Court File No.: T-1754-12

FEDERAL COURT

B E T W E E N:

Nick **Mancuso**, **The Results Company Inc.**, David **Rowland**, **Life Choice Ltd** (amalgamated from, rolled into, and continuing on business for, and from, **E.D. Modern Design Ltd.** and **E.G.D. Modern Design Ltd.**), and Dr. Eldon **Dahl**, and Agnesa **Dahl**

Plaintiffs

- and -

MINISTER OF NATIONAL HEALTH AND WELFARE, ATTORNEY GENERAL OF CANADA, MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS, ROYAL CANADIAN MOUNTED POLICE, and HER MAJESTY THE QUEEN IN RIGHT OF CANADA

Defendants

STATEMENT OF CLAIM

(Pursuant to s.17 (1) and (5)(b) ***Federal Courts Act***, and s.24(1) and 52 of the ***Constitution Act, 1982***)

(Filed this 21st day of September, 2012)

TO THE DEFENDANT:

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

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the ***Federal Courts Rules,*** serve it on the applicant's solicitor or, where the applicant does not have a solicitor, serve it on the applicant, and file it, with proof of service, at a local office of this Court, **WITHIN 30 DAYS** after this statement of claim is served on you, if you are served within Canada.

Copies of the ***Federal Courts Rules,*** information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

Dated this 21st of September, 2012.

Issued by: CHARLES SKELTON
REGISTRY OFFICER
AGENT DU GREFFE

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CLAIM

1. All the Plaintiffs claim:

(a) a declaration that:

(i) the definition of "drug" found in section 2 of the ***Food and Drug Act,*** R.S.C. 1985 C. F-27 (the "***Act***"), is overlybroad so as to take the application of the ***Act*** beyond the jurisdiction of Parliament as set out in s. 91 of the ***Constitution Act, 1867***, and in contravention of s. 7 of the ***Charter***;

(ii) that the definition of "drug" be read down to exclude substances such as food, dietary (food) supplements, and vitamins (deemed "natural health products" by the Defendant Minister), that do not pose a health risk and consequently do not engage Parliament's jurisdiction to regulate in the area of health under section 91 [27] of the ***Constitution Act, 1867***;

(iii) that the definition of "drug" found in section 2 of the ***Act***, does not include substances such as food and naturally occurring dietary food supplements, nutritional food derivatives, and vitamins ("natural health products");

(iv) that the definition of "drug" found in section 2 of the ***Act***, does not include dietary food supplements, nutritional food derivatives, and vitamins ("natural health products") on the basis that the Parliament of Canada did not intend the definition of "drug" to apply to said substances;

(v) that the ***Natural Health Products Regulations***, SOR/2003-196 enacted pursuant to subsection 30(1) of the ***Act*** is contrary to sections 91 and 92 of the ***Constitution Act, 1867*** and therefore, is ***ultra vires*** the Parliament of Canada and unlawfully intrudes upon exclusive Provincial jurisdiction in regards to civil right(s), property, food, and health matters;

(vi) that the ***Natural Health Products Regulations*** are invalid as not being approved by the Joint Parliament and Senate Subcommittee on Agenda and Procedure pursuant to the ***Statutory Instruments Act***, R.S. 1985 c. s-22;

(vii) that the ***Natural Health Products Regulations***, SOR/2003-196 purported to be enacted pursuant to subsection 30(1) of the ***Act*** are ***ultra vires*** the Governor General in Council as they go beyond the intent and meaning of the empowering legislation and the specific delegated legislated regulatory authority;

(viii) that the definition of "drug" found in section 2 of the ***Act*** is overlybroad and should be declared void for vagueness and/or for a violation of section 7 of the ***Canadian Charter of Rights and Freedoms***;

(ix) that the Defendants, and their officials, have violated the Plaintiffs' rights guaranteed by subsections 2(a) and (b), 7, 8, and 15 of the ***Canadian Charter of Rights and Freedom*** as well as sections 1(a) and (d) of the ***Canadian Bill of Rights***;

(x) a declaration striking down subsections 3(1) and 3(2) of the ***Act*** as unconstitutional for violating the Plaintiffs' rights to freedom of expression as well as freedom of conscience and belief as guaranteed by subsections 2(a) and (b) of the ***Canadian Charter of Rights and Freedoms*** and section 1(c) of the ***Canadian Bill of Rights***; and

(xi) a declaration striking down subsections 3(1) and 3(2) of the ***Act*** as unconstitutional for violating ss. 2(a), 2(b), 7 and 15 of the ***Canadian Charter of Rights and Freedoms*** and sections 1(a), (b) and (d) of the ***Canadian Bill of Rights*** in that the effect of the subsections is to deny personal choice in the area of personal health and medical care which go to bodily and psychological

integrity as set out by the ***SCC*** in, ***inter alia***, ***Morgentaler, Singh,*** and ***Rodriguez***.

(b) a further declaration that:

(i) the entire scheme and enforcement, with respect to dietary food supplements and vitamins ("natural health (food) products") is unconstitutional in breaching section 7 of the ***Charter*** in its "reverse onus" enforcement of having the producers, distributors, and vendors of historically safe food, dietary (food) supplements and vitamins ("natural health (food) products") prove, to the officials of the Defendant Minister that they are "not unsafe";

(ii) that the scheme and enforcement of the scheme, with respect to dietary (food) supplements and vitamins ("natural health products") with respect to NPN licensing, as well as compliance costs, applied and enforced ***as if*** these products are pharmaceutical or akin "drugs", and their cost-prohibitive fee/cost grid, places small manufacturers and distributors out of business which violates the overbreadth doctrine under section 7 of the ***Charter***;

(iii) that the scheme and enforcement of the ***Act*** and ***Regulations***, with respect to dietary (food) supplements and vitamins ("natural health products") violates section 7 and 15 of the ***Charter*** in that:

A/ it violates section 7 in breaching the right to choose the consumption of these products, dietary, food supplements and vitamins ("natural health products") as a matter of personal bodily and psychological integrity;

B/ it violates section 7 and 15 of the ***Charter*** in interfering with such informed and adult choices over one's life, liberty and security of the person;

and that the ***Act*** and ***Regulations*** and their enforcement, further arbitrarily discriminate, contrary to sections 7 and 15 of the ***Charter***, against the large number of persons whose first

preference is to dietary (food) supplements and vitamins over drugs, and that such violations are not saved under section 1 of the ***Charter*** in that they are not in reasonably justified in a free and democratic society;

(iv) that an individual has the constitutional right, under section 7 and 15 of the ***Charter***, to consume whatever safe form of food available to him/her without arbitrary or selective restriction, without scientific or health risk basis, by the state;

(v) such further or other interim and/or permanent injunctive relief as the Plaintiffs may advise and this Honourable Court grant;

(c) a further declaration that food, dietary (food) supplements and vitamins be classified as "food", and not "drugs", and that the enforcement and inspection system be that akin to the food inspection and enforcement system, and not the pharmaceutical and/or prohibited "drug" system;

(d) such further declaratory relief as counsel may advise and this Honourable Court grant;

(e)

(i) an interim and final order (in the nature) of ***prohibition*** restraining the Defendants and their agents from enforcing any sections of the ***Act(s)*** and ***Regulations*** for which a declaration of unconstitutionality is sought under (a) and (b) or (c) above;

(ii) an interlocutory and permanent injunction restraining the Defendants and their officials from delaying, seizing and or in any manner interfering with the NAFTA protected personal use and commercial shipment of imports and exports into and out of Canada of the Plaintiffs' and Plaintiffs' associated entities' product shipments, which conduct by said Defendants is in violation of GATT, NAFTA the WTO including related agreements, policies, regulations and Rulings;

(iii) an interlocutory and permanent order (in the nature) of ***prohibition***, enjoining the Defendants, and their officials from proceeding with

the enforcement of the ***Natural Health Products Regulations***, SOR/2003-196; and

(iv) an interlocutory and permanent order (in the nature) of ***prohibition***, enjoining the Defendants from interfering with any advertising by the Plaintiffs, with respect to dietary (food) supplements and vitamins.

2. The Plaintiffs, Nick Mancuso, The Results Company Inc., David Rowland, Life Choice Ltd. (amalgamated from, rolled into, and continuing on business for, and from, E.D. Modern Design Ltd. and E.G.D. Modern Design Ltd.), Eldon Dahl, and Agnesa Dahl further claim:

(a) any and all damages suffered, individually and distinctively, for losses particular to each particular Plaintiff, to be determined and quantified at trial, namely:

(i) $500,000 for Nick Mancuso for mental distress and pain and suffering and breach of his s. 2, 7 and 15 ***Charter*** rights;

(ii) $3.4 million for The Results Company Inc. for loss of sales and income;

(iii) $500,000 for David Rowland for loss to and damage to reputation and loss of income derived from The Results Company Inc., as well as violations of his ss. 2, 7, and 15 of ***Charter*** rights;

(iv) $12.4 million for Life Choice Ltd. (amalgamated from, rolled into, and continuing on business for, and from, E.D. Modern Design Ltd. and E.G.D. Modern Design Ltd.), for loss of sales and income;

(v) $4 million for Eldon Dahl for loss of salary and income derived from Life Choice Ltd. (amalgamated from, rolled into, and continuing on business for, and from, E.D. Modern Design Ltd. and E.G.D. Modern Design Ltd.), mental distress, and damages for violation(s) of his ss. 7, 8, 9, and 15 of the ***Charter*** rights; and

(vi) $3.4 million for Agnesa Dahl for loss of salary and income derived from Life Choice Ltd. (amalgamated from, rolled into, and continuing on business for, and from, E.D. Modern Design Ltd. and E.G.D. Modern Design Ltd.), mental distress, and damages for violation(s) of her ss. 7, 8, 9, and 15 of the ***Charter*** rights;

(b) all Plaintiffs claim aggravated damages in the amount of $500,000 each;

(c) all Plaintiffs claim punitive damages in the amount of $500,000 each;

(d) solicitor-client costs of this action and such further or other relief as the Plaintiffs may request and this Honourable Court deems just.

