

CANADA

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

NO: 500-06-001336-243

(Class Action)  
SUPERIOR COURT

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**M. VIGNEAULT**

*Applicant*

-vs.-

**CLINIQUES D'OPHTALMOLOGIE  
BELLEVUE INC.**, legal person duly  
incorporated having its principal  
establishment located at 4135 rue de Rouen,  
Montréal, Québec, H1V 1G5

and

**CLINIQUE D'OPHTALMOLOGIE  
BELLEVUE QUÉBEC INC.**, legal person  
duly incorporated having its principal  
establishment located at 7272 boul. Wilfrid-  
Hamel, Québec, Québec, G2G 1C1

and

**LA CLINIQUE D'OPHTALMOLOGIE  
BELLEVUE-VAUDREUIL INC.**, legal person  
duly incorporated having its principal  
establishment located at 160-17 boul. de la  
Cité-des-Jeunes, Vaudreuil, Québec, J7V  
9S6

and

**CLINIQUE D'OPHTALMOLOGIE  
BELLEVUE MONTRÉAL CENTRE-VILLE  
INC.**, legal person duly incorporated having  
its principal establishment located at 4150  
rue Sainte-Catherine O, Westmount,  
Québec, H3Z 2Y5

*Defendants*

**APPLICATION TO AUTHORIZE THE BRINGING OF A CLASS ACTION & TO  
APPOINT THE APPLICANT AS REPRESENTATIVE PLAINTIFF**

(Art. 574 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, YOUR APPLICANT STATE AS FOLLOWS:

**I. GENERAL PRESENTATION**

A) The Action

1. The Applicants wish to institute a class action on behalf of the following class, of which she is a member, namely:
  - All persons resident in Québec who underwent cataract surgery and paid the Defendants for uninsured:
    - pre-operative diagnostic tests to determine candidacy for implantation of TECNIS Eyhance non-toric intraocular lenses; and/or
    - ultrasonic biometric tests; and/or
    - femtosecond laser refractive relaxing incisions.
2. The Defendants own, constitute, and/or operate a network of specialized medical centres providing insured and non-insured ophthalmic services and procedures from various locations in the Province of Québec;
3. The Applicant contends that the Defendants have and continue to charge patients for medically unjustified and superfluous uninsured pre-operative diagnostic tests to determine candidacy or implantation of Johnson & Johnson brand TECNIS Eyhance non-toric intraocular lenses, as well ultrasonic biometric tests and femtosecond laser refractive relaxing incisions concomitant to cataract surgery;
4. The Defendants knowingly, recklessly, or negligently engage in these practices despite knowing that superior and more effective alternatives to ultrasonic biometric tests are insured under the Quebec Health Insurance Plan ("RAMQ") and are available free of charge, and that relaxing incisions and pre-operative diagnostic tests to determine candidacy for implantation of Eyhance non-toric intraocular lenses are unnecessary and should not be administered or charged to patients;



5. By misleading the Applicant and Class Members as to the necessity of said pre-operative diagnostic tests, ultrasonic biometric tests, and femtosecond laser refractive relaxing incisions, the Defendants induced them to make payments in error and are therefore in receipt of payments not actually due;
6. By requiring the Applicant and Class Members to pay for tests and procedures that are medically unjustified, superfluous and unnecessary, the Defendants have unjustly enriched themselves at Applicant and Class Members' expense;
7. The Defendants exploited and continue to exploit the scientific informational disequilibrium they enjoy over the Applicant and Class Members, who were unable to form an independent educated opinion in respect of whether the said tests and incisions were indeed medically justified and effective;
8. The Applicant and Class Members' consent to these procedures was not, therefore, legally valid or effective, resulting in the Defendants violating their rights under the *Civil Code of Québec* and Québec's *Charter of Human Rights and Freedoms*;
9. The Applicant and Class Members suffered significant legally-cognizable compensable injuries directly and immediately caused by the Defendants' unlawful conduct, and are entitled to claim, *inter alia*:
  - (a) Compensatory damages corresponding to the value of sums paid to the Defendants for the above-mentioned unnecessary medical procedures and services;
  - (b) Compensatory damages for the intentional and non-consensual interferences with their bodily integrity;
  - (c) Compensatory non-pecuniary damages for pain, suffering, stress, and anxiety;
  - (d) Restitution of all payments made by Applicant and Class Members to the Defendants in respect of tests, procedures and services that were represented as being, but actually were not, medically justified;
  - (e) Punitive damages;
10. The Defendants' faults are the direct and immediate cause of the above-mentioned pecuniary, moral, and bodily injuries suffered by the Applicant and Class Members;

B) The Defendants

11. Defendant Cliniques d'Ophtalmologie Bellevue Inc. is a privately-held corporation founded in 2017 and duly constituted under the *Quebec Business Corporations Act*;

12. As shown in an extract from the *Registraire des entreprises*, attached herein as **Exhibit R-1**, the Defendant Cliniques d'Ophtalmologie Bellevue Inc. also owns and operates branches under the names Clinique d'ophtalmologie Bellevue Laval (opened in 2010), Clinique d'ophtalmologie Bellevue Montréal (opened in 2005), and Clinique d'ophtalmologie Bellevue Longueuil (opened in 2012), all of which have the same *Numéro d'entreprise du Québec*, namely: 1172413370;
13. As shown in an extract from Cliniques d'Ophtalmologie Bellevue Inc.'s website, attached herein as **Exhibit R-2**, the same corporate website is used for the Defendants Cliniques d'Ophtalmologie Bellevue Inc., Clinique d'Ophtalmologie Bellevue Québec Inc., Clinique d'Ophtalmologie Bellevue Montréal Centre-Ville Inc., and La Clinique d'Ophtalmologie Bellevue-Vaudreuil Inc.;
14. As further shown in the Privacy Policy available on the Defendants' website and attached herein as **Exhibit R-3**, the Defendants' corporate address is presented as the contact address for clients to exercise their rights of opposition to, and withdrawal from, the Defendants' collection and use of their personal information as well their right to access and seek rectification of their personal information under the *Act respecting the protection of personal information in the private sector*;
15. As appears in an extract from the *Registraire des entreprises* attached herein as **Exhibit R-4**, Defendant Clinique d'Ophtalmologie Bellevue Québec Inc. is a privately-held corporation founded in 2021 and duly constituted under the *Quebec Business Corporations Act*;
16. As appears in an extract from the *Registraire des entreprises* attached herein as **Exhibit R-5**, Defendant La Clinique d'Ophtalmologie Bellevue-Vaudreuil Inc. is a privately-held corporation founded in 2020 and duly constituted under the *Quebec Business Corporations Act*;
17. As appears in an extract from the *Registraire des entreprises* attached herein as **Exhibit R-6**, Defendant Clinique d'Ophtalmologie Bellevue Montréal Centre-Ville Inc. is a privately-held corporation founded in 2022 and duly constituted under the *Quebec Business Corporations Act*;
18. On information and belief, the Defendants Cliniques d'Ophtalmologie Bellevue Inc., Clinique d'Ophtalmologie Bellevue Québec Inc., Clinique d'Ophtalmologie Bellevue Montréal Centre-Ville Inc., and La Clinique d'Ophtalmologie Bellevue-Vaudreuil Inc. are neither separate nor independent. For instance, the corporate website <https://cliniquebellevue.com>, a screenshot of which is produced as **Exhibit R-7**, does not distinguish between the aforementioned Defendants, referring to "The Bellevue Ophtalmology Clinic" and to "Its 6 establishments located in Montreal, Laval, Longueuil, Vaudreuil-Dorion, Drummondville and Quebec";



