

NOTICE OF CLAIM

(FORM 2, DISTRICT COURT RULES 2009)

Definitions of words used in this Notice

address for service: an address of a place in New Zealand where all documents about a claim can be taken or sent to the plaintiff or defendant

defendant: the person who a claim is against

file: to take or send documents about a claim to the court Registrar

judgment: when the court makes a judgment in favour of the plaintiff because the defendant does not return their documents or information in time

jurisdiction: the court's authority to decide on a claim

plaintiff: the person making a claim against someone else

serve: to take or send documents about a claim to the plaintiff's or defendant's address for service

serve personally: to take documents about a claim to the plaintiff or defendant and give the documents to them

working day: any normal weekday from Monday to Friday, unless it is one of the following public holidays: Good Friday, Easter Monday, Anzac Day, Labour Day, Queen's birthday, or Waitangi Day. As well as these public holidays, the days from Christmas Day (25 December) to 15 January do not count as working days.

Information for defendant

Who to contact if you need help

If you need help understanding this Notice, please talk to your lawyer, local Citizens Advice Bureau, or Community Law Centre, or go to: www.justice.govt.nz/civil.

Why you have received this Notice

You have received this completed Notice of Claim because Ian Johnson Pharmacy Limited wants to make a civil claim against you in the Manukau District Court. This Notice of Claim tells you and the court what Ian Johnson Pharmacy Limited's claim is about.

The person making the claim against you, namely, Ian Johnson Pharmacy Limited, is the plaintiff.

You are the defendant.

What to do next if you are the defendant

You must respond to this Notice of Claim within 30 working days. To respond to Ian Johnson Pharmacy Limited, fill in form 3 (Response by Defendant). You can get a copy of form three from www.justice.govt.nz/civil, your local District Court, or your lawyer.

What happens if you do not respond to Ian Johnson Pharmacy Limited

If you do not respond to this Notice of Claim within 30 working days, the court may decide you have to pay or give Ian Johnson Pharmacy Limited what they are claiming in this Notice (this is called judgment).

Keep a copy of this Notice, and any other forms or notices you receive, for your own records.

Other forms in claim process

For more information about the claim process, *see* the notes at the end of this Notice of Claim.

How to get legal advice

You may want to employ a lawyer to advise you. If you decide to employ a lawyer, you should do so as soon as possible. If you cannot afford a lawyer, you may be eligible for legal aid. To find out about legal aid, contact the staff at your local Legal Services Agency, Citizens Advice Bureau, or Community Law Centre, or approach a lawyer or legal firm for help.

What happens if you are an overseas resident

If you live outside of New Zealand, you should have received form G 6 (notice to defendant served overseas) as well as this Notice of Claim. Form G 6 sets out your options as an overseas resident. *See* www.justice.govt.nz/civil for more information.

What if you think the District Court is not the proper place to decide on this claim?

You may think the District Court is not the proper court or place to decide on the plaintiff's claim (this is called protest to jurisdiction). For example, you may think the case should be heard by—

- another court (such as the High Court, Family Court, Employment Court, or Environment Court):
- a court in another country:
- a tribunal (such as the Tenancy Tribunal):
- an arbitrator.

If you want to protest the District Court's jurisdiction for this claim, you must file and serve form G 7 (appearance under protest to jurisdiction), instead of serving form 3. You can get a copy of form G 7 from www.justice.govt.nz/civil, your local District Court, or your lawyer.

