

FORM 3-9  
(Rule 3-9)

COURT FILE NUMBER QB 839 of 2019

COURT OF QUEEN'S BENCH FOR SASKATCHEWAN

JUDICIAL CENTRE SASKATOON

PLAINTIFF MED-LIFE DISCOVERIES LP, by its general partner MED-LIFE DISCOVERIES GP INC.

DEFENDANTS YOLBOLSUM CANADA INC., PRODROME SCIENCES INC., PRODROME HEALTH CENTERS INC., DAYAN GOODENOWE (also known as DAYAN GOODNOUGH), MONTE GORCHINSKI, ERIKA SHKLANKA, VIJITHA SENANAYAKE VIJITHA SENANAYAKE (also known as GAMARALLAGE SENANAYAKE), YANQIU JIANG, AUDREY TRICE (also known as AUDREY REIDT), ELLEN LIANG (also known as JIAQI LIANG), IAN WRIGHT, JOHN RYAN, KEVIN PERROTT, JANA HORSNALL, and TANYA SCHELL

NOTICE TO DEFENDANT

1. The plaintiff may enter judgment in accordance with this Statement of Claim or the judgment that may be granted pursuant to The Queen's Bench Rules unless, in accordance with paragraph 2, you:
  - a. serve a Statement of Defence on the plaintiff; and
  - b. file a copy of it in the office of the local registrar of the Court for the judicial centre named above.
2. The Statement of Defence must be served and filed within the following period of days after you are served with the Statement of Claim (excluding the day of service):
  - a. 20 days if you were served in Saskatchewan;
  - b. 30 days if you were served elsewhere in Canada or in the United States of America;
  - c. 40 days if you were served outside Canada and the United States of America.
3. In many cases a defendant may have the trial of the action held at a judicial centre other than the one at which the Statement of Claim is issued. Every defendant should consult a lawyer as to his or her rights.
4. This Statement of Claim is to be served within 6 months from the date on which it is issued.
5. This Statement of Claim is issued at the above-named judicial centre on the 7<sup>th</sup> day of June, 2019.

**XIMENA PINO**  
**DEPUTY LOCAL REGISTRAR**  
\_\_\_\_\_  
(Deputy) Local Registrar

## STATEMENT OF CLAIM

### The Parties

1. The plaintiff, Med-Life Discoveries LP, by its general partner Med-Life Discoveries GP Inc. ("**Med-Life**"), is a limited partnership formed under the laws of Saskatchewan and headquartered in Saskatoon, Saskatchewan. Med-Life carries on business as a human health research and development company.
2. The defendant Yolbolsum Canada Inc. ("**YBCI**") is a business corporation incorporated pursuant to the laws of Saskatchewan and has its registered office in Saskatoon, Saskatchewan. YBCI's current business is as a holding company.
3. The defendant Prodrome Sciences Inc. ("**Prodrome**") is a Canada business corporation extraprovincially registered to carry on business in Saskatchewan. Prodrome purports to carry on business as a human health research and development company.
4. The defendant Prodrome Health Centers Inc. ("**PHCI**") is a Canada business corporation extraprovincially registered to carry on business in Saskatchewan. PHCI purports to operate a "Health Centre" in Moose Jaw, Saskatchewan utilizing the technologies allegedly owned or developed by Prodrome.
5. The defendant Dayan Goodenowe (also known as Dayan Goodnough) ("**Goodenowe**") is an individual residing in or near Saskatoon, Saskatchewan and is the President and Chief Executive Officer of Prodrome and the Chief Executive Officer of PHCI. He is also the sole director and officer, and is a shareholder, of YBCI.
6. The defendant Monte Gorchinski ("**Gorchinski**") is an individual residing in or near Saskatoon, Saskatchewan, and is the Chief Financial Officer of Prodrome and PHCI.
7. The defendant Erika Shklanka ("**Shklanka**") is an individual residing in or near Saskatoon, Saskatchewan, and is the Vice President, Operations of Prodrome and PHCI.
8. The defendant Vijitha Senanayake (also known as Gamarallage Senanayake) ("**Senanayake**") is an individual residing in or near Saskatoon, Saskatchewan, and is the Vice President, Clinical Research and Development of Prodrome and the Vice President, Research of PHCI.
9. The defendant, Yanqiu Jiang ("**Jiang**") is an individual residing in or near Saskatoon, Saskatchewan, and is the Vice President, Software Development and Design of Prodrome and the Vice President, Software of PHCI.