19. The Defendants individually and collectively derive substantial revenue from the provision of vision care, services, procedures, and surgeries paid for by private clients and/or by the Régie de l'assurance maladie du Québec ("RAMQ");
20. In consequence of all of the foregoing, all Defendants are solidarily liable for the acts and omissions of the other;

C) The Situation

21. The Defendants own, constitute and/or operate a network of medical facilities that collectively does business as "The Bellevue Ophthalmology Clinic." As described on the corporate website used by all Defendants (Exhibit R-7):

*The Bellevue Ophthalmology Clinic specializes in the treatment, diagnosis, monitoring and prevention of eye diseases. Its team is made up of ophthalmologists and optometrists from various specialties in order to offer its patients a wide range of services adapted to their needs.*

*In addition to its general ophthalmology services, the clinic also offers different types of refractive surgeries (vision correction).*

22. The medical facilities owned and operated by the Defendants fall within the definition of "specialized medical centre" under para. 1(f.1) of the *Medical Act*, CQLR c M-9 / *Loi médicale*, RLRQ c M-9 ("LM") and s. 333.1 of the *Act respecting health services and social services*, CQLR c S-4.2 / *Loi sur les services de santé et les services sociaux* ("LSSSS"). Section 333.1 defines "specialized medical centre" as follows:

<p><b>TITLE I.1</b> SPECIALIZED MEDICAL CENTRES <b>333.1.</b> In this Act, "specialized medical centre" means a place, outside a facility maintained by an institution, that is equipped for the provision by one or more physicians of medical services necessary for a hip or knee replacement, <b><u>a cataract extraction and intraocular lens implantation</u></b> or any other specialized medical treatment determined by regulation of the Government. <b>(emphasis added)</b></p>	<p><b>TITRE I.1</b> LES CENTRES MÉDICAUX SPÉCIALISÉS <b>333.1.</b> Dans la présente loi, on entend par «centre médical spécialisé» un lieu aménagé hors d'une installation maintenue par un établissement aux fins de permettre à un ou plusieurs médecins de dispenser à leur clientèle les services médicaux nécessaires pour effectuer une arthroplastie-prothèse de la hanche ou du genou, <b><u>une extraction de la cataracte avec implantation d'une lentille intra-oculaire</u></b> ou tout autre traitement médical spécialisé déterminé par règlement du gouvernement. <b>(emphasis added)</b></p>
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23. All physicians (ophthalmologists and optometrists) practising as part of the Defendants' network of specialized medical centres are qualified to practise the medical profession and are members of the *Collège des Médecins du Québec* (Quebec Order of Physicians). Said physicians are, pursuant to s. 3 of the *LM*, also governed by the *Professional Code*, CQLR, c. C-26 / *Code des professions*, RLRQ c C-26:

<p><b>3.</b> Subject to this Act, the Order and its members shall be governed by the Professional Code (chapter C-26).</p>	<p><b>3.</b> Sous réserve des dispositions de la présente loi, l'Ordre et ses membres sont régis par le Code des professions (chapitre C-26).</p>
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24. As specified on the Defendants' corporate website (Exhibit R-7), "Bellevue ophthalmology clinics are part of a group of privately managed public clinics." The clinics are therefore operated as "specialized medical centre[s] where only physicians subject to the application of an agreement under section 19 of the *Health Insurance Act* (chapter A-29) practise" within the meaning of s. 333(1) of the *LSSSS*;
25. By this is meant that the Defendants and their physicians have entered into an agreement to provide their ophthalmic services, procedures, and treatments within Québec's public health care system. Section 19 of the *Health Insurance Act*, CQLR, c. A-29 / *Loi sur l'assurance maladie*, RLRQ c A-29 ("*LAM*") provides :

<p><b>DIVISION III</b> <b>PROFESSIONALS IN THE FIELD OF HEALTH</b></p> <p><b>19.</b> For the purposes of this Act, the Minister may, with the approval of the Conseil du trésor, enter into an agreement with the representative organizations of any class of health professionals.</p> <p>An agreement may, in particular, provide that the remuneration of insured services will vary according to rules which apply to an activity, a type of activity or all activities of a health professional, or to the activities of a class of professionals or of a specialty. Such an agreement may also provide different methods of remuneration which include fee-for-service remuneration, flat-rate fees and salary. It may also provide, as compensation or reimbursement, for the payment of various amounts such as premiums, expenses or allowances.</p>	<p><b>SECTION III</b> <b>PROFESSIONNELS DE LA SANTÉ</b></p> <p><b>19.</b> Le ministre peut, avec l'approbation du Conseil du trésor, conclure avec les organismes représentatifs de toute catégorie de professionnels de la santé, toute entente pour l'application de la présente loi.</p> <p>Une entente peut prévoir notamment que la rémunération de services assurés varie selon des règles applicables à une activité, un genre d'activité ou l'ensemble des activités d'un professionnel de la santé, ou aux activités d'une catégorie de professionnels ou d'une spécialité à laquelle il appartient. Une telle entente peut aussi prévoir différents modes de rémunération dont les modes de rémunération à l'acte, à honoraires forfaitaires et à salaire. Elle peut en</p>
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	<p>autre prévoir, à titre de compensation ou de remboursement, le versement de divers montants tels des primes, des frais ou des allocations.</p>
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26. The binding effect of an agreement mentioned in s. 19 is specified in s. 21 of the *LAM*:

<p><b>21.</b> An agreement under section 19 shall bind all professionals in the field of health who are members of the body which made the agreement and those whose field of professional activities is the same as that of such members and who are contemplated by the agreement.</p>	<p><b>21.</b> Une entente visée à l'article 19 oblige tous les professionnels de la santé qui sont membres de l'organisme qui l'a conclue ainsi que tous ceux dont le champ d'activités professionnelles est le même que celui de ces membres et qui sont visés par l'entente.</p>
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27. Section 22 prohibits physicians subject to an agreement mentioned in s. 19 of the *LAM* from charging any amounts other than those specified in the agreement in respect of insured services:

<p><b>22.</b> A professional in the field of health subject to the application of an agreement shall not exact or receive for an insured service any other remuneration than that provided for by the agreement and to which he is entitled under the preceding paragraphs; any covenant to the contrary is absolutely null.</p> <p>The Board may recover from a health professional who contravenes the fifth paragraph, by compensation or otherwise, any amount or the value of any benefit received, after sending him a notice in writing.</p> <p>No payment may be charged to or received from any insured person, directly or indirectly, for costs incurred for insured services provided by a health professional who is subject to the application of an agreement or by a professional who has withdrawn. Such costs include those related to</p>	<p><b>22.</b> Un professionnel de la santé soumis à l'application d'une entente a droit d'être rémunéré par la Régie pour un service assuré qu'il a lui-même fourni à une personne assurée qui a présenté sa carte d'assurance maladie ou son carnet de réclamation, selon le cas, ou d'être rémunéré par une personne assurée pour un service assuré qu'il lui a lui-même fourni lorsque cette dernière n'a pas présenté sa carte d'assurance maladie ou son carnet de réclamation, selon le cas, pourvu que ce professionnel de la santé se soit conformé aux dispositions de l'entente.</p> <p>La Régie peut récupérer d'un professionnel de la santé qui contrevient au cinquième alinéa, par compensation ou autrement, toute somme ou valeur de l'avantage reçu après l'avoir avisé par écrit.</p> <p>Aucun paiement ne peut être réclamé ou reçu d'une personne assurée, directement ou indirectement, pour des</p>
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<p>(1) the operation of a private health facility or a specialized medical centre within the meaning of the Act respecting health services and social services;</p> <p>(2) services, supplies, medications and equipment required to provide an insured service, as well as to perform diagnostic tests related to such a service</p> <p>Such costs do not include those related to services not considered insured that are required before, during or after the provision of an insured service.</p> <p>In addition, directly or indirectly requiring an insured person to pay for access to an insured service, and granting an insured person privileged access to such a service in exchange for payment, are prohibited.</p>	<p>frais engagés aux fins de la dispensation de services assurés par un professionnel de la santé soumis à l'application d'une entente ou par un professionnel désengagé. Constituent notamment de tels frais ceux liés:</p> <p>1° au fonctionnement d'un cabinet privé de professionnel ou d'un centre médical spécialisé au sens de la Loi sur les services de santé et les services sociaux;</p> <p>2° aux services, fournitures, médicaments et équipements requis pour la dispensation d'un service assuré, ainsi que pour la réalisation d'un test diagnostique se rapportant à un tel service.</p> <p>Ne constituent pas de tels frais ceux liés à des services non considérés comme assurés requis avant, pendant ou après la dispensation d'un service assuré.</p> <p>Il est de plus interdit de rendre, directement ou indirectement, l'accès à un service assuré conditionnel à un paiement par une personne assurée, ou de procurer à celle-ci un accès privilégié à un tel service moyennant paiement.</p>
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28. As a result of their physicians being subject to an agreement governed by the *LAM*, the Defendants cannot charge patients for medical services, procedures, and treatments insured pursuant to said Act and its regulations and that are instead reimbursed by the *Régie de l'assurance maladie du Québec* ("RAMQ") to the maximum amount covered by the applicable agreement;
29. As a result, the Defendants can only charge patients for ophthalmological services, procedures, and treatments not covered under the *HIA* and its regulations;
30. The RAMQ's website (an extract of which is attached as **Exhibit R-8**) lists the following "ophthalmic services" as being covered under the Quebec Health Insurance Plan and therefore being "free of charge if they are provided by a participating physician as part of a covered service":
- *cataract extraction,*



- *soft contact lenses (single-piece, foldable, monofocal aspheric intraocular lenses) used to treat cataracts*

31. Critically, a document available on RAMQ's website titled "Frequently asked questions about costs billed" and attached herein as **Exhibit R-9** defines "covered service" as "services that are medically required." This definition in turn corresponds to the definition of "insured services" in the *LAM*:

<b>DIVISION I</b> INTRODUCTION	<b>SECTION 1</b> INTRODUCTION
<p><b>1.</b> In this Act, unless the context indicates a different meaning, the following expressions and words mean or designate:</p> <p>(a) "insured services": the services, medications, devices, or other equipment that compensate for a physical deficiency, visual or hearing aids and communication devices contemplated in section 3;</p> <p>[...]</p> <p><b>3.</b> The cost of the following services rendered by a professional in the field of health are assumed by the Board on behalf of every insured person, in accordance with this Act and the regulations:</p> <p>(a) all services rendered by physicians that are medically required;</p>	<p><b>1.</b> Dans la présente loi, à moins que le contexte n'indique un sens différent, les expressions et mots suivants signifient ou désignent :</p> <p>a) « services assurés » : les services, médicaments, appareils ou autres équipements suppléant à une déficience physique, aides visuelles, aides auditives et aides à la communication visés dans l'article 3 ;</p> <p>[...]</p> <p><b>3.</b> Le coût des services suivants qui sont rendus par un professionnel de la santé est assumé par la Régie pour le compte de toute personne assurée, conformément aux dispositions de la présente loi et des règlements :</p> <p>a) tous les services que rendent les médecins et qui sont requis au point de vue médical;</p>

32. The same document (Exhibit R-9) on RAMQ's website titled "Frequently asked questions about costs billed" provides the following relevant details concerning insured ophthalmological services:

***Which ophthalmological services are covered?***

*The following fees **cannot be billed to you** by a participating physician, if they are related to a covered service:*



- *Eye drops of any kind (mydriatic, anesthetic and other)*
- **Optical biometry**
- *Retinophotograph*
- **Cataract extraction (all techniques, including the use of laser)**
- *Optical coherence tomography (OCT) conducted in a clinic to treat, by an intravitreal injection, one of the following pathologies:*
  - *age-related macular degeneration*
  - *macular edema caused by vein occlusion*
  - *diabetic macular edema*
  - *retinopathy of prematurity*
  - *malignant myopia*
  - *neovascular glaucoma*
  - *neovascular diabetic retinopathy*

*Soft contact lenses (single-piece, foldable, monofocal aspheric intraocular lenses), placed on the cornea during laser surgery are covered, thus, free-of-charge. (emphasis added)*

33. The webpage on RAMQ's website entitled "Which ophthalmic services are covered and not covered" (Exhibit R-8) identifies "Toric contact lenses or speciality lenses" as not being covered by the Quebec Health Insurance Plan;
34. The RAMQ document titled Frequently asked questions about costs billed (Exhibit R-9) also states that "Toric contact lenses or speciality lenses are not covered";
35. Importantly, RAMQ's document titled Frequently asked questions about costs billed (Exhibit R-8) provides as follows:

*If you wish to obtain lenses other than those covered, you will need to **pay the difference between the cost of your lenses and that of the lenses that are covered.** (emphasis added)*

36. As a result, and most relevant to the present proposed class action, cataract extraction, soft contact (intraocular) lenses used to treat cataracts, optical coherence tomography to treat certain pathologies, and corrective laser eye surgery (e.g. refractive laser surgery) are insured services to the extent that they are medically required;
37. The Defendants' shared corporate website provides as follows in respect of services, treatments, procedures and other items in respect of which clients are charged (Exhibit R-7):

