



Court File No. **VLC-S-S-257300**

ACTION NO.  
VANCOUVER REGISTRY

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN

DANIEL MAYNARD

PLAINTIFF

AND

IMPERIAL TOBACCO COMPANY LTD.,  
IMPERIAL TOBACCO CANADA LTD.,  
NICOVENTURES TRADING LIMITED

DEFENDANTS

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

**NOTICE OF CIVIL CLAIM**

**This action has been started by the plaintiffs for the relief set out in Part 2 below.**

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

**Time for response to civil claim**

A response to civil claim must be filed and served on the plaintiff,

- (a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,
- (b) if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or

(d) if the time for response to civil claim has been set by order of the court, within that time.

## THE PLAINTIFF'S CLAIM

### Part 1: STATEMENT OF FACTS

#### Overview of Claim Against the Defendants

1. The Defendant, Imperial Tobacco Canada Ltd. (the “**Defendant ITL**”) is a federally incorporated company registered pursuant to the *Canada Business Corporations Act*, with its registered office at 30 Pedigree Court, Brampton, ON.
2. The Defendant, Imperial Tobacco Company Ltd. (the “**Defendant ITC**”) is a federally incorporated company registered pursuant to the *Canada Business Corporations Act*, with its registered office at 30 Pedigree Court, Brampton, ON.
3. The Defendant, Nicoventures Trading Limited (the “**Defendant Nicoventures**”) is a company registered in the United Kingdom, with an address at Globe House, 1 Water Street, London., which is also the location of the global headquarters for British American Tobacco (“**BAT**”).
4. This claim relates to the deceptive and misleading design, regulatory approval, labelling, advertising, marketing, promotion, distribution, and sale by the Defendant ITL, the Defendant ITC and the Defendant Nicoventures (the “**Defendants**”) of a smokeless nicotine product called Zonnic® that delivers nicotine through a small pouch that is placed between the lips and the gums (“**Zonnic**”).
5. Nicotine — an addictive substance — is a product with no real benefit other than to give the user the pleasure of satisfying and temporarily soothing the intense need — the drug addiction — that his or her consumption creates and to relieve the stress of (even temporary) abstinence.
6. In recent years, tobacco companies have been faced with an existential threat: with cigarette sales dwindling, the core business of tobacco companies has been inexorably declining. This case addresses the latest chapter in big tobacco’s efforts to addict a new generation of persons to nicotine.
7. Historically, the tobacco industry has deployed various marketing strategies aimed at promoting nicotine addiction, such as the use of:
  - a. advertising that creates appealing images associated with smoking, particularly across mediums that are popular among youth;
  - b. flavoured tobacco products, such as menthol cigarettes, flavoured cigars, and e-cigarettes;
  - c. social media to engage with younger audiences;

- d. packaging designs with bright colours, attractive logos, and sleek containers; and
  - e. strategic product placement in prominent locations to increase the visibility and influence of the product, such as near cash registers in convenience stores.
- 8. With respect to tobacco and vaping products, the above-mentioned strategies have been eliminated by regulatory intervention. In response, the Defendants have deployed their previously outlawed marketing playbook to a new, largely unregulated frontier: natural health products.
- 9. In particular, the Defendants deliberately designed Zonnic with 4 mg or less of nicotine per pouch for the express purpose of avoiding nicotine control laws that do not apply to nicotine products approved under the *Natural Health Product Regulations*, SOR/2003-196 (the “**Natural Health Regulations**”). As a “natural health product” Zonnic could be purchased in Canada by anyone (without age restriction) and promoted broadly (without advertising restriction).
- 10. At all material times, the Defendants have publicly declared Zonnic to be a “nicotine replacement therapy” while instead marketing the product to appeal to children, teenagers, and young adults (“**Young Persons**”) and persons not presently addicted to nicotine, with vivid packaging featuring sweet flavours like “Chill Mint”, “Berry Frost”, and “Tropic Breeze”. The Zonnic packaging contains no warnings or disclosure about the primary harm associated with its use, namely, long-term nicotine addiction.
- 11. Further, the Defendants have deceptively advertised Zonnic using traditional and social media, lifestyle imagery, product placement, contests, launch parties, giveaways, and other promotions, which obscure the risk of injury and addiction associated with the product. The Defendants’ strategy hinges on the expectation that persons who do not smoke or vape, or who use nicotine products infrequently, will experiment with Zonnic and, owing to the highly addictive nature of nicotine, transform into lifelong customers.
- 12. The Defendants’ true motives are clear: they have marketed their brand not to help nicotine addicts stop using nicotine, but rather to profit from a new generation of nicotine consumers, and to continue to profit from those persons already using or addicted to nicotine by exacerbating their need for this highly addictive drug. The Defendants have profited from turning Young Persons and non-nicotine users into nicotine addicts and exacerbating addiction in previous nicotine users.

### **The Plaintiff and Class Members**

- 13. The Plaintiff, Daniel Maynard, has an address for delivery of 820 -980 Howe Street, in the City of Vancouver, in the Province of British Columbia.
- 14. Since approximately November 2023, the Plaintiff has purchased Zonnic, for personal use, at stores near his home. He was induced to purchase Zonnic after

seeing advertising on social media and at point-of sale displays at the convenience stores involving bright colours and signs.

15. The Plaintiff was previously addicted to nicotine products including chewing tobacco but had largely stopped using any nicotine product by the time he first purchased and used Zonnic. By virtue of the Defendants' advertising and marketing, the Plaintiff understood that Zonnic was safe to use. The Plaintiff was not aware that Zonnic was highly addictive and carried a significant risk of restarting his nicotine addiction. He did not see any warning label on the product to alert him of these serious risks.
16. After purchasing and using Zonnic, the Plaintiff became addicted to Zonnic, and started developing heart palpitations, anxiety and associated panic attacks. He attended the hospital on several occasions as a result of his use of Zonnic.
17. The Plaintiff brings this action on his own behalf and on behalf of:

All persons in Canada who purchased Zonnic in Canada between July 18, 2023 and a date to be fixed by the Court, for primarily personal, family or household use.

