C A N A D A

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

N^{O} : 500-06-000468-096

S U P E R I O R C O U R T
(Class Action)

G. ALBILIA

Petitioner

-vs-

L'ORÉAL CANADA INC.

Respondent

PARTICULARIZED MOTION TO AUTHORIZE THE BRINGING OF A CLASS ACTION AND TO ASCRIBE THE STATUS OF REPRESENTATIVE

(Art. 1002 C.C.P. and following)

TO ONE OF THE HONOURABLE JUSTICES OF THE SUPERIOR COURT OF QUEBEC, SITTING IN AND FOR THE DISTRICT OF MONTREAL, THE PETITIONER STATES THE FOLLOWING:

GENERAL PRESENTATION

1. Petitioner wish to institute a class action on behalf of the following group, of which he is a member, namely:

   - All residents in Canada who purchased and/or used any product designed, manufacture, distributed, sold or otherwise put onto the marketplace by Respondent, which contained either 1,4-dioxane and/or formaldehyde, or any other group to be determined by the Court;

     alternately (or as a subclass):

     All residents in Quebec who purchased and/or used any product designed, manufacture, distributed, sold or otherwise put onto the marketplace by Respondent, which contained either 1,4-dioxane and/or formaldehyde, or any other group to be determined by the Court;

   (hereinafter, both Quebec resident and non-Quebec resident Class Members are collectively referred to as, "Petitioner(s)", "Class Member(s)", "Group Member(s)", the "Group", the "Class", the "Member", the "Consumer(s)");

2. Respondent is a company that manufactures, distributes, and imports both in Canada and Quebec “cosmétiques”, the whole as appears from the CIDREQ report regarding Respondent, filed herewith, *en liasse*, as **Exhibit R-1**;

FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE PETITIONERS

Introduction:

3. Babies and children are exposed to several products at bath time, several times a week;

4. Despite marketing claims like “gentle” and “pure,” many top-selling children’s bath products, such as certain products sold by Respondent, are contaminated with the **formaldehyde** and/or **1,4-dioxane**;

5. Formaldehyde and 1,4-dioxane are toxic byproducts of chemical manufacturing and production formulation that are known to be carcinogens;

6. Formaldehyde can also trigger skin rashes and skin sensitivity in some children and adults;

7. Health Canada regularly issues “List of Prohibited and Restricted Cosmetic Ingredients”, which is known as “The Cosmetic Ingredient “Hotlist””, the whole as more fully appears from the most recent Cosmetic Ingredient Hotlist, dated March 2007, filed herewith as **Exhibit R-2** (hereinafter the “**Health Canada Hotlist**” or the “**Hotlist**”):

8. Health Canada states the following in its Hotlist (R-2):

> “Section 16 of the *Food and Drug Act* states that no person shall sell a cosmetic product that has in it any substance that may injure the health of the user when the cosmetic is used according to its customary method. To help cosmetic manufacturers satisfy this requirement, Health Canada has developed the Cosmetic Ingredient Hotlist – a list of substances which are restricted and prohibited in cosmetics.
>
> (…)
>
> If a cosmetic contains an ingredient which appears on the Hotlist, the

manufacturer may be advised to:

- Remove the substance from the formulation;
- Reduce the concentration of the ingredient to an acceptable level;
- Consider marketing the product as a drug, with appropriate claims and apply for a Drug Identification Number (DIN);
- Provide evidence that the product is safe for its intended use;
- Confirm that the product is labelled as required;
- Confirm that the product is sold in a child-resistant package.

Depending on the response of the manufacturer, the cosmetic may be found to be unacceptable for sale in Canada. In such a case, the product would be:

- Referred to a regional Product Safety Officer for appropriate action;
- Referred to the Health Products and Food Branch (HPFB) Inspectorate.

The Hotlist appears below, listing ingredients in alphabetical order. **Substances are designated as prohibited unless a specific restriction is stated. Caution statement and directions for safe use must appear on the label in English and French**. (Emphasis Added)

Note:

1) If a cosmetic contains a restricted ingredient, the notifying company must indicate, in their cosmetic notification form, the **exact concentration** at which it is present in the product.