10. The defendant Audrey Trice (also known as Audrey Reidt) ("**Trice**") is an individual residing in or near Saskatoon, Saskatchewan, and is the Office Manager of Prodrome and the Manager, Administrative Services of PHCI.

11. The defendant Ellen Liang (also known as Jiaqi Liang) ("**Liang**") is an individual residing in or near in or near Saskatoon, Saskatchewan, and is the Interlaboratory Manager of Prodrome and the Manager, Laboratory Operations of PHCI.

12. The defendant Ian Wright ("**Wright**") is an individual residing in the State of Delaware, United States of America, and is an Advisor (and is represented to be a Board Member) of Prodrome.

13. The defendant John Ryan ("**Ryan**") is an individual residing in the State of Massachusetts, United States of America, and is an Advisor (and is represented to be a Board Member) of Prodrome.

14. The defendant Kevin Perrott ("**Perrott**") is an individual residing in or near San Francisco, California, United States of America, and is an Advisor (and is represented to be a Board Member) of Prodrome.

15. The defendant Jana Horsnall ("**Horsnall**") is an individual residing in the Province of Saskatchewan, and is the Vice President, Community Health of PHCI.

16. The defendant Tanya Schell ("**Schell**") is an individual residing in or near Saskatoon, Saskatchewan, and is the Manager, Events of PHCI.

17. YBCI, Prodrome, and Goodenowe are referred to collectively herein as the "**Primary Defendants**". PHCI, Gorchinski, Shklanka, Senanayake, Jiang, Trice, Liang, Wright, Ryan, Perrott, Horsnall, and Schell are referred to collectively herein as the "**Secondary Defendants**". The Primary Defendants and the Secondary Defendants are referred to collectively herein as the "**Defendants**".

#### **Phenomenome Discoveries Inc. and Relevant Contracts**

18. In March of 2001, YBCI caused Phenomenome Discoveries Inc. ("**PDI**") to be incorporated. At the time of PDI's incorporation, YBCI was the sole shareholder in PDI.

19. On February 1, 2002, YBCI and PDI entered into a Management Services Contract (the "**Goodenowe Services Contract**"), whereby YBCI agreed to provide management services to PDI, in exchange for consulting fees as detailed therein. The Goodenowe Services Contract required YBCI to utilize certain "Approved Personnel" to deliver these management services. At all material times, each of YBCI, PDI, and Goodenowe intended that the one and only individual comprising the "Approved Personnel" pursuant to the Goodenowe Services Contract was Goodenowe.

20. Goodenowe signed the Goodenowe Services Contract on behalf of YBCI.
21. In the Goodenowe Services Contract, YBCI covenanted that:
- (a) it would ensure Goodenowe would "well and faithfully serve [PDI] and use his ... best efforts to promote the best interests of [PDI] and to render the services required by this Agreement in a competent and professional manner."
  - (b) YBCI and Goodenowe would "keep in complete confidence all transactions of [PDI] with its clients and customers, all customer or client lists, and the state of the accounts and files of the individuals, firms, corporations or others with whom it does business."
  - (c) YBCI and Goodenowe would not "at any time, under any circumstances or in any manner or way, directly or indirectly, make known to any person or persons, (a) the transactions of [PDI] or of its clients and customers...(c) any process, method or device of the Business or other information in respect of the business of [PDI] ... (e) **the secrets of their business which become known to either of them**, either during or after the Term of this agreement." [emphasis added]
  - (d) A breach (or likely impending breach) of the confidentiality provisions of the Goodenowe Services Contract would entitle PDI to an injunction in order to restrain or prevent any such breach by YBCI or any or all of YBCI's partners, co-venturers, employees, officers, directors, servants, agents, representatives, and any and all persons directly or indirectly acting for, or on behalf of, or with the Contractor.
22. On December 15, 2001, YBCI entered into a license agreement (as amended on a number of occasions, the last such occasion being July 23, 2007, the "**Licence Agreement**") with PDI, whereby YBCI granted PDI an exclusive license to practise an "**Invention**", defined in the agreement as a "Non-Targeted Complex Sample Analysis" which was then the subject of a Canadian patent application and a patent application pursuant to the Patent Cooperation Treaty (the "**Patents**").
23. The Licence Agreement provided, among other things, that:
- (a) YBCI granted to PDI an "exclusive licence to ... use the Invention and the Patents, including the right to make discoveries from the Invention and Patents" and to "market and sell a service involving the use of the Invention and Patents, (the "**Service**")." (Section 1.1)
  - (b) Any improvements to the Service were to belong exclusively to PDI, with YBCI receiving a non-exclusive licence to practice the improvements. (Section 4.2)