(the "**Class**", "**Class Members**" and "**Class Period**")

18. The Plaintiff and Class Members have sustained injuries and damages as a result of their use of Zonnic which include, but are not limited to, the following:
  - a. Addiction, or increased addiction, to nicotine;
  - b. Anxiety;
  - c. Panic attacks; and
  - d. Such other injuries as shall be proven at trial,

all of which injuries have caused and continue to cause the Plaintiff and Class Members pain, suffering, loss of enjoyment of life, loss of earnings, past and prospective, and loss of income earning capacity, loss of opportunity to earn income, past and prospective.

19. The Plaintiff and Class Members have been misled by the statements, representations and omissions made by the Defendants with respect to the safety and character of Zonnic. They would not have purchased or used Zonnic had they been provided with accurate information and warnings regarding the risk of addiction or increased addiction associated with its use.

### **The Defendants' Corporate Structure and Factual Basis for Joint Liability**

20. In or about July 2023, the Defendants started to sell Zonnic in Canada, directly or through intermediaries (retailers), and have profited from, or become enriched from, these sales.

21. Collectively, the Defendants form an inextricably interwoven corporate structure designed to advance their common tobacco business by their wrongful and deceptive introduction, regulatory approval, design, labelling, advertising, marketing, promotion, distribution, and sale of Zonnic in Canada. Namely, at all material times each Defendant:
  - a. was an agent of the others, acting within the scope of that agency relationship and ratifying the others' acts; and
  - b. substantially assisted each other in performing acts and omissions which furthered a common design to misrepresent the known risks and alleged benefits of Zonnic and to deceptively promote Zonnic, which has led to, and continues to lead to, harm to the Plaintiff and proposed Class Members;
22. While the particulars of the conspiracy are not entirely known to the Plaintiff at present, the Defendants worked closely together to establish high-level strategies to promote, obtain regulatory approval for, and sell Zonnic in Canada, and shield it from regulatory or public scrutiny, while misleading and deceiving consumers about the risks. This included the jointly-made decision to adopt and implement youth-centric product designs and other misleading and deceptive strategies aimed at addicting a new generation to nicotine, and exacerbating addiction in existing users, including by commission of torts against the Plaintiff and Class Members and breaches of statute and the common law as particularized below.
23. At all material times, the predominant purpose of the conspiracy was intended to cause harm to the Plaintiff and Class Members, in the form of addiction to nicotine. Alternatively, the Defendants conspired together by way of unlawful means, by engaging in conduct contrary to, *inter alia*, consumer protection legislation in circumstances when they knew or ought to have known that injury to the Plaintiff and similarly situated persons was likely to result.

**The Defendants Knew or Ought to Have Known that Nicotine is Addictive and has Deleterious Effects**

24. Nicotine is the addicting agent in tobacco-based products, such as cigarettes and vaping devices. It is the fundamental cause of addiction among tobacco users. Its addictive potential has been described as lesser than heroin and higher than cocaine.
25. Drug addiction is a strongly established pattern of behaviour characterized by the repeated self-administration of a drug in amounts which reliably produce reinforcing psychoactive effects and great difficulty in achieving voluntary long-term cessation of such use, even when the user is strongly motivated to stop.
26. The neurological changes caused by nicotine create addiction. Repeated exposure to nicotine causes neurons in the brain to adapt to the action of the drug and return brain function to normal. This process, called neuroadaptation, leads to the development of tolerance in which a given level of nicotine begins to have less

of an effect on the user. Once a brain is addicted to nicotine, the absence of nicotine causes compulsive drug-seeking behavior that could result in withdrawal symptoms if not satisfied, such as anxiety, depression, irritability, difficulty concentrating, disorientation, and intense cravings for nicotine, making it difficult to quit.

27. Nicotine use causes or materially contributes to the following non-exhaustive list of the harms and injuries:
  - a. Addiction, which in the case of Young Persons, can develop within weeks of continuous use;
  - b. Addiction, leading to the use of other harmful nicotine products such as cigarettes and vaping devices;
  - c. Substantial neural remodeling to reward centres of the brain, leading to cognitive changes such as reduced attention span and enhanced impulsivity;
  - d. Anxiety, depression, altered emotional regulation, and other mood changes;
  - e. Seizures; and
  - f. Such other injuries as will be particularized at the trial of this matter.
28. As designers, labelers, marketers, promoters, advertisers, distributors, and sellers of Zonnic, the Defendants knew or ought to have known that Zonnic:
  - a. is an addictive substance, given that it contains nicotine;
  - b. contains the equivalent of three to four cigarettes per pouch;
  - c. would be consumed by non-users of nicotine and Young Persons;
  - d. when used as directed, can cause or exacerbate nicotine addiction; and
  - e. can serve as a gateway to consumption, or increased consumption, of other harmful nicotine products, including vaping devices and cigarettes.

### **Regulatory Approval of Zonnic**

29. Tobacco companies have a long history of staying two steps ahead of government, public health agencies, and the justice system, as well as shaping the evolving preferences of consumers. Zonnic is the latest innovation in this regard.
30. The Defendants conspired together to wrongfully obtain approval of Zonnic as a natural health product under the *Natural Health Regulations*.

31. Before and during the regulatory approval process, the Defendants knew, or ought to have known that:
  - a. Zonnic would not be impacted by the same regulatory framework and rules that apply to tobacco or vaping products;
  - b. the regulatory framework around the *Natural Health Regulations* is not designed to prevent anyone (of any age) from starting to consume nicotine, to protect people from addiction or harm, or to prevent Young Persons from inducements to use their products;
  - c. the *Natural Health Regulations* do not impose a legally enforceable minimum age for sale of nicotine pouches; and
  - d. the *Natural Health Regulations* do not contain any advertising or marketing restrictions that apply to traditional nicotine-based products.
32. Further, at all material times, the Defendants misled and deceived Health Canada by omitting their plan to sell, advertise, and market Zonnic:
  - a. in gas stations and convenience stores across the country, next to items appealing to Young Persons like pop, chips, chocolate bars, and candy;
  - b. via social media depicting young, attractive, stylish, and trendy-looking users;
  - c. by way of launch parties designed to appeal to Young Persons;
  - d. at point of sale, where such advertising is prohibited for tobacco and vaping products; and
  - e. Such further particulars as will be defined at trial.
33. The Defendants received regulatory approval for Zonnic because they designed it with 4 mg or less of nicotine per pouch with the express purpose of avoiding nicotine control laws like those found under the federal *Tobacco and Vaping Products Act*, which prohibits the sale of nicotine-containing tobacco products and vaping products to persons under 18 years of age and heavily restricts their promotion.
34. On July 18, 2023, the Defendant Nicoventures, in collaboration with the Defendant ITC and the Defendant ITL, obtained approval from Health Canada for Zonnic as a form of nicotine replacement therapy under the *Natural Health Regulations* and was assigned Natural Product Number (NPN) 80125630.