3. The Plaintiffs further advise, and propose, to bring a constitutional challenge, by way of motion (application) on the within main action, to strike s.49 of the ***Federal Courts Act,*** which bars jury trials, as violating the constitutional imperatives of Rule and Law and Constitutionalism, as well as the right to a jury trial, grounded in the ***Magna Carta,*** and continued in s.11 (f) of the ***Charter*** in the criminal context, as well as the residual clause of s.7 of the ***Charter*** in the civil context, given that the Federal Court is recognized, by the Supreme Court of Canada in ***inter alia, Commonwealth of Puerto Rico v. Hernandez [1975] 1 SCR 228,*** as a Superior Court of competent jurisdiction, in that, the right to a jury was entrenched ***Magna Carta,*** and continued in the criminal context, under s. 11(f), and in civil context, under the residual clause of s.7 of the ***Charter*** in accordance with ***Re B.C. Motor Vehicle Act, [1985] 2 S.C.R. 486.***

THE PARTIES

A/ The Plaintiffs

4. The Plaintiff(s),

   (a) Nick **Mancuso** is as described in paragraphs 24-27 herein of this statement of claim;

   (b) **The Results Company Inc.**, and David Rowland are as described in paragraph 32 herein of this statement of claim; and

   (c) **Life Choice Ltd.** (amalgamated from, rolled into, and continuing on business for, and from, E.D. Modern Design Ltd. and E.G.D. Modern Design Ltd.), Eldon Dahl, and Agnesa Dahl are as described in paragraphs 40-43, and 77-80 herein of this statement of claim;

5. The Defendant(s),

   (a) the Minister of National Health and Welfare is statutorily and constitutionally charged with the administration of the ***Food and Drug Act*** as well as any ***Regulations*** legally promulgated under the ***Act***;

   (b) the Attorney General of Canada is, constitutionally, the Chief Legal Officer, responsible for and defending the integrity of all legislation, as well as responding to declaratory relief with respect to legislation, including with respect to its constitutionality and required to be named as a Defendant in any action for declaratory relief;

   (c) Her Majesty the Queen, is statutorily and constitutionally liable for the acts and omissions of her officials pursuant to s. 17 of the ***Federal Courts Act*** as well as s. 24(1) and 52 of the ***Constitution Act, 1982***;

   (d) the Minister of Public Safety and Emergency Preparedness is statutorily and constitutionally charged with the oversight of the RCMP and its activities as well as the administration of the ***RCMP Act***; and

   (e) the Royal Canadian Mounted Police is Canada's national police force with duties and responsibilities as set out in the ***RCMP Act***.

THE FACTS

A/ With Respect to All the Plaintiff(s)

6. The Plaintiffs are consumers, producers, distributors, and vendors of dietary food supplements and vitamins (termed "natural health products" by the Defendant Minister), which products have been safely consumed for centuries, in various forms, without ***Regulation***, prohibition, nor enforcement as "drugs", prior to 1985-2005.

7. The ***Act***, and the ***Regulations*** thereunder enforced by the Defendant Minister and his officials erroneously classify any and all "foods" as "drugs", then selectively and arbitrarily choose which "foods" or "drugs" to regulate, and enforce those ***Regulations***, by draconian tactics usually reserved for dangerous, armed criminals and terrorists.

8. The Plaintiffs state, and the fact is, that the "***Natural Health Product (NHP) Regulations***" are a misleading misnomer in that what they cover are dietary food supplements and/or vitamins which are contained in food. In fact, any and all food(s) are "natural health products" depending on a person's health needs, requirements, and/or context. In this context, the Plaintiffs state, and the fact is, that the Defendants do not have the jurisdiction to arbitrarily select, regulate, and effectively prohibit the sale, nor prohibit the claim that, for instance, prunes help alleviate constipation or claim of the qualities of prunes (because of their natural laxative qualities), or chamomile for relaxation qualities, or oregano for flus and colds, etc., anymore than they do on the vast majority of the products listed in their ***Natural Health Product Regulations***.

9. This absurdity is illustrated by the fact that plain, bottled water cannot have, on its label, any claim that it may prevent dehydration, as it is then caught by the ***Act*** and ***Regulation***, as a "drug", including prohibition against advertising of any health claims.

10. The Plaintiffs state, and the fact is, that a dietary (food) supplement may be defined as follows:

    (a) containing one or more of the following dietary ingredients: a vitamin, a mineral, an herb or botanical, an amino acid, an essential fatty acid, a probiotic, an enzyme, or any food factor used by human beings to supplement the diet by increasing total dietary intake, or any concentrate, metabolite, constituent, extract, or combination thereof;

    (b) which is in turn labelled as a dietary supplement and is not represented for use as a conventional food or as a sole item of a meal or diet; and

    (c) is in the form of a capsule, powder, softgel, gelcap, tablet, liquid, or other ingestible form;

    (d) food, dietary (food) supplements and vitamins, which may be isolated or concentrated, are food factors, taken in addition to one's normal diet, for the purposes of enhancing nutritional intake, building health, and preventing illness;

    (e) every molecule of such substances is natural to the human body, which has metabolic pathways to process them safely, and ***unlike*** drugs (pharmaceuticals), which are foreign to the body, they do not, like drugs disrupt biochemical pathways.

11. The Plaintiffs state, and the fact is, that what is in fact a dietary (food) supplement is defined, and regulated, by Health Canada, as "Natural Health Products" (NHPs) which is both misleading and a misnomer because all foods, their derivatives, and/or supplementary attributes are "natural health products". However, the Defendants' officials treat them, and enforce them, as if they were:

    (a) pharmaceutical drugs, which they are not; and

    (b) prohibited drugs, which they are not.

12. The Plaintiffs state, and the fact is, that "Schedule F" of the ***Food and Drugs Regulations*** lists substances most of which are pharmaceuticals, however lists a number of vitamins and dietary (food) supplements, such as:

(a) Betaine, which is a natural substance widely distributed in plants and animals. There is no prohibition nor regulation against it, ***per se***, nor is there any risk or harm associated with its use, ***per se***;

(b) Folic acid, which is a B-vitamin naturally occurring in green plant tissue, liver, and yeast. There have been no documented cases of harm from its use, not at any level of intake. Yet, Schedule F sets a non-prescriptive limit of 1 mg. per day – meaning you can sell higher amounts than this by prescription only, for no good scientific nor ascertainable health-risk reason;

(c) Nicotinic Acid, which is the chemical name for niacin, a B-vitamin. It occurs naturally in liver, yeast, milk, cheese, and cereals. It requires a prescription for recommended dosages exceeding 500 mg. per day. Niacin in large amounts produces a temporary flushing response, but there have been no documented cases of harm from its oral consumption.

(d) Vitamin A – which is restricted to prescription for recommended intakes greater than 10,000 IU per day. A six ounce serving of fried beef liver provides 90,000 IU of vitamin A with no prescription required. Chronic toxicity in older children and adults may develop after months of taking 100,000 IU of vitamin A daily. All symptoms of vitamin A toxicity are temporary and subside when the vitamin A is discontinued. In other words, vitamin A may be considered safe at up to 10 times its non-prescriptive limit. The United States has no non-prescriptive limits for vitamin A. 25,000 IU capsules are freely available in that country;

(e) Vitamin B-12 – which is restricted to prescription when combined with Intrinsic Factor Concentrate. Intrinsic factor is simply a concentrated bit of stomach tissue taken from an animal (cow, pig, sheep), There is no articulated health reason for this prescription;

(f) Vitamin D - which is restricted to prescription when recommended to take more than 1,000 IU daily. Toxic effects have occurred in adults receiving 100,000 IU daily for several months. In other words, vitamin D may be considered safe at up to 100 times its non-prescriptive limit.

13. The Plaintiffs state, and the fact is, that dietary (food) supplements (like food) and vitamins, are not "drugs", and should not be treated as such. The Plaintiffs state and fact is, that food and dietary (food) supplements and vitamins, as opposed to drugs, can be distinguished. Drugs have the following characteristics:

(a) Drugs are foreign to the body. They do not become part of our tissues, nor do they contribute nutrients;

(b) Drugs are powerful chemical agents which alter bodily functions by interfering with biochemical reactions and enzymatic processes;

(c) Drugs tend to produce side effects, many of which can be permanent. Even aspirin can cause stomach upset, internal bleeding, nausea, impaired vision, mental confusion, rashes, ringing in the ears, digestive disturbances and death;

(d) Drugs are potentially lethal. Misuse and overdoses can kill. (Death is the most permanent side effect of all);

(e) Drugs deal with symptoms, not causes. They tend to mask difficulties rather than deal with them. There is no bodily condition which is caused by the deficiency of any drug. Headaches, for example, are not caused by a lack of aspirin in one's system;

(f) Drugs have to be monitored very carefully to prevent harmful overdoses and untoward side reactions;

(g) Drugs can actually produce disease. We have, in Canada, an alarming growth of those diseases termed "iatrogenic" (physician caused).

14. On the other hand, food, dietary food supplements and vitamins, or in other words "nutrients", deemed "Natural Health Products" by the Defendants, can be described as having the following characteristics:

(a) Nutrients are both natural and essential to the body. If our intake of them is inadequate, we die or suffer impaired functioning;

(b) Nutrients work by supporting biochemical and enzymatic processes;

(c) Nutrients do not usually produce side effects. Overuse of a few of them can induce temporary, reversible symptoms of overload. Because the body has built-in enzyme systems to handle nutrients, it can readily deal with excesses;

(d) Nutrients work best in combination with each other. They tend to support one another. Nutrition is like a chain. All of the links have to be strong in order to get meaningful results; and

(e) Nutrients are safe. According to Canadian Poison Control Statistics, ***there has never been, a single documented fatality caused by taking vitamin,*** mineral or amino acid supplements or anything classified as a "natural health product" by the Defendant Minister of National Health and Welfare.

15. The Plaintiffs state, and the fact is, that one of the most absurd and clear examples of the confusion and blurring of the distinction is DHEA, contained in capsules, for the following reasons:

(a) DHEA is a dietary food supplement extracted from wild yam or soy, and is also a naturally occurring substance produced in, and by, the human body;

(b) Capsules have been freely available for sale and widely consumed in the U.S. for over a decade;

(c) Capsules have zero documented cases of harm from their use in all that time;

(d) Section 5(2) of the ***Controlled Drugs and Substances Act*** makes it a criminal offence to possess, for the purpose of trafficking, any substance listed in its Schedules;

(e) Schedule IV, 23 (36) lists Prasterone, an extract of DHEA, as a prohibited substance. The Plaintiff, Eldon Dahl, was charged under Section 5(2) for possessing DHEA;

(f) DHEA was the excuse for the raid on Eldon Dahl and his family. The Plaintiffs state, and the fact is, that it is easy to get a warrant if you can tell the judge that the suspect is trafficking in what he would assume to be an illicit street drug, which it is not;

(g) That's why the RCMP officers have guns drawn whenever they raid vitamin suppliers. They are acting on a warrant that prepares them for a "drug bust";

(h) Health Canada has no documented cases of injury from consuming DHEA, and thus has no right to prohibit it.

