



Court File No.:

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

LANA PARRIS

Plaintiff

and

FIRMENICH INTERNATIONAL SA, DSM-FIRMENICH AG, FIRMENICH  
OF CANADA LIMITED, GIVAUDAN SA, GIVAUDAN CANADA CO.,  
INTERNATIONAL FLAVOURS AND FRAGRANCES INC.,  
INTERNATIONAL FLAVOURS & FRAGRANCES INC. (CANADA) LTD,  
SYMRISE AG, and SYMRISE PET FOOD CANADA (SPF)

Defendants

Proceeding commenced under the *Class Proceedings Act, 1992*, SO 1992, c 6

**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 an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

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Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date	_____	Issued by	_____
			Local Registrar
		Address of court office:	Superior Court of Justice 161 Elgin St Ottawa, ON K2P 2K1

TO: FIRMENICH INTERNATIONAL SA  
Rue de la Bergere 7  
1242 Satigny  
Switzerland

AND TO: DSM-FIRMENICH AG  
Wurmisweg 576  
4303 Kaiseraugst  
Switzerland

AND TO: FIRMENICH OF CANADA LIMITED  
40 King Street West, Suite 210  
Toronto, ON M5H 3C2

AND TO: GIVAUDAN SA  
Chemin de la Parfumerie 5  
1214 Vernier  
Switzerland

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AND TO: GIVAUDAN CANADA CO.  
2400 Matheson Blvd E  
Mississauga, ON L4W 5G9

AND TO: INTERNATIONAL FLAVOURS AND FRAGRANCES INC.  
521 West 57<sup>th</sup> Street  
New York, NY 10019  
United States

AND TO: INTERNATIONAL FLAVOURS & FRAGRANCES INC. (CANADA) LTD.  
931 Equestrian Court  
Oakville, ON L6L 6L7

AND TO: SYMRISE AG  
Mühlenfeldstr. 1 37603  
Holzminden, Niedersachsen  
Germany

AND TO: SYMRISE PET FOOD CANADA (SPF)  
1876 Avenue 94  
Saint-Blaise-sur-Richelieu, QC J0J 1W0

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## CLAIM

### I. OVERVIEW

1. This action arises from a conspiracy, combination, agreement or arrangement to fix, raise, maintain or control prices and allocate the market and customers in Canada and elsewhere for Fragrances used in thousands of products, ranging from luxury fragrances and cosmetics to everyday consumer goods such as breakfast cereal, shampoo, body wash, toothpaste, detergents, personal care products, cosmetics, and retail fragrances. The defendants also entered into agreements to limit the supply of certain fragrances and prohibited competitors from supplying to certain customers. The unlawful conduct began as early as August 14, 2018, and continued until March 7, 2023. The unlawful conduct will affect prices for thousands of end products for several years, even after the unlawful conduct has stopped. The unlawful conduct targeted all direct and indirect consumers of Fragrances and end products, raising the prices for all members of the Class.
2. As a direct result of the unlawful conduct alleged herein, the plaintiff and other members of the Class paid artificially inflated prices for Fragrances and end products during the Class Period and have thereby suffered losses and damages.

### II. DEFINED TERMS

3. In this claim, the following terms have the following meanings:
  - (a) “**Class**” means the proposed class of all persons in Canada who purchased Fragrances directly from the defendants or purchased products containing the

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defendants' Fragrances during the Class Period. Excluded from the Class are the defendants, their parent companies, subsidiaries, and affiliates.

- (b) “**Class Period**” means the period between August 14, 2018 and the date of certification of this action as a class proceeding;
- (c) “**CMA**” means the United Kingdom Competition and Markets Authority;
- (d) “**Comco**” means the Swiss Competition Commission;
- (e) “**Competition Act**” means the *Competition Act*, RSC 1985, c C-34;
- (f) “**End Products**” means all consumer products that use the defendants' Fragrances, including but not limited to, breakfast cereal, shampoo, body wash, toothpaste, detergents, personal care products, cosmetics and retail fragrances;
- (g) “**FCA**” means Fragrance Creators Association
- (h) “**Fragrances**” means fragrances and fragrance products manufactured, produced, marketed, distributed and supplied by the defendants;
- (i) “**FSAC**” means the Fragrance Science and Advocacy Council; and
- (j) “**IFRA**” means the International Fragrance Association.