- (c) YBCI acknowledged and agreed that "all data, discoveries, and inventions made by [PDI] by virtue of [PDI's] use of, or access to, the Invention and/or the Patents shall be the sole and exclusive property of [PDI]." (Section 1.4)

24. On April 22, 2003, Goodenowe entered into a Non-Competition and Intellectual Property Agreement with PDI (as amended on April 18, 2011, the "**NCIP Agreement**") agreement, whereby Goodenowe covenanted and agreed with PDI that:

- (a) During the term of the NCIP Agreement and for 12 months thereafter, Goodenowe "will not for any reasons whatsoever, directly or indirectly, either as an individual or as a partner or joint venturer or as an employee, principal, consultant, agent, shareholder, officer, director, or as a sales representative for any person, firm, association, organization, syndicate, company or corporation, or in any manner whatsoever, carry on, be engaged in, concerned with, interested in, or advise a business that offers the [Service];"
- (b) "[PDI] acquires all intellectual property right to all writings, products, developments or services, inventions and improvements (whether or not patentable) (the "Works") which Goodenowe makes, discovers or develops while [YBCI] is under contract to [PDI], whether during working hours or at any other time, which directly and specifically arise from any metabolic profiling data generated or produced by [PDI]".

25. Certain of the Secondary Defendants had employment contracts with PDI or Phenomenome Laboratory Services Inc. ("**PLSI**"), a wholly-owned subsidiary of PDI, as follows:

- (a) Employment Agreement (General) between PDI and Shklanka dated November 19, 2012 (the "**Shklanka Employment Agreement**");
- (b) Employment Agreement (General) between PDI and Senanayake dated December 3, 2012 (the "**Senanayake Employment Agreement**");
- (c) Employment Agreement (General) between PDI and Jiang dated September 16, 2002 (the "**Jiang Employment Agreement**");
- (d) Employment Agreement (General) between PDI and Trice dated May 22, 2008 (the "**Trice Employment Agreement**"); and
- (e) Employment Agreement (Indefinite) between PLSI and Liang dated November 26, 2013 (the "**Liang Employment Agreement**"; together with the Shklanka Employment Agreement, the Senanayake Employment Agreement, the Jiang Employment Agreement, and the Trice Employment Agreement, the "**PDI Employment Agreements**").

26. Each of the PDI Employment Agreements contains, among other things, detailed confidentiality, non-competition, and non-solicitation covenants including, without limitation, the following:

- (a) a recognition of the employer's exclusive proprietary interest in its confidential information including, without limitation:
  - (i) pricing and sales policies and concepts;
  - (ii) information regarding proprietary software including but not limited to source code;
  - (iii) business plans, forecasts and market strategies;
  - (iv) research and development plans, technical and product bulletins, surveys, research and development programs, correspondence and sales reports;
  - (v) methodology and use of proprietary technology and know-how; and
  - (vi) research information, research results, data, discoveries and inventions whether or not patentable, trade secrets, methods, production processes, product specifications and formulas, patterns, devices, compilations of information, laboratory protocols, laboratory notebooks and other technical or scientific information;
- (b) a covenant to keep all such confidential information confidential, including after the term of the agreement for an unlimited period;
- (c) a covenant to turn over all property and information of the employer at the termination of the employment relationship, including books, records, reports, files, manuals, notes, data, tapes, reference items, sketches, drawings, memoranda and other materials relating to any confidential information or to the employer's business;
- (d) a recognition that the employer owns all intellectual property and all related rights with respect to such intellectual property, whether or not patentable, developed by the employee during the term of their employment;
- (e) detailed covenants not to compete with the employer or solicit its employees for a 36-month period following the termination of the employment relationship; and
- (f) an acknowledgment that any breach of the confidentiality, non-competition, and non-solicitation provisions will entitle the employer to an injunction to prevent or restrain any such breach.

