

CANADA

PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

SUPERIOR COURT  
(Class Action Chamber)

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No.: 500-06-000948-188

**MICHAEL POHORESKY, residing and  
domiciled at**

and

**HAROLD POHORESKY, residing and  
domiciled**

*Representative Plaintiffs*

-and-

**“All persons who reside or have resided in Canada who were prescribed and ingested the drug REXULTI® during the Class Period, starting from February 16, 2017, and who thereafter developed one or more of the following Compulsive Behaviours and Impulse Control Disorders: (i) compulsive gambling, (ii) hypersexuality, (iii) binge eating; (iv) compulsive shopping and/or spending; and their family members, dependents, heirs and estates”**

*The Class*

v.

**OTSUKA CANADA PHARMACEUTICAL  
INC.**

a legal person incorporated under the CBCA,  
domiciled in the district of Montreal at 2250  
Alfred Nobel Blvd., Ste. 301, Saint Laurent, QC  
H4S 2C9

-and-

**LUNDBECK CANADA INC.**

a legal person incorporated under the Business Corporations Act domiciled at 400-2600 Boul. Alfred-Nobel, St. Laurent QC, H4S 0A9

*Defendants*

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**ORIGINATING APPLICATION**

(Articles 100, 141-141 and 583 of the *Code of Civil Procedure*)

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**IN SUPPORT OF THEIR ORIGINATING APPLICATION, THE REPRESENTATIVE PLAINTIFFS MICHAEL POHORESKY AND HAROLD POHORESKY STATE AS FOLLOWS:**

**I. DEFINITIONS**

1. In this application, in addition to the terms that are otherwise defined within, the following terms have the following meanings:
  - a. “**Abilify**” means aripiprazole tablets sold under the trademark ABILIFY, and depot injections of aripiprazole sold under the trademark ABILIFY MAINTENA;
  - b. “**CBCA**” means the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44;
  - c. “**CCQ**” means the Civil Code of Québec;
  - d. “**Class Period**” means the period starting from February 16, 2017;
  - e. “**Compulsive Behaviours**” means, *inter alia*, an uncontrollable impulse to gamble, shop, eat; unusual sexual thoughts, fantasies, desires or behaviours; or any other uncontrollable behaviour that causes harm to the individual or others;
  - f. “**Defendants**” means Otsuka Canada Pharmaceutical Inc. and Lundbeck Canada Inc.;
  - g. “**Foreign Entities**” means Otsuka Pharmaceutical Company Ltd., Otsuka Pharmaceutical Development & Commercialization Inc., H. Lundbeck A/S and Lundbeck Research USA Inc.
  - h. “**Impulse-Control Disorders**” means, *inter alia*, any one or more impulse control disorders, including but not limited to compulsive gambling, hypersexuality, binge eating and compulsive shopping and/or spending;

- i. **“Product Monograph”** means the Canadian product monograph for Rexulti;
- j. **“Rexulti”** means brexpiprazole tablets sold under the trademark Rexulti™;

## II. THE CLASS ACTION

2. The Representative Plaintiffs Michael Pohoresky (**“Michael”**) and Harold Pohoresky (**“Harold”**) (altogether the **“Representative Plaintiffs”**) obtained the authorisation to bring a class action and were appointed as representative plaintiffs for the persons (collectively, the **“Class”**; individually, the **“Members”**):

“All persons who reside or have resided in Canada who were prescribed and ingested the drug REXULTI® during the Class Period, starting from February 16, 2017, and who thereafter developed one or more of the following Compulsive Behaviours and Impulse Control Disorders:

- compulsive gambling;
- hypersexuality;
- binge eating;
- compulsive shopping and/or spending;

and their family members, dependents, heirs and estates”

as it appears from the authorization judgment dated December 3, 2021 (the **“Authorization Judgment”**).

3. The Superior Court also granted this authorisation against the Foreign Entities. The Court of Appeal reversed the conclusions of the Authorization Judgment in this respect and this issue is now before the Supreme Court of Canada.
4. This class proceeding arises from the Defendants’ and Foreign Entities failure to warn the Canadian public of the severe side effects of the drug Rexulti. As a result of their misrepresentations and omissions, the Defendants’ and Foreign Entities harmed the Class Members.
5. In Canada, Rexulti was initially indicated for the treatment of schizophrenia only. On February 22, 2019, Health Canada approved Rexulti for the treatment of depression. Rexulti has the undisclosed side effect of causing or materially increasing the risk and severity of Compulsive Behaviours and Impulse Control Disorders, particularly gambling.
6. The Defendants and Foreign Entities knew or should have known that Rexulti has this severe side effect, because the Defendants’ and Foreign Entities intentionally designed

Rexulti to be substantially similar to their drug Abilify. Abilify was researched and developed by the Defendants' and Foreign Entities, is indicated for the treatment of schizophrenia, bipolar I disorder and Major Depressive Disorder, and causes or materially increases the risks of Compulsive Behaviours and Impulse Control Disorders. As Rexulti and Abilify are almost identical in their chemical structure and mechanism of action in the brain, the Defendants' and Foreign Entities knew or should have known that Rexulti would also cause or materially contribute to Impulse Control Disorders and Compulsive Behaviours.

7. The increased risk of Compulsive Behaviours and Impulse Control Disorders associated with Abilify became the subject of escalating regulatory intervention in Canada, the United States, and Europe. Regulators compelled the Defendants and Foreign Entities to revise Abilify's product monographs with increasingly comprehensive warnings, and by 2017, the Canadian product monograph for Abilify featured a lengthy and explicit warning about its risk of Compulsive Behaviours and Impulse Control Disorders.
8. Despite the clear need to label Rexulti with adequate warnings, Defendants and Foreign Entities concealed Rexulti's risk of Compulsive Behaviours and Impulse Control Disorders from the Canadian public and their treating physicians. The Product Monograph for Rexulti omits critical information about the full array of the Compulsive Behaviours and Impulse Control Disorders that Rexulti can induce, the causal relationship between Rexulti and the development of these side effects, the need to discontinue or taper Rexulti if these side effects develop, and the methods for detecting whether a patient is developing these side effects. The Product Monograph also misleadingly implies that only people with a pre-existing history of pathological gambling should be worried about the risk of Compulsive Behaviours and Impulse Control Disorders.
9. Further, despite their significant collective resources and the existence of a large body of scientific evidence demonstrating that Abilify can cause or materially increase the risk of developing Compulsive Behaviours and Impulse Control Disorders, Defendants and Foreign Entities failed to conduct any, or any adequate or reasonable, pre- or post-market testing and research to confirm whether Rexulti has the same severe side effects as Abilify.
10. The Representative Plaintiffs and the Class Members would never have been harmed by Rexulti but for the Defendants' and Foreign Entities' failure to warn them about this side effect. This failure to warn was particularly egregious given the vulnerability of the Representative Plaintiff, Michael Pohoresky and other Class Members – as individuals with schizophrenia and/or other major mental illnesses, they are particularly vulnerable and affected by the harms of Compulsive Behaviours and Impulse Control Disorders, including social alienation, financial loss, emotional anguish, and humiliation.

### **III. THE REPRESENTATIVE PLAINTIFFS' CIRCUMSTANCES**

11. Michael is 45 years old and currently resides in Ottawa, Ontario. Michael is an artist and also writes poetry.
12. Michael was first diagnosed with schizophrenia at the age of 18.

