

ACTION NO. S1914497
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

JAMES DOUGLAS RUCKMAN

PLAINTIFF

AND:

BIOTRADE CANADA LTD., LONDON DRUGS LIMITED,
REXALL PHARMACY GROUP LTD., REXALL/PHARMA PLUS PHARMACIES LTD.,
PHARMASAVE DRUGS LTD., WHOLE FOODS MARKET, AND
WHOLE FOODS MARKET CANADA INC. AND PNP PHARMACEUTICALS INC.

DEFENDANTS

BIOTRADE CANADA LTD.,
HEALTHY LIFE AND FOODS COMPANY LTD., HERBAMEDICA S.A. DE C.V., AND
BAOJI EARAY BIO-TECH CO. LTD.

THIRD PARTIES

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

ORDER MADE AFTER APPLICATION

BEFORE } THE HONOURABLE JUSTICE BRANCH } 2/April/2024

ON THE APPLICATION of the plaintiff, James Douglas Ruckman; coming on for hearing in person at the Courthouse at 800 Smithe Street Vancouver, BC on March 15, 2024 and continued on April 2, 2024 by MS Teams; and on hearing Anthony Leoni and Kendal Paul for the plaintiff; and Nicole Chang for the Defendant Biotrade Canada Ltd; Denny Chung for the Defendant Whole Foods Market and Whole Foods Market Canada Inc.; Kaitlin Smiley for the Defendant London Drugs Limited; Emily Kirkpatrick for the Defendants Rexall/Pharma Plus Pharmacies Ltd and Rexall Pharmacy Group Ltd. (the “**Rexall Defendants**”); and; Jill Shore for the Defendant PNP Pharmaceuticals Inc.

AND ON READING all materials filed and on hearing the submissions of counsel, and BY CONSENT of all parties except the Rexall Defendants;

THIS COURT ORDERS that:

1. For the purposes of the Order, except to the extent that they are modified in this Order, the definitions set out in the settlement agreement dated January 31, 2024 (“**Settlement Agreement**”), and attached as **Schedule A** to this Order, apply to and are incorporated into this Order;
2. This Action is certified as a class proceeding as against the Defendants for settlement purposes only;
3. Notice is approved in the form set out as **Schedule B** to the Settlement Agreement;
4. The Class is defined as:
 - a. All persons in Canada who purchased and/or ingested one or more of the U-Dream sleep aid products manufactured or distributed by the Defendants and identified and listed under the NPN (Natural Product Number) listed in Schedule A from August 18, 2014 to present (the “**Class Period**”);
 - b. where such persons in (a) are deceased, all living parents, spouses or children entitled to maintain a claim against the Defendants pursuant to the *Family Compensation Act*, R.S.B.C. 1996, c. 126, and persons entitled to bring similar claims in other Provinces and Territories;
5. James Ruckman is appointed the representative plaintiff on behalf of the Class;
6. Rice Harbut Elliott LLP is appointed class counsel on behalf of the Class (“**Class Counsel**”);
7. Rice Point be appointed as Claims Administrator on behalf of the Class;
8. Within three weeks of the date of this Order, the Defendants will provide to RicePoint any email contact information they have for known Class Members as a result of purchases using a loyalty program or online purchases or confirm that they do not have email contact information for known Class Members. RicePoint will only use the information provided to create a contact list to effect to Class Members the Notice of Proposed Settlement and Settlement Approval Hearing, and should it be approved, Notice of Settlement to any Class Member. RicePoint will destroy all records received from the Defendants after the contact list has been created, and will destroy the email contact information of Opt-Outs which was received from the Defendants;
9. Notice of certification will be distributed to known members of the Class by email and to unknown members of the Class by advertisements in French and English on Google Display Network, Facebook, and Instagram, with an additional press release over PR Newswire’s Canadian Bilingual Newsline;

10. Notice distributed to known Class Members by email will state that the Court ordered that such notice be conveyed in this matter based on contact information the Court ordered the Defendants provide;
11. The procedure by which any Person can opt out of this Action as set out in paragraphs 26(a) to (e) of the Settlement Agreement is hereby approved;
12. Schedule G to the Settlement Agreement (Opt Out Form) is hereby approved;
13. Any Person who opts out of this action in accordance with Schedule G to this Settlement Agreement shall be excluded from the Class and the Action;
14. The hearing date for the approval of the Settlement Agreement ("**Settlement Approval Hearing**") is hereby set for August 2, 2024, by MS-Teams;
15. The procedure by which any Person can file an Objection and Notice of Intention to Appear at the Settlement Approval Hearing as set out in paragraphs 32 to 34 of the Settlement Agreement is hereby approved;
16. If the Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason, this Order, including certification for settlement purposes only, shall be set aside and declared null and void and of no force or effect without the need for any further order of this Court;
17. The following common issues are hereby approved:
 1. Did the Defendants supply to the marketplace U-Dream intended for human consumption by the Class Members?
 2. Did one or more Defendants cause the consumption of the U-Dream with either knowledge or reckless disregard to the presence of a pharmaceutical-grade substance similar to Zopiclone (a Schedule 1 substance under the **Controlled Drugs and Substances Act**, SC 1996, c. 19), so as to constitute a battery at law?
 3. Does the U-Dream contain a pharmaceutical-grade substance similar to Zopiclone - a Schedule 1 substance under the **Controlled Drugs and Substances Act**?
 4. Did the Defendant Manufacturers owe a duty of care to the Class Members with respect to the development, testing, manufacturing, packaging, distribution, marketing, and sale of the U-Dream?
 5. If the answer to the above question is 'yes', did the Defendant Manufacturers breach the standard of care owed to the Class Members?