**IN THE DISTRICT COURT OF NEW ZEALAND
HELD AT MANUKAU**

CIV 2010-092- 1947

BETWEEN IAN JOHNSON PHARMACY LIMITED, a duly incorporated
company having its registered office at Bairds Road, Otara, Auckland
and carrying on business as a pharmacy


Plaintiff

AND GLAXOSMITHKLINE NZ LIMITED, a duly incorporated
company having its registered office at 8th Floor Quay Tower, 29
Customs Street West, Auckland, and carrying on business as a
manufacturer of medicines

Defendant

**NOTICE OF CLAIM
DATED: 7 MAY 2010**

Presented By:


AULD BREWER MAZENGARB & MCEWEN
Lawyers and Notary Public
PO Box 738
NEW PLYMOUTH

Tel: 06 757 5183
Fax: 06 757 4605

(T C Brewer)

PHA091\35\117.docx

FILED AT: Manukau
CIV: 2010-092-
DATE FILED: 14 MAY 2010

SECTION 1: PLAINTIFF'S DETAILS

I am listing 1 Plaintiff.

- 1A Plaintiff's name:** Ian Johnson Pharmacy Limited
- 1B Plaintiff's trading name:** Johnson's Pharmacy Ltd
- 1C Plaintiff's address for service:** PO Box 738, New Plymouth
- 1D Plaintiff's postal address:** N/A
- 1E Plaintiff's contact details:** N/A
- 1F Lawyers' contact details:** Auld Brewer Mazengarb & McEwen
PO Box 738
New Plymouth

Attn: T C Brewer / A W M Britton

SECTION 2: DEFENDANT'S DETAILS

I am listing 1 Defendant

- 2A Defendant's name**
GlaxoSmithKline NZ Limited
- 2B Defendant's trading name**
GlaxoSmithKline / GSK
- 2C Defendant's address for service**
Chapman Tripp
PO Box 2206
Shortland Street
Auckland 1140
- 2D Defendant's postal address**
N/A
- 2E Defendant's contact details**
N/A
- 2F Does the Defendant have a lawyer who is dealing with this claim on its behalf?**
Yes.

Chapman Tripp
PO Box 2206
Shortland Street
Auckland 1140

Attention: A Ross

SECTION 3: YOUR DESCRIPTION OF THE FACTS OF THE CLAIM AGAINST THE DEFENDANT, AND ANY SUPPORTING LEGAL REFERENCES

3A Connection between the Plaintiff and the Defendant

What is the connection between you and the Defendant?

- (1) The Plaintiff is a duly incorporated company having its registered office at 133 Bairds Road, Otara, Auckland and carries on the business of a pharmacy.
- (2) The Defendant is a duly incorporated company having its registered office at 29 Customs Street West, Auckland and carries on the business of a manufacturer of medicines.
- (3) In its day to day business operations, the Plaintiff purchases medicines manufactured by the Defendant which it dispenses to patients having the requisite Doctor's prescription.

3B Details of duty the Defendant owes the Plaintiff

What duty does the Defendant owe you? What obligation does the Defendant have to you?

- (1) The Defendant owes the Plaintiff a duty not to breach a contract that exists between it and the Plaintiff and in particular an implied term of the contract that the Defendant make reasonable payment to the Plaintiff for work done under the contract.
- (2) As an additional and alternative duty, the Plaintiff claims the Defendant owes it a duty pursuant to the law of unjust enrichment to reasonably remunerate the Plaintiff for the cost of the services performed by the Plaintiff in the Marevan recall (see 3C) as follows:
 - (a) The services were provided by the Plaintiff at the Defendant's request;
 - (b) The Defendant was enriched by the provision of the services:
 - (i) Its potential and actual liability to the affected patients was reduced or eliminated.
 - (ii) Its potential liability to the Crown for any harm done to affected patients was reduced or eliminated.
 - (iii) Its reputation in the market place was preserved.
 - (iv) It was spared the time, trouble and expense of procuring alternative means of recalling the affected tablets.