## Receivership and Med-Life Acquisition of PDI Business Assets

27. On December 3, 2015, the Saskatchewan Court of Queen's Bench (the "**Court**") appointed FTI Consulting Canada Inc. (the "**Receiver**") as interim receiver of the assets of PDI and PLSI.
28. On February 25, 2016, the Court of Queen's Bench granted an Order (the "**Receivership Order**") appointing the Receiver as the receiver and manager of all of the assets, undertakings and properties of PDI and PLSI, and authorized the Receiver to market the property of PDI and PLSI (as defined in the Receivership Order) (the "**PDI Property**") for sale.
29. At the time of the Receivership Order, the Receiver continued to retain the management services of Goodenowe to assist in the marketing of the PDI Property for sale.
30. On or about July 5, 2016, Goodenowe resigned from his role at PDI, advising the Receiver that he and/or YBCI intended to put in a bid to purchase the PDI Property in the receivership proceedings.
31. On July 6, 2016, Goodenowe caused Prodrome to be incorporated.
32. Goodenowe did not make a bid, either directly or indirectly through YBCI or otherwise, to purchase the PDI Property.
33. On August 22, 2016, the Receiver entered into a Purchase and Sale Agreement (the "**PDI Sale Agreement**") with Med-Life whereby the Receiver agreed to sell certain of the PDI Property (defined in the PSA as the "Purchased Assets" and referred to herein as the "**PDI Purchased Assets**") to Med-Life, subject to the Receiver obtaining an Approval and Vesting Order from the Court.
34. At the time of the PDI Sale Agreement, and all material times prior thereto, PDI operated the following businesses (collectively, the "**Business**"):
- (a) The development of technologies (including diagnostic tests) to (i) investigate the manner in which certain diseases arise, and (ii) identify persons most likely to develop such diseases;
  - (b) The design of therapies to treat the causes of certain diseases, and
  - (c) The operation of a licensed laboratory.
35. The PDI Sale Agreement provided that the PDI Purchased Assets to be acquired by Med-Life would include all of the assets owned by PDI related to the PDI Business including, without limitation, all of PDI's intellectual property including all patents, know-how, trade secrets, proprietary information,

confidential information and information of a sensitive nature having value to the Business, and an assignment of the NCIP Agreement.

36. In August 2016, the Receiver applied to the Court for an order approving the sale of the PDI Purchased Assets to Med-Life in accordance with the PDI Sale Agreement.

37. Goodenowe and YBCI opposed the Receiver's application on a number of grounds, including the following allegations set out in Goodenowe's affidavit sworn August 28, 2016 [emphasis added]:

3. I am providing this affidavit in response to the Receiver's application for approval of the sale agreement it entered into with Med-Life Discoveries Inc. ("MLD") for the sale of PDI's assets. YBCI has a proprietary interest in a number of the assets that the Receiver seeks to convey to MLD through the sale agreement. I understand that the Receiver is also seeking a vesting order, which would transfer the assets to MLD free and clear of any interest or licensing rights that YBCI or any other party may have to the assets.

4. Under a license agreement, **YBCI has rights of both assignment and license to much of the intellectual property that PDI has created since that company was formed in 2000.** If the requested vesting order is granted, YBCI will be severely harmed. It would completely take away YBCI's rights under the license agreement.

38. The Court rejected the objections of Goodenowe and YBCI, granted the Approval and Vesting Order sought by the Receiver (the "**Approval and Vesting Order**"), and ordered that the PDI Purchased Assets vest in Med-Life free and clear of any claims or encumbrances, including any claim by YBCI or Goodenowe. In coming to the decision to grant the Approval and Vesting Order, the Court made the following findings of fact:

32. Certainly this NCIP Agreement is a contract between Goodenowe and PDI. However, Goodenowe has been the president and chief executive officer of PDI until his resignation on July 5, 2016. Goodenowe provided his management services to PDI through a contract between PDI and YBCI. Goodenowe knew exactly what he made, discovered and developed while YBCI contracted his management services to PDI. And, he has agreed, since 2003, that all of the intellectual property, including any improvements, belong to PDI. YBCI cannot now complain that there is some injustice if it is not permitted to claim a contractual right as against the assets being sold by the Receiver. Oppositely, that right was bargained away a long time ago by Goodenowe.

