CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT OF QUÉBEC
(CLASS ACTION)

No.: 500-06-000576-112

[redacted] **SIFNEOS**, residing and domiciled at [redacted], Montréal, Québec, [redacted];

Petitioner

vs.

PFIZER INC., a legal person duly constituted according to the law, having its main place of business at [redacted];

and

PFIZER CANADA INC., a legal person duly constituted according to the law, having its main place of business at [redacted];

and

WYETH, a legal person duly constituted according to the law, having offices at [redacted];

and

WYETH CANADA, a legal person duly constituted according to the law, having offices at [redacted];

and

WYETH CANADA INC., a legal person duly constituted according to the law, having a place of business at [redacted];

and

WYETH HOLDINGS CANADA INC., a legal person duly constituted according to the law, having offices at [redacted];

and

WYETH PHARMACEUTICALS INC., a legal person duly constituted according to the law, having offices at [redacted];

and

WYETH-AYERST INTERNATIONAL INC., a legal person duly constituted according to the law, having offices at [redacted];

Respondents

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 QUÉBEC, SITTING IN AND FOR THE DISTRICT OF MONTRÉAL, THE PETITIONER STATES THE FOLLOWING:

INTRODUCTION:

1. Petitioner wishes to institute a class action on behalf of the following Group, of which she is a member:

> *All persons in Québec, (including their estates, executors, personal representatives, their dependants and family members), who were prescribed, purchased, used or ingested either of the drugs Premarin or Premplus, manufactured, marketed or distributed by the Respondents, or any other Group or Sub-Group to be determined by the Court;*

(hereinafter referred to as the "Group Members", or the "Group");

2. Respondents Pfizer Inc., Pfizer Canada Inc., Wyeth, Wyeth Canada., Wyeth Canada Inc., Wyeth Holdings Canada Inc., Wyeth Pharmaceuticals Inc., and Wyeth-Ayerst International Inc., are hereinafter collectively referred to as the "**Respondents**", unless specified otherwise, and include any subsidiaries, affiliates, predecessors or related companies;

3. Respondent Pfizer Inc. acquired the Respondents Wyeth, Wyeth Canada, Wyeth Canada Inc., Wyeth Holdings Canada Inc., Wyeth Pharmaceuticals Inc., and Wyeth-Ayerst International Inc. in 2010. At the time of their acquisition by Pfizer Inc., the Respondents Wyeth Canada, Wyeth Canada Inc., Wyeth Holdings Canada Inc., Wyeth Pharmaceuticals Inc., and Wyeth-Ayerst International Inc. were wholly owned subsidiaries of the Respondent Wyeth;

4. Respondents are research-based pharmaceutical companies. They research, develop, design, test, manufacture, distribute, label, package, supply, market, sell, advertise, and/or distribute various pharmaceutical products, including hormone replacement therapy drugs under the brand names Premarin and Premplus, (hereinafter collectively referred to as the "**Hormone Drugs**", unless otherwise specified) in Canada;

5. Respondents placed hormone replacement therapy drugs distributed under the brand names Premarin and Premplus in the streams of commerce. for the purpose of treating or alleviating the symptoms of menopause;

6. Premarin is a form of estrogen. It was prescribed to alleviate menopausal symptoms in women. It was also prescribed for long-term use to post-menopausal women for the improvement of their general health and well being. Among the benefits ascribed to the Hormone Drugs by the Respondents are reduction in bone density loss, decreased risk of osteoporosis, decrease of cardiovascular and coronary artery disease, decreased depression, decreased irritability, nervousness, and anxiety, decreased fatigue, and reduced memory loss;

7. Premarin causes a significant increase in the incidence of uterine cancer when used alone. For this reason, women are often prescribed Premarin in combination with the drug progestin. The combination of Premarin with progestin was thought to limit the increased risk of uterine cancer.

8. Premplus, like Premarin, is used to alleviate or control the effects of menopause on women. However, as opposed to Premarin, Premplus contains both estrogen and progestin in a single medication.