***What are the fees to be paid at Bellevue ophthalmology clinics?***

*Bellevue ophthalmology clinics are part of a group of privately managed public clinics. Consultation fees with an ophthalmologist as well as follow-up, diagnostic and ophthalmic treatment fees are covered by the Régie de l'assurance maladie du Québec (RAMQ). Some costs are not covered, such as services provided by our optometrists, refractive surgeries, preparation of administrative documents and certain imaging exams.*

38. Notably, the Defendants' website does not mention whether all refractive surgeries must be paid and thus not covered under the Quebec Health Insurance Plan. In other words, it is unclear whether the Defendants only offer uninsured refractive surgeries, and the website makes no distinction between insured and uninsured refractive surgeries. The representations on the Defendants' website therefore do not adequately inform actual or prospective clients;
39. Specialized medical centres like the ones owned, operated, or controlled by the Defendants are not prohibited from charging for services, treatments, and procedures that are not covered under RAMQ in addition to providing insured services for which no fees or any other payment whatsoever is required of, or received from, clients;
40. The following conditions must, however, be satisfied under the *LAM*:

**22.0.0.1.** A physician subject to the application of an agreement or a physician who has withdrawn who practises in a private health facility, or a physician subject to the application of an agreement who practises in a specialized medical centre within the meaning of the Act respecting health services and social services (chapter S-4.2) must post in public view, in the waiting room of the facility or centre where the physician practises, the tariff of fees that the physician may charge an insured person under a government regulation made under this Act, and the tariff of fees for medical services rendered by the physician that are non-insured services or services not considered insured services by regulation. Physicians who share a common waiting room may post a single notice.

**22.0.0.1.** Un médecin soumis à l'application d'une entente ou un médecin désengagé qui exerce dans un cabinet privé ou un médecin soumis à l'application d'une entente qui exerce dans un centre médical spécialisé au sens de la Loi sur les services de santé et les services sociaux (chapitre S-4.2) doit afficher à la vue du public, dans la salle d'attente du cabinet ou du centre médical spécialisé où il exerce, le tarif des frais qu'il peut réclamer d'une personne assurée suivant un règlement du gouvernement pris en application de la présente loi, ainsi que celui des services médicaux qu'il rend et qui sont non assurés ou non considérés comme assurés par règlement. Une même affiche peut servir pour les médecins qui ont une salle d'attente en commun.

Aucune autre somme d'argent que celle affichée conformément au premier alinéa ne peut être réclamée ou reçue d'une



<p>No amount other than a fee posted in accordance with the first paragraph may be directly or indirectly charged to or received from an insured person for a medical service received in a private health facility or a specialized medical centre. (emphasis added)</p>	<p>personne assurée, directement ou indirectement, pour l'obtention d'un service médical dans un cabinet privé ou dans un centre médical spécialisé. (emphasis added)</p>
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41. Additional conditions and requirements listed in s. 22.0.0.1 are as follows:

<p><b>22.0.0.1</b></p> <p>[...]</p> <p>An insured person from whom payment is demanded must be given an itemized invoice stating the tariff for the fees mentioned in the first paragraph and for each non-insured medical service and each medical service not considered insured.</p> <p>The notice posted under the first paragraph and the invoice must mention the right of the person from whom payment is exacted contrary to section 22.0.1 to claim reimbursement.</p> <p>For the purposes of this section or any other provision of this Act, a non-insured service or a service not considered insured is deemed to remain such even if it is required before, during or after the provision of an insured service. This also applies to the fees mentioned in the first paragraph.</p>	<p><b>22.0.0.1</b></p> <p>[...]</p> <p>Lorsqu'un paiement est exigé d'une personne assurée, une facture détaillée doit lui être remise. Cette facture doit indiquer le tarif réclamé pour chacun des frais visés au premier alinéa et pour chacun des services médicaux non assurés ou non considérés comme assurés.</p> <p>L'affiche prévue au premier alinéa et la facture doivent faire mention du droit de la personne qui se voit exiger un paiement à l'encontre des dispositions de l'article 22.0.1 d'en réclamer le remboursement.</p> <p>Pour l'application du présent article ou de toute autre disposition de la présente loi, un service non assuré ou un service non considéré comme assuré est réputé demeurer un service non assuré ou un service non considéré comme assuré même s'il est requis avant la dispensation d'un service assuré, lors de sa dispensation ou à la suite de celle-ci. Il en est de même à l'égard des frais visés au premier alinéa.</p>
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42. Violations of the conditions and requirements listed in s. 22.0.0.1 attract hefty administrative monetary penalties:

<p><b>22.0.0.1</b> A physician subject to the application of an agreement or a physician who has withdrawn who contravenes the first, third or fourth paragraph is guilty of an offence and is liable to a fine of \$2,500 to \$25,000 and, for a subsequent offence, to a fine of \$5,000 to \$50,000.</p> <p>Every person who contravenes the second paragraph is guilty of an offence and is liable to a fine of \$5,000 to \$50,000 in the case of a natural person and \$15,000 to \$150,000 in any other case. In the case of a subsequent offence, the minimum and maximum fines are doubled.</p>	<p><b>22.0.0.1</b> Un médecin soumis à l'application d'une entente ou un médecin désengagé qui contrevient au premier, troisième ou quatrième alinéa commet une infraction et est passible d'une amende de 2 500 \$ à 25 000 \$ et, en cas de récidive, d'une amende de 5 000 \$ à 50 000 \$.</p> <p>Quiconque contrevient au deuxième alinéa commet une infraction et est passible d'une amende de 5 000 \$ à 50 000 \$, dans le cas d'une personne physique, et de 15 000 \$ à 150 000 \$, dans les autres cas. En cas de récidive, les amendes minimale et maximale sont portées au double.</p>
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43. Importantly, as stipulated under s. 104.1 thereof, the *LAM* is of public order and therefore admits of no derogation of any kind, whether conventional or otherwise;

D) Problematic Practices

44. The Defendants' problematic practices at issue in the present proposed class action are concomitant to their charging for cataract surgeries referred to on their website as "Phacorefractive Cataract Surgery Assisted by Femtosecond Laser";
45. As shown in a screenshot from their website attached herein as **Exhibit R-10**, the Defendants represent this type of cataract surgery as one that "enables the surgeon to achieve higher levels of safety, precision, and predictability than traditional cataract surgery";
46. The Defendants also identify "benefits for patients" including "Improved positioning of their intraocular lens" and "Optimized vision" and "Reduced risk of complications". The Defendants also represent that this surgery involves the "surgeon mak[ing] a micro-incision through the cornea" in order to "remove the cataract-affected lens and replace it with an artificial lens (intraocular lens)";
47. As the RAMQ website and documents cited hereinabove provide, the main artificial lenses used in cataract surgery are monofocal intraocular lenses and toric intraocular lenses. However, only the former are covered under the RAMQ;

***Medically Unjustified Ultrasound Biometric Testing***

48. The Defendants required Class Members to pay for and undergo ultrasound biometric testing prior to cataract surgery to identify which lenses should be

implanted. The Defendants charged the Applicant and Class Members a fee of \$100 per eye for the ultrasound biometric test, for a total of \$200;