16. The Plaintiffs state, and the fact is, that:

(a) the definition of "drug" found in s. 2 of the ***Food and Drug Act, RSC 1985 c. F-27*** (the "***Act***"), is so broad as to include "any substance or mixture of substances" for which health claims are made regardless of whether the substances can be reasonably expected to pose any health risk. This includes any and all food consumed daily. For example, substances such as water, fruit and vegetables are "drugs" under the ***Act*** if "health" claims are made despite the fact that they cannot reasonably be expected to pose health risks if regulated as "food" under the ***Act***;

(b) insofar as the overly broad definition of "drug" in the ***Act*** extends to substances that cannot reasonably be expected to pose any health risk, the Plaintiffs state that it does not fall within Parliament's criminal law power. The applicant does not take issue with Parliament's jurisdiction to regulate substances such as foods to protect against adulteration and to enforce standards of purity to protect against harm as is done for other "foods" under the ***Act***;

(c) insofar as the overly broad definition of "drug" in the ***Act*** extends to substances that cannot reasonably be expected to pose a health risk, the Plaintiffs state, and the fact is, that it does not fall within Parliament's

emergency power under the head of peace order and good government or under any other head of power under s. 91 of the ***Constitution Act, 1867***;

(d) because the definition of "drug" is overly broad so as to engage the ***Act*** in areas beyond Parliament's jurisdiction, the definition should be read down to exclude substances such as food, dietary (food) supplements and vitamins (deemed "natural health products" by the Defendant Minister) that do not pose a health risk and consequently do not engage Parliament's jurisdiction to regulate in the area of health;

(e) the Parliamentary debates surrounding the ***Act*** make it clear that Parliament never intended the definition of "drug" to apply to substances such as food, dietary (food) supplements and vitamins (deemed "natural health products" by the Defendant Minister);

(f) the Minister of Health's historic enforcement of the ***Act*** makes it clear that Parliament never intended the definition of "drug" to apply to substances such as food, dietary (food) supplements and vitamins (deemed "natural health products" by the Defendant Minister);

(g) the ***Natural Health Products Regulations,*** SOR/2003-196 purport to regulate "natural health products". The overwhelming majority of Natural Health Products as defined by the ***Regulations*** pose no or only a negligible ***de minimis*** health risk to Canadians as they are simply food, dietary (food) supplements and vitamins;

(h) Parliament has the jurisdiction to regulate any product that has a potential health risk. Parliament cannot extend this jurisdiction to products which pose no or only a ***de minimis*** health risk. The ***Natural Health Products Regulations,*** SOR/2003-196 are ***ultra vires*** the jurisdiction of Parliament;

(i) the ***Natural Health Products Regulations,*** SOR/2003-196 impose product license, site license, manufacturing, storing and labeling requirements for what the Defendants deem "natural health products". Parliament has not given or delegated legislative authority under the provisions of the ***Act*** to create ***Regulations*** that propound a scheme for imposing these requirements on natural health products;

(j) the ***Natural Health Products Regulations***, SOR/2003-196 are ***ultra vires*** the Governor General in Council in that they purport to apply to a subset of drug that goes beyond the definition of "drug" as found in the ***Act*** and includes perfectly safe food and/or dietary supplements and vitamins;

(k) the definition of "drug" in the ***Act*** does not differentiate between pharmaceutical formulations and food, dietary (food) supplements and vitamins, and as such has the potential to obstruct Canadians', including the Plaintiffs', access to foods and dietary supplements and vitamins that have beneficial health effects thus infringing sections 2, 7, and 15 of the ***Charter***;

(l) the definition of "drug" found at section 2 of the ***Act*** is arbitrary, overly broad and should be declared as overlybroad, as well as void for vagueness, as violating section 7 of the ***Canadian Charter of Rights and Freedoms*** (the "***Charter***");

(m) this arbitrariness, vagueness and overbreadth has created the situation where the regulatory body, Health Canada, has demonstrated confusion as to whether food, dietary (food) supplements and vitamins are "drugs" under the ***Act***;

(n) this arbitrariness, vagueness and overbreadth has created the situation where Canadians do not know which food, dietary (food) supplements and vitamins will be treated by Health Canada as "drugs" at any given time;

(o) the arbitrary, vague and the overlybroad nature of the definition of "drug" has created the situation that when Health Canada decides to treat a food, dietary (food) supplements and vitamins as a drug because of Schedule "A" health claims, whereby a criminal conviction under s. 3 of the ***Act*** will automatically follow;

(p) subsection 3(1) of the ***Act*** prohibits all advertising to the general public of any treatment, preventative or cure for any condition listed in Schedule A of the ***Act*** which contravenes the Plaintiffs' right(s) to freedom of expression under s.2(b) of the ***Charter*** and s.1(c) of the ***Canadian Bill of Rights***;

(q) subsection 3(2) of the ***Act*** prohibits all selling of foods or drugs where there is any representation by label or advertisement to the general public that the food or drug is a treatment, preventative, or cure for any conditions listed in Schedule A of the ***Act*** which contravenes the Plaintiffs' right(s) to freedom of expression under s.2(b) of the ***Charter*** and s.1(c) of the ***Canadian Bill of Rights***;

(r) the purpose of subsections 3(1) and 3(2) is to limit freedom of expression which contravenes the Plaintiffs' right(s) to freedom of expression under s.2(b) of the ***Charter*** and s.1(c) of the ***Canadian Bill of Rights***;

(s) one of the purposes behind subsections 3(1) and 3(2) of the ***Act*** is to ensure that Canadians seek "proper" medical treatment for the conditions listed in Schedule A. "Proper" medical treatment, as articulated and advanced by the Defendant Minister, means exclusive treatment by a medical doctor prescribing pharmaceutical drugs;

(t) "proper" medical treatment is not without risks. One of the leading causes of death in Canada, if not the leading cause of death, is "proper" medical treatment;

(u) there are numerous dietary (food) supplements and vitamins that are effective in the safe treatment, mitigation or prevention of the conditions listed in Schedule A of the ***Act***;

(v) the right to make personal choices in the area of personal health and medical care is a right guaranteed by ss. 2, 7, and 15 of the ***Charter*** in that it relates to the bodily and psychological integrity of the person, as well as to the right to life, liberty, and security of the person in choosing, in accordance with each individual's belief system and conscience, what safe food, supplements, or health products to consume "natural" or "synthetic", whereby the ***Act, Regulations***, and enforcement thereof by the Defendants' officials arbitrarily discriminate, contrary to ss. 7 and 15 of the ***Charter***, against the identifiable sector of society which makes first resort to food, dietary (food) supplements, and vitamins to ensure health and physical and psychological integrity;

(w) individuals, including the Plaintiffs, cannot choose to take dietary supplements and vitamins for conditions listed in Schedule A, because subsections 3(1) and 3(2) prohibit the advertising necessary to educate Canadians about the products;

(x) the absence of choice caused by subsections 3(1) and 3(2) forces individuals, including the Plaintiffs, to assume the risk of "proper" medical treatment contrary to their free choice and contrary to ss. 2, 7, and 15 of the ***Charter***;

(y) furthermore the Draconian methods of enforcements against alleged breaches of the ***Act*** and ***Regulations***, as if the Defendants' officials are enforcing search and seizures against prohibited drug dealers and cartels, with fully armed police tactical units, constituted a flagrant violation of ss. 7 and 8 of the ***Charter***;

(z) the violations set out above under ss. 2(a), 2(b), 7, 8, and 15 of the ***Charter***, and the harm these violations cause, cannot be justified under s. 1 of the ***Charter***.

17. The Plaintiffs further state that the Defendants' officials' administrative regime of the ***Act*** and ***Regulations*** with respect to dietary food supplements and vitamins, under the "Natural Health Products" ***Regulations*** are purposely designed to:

(a) be cost prohibitive in their NPN licensing scheme on-site, etc.; and

(b) be cost prohibitive in the testing scheme;

with the purpose and intent of eliminating smaller producers, distributors, and vendors from the market by treating dietary (food) supplements and vitamins as if they were pharmaceutical and/or prohibited drugs, and thus realize and effect a situation and condition whereby only large pharmaceutical companies and drug stores can manufacture, produce, distribute, and sell these same, safe, dietary food supplements and vitamins.

18. The plaintiffs further state that the Defendants' officials' administrative regime perpetuates the vague, overly-broad, and moreover arbitrary terms of the ***Act*** and ***Regulations*** in that, **inter alia**:

(a) there are no published guidelines nor criteria on how or on what basis and/or why a certain product or application will or will not be approved for NPN licensing;

(b) each application is left in the discretion of an official who does not necessarily possess the scientific and/or professional qualifications to assess the attributes, effects, nor safety of a given product;

(c) the application assessment is not based on science and no articuable reasons are given for accepting or rejecting the application for NPN licensing;

(d) there is no standard of evidence applied to the applications for NPN licensing;

(e) there are no published, accepted methods to determine the substance and/or application;

(f) it has been known to happen that person "X" applies and is denied and person "Y" applies for exactly the same product and is granted the licence without any articulation as to why;

(g) in a word, the administrative regime is arbitrary, vague, overly-broad, and non-articulated save and except for the prior-restraint of banning everything prior to the reverse-onus of "proving", on non-existing guidelines and criteria, that the "product" is "not unsafe", contrary to all rudimentary notions of the Rule of Law and presumption of innocence, and constitutional protection, under s. 7 of the ***Charter***, against reverse onus provisions and enforcement in the (quasi) criminal and regulatory spheres.

19. The Plaintiffs further state, and the fact is, that the methods of enforcement of the ***Act*** and ***Regulations***, with respect to dietary food supplements and vitamins, under the "Natural Health Products" ***Regulations***, are in excess and abuse of authority and process in that they purposely engage in the following flagrant conduct:

    (a) by executing search warrants with RCMP squads in full tactical combat gear and pointing guns at those who allegedly possess dietary (food) supplements and vitamins, as if they were enforcing warrants against prohibited drugs, and drug dealers, engaged in the illicit heroin or cocaine trafficking;

    (b) by using all the enforcement methods to intimidate and threaten as if dealing with hardened and dangerous criminals; and

    (c) the raids are conducted, without any prior notification or warning of alleged breaches of the ***Act*** and/or ***Regulations***, as required by the ***Act/Regulations***;

    all of which is designed with the intent and purpose of eliminating smaller producers, distributors, and vendors from the market by treating dietary food supplements and vitamins as if they were pharmaceutical drugs, and thus realize and effect a situation and condition whereby only large pharmaceutical companies and drug stores can manufacture, produce, distribute, and sell these same, safe, dietary food supplements and vitamins.