13. Michael received his first prescription of Rexulti on or about April 24, 2018 for treatment of schizophrenia. The initial dosage prescribed was 4 mg/day. On or about June 12, 2018, Michael's dosage of Rexulti was reduced to 2 mg/day. On or about July 5, 2018 the dosage was increased to 3mg/ day and remained as such until he stopped taking Rexulti in late 2018.
14. Prior to receiving a prescription for Rexulti, Michael was prescribed Abilify from November 22, 2011 to April 5, 2018.
15. While on Abilify, Michael developed compulsive behaviours such as binge eating, hypersexuality and overspending on food. Within approximately one year, Michael's weight increased from 225 to 280 pounds.
16. While taking Abilify, Michael also began to gamble compulsively. Michael did not have a history of compulsive and uncontrollable gambling prior to his use of Abilify. He had previously gambled but only occasionally for entertainment, but had never experienced uncontrollable urges to gamble.
17. Michael's obsessive and uncontrollable gambling while on Abilify caused him significant stress and placed a strain on his finances and relationship with his family.
18. For instance, his compulsive gambling became so difficult to control that, in 2017, Michael had to self-exclude from the Casino du Lac-Leamy, a casino he had been visiting when taking Abilify.
19. Due to the difficulties he experienced while taking Abilify, including Compulsive Behaviour such as gambling and playing lottery tickets, Michael and his doctors discussed a switch to Rexulti. Michael stopped taking Abilify on April 5, 2018 shortly before receiving his first prescription for Rexulti.
20. On or around March 21, 2018, Michael's physician reviewed the risks and benefits of switching his medication to Rexulti. However, at no time before taking Rexulti was Michael advised by his physician or the Defendants' and Foreign Entities of the risk of Compulsive Behaviours associated with the use of Rexulti. Had Michael been aware of the similarities between Rexulti and Abilify, including the undisclosed risks of Compulsive Behaviours including compulsive gambling associated with Rexulti, he would have requested an alternative medication from his physician.
21. Michael's compulsive gambling intensified in July and August 2018 after he started taking Rexulti. Taking the medication increased his uncontrollable urges to gamble.
22. Michael continued to gamble at casinos in July 2018. Whenever he would win any money, he would immediately gamble it away on the same day.
23. In the summer of 2018, Michael started to gamble away his Ontario Disability Support Program Payments (ODSP). He was receiving these payments since 2003 because of his schizophrenia.

24. Michael's gambling also caused him to sell his valuable possessions below their value in order to make cash to gamble. For example, in August 2018, he sold his electric scooter, which was his only mode of transportation and had been gifted to him by his brothers, for less than half of its value. Michael gambled away all the proceeds of the sales of his possessions.
25. Michael incurred significant debt to feed his gambling addiction. Michael took high-interest payday loans amounting to approximately \$5,000 from services such as Easy Money and Cash Money. He also borrowed approximately \$5,000 from his brother.
26. Michael's father, Harold, and Michael's brothers gave him money to purchase essentials like food and clothing, but he would use the money to gamble.
27. By July and August 2018, Michael's gambling losses had exceeded \$50,000.
28. Michael's excessive gambling and debts led to significant conflict with his family. His behaviour toward his family grew increasingly erratic, leading to an involuntary admission to the Royal Ottawa Mental Health Centre from September 11, 2018 to October 30, 2018.
29. Michael's excessive spending to feed his gambling addiction ultimately led him to lose autonomy over his own finances.
30. On September 13, 2018, Michael executed a Continuing Power of Attorney for Property naming his father, Harold, the attorney for his property, as more fully appears from **Exhibit P-1**. Pursuant to this power of attorney, Harold has the authority to make decisions on behalf of Michael with respect to his property and finances, including litigation. This power of attorney has not been revoked, terminated or varied since then.
31. On or about September 19, 2018, the attending physician at the Royal Ottawa Mental Health Centre issued a Form 21 Certificate of Incapacity declaring that Michael lacked capacity to make decisions with respect to his finances pursuant to section 54(4) of Ontario's Mental Health Act, R.S.O. 1990, c. M.7, as more fully appears from **Exhibit P-2**. On the same date, Michael was given notice of his incapacity under Form 33 as more fully appears from **Exhibit P-3**.
32. On October 16, 2018, upon his discharge from the Royal Ottawa Mental Health Centre, Michael was issued with a Form 24 Notice of Continuance of Certificate of Incapacity to Manage One's Property, which is still in effect to this date, as more fully appears from **Exhibit P-4**. As a result, Harold is and remains Michael's attorney for property, and Michael's substitute decision maker for finances.
33. During his admission to the Royal Ottawa Mental Health Centre in September and October 2018, Michael was also declared incapable of managing his treatment. Harold, as next-of-kin, is Michael's substitute decision maker for treatment pursuant to section 20(1) of Ontario's Health Care Consent Act, 1996, S.O. 1996, c. 2, Sched., as more fully appears from **Exhibit P-5**.

34. Currently, Michael relies on a small daily allowance paid by Harold to cover essential living expenses and rent.
35. Since Harold controls his finances, Michael no longer has access to funds to gamble. He does, however, continue to experience a compulsion to gamble. He no longer gambles with money, but he uses free coins from Get It Rich to gamble in online slot machines. He obsessively returns to get free coins every two hours.
36. As a result of his compulsive gambling, Michael has lost money, his autonomy over his own affairs and the trust and companionship of his family.
37. Michael was never advised of the risk of Compulsive Behaviours and Impulse Control Disorders associated with the use of Rexulti.
38. Had Michael been advised that Rexulti had the same serious side effect as Abilify, he would have refused to take Rexulti and would have insisted on a safer alternative treatment.
39. But for the Defendants' and Foreign Entities' breach of their duties to warn Michael of Rexulti's side effects, including the increased risk of Compulsive Behaviours and Impulse Control Disorders, he would not have suffered his injuries and incurred his damages.
40. Michael suffered damages including pain, suffering, stress, and pecuniary losses from gambling, and the loss of care and companionship of his friends and family.
41. Michael also claims punitive damages from the Defendants' and Foreign Entities for their gross negligence and wanton disregard for his health and safety, as protected by the *Charter of Human Rights and Freedoms*, R.S.Q. c. C-12 (the "**Quebec Charter**") in an amount to be determined at trial.
42. The Defendants' and Foreign Entities' negligence has also caused harm to Michael's family members and to the family members and the dependents of other Class Members, who have suffered pain, stress, and financial losses as a result of Michael's and the other Class Members' compulsive gambling and other harmful Compulsive Behaviours and Impulse Control Disorders.
43. As mentioned above, Harold is Michael's father. He resides in Ottawa, Ontario. He is a retired regulatory lawyer. Harold retired in 2008.
44. As also mentioned above, Harold serves as his son's substitute decision maker for finances and medical treatment.
45. As a result, Harold works closely with his son's treatment team and is heavily involved with managing Michael's finances.
46. Harold rations Michael's ODSP cheques and ensures that Michael has the necessities of life and does not gamble away his money.

47. As a result of Michael's struggles with Compulsive Behaviours, including compulsive gambling, Harold has had to spend money from his retirement pension to supplement Michael's ODSP payments and pay for Michael's rent and essentials such as food, clothing and household items.

#### **IV. THE DEFENDANTS AND FOREIGN ENTITIES' LIABILITY**

##### **C) THE DEFENDANTS AND FOREIGN ENTITIES**

48. At all times material to this action, the Defendants and Foreign Entities acted in concert in designing, developing, manufacturing, testing, inspecting, marketing, supplying, exporting, importing, and selling Rexulti in Canada, including in the Province of Québec, for profit, and in concealing its risk of Compulsive Behaviours and Impulse Control Disorders from the public.
49. Otsuka Pharmaceutical Company Limited ("**Otsuka**") is a Japanese corporation with its headquarters in Tokyo, Japan. Otsuka is the owner of the trademark Rexulti™. Canadian Patent No. 2602247 pertaining to brexpiprazole, the active ingredient in Rexulti, was issued to Otsuka on April 2, 2013, the whole as appears more fully from **Exhibit P-6**.
50. The Product Monograph is purportedly authored by Otsuka. Otsuka oversees worldwide manufacturing, distribution, and marketing of Rexulti in concert with its wholly owned regional subsidiaries.
51. American subsidiary Otsuka Pharmaceutical Development & Commercialization Inc. assisted in the development and commercialization of Rexulti; its employees conducted and published numerous clinical trials and studies relied on by Health Canada in approving Rexulti.
52. In Canada, Otsuka operates through its wholly owned subsidiary Otsuka Canada Pharmaceutical Inc. ("**Otsuka Canada**"), a corporation incorporated under the CBCA, with its head office located in Montreal, Québec. Otsuka Canada uses the trademark Rexulti under license from Otsuka. Otsuka Canada imports and markets Rexulti in Canada.
53. Otsuka pursued these ends as part of a collaborative drug development enterprise with H. Lundbeck A/S, ("**Lundbeck**") a Danish pharmaceutical company with its headquarters in Valby, Denmark.
54. A November 11, 2011 press release and accompanying slideshow produced by Otsuka details Otsuka's and Lundbeck's agreement to collaborate in respect of "OPC-34712", Otsuka's internal code name for brexpiprazole. The agreement sets out a worldwide revenue sharing arrangement, and provides that Otsuka and Lundbeck will each materially contribute to Rexulti's development and commercialization in the United States, Canada, and select European territories. This press release produced as **Exhibit P-7**.
55. As of September 2018, Otsuka's website identifies Lundbeck as a "global collaborator with whom we have a business alliance" for the "co-development and co-commercialization of brexpiprazole." This web page is produced as **Exhibit P-8**.