35. By virtue of the Defendants' wrongful acts and omissions, until the federal government announced new restrictions in August 2024, it was legal for stores to sell Zonnic to persons of any age in Canada.
36. The Defendants continue to wrongfully sell Zonnic in Canada with no warning labels, or in the alternative, inadequate warning labels, on the product packaging. The Zonnic package contains a bilingual label attached to the back of the product in a 5-page peelable sticker that contains illegibly tiny font containing only the following remark: "*Do not use if you are an occasional smoker, non-smoker or non-nicotine user.*" The label contains no warning that nicotine is addictive and no, or insufficient, warning alerting users to risks of personal injury, addiction or other risks associated with use. To the contrary, other nicotine pouches sold in other jurisdictions, including Zyn® sold by Swedish Match NA LLC in the United States, contain a prominent, large font black box warning "**Nicotine is an addictive chemical**".
37. To the extent that the 5-page peelable sticker can be construed as containing a warning, which is denied, it is insufficient and:
  - a. contrary to the requirements set out in s. 88 of the *Natural Health Regulation*, which requires warnings to be prominently and clearly displayed;
  - b. false, misleading, deceptive, or likely to create an erroneous impression regarding its character, value, quantity, composition, merit, or safety, contrary to section 9 of the *Food and Drugs Act* R.S.C., 1985, c. F-27, (the "*Food and Drugs Act*"); and
  - c. particularly ineffective in light of the marketing and labeling of Zonnic which is intended to create the general impression that Zonnic is a safe and appropriate product for Young Persons, non-nicotine users, and for smoking cessation.
38. The Defendants have also failed to provide prominent and clearly displayed warnings about risks of addiction and other injury associated with Zonnic use on the Zonnic website, the @zonniccanada Instagram account, and on Health Canada's website (which contains product licensing information for Zonnic).
39. Public health groups have criticized Health Canada for approving Zonnic for sale in Canada without the typical protections and restrictions which accompany nicotine-containing products. For example, on November 14, 2023 the Canadian Cancer Society issued a news release stating the following:

Health Canada has approved the sale of flavoured nicotine pouches by Imperial Tobacco Canada Ltd. in such a way that the products can be legally sold to children of any age. Moreover, Imperial Tobacco can promote these products on TV or on billboards across from schools, on social media, through lifestyle advertising, through free samples, and by other means.

On July 18, 2023, a sister company of Imperial Tobacco was given approval to sell flavoured nicotine pouches under the Natural Health Product Regulations, with the products containing nicotine but not tobacco. Imperial Tobacco is now aggressively marketing these nicotine pouches by selling and promoting them in convenience stores and gas stations, with in-store promotions that may be located near candy or chocolate bars. It is completely legal for stores to sell these flavoured nicotine pouches to children of any age.

"This is a stunning development. It is absolutely incomprehensible that these flavoured nicotine products could be allowed on the market without adequate regulatory protections in place," says Cynthia Callard, Executive Director of Physicians for a Smoke-Free Canada. "While this decision was made prior to the appointment of the current Minister of Health and the Associate Minister of Health, we urge the Ministers to take immediate action to remedy this unacceptable situation, and to prevent nicotine addiction among youth. The Canadian public will not tolerate these new developments and this regulatory gap."

40. On November 30, 2023, the Minister of Health of Canada announced that Health Canada would move quickly to close the regulatory loophole exploited by the Defendants. Minister Holland stated, *inter alia*, as follows:

"There are very serious questions about what the tobacco industry is doing here and what their intention is. And it would seem that their intention is to addict new young people to nicotine, which is disgusting."

[...]

"The way that this was presented is that it was for the purposes of cessation. In their marketing and their approach, it exists in a completely different way. We were duped."

41. In August 2024, after the federal government announced new restrictions with respect to how nicotine pouches could be marketed and sold in Canada, Minister Holland stated, *inter alia*, as follows:

"All the stuff that's clearly designed to target youth – it's over..."

"It has been so deeply disturbing to see so many young people becoming addicted to these nicotine pouches who've never had any interaction with cigarettes..."

"We'll never know what hole they'll [nicotine pouch manufacturers] slither out of next to try to attack our children..."

“I’m very concerned that there are kids who are already addicted. I am very concerned that tobacco companies have already achieved their goal...”

42. To date, the regulatory loopholes exploited by the Defendants with respect to the approval of Zonnic have not been addressed by regulators.

### **Marketing and Advertising of Zonnic**

43. On or shortly after July 18, 2023, Zonnic was launched on the Canadian market.
44. Prior to Zonnic being made commercially available in Canada, the Defendants developed a unique selling proposition (“**USP**”) that has been promulgated through the methods described in paragraph 44, with the intention of misleading and deceiving consumers into believing that Zonnic is:
- a. safe;
  - b. a natural health product, when instead it is composed of synthetic nicotine;
  - c. a nicotine replacement therapy that will assist users with the nicotine cessation process, rather than increasing a user’s dependence on nicotine; and
  - d. is a desirable, acceptable, fun, and trendy product for use by Young Persons.

