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F I L E D	FEDERAL COURT COUR FÉDÉRALE February 07, 2024 07 février 2024
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Court File No.

FEDERAL COURT

BETWEEN:

CANADIAN ASSOCIATION OF PPE MANUFACTURERS, THE BIG-NANO CORPORATION, CANADA MASQ CORPORATION, 2256385 ONTARIO INC. O/A CANADA STRONG MASKS, LAYFIELD CANADA LTD., INTERNATIONAL PPE SUPPLY INC., NOVO TEXTILE COMPANY LTD., ORTHOPAEDIC INNOVATION CENTRE INC., PENN PROTECTIVE EQUIPMENT INC., PADM MEDICAL INC., IPC TECHNOLOGIES INC. O/A PRESCIENT, SWENCO LIMITED, TREBOR RX CORP., ROSWELL TEXTILES INC., ROSWELL DOWNHOLE TECHNOLOGIES INC., AND PRECISION ADM INC

The Plaintiffs

-And-

HIS MAJESTY THE KING AND THE ATTORNEY GENERAL OF CANADA

The Defendants

Statement of Claim

TO THE DEFENDANTS:

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

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a 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 plaintiff's solicitor or, if the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, with proof of service, at a local office of this Court

WITHIN 30 DAYS after the day on which this statement of claim is served on you, if you are served in Canada or the United States; or

WITHIN 60 DAYS after the day on which this statement of claim is served on you, if you are served outside Canada and the United States.

TEN ADDITIONAL DAYS are provided for the filing and service of the statement of defence if you or a solicitor acting for you serves and files a notice of intention to respond in Form 204.1 prescribed by the Federal Courts Rules.

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.

Date: _____

Issued by: _____
(Registry Officer)

Address of local office: Thomas D'Arcy McGee Building
90 Sparks Street, 5th Floor
Ottawa, Ontario
K1A 0H9

TO: Attorney General of Canada
Civil Litigation Section
Department of Justice Canada
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I. The Parties

1. The Plaintiff, The BIG-nano Corporation, is a corporation, incorporated under the laws of the Province of Ontario and carrying on business throughout Canada.
2. The Plaintiff, Canada Masq Corporation, is a corporation, incorporated under the laws of the Province of Ontario and carrying on business throughout Canada.
3. The Plaintiff, 2256385 Ontario Inc. o/a Canada Strong Masks, is a corporation, incorporated under the laws of the Province of Ontario and carrying on business throughout Canada.
4. The Plaintiff, Layfield Canada Ltd., is a corporation, incorporated under the laws of the Province of British Columbia and carrying on business throughout Canada.
5. The Plaintiff, International PPE Supply Inc. is a corporation, incorporated under the laws of the Province of Ontario and carrying on business throughout Canada.
6. The Plaintiff, Novo Textile Company Ltd., is a corporation, incorporated under the laws of the Province of British Columbia and carrying on business throughout Canada.
7. The Plaintiff, Orthopaedic Innovation Centre Inc., is a corporation, incorporated under the laws of the Province of Manitoba and carrying on business throughout Canada.
8. The Plaintiff, PENN Protective Equipment Inc., is a corporation, incorporated under the laws of the Province of Ontario and carrying on business throughout Canada.
9. The Plaintiff, IPC Technologies Inc. o/a Prescient, is a corporation, incorporated under the laws of the Province of Manitoba and carrying on business throughout Canada.
10. The Plaintiff, Swenco Limited, is a corporation, incorporated under the laws of the Province of Ontario and carrying on business throughout Canada.
11. The Plaintiff, Trebor Rx International LLC, is a corporation, incorporated under the laws of the Province of Ontario and carrying on business throughout Canada.
12. The Plaintiff, PADM Medical Inc., is a corporation, incorporated under the laws of Canada and carrying on business throughout Canada.
13. The Plaintiff, Roswell Textiles Inc., is a corporation, incorporated under the laws of Canada and carrying on business throughout Canada.
14. The Plaintiff, Roswell Downhole Technologies Inc., is a corporation, incorporated under the laws of Canada and carrying on business throughout Canada.
15. The Plaintiff, Precision ADM Inc., is a corporation, incorporated under the laws of Canada and carrying on business throughout Canada.