9. The Respondents offer their products and carry on business in the province of Québec and throughout Canada and derive revenue as a result of Group Members located in Québec and throughout Canada;

10. The Hormone Drugs can cause a number of serious and potentially life threatening adverse effects. These include breast cancer, but also problems including, but not limited to, heart disease, blood clots, ovarian cancer, lupus, stroke, dementia, arthritis, gall bladder disease, asthma, irritable bowel syndrome, and hearing loss;

11. The risks associated with the Hormone Drugs are much more serious than the possible benefits to be accrued from their use.

FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE PETITIONER

12. The Petitioner, [redacted] SIFNEOS, was born on [redacted]. She is [redacted] years old.

13. Petitioner was prescribed Premarin during the year 2005 and continued using Premarin until March, 2011.

14. Petitioner ceased using Premarin in March, 2011, because she was diagnosed with breast cancer. Three cancerous nodes were found in her breasts;

15. Since the cancer diagnosis, Petitioner has undergone a series of five chemotherapy cycles.

16. Petitioner is also undergoing treatment for her cancer through a series of

Herceptin infusions. This is a type of targeted chemotherapy.

17. As a result of the cancer diagnosis and subsequent treatments, Petitioner has experienced physical suffering and side effects including painful injections, hives on her head and body, leg weakness including buckling of legs and difficulty climbing stairs, breathing problems, swollen arms, and neuropathy

18. Respondents failed to warn Petitioner and other Group Members, prior to their purchase and consumption, of the actual health risks posed by the Hormone Drugs. Had the Respondents warned consumers, the Petitioner and other Group Members would not have purchased or used the Hormone Drugs, or would have used them much more sparingly;

19. The Group Members have incurred injuries and losses from the purchase, consumption, and use of the Hormone Drugs.

20. The damages and losses include expenses relating to medical treatment sought and received, physical injuries, the cost paid for the Hormone Drug, damages incurred as a result of illness or visits to medical facilities, loss of employment income, loss of enjoyment of life, pain and suffering, and anticipated future medical and health costs;

21. The Group Members have suffered and will continue to suffer physical injuries and other losses or damages due to the use and consumption of the Hormone Drugs;

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

RISKS OF HORMONE DRUGS

22. Ingestion of Hormone drugs materially contributes to the increased risk of increased negative health effects including, but not limited to, serious and potentially life threatening adverse effects, such as breast cancer, ovarian cancer, lupus, blood

clots, coronary heart disease, stroke, dementia, arthritis, gall bladder disease, asthma, irritable bowel syndrome, and hearing loss;

RESPONDENTS' CONDUCT

23. Respondents researched, designed, tested, manufactured, marketed, labeled, distributed, promoted, and/or sold Hormone Drugs in Canada;

24. At all material times, Respondents have marketed that Hormone Drugs are safe and beneficial, which is not true;

25. Had the Respondents done appropriate scientific research and testing, they should have known that Hormone Drugs materially contribute to the risk of serious adverse medical events as described above, and should have fully informed the medical professionals and patients/consumers, including the Petitioner and Group Members, of such risks in a timely manner;

26. Respondents knew or should have known of the risks of using Hormone Drugs, The Group Members relied on the Respondents' misrepresentations and were thus induced to use the Hormone Drugs;

27. Had the true facts been disclosed concerning the degree to which Hormone Drugs are associated with side effects that significantly lower their quality of life and may lead to death, consumers would not have used Hormone Drugs;

28. Respondents misled or deceived Group Members by misrepresenting and minimising in written labelling, written marketing materials, and advertising the actual risks incurred by consuming the Hormone Drugs;

29. Respondents warranted that Hormone Drugs were safe and fit for their intended purpose. However, Hormone Drugs were not, and are not, safe for their intended use in that they pose an undue risk of harm to Group Members;

30. At all material times, Respondents failed to provide the medical community and the general public with a clear, complete, and current warning of the risks associated with Hormone Drugs use, or failed to provide such warning in a timely manner;

31. Respondents ignored the potentially serious risks posed to the public and deliberately held back information from the public and the Group Members;

32. The Respondents are liable for the damages suffered by the Petitioner in that the Respondents were engaged in the business of researching, creating, designing, testing, manufacturing, labelling, packaging, supplying, marketing, selling, advertising, and distributing Hormone Drugs, when they knew or ought to have known about the serious risks but still sold and distributed them in Quebec and throughout Canada;