(the “**Representations**”)

45. The Defendants have advanced their USP to reach, attract, and addict as many consumers as possible as quickly as possible, for the purposes of profit, using the following techniques which expand upon those used by the tobacco industry:
- a. **Exotic Flavours.** The Defendants have placed special emphasis on sweet and fruity flavours in colourful packaging so that Young Persons will notice and become curious about the product, try it, become addicted to it, and hopefully talk about how enjoyable it is with their friends.
  - b. **Glamorized Imagery.** The Defendants’ packaging, website and social media directly parallel visuals previously adopted by tobacco companies, including imagery relating to attractiveness, stylishness, sex appeal, fun, belonging, relaxation, and sensory pleasure, including taste.
  - c. **Multiple Platforms.** The Defendants have advertised Zonnic across multiple social media platforms, including TikTok, Facebook and Instagram, which can be viewed and followed by any person regardless of their age, location, or country of residence.

- d. **Hashtag Use.** The Defendants have employed a viral hashtag marketing strategy to promote Zonnic through the exploitation of pre-existing social networks. In addition, their branded hashtags have promoted user-generated content – every time a user uses a branded hashtag in one of their posts, they increase the Defendants’ presence on social media.
  - e. **Influencers.** The Defendants have compensated social media “influencers” who have massive inventories of followers, to promote Zonnic and create and nurture online conversations about their brand. Influencers contribute what appears to be independent user generated content, which is influential, in part, due to its perceived independence from marketers’ influences.
  - f. **Launch Parties.** The Defendants have hosted launch parties appealing to high school and university-aged persons. One such event occurred in Montreal on or about October 19, 2023 and featured exciting colours and youthful vibes and was designed to further the Defendants’ USP that Zonnic is a safe and appropriate for use by Young Persons and non-nicotine users.
46. Through the above viral advertising campaign, the Defendants have successfully misled consumers with their USP: that Zonnic is safe, natural, to be used to stop smoking, and desirable, acceptable, fun, and trendy for use by Young Persons, non-nicotine users, and for smoking cessation. In making the Representations, for the purposes of profit, the Defendants have failed to inform the Plaintiff and Class Members of the dangers associated with ordinary use of Zonnic, including but not limited to the following:
- a. that Nicotine is an addictive substance and Zonnic is an addictive product;
  - b. the efficiency with which Zonnic delivers nicotine to the user’s bloodstream;
  - c. the actual nicotine dose a Zonnic user receives;
  - d. that one Zonnic pouch contains concentrations of nicotine comparable to three to four cigarettes;
  - e. that a Zonnic user who is a Young Person is particularly vulnerable to addiction by virtue of being exposed to potent levels of nicotine that will affect the user’s pharmaceutical, physiological, emotional, and behavioural states in the short and long-term;
  - f. that a Zonnic user will experience an increased risk of nicotine abuse, addiction, and personal injury; and

- g. that Zonnic users are exposing themselves to unknown long-term health consequences, including but not limited to exposure to flavouring and other chemicals that have not been tested for their intended use and are potentially dangerous.

(the “**Omissions**”)

## PART 2: RELIEF SOUGHT

47. The Plaintiff claims on his own behalf and on behalf of the Class Members:

- a. An order certifying this action as a class proceeding and appointing the Plaintiff as the representative Plaintiff under the *Class Proceedings Act* [RSBC 1996] c. 50;
- b. A declaration that it is not in the interests of justice to require strict compliance by the Plaintiff with the notice requirements in section 18(15) of the *Consumer Protection Act*, RSO 1990, c. C.31, s. 7.1(1) to (4) of the *Consumer Protection Act*, RSA 2000, c. C-26.3 and s. 4(5) and (6) of the *Business Practices Act*, RSPEI 1988, c. B-7 and waiving any such notice requirements;
- c. Relief pursuant to the *Competition Act*, RSC c. C-34 (the “**Competition Act**”);
- d. Relief pursuant to the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2 (the “**BPCPA**”), and comparable legislation in the other provinces and territories;
- e. Recovery of health care costs incurred by the Ministry of Health Services on their behalf pursuant to the *Health Care Cost Recovery Act*, S.B.C. 2008, c. 27, (the “**HCCRA**”) and comparable legislation in the other provinces and territories;
- f. A declaration that the Defendants have been unjustly enriched by the purchase price of Zonnic paid directly or indirectly by the Plaintiff and Class Members and received by the Defendants;
- g. An order that the Defendants make restitution to the Plaintiff and Class Members equal to the amount by which the Defendants have been found to be unjustly enriched, or alternatively disgorgement;
- h. General damages;
- i. Special damages;
- j. Punitive damages;
- k. Costs;

- l. Interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79; and
- m. Such further and other relief this Honourable Court may deem just.

### **Part 3: LEGAL BASIS**

48. The Plaintiff and Class Members plead and rely on the *Class Proceedings Act* [RSBC 1996] c. 50; the *Court Order Interest Act*, RSBC 1996, c 79; the *Competition Act*; the *BPCPA*; the *Food and Drugs Act*; the *Natural Health Regulations*; the *Supreme Court Civil Rules*, BC Reg 168/2009; the *Negligence Act*, RSBC 1996, c. 333; the *HCCRA*, and related enactments.

### **Negligence and Failure to Warn**

49. As manufacturers, designers, labelers, marketers, promoters, advertisers, distributors, and sellers of nicotine pouches, the Defendants were in such a close and proximate relationship to the Plaintiff, and other Class Members, as to owe them a duty of care. The Defendants caused Zonnic to be introduced into the stream of commerce in Canada, and they knew, or ought to have known, that any damages or adverse effects related to use of Zonnic would cause foreseeable injury to the Plaintiff and Class Members.
50. The Defendants, and each of them, owed a duty to the Plaintiff and Class Members—who were reasonably foreseeable users of Zonnic—to exercise reasonable care when designing, labelling, advertising, marketing, promoting, distributing, and selling nicotine pouches.
51. The Defendants, and each of them, breached the standard of care owed to the Plaintiff and Class Members to ensure that the nicotine pouches were safe and effective for their intended use. Particulars of the Defendants' negligence include, *inter alia*:
- a. Exploiting a regulatory framework that they knew, or ought to have known, would permit them to sell Zonnic to persons of any age, including Young Persons, and to display Zonnic for sale in favourable storefront locations that would appeal to Young Persons and non-nicotine users;
  - b. Designing or marketing a product that they knew, or ought to have known, had an unreasonably high risk of causing injury, including addiction;
  - c. Failing to warn, or alternatively, failing to adequately warn the Plaintiff and Class Members, that Zonnic is extremely addictive, especially when used by Young Persons without prior exposure to nicotine;