(Collectively, the aforesaid Plaintiffs shall be referred to as the “**Plaintiffs**”)

16. The Defendants are His Majesty the King, and the Attorney General of Canada being the statutory nominee of His Majesty who proceedings against the Crown may be taken in the name of pursuant to s.23(1) of the *Crown Liability and Proceedings Act* R.S.C., 1985, c. C-50 (hereinafter the Defendants shall collectively be referred to as the “**Government of Canada**”).
17. The Plaintiffs state, and the fact is, they are all Canadian small and medium-sized enterprises (“**Canadian SMEs**”) in the Canadian manufacturing industry that were enticed by the misrepresentations of the Government of Canada to manufacture Personal Protective Equipment (“**PPE**”) to combat acute respiratory syndrome coronavirus 2 (“**SARS-CoV-2**”) which caused a pandemic of Coronavirus Disease 2019 (“**COVID-19**”) beginning March 2020.
18. The Plaintiff, Canadian Association of PPE Manufacturers (hereinafter referred to as “**CAPPEM**” and not as the “Plaintiffs” defined above) is an industry association of Canadian SMEs manufacturing PPE to combat SARS-CoV-2 and COVID-19 formed by the Plaintiffs and Canadian SMEs manufactures to represent them in their dealings with the Government of Canada.

II. The Claim

a. Brief Summary of the Plaintiffs’ and CAPPEM’s Claim

19. The Plaintiffs and CAPPEM state they had a special relationship with the Government of Canada that gave rise to a duty of care to support the SME’s that pivoted and retooled their businesses to manufacture PPE for the Canadian people. This promise came from the very top of our Canadian government and was supported and propagated through all the departments that dealt with the plaintiffs.
20. The Government of Canada made negligent misrepresentations to the Plaintiffs and CAPPEM causing the Plaintiffs and CAPPEM to invest in PPE innovations, manufacturing, and production.
21. The misrepresentations of the Government of Canada to the Plaintiffs and CAPPEM included misrepresentations of markets, direct supports, flexible government procurement, and long-term support.
22. The misrepresentations of the Government of Canada to the Plaintiffs and CAPPEN were a continuing course of action of the Government of Canada occurring for over a three (3) year period beginning March 20, 2020.
23. The Government of Canada’s misrepresentations to the Plaintiffs and CAPPEM caused collective damages to the Plaintiffs and CAPPEM of approximately \$88,400,000.00 in

investment losses, and a further \$5,404,500,000.00 in projected lost market opportunity losses over a 10-year period.

b. Facts and Particulars Giving Rise to the Plaintiffs' and CAPPEM's Claim

24. In March of 2020, SARS-CoV-2 caused a pandemic of COVID-19.

25. The Government of Canada responded to the pandemic in several ways, one being the Government of Canada's plan titled Canada's Plan to Mobilize Industry to fight COVID-19 (hereinafter "CPMI") announced on March 20, 2020.

i. The Government of Canada's March 2020 CPMI Representation

26. The Government of Canada made representation to the Plaintiffs through its CPMI that the Government of Canada is mobilizing Canadian businesses and manufacturers like the Plaintiffs' to help fight the spread of COVID-19 and protect the health and safety of all Canadians.

27. The Government of Canada made representation through its CPMI to the Plaintiffs that the CPMI will introduce new measures to directly support businesses like the Plaintiffs' to rapidly scale up production or re-tool their manufacturing lines to develop products made in Canada that will help in the fight against COVID-19.

28. The Government of Canada made representation through its CPMI to the Plaintiffs that it will create pathways to deploy resources to domestic manufacturers and businesses like the Plaintiffs' so they can help during this critical time.

29. The Government of Canada made representation through its CPMI to the Plaintiffs the Government of Canada will introduce new measures to directly support businesses like the Plaintiffs' to rapidly scale up production or re-tool their manufacturing lines to develop products made in Canada that will help in the fight against COVID-19. The CPMI stated these products could include critical health and safety supplies and equipment, including personal protective equipment, sanitization products, diagnostic and testing products, and disease tracking technology.

30. The Government of Canada made representation to the Plaintiffs through its CMPI that its focus would be on domestic capacity building, innovative solutions, and procurement of essential supplies.

31. The Government of Canada made representation to the Plaintiffs through its CPMI that it would build the industrial capability needed to manufacture critical supplies at scale in Canada. This will be done either by re-tooling the manufacturing lines of existing Canadian businesses like the Plaintiffs or rapidly scaling up the production of others that already produce these products.