49. The ultrasound biometric tests paid for were, however, are overwhelmingly unnecessary;
50. First, as highlighted by Dr. Paul Thompson, ophthalmologist at the *Centre hospitalier de l'Université de Montréal* in an article published in *La Presse* in November 2023, only in the case of extremely dense cataracts is the test required to determine which type of lens is to be implanted (**Exhibit R-11**);
51. According to Dr. Thompson, most ophthalmologists today no longer make use of ultrasound biometry but instead rely on optical biometry, which is considerably superior and more precise. Dr. Thompson also states that administering ultrasonic biometric tests when optical biometry is ten times more precise is both useless and illogical;
52. Also quoted is Dr. Marie-Claude Blouin, ophthalmologist at *l'Hôtel-Dieu de Sorel* as stating that the vast majority of ophthalmologists would simply stop administering ultrasonic biometric tests on the vast majority of patients if said tests were covered under the RAMQ;
53. Other scientific sources highlight the superiority and higher precision of optical biometry tests in comparison to their ultrasound biometric country counterparts. For example, an article published in *Cataract & Refractive Surgery Today Global | Europe Edition* in November 2009 and attached herein as **Exhibit R-12** concludes as follows:

*Optical biometry gives us the true optical axial length of the eye, from the anterior corneal vertex to the photoreceptors on the back of the retina, eliminating the two intrinsic problems of ultrasound biometry. Additionally, there is a third advantage of optical biometry over ultrasound. Because optical biometry uses light instead of sound for measurement it produces a more accurate result. The wavelengths used in ultrasound are many times longer than the wavelength of light; the shorter the wavelength the more precise the measurement. Biometry using light is inherently more accurate than ultrasound simply because of the shorter wavelength. These three attributes have made optical biometry the standard of care today. (emphasis added)*

54. Further, an article published on March 1, 2024 in the *Saudi Journal of Ophthalmology* and attached herein as **Exhibit R-13** directly corroborates Dr. Thompson's expert insight, concluding: "The accuracy of optical biometry is higher than ocular ultrasound...." The article further cites an article published in the *Journal of Clinical and Diagnostic Research* in July 2019 and attached herein as **Exhibit R-14** as support for this conclusion;



55. Importantly, optical biometric tests are covered by the RAMQ, whereas ultrasound biometric tests are not. As a result, the Defendants can charge patients for ultrasonic biometric tests any price they see fit;
56. Thus, despite optical biometry tests being vastly superior and more precise than ultrasonic biometric tests, and despite the former being covered under RAMQ, the Defendants offer the latter to unsuspecting clients such as the Applicant and Class Members, who are simply not aware of the differences between both, or of the fact that optical biometry tests are covered under the RAMQ and therefore free of charge;
57. As listed in RAMQ's *Manuel des médecins omnipraticiens - Rémunération à l'acte*, which enumerates insured medical services and the amount of fees to be reimbursed to physicians by the RAMQ (**Exhibit R-15**), ophthalmologists are reimbursed \$28.25 from the RAMQ for each optical biometric test performed on one eye;
58. As affirmed by the Defendants' Director of Medical and Surgery Operations in the *La Presse* article (Exhibit R-11), ultrasonic biometric tests form part of the Defendants' medical protocol for refractive cataract surgery. This means that patients are not even given the choice to select optical biometry tests. As well, Mylaine Beaudry, the Defendants' director of medical and surgical operations failed to explain the rationale for charging for ultrasonic biometric tests when asked by *La Presse*:

*« La biométrie ultrasonique fait partie de notre protocole de chirurgie réfractive et est un service non assuré en cabinet »*

59. In sum, the Defendants charged the Applicant and Class Members for uninsured ultrasonic biometric tests despite the fact that optical biometric tests are insured under the RAMQ and scientifically superior to ultrasonic biometric tests;

### ***Superfluous and Medically Unjustified Pre-Operative Diagnostic Tests***

60. The Defendants required some Class Members to pay for and undergo medically unjustified and superfluous uninsured pre-operative diagnostic tests prior to determine their candidacy for implantation of TECNIS Eyhance non-toric intraocular lenses manufactured by Johnson & Johnson. On information and belief, the Defendants charge a fee of \$500 per eye for said pre-operative diagnostic tests, for a total of \$1,000;
61. The pre-operative diagnostic tests are, however, entirely unnecessary. According to Johnson & Johnson's Patient Brochure, attached herein as **Exhibit R-16**, Eyhance monofocal plus lenses are compatible with all patients. This renders any pre-operative diagnostic test aimed at determining candidacy and suitability entirely superfluous and unnecessary;



62. As highlighted in a scientific article published in the Review of Ophthalmology in March 2021 and attached herein as **Exhibit R-17**, the industry standard for lenses implanted as part of cataract surgery are monofocal. Other lenses exist and are used to correct presbyopia and are known as presbyopia-correcting lenses. As presbyopia-correcting lenses are not suitable for all patients – for example, patients with glaucoma and/or macular degeneration – pre-operative diagnostic tests are performed to assess individual patients’ suitability for presbyopia-correcting lenses;
63. By contrast, Johnson & Johnson’s Eyhance lenses are monofocal plus (or enhanced monofocal) lenses that are not used for presbyopia correction or approved by Health Canada or the United States’ Food and Drug Administration for correcting presbyopia;
64. In the press release issued by Johnson & Johnson Vision on August 11, 2020 announcing the launch in Canada of the Eyhance lenses (attached herein as **Exhibit R-18**), Johnson & Johnson also announced the launch of the TECNIS Synergy Intraocular Lens, which is described as “a breakthrough presbyopia-correcting IOL...” By contrast, the TECNIS Eyhance is described as “a revolutionary IOL that provides high-quality vision at both intermediate and far distance” and as “a next-generation IOL that elevates expectations for the monofocal category by providing enhanced intermediate vision”;
65. As well, the March 2021 scientific article published in the Review of Ophthalmology in (Exhibit R-17) quotes an ophthalmologist and Professor of Ophthalmology emphasizing the importance of clearly communicating to patients “that the Tecnis Eyhance is not a presbyopia-correcting refractive IOL, but an enhanced monofocal IOL...”;
66. The Eyhance monofocal intraocular lenses are compatible with all patients undergoing cataract surgery. Indeed, the Patient Brochure for TECNIS™ Eyhance lenses available on Johnson & Johnson Vision’s [www.clearvisionforyou.com/en-ca](http://www.clearvisionforyou.com/en-ca) website states (Exhibit R-16) states as follows:
- CONTRAINDICATIONS:**  
*There are no known conditions under which the TECNIS Eyhance™ and TECNIS Eyhance™ Toric II IOLs should not be used.* (emphasis added)
67. As a result, it is unnecessary for the Defendants to perform pre-operative diagnostic tests to evaluate individual patients’ candidacy for their implantation. Any pre-operative diagnostic tests administered to assess candidacy for Eyhance monofocal intraocular lenses are, therefore, medically unjustified, superfluous and unnecessary.
68. By misleading Class Members as to the necessity of the aforementioned pre-operative diagnostic tests, the Defendants induced patients to make payments in



error and are therefore in receipt of payments not actually due to them. Alternatively, or in addition, the Defendants unjustly enriched themselves at Class Members' expense;

