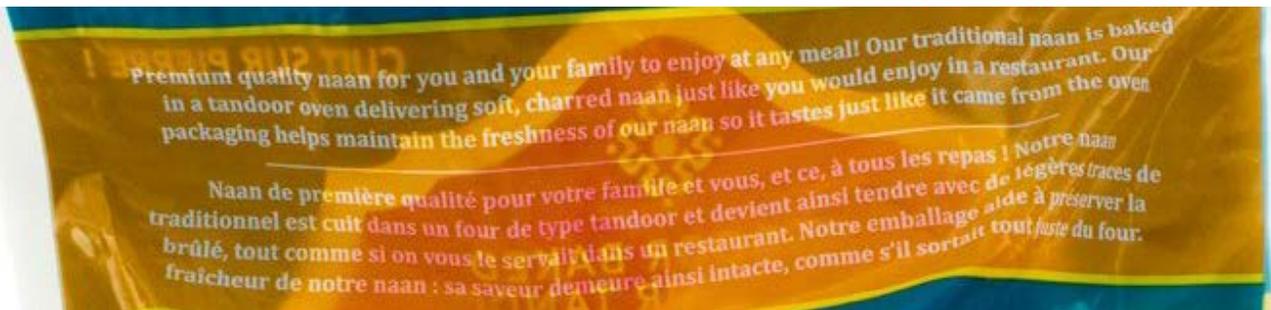
k) Santosh Plain Naan Bread, Santosh Garlic Naan Bread, and Santosh 100% Whole Wheat Naan Bread:





Santosh™ promises premium quality naan for you and your family to enjoy at any meal! Our traditional naan is baked in a tandoor oven delivering soft, charred naan just like you would enjoy in a restaurant.

## 1) Rivaj Traditional Tandoor Baked Naan:



m) Any other Naan formulated, developed, manufactured, packaged, labelled, distributed, marketed, advertised, promoted, and/or sold by the Defendant in Canada and represented as having been baked in a tandoor oven when it was not.

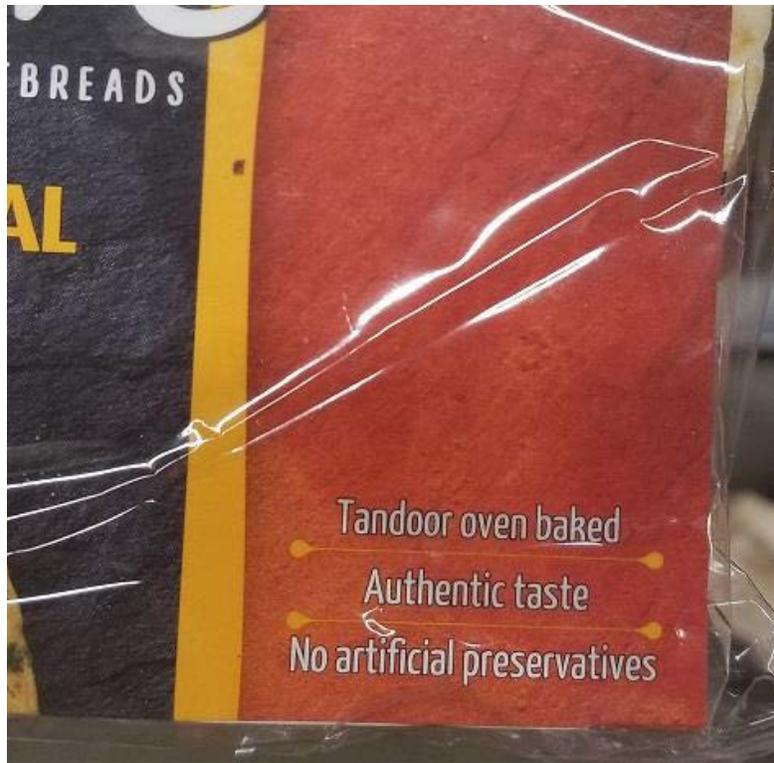
20. Unfortunately for the thousands of consumers who have paid a premium for the Defendant's purportedly "tandoor-baked" naan, Defendant's representations are false and

misleading. The Naan Products are not actually baked in a tandoor oven. Rather, they are mass produced on an “endless” conveyor belt in a gas-heated commercial oven, which the Defendant calls a “tunnel oven”, with steps taken to try to mimic traditional naan characteristics.

### **III. The Defendant’s Marketing**

21. The Defendant markets the Stonefire Naan Products as being “Tandoor Oven-Baked to Honor 2,000 Years of Tradition” to portray the bread as a high-quality, hand-baked, low-volume alternative to other mass-produced commercially-available flatbreads. The ordinary usage of the term “tandoor” and “2,000 years of tradition,” as well as the limitations of baking in a tandoor oven, describe a baking process devoid of automation or machinery and imply a higher level of quality as compared with other commercially mass-produced methods.

22. The Defendant represents in prominent text on the front packages of their Stonefire Naan Products that the naan is “Tandoor oven baked,” as depicted in the below image of Stonefire Original Naan’s front packaging.

