CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT OF QUÉBEC
(CLASS ACTION)

No.: 500-06-

ANNE MARIE SCALABRINI, residing and domiciled at [redacted]

Petitioner

vs.

MERCK CANADA INC., a legal person duly constituted according to the law with offices situated at 16711 Autoroute Transcanadienne, Kirkland, Québec, H9H 3L1;

and

MERCK & CO, INC., a legal person with offices being situated at 1 Merck Drive, Whitehouse Station, New Jersey, 08889-0100, United States of America;

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. The Petitioner wishes to institute a class action on behalf of the following Group:

   - All persons in Canada, or alternatively all persons in Québec, (including their estates, executors, personal representatives, their dependants and family members), who purchased or used any contraceptive ring product, including but not limited to the brand name NuvaRing, manufactured, marketed or distributed by Respondents, or any other Group or Sub-Group to be determined by the Court;

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

2. Respondents Merck Canada Inc., and Merck & Co, are hereinafter collectively referred to as the "**Respondents**", including their predecessors, parent companies, subsidiaries, or partners;

3. The Respondents are research-based pharmaceutical companies. They research, develop, design, test, manufacture, create, label, package, supply, market, sell, advertise and/or distribute various pharmaceutical products in the field of women's health, including the contraceptive ring product NuvaRing, in Canada and other countries;

4. The Respondents placed contraceptive ring products, distributed under various brand names including but not limited to the NuvaRing brand, (hereinafter referred to collectively as the "**NuvaRing**"), in the streams of commerce, for the purpose of birth control;

5. The Respondents introduced NuvaRing into the United States market on or about July 16, 2002;

6. The Respondents started marketing and selling NuvaRing in Canada on or about September 15, 2005;

7. NuvaRing is a circular shaped device that a User inserts into her vagina in order to prevent conception. NuvaRing prevents conception by emitting hormones, which adversely affect the fecundity of the User;

8. The Respondents, together with or through their predecessors, parent companies, and subsidiaries, marketed, advertised, distributed and sold NuvaRing to hundreds of thousands of Consumers across Canada;

9. The Respondents offer their products in Québec and throughout Canada and derive revenue as a result of Users located in Québec and throughout Canada;

10. NuvaRing can cause increased negative health effects including but not limited to heart-related side effects such as high blood pressure, blood clots, strokes, pulmonary embolism, deep vein thrombosis, heart attacks, death and/or other risks or side effects;

FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE PETITIONER

11. The Petitioner Anne Marie Scalabrini is 22 years old;

12. The Petitioner was prescribed NuvaRing at 17 years of age and used NuvaRing for approximately 5 years;

13. The Petitioner was then briefly told that pulmonary embolisms could be a side effect of NuvaRing use, but only for women over 30 years of age;

14. The Petitioner used NuvaRing without suffering from any reported side effects, until November 4 2012;

15. At that date, the Petitioner began to feel a sharp pain in her chest and experienced difficulty breathing, trouble sleeping on her back and difficulty bending over;

16. The Petitioner went to the emergency at the Montfort hospital on November 6 2012 for the abovementioned symptoms, where she was diagnosed with a pulmonary embolism which had caused a pulmonary infection;

17. The Petitioner received an injection of Lovenox to treat the pulmonary embolism, and was prescribed with Xarelto;

18. Furthermore, Petitioner suffered a second episode of pulmonary embolism in

February 2013;

19. Following the February 2013 episode, the Petitioner's Xarelto prescription was changed to a prescription of Coumadin, to be taken indefinitely;

20. The Petitioner had to visit the hospital at least 10 times to follow up on her condition;

21. More specifically, the Petitioner consulted Drs. Baldo and Le Gal at the thrombosis center of the Montfort hospital, who mentioned that the NuvaRing contraceptive was a risk factor regarding pulmonary embolism, prompting the Petitioner to cease its use immediately;

22. Although the symptoms mentioned in paragraph 15 have diminished, to this day, the Petitioner still feels some chest pain and difficulty breathing, and she will have to continue using Xarelto until May 2012 or until further notice;

23. The Petitioner worked at the Zone store and studied at the Cité Collégiale in interior design when she suffered from the pulmonary embolism, and had to terminate her employment at the said store because of the stress the episode generated;

24. The Petitioner also lost 3 weeks of her semester at the Cité Collégiale, but managed to complete it;

25. The Respondents failed to warn the Petitioner and other Class Members, prior to their purchase and use, of the health risks posed by NuvaRing. Had the Respondents warned Consumers, the Petitioner and other Class Members would not have purchased or used NuvaRing;