### III. RELIEF SOUGHT

4. The plaintiff claims on her own behalf and on behalf of the Class:

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- (a) A declaration that the defendants unlawfully conspired, combined, agreed or arranged with each other and other unknown conspirators to raise, maintain, fix and/or stabilize the price of Fragrances sold in Canada and elsewhere during the Class Period;
- (b) Damages in the amount of \$1,000,000,000 for:
  - (i) Breach of Part VI of the Competition Act;
  - (ii) Civil conspiracy; and
  - (iii) Unjust enrichment;
- (c) Punitive, exemplary and aggravated damages in the amount of \$10,000,000;
- (d) Pre-judgment and post-judgment interest in accordance with sections 128-129 of the *Courts of Justice Act*, RSO 1990, c C.43;
- (e) Investigative costs pursuant to section 36 of the *Competition Act*;
- (f) Costs of this proceeding on a full-indemnity basis, plus applicable taxes; and
- (g) Such further and other relief as this court may deem just.

#### **IV. THE PARTIES**

##### **A. The Plaintiff**

5. The plaintiff, Lana Parris, is a resident of Ottawa, Ontario. During the Class Period, she regularly purchased fine fragrances and perfumes containing the defendants' Fragrances.

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These include perfumes sold under the names Coach, Gucci, Issey Miake, Dolce & Gabbana, Giorgio Armani, Givenchy and Tom Ford.

6. All of the perfumes purchased by the plaintiff can be traced back to one or more of the defendants.
7. Firmenich International SA's Fragrances are used in the following of the above perfumes:
  - (a) Coach;
  - (b) Gucci;
  - (c) Issey Miake;
  - (d) Dolce & Gabbana; and
  - (e) Giorgio Armani
8. Tom Ford perfumes can be traced back to International Flavours and Fragrances Inc. and Givaudan International SA.
9. Givenchy perfumes can be traced back to Symrise AG and International Flavours and Fragrances Inc.
10. As a result of the conduct alleged below, the plaintiff overpaid and therefore suffered damages. The damages suffered by the plaintiff are equal to the differences between the

artificially inflated prices that she paid for the Fragrances and end products and the prices that she should have paid in a competitive market system.

**B. The Defendants**

*(i) Firmenich Defendants*

11. Firmenich International SA is a private company engaged in the manufacture, production, marketing, distribution, and supply of Fragrances. Its headquarters are located at Rue de la Bergere 7, Satigny CH-1242, Switzerland. In May 2023 Firmenich merged with Koninklijke DSM N.V to form DSM-Firmenich AG (Geneva). On May 09, 2023, Firmenich International SA became a wholly-owned subsidiary of DSM-Firmenich AG. Firmenich of Canada Limited is Firmenich International SA's Canadian subsidiary.
12. During the Class Period, Firmenich International SA, DSM-Firmenich AG and Firmenich of Canada Limited (collectively "**Firmenich**") engaged in the manufacture, production, marketing, distribution, and supply of Fragrances throughout Canada, either directly, through their predecessors, affiliates and/or subsidiaries, or indirectly through end products that use their Fragrances.
13. Firmenich of Canada Limited is Firmenich International SA and DSM-Firmenich AG's agent in Canada. Firmenich of Canada Limited is engaged in the manufacture, production, marketing, distribution, and supply of Fragrances in Canada. Firmenich of Canada Limited implemented Firmenich's price-fixing arrangements within Canada for the purposes of the conduct described below.



**(ii) Givaudan Defendants**

14. Givaudan International SA is a public company engaged in the manufacture, production, marketing, distribution and supply of Fragrances. Its headquarters are located at Chemin de la Parfumerie 5, 1214 Vernier, Switzerland. Givaudan Canada Co. is Givaudan International SA's Canadian subsidiary and operates out of 2400 Matheson Blvd E, Mississauga, ON L4W 5G9.
15. During the Class Period, Givaudan International SA, and Givaudan Canada Co. (collectively "**Givaudan**") engaged in the manufacture, production, marketing, distribution, and supply of Fragrances throughout Canada, either directly, through their predecessors, affiliates and/or subsidiaries, or indirectly through end products that use their Fragrances.
16. Givaudan Canada Co. is Givaudan International SA's agent in Canada. Givaudan Canada Co. is engaged in the manufacture, production, marketing, distribution, and supply of Fragrances in Canada. Givaudan Canada Co. implemented Givaudan's price-fixing arrangements within Canada for the purposes of the conduct described below.