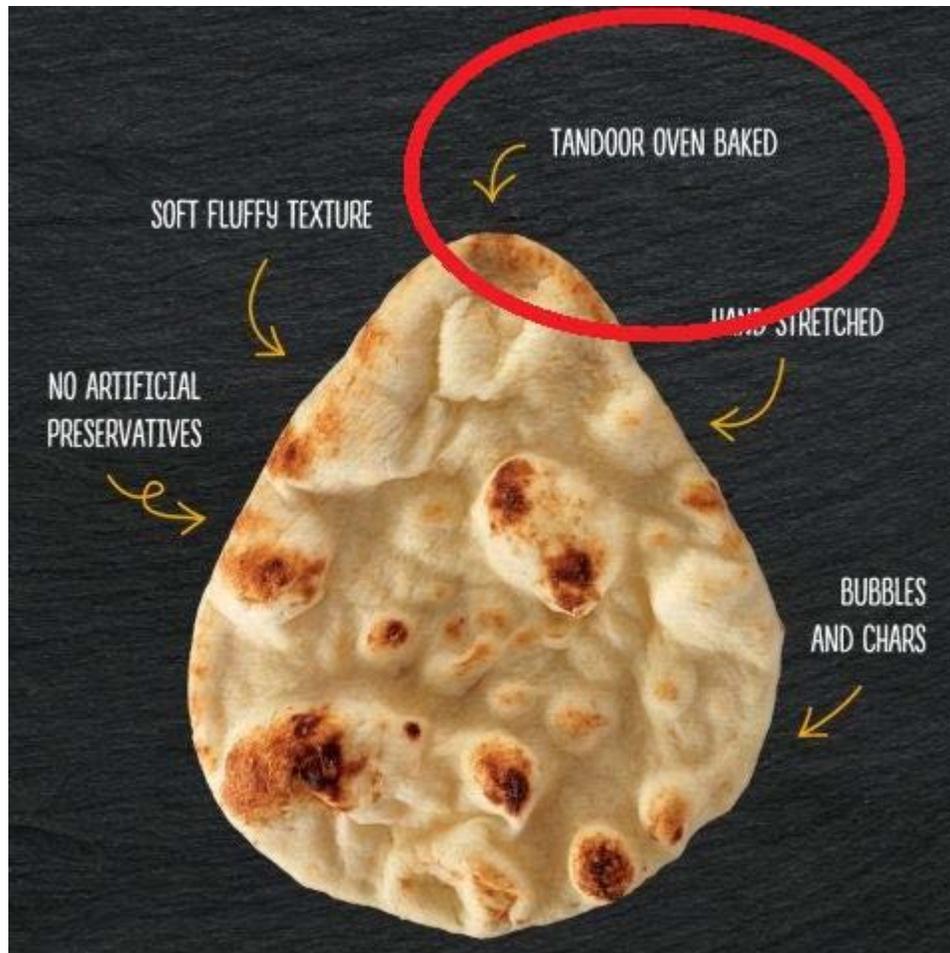


23. The Defendant also represents, in bold, oversized, and all-capital text on the back of their packages of their Stonefire Naan Products, that their naan is “HAND-STRETCHED AND TANDOOR OVEN-BAKED TO HONOR 2,000 YEARS OF TRADITION,” as depicted in the below image of Stonefire Original Naan’s back packaging.



24. In addition to marketing the Stonefire Naan Products in stores, the Defendant advertises the same images of the front and back packages of their Stonefire Original Naan, Stonefire Roasted Garlic Naan, Stonefire Whole Grain Naan, Stonefire Organic Original Naan, Stonefire Original Mini Naan, Stonefire Ancient Grain Mini Naan, and Stonefire Naan Dippers on their website, which images prominently display the statements that the naan is “Tandoor oven baked” and “TANDOOR OVEN-BAKED TO HONOR 2,000 YEARS OF TRADITION”.

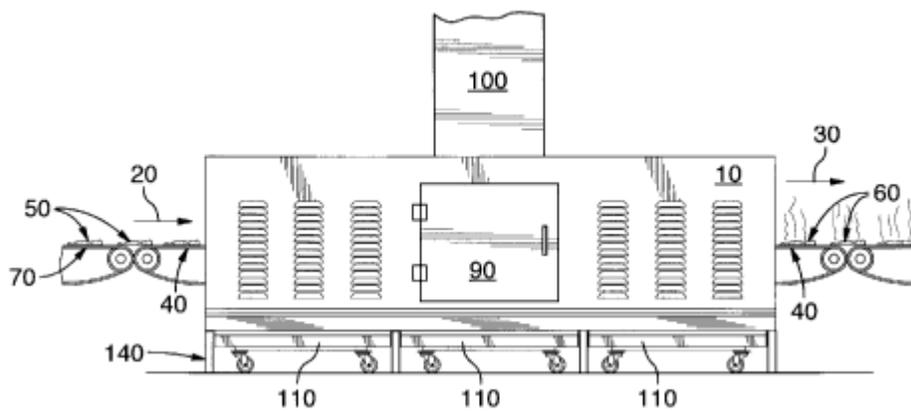
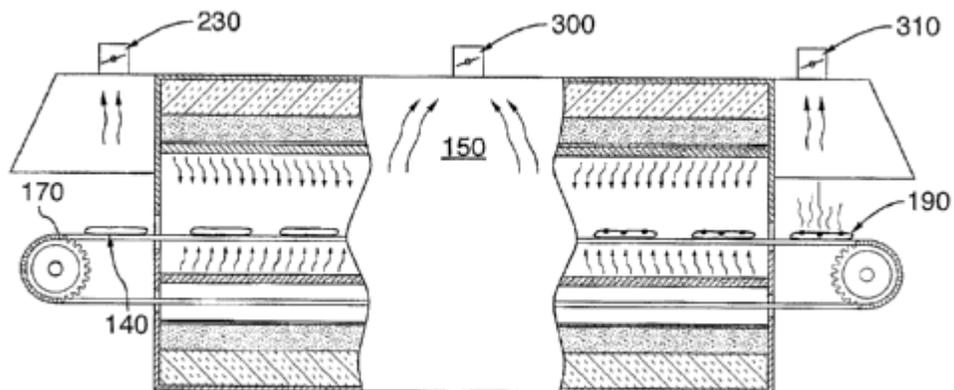
25. Moreover, for each of their Stonefire Naan Products, the Defendant advertises on their website separate diagramming photographs of each naan with informational text describing the naan, including text that states that the naan is “Tandoor Oven Baked,” as depicted in the below diagram of Defendant’s Stonefire Original Naan.

