CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL
No:500-06-000591-129

SUPERIOR COURT
CLASS ACTION

GUY BELAIR domiciled and resident at [redacted]

Petitioner

vs.

BAYER INC., a legal person duly constituted according to the law with offices situated at 77 Belfield Road, city of Toronto, province of Ontario, M9W 1G6

and

BAYER CORPORATION, a legal person duly constituted according to the law with offices situated at 100 Bayer Road, Pittsburgh, Pennsylvania, 15205-9741, United States of America

and

BAYER HEALTHCARE PHARMACEUTICALS INC., a legal person duly constituted according to the law with offices situated at 6 Westbelt, Wayne, New Jersey, 07470-6806, United States of America

BAYER HEALTHCARE, LLC, a legal person duly constituted according to the law with offices situated at 555 White Plains Road, Tarrytown, New York, 10591, United States of America

Respondents

MOTION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION AND TO OBTAIN THE STATUS OF REPRESENTATIVE
(Articles 1002 and following of the C.C.P.)

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

INTRODUCTION

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

a. All persons and entities in Canada (including their estates, executors, or personal representatives) that purchased, used, or acquired Avelox®, a fluroquinolone antibiotic, and their dependants and family members, or any other Class or Sub-Class to be determined by the Court (the "Class" or "Class Members")

2. In this Motion,

(a) **"Bayer Respondents"** hereinafter collectively refers to Bayer Inc., Bayer Corporation, and Bayer Healthcare Pharmaceuticals, Inc. and Bayer Healthcare, LLC

3. Respondent Bayer Inc. is a corporation with headquarters in Toronto, Ontario; subsidiaries;

4. Respondent Bayer Corporation, is a corporation with headquarters in Pittsburgh, Pennsylvania, U.S.A. Bayer Corporation maintains a division, Bayer Pharmaceutical Division – North American;

5. Respondent Bayer Healthcare Pharmaceuticals Inc., is a corporation headquartered at Wayne, New Jersey, U.S.A., 07470. Bayer Healthcare Pharmaceuticals, Inc. was created by the integration of Bayer Healthcare and Berlex Laboratories;

6. Respondent Bayer Healthcare, LLC, is a Delaware limited liability company, headquartered at Tarrytown, New York, U.S.A;

7. The Bayer Respondents shared the common purpose of designing, manufacturing, testing, packaging, labelling, marketing, or selling Avelox® in Canada for profit. The business and interests of each Bayer Respondent is interwoven with that of the other Bayer Respondents, and each is the agent of the others. At material times, the Bayer Respondents

were involved in designing, manufacturing, testing, packaging, labelling, marketing, or selling Avelox® in Canada directly or through agents, affiliates, or subsidiaries;

A. Avelox®

8. Avelox® is an antibiotic in the fluroquinolone class of drugs that is used to treat, inter alia, bacterial infections, infections of the respiratory tract, urinary tract, and skin;

9. Avelox® causes Tendon Injuries, particularly but not limited to the Achilles tendon, but also of the rotator cuff, biceps, hand, and thumb, as well as other damage and injury. The risk is increased, *inter alia*, in those persons who are over the age of 60, are taking steroids, or have had a kidney, heart, or lung transplant;

10. The injuries may manifest during, shortly after, or even months after a course of Avelox®;

11. The most common injury associated with taking Avelox® is a ruptured Achilles tendon, which may require surgery to repair and frequently entails months of immobility and rehabilitation;

12. As early as the 1980's, there was evidence that use of fluroquinolone based antibiotics leads to an increased risk of Tendon Injuries. Around this period, studies published in medical journals showed an increased risk of Tendon Injuries associated with fluroquinolones;

13. Since the 1990's, health authorities and pharmaceutical companies in Europe have warned practitioners and patients about the risk of fluroquinolone-induced Tendon Injuries and provided guidelines to prevent rupture;

14. In a letter to *The New England Journal of Medicine* dated September 15, 1994, Dr. Kent A. Houston warned about the risk of Tendon Injuries. He writes:

> Fluroquinolone antibiotics have been associated with Achilles tendinitis and rupture in reports from Europe and New Zealand. As of 1992 more than 40 cases had been reported in France. This unusual side effect has not been widely recognized in the United States and is not mentioned in the Physicians' Desk Reference. Physicians should be aware of this potential complication. [References omitted]