2) **Unless otherwise stated, substances listed on the Cosmetic Ingredient Hotlist are prohibited in cosmetic products. Substances list with specific condition(s) outlines are restricted in Cosmetic products**." (Emphasis Added)

9. **1,4-dioxane** is a byproduct of a chemical processing technique called

ethoxylation, in which cosmetic ingredients are processed with ethylene oxide;

10. Manufacturers can easily remove the 1,4-dioxane byproduct;

11. Common ingredients likely to be contaminated with 1,4-dioxane include PEG 12 dimethicone, PEG 45M, PEG-80 sorbitan laurate, PEG-150 disterate, PEG-100 stearate, sodium laureth sulfate, polyethylene and ceteareth-20;

12. **Dioxane (1,4-dioxane)** is a **prohibited substance** by Health Canada considering that the Health Canada Hotlist lists said substance without outlining any specific conditions;

13. **Formaldehyde** contaminates personal care products when common preservatives release formaldehyde over time in the container;

14. Common ingredients likely to contaminate products with formaldehyde include Quaternium-15, DMDM hydantoin, imidazolidinyl urea and diazolidinyl urea;

15. **Formaldehyde** is a **restricted substance** by Health Canada considering that the Health Canada Hotlist lists said substance with certain conditions;

16. Respondent has designed, manufactured, sold or otherwise put onto the marketplace certain products that contain Dioxane (1,4-dioxane) (a prohibited substance) and/or Formaldehyde (a restricted substance) (hereinafter Respondent's "**Products**");

17. Furthermore, Respondent failed and/or neglected and/or refused to list the 1,4-dioxane and/or the formaldehyde on the ingredients label of the Products;

18. "The Campaign for Safe Cosmetics" (hereinafter the "**Campaign**") is a U.S. national coalition of non-profit health and environmental organizations. Its collective goal is to protect the health of consumers and workers by requiring the personal care products industry to phase out the use of chemicals linked to cancer, birth defects and other serious health concerns, and replace them with safer alternatives;

19. On March 12, 2009, the Campaign issued a report entitled "No More Toxic Tub - Getting Contaminants Out of Children's Bath & Personal Care Products" (hereinafter the "**Report**"), a copy of which is filed herewith, as though recited at length herein, as **Exhibit R-3**;

20. The R-3 Report is the first study to document the widespread presence of both formaldehyde and 1,4-dioxane in bath products for children, including shampoos, bubble baths, lotions, liquid shower soap, bath wash, baby wipes, hair relaxers, and hand soap. Many products tested by the Campaign in its R-3 Report contained both formaldehyde and 1,4-dioxane;

21. The Campaign commissioned an independent laboratory to test 48 products for 1,4-dioxane; 28 of those products were also tested for formaldehyde. The lab found that:

    a) 17 out of 28 products tested – 61 percent – contained both formaldehyde and 1,4-dioxane;

    b) 23 out of 28 products – 82 percent – contained formaldehyde at levels ranging from 54 to 610 parts per million (hereinafter "**ppm**");

    c) 32 out of 48 products – 67 percent – contained 1,4-dioxane at levels ranging from 0.27 to 35 ppm;

22. Petitioner has one young children, namely a son (age 2 ½);

23. Since the birth of his son, Petitioner and members of his family have been purchasing and using Respondent's products, namely **L'Oréal Kids Extra Gentle 2-in-1 Fast Dry Shampoo – Burst of Cool Melon**;

    a) Petitioner's son was born on June 28, 2009;

    b) Petitioner and/or his wife bought the bath product and it was used on their son; sometimes, the Petitioner used it on himself;

    c) Other bath products that were used on Petitioner's son were: Huggies Naturally Refreshing Cucumber & Green Tea Baby Wash, Johnson's Baby Shampoo, and Pampers Kandoo Foaming Soap (but more as a hand soap than as a bath product);

    d) Petitioner used said bath product on his son approximately four (4) times per week;

    e) Petitioner began using said bath product on his son approximately (1) one year

after his birth up until approximately March 2009;

24. In fact, said son had suffered skin rashes and irritations, while Petitioner was using Respondent's products. The cause of these rashes was never determined;

a) These rashes and irritations appeared on the Petitioner's son's whole body, but was worst on his back;

b) They began appearing approximately one (1) year after Petitioner's son's birth;

c) They appeared sometimes once a week, but gradually got worse over time;

d) They lasted for as short as one (1) day and as long as a week;

25. As appears from the R-3 Report, **L'Oréal Kids Extra Gentle 2-in-1 Fast Dry Shampoo – Burst of Cool Melon** was tested by the Campaign and was shown to contain:

a) 0.95 ppm of 1,4-dioxane, a prohibited ingredient according to the Health Canada Hotlist;

b) 260 ppm of formaldehyde, a restricted ingredient according to the Health Canada Hotlist;