**(iii) IFF Defendants**

17. The defendant International Flavours and Fragrances Inc. is a publicly traded company which is engaged in the manufacture, production, marketing, distribution, and supply of Fragrances. Its headquarters are located at 521 West 57<sup>th</sup> Street, New York, NY 10019, United States. International Flavours and Fragrance Inc (Canada) Ltd. is its Canadian subsidiary.

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18. During the Class Period, International Flavours and Fragrances Inc. and International Flavours and Fragrances Inc (Canada) Ltd. (collectively “**IFF**”) engaged in the manufacture, production, marketing, distribution, and supply of Fragrances throughout Canada, either directly, through their predecessors, affiliates and/or subsidiaries, or indirectly through end products that use their Fragrances.
19. International Flavours and Fragrance Inc (Canada) Ltd. is International Flavours and Fragrance Inc.’s agent in Canada. International Flavours and Fragrance Inc (Canada) Ltd. is engaged in the manufacture, production, marketing, distribution, and supply of Fragrances in Canada. International Flavours and Fragrance Inc (Canada) Ltd. implemented IFF’s price-fixing arrangements within Canada for the purposes of the conduct described below.  
  
*(iv) Symrise Defendants*
20. Symrise AG is a publicly traded company engaged in the manufacture, production, marketing, distribution, and supply of Fragrances. It is headquartered at Mühlenfeldstr. 1 37603, Holzminden, Niedersachsen Germany. Its Canadian subsidiary is Symrise Pet Food Canada (SPF).
21. During the Class Period, Symrise AG and Symrise Pet Food Canada (SPF) (collectively “**Symrise**”) engaged in the manufacture, production, marketing, distribution, and supply of Fragrances throughout Canada, either directly, through their predecessors, affiliates and/or subsidiaries, or indirectly through end products that use their Fragrances.

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22. Symrise Pet Food Canada (SPF) is Symrise AG's agent in Canada. Symrise Pet Food Canada (SPF) is engaged in the manufacture, production, marketing, distribution, and supply of Fragrances in Canada, including for use in pet food. Symrise Pet Food Canada (SPF) implemented Symrise's price-fixing arrangements within Canada for the purposes of the conduct described below.

*(v) Unnamed Co-Conspirators*

23. Various persons, partnerships, sole proprietors, firms, corporations, and individuals not named as defendants in this action, the identities of which are not presently known, may have participated as co-conspirators with the defendants in the unlawful conduct alleged in this statement of claim, and have performed acts and made statements in furtherance of the unlawful conduct.

*(vi) Joint and Several Liability*

24. The defendants are jointly and severally liable for the actions of and damages allocable to all co-conspirators.

25. Whenever reference is made herein to any act, deed or transaction of any corporation, the allegation means that the corporation or limited liability entity engaged in the act, deed, or transaction by or through its officers, directors, agents, employees, or representatives while they were actively engaged in the management, direction, control or transaction of the corporation's business or affairs.

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## **V. FACTS**

### **A. The Fragrance Industry**

26. Fragrances used in fine perfumes and other consumer products are generally not manufactured in-house by the manufacturers of those end products. Typically, these Fragrances are manufactured by the defendants or their competitors and supplied for addition to the end product. In 2020, the Fragrance industry was worth approximately \$56 billion.
27. The defendants are the leaders and major players of the multibillion-dollar Fragrance industry. Collectively, the defendants account for nearly 63% of the global market share for Fragrances, i.e. IFF 22%, Givaudan 18%, and Symrise 12% and Firmenich 11%.
28. The defendants all purport to be an intricate part of everyday consumer's lives. For example, Firmenich claims to be "touching over 4 billion consumers several times a day, in more than 100+ markets". Firmenich Fragrances are used in Flora Gorgeous Gardenia and Bloom by Gucci, Boss Alive EDT and Boss Bottled Marine by Hugo Boss, Kate Spade by Kate Spade New York and Wild Rose by Coach and everyday consumer products like Axe Apollo shower gel and deodorant, Dove body wash and deodorant, and several L'Oréal and Palmolive products. These end products are sold widely in Canada, and have been purchased by members of the Class millions of times since August, 2018.
29. In 2021, Firmenich reported annual revenue of CHF 4.272 billion (\$6.3 billion), out of which CHF 2.855 billion (\$4.2 billion) came from Fragrances. In 2022, Firmenich reported an increase of annual revenue by 11.1% to CHF 4.723 billion (\$6.99 billion), out of which