- d. Placing Zonnica in the Canadian market when they knew or ought to have known that the risks of Zonnica use outweigh any potential benefits;
- e. Using flavouring chemicals that have been untested for their intended use and which are potentially dangerous for humans to consume;
- f. Failing to warn consumers that the flavouring chemicals used in Zonnica have been untested for their intended use and are potentially dangerous;
- g. Failing to report any, or alternatively, any serious side effects or harmful complications associated with Zonnica use;
- h. Designing Zonnica packaging with bright colours and using a variety of appealing flavours, such that the Defendants knew or ought to have known that the products would be used by Young Persons who are more vulnerable to the effects of nicotine;
- i. Failing to implement a timely recall of Zonnica once it was known, or ought to have been known, that Zonnica was not being used for its intended purpose;
- j. Failing to make reasonable efforts to reduce any or all risks to life that the Defendants knew or ought to have known was inherent in the design of Zonnica;
- k. Designing or marketing a product that was not fit for the purpose for which it was intended and not of merchantable quality;
- l. Wrongfully marketing, promoting, or advertising Zonnica in a manner that would likely appeal to Young Persons;
- m. Applying callous and reckless disregard for the health and safety of the Plaintiff and the Class Members; and
- n. Such further and other particulars of negligence as will be alleged at trial.

52. The Plaintiff and Class Members have suffered loss and damage that was a direct and foreseeable consequence of the Defendants' negligence as a result of their purchase and consumption of Zonnica. These damages include but are not limited to:

- a. personal injury, including nicotine addiction, or increased nicotine addiction;

- b. purchasing and using Zonnic when they would not have otherwise done so had they been informed of the risks associated with Zonnic use;
  - c. the cost of purchasing Zonnic and other nicotine products to maintain their nicotine addiction; and
  - d. other losses incidental to their addiction or other injuries.
- 53. The material facts in support of the Defendants' negligence and failure to warn are pleaded in paragraphs 9-16, 18-19, 24-28, 30-46.

**Breaches of the *Competition Act***

- 54. The *Competition Act* applies to business transacted in Canada.
- 55. Zonnic is a "product" within the meaning of sections 2 and 52 of the *Competition Act*.
- 56. The Representations and Omissions made by the Defendants include both express misrepresentations to the Plaintiff and Class Members regarding the safety and efficacy of Zonnic, as well as misrepresentations by omission. The Defendants knew, or ought to have known, that their Representations and Omissions were false and misleading in a material respect.
- 57. Further, the Defendants knew, or ought to have known, that Zonnic is not a safe smoking cessation device and that use of Zonnic by consumers materially increases the risk of injury, addiction, and the likelihood of advancing to use of other nicotine products like cigarettes to sustain their addiction.
- 58. As a result of the Representations and Omissions, the Defendants breached section 52 of the *Competition Act* and committed an unlawful act because their Representations and Omissions:
  - a. were made for the purpose of promoting, directly or indirectly, the use of Zonnic;
  - b. were made for the purpose of promoting, indirectly or directly, any business interests of the Defendants;
  - c. were made to the public;
  - d. were made knowingly and recklessly; and
  - e. were false and misleading in a material respect.
- 59. As a result of the Defendants' breaches of s. 52 of the *Competition Act*, the Plaintiff and Class Members purchased Zonnic. Had the Plaintiff and Class Members been informed of the risks associated with Zonnic use, they would not have purchased or used it, and they have thereby suffered damages.

60. The material facts supporting breach of the *Competition Act* as described above are pleaded in paragraphs 9-12, 14-15, 18-28, 30-46.

**Breach of Consumer Protection Legislation**

61. In this matter, the following elements are established pursuant to section 1 of the *BPCPA*:
- a. Zonnic is a “good”;
  - b. The Defendants' solicitations, offers, advertisements, promotion, and supply of Zonnic to the Plaintiff and Class Members for primarily personal, family or household use, as an alternative to smoking, were “consumer transactions”;
  - c. The Plaintiff and Class Members in British Columbia are “consumers”; and
  - d. The Defendants are “suppliers”.
62. The Defendants' conduct in their solicitations, offers, advertisements, promotions, sales, and supply of Zonnic constituted deceptive acts and practices contrary to s. 4 of the *BPCPA*. The Defendants' deceptive acts or practices included *inter alia*:
- a. making the Representations and Omissions;
  - b. advertising, promoting, and selling Zonnic as a “natural” product when it is composed of synthetic nicotine;
  - c. through their wrongful USP, conveying the general impression that Zonnic is a safe and appropriate product for Young Persons, non-nicotine users, and for smoking cessation, when it is none of those things;
  - d. advertising, promoting, and selling Zonnic without any warning, or any reasonable warning, to alert consumers to the fact that Zonnic contains nicotine, a highly addictive substance;
  - e. advertising, promoting, and selling Zonnic as a smoking cessation tool when they knew or ought to have known that Zonnic would cause users to become addicted, or more addicted, to nicotine; and
  - f. advertising, promoting, and selling Zonnic as a smoking cessation tool, while designing and advertising the product to appeal to Young Persons.
63. The Defendants' conduct in their solicitations, offers, advertisements, promotions, sales, and supply of Zonnic, including the Representations and Omissions, also had the capability, tendency, or effect of deceiving or misleading consumers

regarding the safety, risks, and efficacy associated with use of Zonnic, contrary to s. 4 of the *BPCPA*.