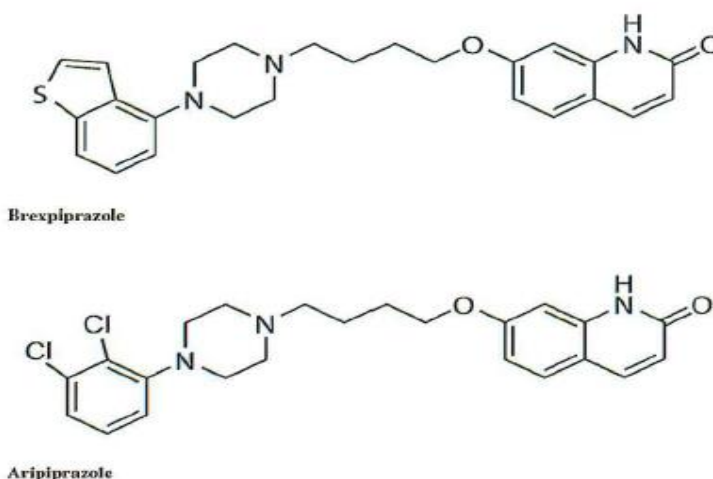


56. Like Otsuka, Lundbeck operates globally through its wholly owned regional subsidiaries. Lundbeck Research USA Inc. is a wholly owned subsidiary of Lundbeck; its employees co-authored the clinical trials relied on by Health Canada in approving Rexulti.
57. In Canada, Lundbeck operates through its wholly owned subsidiary Lundbeck Canada Inc., a corporation incorporated under the CBCA, with its head office located in Montreal, Québec. With Otsuka Canada, Lundbeck Canada imports and markets Rexulti in Canada.
58. As such, the Defendants and the Foreign Entities are solidarily liable to the Plaintiffs and Class Members because:
  - a. They agreed to co-develop and co-commercialize Rexulti in Canada and throughout the world;
  - b. They actively participated in joint executive governance and operating committees with respect to Rexulti;
  - c. They mutually provided funding and services including manufacturing, customer management, distribution and pharmacovigilance, for the benefit of their alliance;
  - d. Their employees and consultants jointly oversaw and authored clinical trials and studies of Rexulti, the results of which formed the basis for Health Canada's approval of Rexulti for the treatment of schizophrenia (the whole as appears more fully from **Exhibits P-9, P-10, P-11, and P-12**); and,
  - e. They collectively failed to warn Michael and the Class Members of the risks of Compulsive Behaviours and Impulse Control Disorders associated with Rexulti;
  - f. They have jointly caused the injury of the Representative Plaintiffs and of the Class Members.

**C) HISTORY OF REXULTI AND ABILIFY**

59. Rexulti (brexpiprazole) was approved for sale in Canada on February 16, 2017 to treat schizophrenia in adults, the whole as appears more fully from Health Canada's Regulatory Decision Summary for Rexulti, attached as **Exhibit P-13**.
60. Rexulti is available in oral tablets of 0.25, 0.5, 1, 2, 3 and 4 milligrams.
61. Rexulti was previously approved for sale in the United States on July 10, 2015 to treat schizophrenia and as an adjunctive treatment for Major Depressive Disorder, the whole as appears more fully from the U.S. Food and Drug Administration's Approval Letter for Rexulti, attached as **Exhibit P-14**.
62. The active medicinal ingredient in Rexulti, brexpiprazole, belongs to a class of drugs identified alternately in the scientific literature as second-generation and third-generation antipsychotics, the whole as appears more fully from **Exhibit P-15**.

63. Brexpiprazole is almost chemically identical to aripiprazole. This similarity is apparent on visual comparison of the Lewis structures of aripiprazole and brexpiprazole at Figure 1, inset.



[Figure 1]

64. Aripiprazole was researched, developed, designed, tested, manufactured, licensed, marketed, distributed and sold by the Defendants and Foreign Entities under the brand names ABILIFY© and, as a depot injection, ABILIFY MAINTENA©.
65. The similarity of brexpiprazole to aripiprazole is intentional. Brexpiprazole was developed because aripiprazole lost patent protection in the United States and began to face competition from generic formulations of aripiprazole in 2015.
66. Abilify was a blockbuster drug for the Defendants and Foreign Entities. In 2014, prior to losing American patent protection, Abilify generated \$6.4 billion in global revenues, and was the seventh-best selling drug in the world, as can be seen in Otsuka’s Annual Report for Fiscal Year 2014, attached as **Exhibit P-16**.
67. Because of Abilify’s success, brexpiprazole was intended to be as functionally similar to aripiprazole as possible while still being chemically distinct enough to attract patent protection of its own. This practice is known as ‘evergreening’ – extending the monopoly afforded by the patent system by making superficial changes to the chemical structure of an existing drug that do not change its underlying therapeutic properties or side effect profile. Evergreening as an industry practice is discussed in more detail in the *Canadian Medical Association Journal* article attached as **Exhibit P-17**.
68. The Health Canada Summary Basis of Decision for Rexulti observes that brexpiprazole has “a similar chemical structure to the antipsychotic drug aripiprazole (Abilify)”, attached as **Exhibit P-18**. A member of Otsuka’s advisory board has acknowledged in a scientific publication that brexpiprazole was intended to closely imitate aripiprazole because aripiprazole was losing patent protection. This publication is attached as **Exhibit P-19**.

**C) MECHANISM OF ACTION**

69. Besides chemical similarity, aripiprazole and brexpiprazole share an identical mechanism of action—partial dopamine agonism.
70. Neurons in the brain “activate”, or generate an electric signal, when they are exposed to neurotransmitter molecules. Dopamine is a neurotransmitter molecule. It is hypothesized that abnormal patterns of dopaminergic activation cause some of the pathology of schizophrenia.
71. Most antipsychotic drugs used in the treatment of schizophrenia are thought to work by “antagonizing”, or blocking, dopamine receptors. This antagonism stops dopamine from binding to the receptor and activating it.
72. Aripiprazole and brexpiprazole are unlike other antipsychotics in that they can both antagonize and agonize, or activate, the brain’s dopamine receptors. An agonist that activates a dopamine receptor to the same extent as dopamine itself is a “full” dopamine agonist. Aripiprazole and brexpiprazole are less potent agonists than dopamine, so they are classified as “partial” dopamine agonists.
73. Partial dopamine agonists are thought to have a “buffering” or stabilizing effect on dopamine transmission: they antagonize receptors and reduce transmission when dopamine transmission is high, but agonize receptors and increase transmission when dopamine transmission is low. Their ability to facilitate dopamine transmission may explain their antidepressant properties, while their ability to reduce transmission may explain their antipsychotic properties. This explanation is set out in the article entitled “The ABC’s of dopamine receptor partial agonists – aripiprazole, brexpiprazole and cariprazine: the 15-min challenge to sort these agents out”, attached as **Exhibit P-20**.
74. Aripiprazole and brexpiprazole have an almost identical propensity, or “affinity”, to bind to the same dopamine receptor subtypes and exert this partial agonism effect. This similarity is highlighted in the Product Monograph, attached as **Exhibit P-21**, and in a pair of review articles comparing aripiprazole’s and brexpiprazole’s mechanisms of action, attached as **Exhibits P-22** and **P-23**.
75. Because dopamine-activated brain circuits also regulate our experience of pleasure and reward, dopamine agonists can cause or exacerbate pleasure- or reward- seeking behaviours, like compulsive gambling, binge eating, or hypersexuality. This side effect of dopamine agonists was known for decades before the development of Abilify and Rexulti.