32. The Government of Canada made representation to the Plaintiffs through its CPMI that it would refocus the Government of Canada's existing industrial and innovation programs, by adding to their mandate a requirement that they prioritize the fight against COVID-19. This included the Strategic Innovation Fund to deliver direct support to Canadian companies like the Plaintiffs for large-scale projects, the National Research Council of Canada to expedite research and development with small and medium-sized enterprises like the Plaintiffs, and Innovation Superclusters to tap into a national network of 1,800 members, and Innovative Solutions Canada to help companies like the Plaintiffs commercialize products more quickly.
33. The Government of Canada made representation through its CPMI to the Plaintiffs that it would provide direct support to key Canadian companies like the Plaintiffs that are working on large-scale and later-stage research and development projects aimed, in the immediate term, at producing countermeasures to COVID-19.
34. The Government of Canada made representation through its CPMI to the Plaintiffs that it would challenge innovative companies like the Plaintiffs to develop research-based solutions, technologies, and products that can address a variety of COVID-19 issues.
35. The Government of Canada made representation through its CPMI to the Plaintiffs that it would source equipment needed to support Canada's response to COVID-19 here in Canada. The Government of Canada will use existing supply arrangements and innovative, flexible procurement approaches. It is also reaching out to suppliers to identify and purchase equipment, supplies, and services needed for Canada's response to COVID-19. With a view to longer-term support, the Government of Canada will ensure procurement flexibility to support innovation and build domestic manufacturing capacity to supply critical health supplies to Canadians by companies like the Plaintiffs.

(Collectively the "**March 2020 CPMI Representations**")

ii. Happenings after March 2020 CPMI Representations

36. As a result of the Government of Canada's March 2020 CPMI Representations, and the Plaintiffs' reliance on same, the Plaintiffs were enticed to engage with the Government of Canada in carrying out the CPMI regarding the Plaintiffs investing in and retooling their manufacturing operations to manufacture and produce PPE to combat COVID-19. But for the Government of Canada's March 2020 CPMI Representations, the Plaintiffs would not have engaged with the Government of Canada as they did.
37. On March 30, 2020, the Government of Canada announced new partnerships with Canadian industries to fight COVID-19, including \$50,000,000.00 in new funding to Next Generation Manufacturing Canada ("**NGen**"), a not-for-profit industry-led organization leading Canada's Global Innovation Cluster for Advanced Manufacturing that acts as the agent of the Government of Canada in carrying out its policy. The \$50,000,000.00 was provided by the Government of Canada to NGen to support immediate development of medical masks, respirators, filtration materials and other medical items on behalf of government and to support long-term sustainable domestic

industries including the manufacture of medical masks, respirators and filtration materials.

38. In April through October of 2020, the Government of Canada solicited help from the Plaintiffs through a series of Challenge Programs and through National Research Council's ("NRC") Industrial Research Assistance Program Innovation ("IRAP") Technology Advisors ("ITAs") to develop masks, respirators, and filtration materials.
39. In May of 2020 the Government of Canada identified PPE products of masks & respirators as items vital as matter of National Security in the event of an airborne pandemic. As a result, the Government of Canada enacted a National Security Exception for procurement but did not contract with the Plaintiffs or any other Canadian SME manufacturers of PPE.
40. In May through August of 2020, the Government of Canada via the ITAs working for the NRC IRAP directed the Plaintiffs to participate in the NGen COVID-19 Response Challenges to develop masks, respirators, filtration materials and other items to aid the Government of Canada's response to Covid-19.
41. In May of 2020, the Government of Canada via its agent NGen issued COVID-19 Response Challenges 2 & 3 to solicit the Plaintiffs to invest and develop products desired by the Government of Canada to respond to COVID-19.
42. On June 8, 2020, the Government of Canada via it's department Innovation, Science, and Economic Development ("ISED") represented to the Plaintiffs that the long-term, sustainable domestic mask and respirator supply would be comprised of new materials and innovations from a domestic company supply chain by domestic SME's selected by it's agent Ngen, including the Plaintiffs, and that procurement would be by another Ministry.
43. In August 2020, the Government of Canada funded the CSA Group to carry out a study as it's agent, which was led by the University of Toronto with input from numerous Government of Canada Ministries and Departments and domestic manufacturers including the Plaintiffs through NGen to coordinate the development of the domestic supply chain for masks and respirators including innovation, National Standards, redesign of the National Emergency Strategic Stockpile and support for domestic manufacturers including the Plaintiffs. The study was published in May 2021 and titled "Envisioning a Made-in-Canada Pandemic Response Products Ecosystem: Towards Self-Sufficiency and Sustainability".
44. In August of 2020, the Parliamentary Secretary to the Minister of Public Procurement and Services Canada, in his role of determining long-term contracts with the Government of Canada for the supply of masks and respirators represented to the Plaintiffs, including Swenco Ltd., that 50% of the N95 respirator market of the Government of Canada was available to them even after the long-term direct support and procurement contracts made with the Government of Canada with multinationals AMD Medicom Inc. and 3M Company.

