

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

ERIN DAWN CHRISTIANSEN

Plaintiff/Moving Party

- and -

METTRUM LTD.

Defendant/Responding Party

PROCEEDING UNDER THE *CLASS PROCEEDINGS ACT, 1992*

**AFFIDAVIT OF ERIN DAWN CHRISTIANSEN
(SETTLEMENT & FEE APPROVAL)**

I, **ERIN DAWN CHRISTIANSEN**, of the City of Thunder Bay, Ontario **MAKE OATH AND SAY** as follows:

1. I am the proposed Representative Plaintiff in this action. I have direct knowledge of the matters to which I depose in this affidavit. The defined terms in this affidavit have the same meaning in this affidavit as they do in my Amended Statement of Claim, the affidavit of J. Adam Dewar sworn December 9, 2020, the Settlement Agreement dated June 16, 2020, and in the affidavits I swore in this action on April 24, 2018 and July 19, 2018 (the "Certification Affidavits").
2. I am submitting this affidavit to seek approval of the Settlement Agreement and of Class Counsel's fees.

Background

3. I am 35 years of age and reside in Thunder Bay, Ontario. Due to the chronic conditions discussed below, I am required to rely on Ontario Disability Support Program ("ODSP") payments for support.
4. Around March of 2016, I was prescribed medical marijuana for the first time to treat chronic back pain arising from surgery to treat scoliosis and spina bifida.
5. In March of 2016, I followed the procedure set out in the *Access to Cannabis for Medical Purposes Regulations* ("ACMPR") and registered to purchase medical marijuana from Mettrum.
6. Between approximately March 2016 and November 2016, I purchased several orders of medical marijuana products, including some of the Recalled Products, from Mettrum. As set out in Certification Affidavits, I roughly estimate that I paid Mettrum more than \$3,000 for my medical marijuana products.
7. As set out in my certification affidavit, I began to feel increasingly unwell in the summer of 2016. On August 19, 2016, I was admitted to Thunder Bay Regional Hospital suffering from a rash on my throat to my face, head and body aches, hot and cold flashes and diarrhea. Throughout the course of my hospitalization, I underwent numerous tests and was prescribed intravenous fluids, prescription pain medication and antibiotics. My condition improved and I was discharged on August 29, 2016. Hospital staff were not able to confirm a diagnosis of my condition over the course of my hospitalization. I never

discussed the possibility that my illness may have been caused by my use of the Recalled Products, and I have never received a diagnosis in any way linking my use of the Recalled Products to my hospitalization.

8. In November of 2016, I received the first of several recall notices from Mettrum. The recall notice I first received explained that the presence of pyrethrins – what Mettrum described as a “natural” pest control product – had been detected on some of Mettrum’s medical marijuana products. The recall notices seemed to escalate in seriousness when it was discovered that Mettrum’s medical marijuana products had been exposed to myclobutanil, of which I was informed in Mettrum’s recall notice received in January of 2017. Both pyrethrins and myclobutanil are pest control products not authorized for use on medical marijuana plants.
9. While I had been somewhat concerned about Mettrum’s initial recall notice and use of pyrethrins, I became more concerned when I received Mettrum’s January recall notice about the use of an additional unauthorized pesticide, namely, myclobutanil.
10. After receiving the recall notices, I requested that Mettrum provide me with a refund. Mettrum refused. I was advised by Mettrum that, among other things, it would only replace unused and returned Recalled Products and that I was not entitled to a refund on any consumed Recalled Products. Mettrum advised me that I was only entitled to a discount off my next purchase. I thought this was unfair, as Mettrum had taken my money for products it now advised were exposed to unauthorized pest control products.
11. In February of 2017, I saw coverage of the Recall in the media and contacted Roy O’Connor LLP about the possibility of launching a class action lawsuit. The \$3,000 that I

paid for Mettrum products was a lot of money to me and getting as much of it back as possible was important to me. Given the value of my claim and the size and sophistication of the Defendant, I did not want to try to sue them on my own. I certainly did not have the financial resources to hire a lawyer to sue on my individual behalf and I did not see an alternative to a class action. I was disappointed by Mettrum's use of unapproved pesticides and felt that it was important for Mettrum's customers, including myself, to be compensated. I suspected that many of Mettrum's other customers would feel like I did.

12. After a number of conversations with lawyers at Roy O'Connor (principally David O'Connor and Adam Dewar), I decided to act as Representative Plaintiff. As discussed further below, I reviewed and signed a formal Retainer Agreement (a copy of which is attached as Exhibit "H" to the affidavit of J. Adam Dewar sworn December 9, 2020, in which I agreed to act as the Representative Plaintiff and to bring this action on behalf of all of the Class Members. I read the Retainer carefully and had some discussions with my lawyers about it before I signed it. I understand and agreed to the terms of the Retainer.

My Role as Representative Plaintiff

13. As the Representative Plaintiff, I was consulted by Class Counsel throughout this litigation.

My contact was most often with David O'Connor and/or Adam Dewar. Over the course of this action, I received numerous updates on the status of the action, considered Class Counsel's advice and provided input or instructions on every major decision as required.

Without limiting the generality of the foregoing, I took the following steps to advance this action:

- a. retained and instructed Class Counsel to launch this class proceeding;

- b. instructed Class Counsel to seek financial support from the Class Proceedings Fund;
- c. provided information, input and instructions to Class Counsel;
- d. reviewed and assisted in the preparation of my statement of claim;
- e. provided affidavit evidence in support of the certification motion;
- f. traveled to Toronto to be prepared for and attend a mediation;
- g. reviewed and approved the settlement terms and structure as well as the Settlement Agreement in this case.

