

File No. **CU 25-01-50330**

**THE KING'S BENCH  
Winnipeg Centre  
(Proceeding under *The Class Proceedings Act*)**

BETWEEN:

**Nellie Taptaqut Kusugak, Malaya Qaunirq Chapman, and  
Isabelle Mark Chapadeau**

Plaintiffs

-and-

**The North West Company**

Defendants

Proceeding under the *Class Proceedings Act*, C.C.S.M. c. C.130

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**STATEMENT OF CLAIM**

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File No. \_\_\_\_\_

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**STATEMENT OF CLAIM**

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**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 a Manitoba lawyer action for you must prepare a statement of defence in Form 18A prescribed by the *King's Bench Rules*, serve it on the plaintiff's lawyer or where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you were served in Manitoba.

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.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

February 5, 2025  
Date

E. PEREZ  
DEPUTY REGISTRAR  
COURT OF KING'S BENCH  
Issued \_\_\_\_\_ FOR MANITOBA

Deputy Registry  
100C – 408 York Avenue  
Winnipeg, Manitoba R3C 0P9

To: The North West Company  
77 Main Street  
Winnipeg, Manitoba. R3C 1A3

## DEFINITIONS

1. In this Statement of Claim,
  - a) “**Business Practices Act**” means the *Business Practices Act*, CCSM c B120;
  - b) “**Class**” and “**Class Members**” means all persons and entities who purchased goods eligible for the Subsidy from the Defendant and its subsidiaries (including, without limitation, Northern Stores, NorthMart, Valu Lots, and QuickStop) during the **Class Period**, but for the **Excluded Persons**;
  - c) “**Class Period**” means the period between April 1, 2011 and the present day;
  - d) “**Competition Act**” means the *Competition Act* R.S.C. 1985, c. C-34;
  - e) “**CPA**” means the *Class Proceedings Act*, C.C.S.M. c. C.130;
  - f) “**Defendant**” means the North West Company, and where context requires, includes the North West Company’s subsidiaries;
  - g) “**Department**” means the Department of Crown-Indigenous Relations and Northern Affairs, and, where context requires, includes the predecessors of that entity;
  - h) “**Excluded Persons**” means businesses and organizations whose purchases from North West Company and its subsidiaries are not eligible for the **Subsidy**, and includes mining companies, oil and gas companies, exploration companies and camps, companies providing support activities for mining and oil and gas extraction, exploration and development, surveying and mapping services, construction companies, environmental cleanup operations, electricity companies, weather stations, research stations and projects, military establishments and operations, outfitters, bed and breakfast establishments and boarding houses, except where these facilities are used as women's shelters, emergency housing or other such purpose as affirmed by the local government;

- i) “*Newfoundland CPBPA*” means the *Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1;
- j) “*Nunavut CPA*” means the *Consumer Protection Act*, RSNWT (Nu) 1988, c C-17;
- k) “*Ontario CPA*” means the *Consumer Protection Act*, 2002, S.O. 2002, c. 30, Sched A;
- l) “*Québec CPA*” means the *Consumer Protection Act*, CQLR c P-40.1;
- m) “*Saskatchewan CPABPA*” means the *Consumer Protection and Business Practices Act*, S.S. 2013, c C-30.2; and
- n) “**Subsidy**” means the Nutrition North Subsidy program designated as part of the Nutrition North Canada program.

## CLAIM

### **Relief Sought**

- 2. The Plaintiffs claim on their own behalf and on behalf of the Class Members:
  - a) an order certifying this action as a class proceeding under the *CPA*;
  - b) a declaration that the Defendant has engaged in conduct contrary to Part VI of the *Competition Act*;
  - c) damages pursuant to section 36 of the *Competition Act*;
  - d) costs of investigation and prosecution of this proceeding pursuant to section 36 of the *Competition Act*;
  - e) a declaration that the Defendant has engaged in unfair business practices contrary to the *Business Practices Act*, and the equivalent provisions of extra-provincial consumer protection legislation (as set out below);