- (v) It retained its share of the New Zealand market for warfarin;
- (c) The enrichment enjoyed by the Defendant was at the Plaintiff's expense; and
- (d) The enrichment enjoyed by the Defendant is unjust because:
 - (i) The Plaintiff provided the services to the Defendant under an implied contract void for mistake; or
 - (ii) The Plaintiff provided the services to the Defendant under an implied contract void for uncertainty; or
 - (iii) The Plaintiff provided the services to the Defendant as a result of an unconscionable bargain; or
 - (iv) The Plaintiff provided the services to the Defendant in circumstances constituting an agency of necessity.
- (3) As an additional and alternative duty, the Plaintiff claims that the Defendant has a duty not to deny that which it has encouraged the Plaintiff to believe to its detriment, namely, that a contract either existed or would be concluded and that such a contract provided for or would provide for remuneration of the Plaintiff for the services it provided to the Defendant in the Marevan recall and says further that it would be unconscionable for the Defendant to be permitted to make such denial;
- (4) As an additional and alternative duty, the Plaintiff claims that pursuant to section 9 of the Fair Trading Act 1986, the Defendant owes it a duty not to engage in misleading or deceptive conduct or conduct that is likely to mislead or deceive.

Was there a contract (an agreement or understanding) between you and the Defendant?

- (5) Yes (see 3B(1)).

What terms from that contract are relevant to your claim?

- (6) The Defendant's request in the facsimile dated 28 January 2010 was a request for the Plaintiff to provide its professional services to the Defendant for the purposes of the Marevan recall (see 3C);
- (7) The Plaintiff's provision of the services amounted to an acceptance of the Defendant's request;
- (8) Contractual intention existed. If the Court finds otherwise, contractual intention should be implied by the Court; and

- (9) Reasonable remuneration from the Defendant for the services provided by the Plaintiff in response to its request should be implied as requisite consideration by the Court.

3C What happened that led to this claim?

What did the Defendant do (or not do) that led you to make this claim?

- (1) On 28 January 2010 the Plaintiff received a facsimile from the Defendant informing it that the Defendant was recalling batch 35222 of Marevan (Warfarin) 3mg Tablets because of a manufacturing problem that could have resulted in the amount of warfarin in the tablet possibly being more than the labelled amount in some tablets. The facsimile stated it was important for patients to return Marevan 3mg Tablets dispensed since 23 November 2009 for replacement and for their clinical status to be reviewed by their prescriber or clinic. The facsimile then requested the following services be provided by the Plaintiff in order to facilitate the recall:
- (a) To contact all patients dispensed Marevan 3mg since 23 November 2009 and advise them to return their tablets to the Plaintiff for replacement and to advise them to contact their prescriber or clinic to determine if their clinical status needed to be assessed.
 - (b) For affected stock in its possession:
 - (i) The Plaintiff was to quarantine all stock from the affected batch immediately;
 - (ii) The Plaintiff was to complete an "Inventory of Medicines Returned" form regardless of whether or not the Plaintiff had any of the affected batch. The Plaintiff was then to fax this form to a provided number; and
 - (iii) The Plaintiff was to return any affected stock by courier to Healthcare Logistics by 29 January 2010 labelled as "Recalled Stock".
 - (c) For patient-returned Marevan:
 - (i) The Plaintiff was to collect and quarantine any affected patient supplies of Marevan returned to it and enter each patient return on a "Recalled Medicine Patient Returns" form;
 - (ii) The Plaintiff was to replace the number of tablets returned by affected patients with the same number of tablets from a new batch of Marevan, supplied by the Defendant;