In summary the Receiver is entitled to sell the assets of PDI free and clear of any claim of YBCI pursuant to the Licence with PDI.

39. The closing of the transaction contemplated in the PDI Sale Agreement occurred on or about November 1, 2016, at which time Med-Life became the owner of the PDI Purchased Assets.

**Prodrome Sciences Inc. and Prodrome Health Centers Inc.**

40. In May 2016, while Goodenowe was still an officer of PDI, Goodenowe and YBCI founded the business of Prodrome, which carries on a business similar or identical to the Business.

41. Gorchinski, Shklanka, Senanayake, Jiang, Trice, and Liang are all former employees of PDI who now work for Prodrome and PHCI. Ryan is a former director of PDI who is now an advisor to Prodrome. Wright and Perrott are advisors to Prodrome. Horsnall and Schell are employees of PHCI.

42. PHCI purports to promote and/or utilize Prodrome's diagnostic and drug assets at its Health Centre in Moose Jaw, Saskatchewan.

43. Prodrome offers diagnostic tests (the "**Prodrome Analogue Diagnostics**") which are similar or identical to those developed by PDI (and now owned by Med-Life) (the "**Med-Life Diagnostics**"), as follows:

<b>Med-Life Diagnostic</b>	<b>Prodrome Analogue Diagnostic</b>
<b>Cologic®</b> , a blood test that identifies individuals with an elevated risk of colorectal cancer by measuring the levels of a particular metabolite in the blood.	<b>Prodrome-CRC</b> , a test to assesses colorectal cancer risk by measuring the levels of a particular "prodrome" in the blood.
<b>PanaSee™</b> , a blood test that identifies individuals with an elevated risk of pancreatic cancer by measuring the levels of a particular metabolite in the blood.	<b>Prodrome-PAC</b> , a blood test that identifies people with an elevated risk of pancreatic cancer by measuring the levels of a particular "prodrome" in the blood.
<b>Alz-ID™</b> , a blood test that identifies individuals with an elevated risk of Alzheimer's disease by measuring the levels of certain plasmalogens in the blood.	<b>Prodrome-Neuro</b> , a blood test that identifies individuals with an increased risk of Alzheimer's disease by measuring the levels of a particular "prodrome" in the blood.
<b>OvAware</b> , a blood test that identifies individuals with an elevated risk of ovarian cancer by measuring the levels of certain lipids in the blood.	<b>Prodrome-OVC</b> , a blood test that identifies individuals with an increased risk of ovarian cancer by measuring the levels of a particular "prodrome" in the blood.

44. Each of the Med-Life Diagnostics is the product of years, and in some cases decades, of research and development work on the part of PDI and Med-Life including original scientific research, experimentation, data gathering and analysis, computer software development, and testing. The fruits of this lengthy process are wholly owned by Med-Life and, in addition to their protection under more formal intellectual property regimes which are not the subject of this litigation (i.e. patents, copyright, and trademarks), comprise trade secrets and/or confidential information owned by Med-Life, a fact known to the Defendants.

45. Notwithstanding the Primary Defendants' characterization of the Prodrome Analogue

Diagnostics as measuring "prodromes" in the blood, the fact is that each of the Prodrome Analogue Diagnostics is identical, or substantially identical, to its corresponding Med-Life Diagnostic. The arbitrary characterization of the compounds being tested for as "prodromes" is nothing more than a deceptive attempt on the part of the Defendants to distance themselves from PDI and Med-Life. The Prodrome Analogue Diagnostics were either:

- (a) developed by YBCI and/or Goodenowe under contract with PDI (as the Med-Life Diagnostics), and while their rights and actions were governed by the terms of the Licence Agreement, the Goodenowe Services Agreement, and the NCIP Agreement; or, in the alternative,
- (b) developed by the Defendants using knowledge, expertise, confidential information, data, trade secrets, intellectual property, books and written records (physical or electronic), and/or other information which forms part of the PDI Purchased Assets ("**Proprietary Information**").