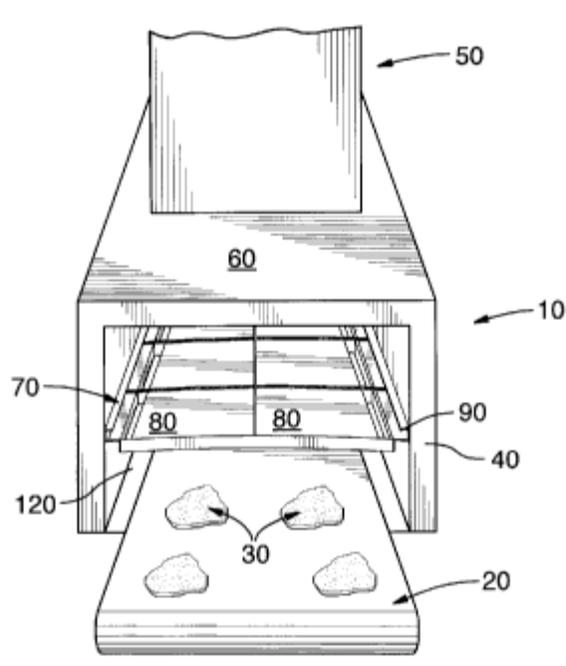


#### **IV. The Naan Products are not Baked in a Tandoor Oven**

26. In blunt contrast to its marketing campaign, the Defendant’s Naan Products are not actually baked in a tandoor oven. Instead, as conceded by its own patents (referred to above at paragraph 8), the Naan Products are mass produced on an “endless” conveyor belt that rotates through a gas-fired commercial oven that the Defendant invented and patented.

27. Below are illustrations of the Defendant's conveyor belt commercial oven system taken from the Canadian patents CA 2857839, CA 2730651, and CA 2730654:





28. The Naan Products are not baked in a tandoor oven in any sense of the word. Rather, the Naan Products are mass produced on a conveyor belt in a gas-heated commercial oven designed by the Defendant to overcome the impracticalities of using a real tandoor oven, so as to mass-produce products.

29. More recently, on the Defendant's website at [www.stonefire.com](http://www.stonefire.com), the representation of "baked at extremely high heat, in a tandoor oven, just as they were hundreds of years ago" has been changed to "baked in our patented tandoor tunnel oven to give the texture and taste of a traditional tandoor oven". The product labelling and packaging has remained the same.

30. The Defendant's website at [www.santoshnaan.com](http://www.santoshnaan.com) continues to represent the following: "Every piece is hand-finished and baked in a traditional tandoor oven to deliver authentic bubbles and chars" and "Our traditional naan is baked in a tandoor oven delivering soft, charred naan just like you would enjoy in a restaurant".

## V. Summative Remarks

31. The Plaintiff and the Class Members that she seeks to represent suffered economic damages by purchasing the Naan Products; they did not receive the benefit of the bargain, and are therefore entitled to damages.

32. The Defendant placed their Naan Products into the stream of commerce in Canada with the intention and expectation that customers, such as the Plaintiff and Class Members, would purchase the Naan Products based on its representations.

33. The Defendant knew or ought to have known that purchasers of their Naan Products would not be reasonably able to protect their interests, that such purchasers would be unable to receive a product that would conform to the Defendant's representations, and that customers would be relying on the Defendant's representations to their detriment.

34. The Plaintiff and members of the Class would not have purchased the Naan Products and most certainly would not have paid the high price had they known that the Naan Products were not baked in a tandoor oven. When the Plaintiff and members of the Class purchased the Naan Products, they relied on their reasonable expectation that the representation that it was tandoori naan was accurate.

35. Canadian consumers were prepared to, and did actually pay, a premium to purchase the Defendant's Naan Products in reliance upon the Representation.

### **THE REPRESENTATIVE PLAINTIFF**

36. Over the past several years, the Plaintiff purchased many Naan Products including, but not limited to, Stonefire Roasted Garlic Naan from various grocery stores, primarily at:

- a) Loblaws Superstore located at Bayview Ave. and St. John's Sideroad in Aurora, Ontario;
- b) Metro located at Yonge St. and Mulock Dr. in Newmarket, Ontario;
- c) Longo's located at Wellington St. East and Bayview Ave. in Aurora, Ontario.

37. The Plaintiff purchased the Naan Products based on the Defendant's marketing and after having read the Naan Product's labelling. Specifically, he believed that the Naan Products were superior to standard naan breads or other flat breads because they were baked in a tandoor oven.