**D) SCIENTIFIC EVIDENCE THAT DOPAMINE AGONISTS, AND ABILIFY IN PARTICULAR, CAUSE COMPULSIVE BEHAVIOURS AND IMPULSE-CONTROL DISORDERS**

76. Full dopamine agonists such as Mirapex, Permax and Requip are used in the treatment of Parkinson’s disorder and restless leg syndrome, two diseases involving dysfunction of dopaminergic neurons. The product monographs of Mirapex, Permax and Requip were revised in mid-2000 in Canada and the United States to explicitly warn of the risk of

compulsive gambling and other Compulsive Behaviours and Impulse-Control Disorders. These revisions were prompted by numerous studies predating or contemporaneous to Abilify's commercialization in the early 2000s, demonstrating that full dopamine agonists cause Compulsive Behaviours and Impulse Control Disorders, particularly compulsive gambling. Some of these studies are reproduced as **Exhibits P-24, P-25, and P-26**. In particular, studies demonstrated that:

- a. the onset of compulsive gambling was temporally related to the initiation of, or the increase in dose for, dopamine agonist therapy, per the studies attached as **Exhibits P-27 and P-28**;
  - b. reductions in dose or discontinuation of dopamine agonist therapy reduced or eliminated the compulsive gambling, per the study attached as **Exhibit P-29**; and
  - c. adjunctive treatment with dopamine antagonists blocking the D2 receptor subtype (one of the two dopamine receptor subtypes at which aripiprazole and brexpiprazole exert their action) reduces or eliminates dopamine-agonist-caused compulsive gambling, per the study attached as **Exhibit P-30**.
77. It has also been established that Compulsive Behaviours and Impulse Control Disorders are caused by full dopamine agonists in the absence of pre-existing conditions, risk factors, or dopaminergic pathology, per the study attached as **Exhibit P-31**.
78. Starting in 2007, scientists also began observing this effect in patients prescribed Abilify, a partial (rather than full) dopamine agonist, as seen in the 2007 case report reproduced as **Exhibit P-32**.
79. By 2014, an enormous retrospective analysis of the FDA's Adverse Event Report System from 2003-2012 showed that Abilify had a statistically significant "proportionality reporting ratio" for Compulsive Behaviours and Impulse Control Disorders, like gambling, hypersexuality, shopping and binge eating. This indicated that Abilify causes Compulsive Behaviours and Impulse Control Disorders, and the requirement for a commensurate warning on its packaging. This study is attached as **Exhibit P-33**.
80. These results were replicated by two similarly large-scale pharmaco-epidemiological studies on American and European patient databases in 2017 and 2018, both of which revealed similarly elevated, statistically significant proportionality reporting ratios for gambling disorders and treatment with Abilify. These studies are attached as **Exhibits P-34 and P-35**.
81. Case studies of Compulsive Behaviours and Impulse Control Disorders in patients prescribed Abilify revealed that these side effects followed a challenge-dechallenge-rechallenge pattern:
- a. The Compulsive Behaviours and Impulse Control Disorders only emerged when the patient was 'challenged' with, or administered, Abilify;

- b. The Compulsive Behaviours and Impulse Control Disorders desisted when the patient was dechallenged, or had their Abilify discontinued; and,
  - c. The Compulsive Behaviours and Impulse Control Disorders re-emerged when the patient was “rechallenged” with, or re-administered, Abilify following the dechallenge.
82. This pattern strongly indicates that Abilify causes Compulsive Behaviours and Impulse Control Disorders. A survey of case studies demonstrating this challenge-dechallenge-rechallenge pattern is attached as **Exhibit P-36**.

**E) REGULATORY WARNINGS OF ABILIFY’S RISK OF COMPULSIVE BEHAVIOURS AND IMPULSE-CONTROL DISORDERS**

83. Regulatory authorities around the world required the Defendants and Foreign Entities to provide explicit warnings of Rexulti’s risks of Compulsive Behaviours and Impulse Control Disorders in its product monographs, as well as detailed information about how to detect and manage these severe side effects.

**i. Europe**

84. In 2011, Otsuka submitted a “6 Month Periodic Safety Update Report” in respect of Abilify to the European Medicines Agency. The report acknowledged 23 cases of compulsive gambling temporally linked to treatment with Abilify.
85. Following this Safety Update Report, the European Medicines Agency directed Otsuka to warn physicians and consumers of the risk of compulsive gambling associated with Abilify with the following language in the product monograph:

**Pathological Gambling**

Post-marketing reports of pathological gambling have been reported among patients prescribed ABILIFY, regardless of whether these patients had a prior history of gambling. Patients with a prior history of pathological gambling may be at increased risk and should be monitored carefully.

86. Further, the European Summary of Product Characteristics for Abilify was updated to list “pathological gambling” as an “undesirable effect.” These regulatory interventions are recorded in the European Medicines Agency’s summary of procedural steps taken with respect to Abilify, attached as **Exhibit P-37**.
87. In 2017, this warning language in the European product monograph was expanded and strengthened:

Patients can experience increased urges, particularly for gambling, and the inability to control these urges while taking aripiprazole. Other urges, reported, include: increased sexual urges, compulsive shopping, binge or compulsive eating, and other impulsive and compulsive behaviours. It is important for prescribers to ask patients or their

caregivers specifically about the development of new or increased gambling urges, sexual urges, compulsive shopping, binge or compulsive eating, or other urges while being treated with aripiprazole. It should be noted that impulse-control symptoms can be associated with the underlying disorder; however, in some cases, urges were reported to have stopped when the dose was reduced or the medication was discontinued. Impulse control disorders may result in harm to the patient and others if not recognised. Consider dose reduction or stopping the medication if a patient develops such urges while taking aripiprazole.

88. The European product monograph is attached as **Exhibit P-38**.

**ii. Canada**

89. On June 22, 2015, the Canadian product monograph for Abilify was amended for the first time to identify the risk of pathological gambling:

**Pathological Gambling**

Post-marketing reports of pathological gambling have been reported in patients treated with ABILIFY. In relation to pathological gambling, patients with a prior history of gambling disorder may be at increased risk and should be monitored carefully.

90. In September 2015, a similar amendment was made to the Abilify Maintena product monograph, identifying pathological gambling and hypersexuality as “Post Market Adverse Drug Reactions” of “unknown” frequency. These versions of the product monographs are attached as **Exhibits P-39** and **P-40**.
91. On November 2, 2015, Health Canada issued a Summary Safety Review concluding that there is a link between the use of Abilify and an increased risk of compulsive behaviours, particularly pathological gambling and hypersexuality. This Summary Safety Review is attached as **Exhibit P-41**.
92. The October 2016 iteration of the Abilify Maintena product monograph maintained the warning described above. This version of the product monograph is attached as **Exhibit P-42**.
93. In December 2016, the Abilify Maintena product monograph was amended again with a revised and expanded “Warning and Precaution”, reading as follows:

**Pathological Gambling and Other Impulse-Control Disorders**

Post-marketing reports of pathological gambling have been reported in patients treated with aripiprazole. These reports suggest that patients can experience increased urges, particularly for gambling, and the inability to control these urges while taking aripiprazole. With regards to pathological gambling, patients with a prior history of gambling disorder may be at increased risk and should be monitored carefully. Other urges, reported very rarely, include: increased sexual urges, compulsive spending, binge or compulsive eating, and other impulsive and compulsive behaviours. Because

patients may not recognize these behaviours as abnormal, it is important for prescribers to ask patients or their caregivers specifically about the development of new or increased gambling urges, sexual urges, compulsive spending, binge or compulsive eating, or other urges while being treated with aripiprazole. It should be noted that impulse-control symptoms can be associated with the underlying disorder; however, in some cases, although not all, urges were reported to have stopped when the dose was reduced or the medication was discontinued. Although impulse-control disorders have been reported very rarely, impulse-control disorders may result in harm to the patient and others if not recognized. Consider dose reduction or stopping the medication if patient develops such urges while taking aripiprazole.

94. The “Consumer Information” section of the product monograph, a plain language guide intended for patient use, was also amended to include “a history of gambling” as a “Warning and Precaution” to be discussed with the prescribing physician prior to taking Abilify. This version of the product monograph is attached as **Exhibit P-43**.
95. In February 2017, the Abilify product monograph was similarly amended. The Consumer Information “Warning and Precaution” was expanded to include “a history of gambling or impulse control disorders (urge to gamble, spend money, eat or other urges)”. This version of the product monograph is attached as **Exhibit P-44**.