- f) restitution or, alternatively, damages in respect of contraventions of the *Business Practices Act* and the equivalent provisions of extra-provincial consumer protection legislation (as set out below);
- g) a declaration that the Defendant has been unjustly enriched by the retention of the Subsidy and an order that the Defendant account for and make restitution to the Class Members in an amount equal to the amount of the Subsidy retained by the Defendant;
- h) an interlocutory injunction restraining the Defendant from retaining any portion of the Subsidy as profit;
- i) a permanent injunction restraining the Defendant from retaining any portion of the Subsidy as profit;
- j) damages for breach of contract;
- k) punitive damages;
- l) pre-judgment and post-judgment interest pursuant to the *Court of King's Bench Act*, C.C.S.M. c. C.280;
- m) costs of notice and administering the plan of distribution of recovery made in this action, plus applicable taxes, pursuant to sections 24(1) and 33(6) of the *CPA*; and
- n) such further and other relief as this Honourable Court deems just.

### **Overview**

3. Canada's northern communities face a food insecurity crisis. Healthy food staples are significantly more expensive in Canada's northern regions, with the result that members of northern communities are often unable to afford adequate amounts of nutritious foods. Increased poverty rates compound this problem, as do pre-existing socioeconomic barriers and prejudices against Indigenous persons, who make up the majority of the northern population. Food insecurity has negative consequences on health and overall well-being, and is associated with higher levels of malnutrition, infections, chronic diseases, obesity, distress, social exclusion, depression, and suicidal ideation.

4. To ameliorate this crisis, the federal government implemented Nutrition North Canada, through which it provides the Subsidy. The Subsidy provides retailers with funds to lower the retail price of certain products (chiefly, nutritious food) in northern communities. Recipients of the Subsidy are required to enter into funding agreements with the Department. Those funding agreements require participants in the program to pass-through the Subsidy, in its entirety, to their customers.
5. The Defendant is the largest food retailer in Canada's north and entered into funding agreements with the Department to access the Subsidy. Despite making representations that it complies with the requirement to pass-through the entire Subsidy to consumers, and despite making a commitment to do so as condition of receiving the Subsidy, the Defendant has instead unlawfully retained millions of dollars of funding received through the program.
6. These funds are desperately needed to offset food prices in northern Canada. The Defendant has no juristic right to retain these funds for its own use and has done so in breach of competition law, provincial and territorial consumer rights legislation, and its funding agreements.
7. This class proceeding is brought on behalf of northern residents to require the Defendant to return these misappropriated funds to their intended beneficiaries.

### **The Parties**

#### Nellie Kusugak

8. Nellie Taptaqut Kusugak is a 69-year-old Inuk retired bilingual educator and a former Commissioner of Nunavut. She lives in Rankin Inlet, Nunavut, where she has lived most of her adult life. She has also lived in Iqaluit and was born and raised in Arviat. She is the mother of four children, thirteen grandchildren, and four great-grandchildren. Mrs. Kusugak has witnessed and has discussed food insecurity in her community and other communities in Nunavut, including amongst her family.

9. Rankin Inlet has three primary grocery stores, one of which (Northern) is owned by the Defendant. Mrs. Kusugak shops at the Northern store approximately once a week primarily for fresh butchered meat and produce, or for other grocery items not available at the other stores.
10. Mrs. Kusugak depends on the Nutrition North subsidy when purchasing food to offset the expense of feeding herself, her family, and extended family.

Malaya Qaunirq Chapman

11. Malaya Qaunirq Chapman, is a 36-year-old Inuk film producer, artist, and social advocate from Iqaluit, Nunavut. She has lived in Nunavut for approximately 20 years, including in Pangnirtung. Since 2020, she has resided with her common law partner in Kuujjuaq, Quebec.
12. When living in Nunavut, Ms. Qaunirq Chapman depended on and shopped at the Defendant's stores for groceries for herself and her family.
13. Kuujjuaq has three primary grocery stores, one of which (Northern) is owned and operated by the Defendant. Ms. Qaunirq Chapman shops at Northern approximately once a week to feed her immediate and extended family, including grocery shopping for her partner's elder mother, community events and gatherings, and for camping.
14. Ms. Qaunirq Chapman relies on shopping at the Kuujjuaq Northern store for groceries because it is the only store that provides freshly butchered meat. It also has longer hours of operation and is often the only grocery store that is open during the times that she has available to shop for groceries. When she lived in Nunavut, she also shopped at Northern stores regularly for similar reasons.
15. Ms. Qaunirq Chapman relies on the Nutrition North Subsidy when purchasing groceries because groceries in the north are expensive. She understands that the subsidy has been applied to certain important food items to offset that expense.
16. Ms. Qaunirq Chapman has personally experienced and witnessed food insecurity in the North and understands the important role that grocery prices have in accessing nutritious