26. The Class Members have incurred injuries and losses from the purchase and use of NuvaRing, including expenses relating to medical treatment, physical injuries, the cost of the product, costs 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;

27. The Class Members have suffered and will continue to suffer physical injuries and other losses, or damages due to the use of NuvaRing, and claim damages as a result;

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

RISKS OF NUVARING

28. Use of NuvaRing materially contributes to numerous health risks, including but not limited to heart-related side effects such as the risk of high blood pressure, blood clots, deep vein thrombosis, pulmonary embolism, stroke, heart attacks, death and/or other risks or side effects;

RESPONDENTS' CONDUCT

29. The Respondents researched, designed, tested, manufactured, marketed, labeled, distributed, promoted, and sold NuvaRing in Canada;

30. The Respondents marketed, promoted and advertised NuvaRing to physicians and to the public as a safe product;

31. The Respondents marketed, promoted and advertised NuvaRing as presenting less of a risk of thrombotic side effects than other means of contraception because of its relatively low amount of estrogen. However, the Respondents knew or ought to have known that NuvaRing contains a high level of third-generation progestin, which is capable of causing thrombotic side effects;

32. The Respondents failed to adequately warn prescribing physicians and the

public that NuvaRing was associated with thrombotic events;

33. The Respondents failed to provide proper and full information regarding safety to Health Canada, which regulated the sale of NuvaRing, and thereby avoided having appropriate warnings and cautions added to its labeling and advertising;

34. The Respondents knew, but failed to adequately disclose to Users, that NuvaRing released a continuous stream of hormones (progestin and estrogen) into the body of the Users;

35. NuvaRing causes numerous health risks, including amongst other risks heart-related risks such as the risk of high blood pressure, blood clots, deep vein thrombosis, pulmonary embolism, stroke, heart attack, and death, as it appears on the article "Bloot clot risk linked to some non-pill contraceptives" from Healthday, hereby filed as **EXHIBIT R-1**. As a result, NuvaRing is associated with an increased rate of death and has substantial negative effects on independence and quality of life;

36. Had the Respondents done adequate and appropriate scientific research and testing, they would have known that NuvaRing materially contributes to the risk of serious adverse medical events as described above, and should have fully informed the medical professionals and Users, including the Petitioner and putative Class Members, of such risks in a timely manner;

37. The Respondents knew or should have known of the risks of the use of NuvaRing, but instead portrayed NuvaRing as a safe and effective solution for birth control;

38. The Petitioner and her prescribing health care providers were unaware of the increased risks of the use of NuvaRing, and the Petitioner would have used other methods for birth control if she had been so informed;

39. The Respondents misled or deceived Class Members by representing in written labelling, written marketing materials, and advertising that NuvaRing does not pose the aforesaid risks to them during normal use for birth control;

40. The Respondents warranted that NuvaRing is safe and fit for its intended purpose. However, NuvaRing was not, and is not, safe for its intended use in that it poses an undue risk of harm to Users;

41. At all material times, the Respondents failed to provide the medical community and the general public with a clear, complete, and current warning of the risks associated with the use of NuvaRing, or failed to provide such warning in a timely manner, and the Respondents were negligent in that regard;

42. The Respondents deliberately and carelessly made false and misleading statements about the safety of NuvaRing, on which the Petitioner and her prescribing doctor relied to her detriment;

43. Further, or in the alternative, the Respondents did inferior research, design, and tests on NuvaRing and made a defective contraceptive ring product;

CONSUMER PROTECTION LEGISLATION

44. NuvaRing is a consumer product sold in Quebec and Canada by the Respondents. As such, the Respondents are subject to provisions of the Quebec Consumer Protection Act and other similar Canadian legislation as regards, *inter alia*, the safety of NuvaRing, its fitness for use as a contraceptive, and misleading representations made by the Respondents as to the quality and safeness of NuvaRing;

RESPONDENTS' LIABILITY

45. Consumers reasonably relied and rely upon the Respondents to ensure that NuvaRing is safe for human use and contains adequate warnings about potential health risks, such as heart-related risks, or other risks and side effects;

46. NuvaRing was defective and dangerous when the Respondents placed it into the stream of commerce;

47. The Respondents are liable for the damages suffered by the Petitioner and the Class Members in that the Respondents failed to use sufficient quality control, to conduct adequate testing, and to perform proper manufacturing, production, or processing, or failed to take sufficient measures to prevent NuvaRing from being offered for sale, sold or used by Consumers, when they knew or ought to have known about the serious health risks, but still sold and distributed NuvaRing in Canada;