38. The Plaintiff was unaware that the Naan Products were actually mass-produced in the Defendant's patented commercial conveyor-belt oven system.

39. The Plaintiff has discovered that a similar class proceeding is underway in the United States due to this Representation and he now believes that he has been misled by the Defendant; had he known the true facts, the Plaintiff would not have purchased the Naan Products and would certainly not have paid such a high price for them.

40. The Plaintiff has suffered damages as a result of purchasing the Naan Products.

## CAUSES OF ACTION

### A. Negligence

41. The Tort of Civil Negligence can easily be made out as:
- (a) A false representation was made by the Defendant regarding the Naan Products being baked in a tandoor oven;
  - (b) The Defendant had knowledge of and/or were reckless as to the falsehood of the Representation;
  - (c) The false Representation caused the Plaintiff and the Class to act; and
  - (d) The Plaintiff's and the Class Member's actions resulted in a loss.
42. The Defendant had a positive legal duty to use reasonable care to perform its legal obligations to the Plaintiff and to Class Members, including, but not limited to formulating, developing, manufacturing, packaging, labelling, distributing, marketing, advertising, promoting, and/or selling the Naan Products without misrepresentation.
43. The Defendant was aware that its customers (including the Plaintiff and the Class) relied on it to provide truthful and accurate information about its Naan Products.
44. The Defendant breached its duty of care to the Plaintiff and to the Class Members by negligently formulating, developing, manufacturing, packaging, labelling, distributing, marketing, advertising, promoting, and/or selling the Naan Products with a false representation and by failing

to ensure that they were of merchantable quality and fit for their intended purpose. The aforesaid loss suffered by the Plaintiff and Class Members was caused by this negligence.

45. By virtue of the acts and omissions described above, the Defendant was negligent and caused damage to the Plaintiff and of the Class Members.

46. The loss, damages and injuries were foreseeable.

47. The Defendant's negligence proximately caused the loss, damage, injury and damages to the Plaintiff and to the Class Members.

48. By reason of the foregoing, the Plaintiff and each member of the Class are entitled to recover damages and other relief from the Defendant.

**B. Fraudulent and/or Negligent Misrepresentation**

49. The tort of negligent misrepresentation can be made out as:

(a) There was a relationship of proximity in which failure to take reasonable care might foreseeably cause loss or harm to the Plaintiff and to the Class;

(b) The Defendant made a Representation that was untrue, inaccurate and/or misleading;

(c) The Defendant acted negligently in making the Representation;

(d) The Representation were relied upon by the Plaintiff and by the Class reasonably;  
and

(e) The Plaintiff and the Class sustained damages as a result of their reliance.

50. Fraudulent misrepresentation can equally be made out as the Defendant made the representation that the Naan Products were baked in a tandoor oven knowing that it was false and the Defendant intended that the Plaintiff and Class Members would rely upon the representation in purchasing the Naan Products.

51. The Defendant represented to the Plaintiff and the Class Members, by means of its packaging, labelling, marketing, advertising, and promotion that the Naan Products were baked in a tandoor oven – this Representation was untrue as set forth herein.

52. At the time that the Defendant made the misrepresentations herein alleged, they had no reasonable grounds for believing the Representation to be true, as there was ample evidence to the contrary set forth in detail above.

53. The Defendant made the Representation herein alleged with the intention of inducing Plaintiff and the Class Members to unknowingly purchase their Naan Products.

54. The Plaintiff and the Class Members relied upon the Representation and, in reliance upon it, purchased the Naan Products. Said reliance was reasonable.

55. Plaintiff and the Class Members were without the ability to determine the truth of these statements on their own and could only rely on the Defendant in this regard.

56. Had the Plaintiff and the Class Members known the true facts, they would either not have purchased Naan Products or would not have paid such a high price.

57. By reason of the foregoing, Plaintiff and each member of the Class are entitled to recover damages and other relief from Defendant.

### **C. Civil Fraud**

58. The Defendant represented to the Plaintiff and to the Class Members that its Naan Products were baked in a tandoor oven.

59. The Defendant knew that the Representation was false at the time that it made it and that its Naan Products were instead baked on a conveyor belt in a gas-heated commercial oven.

60. The Defendant made the Representation herein alleged with the intention of inducing the Plaintiff and the Class Members to purchase their Naan Products and with the intention of depriving the Plaintiff and the Class Members of property or otherwise causing injury.

61. The Plaintiff and the Class Members relied upon the Defendant's Representation and, in reliance thereupon, purchased the Naan Products. Said reliance was reasonable. The Plaintiff and the Class Members were without the ability to determine the truth of these statements on their own and could only rely on the Defendant's statements as well as the Representation on its packaging and labelling and in its marketing, advertising, and promotional materials.

62. The Plaintiff and Class Members suffered damages as a result of purchasing the Naan Products.

#### **D. Fraudulent Concealment**

63. The Defendant made material omissions as well as affirmative misrepresentations regarding the Naan Products in claiming them to be baked in a tandoor oven to honour 2,000 years of tradition and in failing to disclose that they were actually mass-produced on a conveyor belt in a gas-heated commercial oven system.

64. The Defendant knew that the representations were false at the time that they were made.

65. The Defendant fraudulently concealed and/or intentionally failed to disclose to the Plaintiff and the Class the true nature of the Naan Products, which is that they were not “Tandoor Baked”.