food. She experienced food insecurity in her childhood when she was raised by her great-grandmother, who was living on social assistance. She has witnessed food insecurity in Nunavut communities and in Nunavik (Quebec's most northern region and a part of Inuit homelands).

Isabelle Chapadeau

17. Isabelle Mark Chapadeau is a 26-year-old Inuk designer, artist, and cultural educator. She has lived in Nunavut for approximately 4 years. She now lives in Iqaluit with her two young children and partner in their extended family's home after recently moving from Pangnirtung.
18. There are two primary grocery stores in Pangnirtung, one of which is owned by the Defendant (Northern). When she lived in Pangnirtung, Ms. Chapadeau shopped at the Northern store approximately twice a week primarily to purchase from their greater availability of fresh dairy and produce, as well as baby supplies, for her family and extended family.
19. Iqaluit has two primary and three smaller grocery stores, two of which are owned by the Defendant (NorthMart and Inuulisautinut Niuvirvik). Ms. Chapadeau shops at NorthMart approximately twice a week for her family and her household because of its closer proximity to her home and because her *Jordan's Principle* credits are assigned for redemption at NorthMart. *Jordan's Principle*, under the Inuit Child First Initiative, is part of a larger federal government program intended to ensure all Indigenous children living in Canada can access essential products, services, and supports for their health, social, and education development.
20. Ms. Chapadeau depends on the Nutrition North Subsidy because food is expensive in Nunavut, and she relies on store-bought foods to supplement a country food diet to sustain and feed her family.
21. Ms. Chapadeau has personally experienced food insecurity and has witnessed it since moving to Nunavut. Additionally, her engagement with various communities across the North has raised her awareness of the prevalence of food security issues and the importance

of accessing nutritious foods in the North, including in relation to sustaining health and culture.

The Defendant

22. The Defendant is a public company carried on pursuant to the *Canadian Business Corporations Act*, R.S.C. 1985, c. C-44, with headquarters in Winnipeg, Manitoba. The Defendant is in the business of, among other things, operating retail grocery stores throughout Canada's northern regions. The Defendant is a 'registered northern retailer', as that term is used in connection with the Nutrition North Canada and a recipient of Nutrition North Canada funding. It describes itself as the largest provider of goods and services to Indigenous communities in northern Canada.
23. The Defendant operates in northern regions through subsidiaries operating under various trade names, including Northern Stores, NorthMart, and Quickstop. The Defendant also operates a registered southern supplier operating under the trade name Valu Lots. Valu Lots accepts personal orders from customers in Northern Manitoba, Northern Ontario, and Kivalliq, Nunavut.
24. In many northern communities, the Defendant has monopoly or near-monopoly control over the retail grocery market.
25. The Defendant promotes itself as the successor to the historic North West Company, which was founded in the 18<sup>th</sup> century and once controlled much of the fur trade in what is now northern Canada.

The Class

26. The Plaintiffs bring this action on their own behalf and on behalf of the Class Members, who are defined as all persons and entities who purchased goods eligible for the Subsidy from the Defendant and its subsidiaries (including, without limitation, Northern Stores, NorthMart, Valu Lots, and Quickstop) during the Class Period, but for the Excluded Persons.

27. The Class Members are the predominantly Indigenous residents of isolated northern communities that lack year-round surface transportation.