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

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

50. Furthermore, and as a result of the Respondents' negligence and faults described herein, Class Members have suffered and claim damages for the following:

1. personal injuries suffered;
2. economic and financial losses;
3. pain and suffering;
4. loss of amenities and enjoyment of life;

5. costs of past and future care and related expenses;

6. such further and other damages, the particular of which may be proven at trial;

51. The conduct of the Respondents was wanton, malicious, reckless, and in such disregard for the consequences, as to reveal a conscious indifference to the clear risk of death and serious bodily injuries stemming from the use of NuvaRing;

52. Moreover, the Respondents' conduct, through actions, omissions, wrongdoings, and their awareness of the serious hazards of NuvaRing, and their failure to fully, clearly, and in a timely way disclose and publicize the serious health effects resulting from the use of NuvaRing, open the Respondents to an order to pay punitive and exemplary damages;

CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION

53. 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 the 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 Canada;

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. The Petitioner does not possess the names and addresses of potential Group Members;

54. The recourses of the members raise identical, similar or related questions of fact

or law, namely:

a) Does the use of NuvaRing cause an increase in negative health effects, and to what extent?

b) As a result of negative health effects, was NuvaRing unsafe, or unfit for the purpose for which it was intended as designed, developed, manufactured, sold, distributed, marketed or otherwise placed into the stream of commerce in Canada by the Respondents?

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

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

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

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

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

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

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

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

NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

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

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

GRANT the Petitioner's action against the Defendants;

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

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

CONDEMN the Defendants to pay an amount in punitive and/or exemplary damages to the Group Members, amount to be determined by the Court;

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

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

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 Group Members.

59. Petitioner suggests that this class action be exercised before the Superior Court

in the District of Montréal for the following reasons:

a) The Respondents sell NuvaRing in the District of Montréal;

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

c) The Respondent Merck Canada Inc has an establishment in the District of Montréal;

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

60. The 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 the Petitioner:

a) purchased and used NuvaRing for a period of approximately five years, without being made adequately aware of the health risks associated with the use that product;

b) suffered damages and injuries from using NuvaRing;

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 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 the 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 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;

61. 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 Canada, or alternatively all persons in Québec, (including their estates, executors, personal representatives, their dependants and family members), who purchased or used any contraceptive ring product, including but not limited to the brand name NuvaRing, manufactured, marketed or distributed by 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 use of NuvaRing cause an increase in negative health effects, and to what extent?

b) As a result of negative health effects, was NuvaRing unsafe, or unfit for the purpose for which it was intended as designed, developed, manufactured, sold, distributed, marketed or otherwise placed into the stream of commerce in Canada by the Respondents?

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

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

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

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

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

h) Are the 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 the Petitioner's action against the Defendants;

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

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

CONDEMN the Defendants to pay an amount in punitive and/or exemplary damages to the Group Members, amount to be determined by the Court;

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

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

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 Group 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, October 18, 2013

Merchant Law Group LLP

MERCHANT LAW GROUP LLP
Attorneys for the Petitioner

NOTICE OF PRESENTATION

TO: **MERCK CANADA INC.**
16711 Autoroute Transcanadienne
Kirkland, Québec H9H 3L1

MERCK & CO, INC.
1 Merck Drive
Whitehouse Station, New Jersey, 08889-0100, USA

TAKE NOTICE that the Petitioner has filed this Motion To Authorize The Bringing Of A Class Action And To Ascribe The Status Of Representative in the office of the Superior Court of the judicial district of Montreal.

To file an answer to this action or application, you must first file an Appearance, personally or by advocate, at the Courthouse of Montreal situated at 1 Notre Dame East, Montreal, Quebec, within ten (10) days of service of this Motion.

If you fail to file an Appearance within the time limit indicated, a judgment by default may be rendered against you without further notice upon the expiry of the ten (10) day period.

If you file an Appearance, the action or application will be presented before the Court on **December 9, 2013** at **9:00 AM**, in room **2.16** of the Courthouse. On that date, the Court may exercise such powers as are necessary to ensure the orderly progress of the proceeding or the Court may hear the case.

In support of the Motion To Authorize The Bringing Of A Class Action And To Ascribe The Status Of Representative, the Petitioner discloses the following Exhibit:

Exhibit R-1: article "Bloot clot risk linked to some non-pill contraceptives" from Healthday

This Exhibit is available on request.

MONTRÉAL, October 18, 2013
Merchant Law Group LLP

MERCHANT LAW GROUP LLP
Attorneys for the Petitioner