15. In a response letter, the US Food and Drug Administration ("FDA") wrote a letter dated January 19, 1995 to *The New England Journal of Medicine* acknowledging the risk, on the basis of postmarketing reports and published articles, and indicating that all packages should carry a warning on this risk;

16. In July 2008, the FDA, ordered the Respondents to place a black box warning, the strongest warning required by the FDA, on all USA packaging all fluroquinolone drugs informing the public about risk of Tendon Injuries. The Respondents were also required to warn physicians and pharmacists about the risks;

Avelox®

29. In the late 1990's Avelox® (generic: moxifloxacin) was introduced into the Canadian market place;

30. At all material times, the Bayer Defendants knew or should have known of the risks and incidents of Tendon Injuries associated with the use of Avelox® but did not recall it or adequately warned patients or health practitioners of the risk;

FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE PETITIONER

38. The Petitioner, Guy Belair, was prescribed Avelox® on or about April 5th, 2011 for a sinus infection;

39. At the time, Guy informed the doctor that he was taking a corticosteroid inhaler called Advair for his asthma. He was with his wife and he inquired about any harmful side effects. His doctor assured him that the drug was safe to take;

40. Guy only took one 400 mg dose of Avelox® on the day that it was prescribed. Within hours he began having joint and muscle pain throughout his body which grew increasingly painful over the next few days until he was in what he describes as blinding pain from head to toe;

41. Guy was prescribed Percocet® for his pain which he says was unbearable at the time and the pain continued for several weeks. Gradually the pain became tolerable to a level where he no longer needed Percocet®. He now manages his chronic pain with Naproxen®, an anti-inflammatory drug;

42. Guy has been unable to work since he took Avelox® and currently receives disability benefits from his employer's insurance company;

43. Guy still has chronic pain in most or all of the tendons in his body and in his joints. He has burning sensations in his upper back and neck particularly because the small tendons between his vertebrae have been affected;

44. As a result of his chronic pain in the tendons throughout his body, his mobility has been severely restricted. He walks with a cane and can only walk for fifteen minutes at most and then he becomes exhausted. Moreover, he cannot lift anything weighing more than 10 pounds without experiencing extreme pain;

45. He has noticed that several other health problems have developed since taking Avelox® including impaired cognitive function, vision problems, skin sagging, and problems often associated with nervous system damage. He experiences a burning and twitching sensation in his fingers and toes and sometimes other parts of his body. During one five day period he had a constant twitching sensation in his knee that made it difficult for him to sleep. This burning and twitching sensation has become less frequent, but still occurs without warning;

46. He has also experienced extreme chemical sensitivity that he had never experienced prior to taking Avelox®. He had to move from his last apartment because the environment was aggravating his sensitivities. He is coping in his new apartment but is sensitive to the dust and chemicals in the air that are present because parts of the building are still under construction;

47. His asthma has become worse since taking Avelox® as well. He has had asthma his whole life but previously was able to limit his use of inhalers to the winter months. At only 30 years of age, he has become significantly disabled and unable to work due to his physical pain and cognitive impairment;

48. He has experienced a loss of enjoyment in mental activities like reading and puzzles that he used to be able to do easily;

49. The petitioner is also consulting a psychologist to help him cope with the psychological impact of all the abovementioned physical consequences caused by his ingestion of Avelox®;

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

Risks of Avelox®

50. Use of Avelox® materially contributes to numerous health risks, including but not limited causes Tendon Injuries, particularly but not limited to the Achilles tendon, but also of the rotator cuff, biceps, hand, and thumb, as well as other damage and injury. The risk is increased, *inter alia*, in those persons who are over the age of 60, are taking steroids, or have had a kidney, heart, or lung transplant;

Respondents' conduct

51. Respondents researched, designed, tested, manufactured, marketed, labeled, distributed, promoted, and/or sold Avelox® in Canada;

52. At all material times, Respondents have marketed that Avelox® is safe and beneficial, which is not true;

53. Had the Respondents done appropriate scientific research and testing, they should have known that Avelox® 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 Class Members, of such risks in a timely manner;

54. Had the true facts been disclosed concerning the degree to which Avelox® is associated with side effects that significantly lower their quality of life and may lead to serious injuries,

consumers would not have used Avelox®;

55. Respondents misled or deceived Class Members by misrepresenting and minimizing in written labeling, written marketing materials, and advertising the actual risks incurred by consuming Avelox®;