6. Is the standard of care for the manufacture of the U-Dream one of absolute liability for manufacturing defects?
7. Did the Defendant Merchants and Distributors owe a duty of care to the Class Members with respect to the distribution, marketing, and sale of the U-Dream?
8. If the answer to the above question is 'yes', did the Defendant Merchants and Distributors breach the standard of care owed to the Class Members, and if so, how?
9. Was the U-Dream sold and distributed by the Defendant Merchants and Distributors not of merchantable quality and/or unfit for its intended use on the basis that it contained a pharmaceutical-grade substance similar to Zopiclone—a Schedule I substance under the **Controlled Drugs and Substances Act**—which was not part of the disclosed ingredients of the U-Dream?
10. When did the Defendants know, or when ought the Defendants to have known, that the U-Dream contained a pharmaceutical-grade substance similar to Zopiclone?
11. Did the Defendants have a duty to warn the Class Members of impurities contained in the U-Dream and/or the increased Health Risks from the U-Dream, used as indicated?
12. Does the U-Dream, used as indicated, cause or contribute to increased Health Risks?
13. Is it a reasonable and foreseeable consequence that persons who learn they ingested U-Dream containing an undisclosed pharmaceutical-grade substance similar to Zopiclone, could experience mental disturbance that was serious, prolonged, and above the ordinary annoyances, anxieties, and fears that come with living in civil society?
14. Did one or more of the Defendants engage in conduct that constituted deceptive and/or unconscionable acts or practices, contrary to ss. 4 and 8 of the Business Practices and Consumer Protection Act, S.B.C. 2004, c.2 or equivalent legislation in other common law provinces?
15. Did one or more of the Defendants knowingly or recklessly make a representation to the public that was false or misleading in a material respect, contrary to s. 52 of the Competition Act, RSC, 1985, c C-34?
16. Are Class Members entitled to a claim for recovery against the Defendant Merchants and Distributors under the Sale of Goods Act, R.S.B.C. 1996, c. 410 ("SGA"), s. 18, or equivalent legislation in other common law provinces, namely the implied condition that the goods are

of merchantable quality and the implied warranty or condition as to the quality or fitness of the product and its intended use?

17. Were one or more of the Defendants enriched by the receipt of payments from the Class Members for the purchase of the U-Dream during the Class Period?
18. If the answer to question #18 above is 'yes', did the Class Members suffer a corresponding deprivation in the amount of payments collected by the Defendants from the Class Members?
19. Is there a juristic reason why the Defendants should be entitled to retain the payments collected from the Class Members?
20. If the answer to question #19 above is 'yes' and the answer to question #20 above is 'no', what restitution, if any, is payable by one or more of the Defendants to the Class Members based on unjust enrichment?
21. Is this an appropriate case for one or more of the Defendants to disgorge profits earned during the Class Period?
22. If there is a finding of liability, can the amount of restitution be determined on an aggregate basis, and, if so, in what amount?
23. Did one or more of the Defendants breach articles 1726 and 1730 of the Civil Code of Québec, CQLR c C-1991?
24. Did one or more of the Defendants breach the Consumer Protection Act, RSQ c P-40.1?
25. Are one or more of the Defendants liable to the Class for damages (including punitive damages) for:
 - a. battery?
 - b. negligence?
 - c. breach of the applicable consumer protection legislation?
 - d. breach of the Competition Act, RSC, 1985, c C-34?
 - e. breach of the Sale of Goods Act, R.S.B.C. 1996, c. 410?
 - f. breach of the Civil Code of Québec, CQLR c C-1991?
26. If one or more of the Defendants are liable to the Class for damages, can the court assess damages in the aggregate, in whole or in part, for the Class? If so, what is the amount of the aggregate damages assessment?;

18. The Rexall Defendants have leave to apply to amend this Order on or before April 9, 2024.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of Class Counsel

Signature of
Lawyer for the Defendant



Signature of Kaitlin Smiley
Lawyer for the Defendant London Drugs Limited

Signature of
Lawyer for the Defendant

Signature of
Lawyer for the Defendant

Signature of
Lawyer for the Defendant

Signature of
Lawyer for the Defendant

Signature of
Lawyer for the Defendant

By the Court

Registrar

SCHEDULE A
[Settlement Agreement]

SCHEDULE B

[Notice of Proposed Settlement and Settlement Approval Hearing]