45. In September and October 2020, the Government of Canada's agent, NGen, signed contracts with the Plaintiffs authorizing the development of medical masks, respirators and filtration materials necessary to meet the government's objectives.
46. In October 2020, the Government of Canada via NRC IRAP represented to the Plaintiffs that the new mask and respirator manufacturers companies that were selected, sanctioned, authorized or otherwise supported by Government of Canada through NGen or NRC IRAP would have sufficient support and business opportunity with the Government of Canada but that the Government of Canada was now concerned there would be an oversupply of PPE in the future, so the Government was going to advise additional interested parties, but specifically excluding the Plaintiffs, against investing in PPE manufacture.
47. In November 2020, the Government of Canada authorized CSA Group to develop a CSA National Standard for N95 respirators with a mandate to publish within one year. The Plaintiffs worked closely with NRC, NGen, Government of Canada Scientists, and Health Canada to validate the science and testing of materials, masks and respirators to play a leading role in content development to support innovations like better breathability against the protests of foreign-owned 3M. This led to the publication by the CSA Group of the National Standard of Canada, "Performance Requirements for Filtering Respirators" in 2021.
48. In January 2021, the Government of Canada via the Ministry of Innovation, Science & Economic Development renewed the mandate to continue the made in Canada PPE project launched under the CPMI.
49. The Plaintiffs, as Canadian SMEs manufacturing PPE, formed an industry organization to represent them, being CAPPEM.
50. The Government of Canada delegated to NGen, reporting to the Minister of Innovation, Science & Economic Development, the power to authorize industry organizations as a strategically important Industry Cluster in the National Interest, enter into agreements to fund on their behalf; and negotiate with the Government of Canada, and carry out industry collaboration.
51. In March 2021 NGen authorizes CAPPEM as a strategically important Industry Cluster in the National Interest; provides a funding agreement to fund CAPPEM, authorizes CAPPEM negotiation of government & industry collaboration, mask materials and products to be developed, timelines, etc. The Plaintiffs state, and the fact is, CAPPEM became the Plaintiffs' representatives in their dealings with the Government of Canada.
52. In May 2021 CSA Group as agent for the Government of Canada released the results of the study titled "Envisioning a Made-in-Canada Pandemic Response Products Ecosystem: Towards Self-Sufficiency and Sustainability".
53. In June 2021 the Government of Canada represented to CAPPEM and the Plaintiffs that the Government of Canada will agree to a 10-year contract with CAPPEM and the

Plaintiffs to rebalance the inequity of the Government of Canada contracting for PPE with foreign and multinational companies over the Plaintiffs and CAPPEM members.

54. In June 2021 the Government of Canada represents to CAPPEM that the Government of Canada has a desire to, and will welcome help to, engage opposition parties and Provinces uniting to purchase PPE from the Plaintiffs and CAPPEM members.
55. In Summer 2021, the Government of Canada funded their agent, the CSA Group, to conduct a second study led by University of Toronto with input from numerous Government Ministries and Departments and domestic manufacturers including CAPPEM and the Plaintiffs, through NGEN to further inform and coordinate the development of the domestic supply chain for masks and respirators including innovation, National Standards, redesign of the National Emergency Strategic Stockpile and support for domestic manufacturers including the Plaintiffs. The results of the study were published December 2021 and titled “Realizing A Made-in Canada Pandemic Response Products Ecosystem”.
56. On December 16, 2021 a Unanimous Consent Motion is passed in House of Commons that all masks & respirators purchased by Government of Canada are to be from domestic manufacturers of PPE, like CAPPEM and the Plaintiffs.
57. In January 2022, the NRC solicits an update meeting with CAPPEM to determine the state of the domestic mask and respirator industry, material and product development, and availability of stock and supply, in order to advise the rest of the Government of Canada facilitating informed procurement in the light of pending shortages due to the COVID-19 variant Omicron.
58. On January 24, 2022 the Speaker of the House Anthony Rota in a letter to CAPPEM and the Plaintiffs confirms the House of Commons will comply with the Unanimous Consent Motion to buy masks and respirators from domestic manufacturers like the Plaintiffs.
59. In January 2022, the Government of Canada Treasury Board Secretariat, along with several other Government of Canada departments, represents to CAPPEM that the Government of Canada is very interested in implementing CAPPEM’s vendor-held managed inventory proposal for the National Emergency Strategic Stockpile of PPE, and that the Government of Canada has a similar arrangement for pharmaceuticals.
60. In February 2022 the Government of Canada via Public Services and Procurement Canada confirm and represent to CAPPEM and the Plaintiffs that the Government of Canada will also comply with Unanimous Consent Motion and will buy PPE masks and respirators from domestic manufacturers, being members of CAPPEM and the Plaintiff, thereby waiving parliamentary privilege over the representations in the motion passed in the House of Commons and the Speaker of the House’s representations in December 2021 and January 2022, respectively.
61. In the Spring of 2022 the Government of Canada represents to the Plaintiffs via the PPE Procurement Guidance that the Government of Canada will lead by example and be