56. Respondents warranted that was safe and fit for their intended purpose. However, Avelox® was not, and is not, safe for its intended use in that it poses an undue risk of harm to Class Members;

57. 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 Avelox®, or failed to provide such warning in a timely manner;

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

59. 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, labeling, packaging, supplying, marketing, selling, advertising, and distributing Avelox®, when they knew or ought to have known about the serious risks but still sold and distributed it in Quebec and throughout Canada;

60. Respondents deprived the Petitioner and the Class Members of their right to know what risks are involved in the use of Avelox®, 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

61. The Petitioner and the Class Members reasonably relied and rely upon the Respondents to:

(1) take reasonable care in developing and manufacturing Avelox® and in testing for the adverse side effects of Avelox® ;

(2) ensure that Avelox® was safe for use and only offer them for sale and for human consumption in the streams of commerce if it were safe;

(3) provide adequate warning regarding any side effects associated with Avelox® ;

(4) conduct ongoing testing and analyses to learn of any new health risks posed by Avelox® ; and

(5) inform consumers and health practitioners of the side effects and recall Avelox® promptly after becoming aware of them;

62. The Respondents are strictly liable for a product intended to be ingested by the Petitioner and Class Members;

63. The Respondents failed to conduct adequate testing of Avelox® and failed to take sufficient measures to prevent a harmful product from being offered for sale, sold or used by consumers, thus putting a defective and dangerous product into the stream of commerce;

64. The Respondents failed to adequately and promptly warn consumers and health practitioners about the risk of Tendon Injuries and provide guidelines to prevent the same;

65. Respondents knew or should have known of the risks of using Avelox®, and the Class Members relied on the Respondents' misrepresentations and were thus induced to use Avelox®;

(a)Causation

66. But for the Respondents' acts and omissions, health practitioners would not have prescribed Avelox® , the Petitioner and Class Members would not have ingested Avelox® , or alternatively the Petitioner and Class Members would have known to monitor for signs of Tendon Injuries at its early stage

67. As a result of the Respondents' actions and omissions, the Petitioner and the Class Members have suffered and claim damages for, *inter alia*, the following:

(1) direct or indirect economic losses resulting from the purchase and use of a product that was unfit for use, including but not limited to loss of employment income;

(2) conditions resulting from use of Avelox® , including but not limited to painful swelling, loss of mobility, loss of enjoyment of physical activity, mental pain and anguish, anxiety, or emotional distress; and,

(3) other pain, suffering, or loss, stemming from Tendon Injuries as a result of the use of Avelox® ;

(4) such further and other damages, the particular of which may be proven at trial;

, for which the Respondents are solely liable;

(1) Competition, consumer protection, and trade practices legislation

68. The Petitioner relies on competition, consumer protection, and trade practices legislation in Québec and similar legislation elsewhere, including:

(a) *Consumer Protection Act*, R.S.Q. c. P-40.1, as am., including ss. 219 & 272;

(b) *Business Practices and Consumer Protection Act,* S.B.C. 2004, c.2, as am., including ss. 4-5 & 8-10;

(c) *Fair Trading Act*, R.S.A. 2000, c.F-2, as am., including ss. 6,7 &13;

(d) *The Consumer Protection Act*, S.S. 1996, c. C-30.1, as am., including ss. 5-8, 14, 16, 48 & 65;

(e) *The Business Practices Act*, S.M. 1990-91, c. 6, as am., including ss. 2 & 23;

(f) *Consumer Protection Act, 2002*, S.O. 2002, c. 30, Sched. A, as am., including ss. 8, 11 & 14;

(g) *The Competition Act*, R.S. 1985, c. C-34, as am., including ss. 36 & 52; (h) *Consumer Product Warranty and Liability Act,* S.N.B. 1978, c. C-18.1, including ss. 4, 10, 12,14-18, 23 &27;

(i) *Consumer Protection Act*, R.S.N.S. 1989, c.92, including ss. 26 & 28A;

(j) *Business Practices Act*, R.S.P.E.I. 1998, c. B-7, as am., including ss. 2-4; and,

(k) *Trade Practices Act*, R.S.N.L. 1990, c. T-71, as am., including ss. 5, 6 & 14;

69. Avelox® purchased or consumed by the Petitioner and the Class were consumer products, namely, goods ordinarily used by individuals for personal purposes;