46. Prodrome also claims to be designing and/or developing a number of drug therapies (the "**Prodrome Analogue Therapies**") which are similar or identical to those developed by PDI (and now owned by Med-Life) (the "**Med-Life Therapeutics**"), as follows:

<b>Med-Life Therapeutic</b>	<b>Prodrome Analogue Therapeutic</b>
Plasmalogen restoration therapy to improve the health of individuals with <b>Alzheimer's disease</b> .	Plasmalogen restoration therapy to improve the health of individuals with <b>Alzheimer's disease</b> .
Plasmalogen restoration therapy to improve the health of individuals with <b>multiple sclerosis</b> .	Plasmalogen restoration therapy to improve the health of individuals with <b>multiple sclerosis</b> .
Plasmalogen restoration therapy to improve the health of individuals with <b>Parkinson's disease</b> .	Plasmalogen restoration therapy to improve the health of individuals with <b>Parkinson's disease</b> .
Plasmalogen restoration therapy to improve the health of individuals with <b>Rhizomelic Chondrodysplasia Punctata ("RCDP")</b> , a relatively rare (but very serious) childhood disorder.	Plasmalogen restoration therapy to improve the health of individuals with <b>RCDP</b> .

47. Each of the Med-Life Therapeutics is the product of years, and in some cases decades, of research and development work on the part of PDI and Med-Life including original scientific research, experimentation, data analysis, and testing. The fruits of this lengthy process are wholly owned by Med-Life and, in addition to their protection under more formal intellectual property regimes which are not the subject of this litigation (i.e. patents, copyright, and trademarks), comprise trade secrets and/or confidential information owned by Med-Life, a fact known to the Defendants.

48. The Prodrome Analogue Therapeutics were either:
- (a) developed by YBCI and/or Goodenowe under contract with PDI (as the Med-Life Therapeutics), and while their rights and actions were governed by the terms of the Licence Agreement, the Goodenowe Services Agreement, and the NCIP Agreement; or, in the alternative,
  - (b) developed by the Defendants using Proprietary Information.

49. Prodrome would not be in a position to offer the Prodrome Analogue Diagnostics or the Prodrome Analogue Therapeutics without using Proprietary Information. Nevertheless, Prodrome promotes the Prodrome Analogue Diagnostics and the Prodrome Analogue Therapeutics as its own, including in speeches, papers, presentations, and promotional materials.

#### **Breach of Contract**

50. All of the actions of the Defendants in relation to the Prodrome Analogue Diagnostics and the Prodrome Analogue Therapeutics comprise breaches of the obligations of Goodenowe pursuant to the NCIP Agreement. These obligations are owed to Med-Life as PDI's assignee.

#### **Trespass to Chattels, Conversion, and Conspiracy**

51. The Approval and Vesting Order extinguished any right which any of the Defendants may have had to use any of the Proprietary Information.

52. YBCI and Goodenowe have (and have caused Prodrome and PHCI to), and the Secondary Defendants have, in concert, intentionally and wrongfully used Proprietary Information in offering, developing and promoting the Prodrome Analogue Diagnostics and in designing, developing, promoting, and offering the Prodrome Analogue Therapeutics, with the purpose and effect of interfering with and/or preventing Med-Life's lawful use of and entitlement to such Proprietary Information and, in particular, Med-Life's entitlement to test, commercialize, and sell the Med-Life Diagnostics and the Med-Life Therapeutics. Med-Life has suffered damage as a result of these actions, as detailed below.

#### **Unjust Enrichment**

53. Prodrome has been enriched as a result of its unlawful use of the Prodrome Analogue Diagnostics and the Prodrome Analogue Therapeutics including, without limitation, by contracting with a former customer of PDI in Japan for the use of the Prodrome Analogue Diagnostics. As Med-Life is the only other entity offering these products and services, to the extent that Prodrome has been enriched, Med-Life has suffered a deprivation of revenue. There is no lawful or juristic reason for such an enrichment of Prodrome at Med-Life's expense since, as noted above, Prodrome's use of

the Prodrôme Analogue Diagnostics and the Prodrôme Analogue Therapeutics is entirely unlawful.