buying plant-based and reusable masks and respirators (“**Green PPE**”), in compliance with the Government of Canada’s Greening Government Strategy and the Government of Canada’s Actions on Plastic Waste in Federal Operations policy.

62. In August 2022, the NRC represents to CAPPEM and the Plaintiffs that on May 9, 2022 the Government of Canada decided to initiate the process of procurement of disposable respirators from CAPPEM members, being the Plaintiffs, for the NRC and the first order had just been received and distributed.
63. In September 2022 at a meeting between CAPPEM, the Plaintiffs and the Government of Canada, the Assistant Deputy Minister of Public Procurement and Services Canada, and the Director General of Strategic Acquisitions of the Public Service and Procurement Canada the Government of Canada stated to CAPPEM and the Plaintiffs that the Public Health Agency of Canada needed to give direction to Public Procurement and Services Canada in order to issue contracts to purchase PPE for the National Emergency Strategic Stockpile or any Government of Canada departments and agencies. The Assistant Deputy Minister of Public Procurement and Services Canada, and the Director General of Strategic Acquisitions of the Public Service and Procurement Canada told CAPPEM and the Plaintiffs the Public Health Agency of Canada had never given that direction at any time.
64. In December of 2022 in a meeting between CAPPEM, the Plaintiffs and the Government of Canada, the Vice President of Emergency Management of the Public Health Agency of Canada and the Director General National Emergency Strategic Stockpile told CAPPEM and the Plaintiff the Government of Canada is not interested in buying from the Plaintiffs for the Strategic Stockpile at this time and advised to check back on the appropriate Government of Canada website at a later date. Further, the Government of Canada stated it is not interested in using the National Emergency Strategic Stockpile for distribution to the disadvantaged, those in need, or any other purpose other than stocking an 8-week moving average supply of whatever the Provinces & Territories currently order. Further, it was stated by the Government of Canada they are not interested in stocking Green PPE in the Strategic Stockpile or buying any PPE from the Plaintiffs for the National Emergency Strategic Stockpile to support domestic SMEs at all.
65. In March 2023 the Assistant Deputy Minister of Public Procurement and Services Canada, directs CAPPEM to meet with the Director General of Strategic Acquisitions of the Public Service and Procurement Canada, where the Government of Canada discusses future purchases of PPE, and confirms the Government of Canada’s socio-economic objectives, green considerations, and diversity and inclusion of the supplier base are current priorities at Public Procurement and Services Canada and that future requirements fall under the responsibility of their client departments.
66. In April 2023 CAPPEM met with the Director General of Strategic Acquisitions of the Public Service and Procurement Canada for a briefing on the status of the domestic medical mask and respirator industry, supply chain, availability of ‘green’ plant-based and reusable products, options to supply and manage the National Emergency Strategic Stockpile. Public Procurement and Services Canada expressed interest in moving

forward and committed to briefing the Public Health Agency of Canada to inform and initiate procurement.