70. The Respondents were manufacturers pursuant to s.1(g) of *the Consumer Protection Act,* R.S.Q. c. P-40.1, as am., and similar legislation elsewhere, and the Respondents are therefore subject to deemed statutory warranties that the product supplied is of acceptable quality and is fit for the particular purpose for which the product is being bought;

71. Avelox® was not of an acceptable quality for purchase or ingestion by the Petitioner of the Class;

72. The Respondents' act and omission as set forth above constituted a violation of s. 52 of *The Competition Act*, R.S. 1985, c. C;

73. The Respondents engaged in the unfair trade practices set forth above and specifically declared unlawful under section 9 of the *Food and Drugs Act*, R.S.C. 1985, c. F-27, and similar provincial legislation. Such practices included a packaging, selling, and advertising Avelox® in a manner that was deceptive or likely to create an erroneous impression regarding its safety;

(2)Breach of warranty

74. The Respondents warranted to the Petitioner and the Class that Avelox® was of merchantable quality and fit for use. The Respondents breached the warranty to the Petitioner and the Class by manufacturing, testing, marketing, distributing and selling Avelox®, which were inherently dangerous and which the Respondents knew or ought to have known would result in the Tendon Injuries;

(3)Department of Health Act

75. The Petitioner and the Class suffered injuries as a result of Respondents' acts and omissions and rely upon health and hospital insurance legislation in Québec and similar legislation elsewhere, and claim on behalf of:

(a) the Minister of Health of British Columbia, for the cost of health services received by Class Members pursuant to s. 25(1) of the *Hospital Insurance Act*, R.S.B.C. 1996,

c. 204, as am., including necessary operating and care room facilities, diagnostic or therapeutic X-ray and laboratory procedures, anesthetics, prescriptions and drugs;

(b) the Minister of Health of Alberta, for the cost of health services received by Class Members pursuant to Part 5, Division 1, of the *Hospital Act*, R.S.A. 2000, c. H-12, as am., including in-patient and out-patient services, transportation services, public health services, mental health services and drug services;

(c) the Minister of Health of Saskatchewan, for the cost of health services received by Class Members pursuant to s. 19(5) of *The Department of Health Act*, S.S. 1978, c. D-17, as am;

(d) the Ontario Health Insurance Plan, for the cost of insured services received by Class Members pursuant to s. 31(1) of the *Health Insurance Act*, R.S.O. 1990, c. H.6, as am., including, prescribed services of hospitals and health facilities, prescribed medically necessary services rendered by physicians and prescribed health care services rendered by prescribed practitioners;

(e) the Minister of Health and Social Services of Québec, for the cost of all insured services furnished or to be furnished pursuant to s. 10 of the *Hospital Insurance Act*, R.S.Q. c. A-28;

(f) Her Majesty the Queen in right of the Province of New Brunswick, for the cost of entitled services received by Class Members pursuant to s. 5 of the *Health Services Act*, R.S.N.B. 1973, c. H-3, as am., including accommodation and meals, necessary nursing services, laboratory, radiological and other diagnostic procedures, drugs, use of operating rooms, case rooms and anesthetic facilities and routine surgical supplies;

(g) Her Majesty the Queen in right of the Province of Nova Scotia, for the cost of insured hospital services received by Class Members pursuant to s. 18 of the *Health Services and Insurance Act,* R.S.N.S. 1989, c. 197, as am., including benefits under the Insured Prescription Drug Plan, ambulance services to which the Province has made payment and insured professional services;

(h) the Minister of Health of Newfoundland and Labrador, for the cost of insured services received by Class Members pursuant to s. 5 of the *Hospital Insurance Agreement Act*, R.S.N. 1990, c. H-7, s. 5, as am.

(4)Waiver of tort

76. The Petitioner and the Class are entitled to elect to waive the tort and require the Respondents to account for all or part of the revenue they received from the sale of Avelox®;

77. The Respondents tortuously introduced or kept the products in the Canadian marketplace;

78. The Respondents failed to provide adequate warnings to the Class and health practitioners as to the risks of Tendon Injuries. Had they been warned, there would have been far fewer sales of Avelox®;

79. As a result of the Respondents' breach of duty, they have generated a substantial amount of revenue that they should not in good conscience retain;

80. If the Respondents had complied with the standard of care expected of them, they would not have received any or part of the revenues they received;

(5)Punitive and exemplary damages

81. At all material times, the acts and omissions of the Respondents as set forth above:

(1) were oppressive towards their customers and the general public, the Class, and the Respondents have conducted themselves in a wilful, wanton, and reckless manner;

(2) demonstrated a cavalier and arbitrary approach with respect to their obligations to Class Members; and

(3) pursued conduct which constitutes unfair business practices and dealings with their customers and the public.