### iii. The United States

96. In the United States, Otsuka first updated its product monograph for Abilify on January 15, 2016. Under the heading “Postmarketing Experience”, it identified “pathological gambling” as an adverse reaction of Abilify. This version of the product monograph is attached as **Exhibit P-45**.
97. On May 3, 2016, the FDA released a Drug Safety Communication about impulse-control problems associated with Abilify. It warned that
  - a. the January 15, 2016 labeling change did not “entirely reflect the nature of the impulse-control risk... identified”;
  - b. anyone taking the medication could be affected by the compulsive behaviours;
  - c. the compulsive behaviours stopped when Abilify was discontinued or its dosage reduced;
98. Specifically, of the 184 case reports of impulse control problems associated with Abilify since 2002 reviewed by the FDA, not a single patient had a history of such behaviours before starting Abilify, and all experienced resolution by discontinuing Abilify or reducing their dosage. This Drug Safety Communication is attached as **Exhibit P-46**.
99. In August 2016, the FDA changed Abilify’s labeling again to clearly indicate the causal relationship between Abilify and compulsive behaviours. The Product Monograph now had a separate heading for “Pathological Gambling and Other Compulsive Behaviours” under the “Warnings and Precautions” section. It read as follows:

Post-marketing case reports suggest that patients can experience intense urges, particularly for gambling, and the inability to control these urges while taking aripiprazole. Other compulsive urges, reported less frequently include: sexual urges, shopping, eating or binge eating, and other impulsive or compulsive behaviours. Because patients may not recognize these behaviours as abnormal, it is important for prescribers to ask patients or their caregivers specifically about the development of new or intense gambling urges, compulsive sexual urges, compulsive shopping, binge or compulsive eating, or other urges while being treated with aripiprazole. It should be noted that impulse-control symptoms can be associated with the underlying disorder. In some cases, although not all, urges were reported to have stopped when the dose was reduced or the medication was discontinued. Compulsive behaviours may result in harm to the patient and others if not recognized. Consider dose reduction or stopping the medication if a patient develops such urge

100. The “Medication Guide”, a truncated plain language version of the monograph for the use of patients, was also amended to add warnings about compulsive behaviour for the first time:

**Unusual urges.** Some people taking ABILIFY have had unusual urges, such as gambling, binge eating or eating that you cannot control (compulsive), compulsive shopping and sexual urges. If you or your family members notice that you are having unusual urges or behaviours, talk to your healthcare provider.

101. This version of the product monograph is attached as **Exhibit P-47**.

C) **THE DEFENDANTS’ AND FOREIGN ENTITIES’ KNOWLEDGE OF, AND FAILURE TO WARN THAT, REXULTI CAUSES COMPULSIVE BEHAVIOUR AND IMPULSE CONTROL DISORDERS**

102. As the foregoing chronology demonstrates, while the Defendants and Foreign Entities were developing Rexulti and preparing to bring it to the Canadian market, they were aware that Abilify had the severe side effect of causing Compulsive Behaviours and Impulse Control Disorders, and that extensive warnings were required on Abilify’s product monograph and labeling.
103. Having embarked on an enterprise to make a largely identical drug in brexpiprazole, the Defendants and Foreign Entities knew or should have known that Rexulti also causes or increases the risk of Compulsive Behaviours and Impulse Control Disorders.
104. Despite this knowledge, the Defendants and Foreign Entities failed to warn the Representative Plaintiff Michael and the Class Members of these risks. Instead, at all material times, the Product Monograph was drafted with cursory, incomplete and inadequate information. From November 16, 2017 to November 5, 2018, the only language pertaining to Compulsive Behaviours and Impulse Control Disorders read as follows:

Post-marketing reports of impulse-control disorders including pathological gambling and hypersexuality have been reported in patients treated with another antipsychotic



with partial agonist activity at dopamine receptors. Patients with a prior history of impulse-control disorder may be at increased risk and should be monitored carefully.

105. This warning failed to adequately warn the Representative Plaintiff Michael and the public for the following reasons:
- a. As made clear in this motion, partial dopamine agonists like aripiprazole and brexpiprazole cause or materially contribute to the development of Compulsive Behaviours and Impulse Control Disorders in individuals irrespective of any history of such problems, but this warning implies that only patients with a prior history of such problems are at risk from this side effect;
  - b. This warning does not explain the causal relationship between Compulsive Behaviours and Impulse Control Disorders and treatment with Rexulti;
  - c. This warning fails to identify the full spectrum of Compulsive Behaviours and Impulse Control Disorders caused or materially contributed to by Rexulti;
  - d. This warning fails to advise that Compulsive Behaviours and Impulse Control Disorders frequently desist when Rexulti is discontinued or reduced in dose; and,
  - e. This warning provides no guidance as to how to monitor or manage Compulsive Behaviours and Impulse Control Disorders caused by Rexulti.
106. After November 5, 2018 (following the filing of this Motion for Authorization) the Product Monograph was amended to read as follows:

**Impulsive-Control Disorders/Compulsive Behaviors**

Post-marketing reports of impulse-control disorders including pathological gambling and, compulsive shopping, binge eating, and hypersexuality and other compulsive behaviours have been reported very rarely in patients treated with brexpiprazole. Patients with a prior history of impulse-control disorders may be at increased risk and should be monitored carefully. Because patients may not recognize these behaviors as abnormal, it is important for prescribers to ask patients or their caregivers specifically about the development of new or increased impulse-control disorders or other compulsive behaviors while being treated with brexpiprazole. It should be noted that impulse-control symptoms can be associated with the underlying disorder. Compulsive behaviors may result in harm to the patient and others if not recognized. Consider dose reduction or stopping the medication if a patient develops such urges while taking brexpiprazole.

107. This amended language still failed to adequately warn the Class Members of the risk of Compulsive Behaviours and Impulse Control Disorders associated with the use of Rexulti. In particular, the revised Product Monograph fails to warn of the full breadth and consequences of the Compulsive Behaviours that could be caused by Rexulti. It further fails to state that Compulsive Behaviours are, in fact, “common” side effects of the drug Abilify, and given that Rexulti is an evergreened drug almost identical to Abilify, the

statement that Compulsive Behaviours have been reported “very rarely” in patients using Rexulti fails to provide adequate warning of these risks. Rather, it is misleading and it implies that Compulsive Behaviours are very rare side effects of Rexulti. The November 5, 2018 iteration of the Product Monograph is attached as **Exhibit P-48**.

108. Until November 5, 2018, the patient information sheet appended to the Product Monograph contained no information whatsoever about an association between Rexulti and the emergence of Compulsive Behaviours and Impulse Control Disorders so as to allow the Class Members to make an informed decision about using the drug. Instead, it only instructed patients to inform their doctor of a history of “problems with impulse control (i.e. gambling or sex addiction)”, without explaining the significance of this caution. It also misleadingly implied that only individuals with such a history are at risk of developing Compulsive Behaviours and Impulse Control Disorders from treatment with Rexulti.
109. The November 5, 2018 iteration of the Product Monograph also amended the patient information sheet, instructing patients to inform their physicians of:
- a history of hypersexuality (uncontrollable and/or inappropriate sexual behaviour of severity or duration that causes distress), or other impulse-control disorders (urge to gamble, spend money, eat, or other urges).
110. The February 19, 2019 iteration of the Product Monograph further amended the patient information sheet as follows:
- Impulse behaviours: The following behaviours may occur in some people who take REXULTI:
1. hypersexuality (uncontrollable and/or inappropriate sexual behaviour)
  2. an urge to gamble, spend money, binge eat, other urges or the development of new or increased urge
  3. Tell your doctor right away if you or those close to you notice these behaviours.
111. The February 19, 2019 iteration of the Product Monograph is attached as **Exhibit P-49**.
112. The Canadian labeling for Rexulti stands in sharp contrast to the explicit and detailed warning about compulsive behaviour in the U.S. Rexulti monograph as amended in February 2018, which is not misleading and does not imply that Compulsive Behaviours are a “very rare” side effect of Rexulti. The U.S. Product Monograph reads:

Post-marketing case reports suggest that patients can experience intense urges, particularly for gambling, and the inability to control these urges while taking REXULTI. Other compulsive urges, reported less frequently, include: sexual urges, shopping, eating or binge eating, and other impulsive or compulsive behaviours. Because patients may not recognize these behaviours as abnormal, it is important for prescribers to ask patients or their caregivers specifically about the development of new or intense gambling urges, compulsive sexual urges, compulsive shopping, binge or compulsive eating, or other urges while being treated with REXULTI. In some cases,

although not all, urges were reported to have stopped when the dose was reduced or the medication was discontinued. Compulsive behaviours may result in harm to the patient and others if not recognized. Consider dose reduction or stopping the medication if a patient develops such urges.