66. The Defendant was under a duty to disclose the true nature and baking process of its Naan Products because it was known and/or accessible only to the Defendant, who had superior knowledge and access to the facts regarding the baking process, and the Defendant knew it was not known to or reasonably discoverable by the Plaintiff and the Class. Neither the Plaintiff, nor Class Members could, in the exercise of reasonable diligence, have discovered independently that the Naan Products did not conform to the Representation prior to purchase.

67. The Defendant knew that its Naan Products were not baked in a tandoor oven because *inter alia* the Defendant: designed, created, and patented its own new “endless conveyor belt” oven; effectively acknowledged in other litigation and in its patent materials that its ovens were not tandoor ovens; and were previously sued by another consumer in the United States for the same deceptive conduct as alleged in this claim – since the resolution of which the Defendant has continued to misrepresent its Naan Products as tandoor-oven baked.

68. The Defendant's misrepresentations and false claims that the Naan Products are "Tandoor Oven-Baked to Honor 2,000 Years of Tradition" are material because any reasonable consumer would have considered that the product was traditionally baked in a tandoor oven, by hand, in low volumes, and without use of conventional and automated commercial baking methods.

69. These omitted facts were material because they directly impact the value of the Naan Products.

70. The Defendant actively concealed and/or suppressed these material facts, in whole or in part, with the intent to induce the Class Members to purchase the Naan Products at a higher price, which did not match their true value and to protect its profits and it did so at the expense of the Plaintiff and the Class.

71. The Plaintiff and Class Members were unaware of these omitted material facts and would not have acted as they did if they had known of the concealed and/or suppressed facts. The Plaintiff's and Class Members' actions were reasonable and justified. The Defendant was in exclusive control of the material facts concerning the method of manufacture of the Naan Products and such facts were not known to the public or to the Class Members.

72. The facts concealed and/or not disclosed by the Defendant to the Plaintiff and Class Members are material facts in that a reasonable person would have considered them important in deciding whether to purchase the Naan Products.

73. Class Members relied on the Defendant's Representation in relation to the Naan Products that they were purchasing and they purchased such Naan Products. Said reliance was reasonable.

The Plaintiff and the Class Members were without the ability to determine the truth on their own and could only rely on the Defendant's statements and representations.

74. As a result of the concealment and/or suppression of facts, the Plaintiff and Class Members have sustained and will continue to sustain damages arising from the difference between the price that the Plaintiff and the Classes paid and the actual value that they received.

#### **E. Breach of Warranty**

75. The Defendant is a "merchant" in the business of selling Naan Products to foreseeable consumers such as the Plaintiff and the members of the Class.

76. The Plaintiff and the members of the Class purchased the Defendant's Naan Products.

77. The Defendant expressly represented on its packaging and labelling as well as in its marketing, advertising, and promotion of the Naan Products that those products were baked in a tandoor oven "to Honor 2,000 Years of Tradition". These express representations become a basis of the bargain between the Defendant and Class Members, implicating the Defendant's liability for breach thereof.

78. The Naan Products do not conform to these express representations because they are not baked in a tandoor oven and instead mass-produced in the Defendant's patented commercial conveyor-belt oven system – thus, the Defendant breached its express warranties.

79. The Defendant made this Representation in order to induce the Plaintiff and Class Members to purchase its Naan Products and/or to pay a price premium thereupon.

80. The Plaintiff and the Class Members did rely on the express warranties and promises of the Defendant.

81. The Defendant knew or should have known that, in fact, said Representation and warranties were false, misleading, and untrue.

82. As a direct and proximate result of the foregoing acts and/or omissions, the Plaintiff and the Class Members have suffered damages in that they did not receive the product as specifically warranted and/or paid a premium for the product(s) entitling them to compensatory damages, punitive damages and, in the alternative, equitable and declaratory relief as elaborated further below.

### STATUTORY REMEDIES

83. The Defendant is in breach of the *Sale of Goods Act*, the *Consumer Protection Act*<sup>4</sup>, the *Competition Act*, the *Consumer Packaging and Labelling Act*, and/or other similar/equivalent legislation.

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<sup>4</sup> While the *Consumer Protection Act* applies only in Ontario, other Canadian provinces have similar consumer protection legislation including, but not limited to: the *Business Practices and Consumer Protection Act*, SBC 2004, c.2, as amended, including ss. 4, 5 & 8-10 (British Columbia); the *Consumer Protection Act*, RSA 2000, c C-26.3, as amended, including ss. 5-9 & 13 (Alberta); *The Consumer Protection and Business Practices Act*, SS 2014, c. C-30.2, as amended, including ss. 5-9, 16, 18-23, 26, & 36 (Saskatchewan); *The Business Practices Act*, CCSM, c B120, as amended, including ss. 2-9 & 23 (Manitoba); the *Consumer Protection Act*, CQLR c P-40.1 at ss. 41, 215, 216, 218, 219, 220(a), 221(c), (d), & (g), 228, 239 (a), 253, 270 & 272 (Quebec); the *Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1, as amended, including ss. 7-10, and the *Trade Practices Act*, RSNL 1990, c T-7, as amended, including ss. 5-7 & 14 (Newfoundland); the *Consumer Product Warranty and Liability Act*, SNB 1978, c 18.1 at ss. 4, 13, 15, & 23 (New Brunswick); the *Consumer Protection Act*, RSNS 1989, c 92, including ss. 26-29 (Nova Scotia); the *Business Practices Act*, RSPEI 1988, c B-7, as amended, including ss. 2-4 (Prince Edward Island); the *Consumers Protection Act*, RSY 2002, c 40, as amended, including ss. 58 & 86 (Yukon); the *Consumer Protection Act*, RSNWT 1988, c C-17, as amended, including ss. 70 & 71 (Northwest Territories); and the *Consumer Protection Act*, RSNWT (Nu) 1988, c C-17, as amended, including ss. 70 & 71 (Nunavut).