20. The Plaintiffs further state that, once an "unlicensed product" is banned, a media advisory is published by the Defendants' officials, ***without any testing whatsoever to determine whether the advisory is warranted*** and then, even if subsequently a licence is issued, because the product has been deemed "safe", the media advisory banning the sale or advertising of the product is ***not*** removed.

21. The Plaintiffs further state that the Defendants' officials, with Welfare Canada, in enlisting the assistance of the RCMP to conduct heavily-armed raids, do so by advising the RCMP that the raids concern "counterfeit drugs", thus misleading the RCMP into the misrepresentation that they are raiding for processed pharmaceutical and/or prohibited drugs rather than food, dietary (food)

supplements and/or vitamins. The Plaintiffs further state that if the RCMP are fully aware of the substance, for which they are conducting fully-armed raids, then the RCMP are also, along with the Health and Welfare officials, engaged in a knowingly flagrant violation of ss. 7 and 8 of the ***Charter*** in their abusive and unreasonable (excess of force) raids.

22. The Plaintiffs state, and the fact is, that, in or about 1997, the Plaintiffs herein, David Rowland and "Freedom of Choice in Health Care", took legal action against the Minister of Health and Welfare, challenging these same provisions and ***Regulations***. Subsequent to the launch of the action, the Parliamentary Standing Committee on Health conducted hearings into the issue of dietary food supplements and vitamins (a.k.a. "Natural Health Products"), and issued fifty-three (53) recommendations which included the provision of $7 million dollars to establish the "Office of Natural Health Products (ONHP)" which was to oversee the ***Regulations*** of dietary food supplements and vitamins as a separate entity of regulation from both "food" and "drugs". In or about 1999, the then Minister of Health, the Honourable Allan Rock, announced that all fifty-three (53) recommendations of the Parliamentary Standing Committee would be acted upon and implemented. As a result, the Plaintiffs withdrew their legal challenge. To date, ***none*** of the recommendations have been implemented and in fact the vagueness, overbreadth, as well as the draconian enforcement methods have worsened.

23. The Plaintiffs state, and the fact is, that they have a "reasonable expectation", in law, that the Minister's announcement would be acted upon. The Plaintiffs state that where the common law doctrine of "reasonable expectation" applies in the context of s.7 ***Charter*** protected rights and interests, or any other ***Charter*** or constitutional rights, such as in this case, that the "reasonable expectation" becomes a s.7 ***Charter*** right.

B/ With Respect to the Plaintiff(s) Nick Mancuso.

24. Nick Mancuso is a 64-year-old Canadian actor who has been featured in four (4) Hollywood series as well as in 120 films, and appeared in over 300 films, which films were produced and shot in twelve different countries.

25. Mancuso was born in Calabria, Italy, raised in Toronto, and spent much of his life in the USA. He currently resides in Toronto and the USA.

26. Mancuso is also currently the host of a digital radio show entitled "Power Health Radio" on which various guests, with various expertise, are interviewed with respect to dietary food supplements, vitamins, and other related issues.

27. Mancuso has, throughout his life, heavily relied on dietary food supplements and vitamins as a conscious, informed, choice with respect to his health. He views the free choice of using these products as part of his belief in how to maintain good health, and is part of his belief-system in general, with respect to his bodily and psychological integrity.

28. The current scheme adopted and enforced by the Defendants' officials has curtailed and eliminated the availability of many of these safe products, as well as published information and advertising about them, for his consumption, which elimination of products has caused him mental distress, as well as a violation to his bodily integrity, freedom of choice, and curtailment to his freedom of life-style, and to his very life, liberty, and security of the person interests and rights with respect to his bodily and psychological integrity and health, contrary to ss. 2(a) and (b), 7 and 15 of the ***Charter***.

29. Mancuso resists any notion that the state can arbitrarily and selectively dictate to him what food and dietary (food) supplements or vitamins can be communicated, distributed, and/or sold to him, for consumption, where these products have not been shown by the state, to pose a health risk, and what that level of risk is, the onus upon which rests with the state and not the producers, distributors, vendors, and consumers of what have been known to be safe food dietary supplements and vitamins for centuries.

30. The Plaintiff states that, as a result of the Defendants' officials' arbitrary, excess and abuse of authority, in enforcing the ***Act*** and ***Regulations***, that he has suffered damages, owing to the mental distress and breach of his constitutional rights, which damages he seeks, as set out in paragraph 2 of the within statement of claim as to be proven at trial. The Plaintiff, Mancuso states that his ***Charter*** rights have been infringed, ***inter alia***, as follows:

(a) his s. 7, substantive and procedural ***Charter*** rights, with respect to his bodily and psychological integrity, in being denied the exercise of his free choice to obtain these products which breaches arise from the vague and overly-broad classifications as well as the excessive, abusive, and illegal enforcement of the ***Act*** and ***Regulations***;

(b) his s. 2 ***Charter*** rights to freedom of expression and communication and his right to disseminate and receive information about these product(s), as well as his s. 2 ***Charter*** rights to freedom of conscience and belief with respect to choosing those products as his primary manner in which to maintain personal health, and bodily and psychological integrity as part of his belief system; and

(c) a breach of his s. 15 ***Charter*** right(s) to being accorded equal treatment to the segment of society that chooses pharmaceutical drugs and "conventional" medicine as a primary means of maintaining health and bodily and psychological integrity, and Mancuso further states that he is part of a s. 15 ***Charter*** analogous group of individuals, who identify and are identifiable as a group who choose food, dietary (food) supplements, and vitamins, or in the words of the Defendants' officials, "Natural Health Products", as a primary means to maintain health and bodily and psychological integrity, who is not being accorded, as a consumer, equal treatment before and under the law but is, like the other biological Plaintiffs, discriminated against by the ***Act*** and ***Regulations*** as well as the enforcement of the ***Act*** and ***Regulations***, by those who choose drugs and "proper" and "conventional" medicine as a primary means of maintaining health and bodily and psychological integrity.

C/ With Respect to the Plaintiff(s) The Results Company Inc. ("TRC"), and David Rowland

31. David W. Rowland, MBA, PhD (Nutr) is an innovator in "alternative" medicine. His results-oriented approach spans over 25 years of expertise. One of his unique contributions is the Nutri-Body® method of nutritional assessment, widely used by health practitioners to identify and support biochemical weakness. Another is TRC formulation of 37 food-based formulas including 3 patents, which have a history of highly successful use. David Rowland is the founder of the Canadian Nutrition Institute (1983), Edison Institute of Nutrition (1996), and Nutritional Consultants Organization of Canada (NCOC). He is also an Education Advisor to the Edison Institute of Nutrition.

32. The Results Company Inc. is a small family owned business that markets and distributes the Vitamost® line of dietary supplements, formulated by David W. Rowland. Vitamost® supplements have their own niche in the marketplace, with loyal customers, some of whom have been buying these unique products for over 25 years. During the years 1986 to 2009, Vitamost® sales have been stable, with most years hovering around the $1.5 million mark.

33. Because The Results Company Inc. (TRC) is in the health business, it has the utmost concern for the health and safety of its customers. All Vitamost® products are of the highest quality, manufactured according to the good manufacturing practices (GMPs) required of dietary supplements in the U.S. TRC also maintains its own quality control program, irrespective of any Health Canada requirements. ***In the last 28 years, not a single Vitamost® product has ever had to be recalled, nor has TRC ever received any reports of harm from consuming Vitamost® supplements.***

34. As a result of Health Canada's oppressive and totally unnecessary Natural Products Number ("NPN") product licensing scheme, The Results Company Inc. is quickly being put out of business and may not survive past the end of 2012. As a result, David Rowland's life's work will have been destroyed. The effect of the Defendants' officials excessive and abusive enforcement of these

(unconstitutional and ***ultra vires*** the ***Act***) ***Regulations*** has been, ***inter alia***, as follows:

(a) coinciding with the implementation of NPN licensing, TRC's sales have dropped by 32% in the last 2.4 years. (From 2009 to 2011 sales dropped by 22%. During the first five months of 2012, sales dropped a further 12.5% compared to the same period last year.) Taking 2009 as the base year, sales lost from January 2010 to May 2012 amount to $808,945;

(b) this unprecedented drop in sales is due entirely to Health Canada's discriminatory NPN licensing scheme. Health Canada has refused licences for some Vitamost® products, has withheld licences for others, and made it cost prohibitive even to apply for licences for most products in the Vitamost® line;

(c) even if the NPN licensing scheme is abolished, it is doubtful that TRC could ever rebuild its sales to former levels. The dietary supplement market is being taken over by mass merchandisers whose simpler formulations are favoured by NPN licensing at the Ministry of Health and Welfare. Small family businesses do not have the advertising budgets to compete with corporate giants. There is no more level playing field, due to Health Canada;

(d) from August 2008 until the present, Health Canada has been arbitrarily and without basis withholding NPN approval for Ultragest™, TRC's number one best-selling formula (by units sold). Ultragest™ is a digestive enzyme supplement that has all of the same ingredients as its predecessor, Dygest™, in very slightly different proportions. Under the former regulatory regime, Dygest™ was issued a DIN ("Drug Identification Number", even thought not a "drug"), registration by Health Canada in 1986 and was in continuous sale until 2007. In good faith, TRC sold Ultragest™ during 2008 and 2009, believing that its NPN would soon be issued. Sales of Ultragest™ for 2009 were $456,499;

(e) NPN licensing discriminates against the kind of innovative formulations that are in the Vitamost® line. If sources deemed acceptable to Health Canada do not document a particular ingredient or combination of ingredients and their quantities of use for a particular purpose, then no NPN will be issued for any

product containing those ingredients. The reverse presumption is that any product Health Canada does not know about must not be any good;

(f) one example of an innovative Vitamost® formulation that does not meet NPN guidelines is Advaya®. This product is patented in the U.S. and has a Canadian patent pending. This forthcoming patent will be worthless if Health Canada prevents TRC from selling the product. Health Canada does not allow listing NPN ingredients in descending order of predominance, as is the custom both for food products sold in Canada and for dietary supplements sold in the U.S. To list the exact quantity of each ingredient on the Advaya® label would be to reveal proprietary information protected by patent. Further, Health Canada does not allow any of the many health claims for Advaya® that TRC has been able to verify by means of clinical trials and symptom surveys, all of which claims are compliant with U.S. guidelines for dietary supplements. Advaya® is unique in that it improves biochemistry at a cellular level, thereby potentially increasing the effectiveness of whatever methods a person may choose to improve health. Because of its universal application, the Plaintiffs expect that in its first year of unrestricted sales, Advaya® would immediately become TRC's third best-selling formula, with projected sales of $438,000 for that year, with considerable upward potential in subsequent years;