113. The February 16, 2018 version of the U.S. product monograph is attached as **Exhibit P-50**.
114. This language is identical to the amendments to the U.S. Abilify product monograph made in August of 2016. For over two years, the Defendants and Foreign Entities have had an adequate model of how to properly warn the Canadian public about Rexulti's risk of Compulsive Behaviours and Impulse Control Disorders, but have omitted to do so.
115. Additionally, the Defendants and Foreign Entities have not studied, or have inadequately studied, the risk of Compulsive Behaviours and Impulse Control Disorders associated with brexpiprazole, and have failed to conduct adequate pre- and post-market studies of Rexulti's side effects.

## **I. THE RIGHTS OF ACTION**

### **C) ARTICLE 1457, 1468, AND 1469 OF THE CIVIL CODE OF QUÉBEC**

116. On behalf of them and all other Class Members who are residents of Québec, the Representative Plaintiffs plead that the Defendants and Foreign Entities breached their duties to adequately warn the public about the risks of Rexulti.
117. The Defendants and Foreign Entities designed, developed, tested, manufactured, licensed, distributed, imported and/or exported, marketed, and/or sold Rexulti in Canada in both a coordinated manner and in pursuit of common objectives.
118. At all material times, the Defendants and Foreign Entities had, and still have, a continuous obligation to adequately inform and warn the Class Members of the safety hazards and risks associated with the use of Rexulti.
119. The Defendants and Foreign Entities also had the duty to carry out rigorous scientific studies to assess the risks posed by Rexulti prior to its marketing, to carefully monitor the safety and post-market performance of Rexulti and to warn the Class Members, their health care professionals and Canadian regulators of Rexulti's adverse effects, including its propensity to cause or materially contribute to Compulsive Behaviours and Impulse Control Disorders, as particularized above.
120. Yet, the Defendants and Foreign Entities have failed to discharge these duties despite their significant collective resources and the existence of a large body of scientific evidence highlighting the propensity of dopamine agonists, generally, and aripiprazole specifically, to cause or materially increase the risk of developing Compulsive Behaviours and Impulse Control Disorders.
121. As particularized above, at all material times, the Defendants and Foreign Entities knew, or ought to have known, that the use of Rexulti increases the risk of Compulsive Behaviours

and Impulse Control Disorders. However, the warnings of this risk in all iterations of the Product Monograph were, and still remain, incomplete, inadequate, and inconsistent with the state of science and failed to meet the applicable standard.

122. The Defendants' and Foreign Entities' knowledge of aripiprazole's propensity to cause or exacerbate Compulsive Behaviours, as well as their deliberate plan to develop, patent and market an evergreened successor drug almost identical to aripiprazole, as described above, enhanced their duty to explicitly warn the Class Members of these adverse effects.
123. These duties were also reinforced by the Defendants and Foreign Entities knowledge of Michael and Class Members' vulnerability. As Rexulti is indicated for the treatment of schizophrenia, the Defendants' and Foreign Entities were aware that the users of their drug are particularly vulnerable due to their mental illness and would likely be harmed by Compulsive Behaviours and Impulse Control Disorders.
124. The Defendants' and Foreign Entities' conduct therefore consists of a wilful disregard of the Representative Plaintiff Michael and other Class Members' rights protected under art. 1 of the Quebec *Charter*.
125. The Defendants' and Foreign Entities' failure to warn prevented the Representative Plaintiff Michael and the Class Members from understanding the health and safety risks associated with the use of Rexulti.
126. The Defendants' and Foreign Entities' failures caused the Representative Plaintiffs and the Class Members to ingest Rexulti without having had the opportunity to make an informed decision, which has caused, materially contributed or materially increased their Compulsive Behaviours and Impulse Control Disorders.
127. The Defendants' and Foreign Entities' further knew, or ought to have known, that the undisclosed risk of Compulsive Behaviours and Impulse Control Disorders associated with the use of Rexulti would not only harm the Representative Plaintiff Michael and other users of Rexulti, but also their family members and dependents, including the Representative Plaintiff Harold. In particular, they knew, or ought to have known, that as a result of the compulsive gambling and other harmful Compulsive Behaviours and Impulse Control Disorders caused by Rexulti, their family members and dependents would suffer pain, suffering, stress, and financial losses.
128. In light of the above, the Representative Plaintiff are solidarily liable to the Class Members for the injuries caused by the Compulsive Behaviours and Impulse Control Disorders sustained as a result of the use of Rexulti.

**C) NEGLIGENCE UNDER COMMON LAW**

129. The Defendants and Foreign Entities also owed to the Class Members who are not residents of Québec a duty of care to (i) provide accurate, complete, and timely warnings about any health or safety risk associated with the use of Rexulti and to (ii) to conduct rigorous scientific studies to assess the risks posed by Rexulti prior to its marketing, and to carefully monitor the safety and post-market performance of Rexulti.

130. As set out above, the Defendants and Foreign Entities breached this duty by failing to warn of Rexulti's risk of Compulsive Behaviours. The ensuing harm suffered by the Class Members was a foreseeable result of this breach.
131. The Defendants and Foreign Entities conduct was deliberate, high-handed, and intentional, demonstrating a reckless and callous disregard for the safety of the Class Members. This reprehensible conduct necessitates an award of aggravated and/or punitive damages to deter other pharmaceutical manufacturers from failing to warn of the reasonably foreseeable risks of their evergreened drugs.
132. Having acted in concert, the Defendants' and Foreign Entities are jointly and severally liable for all the damages caused by their wrongdoing.

**C) CONSPIRACY**

133. At all relevant times, the Defendants and Foreign Entities, by their directors, officers, servants and agents, wrongfully, unlawfully, maliciously and lacking *bona fides*, conspired and agreed together, the one with the other, to, among other things, conceal the risk of Compulsive Behaviours and Impulse Control Disorders associated with the use of Rexulti, and to mislead the Representative Plaintiff Michael and the Class Members about the health and safety risks associated with the use of the drug.
134. In conspiring to conceal the risk of Compulsive Behaviours and Impulse Control Disorders from the Class Members, the Defendants and Foreign Entities were motivated predominantly by the following concerns and motivations:
  - a) to increase or maintain sales volumes of Rexulti;
  - b) to increase or maintain revenue;
  - c) to increase or maintain profit;
  - d) to increase or maintain market share;
  - e) to avoid negative publicity and preserve public goodwill;
  - f) to avoid the costs associated with conducting adequate, effective and targeted testing to study the link between the use of Rexulti and the risk of developing Compulsive Behaviours; and
  - g) to place corporate revenue and profit above the safety of the Class Members.
135. In furtherance of the conspiracy, the Defendants and Foreign Entities and their employees, servants, and agents, engaged in, *inter alia*, the following acts:

- a) they set out not to conduct any or any adequate post-market testing to confirm the existence of a causal relationship between the use of Rexulti and the onset of Impulse Control Behaviours and Compulsive Behaviours;
  - b) they disregarded or downplayed the existing body of scientific evidence on the risk of Impulse Control Behaviours and Compulsive Behaviours associated with the use of Rexulti;
  - c) they concealed the result of any clinical trial and other research that they conducted in relation to Rexulti's propensity to cause or materially contribute to Impulse Control Behaviours and Compulsive Behaviours;
  - d) they knowingly or recklessly represented to the Representative Plaintiff Michael and other Class Members that Rexulti was safe for use when they knew or ought to have known that the use of Rexulti is associated with an increased risk of developing Impulse Control Behaviours and Compulsive Behaviours;
  - e) they continued to distribute Rexulti in the Canadian market without issuing adequate warnings or revisions to the product monograph.
136. The conspiracy was unlawful because the Defendants and Foreign Entities knowingly or recklessly, directly and indirectly, and in pursuit of their mutual business interests, made representations to the Representative Plaintiff Michael, the Class Members and the public which were false or misleading in a material respect and which deceived them as to the health and safety risks associated with the use of Rexulti.
137. In the circumstances, the Defendants and Foreign Entities knew that the conspiracy would, and did, cause the Representative Plaintiffs and the Class Members to suffer losses as described herein.

