C A N A D A

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

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

NO: 500-06-000966-198

KAREN [redacted]

Applicant

-vs-

ALLERGAN INC., legal person having its head office at 500-85 Enterprise Boulevard, Markham, Ontario, L6G 0B5

and

ALLERGAN USA INC., legal person having its head office at 5 Giralda Farms, Madison, New Jersey, United States of America, 07940

and

ALLERGAN PLC, legal person having its head office at Clonshaugh Business and Technology Park, Coolock, Dublin, Ireland, D17 E400

and

MENTOR WORLDWIDE LLC, legal person having its head office at 33 Technology Drive, Irvine, California, 92618, United States of America

and

JOHNSON & JOHNSON INC., legal person having its head office at 88 McNabb Street, Markham, Ontario, L3R 5L2

and

IDEAL IMPLANT INCORPORATED, legal person having its head office at 5005 LBJ Freeway, Suite 900, Dallas, Texas, 75244, United States of America

and

CLARION MEDICAL TECHNOLOGIES, legal person having its head office at 125 Fleming Drive, Cambridge, Ontario, N1T 2B8

Defendants

APPLICATION TO AUTHORIZE THE BRINGING OF A CLASS ACTION AND TO APPOINT THE STATUS OF REPRESENTATIVE PLAINTIFF
(ARTICLE 571 AND FOLLOWING C.C.P.)

TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN AND FOR THE DISTRICT OF MONTREAL, YOUR APPLICANT STATES AS FOLLOWS:

I. INTRODUCTION

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

> **Class:**
>
> All consumers in Canada (alternatively in Quebec) who have received textured surface breast implants manufactured, marketed or sold by Allergan Inc., Inamed Corporation, Mentor Worldwide LLC or Ideal Implant Inc.
>
> (hereinafter referred to as the "**Class**")
>
> or any other group to be determined by the Court;

2. Textured breast implants - as sold by all of the Defendants - are linked to a rare type of cancer known as anaplastic large cell lymphoma or BIA-ALCL, Applicant disclosing the Reuters news article updated on December 19, 2018, titled *Allergan stops sales of textured breast implants in Europe* as **Exhibit P-1**;

3. On December 17, 2018, Allergan textured implants lost its "CE mark" (a mark certifying the safety of certain products licensed for sale in European Union);

4. On December 18, 2018, France's *National Agency for the Safety of Medicines and Health Products - L'Agence nationale de sécurité du médicament et des produits de santé* issued a safety recall of Defendant Allergan Inc.'s textured breast implants currently in stock in hospitals and clinics, Applicant disclosing the *Le Monde* news article titled "*L'entreprise Allergan devra rappeler tous ses implants mammaires textures*" as **Exhibit P-2**;

5. As of December 18, 2018, Allergan cannot sell its textured implants in the European Union. However, despite knowing the serious safety risks associated to its products, Allergan continues to sell its textured implants to Class members in Canada;

6. Due to the risks related to the textured implants, doctors worldwide are being advised to use smooth implants instead of textured implants;

7. In an investigation related to a global media collaboration known as the "Implant Files" (the purpose of which is notably to expose the lack of regulatory monitoring of certain implants), CBC News and Radio-Canada found studies putting the occurrence rate of anaplastic large cell lymphoma or BIA-ALCL (due to textured implants) at as high as 1 in 1,000 women (and as low as 1 in 30,000), something that all of Defendants have intentionally omitted informing Class members of, Applicant disclosing the November 29, 2018 CBC investigation article as **Exhibit P-3**;

8. On November 24, 2017, in a publication titled "*Breast Implants - Risk of Anaplastic Large Cell Lymphoma (BIA-ALCL)*", Health Canada warned that:

> All breast implants marketed in Canada are potentially impacted, including products by **Allergan Inc.**, **Mentor**, and **Ideal Implant Incorporated (c/o Clarion Medical Technologies)**.

Applicant disclosing the warning from the Health Canada website under the Recalls and Safety Alerts section as **Exhibit P-4**;

9. During the Class Period, all of the Defendants, either directly or through a wholly-owned subsidiary, agent or affiliate, manufactured, marketed and sold hundreds of millions of dollars' worth of breast implants throughout the world, including within the province of Quebec;

10. During the Class Period, Defendants Allergan Inc., Allergan USA Inc. and Allergan PC (hereinafter collectively referred to as "**Allergan**") have been a leading breast implant manufacturer and also distribute their breast implants to clinics, hospitals and plastic surgeons, who ultimately operate and implant them in consumers' bodies, including the Applicant;

11. Allergan was formerly known as Inamed Corporation, which also sold breast implants. In March of 2006, Allergan purchased Inamed Corporation;