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CHF 3.141 billion (\$4.6 billion) was attributed to Fragrances. In its annual report for 2022, Firmenich mentioned that the raw material and supply chain markets for 2022 were “challenging”, and Firmenich “like the rest of the industry” faced inflationary pressure on raw material, energy and transportation costs. Despite these global challenges Firmenich was able to increase its revenue in their key geographies, including a 5.1% increase in North America.

30. Givaudan claims to be a world leader in “Taste & Wellbeing” and “Fragrance & Beauty” and to touch the lives of people ten times a day. It also states that its main competitors are the other defendants, being Symrise, DSM-Firmenich and IFF. Givaudan supplies its Fragrances to global, regional and local food, beverage, consumer goods, and cosmetics companies. In 2022, 26% of its sales came from North America, amounting to CHF 1.881 billion (\$2.8 billion).
31. Givaudan’s Fragrances are used in household detergent, deodorants, washing powder, shampoo etc. Fine fragrances account for 20% of Givaudan’s fragrance and beauty sales, and consumer products account for 65% of these sales.
32. IFF claims to be a global leader in food, beverage, health, biosciences, and sensorial experiences, including across key scent categories. IFF claims to touch the lives of thousands of consumers everyday and to craft scents for small niche markets and iconic global brands for fine perfumery, laundry detergents, scented candles and shampoos. In its 2022 Annual Report, IFF’s CEO stated that when a consumer “grabs a yogurt from the

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refrigerator there's a one-in-three chance that it was made with an IFF probiotic. If someone is doing laundry at home, there's a 50% likelihood that their cold water laundry detergent was developed with an IFF cleaning enzyme". IFF reported USD 12.4 billion (\$16.4 billion) in sales for the year 2022.

33. Symrise claims to be the "number 1 producer of fragrance raw materials". Symrise makes Fragrances for manufacturers of perfumes, cosmetics, food and beverages, the pharmaceutical industry and producers of nutritional supplements and pet food among others. Symrise's Fragrances are used in many fine fragrances, including DKNY's Be Delicious and Carolina Herrera's 212 VIP men. In 2022, Symrise reported €4618 million (\$6.7 billion) in sales, of which 37% were "Scent and Care" sales and 29% were in North America. Symrise's "Scent and Care" segment alone claims to be used in 16,000 products in a total of 128 countries.
34. Collectively, the defendants are the largest manufacturers and suppliers of Fragrances across the globe. Due to high barriers of entry, substantial start-up costs and the defendants' vertical integration, the defendants hold a uniquely advantageous position in the industry.
35. The Fragrances industry operates on a business-to-business model. The end products that the defendants' Fragrances are used in have commodity-like characteristics. The end products are largely inter-changeable in their purpose and customers choose one over the other in large part based on price. Therefore, any one defendant unilaterally increasing its prices would likely lose sales, reduce its market share and thereby, benefit its competitors.

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To maintain their market shares and simultaneously implement significant price increases, the defendants coordinated their price increases and sometimes announced price increases within a few weeks of each other, as was the case between August 14, 2018 and October 8, 2018.

36. The defendants continued to announce price increases within a few weeks of each other from August 14, 2018 until February 16, 2023. For example, Symrise announced price increases on August 14, 2018, followed by IFF on September 6, 2018, and Givaudan on October 8, 2018. In 2019, Givaudan first announced price increases on January 25, 2019, closely followed by IFF on February 19, 2019. Givaudan announced further increases on July 18, 2019, followed by Symrise on August 10, 2019, and IFF in September of 2019. The defendants' price increases followed a similar trajectory in 2020, when Givaudan introduced its price increases on July 21, 2020, followed by Firmenich on August 11, 2020. In March, 2021, while discussing the 2020-2021 financial year, Symrise CFO attributed the company's increase in profitability to "*successful pricing initiatives and raw material cost management*". Towards the end of 2021, IFF announced price increases on November 9, 2021. Once again, in March of 2022, Symrise acknowledged the previous year's price increases.