## **VI. THE SITUATION OF THE CLASS MEMBERS**

138. The facts giving rise to an individual action on behalf of each Class Member against the Defendants and Foreign Entities, other than the facts set out above with the necessary adaptations, are as follows:
139. Every Class Member ingested Rexulti in Canada, or is a family member or dependent of a person who ingested Rexulti in Canada;
140. All Class Members will have suffered harm as a result of Rexulti, in particular one or more of pain and suffering, personality change, financial losses, humiliation, psychological and emotional harm, loss of reputation, disruption of personal and professional relationships, and medical and rehabilitation treatment costs for their pathologically compulsive behaviours;

141. None of the Class Members were adequately warned about the increased of Compulsive Behaviours and Impulse Control Disorders associated with the use of Rexulti, and had no actual or constructive knowledge of its risks;
142. None of the Class Members would have suffered their injuries but for the acts and omissions of the Defendants and Foreign Entities;
143. All Class Members are entitled to claim from the Defendants and Foreign Entities damages for personal injuries, pain, suffering, loss of companionship or consortium and financial losses;
144. In addition, and as set out above, all Class Members are entitled to claim from the Defendants and Foreign Entities moral, aggravated and/or punitive damages in an amount to be determined by the Court for their gross negligence and complete disregard for the life, health, safety and bodily integrity of the Representative Plaintiff Michael and other Class Members, rights protected under art. 1 of the Quebec *Charter*.

**FOR THESE REASONS, MAY IT PLEASE THE COURT TO:**

**GRANT** the class action of Plaintiffs and the Class Members against the Defendants;

**DECLARE** that the Defendants failed to warn the Plaintiff Michael Pohoresky and the Class Members and/or made misrepresentations about Rexulti's propensity to cause, materially contribute to, or exacerbate Compulsive Behaviours and Impulse Control Disorders;

**CONDEMN** the Defendants solidarily to pay to Plaintiffs and the Class Members the total damages awarded by the court for their physical, psychological, financial and moral damages incurred as well as for loss of income and past and future care costs, with interest at the legal rate and additional indemnity pursuant to Article 1619 of the Civil Code of Québec, as of and from the date of service;

**CONDEMN** the Defendants to pay to the Plaintiffs and the Class Members punitive damages in an amount determined by the Court, with interest and additional indemnity pursuant to Article 1619 of the Civil Code of Québec, as of and from the date of service;

**ORDER** the collective recovery of damages of the Class Members;

**CONDEMN** the Defendants solidarily to pay such other amounts and grant the Class Members such further relief as this Honourable Court may determine as being just and proper; and

**THE WHOLE** with costs, including the costs of all exhibits, expert fees and publication notices.

**MONTREAL**, December 16, 2022

*Woods s.e.n.c.r.l./LLP*

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**Woods LLP**

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**MONTREAL**, December 16, 2022

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**SUMMONS**  
(articles 145 and following CCP)

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**Filing of a judicial application**

Take notice that the plaintiffs have filed this originating application in the office of the Superior Court in the judicial district of Montreal.

**Exhibits supporting the application**

In support of the originating application, the plaintiff intends to use the following exhibits:

- Exhibit P-1.** Continuing Power of Attorney for Property, September 9, 2018
- Exhibit P-2.** Form 21, Certificate of Incapacity to Manage One's Property, September 19, 2018
- Exhibit P-3.** Form 33, Notice of Incapacity to Consent to Treatment of a Mental Disorder, September 11, 2018
- Exhibit P-4.** Form 24, Notice of Continuance of Certificate of Incapacity to Manage One's Property, October 16, 2018
- Exhibit P-5.** Notice of Intention to Issue or Renew Community Treatment Order, October 22, 2018
- Exhibit P-6.** Form IV: Patent List for Patent Number 2602247 (brexpiprazole), issued by Health Canada on 2013-04-02
- Exhibit P-7.** Press release issued by Otsuka entitled "OTSUKA PHARMACEUTICAL CO., LTD. AND H. LUNDBECK A/S Sign Historic Agreement to Deliver Innovative Medicines with Focus on Psychiatric Disorders Worldwide", dated November 11, 2011
- Exhibit P-8.** Web page <https://www.otsuka.co.jp/en/company/global-collaborators/> , "Global Collaborators" by Otsuka, dated October 1, 2018
- Exhibit P-9.** Correll CU, Skuban A, Ouyang J, Hobart M, Pfister S, McQuade RD, et al. "Efficacy and safety of brexpiprazole for the treatment of acute schizophrenia: a 6-week randomized, double-blind, placebo-controlled trial." *American Journal of Psychiatry*. 2015; 172(9):870-880
- Exhibit P-10.** Fleischhacker WW, Hobart M, Ouyang J, Forbes A, Pfister S, McQuade RD, et al. "Efficacy and Safety of Brexpiprazole (OPC-34712) as Maintenance Treatment in Adults with Schizophrenia: a Randomized, Double-Blind, Placebo-Controlled Study." *International Journal of*

Neuropsychopharmacology. 2016; 20(1): 11–21

- Exhibit P-11.** Maeda K, Sugino H, Akazawa H, Amada N, Shimada J, Futamura T et al, “Brexpiprazole I: in vitro and in vivo characterization of a novel serotonin-dopamine activity modulator.” *Journal of Pharmacology and Experimental Therapeutics*. 2014; 350(3): 589–604
- Exhibit P-12.** Maeda K, Lerdrup L, Sugino H, Akazawa H, Amada N, McQuade RD et al. “Brexpiprazole II: antipsychotic-like and procognitive effects of a novel serotonin-dopamine activity modulator.” *Journal of Pharmacology and Experimental Therapeutics*. 2014; 350(3):605-614
- Exhibit P-13.** Regulatory Decision Summary for REXULTI, issued by Health Canada, issued on 2017-02-16 Food and Drug Administration “Approval Letter” for Rexulti, July 2015
- Exhibit P-14.** Food and Drug Administration “Approval Letter” for Rexulti, July 2015
- Exhibit P-15.** Mailman, Richard B., and Vishakantha Murthy. “Third Generation Antipsychotic Drugs: Partial Agonism or Receptor Functional Selectivity?” *Current pharmaceutical design*. 2010; 16(5): 488–501
- Exhibit P-16.** Otsuka, Annual Report for FY 2014
- Exhibit P-17.** Collier, Roger. “Drug Patents: The Evergreening Problem.” *CMAJ: Canadian Medical Association Journal*. 2013; 185(9): E385–E386
- Exhibit P-18.** Summary Basis of Decision for Rexulti, by Health Canada, updated May 9, 2018
- Exhibit P-19.** Das S, Barnwal P, Winston A B, Mondal S, Saha I. “Brexpiprazole: so far so good.” *Therapeutic Advances in Psychopharmacology*. 2016; 6(1):39-54
- Exhibit P-20.** Citrome, L. “The ABC’s of dopamine partial agonists – aripiprazole, brexpiprazole and cariprazine: the 15 minute challenge to sort these agents out.” *International Journal of Clinical Practice*. 2015; 69(11): 1211–1220
- Exhibit P-21.** Rexulti Product Monograph, dated February 16, 2017
- Exhibit P-22.** Stahl S. “Mechanism of action of brexpiprazole: comparison with aripiprazole.” *CNS Spectrums*. 2016; 21(1): 1-16
- Exhibit P-23.** Frankel J, Schwartz T, “Brexpiprazole and cariprazine: distinguishing two new atypical antipsychotics from the original dopamine stabilizer aripiprazole”, *Therapeutic Advances in Psychopharmacology*. 2017; 7(1): 29–41
- Exhibit P-24.** Avanzi M, Baratti M, Cabrini S, Uber E, Brighetti G, Bonfa F. Prevalence of pathological gambling in patients with Parkinson's disease. *Movement*