82. The Respondents did not provide adequate warnings about the risk of Tendon Injuries to health practitioners or the public until required to do so by government health authorities;

83. The Respondents have made no attempt to compensate Class Members for the injuries they suffered as a result of ingesting Avelox®. The Respondents have made no suggestion

that an attempt will be made to compensate those who allege a causal link between the use of Avelox® and the Tendon Injuries;

84. The Respondents violated consumer protection legislation and committed unfair practices as defined by section 9 of the *Food and Drugs Act,* section 52 of the *Competition Act*, and similar provincial legislation;

85. Moreover, the Petitioner claims punitive damages. These damages are justified in this action, given the grossly negligent, reckless and duplicitous manner in which the Respondents willfully misrepresented and sold the Hormone Drugs to consumers, even once the increased dangers of using the Hormone Drugs became evident;

86. In these circumstances punitive or exemplary damages and aggravated damages should be awarded;

CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION

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

a) The number of potential Class Members is so numerous that joinder of all Members is impracticable. While the exact number of Class 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 Class Members located throughout Canada;

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

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

a) Does the use of Avelox® cause Tendon Injuries, as well as other damage and injury, and to what extent?

b) As a result of the caused Tendon Injuries, as well as other damage and injury, was Avelox® 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 Canada by the Respondents?

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

d) Did Respondents fail to inform the Class Members of the true health risks associated with the use of Avelox®?

e) Are Respondents liable to pay damages to the Class Members as a result of their negligence, or misrepresentations made by them in manufacturing, marketing, distributing or selling of Avelox®, or as a result of the use of Avelox®?

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

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

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

The majority of the issues to be dealt with are issues common to every Class Member;

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

NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

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

91. The conclusions that Petitioner wishes to introduce by way of a motion to institute

proceedings are:

GRANT Petitioner's action against Defendants;

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

CONDEMN Defendants to pay an amount in moral damages to the Class Members, 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 the Class Members, amount to be determined by the Court;

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

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

THE WHOLE with interest and additional indemnity provided for in the *Civil Code of Québec* and with full costs and expenses including experts' fees and publication fees to provide notice to Class Members.

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

a) Respondents sell Avelox® in the District of Montréal;

b) Many Class Members are domiciled and/or work in the District of Montréal;

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

93. Petitioner, who is requesting to obtain the status of representative, will fairly and adequately protect and represent the interest of the members of the Class since Petitioner:

a) purchased and took one dose of Avelox®, without being made adequately aware of the health risks associated with the use that product;

b) suffered damages and injuries from using Avelox®;

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 Class;

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

e) 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;

f) does not have interests that are antagonistic to those of other members of the Class;

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;

94. 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 Class herein described as:

- All persons and entities in Canada (including their estates, executors, or personal representatives) that purchased, used, or acquired Avelox®, a fluroquinolone antibiotic, and their dependants and family members, or any other Class or Sub-Class to be determined by the Court (the "Class" or "Class Members");

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

a) Does the use of Avelox® cause Tendon Injuries, as well as other damage and injury, and to what extent?

b) As a result of the caused Tendon Injuries, as well as other damage and injury, was Avelox® 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 Canada by the Respondents?

c) Were Respondents negligent or did they commit faults in the designing, developing, testing, manufacturing, marketing, distributing, labeling or selling of Avelox® to the Class Members?

d) Did Respondents fail to inform the Class Members of the true health risks associated with the use of Avelox®?

e) Are Respondents liable to pay damages to the Class Members as a result of their negligence, or misrepresentations made by them in manufacturing, marketing, distributing or selling of Avelox®, or as a result of the use of Avelox®?

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

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

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

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

GRANT Petitioner's action against Defendants;

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

CONDEMN Defendants to pay an amount in moral damages to the Class Members, 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 the Class Members, amount to be determined by the Court;

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

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

DECLARE that all Members of the Class that have not requested their exclusion from the Class 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 Class in accordance with Article 1006 C.C.P. and **ORDER** Respondents to pay for said publication costs;

THE WHOLE with costs.

MONTRÉAL, January 20, 2012

Merchant Law Group LLP

MERCHANT LAW GROUP LLP
Attorneys for Petitioner