My Views of the Proposed Settlement

14. I have reviewed the terms of the Settlement, discussed the Settlement at length over various conversations with Class Counsel and reviewed the affidavit of Mr. Dewar regarding the Settlement.

15. I understand that the key features of the Settlement include the following:

- a. Mettrum has agreed to settle the class action for a total payment of \$6.95 million;
- b. the \$6.95 million payment will be the total compensation to the Class Members for all damages arising from their purchase and use of the Recalled Products and will also be the source of payment of all fees, expenses, the statutory levy for the Class Proceedings Fund and taxes;
- c. the compensation payable to the Class Members will reimburse them for some or all of the purchase price paid for any Recalled Products they ordered. I understand that the distribution aims to return:

- i. 100% of the purchase price for any Recalled Products that tested positive for trace amounts of myclobutanil (Waves 2 and 3); and
 - ii. 20% (and potentially more) of the purchase price for Recalled Products where the plants were exposed to pyrethrins but there were no detectable levels of pyrethrins in the products (Wave 1) and where some of the plants may have been exposed to myclobutanil (Wave 4).
- d. I understand that the Settlement will be paid out in two stages:
 - i. The first stage payments will be based on 100% of the purchase price paid by each Class Member for the Recalled Products involved in Waves 2 and 3, and 20% of the purchase price by each Class Member for Waves 1 and 4.
 - ii. If any funds remain after the first stage after one year, the remaining funds will be used to increase the payments for Waves 1 and 4.
- e. As I generally refer to above, legal fees and related disbursements (including taxes), the costs of administration and distribution of money to Class Members, and a 10% statutory levy for the Class Proceedings Fund will be deducted from the \$6.95 million Settlement Fund;
- f. payments will be calculated based on a review of Mettrum's records and will be made automatically, and Class Members will not have to make a claim or application to receive compensation;
- g. Mettrum will receive a full release of all Subject Claims, as defined in the Settlement Agreement, that Class Members may have against it for any sort of alleged or perceived damages;
- h. Class Members who are not happy with the Settlement can opt-out of the Settlement;
- i. the total value of the Settlement Fund will not be affected by any opt-outs;

- j. if any payment to a Settlement Class Member totals less than \$25.00, that payment will not be made to the Class Member and will instead remain in trust with the Settlement Administrator to be distributed to the Class on the second distribution, or donated to charity; and,
- k. any funds remaining after stages one and two above will be paid to the Centre for Addiction and Mental Health Foundation.

16. In the circumstances, I believe that the Settlement is an excellent result and is a fair deal for my fellow Class Members. I have weighed the benefits that would be available to Class Members under the Settlement against what might be available after a trial, as well as the costs, risks and delay if we continued the case through a trial and the likely appeal process. The balance was overwhelmingly in favour of the Settlement. This Settlement appears to be as good a result – in fact, likely better than the result – that one could reasonably expect in the circumstances. I have considered, among other things, that:

- a. Class Members will receive a significant refund for their Recalled Products today and will not have to wait several years for only the possibility of receiving what could be less compensation;
- b. if anyone believes they were physically injured by consuming the Recalled Products, which I understand is extremely unlikely and very difficult to prove, they can opt-out of the Settlement and pursue that claim on their own; and,
- c. Class Members do not have to do anything to receive their share of the Settlement – their compensation will be calculated by an independent administrator and automatically paid to the Class Members.

17. I agree with the opinion of Class Counsel that this Settlement is fair, reasonable and in the best interests of the class. I am very proud of the results achieved in this Settlement. I am proud that I was able to assist and be part of this successful claim.

My Views On Class Counsel's Requested Fee

18. As set out above, I spoke to Class Counsel at length about my retainer agreement before I signed it. I carefully read and understood the terms my retainer agreement at the time I signed it. Class Counsel answered all of my questions about the retainer agreement. I agreed with the terms of the retainer agreement when I signed it and I agree with the terms now.

19. I understand, and understood at the time of signing, that my retainer agreement with Class Counsel is a contingency fee agreement. I understood that to mean that the Class Members would not be required to pay any fees or disbursements to advance the litigation and that Class Counsel would only get paid from amounts that they were able to secure from a successful trial or settlement of the case. The burden of the fees and disbursements would be borne by Class Counsel. I understood that if the case was successful, Class Counsel's fees would be 30% of money recovered, plus any costs recovered and disbursements. I thought the arrangement was a fair one for both the Class and for Class Counsel.

20. I note that Class Counsel took on this large and complex case and pursued it for almost three years. Without the efforts and perseverance of Class Counsel, this case would not have been brought and certainly would not have been brought to this successful

resolution. I have been impressed with the work of my lawyers and have thanked them for their efforts, time and success.

21. I believe that without a class proceeding, it would have been impossible for the Class Members to have access to justice against the Defendant. I believe that many members of the class are middle-class and/or of limited financial means. No individual Class Member could have funded the expenses that were necessary to litigate this action against a large, well funded corporation such as Mettrum, as was done by Class Counsel. Our individual claims were too small for any lawyer to take them on a contingency basis and pursue them to trial without the benefit of a Class Proceeding.

22. By taking this matter on contingency and pursuing it as a class proceeding, I believe that the efforts of Class Counsel have allowed thousands of Class Members (including me) to receive compensation for a significant portion of the cost of the recalled medical marijuana they purchased and that the Class Members would almost certainly not have pursued such compensation otherwise.

SWORN REMOTELY BEFORE ME)
by Erin Christiansen via videoconference)
in the City of Thunder Bay,)
in the Province of Ontario before me in the)
City of Toronto, in the Province of Ontario,)
this 9th day of December, 2020 in)
accordance with O.Reg. 431/20)
Administering Oath or Declaration)
Remotely.)


A Commissioner for Taking Affidavits, etc.


Erin Christiansen