### **Unlawful Means Tort**

54. In addition to being unlawful vis-à-vis Med-Life directly for the reasons set out above, the above-described actions of YBCI and Goodenowe, as well as Gorchinski, Shklanka, Senanayake, Jiang, Trice, Liang, and Ryan (the "**PDI Secondary Defendants**"), are unlawful vis-à-vis PDI and PLSI as intentional breaches of those parties' respective contractual and fiduciary duties to PDI and/or PLSI and their duties to maintain the secrecy of PDI's confidential information.

55. PDI and PLSI have ceased operations since substantially all of its assets were sold to Med-Life in the receivership proceedings. However, Med-Life has suffered damage as a result of the unlawful acts committed against PDI and/or PLSI by YBCI, Goodenowe, and the PDI Secondary Defendants. Accordingly, YBCI, Goodenowe, and the PDI Secondary Defendants are liable to Med-Life for damages suffered by Med-Life as a result of those unlawful acts, pursuant to the unlawful means tort.

56. First, the actions of Goodenowe, Prodrôme, PHCI, and the PDI Secondary Defendants detailed above comprise:

- (a) breaches by YBCI of its contractual duties to PDI pursuant to the Goodenowe Services Agreement and the Licence Agreement; and
- (b) breaches by Shklanka, Senanayake, Jiang, Trice, and Liang of their contractual duties to PDI (or, in Liang's case, PLSI) pursuant to the PDI Employment Agreements.

57. Second, Goodenowe owes a *de jure* (and statutory) fiduciary duty to PDI as a former director and officer. The PDI Secondary Defendants owe *de facto* fiduciary duties to PDI as former employees of PDI, and YBCI owes *de facto* fiduciary duties to PDI by reason of its access to the Proprietary Information as well as YBCI's relationship with Goodenowe. In particular:

- (a) by reason of their access to the Proprietary Information, YBCI, Goodenowe, and the PDI Secondary Defendants had scope for the exercise of discretion or power in determining the use to which each of them would put the Proprietary Information to which each of them had access;
- (b) YBCI, Goodenowe, and the PDI Secondary Defendants could unilaterally exercise their discretion in determining how the Proprietary Information would be used, in such a manner as to effect the legal and practical interests of PDI; and
- (c) PDI was vulnerable to YBCI, Goodenowe, and the PDI Secondary Defendants in regard to their access to, and potential use of, the Proprietary Information.

58. For these reasons, YBCI, Goodenowe, and the PDI Secondary Defendants had a duty to only use the Proprietary Information in good faith and with a view to the best interests of PDI. In causing or permitting Prodrome and PHCI to use the Proprietary Information, YBCI, Goodenowe, and the PDI Secondary Defendants are in breach of their respective fiduciary duties to PDI.

59. Third, Prodrome, PHCI, and the Secondary Defendants would be liable to PDI for their knowing assistance of the breaches of Goodenowe and YBCI of their fiduciary duties to PDI, by reason of the following:

- (a) Goodenowe's and YBCI's breaches of their respective fiduciary duties were and are dishonest in nature;
- (b) Prodrome, PHCI, and the Secondary Defendants were and are aware of both Goodenowe's and YBCI's respective fiduciary duties to PDI, and their dishonest breaches of those duties; and
- (c) Prodrome, PHCI, and the Secondary Defendants have participated in, assisted with, and benefitted from these breaches of fiduciary duties, as the business models of Prodrome and PHCI (and, by extension, the employment or other relationships of the Secondary Defendants with Prodrome and/or PHCI) are based entirely upon the unlawful use of the Proprietary Information.

60. Fourth, as noted above, the Proprietary Information was confidential. The confidential nature and secrecy required in relation to the Proprietary Information was communicated to, and was known to, YBCI, Goodenowe, and the PDI Secondary Defendants. They understood that the Proprietary Information was to be used by each of them only in connection with the performance of their duties to PDI; instead, they have misappropriated the Proprietary Information for their own benefit and for the benefit of Prodrome and PHCI.