12. During the Class Period, Defendant Mentor Worldwide LLC (hereinafter "**Mentor**")

manufactured, marketed and sold its breast implants, which are distributed in Canada by Defendant Johnson & Johnson Inc. (hereinafter "**Johnson & Johnson**");

13. During the Class Period, Defendant Ideal Implant Incorporated (hereinafter "**Ideal**") manufactured, marketed and sold its breast implants, which are distributed in Canada by Defendant Clarion Medical Technologies (hereinafter "**Clarion**");

14. During the Class Period all of the Defendants participated in the sale of breast implants that suffered from a serious safety defect/risks and failed to mention the important safety risks associated with textured breast implants in representations made to Class members (specifically the links between textured implants and anaplastic large cell lymphoma or BIA-ALCL);

15. The Defendants have been aware of the link between breast implants and cancer, with the first such case dating back to 1997, Exhibit P-3;

16. The CBC reported that Allergan admits that breast implantation carries "*certain inherent risks*" (Exhibit P-3), which Applicant claims Allergan or its agents never informed her of;

17. Notwithstanding the foregoing, from the first recorded case of cancer in 1997 until the present date, all of the Defendants operate in flagrant violation of section 228 of Quebec's *Consumer Protection Act* (the "**CPA**") by failing to mention an important fact in its representations made to Class members (i.e. of the serious risks of cancer associated to textures breast implants, notably anaplastic large cell lymphoma or BIA-ALCL), as well as articles 1469 and 1473 of the *Civil Code*;

18. One example of this omission appears from Allergan's *Natrelle* breast implants brochure (which is the model Applicant purchased), where there is not a single mention of anaplastic large cell lymphoma or BIA-ALCL, Applicant disclosing the French version of the Natrelle brochure as **Exhibit P-5**;

19. The Defendants are "merchants" within the meaning of the *CPA* and "professional sellers" within the meaning of article 1729 *CCQ*. They operate an enterprise within the meaning of the *CCQ*, and their activities are governed by these legislations, among others;

20. Given the close ties between the Defendants and considering that their obligations were contracted for the operation of an enterprise, they are presumed solidarily liable for the acts and omissions of the other (i.e. between the respective manufacturers and distributors listed at paragraphs 10, 12 and 13 above);

Latent Defects:

21. As manufactures, distributers, suppliers, wholesalers and/or importers of the textured implants, the Defendants are bound to warrant Class members that their implants are,

at the time of the sale, free of latent defects which render them unfit for the use for which they were intended or which so diminish their usefulness that the buyer would not have bought them or paid so high a price if she had been aware of them;

22. The safety defect in the textured breast implants is latent, sufficiently serious, existed at the time of the sale and was unknown to the Applicant and Class members;

23. A reasonable buyer in the same circumstances could not have detected the safety defect at the time of the sale;

24. As professional sellers and merchants, the Defendants are presumed to have known about the safety risks and defects since the date that their respective textured breast implants were manufactured and sold;

25. Class members benefit from the legal presumption that the safety defect existed at the time of the sale, since the textured breast implants sold to Class members are at a risk of rupturing and causing cancer;

26. None of the Defendants are able rebut this presumption because the risks and defects are not due to improper use by Class members;

27. As a result of the foregoing, Defendants violated Title I of the *CPA* (ss. 37, 38, 41 and 53) because the textured implants were not fit for the purposes for which goods of that kind are ordinarily used (i.e. for being used as breast implants);

28. Class members are entitled to exercise directly against the respective Defendants they contracted with a recourse based on a latent defect because they could have never discovered the defect by an ordinary examination of their respective textured implants;

29. Section 53 of the *CPA* bars Defendants from pleading that they were unaware of the safety defects;

Defendants' failure to mention an important fact in its representations (s. 228 *CPA*):

30. The Defendants committed prohibited business practices by their false or erroneous representations concerning the quality of their textured breast implants, as well as by their omission to divulge an important fact concerning the safety of textured breast implants (i.e. that there is a risk of anaplastic large cell lymphoma or BIA-ALCL) for which they were, or should have been, aware of since at least 1997 and likely before;

31. While none of the Defendants have recalled their textured breast implants in Canada as of yet (the recall and ban is in effect in the European Union), it is worth noting that the Court of Appeal has already ruled that the voluntary performance by a merchant of its obligations does not deprive a consumer of her right to resort to the remedy best suited to her situation;

32. As a result of the foregoing, Applicant and Class members are justified in claiming compensatory damages, as well as punitive damages based on several sections of the *CPA*, including but not limited to sections 37, 38, 41, 53, 219, 228 and 272, as well as section 1 and 49 of Quebec's *Charter*;