26. In both cases, Respondent failed and/or neglected and/or refused to list the 1,4-dioxane and/or the formaldehyde on the ingredients label of the L'Oréal Kids Extra Gentle 2-in-1 Fast Dry Shampoo;

27. Respondent is prohibited from designing, manufacturing, distributing and selling a cosmetic product which contains 1,4-dioxane;

28. Respondent knew or should have known that **1,4-dioxane** is a byproduct of a chemical processing technique called ethoxylation, in which cosmetic ingredients are processed with ethylene oxide;

29. Respondent knew or should have known that common ingredients in its Products (such as in the products purchased and used by Petitioner), were likely to be contaminated with 1,4-dioxane and/or formaldehyde (ingredients such as sodium

laureth sulphate and DMDM hydantoin)

30. Respondent could have easily removed the toxic byproduct from its Products;

31. Instead, Respondent did not list the existence of 1,4-dioxane and/or formaldehyde on the ingredients labels of some of its Products, including the abovementioned products purchased and used by Petitioner;

32. Respondent has failed to adequately warn Consumers of the risks associated with the presence of 1,4-dioxane and/or formaldehyde in its Products;

33. Petitioner was therefore not able to determine that the products he purchased and used on his child contained the toxins 1,4-dioxane or formaldehyde;

34. Had Petitioner been made aware of this, he would not have purchased the said products, on multiple occasions, and he would not have used them on his child;

35. Respondent was therefore negligent and committed a fault in the design and manufacturing of its Products and was negligent and committed a fault regarding the labelling of the ingredients of its Products;

36. It is very likely that to Respondent's full knowledge, other of its Products, whether destined for children or for adults, also contain or contained the prohibited 1,4-dioxane and/or the restricted formaldehyde, the whole without listing the presence of these contaminants on the ingredients labels;

37. Class Members have therefore been prevented from making an informed decision and therefore their consent was vitiated when purchasing these Products from Respondent (or from Respondent's distributors);

38. Furthermore, and as explained in the Campaign's Report, R-3, the presence of 1,4-dioxane and/or of formaldehyde in Respondent's Products could have serious medical consequences on the health of Class Members, concerning which Respondent is fully liable and responsible;

FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY EACH OF THE MEMBERS OF THE GROUP

39. The Petitioner and the Class Members are comprised of the following:

    a) Adults who have purchased and/or used the Products on themselves or on children (minors);

    b) Adults *es qualité* for minor children who have used the Products;

40. Every member of the Group has purchased and/or used the Products without being warned, informed or notified by Respondent that said Products contained formaldehyde and/or 1,4-dioxane;

41. Therefore, none of the Class Members were provided adequate warnings and information by Respondent;

42. Every member of the Group was therefore not given the chance to make an informed decision and give an informed consent before purchasing and/or using the Products;

43. Every member of the Group's consent was therefore vitiated when purchasing the Products;

44. Every Member of the Group has or will experience stress, anxiety, worry, trouble, annoyance, inconvenience, pain, suffering and/or other corporal and/or moral damages as a result of the potential and/or actual medical issues which may be caused from the exposure to 1,4-dioxane and/or formaldehyde;

45. Some of the expenses related to the medical treatment that the Class Members have undergone or will undergo, will have been borne by the various provincial health insurers including the *Régie de l'assurance maladie du Québec* and the Ontario Health Insurance Plan. As a result of Respondent's conduct, these various provincial health insurers have suffered and will continue to suffer damages for which they are entitled to be compensated by virtue of their right of subrogation in respect to all past and future insured services. These subrogated interests are asserted by Petitioner and the Class Members;

CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION

46. The composition of the group makes the application of article 59 or 67 C.C.P. impractical or impossible for the reasons detailed below;

47. The number of persons included in the Group is estimated at being in the hundreds of thousands and are scattered across Canada, considering that Respondent is one of the world's most comprehensive and broadly based manufacturers of health care products, and that some of its Products, such as L'Oréal Kids Extra Gentle 2-in-1 Fast Dry Shampoo, is widely used by most parents;

48. The names and addresses of all persons included in the Group are not known to the Petitioner, however, Respondent is likely to possess data regarding sales and distribution figures;

49. In addition, given the costs and risks inherent in an action before the Courts, many people will hesitate to institute an individual action against Respondent. Even if the Class Members themselves could afford such individual litigation, the Court system could not as it would be overloaded. Furthermore, individual litigation of the factual and legal issues raised by the conduct of Respondent would increase delay and expense to all parties and to the Court system;