64. The Defendants' conduct in their solicitations, offers, advertisements, promotions, sales, and supply of Zonnic were also "unconscionable acts or practices" contrary to s. 8 of the *BPCPA*. The Defendants' unconscionable acts or practices included *inter alia*:
  - a. making the Representation and Omissions;
  - b. advertising, promoting, and selling Zonnic in a manner which took advantage of the Plaintiff's and Class Members' inability or incapacity to reasonably protect their own interests due to the Plaintiff's and Class Members' ignorance, age, inexperience, and inability to understand the nature of the consumer transaction; and
  - c. advertising, promoting, and selling Zonnic as a youthful, hip, stylish, and fun health product rather than warning that it is a highly addictive substance with long-term consequences, including personal injury and addiction.
65. At all material times, the Defendants knew, or ought to have known, that the Plaintiff and Class Members:
  - a. were unable to protect their own interests because of ignorance;
  - b. would not and could not reasonably protect their interests by conducting adequate testing of Zonnic prior to purchase;
  - c. would be unable to receive the benefit misrepresented to them from the Defendants; and
  - d. would rely on the Defendants' Representations and Omissions to their detriment.
66. The Defendants' deceptive acts and practices and unconscionable acts and practices were made for the purpose of promoting, directly or indirectly, the sale of Zonnic, or for the purpose of promoting, directly or indirectly, the business interests of the Defendants. The Defendants accepted the benefits of their wrongful conduct in the form of profits from the sale of Zonnic.
67. Further, the Defendants' deceptive acts and practices, unconscionable acts and practices, and Representations and Omissions were false and/or misleading in a material respect and contrary to the following consumer protection legislation:
  - a. Sections 6 and 7.3 of the *Alberta Consumer Protection Act*, RSA 2000, c. C-26.3 ("*Alberta CPA*");

- b. Sections 6 to 8 and/or 19(d)-(e) of the *Saskatchewan Consumer Protection and Business Practices Act*, SS 2014, c. C-30.2 (“*Saskatchewan CPBPA*”);
- c. Sections 2 to 3 and/or 5 of the *Manitoba Business Practices Act*, CCAM, c. B120 (“*Manitoba BPA*”);
- d. Sections 9(2), 14, 15 and/or 17 of the *Ontario Consumer Protection Act*, 2002, SO 2002, c. 30, Sch. A (“*Ontario CPA*”);
- e. Articles 37, 41, 53, 219 to 221 and/or 228 of the *Québec Consumer Protection Act*, CQLR c. P-40.1 (“*Québec CPA*”);
- f. Sections 7 to 9 of the *Newfoundland and Labrador Consumer Protection and Business Practices Act*, SNL 2009, c. C-31.1 (“*Newfoundland and Labrador CPBPA*”);
- g. Section 27 of the *New Brunswick Consumer Product Warranty and Liability Act*, SBC 1978, c. C-18.1 (“*New Brunswick CPWLA*”); and
- h. Sections 2 to 3 of the *P.E.I. Business Practices Act*, RSPEI 1988, c. B-7 (“*PEI BPA*”).

(together with the *BPCPA*, the “**Consumer Protection Legislation**”)

- 68. As a result of the Defendants' conduct described in paragraphs 62 to 67 herein, the Plaintiff and Class Members have suffered the following losses and damages:
  - a. personal injury, including addiction or increased addiction to nicotine;
  - b. purchasing and using Zonnic when they would not have otherwise done so had they been alerted to the risks of injury and nicotine addiction associated with its use;
  - c. suffering economic losses consisting of the cost of purchasing Zonnic;
  - d. suffering additional economic losses in purchasing Zonnic and other nicotine products such as cigarettes to maintain their addiction; and
  - e. suffering additional economic losses incidental to their injury and addiction.
- 69. Had the Plaintiff and Class Members been informed of the risks associated with Zonnic use, they would not have purchased or used Zonnic.
- 70. Further, or in the alternative, reliance by the Plaintiff and Class Members can be inferred by their purchase of Zonnic, in light of the Defendant's wrongful USP, the Representations, and the Omissions, which were false, misleading, and intended to convey the general impression that Zonnic is a safe and appropriate product for

Young Persons, non-nicotine users, and for smoking cessation, when it is none of those things. The Defendants calculated their wrongful USP, the Representations, and Omissions to induce the Plaintiff and Class Members to act on them, and such reliance was objectively reasonable.

71. Further, or in the alternative, but for the Defendants' wrongful deception of regulators leading to approval of Zonnic as a natural health product, and the Defendants' breaches of the *Food and Drugs Act*, the *Natural Health Regulations*, and the *Consumer Protection Legislation*, Zonnic could not have been sold to anyone in Canada.
72. The material facts supporting breaches of *BPCPA* as described above are pleaded in paragraphs 9-12, 14-15, 18-28, 30-46.
73. The Plaintiff and Class Members claim against each of the Defendants for the following remedies under the *Consumer Protection Legislation*, as follows:
  - a. A declaration that the Defendants' conduct in their solicitations, offers, advertisements, promotions, sales and supply of Zonnic, and Representations and Omissions are "deceptive acts and practices" under s. 4 of the *BPCPA* and an order pursuant to s. 172(3) of the *BPCPA* that the Defendants restore to the Plaintiff and Class Members the purchase price collected from them in contravention of the *BPCPA* or, further or in the alternative, damages under s. 171 of the *BPCPA*;
  - b. A declaration that the Defendants' conduct in their solicitations, offers, advertisements, promotions, sales and supply of Zonnic, and Representations and Omissions are "unconscionable acts and practices" contrary to s. 8 of the *BPCPA* and an order pursuant to s. 172(3) of the *BPCPA* that the Defendants restore to the Plaintiff and Class Members the purchase price collected from them in contravention of the *BPCPA* or, further or in the alternative, damages under s. 171 of the *BPCPA*;
  - c. Restitution to the Plaintiff and Class Members of the purchase price they paid for the Zonnic or, further or in the alternative, damages pursuant to s. 13(2) or s. 142.1 of the *Alberta CPA*;
  - d. Restitution to the Plaintiff and Class Members of the purchase price they paid for the Zonnic or, further or in the alternative, damages pursuant to s. 93(1) of the *Saskatchewan CPBPA*;
  - e. Repayment to the Plaintiff and Class Members of the purchase price they paid for the Zonnic or, further or in the alternative, damages pursuant to s. 23(2) of the *Manitoba BPA*;
  - f. Rescission of the sales agreements between the Defendants and the Plaintiff and Class Members and repayment of the purchase price

paid by the Class Members for the Zonnic, pursuant to s. 18(1) of the *Ontario CPA* or, further or in the alternative, an order for damages pursuant to s. 18(2) of the *Ontario CPA*;