***Mandatory and Indiscriminate Relaxing Incisions***

69. Another of the Defendants' problematic practices consists of requiring that patients pay for and undergo femtosecond laser refractive relaxing incisions immediately or otherwise closely after the implantation of Johnson & Johnson TECNIS Symphony toric monofocal intraocular lenses as part of the cataract surgery. As noted, relaxing incisions are not insured under the Quebec Health Insurance Plan;
70. As reported in the second article published in *La Presse* as part of its investigative reporting series entitled "Opérations de la cataracte au privé – Pratique 'inutiles', factures salées" and attached herein as **Exhibit R-19**, the femtosecond laser refractive relaxing incisions are both medically superfluous and unnecessary;
71. The said article quotes Dr. Paul Thompson as affirming that the usual practice among ophthalmologists in cases of astigmatism is to either proceed with the implantation of lenses or to perform relaxing incisions – not to perform both procedures;
72. Said article also quotes Dr. Marie-Claude Blouin, who highlights that it is both superfluous and useless to proceed with femtosecond laser refractive relaxing incisions in respect of a patient in whom toric lenses have been implanted;
73. A third expert quoted in the article, Dr. Éric Fortin, clinical coordinator at the *Centre universitaire d'ophtalmologie de l'Université de Montréal*, affirms that it is hard to imagine a clinical situation in which it would be useful to administer relaxing incisions and implant toric lenses in the context of the same cataract surgery;
74. In addition, Dr. Salim Lahoud, President of *l'Association des médecins ophtalmologues du Québec* characterized the practice as "bizarre" and "unusual";
75. As well, Dr. Barbara Ameline-Chalumeau, specialist in refractive cataract surgery and expert with the *Société française d'ophtalmologie* affirmed being unaware of any justification for concurrently or sequentially administering relaxing incisions and implanting toric lenses in the context of the same cataract surgery;
76. The explanation provided by the Defendants in the *La Presse* article for their "bizarre", "unusual," "superfluous" and "useless" practice is that toric contact lenses do not completely correct astigmatism, and that relaxing incisions are used to address any residual astigmatism remaining in patients after the implantation of toric lenses;



77. This explanation has been refuted by Drs. Blouin and Thompson;
78. In their expert opinion, the Symphony toric lenses charged for by the Defendants are designed to cover increments of 0.5D – that is, one half of a diopter, the name of the measuring unit for astigmatism (among other ocular conditions);
79. It is, however, completely unnecessary to correct astigmatism lower than 0.5D, especially as residual astigmatism at less than 0.5D is actually desirable in serving to ameliorate individuals' visual depth of field;
80. In both experts' view, moreover, relaxing incisions are only useful when significant astigmatism perdures in the months following the implantation of toric lenses, such that they should not be performed simultaneously or concurrently thereto;
81. The said experts affirm that the best way to ensure the highest degree of precision after the implantation of toric lenses is to allow the eyes to heal and to then verify the surgery's final refractive result. If astigmatism continues to tangibly impact the patient's vision, a second procedure – whether a further refractive laser surgery or relaxing incisions – can be offered to the patient;
82. The abovementioned expert opinions are corroborated in the scientific literature examining and comparing toric intraocular lenses and relaxing incisions in the correction of astigmatism, including in the context of refractive cataract surgery;
83. For example, an article published in December 2019 in the Cochrane Database of Systematic Reviews entitled “Toric intraocular lens versus limbal relaxing incisions for corneal astigmatism after phacoemulsification” (**Exhibit R-20**) concludes as follows:

*Toric IOLs probably provide a higher chance of achieving astigmatism within 0.5 D after cataract surgery compared with LRIs [note: “LRIs” refer to limbal relaxing incisions]. There may be a small mean difference in postoperative astigmatism, favouring toric IOLs, but this difference is likely to be clinically unimportant. There was no evidence of an important difference in postoperative visual acuity or quality of life between the techniques. [bold text added]*

84. As there is “no evidence of an important difference in postoperative [uncorrected] visual acuity or quality of life between the techniques”, it stands to reason that it is unnecessary for both techniques to be performed in sequence or concurrently concomitant to cataract surgery;
85. Further, an article published in the Review of Ophthalmology in November 2023 and attached herein as **Exhibit R-21** provides that “there’s no toric IOL [intraocular lens] for the correction of astigmatism < 1D approved in the United States,” such that LRIs are recommended to be used “when the patient has 0.5 D of astigmatism

or 0.75 D of astigmatism”. Indeed, “The ideal candidate” for LRIs “is a patient... has less than 1 D of astigmatism,” as “LRIs lose their efficacy above a certain degree”;

86. In other words, LRIs are recommended when a patient’s level of astigmatism is lower than the lowest level of astigmatism addressed by toric lenses that have received regulatory approval. As such, it unnecessary to combine toric IOLs and LRIs when the former are used to address astigmatism of at least 1D, and unnecessary to resort to LRIs for astigmatism < 0.5 D when toric lenses addressing that level of astigmatism have received regulatory approval;
87. In addition, an article published the Clinical Ophthalmology journal on March 31, 2014 and attached herein as **Exhibit R-22** concludes as follows:

*For correcting astigmatism in eyes with a high amount of preexisting astigmatism, high-cylinder toric IOL implantation achieves better clinical outcomes especially in the early post-operative period, than the combined procedure of moderate-cylinder toric IOL implantation and LRI.*

88. The scientific literature therefore supports the conclusion that it is unnecessary and futile to perform relaxing incisions concurrent or sequentially to the implantation of toric lenses in the context of every single cataract surgery. Only in limited circumstances will this be advisable. This is unlike the Defendants’ surgical protocol for cataract surgery, which involve both IOLs and LRIs regardless of the patient’s actual needs;
89. Importantly, the combination of relaxing incisions and the implantation of toric lenses can, at least in theory, lead to deleterious consequences, such as the risk of temporal nerve damage leading to ocular dryness. This is the opinion of Dr. Davin Johnson, a specialist in cataract, refractive and corneal surgery and an Assistant Professor at Queen’s University’s Department of Ophthalmology, as quoted in the *La Presse* article (Exhibit R-19);
90. On information and belief, The Defendants charged \$1,200 for relaxing incisions in each eye, for a total of \$2,400 charged for relaxing incisions in both eyes concomitant to cataract surgery (Exhibit R-19);

E) Summative Remarks

91. In sum, the Defendants’ problematic practices at issue in the present proposed class action are as follows:
- Requiring, without medical justification, that the Applicant and Class Members on whom refractive cataract surgery was performed to pay for and undergo ultrasonic biometric tests that are not covered under the