(g) NPN licensing also discriminates against complex formulations. Although the majority of dietary supplements in the industry are single ingredient products, most Vitamost® formulas are holistic blends of co-operating and synergistic nutrients. That makes the per unit costs of complying with ongoing NPN requirements disproportionately higher for TRC than for most other companies. An example, it costs $2,544 to test a 19-ingredient product. A typical batch size for such a Vitamost® formula is 1,250 bottles. Thus, each NPN finished product test adds $2.04 to the manufacturing cost of each bottle, which translates to an extra $8.16 per bottle at the retail level. By way of comparison, NPN testing for a single ingredient product costs approximately $250, which mass merchandisers can amortize over batch sizes of 5,000 or more bottles, effective increasing their manufacturing costs by only 5 cents

per bottle (2.5% of what it costs TRC per bottle). In other words, it costs TRC up to 40 times as much per bottle to comply with NPN testing than it does for the mass merchandizers who are taking over the market;

(h) NPN product testing requirements consist of two parts: finished product testing and stability testing, neither of which are needed to protect the consumer, and neither of which are demanded of food products. Vitamost® products are custom manufactured by an FDA approved laboratory in the U.S., which facility fully pre-tests each batch of product before shipping it to Canada. Upon receipt of this product, however, Health Canada insists that this product be kept in "quarantine" until the same tests are repeated in Canada. In 22 years of using this same manufacturer, there have been zero discrepancies between the duplicate tests and the original tests;

(i) stability testing requires duplicating the finished product tests on one batch of each product each year and having it re-tested to confirm its shelf life, i.e. that all ingredients are still in the tablets in the original manufactured quantity at the end of two years. For a 19-ingredient product this requires an additional expenditure of $2,544. If TRC sells only one batch of that product in a year, then the effect is to double the NPN compliance costs for that product – to $4.08 at the manufacturing level, equivalent to $16.32 at the retail level. Health Canada insists that every ingredient in the product be re-tested for stability, including minerals, which never deteriorate. Once a given quantity of a mineral is put into a tablet, that quantity never changes, a simple biochemical fact. It also makes no sense to re-test Vitamost® supplements at the end of two years because these products typically turn over from one to three times per year. After two years, there are likely zero bottles of any given batch still in existence;

(j) during the time period from January 2009 until May 2012, TRC was compelled to pay a total of $35,676 to Canadian Analytical Laboratories for their assistance in helping to meet NPN licensing and site licensing requirements. These charges include annual site licence renewals, new NPN applications, and NPN finished product testing. If TRC had been able to

afford to do all of the NPN product testing that Health Canada says it requires, TRC would have had to pay approximately $136,800 in laboratory and quality control charges during that same 3.4 year time period;

(k) none of the laboratory and quality control charges paid to a third party laboratory are necessary to protect the public. Finished product testing completed by the manufacturer plus David Rowland's expertise in nutritional formulating are fully capable of ensuring that every Vitamost® product is exactly as its label declares and is completely safe to consume;

(l) site licensing is the means by which Health Canada bestows on certain companies the "privilege" of being allowed to operate a business. Site licence renewal is an annual event that requires hiring an outside regulatory affairs firm (at a fee of $2,000) to prepare the voluminous documentation required, much of which is dependent on the NPN finished product tests and stability tests done during the previous year. Every year the documentation required to renew is exactly the same as it was to acquire the site licence in the first place. If the site licence renewal application is only one day late, the site licence is cancelled;

(m) NPN product licensing is the means by which Health Canada bestows on certain companies the "privilege" of being allowed to stay in business. NPN licence applications are reviewed by Health Canada officials with pharmaceutical backgrounds and neither training in nor experience with dietary supplements. NPN licences are typically either denied or made cost prohibitive for high quality holistic supplements. NPN licences are never issued for natural products that compete with prescription drugs;

(n) those NPN licences which have been issued can be revoked at any time. This happened to two Vitamost® products, under the former Drug Identification Number (DIN) regime. In 1992, Health Canada decided retroactively that the sources of two minerals that they had approved in 1986 were no longer acceptable, the DINs for those products were cancelled, the products had to be reformulated, and new DIN registrations applied for;

(o) NPN licensing discourages innovation and rewards the status quo. Every time that TRC wishes to modify a product, to add an additional ingredient or even to alter the amount of an existing ingredient by only one milligram (1 mg.), we have to apply for a new NPN licence for the modified product. To do so requires paying a regulatory affairs consultant anywhere from $500 to $2,500; however, the greater risk is that the NPN licence may be denied because of retroactive restrictions on ingredients which were formerly allowed. The consumer loses the benefit of a new improved product in order to be able to buy the old, outdated one;

(p) depending on how aggressive Health Canada is about enforcing NPN licensing requirements, TRC may be out of business in a matter of months, or maybe only weeks. Only 10 active Vitamost® products have NPN licences; 35 others do not. We estimate that it would cost approximately $53,000 in regulatory affairs fees to apply for these 35 licences plus a further $142,000 per year to comply with NPN product testing requirements for the complete Vitamost® product line;

(q) even if TRC could afford to apply for NPN licensing for its remaining products, it is unlikely that all 35 licences would be granted. The Plaintiffs expect that at least eight of these licences would be refused because the products in question exceed Health Canada's competence to evaluate them;

(r) due to a competitive environment, TRC has to operate on low margins. Its 35 unregistered products do not generate enough income to pay for the costs of NPN licensing and NPN compliance. TRC cannot continue in business with only 10 products. Customers do not take suppliers seriously unless they offer a complete line of supplements, so sales of these 10 will drop dramatically as soon as the other 35 are discontinued. Even at present sales levels, the 10 registered products do not generate enough income to keep the business viable;

(s) both NPN licensing and the DIN registration scheme that it replaces are forms of censorship which both prevents new products from coming to market and restricts the sales of those which are permitted to be sold. Health Canada

decides which health claims it will allow for each product and prohibits all other true claims – including those referenced by textbooks, clinical studies, and even testimonials sworn by affidavit. This censorship is an insidious way of limiting public access to high quality formulas by restricting both the formulators who create these products and the entrepreneurs who bring them to market. In no other industry are suppliers prevented from telling their customers the truth about what their products do. Because Vitamost® products are innovative, 25 years of censorship has severely limited their sales. Customers only find out about these unique supplements by word of mouth, since TRC is prevented from advertising the benefits of taking Vitamost® formulas;

(t) over the last 25 years, vitamins and dietary supplements have been a growth industry. If there had been no censorship of Vitamost® supplements during that time, we believe that our products would have been abe to keep pace with industry growth and may even have performed better, given their uniqueness and desirability. If we assume a very conservative industry growth rate of five per cent per year, Vitamost® annual sales should have grown from $1.5 million in 1986 to at least $4.83 million in 2011. Instead, censorship has kept Vitamost® sales flat lining around $1.5 million per year. The cumulative difference between actual Vitamost® sales and projected likely sales amounts to $34.06 million over those 25 years. In other words, Health Canada's censorship over the years has cost Vitamost® a projectable $34 million in lost sales, and probably much more than that.

35. The Plaintiffs, David Rowland and The Results Company Inc., state and it must be reiterated, that in the 28 years in business there has NEVER been any report of negative or ill side effects from any of their products. There has NEVER been any report of any adverse risk. It is to be remembered that this is partially or largely due to the fact that these products are dietary (food) supplements and vitamins and minerals, and ***not*** pharmaceutical drugs, and are inherently safe and necessary to and for the human body.

36. The Plaintiffs state, and the fact is, that pharmaceutical drugs do and have caused large-scale adverse side-effect(s) and deaths. However, Health Canada treats producers, distributors, and vendors of dietary food supplements and vitamins as if they were criminals.

37. The Plaintiffs do not deny nor claim that individuals should not be free to purchase and consume pharmaceutical drugs. The Plaintiffs state, and fact is, that individuals should not be arbitrarily denied the right to advertise, distribute, sell and consume dietary food supplements and vitamins through the unconstitutional, ***ultra vires***, and moreover, excessive and abusive enforcement by Health Canada both through discriminatory and unnecessary fee and testing schemes designed to put small operations out of business, as well as the para-military methods of enforcement of the regulations, through heavily-armed raids under the guise of executing search warrants.

38. The Plaintiffs state that, as a result of the Defendants' officials arbitrary, excess and abuse of authority in the enforcement of the ***Act*** and ***Regulations***, that they have suffered damage to reputation, as well as quantified economic losses as minimally set out above in paragraph 2 of the within statement of claim as to be proven at trial.

39. The Plaintiff, David Rowland, as a consumer, producer, as well as distributor of these products, further claims, personally, damages not only in loss of income and reputation, derived from The Results Company Inc., but also further claims a breach of his ss. 2, 7, and 15 ***Charter*** rights as claimed and articulated with respect to Nick Mancuso, at paragraph 30 set out above in the within Statement of Claim.

D/ With Respect to the Plaintiff(s) Life Choice Ltd. (amalgamated from, rolled into, and continuing on business for, and from, E.D. Modern Design Ltd. and E.G.D. Modern Design Ltd.), and Dr. Eldon Dahl, and Agnesa Dahl

40. Dr. Eldon Dahl, of the City of Calgary, in the Province of Alberta, was the sole Director, Officer and Shareholder of the corporate entity, a sole proprietorship, E.D. Internal Health.

41. He is experienced in working in the health field and began his own business importing and exporting raw materials for the health and pharmaceutical industry.

- **Store/Clinic History**

42. He purchased an existing health food store in 1984 in West Vancouver and after graduating as a Naturopathic Physician in 1988, he split the store using one half for retail vitamin sales and the other half he used for his clinic.

43. While running his clinic in the late 1980s and early 1990s, he noticed that supplements, that his patients required, were just not available, even by prescription. So, he set up accounts with a supplement store in Blaine, Washington, and he directed his patients to order products for their personal use. However, it was unsuccessful because if the store was out of stock, they would just replace the product they felt would be suitable, but it gave different results than intentioned.

- **E.D. Internal Health History**

44. He was the owner of E.D. Internal Health, a company incorporated under the laws of British Columbia in 1986, employing 17 people who marketed his exclusive product lines within Canada, including Bolder Endurance Bars and additional stock from 15 other suppliers.

45. He started supplying supplements for customers for their own personal use and began his U.S. division of Healthy Solutions.