84. The Plaintiff pleads and relies upon trade legislation and common law, as it exists in this jurisdiction and upon Consumer Protection Legislation and the equivalent/similar legislation and common law in the other Canadian provinces and territories. The Class Members have suffered injury, economic loss and damages caused by or materially-contributed to by the Defendant's inappropriate and unfair business practices, which includes the Defendant being in breach of applicable consumer protection laws.

**A. Breach of the *Sale of Goods Act***

85. At all times relevant to this Claim, the Plaintiff and Class Members were "buyer[s]" within the meaning of that term as defined in s.1 of the *Sale of Goods Act*.

86. At all times relevant to this action, the Defendant was a "seller" within the meaning of that term as defined in s.1 of the *Sale of Goods Act*.

87. First, the Defendant made an express representation that was inaccurate regarding the Naan Products as being baked in a tandoor oven. This representation was relied upon by the Plaintiff and by Class Members.

88. The Naan Products were sold in the ordinary course of the Defendant's business.

89. The Plaintiff and Class Members reasonably relied on the Defendant's skill and judgment in making the representations relating to the tandoor oven.

90. Second, there were conditions as to merchantable quality of the supposed tandoori Naan Products whose purpose was obviously and primarily to be used as tandoori naan, whose true nature could not have been revealed upon examination.

91. The Defendant committed a fault or wrongful act by breaching the implied conditions as to fitness for a particular purpose and to merchantability. By placing into the stream of commerce a product that was unfit for the purpose for which it was marketed and/or advertised, the Defendant is liable for damages relating thereto. The Class is entitled to maintain an action for breach of warranty under ss. 52 & 53 of the *Sale of Goods Act*.

**B. Breach of the *Consumer Protection Act***

92. At all times relevant to this action, many of the Class Members were “consumer[s]” within the meaning of that term as defined in s. 1 of the *Consumer Protection Act*.

93. At all times relevant to this action, the Defendant was a “supplier” within the meaning of that term as defined in s. 1 of the *Consumer Protection Act*.

94. The transactions by which many of the Class Members purchased the Naan Products were “consumer transaction[s]” within the meaning of that term as defined in s. 1 of the *Consumer Protection Act*.

95. The Defendant has engaged in an unfair practice by making a Representation to the Class Members which was and is “false, misleading or deceptive” and/or “unconscionable” within the meaning of ss. 14, 15 and 17 of the *Consumer Protection Act* as follows:

- (a) Representing that the Naan Products have performance characteristics, use, ingredients, benefits and/or qualities, which they do not have;
- (b) Representing that the Naan Products are of a particular standard, quality, grade, or style, which they are not; and
- (c) Using exaggeration, innuendo and ambiguity as to a material fact or failing to state a material fact as such use or failure deceives or tends to deceive.

96. The Representation was and is unconscionable because *inter alia* the Defendant knew or ought to have known that consumers are likely to rely, to their detriment, on Defendant's misleading statements as to the Naan Products having been baked in a tandoor oven.

97. The Representation was and is false, misleading, deceptive and/or unconscionable such that it constituted an unfair practice which induced the Plaintiff and the Class to purchase the Naan Products as a result of which they are entitled to damages pursuant to the *Consumer Protection Act*.

98. The Plaintiff and the Class Members relied on the Representation.

99. The reliance upon the Representation by the Plaintiff and Class Members is established by his or her purchase of the Naan Products. Had the Plaintiff and Class Members known that the Representation was false and misleading they would either not have purchased the Naan Products, or would not have paid such a high price.

**C. Breach of the *Competition Act***

100. At all times relevant to this action, the Defendant's formulation, development, manufacture, packaging, labelling, distribution, marketing, advertising, promotion, and/or sale of the Naan Products as was a "business" and the Naan Products were "product[s]" within the meaning of that term as defined in s.2 of the *Competition Act*.

101. The Defendant's acts are in breach of s. 52 of Part VI of the *Competition Act*, were and are unlawful and render the Defendant liable to pay damages and costs of investigation pursuant to s. 36 of the *Competition Act*.

102. The Defendant made the Representation to the public and in so doing breached s. 52 of the *Competition Act* because the Representation:

- (a) Was made for the purpose of promoting, directly or indirectly, the use of a product or for the purpose of promoting, directly or indirectly, the business interests of the Defendant;
- (b) Was made knowingly or recklessly;
- (c) Was made to the public;
- (d) Was false and misleading in a material respect; and
- (e) Stated uses, benefits, ingredients, and/or qualities of the Naan Products that were false and represented that the Naan Products are available for a reason that does not exist, i.e. being tandoori naan.

103. The Plaintiff and Class Members relied upon the Representation by buying the Naan Products and suffered damages and loss.

104. Pursuant to s. 36 of the *Competition Act*, the Defendant is liable to pay the damages which resulted from the breach of s. 52.