33. Respondents deprived the Petitioner and the Group Members of their right to know what risks are involved in the use of Hormone drugs, and thereby deprived them of their right to make a meaningful choice between a number of alternative forms of drugs available to them;

RESPONDENTS' LIABILITY

34. Consumers reasonably relied and rely upon the Respondents to ensure that the Hormone Drugs are safe for use and contained adequate warnings about potential health risks, such as breast cancer, ovarian cancer, lupus, blood clots, coronary heart disease, stroke, dementia, arthritis, gall bladder disease, asthma, irritable bowel syndrome, hearing loss and/or other risks or side effects;

35. The injuries and damages of the Petitioner and the Group as described herein were caused by the negligence and misrepresentations of the Respondents through their agents, representatives, and employees acting within the course and scope of their employment, for which the Respondents are solely liable;

36. As a direct and proximate result of the Respondents' negligence, Group Members suffered pain, damages, injuries and risks for which the Respondents are solely liable;

37. Each member of the Group has purchased and/or consumed Hormone Drugs;

38. Each Member of the Group is entitled to claim damages because of the faults committed by the Respondents;

39. As a result of the Respondents' negligence and faults described herein, Group Members have suffered and claim damages for, *inter alia*, the following:

1. personal injuries suffered;
2. economic and financial losses (i.e. loss of income and earning capacity);
3. pain and suffering;
4. loss of amenities and enjoyment of life;
5. loss of life expectancy;
6. costs of past and future care and related expenses;
7. such further and other damages, the particular of which may be proven at trial;

40. Respondents, through their actions and omissions described above, infringed on various sections of the Quebec Consumer Protection Act including, but not limited to, sections of the Act concerning the duty to provide a consumer product that is safe and fit for the purpose for which it is being sold, and sections concerning misrepresentations or omissions regarding material aspects of the consumer product being sold;

41. Petitioner claims damages based on these infringements of the Quebec Consumer Protection Act;

42. The Respondents' conduct, through actions, omissions, their awareness of the

serious hazards of the Hormone Drugs, and their failure to fully, clearly, and in a timely way disclose and publicize the serious health effects resulting from the use of the Hormone Drugs, was reprehensible and exposes the Respondents to awards of punitive damages;

43. The Petitioner claims punitive damages. These damages are justified in this action, given the grossly negligent and duplicitous manner in which the Respondents continue to misrepresent and sell the Hormone Drugs to consumers, even once the increased dangers of using the Hormone Drugs became evident;

CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION

44. The composition of the Group makes the application of Article 59 or 67 C.C.P. impractical for the following reasons:

a) The number of potential Group Members is so numerous that joinder of all Members is impracticable. While the exact number of Group Members is unknown to Petitioner at the present time and can only be ascertained from sales and distribution records maintained by the Respondents and its agents, it can be reasonably estimated that there are thousands of potential Group Members located throughout Quebec;

b) Based on the number of potential Group Members, it is impossible for the Petitioner to identify all potential Group Members and obtain a mandate from each of them. Petitioner does not possess the names and addresses of potential Group Members;

c) In addition, given the costs and risks inherent in an action before the Courts, many people will hesitate to institute an individual action against

Respondents. Even if the Group 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 Respondents would increase delay and expense to all parties and to the Court system;

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

a) Does the consumption of the Hormone Drugs cause an increased risk of negative health effects, and to what extent?

b) As a result of negative health effects, were the Hormone Drugs unsafe, or unfit for the purpose for which they were intended as designed, developed, manufactured, sold, distributed, marketed or otherwise placed into the stream of commerce in Quebec by the Respondents?

c) Were Respondents negligent or did they commit faults in the designing, developing, testing, manufacturing, marketing, distributing, labelling or selling of the Hormone Drugs to the Group Members?

d) Did Respondents fail to adequately inform the Group Members of the health risks associated with the use of Hormone Drugs?

e) Are Respondents liable to pay damages to the Group Members as a result of their negligence, or misrepresentations made to Group Members in manufacturing, marketing, distributing or selling of the Hormone Drugs, or as a result of the use of Hormone drugs?

f) Are Respondents liable to pay compensatory damages to the Group Members, and if so in what amount?

g) Are Respondents liable to pay moral damages to the Group Members, and if so in what amount?

h) Are Respondents liable to pay exemplary or punitive damages to the Group Members, and if so in what amount?