RAMQ and that are less precise and effective than optical biometric tests that are covered and available free of charge;

- Charging and requiring Class Members to pay for pre-operative diagnostic tests to determine their candidacy for the implantation of Johnson & Johnson Eyhance intraocular non-toric lenses as part of cataract surgery despite Eyhance lenses being compatible with all patients and not requiring pre-operative diagnostic tests;
  - Requiring patients on whom refractive cataract surgery is performed to pay for and undergo femtosecond laser refractive relaxing incisions concomitant to the implantation of toric intraocular lenses when this not medically justified;
92. The Applicant and Class Members were subject to one or more or all of the above of the Defendants' problematic practices in the context of undergoing refractive cataract surgery;
93. The Defendants' problematic practices are the direct and immediate cause of significant legally-cognizable compensable injuries suffered by the Applicant and Class Members;

## **II. FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE APPLICANT**

94. The Applicant is eighty-two (82) years of age;
95. The Applicant underwent refractive cataract surgery and paid the Defendant for a medically unnecessary and inferior ultrasonic biometric test concomitant to said cataract surgery;
96. The charge for the ultrasonic biometric test was \$200, as appears from a copy of the invoice dated February 9, 2023, produced herein as **Exhibit R-23**;
97. The services and procedures the Applicant received and paid for were administered at the Clinique d'Ophtalmologie Bellevue located in Drummondville, Québec. Contrary to the receipt's identification of this clinic as "La Clinique d'Ophtalmologie Bellevue-Drummondville Inc", this clinic is not a legal entity independent of Clinique D'Ophtalmologie Bellevue Inc., with which it shares a common website, corporate logo, and *Numéro d'entreprise du Québec* 1172413370;
98. The Applicant's damages are a direct and proximate result of the Defendants' conduct;
99. In consequence of the foregoing, the Applicant is justified in claiming damages;



### III. FACTS GIVING RISE TO INDIVIDUAL ACTIONS BY EACH OF THE MEMBERS OF THE CLASS

100. Every member of the Class is a resident of Québec who paid for and underwent refractive cataract surgery performed by the Defendants and unnecessarily paid for a pre-operative diagnostic test to determine their candidacy for the implantation of Johnson & Johnson brand Eyhance intraocular non-toric intraocular lenses and/or an ultrasonic biometric test and/or femtosecond laser refractive relaxing incisions concomitant to the implantation of toric intraocular lenses;
101. All Class Members in whom were implanted Johnson & Johnson Eyhance intraocular non-toric lenses were misled by the Defendants' intentional misrepresentations as to the medical justification and necessity of pre-operative diagnostic tests to determine their candidacy for the implantation of Johnson & Johnson brand Eyhance intraocular non-toric lenses and/or ultrasonic biometric tests and/or femtosecond laser refractive relaxing incisions concomitant to the implantation of toric intraocular lenses;
102. As optical biometric tests are insured under the RAMQ and are considerably superior and more precise than ultrasound biometric tests, the ultrasound biometric tests Class Members paid for were unnecessary and medically unjustified, such that every Class Member who paid for ultrasound biometric tests did so unnecessarily;
103. As the industry standard among ophthalmologists for correcting astigmatism as part of cataract surgery is to **either** proceed with the implantation of lenses **or** to perform femtosecond laser refractive relaxing incisions – not both – and as said relaxing incisions are medically unjustified in every case if lenses are implanted in a patient, every Class Member who paid for femtosecond laser refractive relaxing surgeries after or otherwise concomitant to the implantation of corrective lenses did so unnecessarily;
104. Class Members suffered significant legally-cognizable compensable injuries directly and immediately caused by the Defendants' unlawful conduct, and are entitled to claim, *inter alia*:
- (a) Compensatory damages corresponding to the value of sums paid to the Defendants for the above-mentioned unnecessary medical procedures and services;
  - (b) Compensatory damages for the intentional and non-consensual interferences with their bodily integrity;
  - (c) Compensatory non-pecuniary damages for pain, suffering, stress, and anxiety;

(d) Restitution of all payments made to the Defendants in respect of tests, procedures and services that were represented as being, but actually were not, medically justified;

(e) Punitive damages;

105. All of the legally-cognizable compensable injuries suffered by Class Members are the direct and immediate consequences of the Defendants' conduct;

#### **IV. CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION**

A) The composition of the Class makes it difficult or impracticable to apply the rules for mandates to sue on behalf of others or for consolidation of proceedings

107. The Applicant is unaware of the specific number of persons resident in Québec who paid the Defendants for pre-operative diagnostic tests to determine their candidacy for the implantation of Johnson & Johnson brand Eyhance intraocular non-toric lenses and/or an ultrasonic biometric tests and/or femtosecond laser refractive relaxing incisions concomitant to the implantation of toric intraocular lenses;

108. Class Members are reasonably assumed to be numerous and scattered across the entire province;

109. In addition, given the costs and risks inherent in an action before the courts, many people will hesitate to institute an individual action against the Defendants;

110. Even if the Class Members themselves could afford such individual litigation, it would place an unjustifiable burden on the courts. Furthermore, individual litigation of the factual and legal issues raised by the conduct of the Defendants would increase delay and expense to all parties and to the court system;

111. Also, a multitude of actions instituted in different judicial districts within the same Province risks resulting in contradictory judgments on questions of fact and law that are similar or related to all members of the Class;

112. 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;

113. In these circumstances, a class action is the only appropriate procedural vehicle for all of the members of the Class to effectively pursue their respective rights and have access to justice;

B) The claims of the members of the Class raise identical, similar or related issues of law or fact

114. Individual issues, if any, pale by comparison to the numerous common issues that are central to the outcome of the litigation;
115. The damages sustained by the Class Members flow, in each instance, from a common nucleus of operative facts, namely, Defendants' misconduct;
116. The Members' claims raise identical, similar or related issues of fact or law:
  - a. Did the Defendants charge Class Members for unnecessary ultrasonic biometric tests administered prior to cataract surgery performed?
  - b. Did the Defendants misrepresent to Class Members that ultrasonic biometric tests are necessary to be administered prior to cataract surgery?
  - c. Did the Defendants charge Class Members for unnecessary pre-operative diagnostic tests prior to the implantation of Johnson & Johnson Eyhance intraocular lenses?
  - d. Did the Defendants misrepresent to the Applicant and Class Members that pre-operative diagnostics tests are necessary to determine their candidacy for the implantation of Johnson & Johnson Eyhance intraocular lenses?
  - e. Did the Defendants charge and require Class Members to pay for femtosecond laser refractive relaxing incisions administered concomitant to the implantation of toric intraocular lenses as part of cataract surgery?
  - f. Did the Defendants misrepresent to Class Members the necessity or effectiveness of femtosecond laser refractive relaxing incisions administered concomitant to the implantation of toric intraocular lenses?
  - g. Did the Defendants intentionally, recklessly or negligently interfere with Class Members' bodily integrity and/or with their personal inviolability?
  - h. Are the Defendants in receipt of payments not actually due to them?
  - i. Did the Defendants unjustly enrich themselves at Class Members' expense?
  - j. If the answer to any of the above questions is affirmative, did the Defendants' conduct engage their solidary liability toward Class Members?
  - k. Are the Defendants liable to pay compensatory damages to Class Members? And if so, in what amount?
  - l. Are the Defendants liable to pay restitution to Class Members? And if so, in what amount?