- g. Repayment to the Plaintiffs and Class Members of the purchase price they paid for the Zonnic or, further or in the alternative, compensatory damages, pursuant to s. 272 of the *Québec CPA*;
- h. Repayment to the Plaintiff and Class Members of the purchase price paid for the Zonnic pursuant to s. 17(1) of the *New Brunswick CPWLA* or, further or in the alternative, damages under s. 15 of the *New Brunswick CPWLA*;
- i. Rescission of the sales agreements between the Defendants and the Plaintiff and Class Members and return of the purchase price paid by the Plaintiff and Class Members for the Zonnic or, further or in the alternative, damages pursuant to s. 4(1) of the *P.E.I. BPA*; and
- j. Repayment to the Plaintiff and Class Members of the purchase price they paid for the Zonnic or, further or in the alternative, damages pursuant to s. 10 of the *Newfoundland and Labrador CPBPA*.

### **Unjust Enrichment**

- 74. Due to their breaches of the *Competition Act*, the *BPCPA*, the *Food and Drugs Act*, the *Natural Health Regulation*, and the Consumer Protection Legislation as described herein, the Defendants were unjustly enriched by the monetary amounts they received from the Plaintiff and Class Members, directly or indirectly, through the sale of Zonnic. The Plaintiff and Class Members suffered a corresponding deprivation for the same monetary amount.
- 75. There is no juristic reason for the Defendants to retain these benefits. The contracts between the Defendants and the Plaintiff and Class Members, or those between third party vendors and the Plaintiff and Class Members for the purchase of Zonnic are illegal, void, or voidable due to the Defendants' breaches of the *Food and Drugs Act*, *Natural Health Regulations*, *Competition Act* and/or the *Consumer Protection Legislation*.
- 76. As a result of their actions, the Defendants have been unjustly enriched. The Plaintiff and Class Members are entitled to restitution of the benefits received by the Defendants, directly or indirectly, from the Plaintiff and Class Members through the sale of Zonnic.
- 77. In the alternative, justice and equity requires that the Defendants disgorge to the Plaintiff and Class Members an amount attributable to the benefits received by them, directly or indirectly, from the Plaintiff and Class Members through the sale of Zonnic.

78. The material facts in support of the Defendants' unjust enrichment are found in paragraphs 5-16, 18-46.

### **Punitive Damages**

79. The Defendants, either individually or as a group, have a longstanding track record of generating revenue through deceptive means, appealing to Young Persons, and consistently distorting the deleterious effects of their products—despite being confronted with credible academic and scientific evidence to the contrary.
80. Over the course of several decades, the Canadian government and public health institutions have worked to reduce nicotine addiction by removing nicotine-containing products from public visibility. However, the actions of the Defendants concerning nicotine based Zonnic threaten to reverse the progress made over these decades in eradicating nicotine addiction from Canadian society.
81. The Defendants have designed, labelled, packaged, advertised, promoted, distributed, and sold Zonnic, which contains nicotine, an addictive substance, under the pretense that it is a smoking cessation aid, when they knew or ought to have known that users would become addicted.
82. The Defendants' deliberate design choices including use of vibrant candy-like colours and, coupled with lifestyle advertising featuring youthful models, underscores a calculated effort to allure a younger demographic. Like past behaviours of tobacco companies with cigarettes and e-cigarettes, their current conduct is not only high-handed, but also outrageous, reckless, and predatory.
83. Given the reprehensible misconduct by the Defendants, they are liable to pay punitive damages to the Plaintiff and Class Members.
84. The material facts supporting punitive damages as described above are pleaded in paragraphs 1-16, 18-46.

### **Conspiracy**

85. The Defendants' wrongful solicitations, offers, advertisements, promotions, sales, and supply of Zonnic, and the Representations and Omissions, included false representations to the Plaintiff and Class Members regarding the safety and efficacy of Zonnic, which caused the Plaintiff and Class Members to purchase and use Zonnic.
86. The Defendants conspired with each other and with other companies within the BAT group to orchestrate the addiction of a new generation of persons to nicotine. The predominant purpose of the conduct of the Defendants and their co-conspirators was to cause injury to the Plaintiff and similarly situated persons, namely in the form of addiction, or increased addiction, to nicotine.
87. Further, or in the alternative, the conduct of the Defendants was unlawful, by virtue of being contrary to the *Food and Drugs Act*, *Natural Health Regulations*,

*Competition Act* and/or the *Consumer Protection Legislation*, and the Defendants knew, or ought to have known in the circumstances, that injury and addiction to the Plaintiff and similarly situated persons would be likely to result.

88. The Plaintiff's and Class Members' purchase and use of Zonnic resulted in losses and damages.
89. Particulars of the loss and damage suffered by the Plaintiff and Class Members, which was caused or materially contributed to by Defendants' wrongful acts include:
  - a. personal injury;
  - b. special damages for medical expenses and out-of-pocket expenses;
  - c. loss of both past and prospective income;
  - d. cost of future care; and
  - e. cost of purchasing the Defendants' products fueled by nicotine addiction.
90. The material facts supporting civil conspiracy as described above are pleaded in paragraphs 20-23, 28, 30-34.