46. His business, in Langley, BC, had between 4 to 6 deliveries per week into his warehouse at #105, 20381 62nd Street, Langley, British Columbia from eastern Canada and the United States ("U.S."). To his knowledge, a customs broker handled most of his deliveries for over 10 years, and during that time, he never

encountered one problem or customer complaint registered against E.D. Internal Health.

47. He owned a second unit at #104, 20381 62nd Avenue, Langley, British Columbia, which he rented to Pro-Cap Plus. At no time did he have any control or responsibilities for the raw materials and products manufactured therein, nor did he employ any staff who worked there.

48. E.D. Internal Health Ltd. was set up as a distribution company to actively pursue product lines and obtain exclusive distribution rights for the Canadian marketplace.

49. The U.S. side of his business was established to help individuals obtain health products for personal use by mail order. The U.S. approved the raw materials being shipped to the U.S. for manufacturing and packaging, Canadian approved raw materials are shipped into Canada for encapsulation and packing.

50. His business records showed all sales generated from Canada and those initiated within the U.S. At all times, Dr. Dahl has always tried to run his business in accordance with the law and not against it.

- **First Encounter With Health Canada**

51. Dr. Dahl's first major encounter with Canadian federal criminal regulatory authorities was on September 8, 1987, when undercover Health Inspectors with Health Canada deceived the sales person working at the West Vancouver Health Food Store/Clinic and purchased a bottle of L-tryptophan. The following day, Patricia McKenzie and Sid Ansari, Drug Inspectors with Health Canada, raided the store. No charges were laid.

- **Second Encounter With Health Canada**

52. The second encounter with Health Canada was on his Langley, B.C. residence on November 25, 1996, prompted by a shipment of DHEA gum he had ordered to his home. The order was held at the Customs Canada Border ("Customs") since DHEA is not allowed in Canada. He was advised in writing via notice on November 19, 1996 and that his shipment was being returned to the manufacturer. Two days later, the shipment was released from Customs and delivered to his home.

53. On November 25, 1996, he was advised by Rod Neske and Ron Reinhold, Drug Inspectors with Health Canada, that the shipment was released in error and wanted him to release the shipment and remedy the error. He advised them that the order was received, processed and sold to export.

- **Third Encounter With Health Canada**

54. The third encounter with Health Canada was on April 2, 1998 pursuant to a telephone investigation by Pat McKenzie, Drug Inspector with Health Canada, regarding a shipment of bulk methyl-sulfonyl-methane (MSM) from the United States. When questioned on its purpose, he advised her that it would be used for his family personally. The product was allowed to be sent.

- **Fourth Encounter With Health Canada**

55. The fourth encounter with Health Canada was on September 14, 1999, when crossing the U.S. Customs Border into Canada. He had a warehouse and office in Blaine, Washington, where stocked supplements were kept for shipping to customers for personal use, via mail order, twice per week, in the USA. His customers would send payment to the United States' office and he would personally bring them to Canada for deposit. At that time, he was questioned by Alan Wilson, of Customs Investigation Division. After Wilson searched his vehicle and found the cheques, it was reported to Pat McKenzie and eventually he was allowed to return into Canada with his cheques.

- **Fifth Encounter With Health Canada**
    - ***Mistaken Shipment #1***

56. On February 27, 2001, Infinity Marketing ("Infinity"), a US firm with whom Dr. Dahl and his company dealt, had hired a new shipper and the shipper mistakenly put the wrong shipping manifest on the Canadian bound order and sent it to a completely different company in California. Their order deemed for California arrived by CF Freightways into the Langley, B.C. warehouse. The documentation was correct on the shipping manifest but the raw materials were wrong. He took a picture of the mistaken package and it was returned immediately to the sender.

- ***Mistaken Shipment #2***

57. In March 2001, the new shipper at Infinity mixed up the U.S. and Canadian raw material again. To save shipping space and seeing that his company name was on both orders, she put them together and shipped them to the Canadian warehouse. The owner of Infinity Marketing also marketed energy bars as well as supplements.

58. Infinity Marketing, having rights to a new energy bar, sent Dr. Eldon Dahl samples with the raw materials and being sure he knew the correct container, they marked the box "*candy*". The order was red flagged and inspected by Customs officers in the Seattle, Washington warehouse. He advised Infinity that the order was delayed and asked them to track the shipment. It was at that time, they noticed the shipping error.

59. At that time, he asked them to recall the shipment and repackage it. Infinity was advised that it was being held in Customs for clearance and to wait for updates.

- **Health Canada Raid of March 13, 2001**

60. On March 13, 2001, Chief Investigator, C.R. Head, of the Customs Investigation Division and approximately 20 other persons entered his business with search warrants.

- ***Search Warrants***

61. Patricia McKenzie, a Drug Inspector with Health Products and Food Inspectorate ("Health Canada"), alleged there were reasonable grounds that Eldon Dahl, between January 31, 2000 and March 13, 2001, did the following:

(a) Sold Prasterone aka dihydroepiandrosterone (DHEA), listed on Schedule 'IV' and in violation of section 5(3)(c) of the *Controlled Drugs & Substances Act*;

(b) Possession for the purpose of trafficking DHEA, listed on Schedule 'IV' and in violation of section 5(3)(c) of the Controlled Drug & Substances Act;

(c) Selling Progesterone, listed on Schedule 'F' and in violation of section C.01.041(1.1) of the *Food & Drug Regulations* and contrary to section 31 of the *Food & Drugs Act*;

(d) Selling Progesterone Cream (1,100 mg), DHEA Capsules (50 mg) and Chromium Picolinate Capsules (500 mg), whereof Notices of compliance had not been issued, in violation of C.08.002(1)(a) of the *Food & Drug Regulations* and contrary to section 31 of the *Food & Drugs Act*; and

(e) Selling Progesterone Cream (1,100 mg), DHEA Capsules (50 mg) and Chromium Picolinate Capsules (500 mg), whereof DIN had not been assigned, in violation of section C.01.014(1) of the *Food & Drug Regulations* and contrary to section 31 of the *Food & Drugs Act*;

which the Plaintiffs state, and the fact is, that DHEA, from which Progesterone is derived, is a dietary food supplement extracted from wild yam or soy, and is also a naturally occurring substance produced in, and by, the human body, and both are safe and naturally occurring supplements which can also be found in nature.

- **Seizure #K19-PA-3694 (Health Canada)**

62. On March 13, 2001, the following items were seized from both #105-20381 62nd Avenue, Langley, B.C., of which charges were laid:

(a) 858 sealed "pouch packs" of Capsules (15 capsules containing powder)-containing DHEA & Androstenedione;

(b) 2.6 kilograms of white powder found inside a plastic bag with a gold-coloured, tin-container – containing Nor-Androstenedione & Androstenedione;

(c) 3.1 kilograms of white powder seized from the hopper of an encapsulating machine – containing DHEA;

(d) 0.65 kilogram bag of full capsules containing white powder, seized from a container next to an encapsulating machine – containing DHEA;

(e) 3 plastic bottles containing capsules, labeled, "Your Choice-Sports 34, Trib-Andro Test, Tribulus Terrestreis, Adrostenedione, and MSM Blend (60 Capsules)" – containing Androstenedione;

(f) 1 plastic bottle containing capsules, labeled, "Your Choice-Sports 34C, Andro-Plex (60 Capsules)" – containing Nor-Androstenedione & Androstenediol;

(g) 1 plastic bottle containing capsules, labeled, "Your Choice, DHEA (60 Capsules)" – containing Prasterone;

(h) 1 plastic bottle containing capsules, labeled, "Your Choice-Sports 34B, "19-Nor-Androstenedione (60 Capsules)" – containing Nor-Androstenedione;

(i) 1 plastic bag of capsules containing white powder, stapled to work order #0690 – containing Prasterone;

(j) 1 plastic bag of capsules containing white powder, stapled to work order #0232 – containing Prasterone; and

(k) 1 plastic bag containing white powder, stapled to work order #0275 – containing Nor-Androstenedione.

which the Plaintiffs state, and the fact is, that DHEA, from which Progesterone is derived, is a dietary food supplement extracted from wild yam or soy, and is also a naturally occurring substance produced in, and by, the human body, and both are safe and naturally occurring supplements which can also be found in nature.

- **Seizure of #105-62ND Avenue, Langley, B.C. (PA 3694-1(B))**

63. From his office and warehouse, the following items were seized by Health Canada and RCMP:

(a) From the upper level office (room #1), faxes, correspondence and information on Invoice #915 from Infinity to E.D. Internal Health, one dated for March 2, 2001 totaling $0.00 and one dated for February 23, 2001, totaling $9,350.00(USD) and copies of a "Certificate of Analysis" from Infinity dated February 13, 2001 for DHEA #D02300120982.

(b) From the upper level office (room #1), lower level office (room #3) and lower storage area (room #5), product information sheets, labels, information, ordering sheets from Healthy Solutions (Canada) for DHEA and a letter stating,

> *"The orders are placed in the U.S.A. although the products are shipped from within Canada. Thereby avoiding both Canadian & American Customs"; and (6) product order forms for Healthy Solutions (Canada).*"

which letter is inaccurate in that products and orders from the USA were shipped in the USA, while products and orders from Canada were shipped within Canada.

64. In Seizure #PA-3694-2(A), his computer hardware components were seized and copies of his internal hard drives, floppy drives and CD ROM drives were made as evidence. Items which were seized were outside of their scope and returned to him, such as file folders labeled "Pacific Customs", "Bank-Healthy Solutions" &

"United Parcel", business cards labeled "Canadian Rejuvenation Systems", "Perpetual Desk Calendar & Diary" book, "Pleasure Foods Inc." book, etc.

65. Along with DHEA described above, Cheque stubs, purchase orders, product information sheets, product order forms, letterhead of International Health, both Canadian and US, Invoices, client credit numbers, Commission Reports, etc. were also seized.

- **Seizure of #104-62ND Avenue, Langley, B.C. (PA 3694-2(B))**

66. Seizure of Pro-Cap Plus Ltd. premises involved the retention of invoices, purchase orders, and work orders, etc. Some items seized outside of scope of the search warrant were different labels and clear capsules.

- **Seizure of Residence (PA 3694-1(A))**

67. Dr. Dahl was then told that officers were waiting outside his home and he was asked to drive to his personal residence from the warehouse to allow them entry for a further search.

68. From his personal residence in Langley, B.C., the following items were seized by Health Canada and RCMP:

(a) From the mailbox, Cheque #435 payable to Infinity in the amount of $8,605.00 (USD) dated January 15, 2001 drawn from account #800766-8 registered to International Health & Cheque #439 payable to Infinity in the amount of $11,775.00 (USD) dated February 15, 2001 drawn from account #800766-8 registered to International Health; and

(b) From his office, one bound, red and clear plastic organizer, containing information on specialty formulas, including DHEA and other product information.