Disorders. 2006; 21(12): 2068-2072

- Exhibit P-25.** Weintraub D, Siderowf AD, Potenza MN, Goveas J, Morales KH, Duda JE, et al. Association of dopamine agonist use with impulse control disorders in Parkinson disease. *Archives of Neurology*. 2006; 63(7): 969-973
- Exhibit P-26.** Grosset KA, Macphee G, Pal G, Stewart D, Watt A, Davie J, et al. Problematic gambling on dopamine agonists: not such a rarity. *Movement Disorders*. 2006; 21(12): 2206-2208
- Exhibit P-27.** Dodd ML, Klos KJ, Bower JH, Geda YE, Josephs KA, Ahlskog JE. Pathological gambling caused by drugs used to treat Parkinson disease. *Archives of Neurology*. 2005; 62(9): 1377-1381
- Exhibit P-28.** Voon V, Hassan K, Zurowski M, de SM, Thomsen T, Fox S, et al. Prevalence of repetitive and reward-seeking behaviours in Parkinson disease. *Neurology*. 2006; 67(7): 1254-125
- Exhibit P-29.** Driver-Dunckley E, Samanta J, Stacy M. Pathological gambling associated with dopamine agonist therapy in Parkinson's disease. *Neurology*. 2003; 61(3): 422-423
- Exhibit P-30.** Seedat S, Kesler S, Niehaus DJ, Stein DJ (2000). Pathological gambling behaviour: emergence secondary to treatment of Parkinson's disease with dopaminergic agents. *Depress Anxiety*. 2000; 11(4): 185-186
- Exhibit P-31.** Campbell-Meiklejohn D, Wakeley J, Herbert V, Cook J, Scollo P, Ray MK, et al. Serotonin and dopamine play complementary roles in gambling to recover losses. *Neuropsychopharmacology*. 2011; 36(2): 402-410
- Exhibit P-32.** Mouaffak F, Gallarda T, Bayle FJ, Olie JP, Baup N. Worsening of obsessive-compulsive symptoms after treatment with aripiprazole. *J Clin Psychopharmacol*. 2007; 27(2): 237-238
- Exhibit P-33.** Moore TJ, Glenmullen J, Mattison DR. Reports of pathological gambling, hypersexuality, and compulsive shopping associated with dopamine receptor agonist drugs. 2014; *JAMA Intern Med* 174(12): 1930-1933
- Exhibit P-34.** Etminan M, Sodhi M, Samii A, Procyshyn RM, Guo M, Carleton BC. Risk of gambling disorder and impulse control disorder with aripiprazole, pramipexole, and ropinirole: a pharmacoepidemiologic study. *J Clin Psychopharmacol*. 2017; 37(1): 102-104
- Exhibit P-35.** Lertxundi U, Hernandez R, Medrano J, Domingo-Echaburu S, Garcia M, Aguirre . Aripiprazole and impulse control disorders: higher risk with the intramuscular depot formulation? *Int Clin Psychopharmacol*. 2018; 33(1): 56-58

- Exhibit P-36.** Seedat, Soraya, Simon Kesler, Dana J. H. Niehaus, and Dan J. Stein. "Pathological Gambling Behaviour: Emergence Secondary to Treatment of Parkinson's Disease with Dopaminergic Agents." *Depression and Anxiety*. 2000: 11 (4): 185-186
- Exhibit P-37.** Copy of "Abilify: Procedural steps taken and scientific information after the authorisation" [sic], European Medicines Agency, updated October 26, 2017
- Exhibit P-38.** Abilify: European Public Assessment Report – Product Information, European Medicines Agency, updated April 9, 2018
- Exhibit P-39.** Abilify Product Monograph, June 22, 2015 revision
- Exhibit P-40.** Abilify Maintena Product Monograph, September 15, 2015 revision
- Exhibit P-41.** Summary Safety Review, Health Canada, November 2, 2015
- Exhibit P-42.** Abilify Maintena Product Monograph, October 4, 2016 revision
- Exhibit P-43.** Abilify Maintena Product Monograph, December 13, 2016 revision
- Exhibit P-44.** Abilify Product Monograph, February 23, 2017 revision
- Exhibit P-45.** Abilify U.S. Product Monograph, January 15, 2016 revision
- Exhibit P-46.** Drug Safety Communication, U.S. Food and Drug Administration, May 3, 2016
- Exhibit P-47.** Abilify U.S. Product Monograph, August 18, 2016 revision
- Exhibit P-48.** Rexulti Canadian Product Monograph, November 5, 2018 revision
- Exhibit P-49.** Rexulti Canadian Product Monograph, February 19, 2019 revision
- Exhibit P-50.** Rexulti U.S. Product Monograph, February 2, 2018 revision

*The Plaintiffs will send the exhibits to the defendant as soon as possible.*

**Defendant's answer**

You must answer the application in writing, personally or through a lawyer, at the courthouse of Montréal situated at 1, Notre-Dame East, Montréal, Québec, H2Y 1B6, within 15 days of service of this application or, if you have no domicile, residence or establishment in Québec, within 30 days. The answer must be notified to the plaintiff's lawyer or, if the plaintiff is not represented, to the plaintiff.

**Failure to answer**

If you fail to answer within the time limit of 15 or 30 days, as applicable, a default judgement may be rendered against you without further notice and you may, according to the circumstances, be required to pay the legal costs.

### **Content of answer**

In your answer, you must state your intention to:

- negotiate a settlement;
- propose mediation to resolve the dispute;
- defend the application and, in the cases required by the Code, cooperate with the plaintiff in preparing the case protocol that is to govern the conduct of the proceeding. The protocol must be filed with the court office in the district specified above within 45 days after service of the summons. However, in family matters or if you have no domicile, residence, or establishment in Québec, it must be filed within 3 months after service; or
- propose a settlement conference.

The answer to the summons must include your contact information and, if you are represented by a lawyer, the lawyer's name and contact information.

### **Where to file the judicial application**

Unless otherwise provided, the judicial application is heard in the judicial district where your domicile is located, or failing that, where your residence or the domicile you elected or agreed to with plaintiff is located. If it was not filed in the district where it can be heard and you want it to be transferred there, you may file an application to that effect with the court.

However, if the application pertains to an employment, consumer, or insurance contract or to the exercise of a hypothecary right on the immovable serving as your main residence, it is heard in the district where the employee's, consumer's or insured's domicile or residence is located, whether that person is the plaintiff or the defendant, in the district where the immovable is located or, in the case of property insurance, in the district where the loss occurred. If it was not filed in the district where it can be heard and you want it to be transferred there, you may file an application to that effect with the special clerk of that district and no contrary agreement may be urged against you. You may ask the court to refer the originating application to the district of your domicile or residence, or of your elected domicile or the district designated by an agreement with the plaintiff.

### **Transfer of application to the Small Claims Division**

If you qualify to act as a plaintiff under the rules governing the recovery of small claims, you may also contact the clerk of the court to request that the application be processed according to those rules. If you make this request, the plaintiff's legal costs will not exceed those prescribed for the recovery of small claims.

### **Convening a case management conference**

Within 20 days after the case protocol mentioned above is filed, the court may call you to a case management conference to ensure the orderly progress of the proceeding. Failing this, the protocol is presumed to be accepted.

### **Notice of presentation of an application**

Applications filed in the course of a proceeding and applications under Book III or V of the Code – but excluding applications pertaining to family matters under article 409 and applications pertaining to securities under article 480—as well as certain applications under Book VI of the Code, including applications for judicial review, must be accompanied by a notice of presentation, not by a summons. In such circumstances, the establishment of a case protocol is not required.

**MONTRÉAL**, December 16, 2022

*Woods s.e.n.c.r.l./LLP*

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**Woods LLP**

Counsel for the Plaintiffs

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Code BW 0208 / Our File: 5415-2

**MONTRÉAL**, December 16, 2022

***Rochon Genova LLP***

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**NO.: 500-06-000948-188**

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**SUPERIOR COURT  
(CLASS ACTION)**

DISTRICT OF MONTREAL  
PROVINCE OF QUEBEC

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**MICHAEL POHORESKY** *et al.*  
*Representative Plaintiffs*

v.

**OTSUKA PHARMACEUTICAL  
COMPANY LIMITED** *et al.*  
*Defendants*

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**ORIGINATING APPLICATION**  
(Articles 100, 141-141 and 583 of the  
*Code of Civil Procedure*)

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**ORIGINAL**

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Mtre. Bogdan-Alexandru Dobrota  
Mtre. Laurence Ste-Marie  
File No.: 5415-2

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