37. In 2022, IFF took the lead by announcing its price increases across all divisions on March 17, 2022, followed by Givaudan on April 12, 2022 and then on July 21, 2022. Symrise announced further increases on August 2, 2022 followed by Firmenich on August 5, 2022 and November 22, 2022. IFF also introduced price increases on November 8, 2022. Shortly

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before the investigations on the defendants began, IFF announced price increases on January 25, 2023 and Firmenich on February 16, 2023. On February 10, 2022 IFF's CEO Andreas Fibig acknowledged that "*everybody is basically implementing the same range of pricing in the market.*"

38. The defendants' activities affect Canadian consumers materially. Anyone in Canada who purchased fine fragrances, toothpaste, shampoo, laundry detergent, body wash, candles, cosmetics, hair care or personal care products, air fresheners or cleaning products, among others, was affected by the defendants' unlawful conduct.

**B. Regulatory Investigations**

39. On March 7, 2023, Comco, the US Department of Justice Antitrust Division, the CMA and the competition authorities of the European Union members carried out coordinated raids at the defendants' premises and at the premises of an association active in the fragrance industry in various EU member states. Comco stated that the companies were suspected of coordinating their pricing policy, prohibiting their competitors from supplying certain customers and limiting the production of certain fragrances. Comco stated that if their suspicions are confirmed, clients may have paid excessive prices and competitors may have been limited in their sales opportunities.
40. The European Commission also confirmed sending formal requests for information to several companies active in Fragrances. The European Commission also confirmed that



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the defendants and an association in the fragrance industry may have violated EU antitrust rules that prohibit cartels and restrictive trade practices.

41. Firmenich confirmed on March 8, 2023 that its offices in France, Switzerland and the UK were raided. The defendant said that it is “closely monitoring the situation and is fully cooperating with the investigators.”
42. Similarly, Symrise, Givaudan and IFF confirmed that they are cooperating fully with the authorities.
43. The defendants are a significant part of the Fragrances industry and consequently a material part of every Canadian’s retail experience. Canadians have, during the Class Period, consistently overpaid for their end products due to the defendant’s conduct. The defendants and their unnamed co-conspirators intended for their unlawful conduct to inflate the prices of consumer products in the Canadian market, and globally.
44. The defendants and their unnamed co-conspirators unlawfully conspired, combined, agreed, or arranged to manipulate prices for Fragrances and conceal their anti-competitive behaviour from their clients and the subsequent end-users. The defendants knew that their unlawful conduct would unlawfully increase the prices at which Fragrances and end products are sold from the prices that would otherwise be charged on a competitive basis. The defendants also knew that restricting their competitors’ supply and customer base would result in an artificial inflation of the price of the end-products. The defendants knew that their actions would result in loss and damage to purchasers. Due to the defendants’

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significant market share, the defendants' actions impacted not just their customers, but all Canadians who purchased any product containing Fragrances.

45. The Canadian market for Fragrances and the end products that they are used in is in the billions of dollars. The defendants illegally usurped the Class members' money. Through this class action, the class members claim damages from them jointly and severally for their overcharge.

**C. Organizations Collectively Managed by the Defendants**

46. The defendants are active and core members of multiple organizations operating in and out of the Fragrance industry, such as the FSAC, the IFRA, and the Research Institute for Fragrance Materials. The defendants are also members of flavour-related organizations, such as the European Flavour Association and the International Organization of the Flavour Industry.
47. The defendants are the four and only founding members of the FSAC. On March 16, 2021, the defendants announced the launch of FSAC dedicated towards the strategic development of science-based public policy in response to the legislative and regulatory landscape in North America. Key positions in the FSAC are held by members of the senior management of the defendants. For example, Stephanie Blakely, the President & Chair of FSAC is also the Global Vice-President of Symrise and Greg Adamson, the Vice-Chair and Vice-President of FSAC is the Senior Vice-President of Givaudan. Until at least March 2023

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IFF Vice-President and Regional General Manager NOAM Consumer Fragrances served as the Secretary of FSAC.