69. Dr. Dahl's inventory was confiscated, his computers were removed, all his files were taken and inspected, and his home was fully searched. In the confiscated inventory, Drug Investigator C.R. Head took approximately 5 opened bottles of DHEA and Androstenedione, of which Dahl was using for personal use. On the lower level, the Drug Investigator took a few boxes of foil packets consisting of 15 capsules and each containing small amounts of DHEA and Androstenedione.

- **Post March 21, 2001**

70. After the investigation, all of Dr. Dahl's Canadian shipments were stopped from entering Canada. Customs sent everything for inspection or held them up. His only alternative was to close his Canadian business. He ended up selling his stock and exclusive product lines at cost and also his warehouse.

- **Trial**

71. In a letter to his lawyer, G. Jack Harris, dated September 13, 2002, from Janna Hyman, with the Department of Justice, advised him that Health Canada recommended additional regulatory charges included in the preliminary inquiry. However, the Crown decided to have the charges on separate information to be prosecuted summarily. She requested specific admissions from Eldon Dahl for the purpose of the preliminary inquiry.

72. When Dr. Dahl's case went to trial on April 15, 2004, all his evidence of his United States Company, including pictures, leasing invoices, and shipping invoices went unnoticed by the Trial Judge. The Crown Prosecutor had not been able to find his United States inventory and postulated that his products were in Canada dismissing any claim that his inventory was in Blaine, Washington.

73. The Plaintifffs', Eldon Dahl's and his company's, salespersons described how their job was conducted, how products were sold and promoting Healthy Solutions (Canada) and Healthy Solutions (USA) being clearly presented. At no time did any salesperson carry or promote the sales of United States specialty formulas to the business but only under the personal use format. They only carried samples of Canadian approved products. Dr. Eldon Dahl believes that all the evidence to support Health Canada's charges for orders seized is with the Healthy Solutions (USA) address and not with Healthy Solutions (Canada). The person who could have cleared up all this was the owner of Infinity Marketing from California. However he did not come up to Canada to testify because Health Canada warned that if he did, he would be arrested and charged upon crossing the border, as represented to Dr. Eldon Dahl's lawyer, Mr. Jack Harris, who received the warning from the Defendants' officials prosecuting Dr. Eldon Dahl.

74. Dr. Eldon Dahl was charged with products that were never actually in his possession. All shipping deliveries that the Crown Prosecutor tried to match into Canada were of the wrong weights. For example:

(a) Count 13, 14 and 15 (page 445): Delivery of a shipment on October 29, 1998, Order #632 dated October 10, 1998 for a split shipment of 3 separate items (1 for Canada & 2 to USA). UPS bill of laden state 120 kg and not 45 kg stated on Order #632. No proof the shipment entered Canada; the blank reference is to US delivery.

(b) Count 19, 20 and 21 (page 422): Delivery of a shipment on June 1, 1999, Order #00199 dated May 18, 1999 with Infinity Marketing Group for 25 kg of raw material not permitted entry into Canada. The Crown Prosecutor matched Order #00199 to Invoice #589, a shipment invoiced on March 27, 1009 [sic], but states shipped May 26, 1999, [sic] one year apart with the same weigh. Order #00199 was sent within the USA.

(c) Count 22, 23 and 24 (page 401): Delivery of a shipment on July 27, 1999, an Order of 50 kg of Kava Kava on July 19, 1999 from Infinity Marketing Group. UPS states that 30 lbs or 14 kg were sent and received into Canada, in reference to Invoice #589 delivered July 27, 1999. A further reference is made to Invoice #589 for 25 kg or 55 lbs of Kava Kava by UPS on July 28, 1999. The Crown Prosecutor assumes that an Order dated July 21, 1999, placed through Infinity Marketing for items not permitted entry into Canada. However, the Order dated July 21, 1999 is for 70 kg, since the Order of Kava Kava is 64 kg, they claim this Order entered Canada due to weight. There is no paper trail for Invoice #725 dated July 21, 1999. No shipment information was entered.

(d) Count 25, 26 and 27 (page 391): Delivery of a shipment of August 25, 1999 of an Order of 25 kg of Glucosamine Sulfate on Invoice #738. A second Invoice #738 is reference for an Order of 10 kg of DHEA and 25 kg of HMB. The shipment is stamped Food & Drug inspected, however, Health Canada claims UPS stamped it and it was not physically examined by Health Canada.

(e) Count 28, 29 and 30 (page 377): Delivery of a shipment on October 15, 1999 for 2 Orders with the Invoice number not changed on either shipment. The shipment was stamped "Food & Drug Inspected". The Condroitin sulfate was sent into Canada and the DHEA was shipped within the US.

(f) Count 32, 33 and 34 (page 348): Delivery of a shipment on July 24, 2000, Invoice #838 for various raw materials not permitted entry into Canada. Invoice #838 was shipped on July 20, 2000 but not to Canada. Invoice #835 for 50 kg of Condroitin was shipped to Canada and invoiced on July 21, 2000, weighing 49 kg or 108 lbs, not 55 kg.

75. Justice J.R. Lytwyn provided reasons for conviction and sentence, on May 26, 2004, as follows:

(a) on counts 1 to 8 a conditional sentence was imposed for 18 months with terms and conditions.
(b) on counts 12, 20, 24, 28, 34, 38, and 42, there was a total of $116,360.00 in fines for him personally and $232,720.00 for E.D. Internal Health Ltd with a year to pay.
(c) he was sentenced to one day on each of the other Counts and E.D. Internal Health Ltd. was fined $1.00 on each of the other counts.

- **Post Trial**

76. Due to the trial, Dr. Dahl now has a criminal record for not only something he was not responsible for, but also due to the ***ultra vires***, unconstitutional ***Regulations*** and their excessive and abusive enforcement by the Defendants' officials.

77. On March 21st, 2003, the Plaintiffs, Dr. Eldon Dahl, and his wife, Angesa Dahl, were associated with a company incorporated in the Province of British Colombia, "E.D. Modern Design Ltd., in which Eldon Dahl's brother was the sole shareholder.

78. On January 4th, 2006, Eldon Dahl and his wife, Agnesa Dahl, incorporated a company, in the Province of British Colombia, called "E.G.D. Modern Design Ltd.", in which Eldon Dahl was the sole shareholder and Agnesa Dahl was the Director.

79. These two companies were inter-related and carried on the same business as their previous company, E.D. Internal Health Ltd.

80. In or about 2009, E.D. Modern Design Ltd. and E.G.D. Modern Design Ltd., were incorporated and moved all capital and operations into the Province of Alberta, operating under the same corporate names.

- **Sixth Encounter With Health Canada**

81. August 21, 2008, Health Canada issued a Health Warning Bulletin on the Health Canada webpage http://www.hc-sc.gc.ca/ahc-asc/media/advisories-avis/_2008/2008_145-eng.php advising consumers not to use E.G.D. Modern Design Ltd. Ephedrine HCL and E.G.D. Modern Design Ltd. "Kava Kava" stating that they were unsafe. Additional warnings stated these two products were

contaminated with bacteria which could cause serious and irreversible adverse health effects ***including death***. These warnings were not isolated only in Canada but appeared in The Sun Media August 23, 2008 and internationally on Reuter's online media affecting his company's international credibility and marketing for exportation. http://www.reuters.com/article/pressRelease/idUS225146+21-Aug-2008+MW20080821 Dr. Eldon Dahl's company, E.G.D. Modern Design Ltd, was never notified for any statement nor response.

82. These false warnings, to date, have not been removed even though these products are now licensed as "proven safe" by the Defendants' officials, even though they have always been safe. The Defendants, ***to date***, refuse to remove the old warnings even though the products are licensed, which effects and reduces and eliminates sales because customers read the warning as currently applicable.

- **Seventh Encounter With Health Canada**

83. September 03, 2008, Health Canada (HC) issued another Health Warning Bulletin on the Health Canada web page at http://www.hc-sc.gc.ca/index-eng.php and on the CBC, http://www.cbc.ca/consumer/recalls/2008/09/health_canada_issues_advisory.html 40. The warning listed all of Dr. Eldon Dahl's and E.G.D. Modern Design Ltd. products highlighting the company's logo and Health and Welfare Canada selectively placed the warning beneath the Maple Leaf (meat) Products, Listeria warning, again the warning isolated certain products having bacterial contamination and that the products could lead to serious adverse health effects. This warning did not state death.

84. E.G.D. Modern Design Ltd. first became aware of these public health warnings by one of the company's naturopathic doctors when he faxed the notice. Neither Eldon Dahl nor E.G.D. Modern Design Ltd. was ever notified for a statement or clarification. Upon awareness the company immediately notified all customers of Health Canada's potential health risks and requested a full recall. The company next called its GMP manufacturing facilities for them to conduct a full investigation of the tested samples listed in Health Canada's warning. All products concerned were negative for any contamination or well within the GMP guidelines for acceptable contamination confirming that the GMP manufacturer

would have caught the problem prior to distribution for sale. These Health and Welfare Canada warnings were released without the company's response and seriously jeopardized the company's international trade negotiations with the false claim and threat that the public was at risk.

- **Customer Newsletter Issued**

85. For three years after the investigation, Dr. Eldon Dahl, E.G.D. Modern Design Ltd., and Life Choice Ltd. were watched and monitored never feeling comfortable. When Eldon Dahl traveled outside of the country, upon returning, he was always flagged by the Canada Customs inspection. Prior to 2001, he always traveled freely.

86. March 06, 2008, E.G.D. Modern Design Ltd, issued a newsletter to its customers listing its attention to quality, the newsletter also warned its customers to be on the lookout of salespersons claiming to represent their products' quality and using a near copy of their logo and label offering the customers a 30% discount to their pricing, the warning stated that the company did not have sales representatives visiting customers.

87. On the afternoon of January 13, 2009, E.G.D. Modern Design Ltd. issued a news bulletin (dated January 15, 2009) stating the company's closure due to the owners retiring their distribution, and that it would be closed when the stock was depleted. Dr. Eldon Dahl and E.G.D. Modern Design Ltd. were intending to move export their inventory to Slovakia and market their product lines to all members of the European Union (EU) instead of only marketing to Slovakia since 2004. Slovakia had entered the EU officially in January 2009. The following day Dr. Eldon Dahl's and E.G.D. Modern Design Ltd.'s entire inventory was confiscated by a heavily armed RCMP raid, thus preventing their EU submission for testing and compliance.

88. On January 23, 2009, Eldon Dahl and E.G.D. Modern Design Ltd. made a follow up newsletter to its customers telling them about the raid.