61. The unlawful actions of YBCI, Goodenowe, and the PDI Secondary Defendants taken against PDI and/or PLSI in the form of breaches of their respective fiduciary duties and duties to hold the Proprietary Information confidential for the sole benefit of PDI and/or PLSI were intended to, and have in fact, caused damage to Med-Life, and are accordingly actionable by Med-Life under the auspices of the unlawful means tort.

### **Damages and Disgorgement**

62. The Defendants' actions to develop and promote the Prodrome Analogue Diagnostics and the Prodrome Analogue Therapeutics are causing confusion in the marketplace and the scientific community, are hindering Med-Life's ongoing efforts to develop and commercialize the Med-Life Diagnostics and the Med-Life Therapeutics, and are dealing with Med-Life's customers to the

exclusion of Med-Life.

63. Further, if and to the extent that PDI or PHCI earns or have earned any revenues as a result of their development, production, promotion, and/or commercialization of any of the Prodrone Analogue Diagnostics or the Prodrone Analogue Therapeutics, such revenues are, in equity, the property of Med-Life, and Med-Life seeks the recovery of same by way of a constructive trust over the assets of PDI and PHCI, and/or a remedy of the disgorgement of all such revenues.

**Relief Requested**

64. The Plaintiff therefore claims as against the Defendants, YOLBOLSUM CANADA INC., PRODRONE SCIENCES INC., PRODRONE HEALTH CENTERS INC., DAYAN GOODENOWE (also known as DAYAN GOODNOUGH), MONTE GORCHINSKI, ERIKA SHKLANKA, VIJITHA SENANAYAKE (also known as GAMARALLAGE SENANAYAKE), YANQIU JIANG, AUDREY TRICE (also known as AUDREY REIDT), ELLEN LIANG (also known as JIAQI LIANG), IAN WRIGHT, JOHN RYAN, KEVIN PERROTT, JANA HORSNALL, and TANYA SCHELL, the following:

- (a) judgment for damages and/or for breach of contract and/or the torts of trespass to goods, conversion, conspiracy, and/or the unlawful means tort, in excess of Ten Million Dollars (\$10,000,000.00) or such other amount as may be proven at trial;
- (b) aggravated and punitive damages in light of the Defendants' malicious and high-handed conduct in conspiring to interfere with Med-Life's lawful use of its property;
- (c) interim, interlocutory and permanent injunctions to protect Med-Life's interest in the PDI Purchased Assets including, but not limited to, injunctions:
  - (i) restraining the Defendants from using the PDI Purchased Assets or any assets or techniques derived therefrom; and
  - (ii) restraining the Defendants from representing to any persons that they have the right to use, or to carry on business using, the PDI Purchased Assets or any assets or techniques derived therefrom;
- (d) interest pursuant to *The Pre-judgment Interest Act*, SS 1984-85-86, c P-22.2;
- (e) the costs of this action on a solicitor and his own client, full indemnity basis; and
- (f) such further and other relief as this Honourable Court may deem just.

65. The Plaintiff further claims as against the Defendants YOLBOLSUM CANADA INC., PRODROME SCIENCES INC., PRODROME HEALTH CENTERS INC., and DAYAN GOODENOWE (also known as DAYAN GOODNOUGH), the following:

- (a) an accounting of all revenues earned by Prodrome and PHCI which are or may be derived from the improper use of the PDI Purchased Assets;
- (b) disgorgement of all such revenues to Med-Life, in an amount to be proven at trial; and
- (c) a constructive trust over the assets of Prodrome and PHCI to the extent of the revenues so earned.

DATED at Saskatoon, Saskatchewan, this 7<sup>th</sup> day of June, 2019.

**MLT AIKINS LLP**

Per: 

Douglas C. Hodson, Q.C.  
Solicitor for the Plaintiff,  
Med-Life Discoveries LP, by its general partner  
Med-Life Discoveries GP Inc.

**CONTACT INFORMATION AND ADDRESS FOR SERVICE:**

Name of firm:	MLT Aikins LLP
Lawyer in charge of file:	Douglas C. Hodson, Q.C.
Address of firm:	1500, 410 22nd Street E, Saskatoon SK S7K 5T6
Telephone number:	306.975.7101
Email address:	DHodson@mltaikins.com
File No:	60754.2