48. Before founding the FSAC, the defendants were members of the North America focused FCA, but announced leaving on the same day, i.e. May 27, 2020. The FCA has a broader member base with 60 companies, and has consistently been prioritizing consumer focused fragrance safety and transparency issues.
49. The defendants are also four of the seven “Regular Members” of the IFRA. IFRA claims to work with policymakers, regulators, and other stakeholders at a global level to develop fair and workable regulation that promotes the safe use and enjoyment of Fragrance ingredients. Every year, IFRA hosts the multi-day Global Fragrance Summit along with various other events for its members. Through these events, the defendants have ample opportunity to meet and discuss their price-fixing strategies.
50. At times only known to the defendants, the defendants convened under the cover of association events, meetings, through emails, conversations, and communications to discuss and agree to fix, increase, maintain or stabilize Fragrance prices for Canada and elsewhere. Through these events, meetings, emails, conversations and communications, the defendants conspired, combined, agreed or arranged to unreasonably enhance the prices, time of coordinated price-increases, controlling discounts and allocation of supply to Canada, and elsewhere. The defendants also used association events and meetings as a cover, along with emails, conversations, and communications to monitor and enforce

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adherence to the agreed upon price-fixing scheme. The defendants used the association events, meetings, emails, conversations, and communications to conceal facts, including the fact of the conspiracy, combination, agreement or arrangement. The defendants established the FSAC primarily to facilitate continuing their unlawful conduct.

## **VI. CAUSES OF ACTION**

### **A. Breach of Part VI of the Competition Act**

51. From at least as early as August 14, 2018 until March 7, 2023, the defendants and their unnamed co-conspirators conspired, combined, agreed or arranged:
- (a) To fix, maintain, increase or control the prices of Fragrances and their end products;
  - (b) To allocate sales, territories, customers or markets for the production or supply of Fragrances and their end products; or
  - (c) To fix, maintain, control, prevent, lessen, or eliminate the production or supply of Fragrances and their end products.
52. The defendants implemented, in whole or in part in Canada, a directive, instruction, intimation of policy or other communication, which communication was for the purpose of giving effect to a conspiracy, combination, agreement or arrangement entered into outside Canada in relation to the above that, when it entered into Canada, contravened section 45 of the Competition Act.

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53. The defendants' actions constitute offences under Part VI of the Competition Act. Specifically, the defendants' actions are in breach of sections 45 and 46.
54. As a result of the unlawful conduct alleged, the plaintiff and other members of the Class paid enhanced, inflated, and supra-competitive prices for Fragrances and their end products. The defendants' conduct caused loss and damage to the plaintiff and the Class. The plaintiff claims loss and damage, including full costs of the investigation under Section 36 of the Competition Act.

**B. Civil Conspiracy**

55. The defendants and their unnamed co-conspirators are liable for the tort of civil conspiracy – both under unlawful means conspiracy and predominant purpose conspiracy. The defendants and their unnamed co-conspirators entered into agreements with each other to use unlawful means which resulted in loss and damage, including special damages, to the plaintiff and other members of the Class. The unlawful means include the following:
- (a) Entering into agreements or arrangements to fix, maintain, increase, or control prices of Fragrances and their end products sold to customers in Canada, and elsewhere, in contravention of sections 45(1) and 46(1) of the Competition Act; and
  - (b) Aiding, abetting, and counselling the commission of the above offences, contrary to sections 21 and 22 of the *Criminal Code*, RSC 1985, c C-46.

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56. In furtherance of the conspiracy, the defendants along with their agents, servants and unnamed co-conspirators carried out the acts described above.
57. The acts particularized above were unlawful acts directed towards purchasers of Fragrances and their end products, including the plaintiff, which unlawful acts the defendants knew would likely cause injury to the purchasers, including the plaintiff.
58. The defendants and their unnamed co-conspirators were motivated to conspire. Their predominant purpose was to harm the plaintiff and other members of the Class by requiring them to pay artificially inflated prices for Fragrances, and their end products, and to illegally increase their profits on the sale of these products.
59. The defendants and their unnamed co-conspirators intended to cause economic loss to the plaintiff and other members of the Class. In the alternative, the defendants and their unnamed co-conspirators knew in the circumstances that their unlawful acts would likely cause injury.