67. In May 2023 the Director General of Strategic Acquisitions of the Public Service and Procurement Canada represented to CAPPEM that a CAPPEM presentation had been shared with Public Health Agency of Canada, but no meeting date had been set yet.
68. In August of 2023 the Government of Canada via the Chief Public Health Officer of the Public Health Agency of Canada represented to CAPPEM and the Plaintiffs that the Government of Canada will revamp the National Emergency Strategic Stockpile of PPE by Spring of 2024.
69. In September 2023 the Government of Canada's Director General Strategic Acquisitions of Public Procurement and Services Canada, represented to CAPPEM and the Plaintiffs that the Government of Canada will support CAPPEM and the Plaintiffs when procurement to replace the National Emergency Strategic Stockpile is initiated.
70. In September 2023 the Director General of the National Emergency Strategic Stockpile, Emergency Management Branch, of the Public Health Agency of Canada told CAPPEM and the Plaintiffs that the Government of Canada would not be procuring masks and respirators for the National Emergency Strategic Stockpile from members of CAPPEM and the Plaintiffs.
71. CAPPEM and the Plaintiffs state and the fact is that despite, and directly contrary to, the Government of Canada's representation to support the domestic industry for the long-term, the Government of Canada refused to respond to CAPPEM and Plaintiffs' request to support Canadian SME manufacturers against the actions of foreign-owned multinational 3M running roughshod over the CSA Group Committee to overturn or prevent consensus for key performance requirements for respirators intended to benefit Canadians and Canadian industry like CAPPEM and the Plaintiffs.
72. CAPPEM and the Plaintiffs state and the fact is that despite, and directly contrary to, the Government of Canada's representation to support the domestic industry for the long-term, the Government of Canada refused to support Canadian SME manufacturers, including the CAPPEM and the Plaintiffs, and instead supported foreign competition against Canadian SME manufacturers such as CAPPEM and the Plaintiffs.
73. CAPPEM and the Plaintiffs state and the fact is that despite, and directly contrary to, the Government of Canada's representation to support the domestic industry for the long-term, the Government of Canada refused to replace the US-based NIOSH certification requirements for procurement with the Canadian CSA Certification requirements giving benefit to foreign manufacturers over Canadian domestic manufacturers including the CAPPEM and the Plaintiffs, depriving CAPPEM and the Plaintiffs fair and equitable access to the Canadian market.
74. CAPPEM and the Plaintiffs state and the fact is that despite, and directly contrary to, the Government of Canada's representation to support the domestic industry for the long-

term, the Government of Canada led the Government of the Province of Ontario to enter into a joint agreement with 3M for the supply of N95 respirators thus depriving Canadian SMEs, including CAPPEM and the Plaintiffs, of fair and equitable access to the Ontario N95 market.

75. CAPPEM and the Plaintiffs state and the fact is that despite, and directly contrary to, the Government of Canada's representation to support the domestic industry for the long-term, the Government of Canada's 10 year contract with AMD Medicom Inc. for the supply of N95 respirators and medical masks led the Government of the Province of Quebec to enter into a matching 10 year agreement with AMD Medicom for the supply of N95 respirators and medical masks thus depriving Canadian SMEs, including CAPPEM and the Plaintiffs, of fair and equitable access to the Quebec market.
76. CAPPEM and the Plaintiffs state and the fact is that despite, and directly contrary to, the Government of Canada's representation to support the domestic industry for the long-term, the Government of Canada, through their action to issue long-term contracts to the legacy pre-pandemic multinational manufacturers, inspired and encouraged the two National Hospital Buying Groups, being HealthPro and Mohawk MedBuy, to issue long-term contracts to the legacy pre-pandemic multinational manufacturers for the supply of N95 respirators and medical masks thus depriving Canadian SMEs, including CAPPEM and the Plaintiffs, of fair and equitable access to the Canadian Hospital market.
77. CAPPEM and the Plaintiffs state and the fact is that despite, and directly contrary to, the Government of Canada's representation via Public Services and Procurement Canada in February 2022 that they would buy medical masks and respirators only from the Plaintiffs and Canadian manufacturers for any and all of the approximately 207 Government of Canada Departments and agencies served, no contracts, standing orders or purchase orders were issued to CAPPEM and the Plaintiffs up to and including December 2023.
78. CAPPEM and the Plaintiffs state and the fact is that despite, and directly contrary to, the Government of Canada's representation via Public Services and Procurement Canada in February 2022 that they would buy medical masks and respirators only from the Plaintiffs and Canadian manufacturers, the Request for Proposal ("**RFP**") issued on behalf of Elections Canada in December 2023, referenced international trade agreements, and lowest price, but failed to reference medical masks to the extent possible, be made in Canada until later added by addendum after forceful advocacy by CAPPEM and the Plaintiffs.
79. CAPPEM and the Plaintiffs state and the fact is that despite, and directly contrary to, the Government of Canada's representation to partner with industry to defeat the virus and to provide direct support for industry, the Government of Canada, through their guidance from the Public Health Agency of Canada, inappropriately misdirected 40 million Canadians away from buying and using N95, KN95, 95PFE and CA-N95 respirators and medical masks, and toward making, buying and wearing cloth masks for at least the first two-year period of the pandemic thus depriving CAPPEM and the Plaintiffs of fair and equitable access to the Canadian Public market.