- **Eight Encounter With Health Canada**

89. On January 15, 2009, at his residence in Calgary, Alberta, Dr. Dahl and his wife saw at least 5 undercover police vehicles including vans with red dome lights flashing. Four RCMP officers, one with his gun drawn burst through the door pointing a gun at his wife's chest, severely panicking her.

90. He and his wife sat in their living room for 11 hours and were prevented from moving or seeing the Health Canada agents searching the entire residence. When questioned if they were under arrest, Dr. Eldon Dahl was told that they were just being "detained" and not to move. The Health Canada official, Kim Selling, forced him, against his will and under threat, to open his home safe, which included only personal items, while she photographed the contents unlawfully.

91. Across town, unbeknownst to Dr. Dahl, his daughter's roommate was experiencing the same treatment. The RCMP and Health Canada broke into his daughter's house without her being listed on the warrant for that location.

92. The Plaintiffs, Dr. Eldon Dahl and Agnesa Dahl, state, and the fact is, that the RCMP and officials of Health and Welfare Canada, in executing their search warrant(s) at their residence, and in executing an illegal search and seizure at their daughter's residence, did:

(a) act on malice and misrepresentations and abuse and excess of authority in obtaining the search warrant(s);

(b) acted beyond the scope of the warrant in its execution;

(c) unlawfully "detained" both Plaintiffs, contrary to ss. 7, 8 and 9 of the ***Charter***;

(d) terrorized the Plaintiffs in executing the warrant, while heavily armed, and by assaulting Agnesa Dahl by pointing a pistol at her;

(e) knowingly used these excessive, abusive, and unreasonable tactics with the malicious intent of intimidation and terrorizing the Plaintiffs and knowing that the Plaintiffs posed no risk whatsoever;

(f) knowingly used these excessive, abusive and unreasonable tactics with malicious intent knowing that the items searched for were food, dietary (food) supplements and vitamins;

(g) knowingly used these excessive, abusive and unreasonable tactics with malicious intent, without sending any notification and warning to the Plaintiffs, with respect to the products, as required by the ***Act*** and ***Regulations***;

(h) knowingly laid false and malicious charges against Eldon Dahl and Agnesa Dahl which charges are still on-going; and

(i) engaged in these tactics against these Plaintiffs and others in the same business with the knowledge, intent and design, of eliminating small, independent, manufacturers, producers, distributors, and vendors of these products, and thus realize and effect a situation and condition whereby only large pharmaceutical companies and drug stores can manufacture, produce, distribute, and sell these same, safe, dietary food supplements and vitamins;

thus breaching the Plaintiffs' s. 7 life, liberty and security ***Charter*** rights, as well as rights against unreasonable search and seizure under s. 8 of the ***Charter***, as well as unlawful detention, imprisonment, and detention contrary to ss. 7 and 9 of the ***Charter***.

93. In or about, January, 2010, the Plaintiffs Eldon and Agnesa Dahl were falsely and maliciously charged, and continue to be falsely and maliciously prosecuted, which prosecution is currently on-going, for offences contrary to ss. 9(1) and 31 of the ***Food and Drugs Act*** and ***Regulations*** thereunder, for the possession and sale of perfectly safe, natural products which are food, dietary (food) supplements, and vitamins but are arbitrarily, vaguely, and overly-broadly treated as "drugs" and falsely and maliciously enforced as such.

94. As a result of the false advisories of 2008, and of this raid of January 2009, and as a result of the fact that the entire inventory was seized and not returned, as well as the laying of false and malicious criminal charges against them in or about January, 2010, the Plaintiffs, on July 13th, 2010 amalgamated E.D. Modern Design Ltd. and E.G.D. Modern Design Ltd. and rolled it over as a continuing corporate entity continuing business as "Life Choice Ltd." in an unsuccessful attempt to rebuild the business and the reputation of the Plaintiffs, Dr. Eldon

Dahl, which, to that point had been a very notable and respected reputation in the Natural Health Product industry, for which Dr. Eldon Dahl has received public recognition and awards from the industry.

95. Prior to the raid by the RCMP, in the 10-year period going back from January, 2009 to 1999, the Plaintiff's, Dr. Eldon Dahl's company (corporations), under his direction and control, averaged $1.4 million in gross sales. The Plaintiffs, Dr. Eldon Dahl and Agnesa Dahl, drew salaries of approximately:

(a) $100,000 by Dr. Eldon Dahl; and

(b) $60,000 by Agnesa Dahl;

during these years.

96. Since the RCMP raid of January 2009, Dr. Eldon Dahl's company (corporations) under his direction and control, owing to the complete seizure and non-return of the entire stock and inventory, and extreme damage to reputation in depicting him as a common criminal "drug dealer", have not earned ***any*** positive income and have, since 2009, registered an income loss to the present day.

- **Present Day**

97. The Plaintiffs further state that, as a result of the arbitrary, excessive and abusive enforcement of the ***Act*** and ***Regulations*** with respect to food, dietary (food) supplements, and vitamins in the course of the past fifteen (15) years, up to and including the present, the Plaintiffs have suffered damage and loss as follows:

(a) the armed raid of their home, they have suffered mental distress to date. Their home needed to be sold in order to remove themselves from the constant reminder of abusive and excessive force of the 11-hour ordeal. The mental images of an angry RCMP officer with a gun pointed to the chest of Dr. Dahl's wife constantly remains with them and panic is revisited each time they see a RCMP officer in the rearview mirror of their car or approaching where they live. Their daughter remains panic struck each time the phone rings thinking armed police may soon break down her front door. For Dr. Dahl, the terrorizing images taunt him daily and he lives with the mental stress and anxiety that he cannot protect his family, and has never slept soundly since the raid;

(b) Dr. Dahl's image as a person, businessman and practitioner have been diminished and questioned through the eyes of his peers. His reputation has been irreparably damaged. His and his company's European corporation/business practices with licensed natural health products since 2004 were brought under scrutiny. Health Slovakia who entrusted their licensed health products became suspicious after Health Canada made inquiries questioning their business practices and if they were in order;

(c) Financially Dr. Dahl and his family were ruined since their ability to make a living had been removed; their international and domestic inventory of $350,000 was seized and left to expire without compensation. They struggled to rebuild their business with each license granted by Health Canada, some taking 4 years or more and costing a minimum of $4,000 per the 83 licenses now granted, which attempt was unsuccessful;

(d) Life Choice Ltd. has suffered a loss of income of $1.4 million per year and will continue to do so;

(e) Dr. Eldon Dahl has suffered a perverse loss of income of $100,000 and will continue to do so;

(f) Agnesa Dahl has suffered a loss of $60, 000 and will continue to do so; and

(g) Both Dr. Eldon Dahl and Agnesa Dahl, in addition to the ss. 7, 8, and 9 ***Charter*** breaches outlines in paragraph 92 above, have also had their ***Charter*** rights, as consumers, manufacturers, and distributors, personally breached under ss. 2, 7, and 15 of the ***Charter*** for the same reasons and rationale as set out with respect to Nick Mancuso and David Roland as set out in paragraphs 30 and 39 above in the within statement of claim.

98. Following the laying of charges, all charges relating to ***the safety*** of the seized products, and criminal charges laid thereupon, for possession and trafficking, were dropped as ***no*** safety issue(s) ever arose nor do arise. (These are the same products for which Eldon Dahl was falsely convicted in 2004).

99. The only remaining charges are those relating to "labeling" of the products, alleged failure to obtain NPNs and DINs ("Dry Identification Numbers") even

though none of these products are actually "drugs", except as arbitrarily, vaguely, and over-breathingly defined and enforced contrary to s. 7 of the ***Charter***.

100. Every single product seized, and upon which criminal charges were laid, are readily and freely available, "over the centre" in the USA and are perfectly safe. This including the "Kova-Kova", which is now licensed by Health and Welfare Canada, but which was earlier claimed to cause death, without any testing whatsoever by Health and Welfare Canada.

101. The Plaintiffs state that the damage to reputation, loss of income, as well as the mental stress were caused by the excess and abuse of authority used by officials at Health Canada as well as the RCMP, as well as breaches to their constitutional rights under ss. 2(a), 2(b), 7, 8, 9 and 15 of the ***Charter***, for which they claim the damages in paragraph 2 of the within statement of claim as to be proven at trial.

E/ Constitutional breaches

102. The Plaintiffs state, for sake of clarity, that while the within Statement of Claim clearly sets out which ***Charter*** and constitutional breaches are involved, as being infringed, with respect to the biological Plaintiffs, the corporate Plaintiffs also claim the following ***Charter*** and constitutional rights have been breached:

(a) the right to freedom of expression and communication as guaranteed under s. 2 of the ***Charter;***

(b) the ***procedural safeguards*** of s. 7 of the ***Charter*** in the context of (quasi) criminal prosecution and regulatory scheme;

(c) the right to equality, as a structural imperative of the underlying principle of the ***Constitution Act, 1867*** as enunciated by the Supreme Court of Canada in ***Winner v. S.M.T. (Eastern) Ltd.,*** [1951] S.C.R. 887, which right, above and beyond s. 15 of the ***Charter***, is also involved by the biological Plaintiffs.

F/ Mode and Place of Trial

103. The Plaintiffs proposes that this action be tried at Toronto, before a jury.

Dated at Toronto this 21st day of September, 2012.

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Solicitor for the Plaintiffs

Court File No.: T-1754-12

FEDERAL COURT

B E T W E E N:

Nick **Mancuso, The Results Company Inc.**, David **Rowland, Life Choice Ltd.** (amalgamated from, rolled into, and continuing on business for, and from, E.D. Modern Design Ltd. and E.G.D. Modern Design Ltd.), Dr. Eldon **Dahl**, and Agnesa **Dahl**

Plaintiffs

- and -

MINISTER OF NATIONAL HEALTH AND WELFARE, ATTORNEY GENERAL OF CANADA, MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS, ROYAL CANADIAN MOUNTED POLICE, and **HER MAJESTY THE QUEEN IN RIGHT OF CANADA**

Defendants

STATEMENT OF CLAIM

(Pursuant to s.17(1) and (5) (b)***Federal Courts Act***, and s.24(1) of the ***Charter***)

(Filed this day of September, 2012)

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Solicitor for the Plaintiffs

I HEREBY CERTIFY that the above document is a true copy of the original issued out of / ~~filed in~~ the Court on the
day of SEP 2 1 2012 A.D. 20
Dated this day of SEP 2 1 2012 20

CHARLES SKELTON
REGISTRY OFFICER
AGENT DU GREFFE