### **The Nutrition North Program**

28. The objective of the Subsidy is to provide northern residents with reliable, affordable access to nutritious food products. The program was introduced by the Federal Government in 2011 and is currently administered by the Department. Since its inception, total federal government spending in connection with the program has totaled over \$1.2 billion.
29. The stated objective of the program is to make healthy foods more accessible and affordable to northern community residents and to increase consumption of healthy foods in those regions, thus contributing to better health outcomes.
30. Nutrition North Canada is a transfer payment program that operates on a market-driven model. It works by providing the Subsidy directly to northern retailers pursuant to the terms of funding agreements, on the condition that the retailers pass the full Subsidy to consumers by reducing the prices of eligible foods in an amount equal to the amount of funds received. Retailers are then left to make their own supply-chain arrangements.
31. The Department determines the foods and communities that are eligible for the Subsidy. Because of the Defendant's market dominance in those communities, it is by far the largest recipient of the Subsidy. For example, between 2018 and 2021, the Defendant claimed and received over \$163,000,000 in Subsidy payments.

### **The Defendant's Funding Agreements**

32. The Defendant has received Subsidy payments under the Nutrition North program since the program's inception in 2011. It makes claims and receives payments for the Subsidy pursuant to funding agreements. The funding agreements require the Defendant to pass-through the entire amount of the Subsidy to consumers – *i.e.*, to ensure that selling prices are reduced by the full amount of the Subsidy received.

33. Class Members are the intended beneficiaries of the funding agreements, as apparent from the requirement in the funding agreements that retailers pass-through the entire Subsidy to consumers in the form of price reductions.

**The Defendant's Misrepresentations**

34. The Defendant has made misrepresentations, through the funding agreements and through other statements, acts or omissions, represented, or permitted representations to be made, that it is complying with the requirement to pass-through the full Subsidy to consumers. For example:
- a) the Defendant maintains a statement on its website that “[t]he North West Company uses the entire amount of the Subsidy to reduce retail prices for shoppers”;
  - b) in its stores, the Defendant includes price tags listing the price before the Subsidy as a comparison to the price after the Subsidy, implying that the full Subsidy has been passed along to consumers;
  - c) the Defendants also display posters in its stores, disclosing the Subsidy rate and bearing the message “Making Healthy Choices More Affordable! GUARANTEED... When you see the NNC on our labels you can be guaranteed that all subsidies are applied”;
  - d) in January 2024, the Defendant provided a statement to news media representatives that it “unequivocally passes along 100 per cent of all [Nutrition North Canada] subsidies in our pricing”; and
  - e) as recently as May 2024, the Chief Executive Office of the Defendant stated that the “subsidies are actually 100-percent passed through to the customer”.
35. The misrepresentations caused damages to the Plaintiffs and Class Members, who paid higher prices for the goods eligible for the Subsidy relative to what they were entitled to pay. Additionally, the Class Members relied on the misrepresentations in making purchasing decisions.

36. In addition, the Defendant misrepresented to its counterparty in respect of the funding agreements, the Department, that it was adhering to the terms of the funding agreements and passing the subsidy through in its entirety. Had the Defendant accurately represented that it was only passing on part of the Subsidy, the Department would have required compliance with the funding agreement, namely full pass-through of the Subsidy.

**Commitments to Pass-Through and Warnings of Failure**

37. Nutrition North is the successor to the Food Mail Program, which was operated by the Department's predecessors since the 1960s. The Food Mail Program provided a subsidy directly to Canada Post to mitigate the cost of transporting food products. In 2006, the federal government directed the Department to review the Food Mail Program, given budgetary issues and a perceived need to make the program more efficient. Among other things, it was thought that the Food Mail Program failed to pass-through its subsidy in its entirety.
38. In advance of the program's implementation, the then-CEO of the North West Company Michael McMullen appeared before the Standing Committee on Aboriginal Affairs and Northern Development and stated that the Food Mail Program had been hindered a lack of transparency and accountability. Mr. McMullen stated that the Nutrition North Program would "visibly demonstrate and substantiate" that pass-through of the subsidy to the end consumer, and that the retail and wholesale community would develop a way to transparently audit the program.
39. In April 2011, the Department announced the Nutrition North Canada program.
40. In 2013, the Department conducted an Internal Audit of the Nutrition North Canada program. That audit noted that several "areas for improvement" with respect to the compliance review processes including, among other things, providing only limited conclusions on key risks relating to profit margins on subsidized versus unsubsidized products. Later, the Department conducted an evaluation of the program and noted that there was a perception held by many northern consumers that the Subsidy was not being passed through to them.