**C. Unjust Enrichment**

60. As a result of their conduct, the defendants benefitted from a significant enhancement of their revenues on Fragrances and their end products. All members of the Class have suffered a corresponding deprivation as a result of being forced to pay inflated prices for Fragrances and their end products. There is no juristic reason or justification for the defendants' enrichment, as such conduct is tortious, unjustifiable and unlawful under the Competition Act and similar laws of other countries in which the unlawful acts took place.

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61. It would be inequitable for the defendants to be permitted to retain any of the ill-gotten gains resulting from their unlawful conduct.

62. The plaintiff and other members of the Class are entitled to the amount of the defendants' ill-gotten gains resulting from their unlawful and inequitable conduct.

**D. Damages**

63. The defendants' conduct had the following effects, among others:

(a) Price competition has been restrained or eliminated with respect to Fragrances and their end products sold directly or indirectly to the Class;

(b) The prices of Fragrances and their end products sold directly or indirectly to the Class have been fixed, maintained, increased, or controlled at artificially inflated levels; and

(c) The Class has been deprived of free and open competition for Fragrances and their end products.

64. Fragrances are identifiable, discrete physical products which follow a traceable chain of distribution from the defendants to their customers to consumers and other end-user purchasers. Costs attributable to Fragrances can be traced through the distribution chain.

65. As a result of the above, during the Class Period, the plaintiff and other members of the Class paid artificially inflated prices for Fragrances which were higher than the prices that would have been paid in the absence of the illegal conduct. As a result, the Class suffered

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damages and loss in an amount not yet known but to be determined. Full particulars of the loss and damage will be provided before trial.

**E. Aggravated, Exemplary, and Punitive Damages**

66. The defendants and their unnamed co-conspirators used their market dominance, illegality, and deception in furtherance of a conspiracy, combination, agreement or arrangement to illegally profit from the sale of Fragrances. They were, at all times, aware that their actions would have a significant adverse impact on all members of the Class. The conduct of the defendants and their unnamed co-conspirators was high-handed, reckless, without care, deliberate, and in disregard of the plaintiff and the Class members' rights.
67. Accordingly, the plaintiff requests significant punitive, exemplary and aggravated damages in favour of each member of the Class.

**F. Discoverability & Fraudulent Concealment**

68. The plaintiff and the rest of the Class reasonably expected the defendants to be operating in accordance with the law. A reasonable person under the circumstances would not have been alerted to investigate the legitimacy of the defendants' prices for Fragrances, nor did they have the ability to do so.
69. Accordingly, the plaintiff did not discover, and could not have discovered through the exercise of reasonable diligence, the existence of the alleged conspiracy, combination, agreement or arrangement during the Class Period.



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70. The defendants and their co-conspirators actively, intentionally and fraudulently concealed the existence of the agreement, arrangement, combination and conspiracy from the public, including the plaintiff and other members of the Class. The affirmative acts of the defendants alleged herein, including acts in furtherance of the agreement, arrangement, combination or conspiracy, were fraudulently concealed and carried out in a manner that precluded detection.
71. The defendants' unlawful conduct was self-concealing. As detailed above, the defendants took active, deliberate, and wrongful steps to conceal their participation in the unlawful conduct. As a result, the plaintiff and the rest of the Class were unaware of the unlawful conduct until March 8, 2023 and did not know that they were paying supra-competitive prices for Fragrances and their end products during the Class Period.

## **VII. SERVICE OF STATEMENT OF CLAIM OUTSIDE ONTARIO**

72. The plaintiff is entitled to serve this statement of claim outside Ontario without a court order pursuant to rules 17.02(g) and 17.02(p) of the *Rules of Civil Procedure*, RRO 1990, Reg 194 because:
- (a) The claim relates to a tort committed in Ontario; and
  - (b) The claim relates to a person ordinarily resident or carrying on business in Ontario.

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Date: July 12, 2023

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**Plaintiff**

-and-

**FIRMENICH INTERNATIONAL SA et al.**  
**Defendants**

**Court File No.**

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***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT OTTAWA

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**STATEMENT OF CLAIM**

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