- (iii) The Plaintiff was to fax the completed "Recalled Medicine Patient Returns" form to a provided number;
 - (iv) The Plaintiff was to send the original "Recalled Medicine Patient Returns" form and patient-returned affected stock by courier to Healthcare Logistics labelled as "Recalled Patient Returns".
- (2) The facsimile was signed by the General Manager of the Defendant, Geoff McDonald.
- (3) The Plaintiff carried out on behalf of the Defendant the work requested in the facsimile.
- (a) On 28 January 2010 it contacted seven patients affected by the recall and gave them the advice as set out in 3C(1)(a) above.
 - (b) On 28 January 2010 the Plaintiff quarantined all its stock from the affected batch, completed the "Inventory of Medicines Returned" form and faxed this form to the number provided by the Defendant in the facsimile.
 - (c) On 28 January 2010 the Plaintiff returned the original "Inventory of Medicines Returned" form together with its stock from the affected batch to Healthcare Logistics marked as "Recalled Stock".
 - (d) On or about 28 January 2010 the Plaintiff collected and quarantined patient-returned supplies of affected Marevan tablets and thereafter completed the "Recalled Medicine Patient Returns" form.
 - (e) On or about 28 January 2010 the Plaintiff replaced the number of affected Marevan tablets returned by patients with the same number of tablets from a new batch of Marevan tablets, provided by the Defendant.
 - (f) On or about 28 January 2010 the Plaintiff faxed the completed "Recalled Medicine Patient Returns" form to the number provided by the Defendant in the facsimile.
 - (g) On or about 28 January 2010 the Plaintiff returned the original "Recalled Medicine Patient Returns" form and the affected patient-returned Marevan stock by courier to Healthcare Logistics marked "Recalled Patient Returns".
- (4) The Plaintiff relies on the facsimile in respect of its claim.
- (5) On 5 March 2010 the Plaintiff wrote to the Defendant enclosing an invoice dated 28 February 2010 for the services performed at the Defendant's request for the following amount:

Contacting seven patients x 15 minute average per patient	\$210.00
Dispensing fee for replacing four patients' Marevan tablets – 4 x \$5.30	21.20
Administration, briefing staff, liaising with GPs, internal stock management and GSK paper work	<u>120.00</u>
	\$351.20
GST	<u>43.90</u>
Total (including GST)	<u>\$395.10</u>

- (6) By letter dated 15 March 2010 the Defendant advised the Plaintiff that it refused to pay the Plaintiff the invoiced sum or any part of it.

Legal references (if any):

3D Facts showing why the Defendant should pay or give what is being claimed

What facts justify what you are asking the Defendant to do to settle your claim?

The Plaintiff repeats paragraphs 3A(1) to (3) and paragraphs 3C(1) to (6) above.

Legal references (if any):

3E Loss suffered by the Plaintiff

What did you lose because of the Defendant's actions?

\$395.10

Legal references (if any):

SECTION 4: WHAT YOU ARE ASKING FOR FROM THE DEFENDANT

4A What are you asking the Defendant to give you or to do?

The Plaintiff seeks reasonable remuneration for the services it provided at the request of the Defendant, namely, the sum of \$395.10.

4B Are you also claiming interest on the amount in 4A?

The Plaintiff claims \$0.10 per day from 15 March 2010 until the date of Judgment, being interest accrued on the total loss to the Plaintiff at the prescribed daily rate, pursuant to section 62B of the District Courts Act 1947.

4C What costs and expenses are you claiming?

I claim \$140.00 for the filing fee on this claim.

I claim \$645.00 for preparing this form (as prepared by a lawyer).

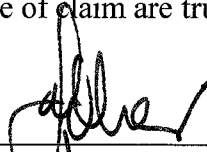
Total: \$785.00

SECTION 5: YOUR SIGNATURE

5A Sign the form below. Then print or type your name and address underneath your signature, or use an address stamp.

I believe that the facts I have stated in this notice of claim are true and correct.

Signature of Plaintiff:



Full name and address of Plaintiff:

Ian James Johnson

Position or office held:

Proprietor

Date:

11/5/2010

Note: keep a copy of this form, and any other forms you receive, for your own records.

Notes

More information about claim process

The claim process involves a series of forms requesting information. Some forms are for the plaintiff to fill in and some are for the defendant. All the forms in the process are listed in the notes section.

You can find out more about the claim process at: www.justice.govt.nz/civil.

Why do you have to go through this process?

By going through the claim process, you might be able to settle the claim without going through the court system. If you go through the claim process and do not settle the claim, the court will then have an accurate record of all the facts of the claim from both the plaintiff and the defendant.

It is important that you keep your own copies of all the forms you send or receive.