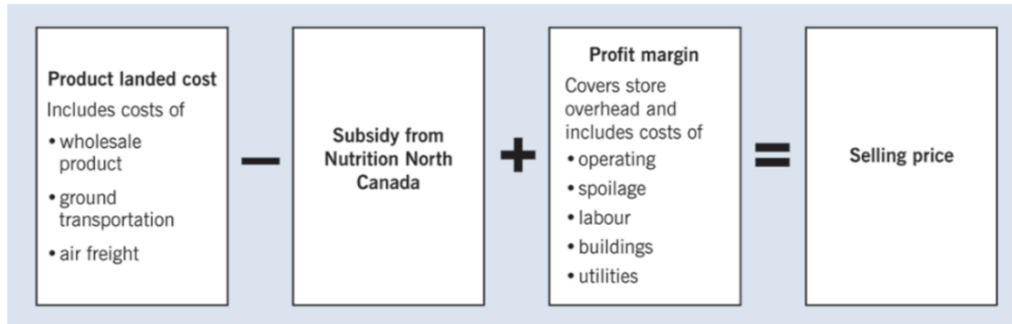
41. The United Nations Special Rapporteur on the right to food examined Nutrition North Canada and noted his concern about the design and implementation of the program, noting that the government had “no way of knowing” whether the Subsidy was being passed through to consumers, and that that more needed to be done to improve the effectiveness of the program.
42. In 2014, the Office of the Auditor General issued a report on the Nutrition North Canada program. The Auditor General’s report concluded that the Department “has not verified whether the northern retailers pass on the full subsidy to consumers” and that it “has not required the information it needs to verify this in the contribution agreements it has signed with northern retailers.”
43. In 2016 and 2017, northerners expressed strong concerns that retailers were not passing on the full value of the Subsidy. In particular, there was a concern that retailers’ pricing decisions were made prior to the application of the Subsidy.
44. In October 2024, Honourable Dan Vandal, Minister of Northern Affairs and Minister responsible for CanNor, announced an external review of the Nutrition North Canada program, to be launched in 2025.
45. Despite these findings, the Defendant continued to make the misrepresentations and did not change its pricing practices to ensure full pass-through of the Subsidy.

#### **Loss and Harm to Class Members**

46. Contrary to its obligations under the funding agreements and as a result of the misrepresentations, the Defendant has retained significant portions of the Subsidy as profit, to the detriment of Class Members. The Defendant did so by retaining a higher profit

margin on Subsidy-eligible products. The possibility for this outcome was suggested in the Auditor General's report, as illustrated in the figure below:

**Exhibit 6.1 — Information needed to determine whether the full subsidy is passed on to consumers**



47. The exact amount of the Subsidy that has been unlawfully retained as profit by the Defendant is known only to the Defendants. Initial estimates suggest that the Defendants may have unlawfully retained approximately \$21.6 million and \$30.8 million annually in funding intended to benefit Class Members.
48. But for the Defendant's misconduct, these funds would have been used to offset the price of nutritious foods for Class Members.

### **Unjust Enrichment**

49. The Defendant has been unjustly enriched by retaining portions of the Subsidy as profit.
50. The amount of the Subsidy the Defendant retained as profit constitutes a benefit, and Class Members have suffered a corresponding deprivation in the form of higher food prices. There is no juristic reason for allowing the Defendant to retain this benefit. To the contrary, the funding agreements specifically require that the Defendant provide these funds to Class Members in the form of cost reductions.
51. Class Members are entitled to restitution of the amount of the Subsidy that the Defendant unlawfully retained.

**Breach of Competition Act**

52. In making the misrepresentations and by retaining portions of the Subsidy as profits, the Defendants have breached section 52 of the *Competition Act*. The Defendant made the misrepresentations for the purpose of promoting its products to Class Members based on the false assertion that it was passing through the entire Subsidy. The Defendant knew—or, alternatively, was reckless with regard to—the truth of the misrepresentations. The misrepresentations were made publicly, or alternatively were made available to the public, and in particular Class Members.
53. The Plaintiffs and the Class Members relied upon the misrepresentations. As a result of the Defendant’s breach of section 52 of the *Competition Act*, the Plaintiffs and Class Members acquired products at prices that were significantly higher than the subsidized price. Further, the Department relied upon the misrepresentations in administering the program.