50. Moreover, a multitude of actions instituted in different jurisdictions, both territorial (different provinces) and judicial districts (same province) risks having contradictory judgments on questions of fact and law that are similar or related to all Members of the Class;

51. These facts demonstrate that it would be impractical, if not impossible, to contact each and every Member of the Class to obtain mandates and to join them in one action;

52. In these circumstances, a class action is the only appropriate procedure for all of the Members of the Class to effectively pursue their respective rights and have access to justice;

53. The recourses of the Members raise identical, similar or related questions of fact or law, namely:

    a) Did Respondent's Products contain 1,4-dioxane and what is the legal consequence?

    b) Did Respondent's Products contain formaldehyde and what is the legal consequence?

c) Did Respondent fail and/or neglect to accurately and sufficiently warn Class Members of the presence of 1,4-dioxane and/or the formaldehyde in its Products?

d) Did Respondent fail and/or neglect and/or refuse to list the 1,4-dioxane and/or the formaldehyde on the ingredients labels of its Products?

e) Is Respondent responsible to reimburse the purchase price paid by Class Members for the Products?

f) Is Respondent responsible to pay compensatory, moral, punitive and/or exemplary damages to Class Members and if so in what amount?

g) Should an injunctive remedy be ordered to force Respondent to recall certain of its Products?

h) Should an injunctive remedy be ordered to force Respondent to properly list certain substances in the ingredients labels of its Products?

i) Should Respondent be condemned to establish a fund for the benefit of the various provincial health insurers for subrogation relating to the medical treatments and expenses that the Class Members have undergone and/or will continue to undergo in the future?

54. The interests of justice favour that this motion be granted in accordance with its conclusions;

NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

55. The action that Petitioner wishes to institute for the benefit of the members of the class is an action in damages for product liability;

56. The conclusions that Petitioner wishes to introduce by way of a motion to institute proceedings are:

GRANT Plaintiff's action against Defendant;

CONDEMN Defendant to reimburse to the Members of the Group the purchase price paid for the Products, plus interest as well the additional indemnity since the date of purchase;

CONDEMN Defendant to pay an amount in moral damages to every Group Member, for stress, anxiety, worry, trouble, annoyance,

inconvenience, estimated at 500$ per person, *sauf à parfaire*, plus interest as well the additional indemnity;

CONDEMN Defendant to pay an amount in punitive and/or exemplary damages to every Group Member, estimated at 250$ per person, *sauf à parfaire*, plus interest as well the additional indemnity;

CONDEMN Defendant to an amount sufficient to compensate the various provincial health insurers for the medical treatments and expenses that the Class Members have undergone and/or will continue to undergo in the future and **ORDER** Defendant to deposit in the office of this Court these sums so as to establish a fund to be administered as this Honourable Court deems fit;

RESERVE the right of each of the Members of the Class to claim future damages related to the use of the Products;

ORDER Defendant to recall all of its Products that contain 1,4-dioxane;

ORDER Defendant to recall all of its Products that contain the prohibited concentration of formaldehyde;

ORDER Defendant to properly list the exact concentration of formaldehyde in its Products?

GRANT the class action of Petitioner on behalf of all the Members of the Group;

ORDER the treatment of individual claims of each Member of the Group in accordance with articles 1037 to 1040 C.C.P.;

RENDER any other order that this Honourable Court shall determine and that is in the interest of the Members of the Group;

THE WHOLE with interest and additional indemnity provided for in the Civil Code of Quebec and with full costs and expenses including expert's fees and publication fees to advise members;

57. Petitioner suggests that this class action be exercised before the Superior Court in the District of Montreal for the following reasons:

a) Respondent has its principal place of business in the District of Montreal;

b) Many Class Members, including Petitioner, are domiciled in the District of Montreal;

c) Class Counsel are domiciled in the District of Montreal;

58. Petitioner, who is requesting to obtain the status of representative, will fairly and adequately protect and represent the interest of the Members of the Group, since Petitioner:

a) purchased and/or used the Products without being informed or notified by Respondent that said Products contained formaldehyde and/or 1,4-dioxane;

b) was not given the chance to make an informed decision and give an informed consent before purchasing and/or using the Products;

c) has or will experience anxiety, inconvenience, pain, and/or suffering and possible other damages as a result this;

d) understands the nature of the action and has the capacity and interest to fairly and adequately protect and represent the interests of the Members of the Group;

e) is available to dedicate the time necessary for the present action before the Courts of Quebec and to collaborate with Class attorneys in this regard;

f) is ready and available to manage and direct the present action in the interest of the Class Members that Petitioner wishes to represent, and is determined to lead the present file until a final resolution of the matter, the whole for the benefit of the Class;

g) does not have interests that are antagonistic to those of other members of the Group;

h) has given the mandate to the undersigned attorneys to obtain all relevant information to the present action and intend to keep informed of all developments;

i) is, with the assistance of the undersigned attorneys, ready and available to dedicate the time necessary for this action and to collaborate with other Members of the Group and to keep them informed;