33. Pursuant to article 1728 *CCQ*, the Defendants are bound not only to restore the price of the breast implant surgery, but also to make reparation for the injury suffered by Class members under the general rules of civil law;

II. CONDITIONS REQUIRED TO AUTHORIZE THIS CLASS ACTION AND TO APPOINT THE STATUS OF REPRESENTATIVE PLAINTIFF (SECTION 575 C.C.P.):

1) The facts alleged appear to justify the conclusions sought:

A) Applicant's claim against Allergan for hidden defect and failure to inform of an important fact

34. In 2016, Applicant considered having a breast augmentation;

35. On May 13, 2016, she paid $150.00 for a consultation with a plastic surgeon (hereinafter referred to only as "**Dr. X**"), who recommended the "Natrelle" Cohesive Silicone Gel-Filled textured breast implants manufactured, marketed and sold by Defendant Allergan;

36. On July 13, 2016, Dr. X provided Applicant with an estimate in the amount of $8,025 for the breast augmentation plus $1,125 for general anesthesia for a total of **$9,150.00** for breast implants, the whole as it appears from the quotation form disclosed as **Exhibit P-6**;

37. Safety and health were important concerns for the Applicant, who was reassured by the fact that Allergan's Natrelle textured implants were marketed as safe and appeared to have virtually no health risks, certainly not of cancer. We note that the Natrelle brochure, Exhibit P-5, which appears to have been distributed to Class members since 2008 to present date, does not contain a single mention of anaplastic large cell lymphoma or BIA-ALCL;

38. On July 29, 2016, under the impression that the textured implants were safe and did not suffer from any safety defects or health risks, Applicant accepted the price quoted and paid a $5,000 deposit for her surgery with Dr. X, Applicant disclosing **Exhibit P-7**;

39. On September 15, 2016, Applicant paid the balance owing of $12,650 to Dr. X (Applicant had another surgery performed at the same time), Applicant disclosing her final invoice as **Exhibit P-8** (which also shows that the $150 consultation fee was paid on May 13, 2016);

40. On September 15, 2016, the Applicant underwent her breast implant surgery, as it appears from the "*Canadian Device Registration – Natrelle Silicone-Filled Breast Implants*" form disclosed as **Exhibit P-9**;

41. The model used in Applicant's left breast is Natrelle style 410 MM-400 soft touch gel implant and in her right breast is Natrelle style 410 MM-360 soft touch gel implant, as it appears from Allergan's blue "ID Card" disclosed as **Exhibit P-10** (both sides);

42. It took Applicant approximately 10 days to recover from her surgery and she missed work and lost revenues during this time;

43. Up until November 2018, Applicant was satisfied with her surgery, until she came across several news articles discussing the serious health risks associated to textured breast implants and found out about the recall and ban of textured breast implants in France and Europe;

44. In the November 22, 2018 article published on the Europe1 website titled "*Des prothèses Allergan pointées du doigt après des cas de lymphomes : "Nous avons recommandé à nos chirurgiens d'arrêter d'en poser*", Dr. Jacques Saboye (président de la Société française de Chirurgie Plastique, Reconstructrice et Esthétique) stated:

> « Les travaux scientifiques ont permis de démontrer qu'il y avait une surexposition d'un type de prothèse particulier, à l'origine de 85% des lymphomes chez les patientes atteintes… Il s'agit des prothèses mammaires macro-texturées Biocell d'Allergan »

Applicant disclosing the article as **Exhibit P-11**;

45. Reading this article on Europe1 (https://www.europe1.fr/sante/des-protheses-allergan-pointees-du-doigt-apres-des-cas-de-lymphomes-nous-avons-recommande-a-nos-chirurgiens-darreter-den-poser-3805919), Exhibit P-11, caused the Applicant to suffer a great deal of stress, realizing that the implants sold to her as safe by Allergan were, in fact, extremely dangerous to the point where doctors in France would no longer implant them in women;

46. She is aware of at least two other Class members whose textured Natrelle breast implants ruptured and is extremely worried, stressed and concerned;

47. Applicant then researched on Health Canada's website and found out that they have not been as proactive as the French and European authorities in recalling the textured breast implants. She found a November 24, 2017 publication titled "*Breast Implants - Risk of Anaplastic Large Cell Lymphoma (BIA-ALCL)*" from the Health Canada website under the Recalls and Safety Alerts section (Exhibit P-4);

48. In Exhibit P-4, Health Canada issues the following warning:

> **Issue**
>
> A safety review on the risk of BIA-ALCL was initiated by Health Canada to determine a Canadian-specific rate of BIA-ALCL cases relative to the number of implants sold over the past 10 years. The safety review determined that the rate of BIA-ALCL reported to Health Canada is low and **cases are mainly associated with breast implants with textured surfaces**.
>
> **Products affected**
>
> All breast implants marketed in Canada are potentially impacted, including products by **Allergan Inc.**, **Mentor**, and **Ideal Implant Incorporated (c/o Clarion Medical Technologies)**.