105. Pursuant to s. 36 of the *Competition Act*, the Plaintiff and Class Members are entitled to recover their full costs of investigation and substantial indemnity costs paid in accordance with the *Competition Act*.

106. The Plaintiff and Class Members are also entitled to recover as damages or costs, in accordance with the *Competition Act*, the costs of administering the plan to distribute the recovery in this action and the costs to determine the damages of each Class Member.

**D. Breach of the *Consumer Packaging and Labelling Act***

107. At all times relevant to this action, the Defendant was a “dealer” within the meaning of that terms as defined in s. 2 of the *Consumer Packaging and Labelling Act*.

108. At all times relevant to this action, the Naan Products were “prepackaged product[s]” within the meaning of that terms as defined in s. 2 of the *Consumer Packaging and Labelling Act*.

109. At all times relevant to this action, the Representation that was made to the public on the Naan Product packaging, were “label[s]” within the meaning of that terms as defined in s. 2 of the *Consumer Packaging and Labelling Act*.

110. At all times relevant to this action, the Representation that was made to the public on the Defendant's website and otherwise, were "advertise[ments]" within the meaning of that terms as defined in s. 2 of the *Consumer Packaging and Labelling Act*.

111. The Defendant packaged, labelled, marketed, promoted, advertised, and sold the Naan Products with "false or misleading representations" under s. 7 of the *Consumer Packaging and Labelling Act* in that they used descriptions and/or illustrations of the type, quality, performance, and/or function that may reasonably be regarded as likely to deceive the Plaintiff and Class Members.

112. More specifically, the Defendant's representations that the Naan Products were "tandoor oven baked" and "Tandoor Oven-Baked to Honor 2,000 Years of Tradition" on the front and back of the Naan Product packaging was in clear breach of the *Consumer Packaging and Labelling Act*.

113. In addition, the Defendant sold and/or advertised the Naan Products which were packaged and/or labelled in such a manner that the Plaintiff and Class Members might, and were, reasonably be misled with respect to the quality of the product.

114. As such, the Defendant breached ss. 7 and 9 of the *Consumer Packaging and Labelling Act* and are liable to pay damages as a result under s. 20.

### CAUSATION

115. The acts, omissions, wrongdoings, and breaches of legal duties and obligations of the Defendant are the direct and proximate cause of the Plaintiff's and Class Members' injuries.

116. The Plaintiff pleads that by virtue of the acts, omissions and breaches of legal obligations as described above, they are entitled to legal and/or equitable relief against the Defendant, including damages, consequential damages, specific performance, rescission, attorneys' fees, costs of suit and other relief as appropriate in the circumstances.

### **DAMAGES**

117. By reason of the acts, omissions and breaches of legal obligations of the Defendant, the Plaintiff and Class Members have suffered injury, economic loss and damages, the particulars of which include, but are not limited to, the following general, compensatory, and punitive damages:

#### **A. General Damages (Non-Pecuniary Damages)**

1. The general damages being claimed herein are trouble and inconvenience.

#### **B. Special Damages**

118. The special damages being claimed herein include the purchase price of the Naan Products or, in the alternative, the overpayment thereof.

#### **C. Punitive (Exemplary) and Aggravated Damages**

119. The Defendant has taken a cavalier and arbitrary attitude to its legal and moral duties to the Class Members.

120. At all material times, the conduct of the Defendant as set forth was deliberate and oppressive towards their customers and the Defendant conducted itself in a willful, wanton and reckless manner with regard to Class Members' rights, such as to warrant punitive damages.

121. By engaging in such deplorable conduct and tactics, the Defendant committed a separate actionable wrong for which this Honourable Court should voice its disapproval and displeasure with an award of punitive damages.

122. In addition, it should be noted that it is imperative to avoid any perception of evading the law without impunity. Should the Defendant only be required to disgorge monies which should not have been retained and/or withheld, such a finding would be tantamount to an encouragement to other businesses to deceive their customers as well. Punitive and aggravated damages are necessary in the case at hand to be material in order to have a deterrent effect on other corporations in Canada.

#### **WAIVER OF TORT, UNJUST ENRICHMENT AND CONSTRUCTIVE TRUST**

123. The Plaintiff pleads and relies on the doctrine of waiver of tort and states that the Defendant's conduct, including the alleged breaches of any of the *Sale of Goods Act*, the *Consumer Protection Act* (and the Consumer Protection Legislation), the *Competition Act*, and the *Consumer Packaging and Labelling Act*, constitutes wrongful conduct which can be waived in favour of an election to receive restitutionary or other equitable remedies.

124. The Plaintiff reserves the right to elect at the Trial of the Common Issues to waive the legal wrong and to have damages assessed in an amount equal to the gross revenues earned by the Defendant or the net income received by the Defendant or a percent of the sale of the Naan

Products as a result of the Defendant's unfair practices and false representations which resulted in revenues and profit for the Defendant.

125. Further, the Defendant has been unjustly enriched as a result of the revenues generated from the sale of the Naan Products and as such, *inter alia*, that:

(a) The Defendant has obtained an enrichment through revenues and profits from the sale of the Naan Products;

(b) The Plaintiff and other Class Members have suffered a corresponding deprivation; and

(c) The benefit obtained by the Defendant and the corresponding detriment experienced by the Plaintiff and Class Members has occurred without juristic reason. Since the monies that were received by the Defendant resulted from the Defendant's wrongful acts, there is and can be no juridical reason justifying the Defendant's retaining any portion of such money paid.