59. The present motion is well founded in fact and in law;

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT the present motion;

AUTHORIZE the bringing of a class action in the form of a motion to institute proceedings in damages;

ASCRIBE the Petitioner the status of representative of the persons included in the group herein described as:

- All residents in Canada who purchased and/or used any product designed, manufacture, distributed, sold or otherwise put onto the marketplace by Respondent, which contained either 1,4-dioxane and/or formaldehyde, or any other group to be determined by the Court;

  alternately (or as a subclass):

  All residents in Quebec who purchased and/or used any product designed, manufacture, distributed, sold or otherwise put onto the marketplace by Respondent, which contained either 1,4-dioxane and/or formaldehyde, or any other group to be determined by the Court;

60. **IDENTIFY** the principle questions of fact and law to be treated collectively as the following:

a) Did Respondent's Products contain 1,4-dioxane and what is the legal consequence?

b) Did Respondent's Products contain formaldehyde and what is the legal consequence?

c) Did Respondent fail and/or neglect to accurately and sufficiently warn Class Members of the presence of 1,4-dioxane and/or the formaldehyde in its Products?

d) Did Respondent fail and/or neglect and/or refuse to list the 1,4-dioxane and/or the formaldehyde on the ingredients labels of its Products?

e) Is Respondent responsible to reimburse the purchase price paid by Class Members for the Products?

f) Is Respondent responsible to pay compensatory, moral, punitive and/or exemplary damages to Class Members and if so in what amount?

g) Should an injunctive remedy be ordered to force Respondent to recall certain of its Products?

h) Should an injunctive remedy be ordered to force Respondent to properly list certain substances in the ingredients labels of its Products?

i) Should Respondent be condemned to establish a fund for the benefit of the various provincial health insurers for subrogation relating to the medical treatments and expenses that the Class Members have undergone and/or will continue to undergo in the future?

IDENTIFY the conclusions sought by the class action to be instituted as being the following:

GRANT Plaintiff's action against Defendant;

CONDEMN Defendant to reimburse to the Members of the Group the purchase price paid for the Products, plus interest as well the additional indemnity since the date of purchase;

CONDEMN Defendant to pay an amount in moral damages to every Group Member, for stress, anxiety, worry, trouble, annoyance, inconvenience, estimated at 500$ per person, *sauf à parfaire*, plus interest as well the additional indemnity;

CONDEMN Defendant to pay an amount in punitive and/or exemplary damages to every Group Member, estimated at 250$ per person, *sauf à parfaire*, plus interest as well the additional indemnity;

CONDEMN Defendant to an amount sufficient to compensate the various provincial health insurers for the medical treatments and expenses that the Class Members have undergone and/or will continue to undergo in the future and **ORDER** Defendant to deposit in the office of this Court these sums so as to establish a fund to be administered as this Honourable Court deems fit;

RESERVE the right of each of the Members of the Class to claim future damages related to the use of the Products;

ORDER Defendant to recall all of its Products that contain 1,4-dioxane;

ORDER Defendant to recall all of its Products that contain the prohibited concentration of formaldehyde;

ORDER Defendant to properly list the exact concentration of formaldehyde in its Products?

GRANT the class action of Petitioner on behalf of all the Members of the Group;

ORDER the treatment of individual claims of each Member of the Group in accordance with articles 1037 to 1040 C.C.P.;

RENDER any other order that this Honourable Court shall determine and that is in the interest of the Members of the Group;

THE WHOLE with interest and additional indemnity provided for in the Civil Code of Quebec and with full costs and expenses including expert's fees and publication fees to advise members;

DECLARE that all Members of the Group that have not requested their exclusion from the Group in the prescribed delay to be bound by any judgment to be rendered on the class action to be instituted;

FIX the delay of exclusion at 30 days from the date of the publication of the notice to the Members;

ORDER the publication of a notice to the Members of the Group in accordance with article 1006 C.C.P.;

THE WHOLE with costs to follow.

MONTREAL, October 30, 2009

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ORENSTEIN & Associates
Attorneys for Petitioner and the
Class Members