46. The majority of the issues to be dealt with are issues common to every Group Member;

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

NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

48. The action that Petitioner wishes to institute for the benefit of the Members of the Group is an action in damages for product liability;

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

GRANT Plaintiff's action against Defendants;

CONDEMN Defendants to pay an amount in compensatory damages to every Group Member, amount to be determined by the Court, plus interest as well the additional indemnity;

CONDEMN Defendants to pay an amount in moral damages to every Group Member, amount to be determined by the Court, plus interest as

well the additional indemnity;

CONDEMN Defendants to pay an amount in punitive and/or exemplary damages to every Group Member, amount to be determined by the Court, plus interest as well the additional indemnity;

GRANT the class action of Plaintiff 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.;

THE WHOLE with interest and additional indemnity as provided for in the *Civil Code of Québec* and with full costs and expenses including experts' fees and publication fees to advise members.

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

a) Many Group Members, including the Petitioner reside, are domiciled and/or work in the District of Montréal;

b) Respondents sell the Hormone Drugs in the District of Montréal;

c) A majority of the Respondents have establishments in the District of Montréal;

d) Petitioner's legal counsel practice law in the District of Montréal.

51. 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) consumed Hormone Drugs for over six years, without being made adequately aware of the health risks associated with the use of said drugs;

b) suffered damages and injuries from using Hormone Drugs, as detailed above;

c) 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;

d) is available to dedicate the time necessary for the present action before the Courts of Québec and to collaborate with her attorneys in this regard;

e) is ready and available to manage and direct the present action in the interest of the Group 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 Group;

f) does not have interests that are in conflict with those of other Members of the Group;

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

h) 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;

52. The present motion is well founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT the present Motion;

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

> *All persons in Québec, (including their estates, executors, personal representatives, their dependants and family members), who were prescribed, purchased, used or ingested either of the drugs Premarin or Premplus, manufactured, marketed or distributed by the Respondents, or any other Group or Sub-Group to be determined by the Court;*

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

a) Does the consumption of the Hormone Drugs cause an increased risk of negative health effects, and to what extent?

b) As a result of negative health effects, were the Hormone Drugs unsafe, or unfit for the purpose for which they were intended as designed, developed, manufactured, sold, distributed, marketed or otherwise placed into the stream of commerce in Quebec by the Respondents?

c) Were Respondents negligent or did they commit faults in the designing, developing, testing, manufacturing, marketing, distributing, labelling or selling of the Hormone Drugs to the Group Members?

d) Did Respondents fail to adequately inform the Group Members of the health risks associated with the use of Hormone Drugs?

e) Are Respondents liable to pay damages to the Group Members as a result of their negligence, or misrepresentations made to Group Members in manufacturing, marketing, distributing or selling of the Hormone Drugs, or as a result of the use of Hormone drugs?

f) Are Respondents liable to pay compensatory damages to the Group Members, and if so in what amount?

g) Are Respondents liable to pay moral damages to the Group Members, and if so in what amount?

h) Are Respondents liable to pay exemplary or punitive damages to the Group Members, and if so in what amount?

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

GRANT Plaintiff's action against Defendants;

CONDEMN Defendants to pay an amount in compensatory damages to every Group Member, amount to be determined by the Court, plus interest as well the additional indemnity;

CONDEMN Defendants to pay an amount in moral damages to every Group Member, amount to be determined by the Court, plus interest as well the additional indemnity;

CONDEMN Defendants to pay an amount in punitive and/or exemplary

damages to every Group Member, amount to be determined by the Court, plus interest as well the additional indemnity;

GRANT the class action of Plaintiff 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.;

THE WHOLE with interest and additional indemnity as provided for in the *Civil Code of Québec* and with full costs and expenses including experts' 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 60 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. and **ORDER** Respondents to pay for said publication costs;

THE WHOLE with costs.

MONTRÉAL, August 10, 2011

Merchant Law Group

MERCHANT LAW GROUP LLP
Attorneys for Petitioner