**Breach of Contract**

54. By unlawfully retaining portions of the Subsidy as profit, the Defendant has breached the funding agreements.
55. Class Members are entitled to bring a claim in breach of contract as a result of this breach of the funding agreement as they are the sole intended beneficiaries of the funding agreements, and in particular of the requirement to provide the full subsidy to Class Members in the form of price reductions.

**Provincial and Territorial Consumer Protection Legislation**

Manitoba Class Members

56. The Defendant is a “supplier”, within the meaning of section 1 of the *Business Practices Act*. By reason of the misrepresentations, the Defendant has breached section 2 of the *Business Practices Act*. The misrepresentations and the misappropriation of Subsidy funds constitute “unfair business practices” within the meaning of the *Business Practices Act*.
57. As a result of the Defendant’s breaches of the *Business Practices Act*, the Class Members are entitled to restitution of some, or all, of the price paid to the Defendant for food products



to which the full Subsidy ought to have been applied, or in the alternative damages pursuant to section 23(2)(a) of the *Business Practices Act*.

58. The Plaintiffs plead and relies upon section 4 of the *Business Practices Act* and asserts that the unfair practices were directed to the public at large.

*Saskatchewan Class Members*

59. Class members transacting in Saskatchewan are “consumers”, and the Defendant is a “supplier”, within the meaning of section 2 of the *Saskatchewan CPABPA*.
60. By reason of the misrepresentations, the Defendant has breached sections 6-9 of the *Saskatchewan CPABPA*. The Defendant’s actions constitute “unfair practices” within the meaning of the *Saskatchewan CPABPA*.
61. As a result of the Defendant’s breaches of the *Saskatchewan CPABPA*, Class members are entitled to restitution pursuant to section 93(1)(a) of some, or all, of the price paid to the Defendant for food products to which the full Subsidy ought to have been applied, or in the alternative damages pursuant to section 93(1)(b) of the *Saskatchewan CPABPA*.

*Ontario Class Members*

62. Class Members transacting in Ontario are “consumers” and the Defendant is a “supplier”, within the meaning of the *Ontario CPA*.
63. By reason of the Defendant’s conduct outlined above, the Defendant has breached sections 14, 15, and 17 of the *Ontario CPA*. The Defendant’s actions constitute “unfair business practices” within the meaning of the *Ontario CPA*.
64. As a result of the Defendant’s breaches of the *Ontario CPA*, Class Members are entitled to restitution pursuant to subsection 18(1) and (2) of some, or all, of the price paid to the Defendant for food products to which the full Subsidy ought to have been applied, or in the alternative damages pursuant to section 18(11) of the *Ontario CPA*.

Newfoundland and Labrador

65. Class Members transacting in Newfoundland and Labrador are “consumers” and the Defendant is a “supplier”, within the meaning of the *Newfoundland CPBPA*.
66. By reason of the Defendant’s conduct outlined above, the Defendant has breached sections 7 and 8 of the *Newfoundland CPBPA*. The Defendant’s actions constitute “unfair business practices” within the meaning of the *Newfoundland CPBPA*.
67. As a result of the Defendant’s breaches of the *Newfoundland CPBPA*, Class Members are entitled to restitution pursuant to section 10(2)(e) of some, or all, of the price paid to the Defendant for food products to which the full Subsidy ought to have been applied, or in the alternative damages pursuant to section 10(2)(b) of the *Newfoundland CPBPA*.

Québec

68. Class Members transacting in Québec are “consumers” within the meaning of the *Québec CPA*. By reason of the Defendant’s conduct outlined above, the Defendant has breached the *Québec CPA*, and in particular sections 219, 220, 221, 225, and 228.
69. As a result of the Defendant’s breaches of the *Québec CPA*, Class Members who transacted in Québec are entitled to restitution pursuant to section 272 of some, or all, of the price paid to the Defendant for food products to which the full Subsidy ought to have been applied.