- m. Are the Defendants liable to pay damages under art. 49 of the *Charter of Human Rights and Freedoms*? And if so, in what amount?
- n. Are the Defendants liable to pay punitive damages to Class Members? And if so, in what amount?

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

**V. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT**

118. The action that the Applicant wishes to institute on behalf of the members of the Class is an action in damages;

119. The conclusions the Applicant seeks by way of the present application to institute proceedings are as follows:

GRANT the class action of the Applicant and each of the Class Members;

DECLARE the Defendants solidarily liable for the damages suffered by the Applicant and Class Members;

CONDEMN the Defendants to pay to each Class Member a sum to be determined in compensation of the damages suffered, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay to each of the members of the Class, punitive damages, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay interest and additional indemnity on the above sums according to law from the date of service of the application to authorize a class action;

ORDER the Defendants to deposit in the office of this Court the totality of the sums which forms part of the collective recovery, with interest and costs;

ORDER that the claims of individual Class Members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

CONDEMN the Defendants to bear the costs of the present action including expert and notice fees;

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

A) The Applicant requests that she be designated as representative of the Class



120. The Applicant is a member of the Class;
121. The Applicant is ready and available to manage and direct the present action in the interest of the members of the Class that she wishes to represent and is determined to lead the present dossier until a final resolution of the matter, the whole for the benefit of the Class;
122. The Applicant has the capacity and interest to fairly, properly, and adequately protect and represent the interest of the members of the Class;
123. The Applicant has mandated the undersigned attorneys to obtain all relevant information with respect to the present action and intend to keep informed of all developments;
124. The Applicant, with the assistance of said attorneys, is ready and available to dedicate the time necessary for this action and to collaborate with other members of the Class and to keep them informed;
125. The Applicant has given instructions to the undersigned attorney to put information about this class action on their website and to collect the coordinates of those Class Members that wish to be kept informed and participate in any resolution of the present matter, the whole as will be shown at the hearing;
126. The Applicant is in good faith and has instituted this action for the sole goal of having her rights, as well as the rights of other Class Members, recognized and protected so that they may be compensated for the damages that they have suffered as a consequence of the Defendants' conduct;
127. The Applicant understands the nature of the action;
128. The Applicant's interests are not antagonistic or otherwise adverse to those of other members of the Class;
- B) The Applicant suggests that this class action be exercised before the Superior Court of Justice in the district of Montreal
129. A great number of the members of the Class reside in the judicial district of Montreal and in the appeal district of Montreal;
130. The Applicant's attorneys practice their profession in the judicial district of Montreal;
131. The present application is well founded in fact and in law.

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

**GRANT** the present application;



**AUTHORIZE** the bringing of a class action in the form of an application to institute proceedings in damages;

**APPOINT** the Applicant as representatives of the persons included in the Class herein described as:

- All persons resident in Québec who underwent cataract surgery and paid the Defendants for uninsured:
  - pre-operative diagnostic tests to determine candidacy for implantation of TECNIS Eyhance non-toric intraocular lenses; and/or
  - ultrasonic biometric tests; and/or
  - femtosecond laser refractive relaxing incisions.

**IDENTIFY** the principal issues of fact and law to be treated collectively as the following:

- a. Did the Defendants charge Class Members for unnecessary ultrasonic biometric tests administered prior to cataract surgery performed?
- b. Did the Defendants misrepresent to Class Members that ultrasonic biometric tests are necessary to be administered prior to cataract surgery?
- c. Did the Defendants charge Class Members for unnecessary pre-operative diagnostic tests prior to the implantation of Johnson & Johnson Eyhance intraocular lenses?
- d. Did the Defendants misrepresent to the Applicant and Class Members that pre-operative diagnostics tests are necessary to determine their candidacy for the implantation of Johnson & Johnson Eyhance intraocular lenses?
- e. Did the Defendants charge and require Class Members to pay for femtosecond laser refractive relaxing incisions administered concomitant to the implantation of toric intraocular lenses as part of cataract surgery?
- f. Did the Defendants misrepresent to Class Members the necessity or effectiveness of femtosecond laser refractive relaxing incisions administered concomitant to the implantation of toric intraocular lenses?
- g. Did the Defendants intentionally, recklessly or negligently interfere with Class Members' bodily integrity and/or with their personal inviolability?
- h. Are the Defendants in receipt of payments not actually due to them?



- i. Did the Defendants unjustly enrich themselves at Class Members' expense?
- j. If the answer to any of the above questions is affirmative, did the Defendants' conduct engage their solidary liability toward Class Members?
- k. Are the Defendants liable to pay compensatory damages to Class Members? And if so, in what amount?
- l. Are the Defendants liable to pay restitution to Class Members? And if so, in what amount?
- m. Are the Defendants liable to pay damages under art. 49 of the *Charter of Human Rights and Freedoms*? And if so, in what amount?
- n. Are the Defendants liable to pay punitive damages to Class Members? And if so, in what amount?

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

GRANT the class action of the Applicant and each of the Class Members;

DECLARE the Defendants solidarily liable for the damages suffered by the Applicant and Class Members;

CONDEMN the Defendants to pay to each Class Member a sum to be determined in compensation of the damages suffered, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay to each of the members of the Class, punitive damages, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay interest and additional indemnity on the above sums according to law from the date of service of the application to authorize a class action;

ORDER the Defendants to deposit in the office of this Court the totality of the sums which forms part of the collective recovery, with interest and costs;

ORDER that the claims of individual Class Members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

CONDEMN the Defendants to bear the costs of the present action including expert and notice fees;

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

**DECLARE** that all Class Members that have not requested their exclusion, be bound by any judgment to be rendered on the class action to be instituted in the manner provided for by the law;

**FIX** the delay of exclusion at thirty (30) days from the date of the publication of the notice to the Class Members, date upon which Class Members that have not exercised their means of exclusion will be bound by any judgment to be rendered herein;

**ORDER** the publication of a notice to the members of the group in accordance with article 579 C.C.P. within sixty (60) days from the judgment to be rendered herein in La Presse, the Montreal Gazette, Le Journal de Montréal, Le Journal de Québec, Le Soleil, and Le Devoir;

**ORDER** that said notice be available on the Defendants' websites, Facebook page(s), X accounts, and Instagram accounts with a link providing "Notice to individuals who paid Cliniques Bellevue to undergo refractive cataract surgery";

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

**THE WHOLE** with costs, including all publication and dissemination fees.

Montreal, October 4, 2024



CONSUMER LAW GROUP INC.  
Per: Me Jeff Orenstein  
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