

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE
JUSTICE PERELL

) WEDNESDAY, THE 3RD DAY
) OF OCTOBER, 2012
)

BETWEEN:

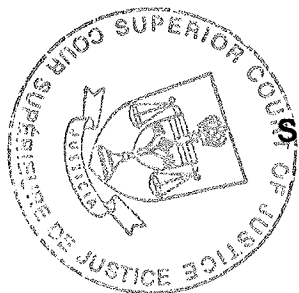
**GIOVANNI SPINA, JOHN SPINA DRUGS LTD.,
ROMEO VANDENBURG and ROMEO VANDENBURG DRUG COMPANY LTD.**

Plaintiffs

AND

**SHOPPERS DRUG MART INC., SHOPPERS DRUG MART
CORPORATION and 919979 ALBERTA LTD.**

Defendants



PROCEEDING UNDER THE *CLASS PROCEEDINGS ACT*, 1992

**ORDER
(Motion to Strike and Motion for Certification)**

THIS MOTION, made by the Plaintiffs for an order certifying this action as a class proceeding pursuant to the *Class Proceedings Act*, 1992 S.O. 1992, c.6, and this motion made by Defendants for an order pursuant to Rule 21.01(1)(a) and (b) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 to strike certain claims asserted by the Plaintiffs, were heard on August 27-30, 2012 at Toronto, Ontario.

ON READING the motion records and facts of the parties, filed, and on hearing the submissions of counsel for the parties:

1. **THIS COURT ORDERS** that the following claims are struck out, without leave to amend:

- a. the Advantages of Bulk Purchasing/Rebates Claims, asserting causes of action for breach of contract, breach of the statutory duty of fair dealing under the *Arthur Wishart Act (Franchise Disclosure)*, S.O. 2000, c. 6 ("AWA") (and under other comparable provincial franchise legislation), breach of the common law duty of good faith, breach of duty as agent, and unjust enrichment;
- b. claims for breach of fiduciary duty;
- c. claims for breach of the duty of disclosure.

2. **THIS COURT ORDERS** that the Plaintiffs' claim that the Defendants have interfered with their right to associate with other franchisees contrary to the AWA (and under other comparable provincial franchise legislation) and at common law is struck out, with leave to amend.

3. **THIS COURT ORDERS** that the balance of the Defendants' motion is dismissed.

4. **THIS COURT DECLARES** that the following causes of action satisfy section 5(1)(a) of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6:

- a. the Professional Allowances Claims, asserting causes of action for breach of contract, breach of statutory duty of fair dealing and/or common law duty of good faith, and unjust enrichment;
 - b. the Cost Recovery Fees Claims, asserting causes of action for breach of contract, breach of statutory duty of fair dealing and/or common law duty of good faith, and unjust enrichment;
 - c. the Budgeting Practices Claims, asserting causes of action for breach of contract, breach of statutory duty of fair dealing and/or common law duty of good faith; and
 - d. the Inventory Practices Claim asserting causes of action for breach of contract, breach of statutory duty of fair dealing and/or common law duty of good faith, and unjust enrichment
5. **THIS COURT ORDERS** that the balance of the motion to certify this action as a class proceeding is adjourned to a date to be scheduled.
6. **THIS COURT ORDERS** that costs shall be determined at the completion of the certification motion.

ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

OCT 15 2013

PER / PAR:



P. Perell J.

GIOVANNI SPINA et al. and **SHOPPERS DRUG MART INC., et al.**
Plaintiffs Defendants

Court File No. CV-10-414774-OOCP

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceeding commenced at
TORONTO

ORDER
(Motion to Strike and Motion for
Certification)

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