Nunavut

70. Class Members transacting in Nunavut are protected by the *Nunavut CPA*. By reason of the Defendant’s conduct outlined above, it has breached ss. 70(1) and Part VI.1 of that legislation. These Class Members are entitled to relief pursuant to s. 72.5 of the *Nunavut CPA*.
71. The Plaintiffs plead and relies upon section 72.4 of the *Nunavut CPA* and asserts that the Defendant has engaged in unfair business practices and unconscionable acts and practices within the meaning of the *Nunavut CPA*.

Northwest Territories and Yukon

72. In respect of consumer transactions entered into in Northwest Territories and Yukon, the Plaintiffs rely upon the statutory warranties on retail sales in the *Consumer Protection Act*, RSNWT (Nu) 1988, c C-17 at s. 70(1)(f) and the *Consumers Protection Act*, RSY 2002, c 40 at s. 58(f). Specifically, the Defendant's pricing practices mean that the goods sold did not correspond with the description by which they were sold.

**Punitive Damages**

73. The Defendant's conduct knowingly deprived Class Members of funds that were and are desperately needed to ameliorate the food insecurity crisis in northern Canada. In 2022, 36.4% of people living in the territories experienced marginal, moderate or severe food insecurity. Nunavut experienced the highest rate of food insecurity, with 62.6% of residents experiencing food insecurity.
74. The Defendants were aware that retaining portions of the Subsidy as profit would reduce the Class Members' access to nutritious foods, resulting in poorer health outcomes in some of Canada's most vulnerable and impoverished communities.
75. Because of the Defendant's misconduct, Class Members were unable to purchase as much nutritious foods as they otherwise would have purchased. Consequently, the Defendant's misconduct has caused – and will cause, if allowed to continue – a reduction in health and well-being outcomes for Class Members, including but not limited to increased rates of malnutrition, obesity, cardiovascular disease, diabetes, and other morbidities associated with unhealthy diets, as well as increased rates of depression and suicidal ideation.
76. In addition, because of the Defendant's misconduct, Class Members expended more of their limited incomes on purchasing nutritious foods than they would have if the Defendant had fully passed through the Subsidy, depriving them of opportunities to spend their incomes on other necessities, such as housing, transportation and childcare. In 2022, nearly a quarter of the population living in the territories was below the poverty line. This increased to 44.5% for persons living in Nunavut.

77. The Defendant's actions were high-handed, outrageous, reckless, and predatory. The Defendant's reprehensible misconduct warrants an award of punitive damages.

**Discoverability**

78. In 2016 and again in 2019, the Department increased the amount of the Subsidy. In 2023, Professors Tracey Galloway and Nicholas Li used these changes in funding amounts to undertake a comprehensive econometric analysis of whether northern retailers – and the Defendant in particular – were in fact passing along the full Subsidy. Their findings were published in July 2023. They concluded that (a) overall only 67% of the Subsidy was being passed on to consumers; and (b) that in communities where there is a retail monopoly, only 53% of the Subsidy was being passed on to consumers.
79. As a result of the Defendant's dominate market share and monopoly position in many eligible communities, the Defendant's misconduct in unlawfully retaining significant portions of the Subsidy is the sole or, alternatively, the predominant cause of these findings.
80. The Defendant's misrepresentations concealed from Class Members (and the Department) the fact that the Defendant was unlawfully retaining portions of the Subsidy. It was not until Professors Galloway and Li published their research findings in July 2023 that the nature of the Defendant's wrongful conduct was revealed.
81. The Plaintiffs and Class Members did not discover and could not have discovered through the exercise of reasonable diligence, the existence of the claims which are the basis of this action until, at the earliest, July 2023, when until Professors Galloway and Li published their research findings. The North West Company actively misled the Class Members through its misrepresentations and omissions, as pleaded above, as to the amount of the Subsidy being passed through to the Class Members. As a result, neither the Plaintiffs nor the Class Members could have learned of the accrual of their claims against the North West Company at an earlier time.

**Procedure and Place of Trial**

82. This action is commenced pursuant to the *CPA*.

83. The trial of the action should take place in the city of Winnipeg, in the Province of Manitoba.

Date of Issue: February \_\_\_\_, 2025

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