#### **Joint and Several Liability**

91. The Defendants are jointly and severally liable for the actions and damages allocable to any of them.

#### **Health Care Cost Recovery Act**

92. The Plaintiff relies upon health and hospital insurance legislation in British Columbia and similar legislation elsewhere and claims health care costs incurred by himself and Class Members and paid by provincial and territorial governments as a result of the wrongdoing of the Defendants:
  - a. On behalf of His Majesty the King in right of the Province of New Brunswick, the Class Members claim the cost of "entitled services" under *Health Services Act*, SNB 2014, c 112, ss 1 and 3 and General Regulation, NB Reg 84-115, s 2 and Schedule II;
  - b. On behalf of the government of British Columbia, the Plaintiff and Class Members claim the past and future cost of providing "health care services" under *Health Care Costs Recovery Act*, SBC 2008, c 27, ss 1-3 and 7 and *Health Care Costs Recovery Regulation*, BC Reg 397/2008, s 3;
  - c. On behalf of His Majesty in right of Alberta and the Minister of Health of Saskatchewan, the Class Members claim the direct and indirect

costs of past and future "health services" under *Crown's Right of Recovery Act*, SA 2009, c C-35, ss 1, 2(1) and 38 and *Crown's Right of Recovery Regulation*, Alta Reg 87/2012, s 3; and *The Health Administration Act*, RSS 1978, c H-0.0001, s 19;

- d. On behalf of the Minister of Health of Manitoba, the Class Members claim the past and future cost of "insured hospital, medical, and other services under *The Health Services Insurance Act*, RSM 1987, c H35, ss 2, 97 and *The Medical Services Insurance Regulation*, Man Reg 49/93, s 1;
- e. On behalf of His Majesty in right of the Province of Nova Scotia, the Class Members claim the past and future cost of "insured hospital services", and other care, services, and benefits under *Health Services and Insurance Act*, RSNS 1989, c 197, ss 2 and 18;
- f. On behalf of the Government of Yukon, and the Ministers of Health of the Northwest Territories and Nunavut, the Class Members claim the cost of providing "insured services", including in-patient and out-patient services under *Hospital Insurance Services Act*, RSY 2002, c 112, ss 1 and 10-11 and *Yukon Hospital Insurance Services Regulations*, YCO 1960/35, s 2; *Hospital Insurance and Health and Social Services Administration Act*, and RSNWT 1988, c T-3, ss 1 and 19-20 and *Hospital Insurance Regulations*, RRNWT 1990, c T-12, s 1; and
- g. On behalf of the Ontario Health Insurance Plan, the province of Québec, the Minister of Health and Wellness of Prince Edward Island, and the Crown in right of Newfoundland and Labrador, the Class Members claim the cost of "insured services" under *Health Insurance Act*, RSO 1990, c H.6, ss 1, 11.2, and 30-31 and General, RRO 1990, Reg 552; *Hospital Insurance Act*, CQLR c A-28, ss 1 and 10 and Regulation respecting the application of the *Hospital Insurance Act*, CQLR c A-28, r 1, s 3 and *Health Insurance Act*, CQLR A-29, ss 1, 3, and 18; *Hospital and Diagnostic Services Insurance Act*, RSPEI 1988, c H-8, ss 1 and 14 and General Regulations, PEI Reg EC539/63, s 1; and *Medical Care and Hospital Insurance Act*, SNL 2016, c M-5.01, ss. 41-42 and 44, and *Hospital Insurance Regulations*, CNLR 742/96, s 2 and Schedule.

### ***Jurisdiction***

93. The Plaintiff relies on ss. 13, 7, and 10 of the *Court Jurisdiction and Proceedings Transfer Act*, S.B.C. 2003, c. 28 and pleads that there is a real and substantial connection between the subject matter of this action and the Province of British Columbia for the following reasons:
  - a. The Defendants marketed, sold, and imported Zonnic into British Columbia;

- b. The Defendants committed the torts described above in British Columbia;
- c. This claim pleads breaches of the *BPCPA* for wrongful conduct occurring in British Columbia;
- d. The Defendants engaged in a conspiracy to breach food and drugs legislation and regulation, consumer protection and competition legislation, as well as exploiting the regulations around the marketing and sale of nicotine-based products;
- e. The Plaintiff and many Class Members reside in British Columbia;
- f. The Plaintiff's damages were sustained in British Columbia;
- g. The action concerns restitutionary obligations that, to a substantial extent, arose in British Columbia; and/or
- h. The action contains a claim for an injunction ordering a party to do or refrain from doing anything in British Columbia.

Form 11 (Rule4-5(2))

**ENDORSEMENT ON ORIGINATING PLEADING OR PETITION  
FOR SERVICE OUTSIDE BRITISH COLUMBIA**

The Plaintiff claims the right to serve this pleading/petition on the Defendants outside British Columbia on the ground that:

The Plaintiff has at all material times been a resident of British Columbia and has suffered loss in British Columbia. The Supreme Court of British Columbia has jurisdiction with respect to this matter and the Plaintiff pleads the *Court Jurisdiction and Proceedings Transfer Act*, 2003, SBC Chapter 28 and amendments thereto.

|                                          |                                                                                  |
|------------------------------------------|----------------------------------------------------------------------------------|
| Plaintiff's address for service:         | <b>RICE HARBUT ELLIOTT LLP</b><br>820 - 980 Howe Street<br>Vancouver, BC V6Z 0C8 |
| Fax number address for service (if any): | Nil                                                                              |
| E-mail address for service (if any):     | service@rhelaw.com                                                               |
| Place of trial:                          | Vancouver                                                                        |
| The address of the registry is:          | 800 Smithe Street, Vancouver BC V6Z 2E1                                          |

Date: 26/Sep/2025

Signature of ☐ plaintiff  
☒ lawyer for plaintiff  
 Anthony Leoni

Rule 7-1 (1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a list of documents in Form 22 that lists

(i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial, and

(b) serve the list on all parties of record.

### Appendix

#### Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

A claim for negligence and breach of consumer protection and competition legislation with loss and damages to the Plaintiff and a class of similarly situated persons resident in Canada.

#### Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- ☐ a motor vehicle accident
- ☐ medical malpractice
- ☒ another cause

A dispute concerning:

- ☐ contaminated sites
- ☐ construction defects
- ☐ real property (real estate)
- ☐ personal property
- ☐ the provision of goods or services or other general commercial matters
- ☐ investment losses
- ☐ the lending of money
- ☐ an employment relationship
- ☐ a will or other issues concerning the probate of an estate
- ☒ a matter not listed here

**Part 3: THIS CLAIM INVOLVES:**

- ☒ a class action
- ☐ maritime law
- ☐ aboriginal law
- ☐ constitutional law
- ☐ conflict of laws
- ☐ none of the above
- ☐ do not know

**Part 4:**

1. *Business Practices Act*, R.S.P.E.I. 1988, c. B-7
2. *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2
3. *Class Proceedings Act*, R.S.B.C. 1996, c. 50