80. CAPPEM and the Plaintiffs state and the fact is that despite, and directly contrary to, the Government of Canada's representation to partner with industry to defeat the virus and to provide direct support for industry, the Government of Canada, through the inappropriate abandonment of mask mandate guidance from the Public Health Agency of Canada in February 2022, inappropriately misdirected 40 million Canadians away from buying and using N95, KN95, 95PFE and CA-N95 respirators and medical masks during at least the second two-year period of the pandemic thus depriving CAPPEM and the Plaintiffs of fair and equitable access to the Canadian Public market.

81. CAPPEM and the Plaintiffs state and the fact is that despite, and directly contrary to, the Government of Canada's representation to partner with industry to defeat the virus and to provide direct support for industry, the Government of Canada, through the Public Health Agency of Canada, refused to support the Plaintiffs' initiative to develop a CSA National Standard for Bioaerosol Respirators for the Public to protect the public against COVID-19 and future pandemics thus depriving CAPPEM and the Plaintiffs of fair and equitable access to the Canadian Public market.

iii. Negligent Misrepresentation by the Government of Canada and Damages to CAPPEM and the Plaintiffs

82. CAPPEM and the Plaintiffs state, and the fact is a special relationship between CAPPEM, the Plaintiffs and the Government of Canada arose beginning March 20, 2020 or as soon thereafter as CAPPEM, the Plaintiffs and the Government of Canada's relationship crystallized into a special relationship based on the facts herein.

83. CAPPEM and the Plaintiffs state the special relationship between them, and the Government of Canada gave rise to the Government of Canada owing CAPPEM and the Plaintiffs a duty of care. In particular, the Government of Canada had a duty of care to not make misrepresentations to the Plaintiffs and CAPPEM that they knew or ought to have known the Plaintiffs and CAPPEM would rely upon to the Plaintiffs' and CAPPEM's detriment.

84. The Plaintiffs and CAPPEM state, and the fact is, the representation of the Government of Canada to the Plaintiffs and CAPPEM as plead above herein were untrue, inaccurate, or misleading, thereby constituting misrepresentations.

85. The Plaintiffs and CAPPEM state, and the fact is, the conduct and misrepresentations of the Government of Canada were not a course or principle of action that were based on public policy consideration, such as economic, social, and political factors, that would dictate the duty of care of the Government of Canada to the Plaintiffs and CAPPEM not arising.

86. Further, and in the alternative, if the conduct and misrepresentations of the Government of Canada were a course or principle of action that were based on public policy consideration, such as economic, social, and political factors, which is expressly not admitted by denied, the Plaintiffs and CAPPEM state, and the fact is, the conduct and

misrepresentations of the Government of Canada were irrational and taken in bad faith, and therefore the facts do not dictate a non-existence of a duty of care of the Government of Canada to the Plaintiffs and CAPPEM.

87. The Plaintiffs and CAPPEM state, and the fact is, over the course of the relationship between the Plaintiffs and the Government of Canada beginning March 20, 2020 and up to September 2023 the Plaintiffs collectively invested \$88,400,000.00 into PPE manufacturing, and lost that same amount, all due to the negligent misrepresentation of the Government of Canada. As to particulars of losses of investment of each of the Plaintiffs and CAPPEM individually:

- a. CAPPEM invested and lost \$600,000.00 due to the Government of Canada's negligent misrepresentations.
- b. The Plaintiff, The BIG-nano Corporation, invested and lost \$11,100,000.00 due to the Government of Canada's negligent misrepresentations.
- c. The Plaintiff, Canada Masq Corporation, invested and lost \$6,000,000.00 due to the Government of Canada's negligent misrepresentations.
- d. The Plaintiff, 2256385 Ontario Inc. o/a Canada Strong Masks, invested and lost \$100,000.00 due to the Government of Canada's negligent misrepresentations.
- e. The Plaintiff, Layfield Canada Ltd., invested and lost \$1,700,000.00 due to the Government of Canada's negligent misrepresentations.
- f. The Plaintiff, International PPE Supply Inc., invested and lost \$1,000,000.00 due to the Government of Canada's negligent misrepresentations.
- g. The Plaintiff, Novo Textile Company Ltd., invested and lost \$10,000,000.00 due to the Government of Canada's negligent misrepresentations.
- h. The Plaintiff, Orthopaedic Innovation Centre Inc., invested and lost 1,000,000.00 due to the Government of Canada's negligent misrepresentations.
- i. The Plaintiff, PENN Protective Equipment Inc., invested and lost \$1,500,000.00 due to the Government of Canada's negligent misrepresentations.
- j. The Plaintiffs, PADM Medical Inc., Roswell Downhole Technologies Inc., and Precision ADM Inc., invested and lost \$10,000,000.00 due to the Government of Canada's negligent misrepresentations.
- k. The Plaintiff, IPC Technologies Inc. o/a Prescient, invested and lost \$15,000,000.00 due to the Government of Canada's negligent misrepresentations.