126. Further, or in the alternative, the Defendant is constituted as constructive trustees in favour of the Class Members for all of the monies received because, among other reasons:

(a) The Defendant was unjustly enriched by receipt of the monies paid for the Naan Products;

(b) The Class Members suffered a corresponding deprivation by purchasing the Naan Products;

- (c) The monies were acquired in such circumstances that the Defendant may not in good conscience retain them;
- (d) Equity, justice and good conscience require the imposition of a constructive trust;
- (e) The integrity of the market would be undermined if the court did not impose a constructive trust; and
- (f) There are no factors that would render the imposition of a constructive trust unjust.

127. Further, or in the alternative, the Plaintiff claim an accounting and disgorgement of the benefits which accrued to the Defendant.

### **COMMON ISSUES**

128. Common questions of law and fact exist for the Class Members and predominate over any questions affecting individual members of the Class. The common questions of law and fact include:

- (a) Are the Naan Products baked in a tandoor oven?
- (b) Did the Defendant know or should it have known that its conveyor-belt commercial oven is not a tandoor oven?
- (c) Did the Defendant wrongfully represent that the Naan Products are baked in a tandoor oven? And is this conduct continuing?

(d) Are the Defendant's representations in labelling, marketing, advertising, promotion, and warranties false, misleading, or deceptive?

(e) Did the Defendant owe a duty of care to the Plaintiff and to the Class in performing its legal obligations, including to ensure that its representations are accurate and not misleading?

(f) Did the Defendant's representation that the Naan Products were baked in a tandoor oven and/or failure to disclose the fact that the Naan Products are baked on a conveyor-belt oven amount to:

- (i) Negligence?
- (ii) Negligent misrepresentation?
- (iii) Civil fraud?
- (iv) Fraudulent concealment?
- (v) Breach of warranty?

(g) Did the Defendant's acts or practices breach the *Sale of Goods Act*, the *Consumer Protection Act*, the *Competition Act*, the *Consumer Packaging and Labelling Act*, and/or other similar/equivalent legislation?

(h) Did the Defendant's cause loss or injury and damages to Class Members?

(i) Was the Defendant unjustly enriched?

(j) Is the Defendant liable to the Class Members for:

- (i) Reimbursement of the purchase price of the Naan Products or, in the alternative, a portion of the purchase price?
- (ii) Class Members' trouble and inconvenience?
- (iii) Disgorgement of the monies received by the Defendant from the sale of its Naan Products?
- (k) Should an injunctive remedy be ordered to prohibit the Defendant from continuing to perpetrate its unfair practices?
- (l) Is the Defendant responsible to pay punitive damages to Class Members and in what amount?

### **EFFICACY OF CLASS PROCEEDINGS**

129. The members of the proposed Class potentially number in the thousands and are geographically dispersed. Because of this, joinder into one action is impractical and unmanageable. Conversely, continuing with the Class Members' claim by way of a class proceeding is both practical and manageable and will therefore provide substantial benefits to both the parties and to the Court.

130. Given the costs and risks inherent in an action before the courts, many people will hesitate to institute an individual action against the Defendant. Even if the Class Members themselves could afford such individual litigation, the court system could not as it would be overloaded and, at the very least, it is not in the interests of judicial economy. Further, individual litigation of the

factual and legal issues raised by the conduct of the Defendant would increase delay and expense to all parties and to the court system.

131. This class action overcomes the dilemma inherent in an individual action whereby the legal fees alone would deter recovery and thereby in empowering the consumer, it realizes both individual and social justice as well as rectifies the imbalance and restore the parties to parity.

132. Also, a multitude of actions instituted in different jurisdictions, both territorial (different provinces) and judicial districts (same province), risks having contradictory and inconsistent judgments on questions of fact and law that are similar or related to all members of the class.

133. In these circumstances, a class action is the only appropriate procedure and the only viable means for all of the members of the class to effectively pursue their respective rights and have access to justice.

134. The Plaintiff has the capacity and interest to fairly and fully protect and represent the interests of the proposed Class and has given the mandate to her counsel to obtain all relevant information with respect to the present action and intends to keep informed of all developments. In addition, class counsel is qualified to prosecute complex class actions.

### **LEGISLATION**

135. The Plaintiff pleads and relies on the *Class Proceedings Act*, the *Sale of Goods Act*, the *Competition Act*, the *Consumer Packaging and Labelling Act*, the *Consumer Protection Act*, and other Consumer Protection Legislation.

## JURISDICTION AND FORUM

### Real and Substantial Connection with Ontario

136. There is a real and substantial connection between the subject matter of this action and the province of Ontario because:

- (a) The Defendant has its head office in Ontario;
- (b) The Defendant engages in business with residents of Ontario;
- (c) The Defendant derives substantial revenue from carrying on business in Ontario;  
and
- (d) The damages of many Class Members were sustained in Ontario.

137. The Plaintiff proposes that this action be tried in the City of Ottawa, in the Province of Ontario as a proceeding under the *Class Proceedings Act*.

Date: July 8, 2019

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**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

**PROCEEDING COMMENCED IN OTTAWA**  
Proceeding under the *Class Proceedings Act, 1992*

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**STATEMENT OF CLAIM**

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