

Form 3-93
(Rule 3-93)

COURT FILE
NUMBER

Q.B. NO. 1512 OF 2003

Clerk's Stamp

COURT OF QUEEN'S BENCH FOR SASKATCHEWAN

JUDICIAL CENTRE **SASKATOON**

PLAINTIFFS

**JUSTIN LYBECK, TOM SAVAS, TREVOR
MOSER and CODY ARMSTRONG, a minor
suing under his legal guardian, TAMI
ARMSTRONG**

DEFENDANTS

**THE CITY OF NORTH BATTLEFORD,
HER MAJESTY THE QUEEN IN RIGHT
OF THE PROVINCE OF
SASKATCHEWAN and SASKATCHEWAN
WATER CORPORATION**

**NOTICE OF APPLICATION FOR PRELIMINARY APPROVAL OF
CERTIFICATION BROUGHT PURSUANT TO *The Class Actions Act***

TAKE NOTICE that the Plaintiff will make an application for an order pursuant to *The Class Actions Act*. The application is to be heard at 10:00am on Monday, September 12, 2016 at the Court of Queen's Bench, 520 Spadina Crescent East, Saskatoon, Saskatchewan before the Honourable Justice R. C. Mills.

The order is being requested for the following purposes:

- (a) declaring that there will be separate Applications for Certification for the Infant Class and the Adult Class and that the foregoing application pertains solely to the Application for Certification of the Infant Class;
- (b) conditionally certifying the action of the Infant Class as a class action for the purposes of settlement only;
- (c) conditionally approving the terms and conditions of the settlement of this action as outlined in the Settlement Agreement (exhibit "A" of the Affidavits of Tom Savas and Codi Armstrong), the defined terms in which are used in the same way and with the same meaning in this Notice of Application, and in particular;

- i) Fixing the time, date and place of the hearing seeking final approval of the Settlement Agreement; and
- ii) Approving the form and content of the Hearing Notices that will advise class members in this proceeding of the hearings to approve the settlement in these proceedings as well as the manner of publication of such notices.

(d) defining the Infant Class as:

All persons who:

- i. Contracted cryptosporidiosis or symptoms of cryptosporidiosis as a result of consuming contaminated water supplied by the City of North Battleford between March 20 and April 25, 2001; and
- ii. Who were under the age of 18 years at the time of such consumption.

(e) appointing Tom Savas and Cody Armstrong as representative Plaintiffs for the Infant Class;

(f) stating the nature of the claims, to be as follows:

- i) damages in negligence against the defendant the City of North Battleford, for damage and loss sustained by the Infant Class members caused by the contamination of the drinking water supplied by the City of North Battleford between March 20, 2001 and April 25, 2001;
- ii) damages in negligence against the defendant the Her Majesty the Queen in Right of Province of Saskatchewan and the Saskatchewan Water Corporation, for damage and loss sustained by the Infant Class members caused by the contamination of the drinking water supplied by the City of North Battleford between March 20, 2001 and April 25, 2001;

(g) stating the remedies claimed to be as follows:

- i) Are the defendants or any of them liable to the Infant Class members for damages?;
- ii) If so, can they be assessed on an individual basis and how shall they be determined? and;
- iii) If the answer to Question ii) is no, can damages be assessed on an aggregate basis and how should they be distributed?

(h) certifying the following issues as common issues:

- i) Did the City of North Battleford owe a duty of care to the Infant Class?;

- ii) If the City of North Battleford owed a duty of care to the Infant Class, was the City of North Battleford negligent?; and
 - iii) If the City of North Battleford was negligent are the members of the Infant Class entitled to damages and if so in what amount?;
 - iv) Did Her Majesty the Queen In Right of the Province of Saskatchewan and the Saskatchewan Water Corporation owe a duty of care to the Infant Class?;
 - v) If Her Majesty the Queen In Right of the Province of Saskatchewan and the Saskatchewan Water Corporation owed a duty of care to the Infant Class, was the City of North Battleford negligent?; and
 - vi) If Her Majesty the Queen In Right of the Province of Saskatchewan and the Saskatchewan Water Corporation was negligent are the members of the Infant Class entitled to damages and if so in what amount?
- (i) approving the Preliminary Approval Notice, as well as the Notice Plan attached as Schedules “B” and “D” to the Settlement Agreement and that the Defendants shall be responsible for all costs associated with notice in this action;
 - (j) an Order that Bruneau Group Inc. be appointed as administrator of the settlement;
 - (k) making any Orders that this Honorable Court considers appropriate.

The grounds relied on for this application are the following:

- (a) the Parties have reached a settlement, as it relates to the Infant Class Members, on the terms and conditions set out in the Settlement Agreement;
- (b) the pleadings in this action disclose a cause of action against the defendants;
- (c) there is an identifiable class of 2 or more persons;
- (d) the claims of the members of the Infant Class raise common issues respecting the within litigation;
- (e) a class action is the preferable procedure for resolution of the common issues;
- (f) the plaintiffs, Tom Savas and for Cody Armstrong, are willing to be appointed as the representative plaintiffs and:
 - i) will fairly and adequately represent the interests of the Infant Class;
 - ii) have produced a plan that sets out a workable method of advancing the action;

- iii) do not have, on the common issues, an interest that is in conflict with the interests of other class members;
- (g) *The Class Actions Act*, S.S. 2001, c. C-12.01;
- (h) *The Queen's Bench Rules* for Saskatchewan, Rule 2-14 to 2-18 and 3-93.

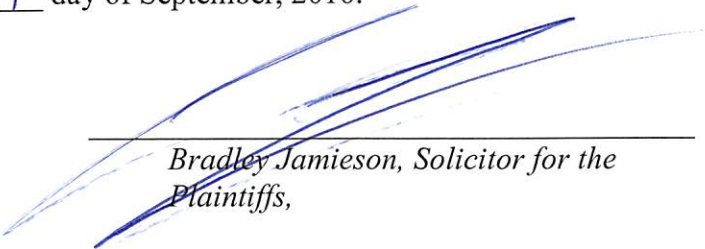
Affidavit or other evidence to be used in support of this application:

- (a) the affidavit of: Tom Savas to be filed;
- (b) the affidavit of Cody Armstrong to be filed;
- (c) the affidavit of Bradley Jamieson to be filed;
- (d) the pleadings and proceedings in this action; and
- (e) such further and other materials as counsel may advise and the Honourable Court will allow.

NOTICE

If you wish to oppose the motion, an Affidavit in Response must be filed in the Court office and served on each of the parties to this action at least 7 days before the date set for hearing the motion.

DATED at Saskatoon, Saskatchewan, this 1 day of September, 2016.



*Bradley Jamieson, Solicitor for the
Plaintiffs,*

CONTACT INFORMATION AND ADDRESS FOR SERVICE

If prepared by a lawyer for the party:

Name of firm:	<u>CUELENAERE KENDALL KATZMAN & WATSON</u>
Name of lawyer in charge of file:	<u>Bradley Jamieson</u>
Address of legal firm:	<u>500-128 4th Ave. South, Saskatoon, SK, S7K 1M8</u>
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Fax number (if any):	<u>306-652-4171</u>