- l. The Plaintiff, Swenco Limited, invested and lost \$10,000,000.00 due to the Government of Canada's negligent misrepresentations.
 - m. The Plaintiff, Trebor Rx Corp., invested and lost \$15,000,000 due to the Government of Canada's negligent misrepresentations.
 - n. The Plaintiff, Roswell Textiles Inc., invested and lost \$6,000,000.00 due to the Government of Canada's negligent misrepresentations.
88. The Plaintiffs and CAPPEM state, and the fact is, they have collectively suffered \$5,404,500,000.00 in lost market opportunity losses over a 10-year period due to the Government of Canada's negligent misrepresentations. As to particular lost market opportunity losses over a 10-year period of each of the Plaintiffs and CAPPEM individually:
- a. CAPPEM loss \$27,000,000.00 in market opportunity over a 10-year period due to the Government of Canada's negligent misrepresentations.
 - b. The Plaintiff, The BIG-nano Corporation, lost \$170,000,000.00 in market opportunity over a 10-year period due to the Government of Canada's negligent misrepresentations.
 - c. The Plaintiff, Canada Masq Corporation, lost \$579,500,000.00 in market opportunity over a 10-year period due to the Government of Canada's negligent misrepresentations.
 - d. The Plaintiff, 2256385 Ontario Inc. o/a Canada Strong Masks, lost \$205,000,000.00 in market opportunity over a 10-year period due to the Government of Canada's negligent misrepresentations.
 - e. The Plaintiff, Layfield Canada Ltd., lost \$100,000,000.00 in market opportunity over a 10-year period due to the Government of Canada's negligent misrepresentations.
 - f. The Plaintiff, International PPE Supply Inc., lost \$10,000,000.00 in market opportunity over a 10-year period due to the Government of Canada's negligent misrepresentations.
 - g. The Plaintiff, Novo Textile Company Ltd., lost \$150,000,000.00 in market opportunity over a 10-year period due to the Government of Canada's negligent misrepresentations.
 - h. The Plaintiff, Orthopaedic Innovation Centre Inc., lost \$10,000,000.00 in market opportunity over a 10-year period due to the Government of Canada's negligent misrepresentations.

- i. The Plaintiff, PENN Protective Equipment Inc., lost \$25,000,000.00 in market opportunity over a 10-year period due to the Government of Canada's negligent misrepresentations.
- j. The Plaintiff, PADM Medical Inc., Roswell Downhole Technologies Inc., and Precision ADM Inc., lost \$1,000,000,000.00 in market opportunity over a 10-year period due to the Government of Canada's negligent misrepresentations.
- k. The Plaintiff, IPC Technologies Inc. o/a Prescient, lost \$1,000,000,000.00 in market opportunity over a 10-year period due to the Government of Canada's negligent misrepresentations.
- l. The Plaintiff, Swenco Limited, lost \$245,000,000.00 in market opportunity over a 10-year period due to the Government of Canada's negligent misrepresentations.
- m. The Plaintiff, Trebor Rx Corp., lost \$1,710,000,000.00 in market opportunity over a 10-year period due to the Government of Canada's negligent misrepresentations.
- n. The Plaintiff, Roswell Textiles Inc., lost \$200,000,000.00 in market opportunity over a 10-year period due to the Government of Canada's negligent misrepresentations.

III. Relief Sought

89. Damages of \$88,400,000.00 as against the Government of Canada and payable to CAPPEM and the Plaintiffs for investment losses.
90. Damages of \$5,404,500,000.00 as against the Government of Canada and payable to CAPPEM and the Plaintiffs for projected lost market opportunity losses over a 10-year period.
91. Costs as against the Government of Canada and payable to CAPPEM and the Plaintiffs on a solicitor-client basis, or such costs as the Court deems just and reasonable.

IV. Statutes Plead

92. CAPPEM and the Plaintiffs plead and rely upon the following statutes:
 - a. *Federal Courts Act*, R.S.C., 1985, c. F-7.
 - b. *Crown Liability and Proceedings Act*, R.S.C., 1985, c. C-50.
 - c. *Federal Courts Rules*, SOR/98-106.
93. CAPPEM and the Plaintiffs reserve their right to plead any other such statute not plead herein.

CAPPEM and the Plaintiffs propose that this action be tried at Ottawa, Ontario.

February 7, 2024



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