49. Applicant is concerned that - unlike the French and European authorities - Health Canada has not thoroughly investigated the health risks associated to textured breast implants since November 2017 and following the recall and ban in Europe in December 2018;

50. Applicant read several other articles online that were published in November and December 2018, all of which exposed the serious health risks associated to textured implants;

51. Finally, Applicant watched the November 27, 2018 *France 2* "Cash Investigation" on implants (done in partnership with the *International Consortium of Investigative Journalists*), the relevant portion of which is disclosed as **Exhibit P-12**, where French surgery professor Dr. Laurent Lantieri explains the risks associated to Allergan's textured implants and states:

> « Qui va payer cette surveillance ? Qui va payer éventuellement s'il faut changer ce type de prothèse ? Je pense qu'il y a une responsabilité très claire de l'industrielle sur ce sujet-là ».

Asked by the interviewer whether the corporations should be held liable, Dr. Lantieri replies:

> « Absolument ! Ce n'est pas la solidarité nationale de payer pour un problème qui est un problème industriel ».

Asked by the interviewer what women with textured implants should now do, Dr. Lantieri advises that they should be supervised an undergo an MRI annually:

> « Surveillée – tous les ans par un examen qui est un IRM ».

52. Applicant certainly does not want to undergo an MRI each year, which involves significant costs (approximately $850 each time) and risks, nor was she told she would have to at the time of sale;

53. On December 18, 2018, France's *National Agency for the Safety of Medicines and Health Products* issued a safety recall of Allergan Inc.'s textured breast implants currently in stock in hospitals and clinics, Exhibit P-2;

54. Applicant is worried that one of her implants may have ruptured (as was the case of Terri McGregor in the CBC Implant Files article, Exhibit P-3);

55. Allergan failed in its legal obligations to inform Applicant of the serious health risks and dangers associated to textured breast implants;

56. Had Applicant been informed and aware of the health risks and dangers associated to Allergan's Natrelle textured implants, she would have never accepted having this type of implant and would have never purchased textured implants at any price;

57. As a result of the above, around December 21, 2018, the Applicant contacted Dr. X and asked that he remove her textured implants – free of charge – and replace them with another type of implant that does not contain the safety risks and dangers associated to textured implants;

58. Dr. X advised Applicant that this was possible, but that Allergan would not assume the costs and that Applicant would have to pay approximately $8,500.00 for replacement implants;

59. Applicant cannot afford to pay $8,500.00 out of pocket at this time and seeks a conclusion condemning Allergan to either replace the defective implants at no cost to her or to reimburse her the $8,500.00 should she eventually be able to pay for the replacements;

60. Applicant's *Charter* right to her personal security has been violated by Allergan's gross and intentional negligence as described above;

61. The Applicant was entitled to expect, and rightly expected, that Allergan guarantee the quality and safety of the products it designs, manufactures, markets and sells;

62. In additional to pecuniary losses (i.e. the $9,150.00 paid for her textured implants), this situation caused Applicant a lot of stress, inconvenience, frustration and loss of time from work;

63. Applicant has suffered ascertainable loss as a result of Allergan's omissions, misrepresentations and gross negligence associated with the manufacturing, marketing and selling of its textured breast implants and hereby claims the following damages:

Damages	Amount
Reimbursement of initial breast implant surgery (Exhibits P-6 and P-8)	$9,150.00
Reimbursement of replacement costs	$8,500.00
Trouble and inconvenience	$10,000.00
Moral damages	$10,000.00
Punitive damages pursuant to s. 272 *CPA*	$10,000.00
Punitive damages for violation of s. 1 of Quebec's *Charter*	$10,000.00
TOTAL:	**$57,650.00**

64. Applicant's damages are a direct and proximate result of Allergan's misconduct;

65. In addition to the monetary damages claimed and due to the physical and mental dangers caused by the textured implants, Applicant respectfully requests from this Honourable Court injunctive relief in order to oblige Defendants to supply to each Class member breast implants of equal or superior quality to the textured implants subject of the current action, free of any known health risks, and to pay the entire costs of the removal of the current textured breast implants and the implantation of the replacement implants, the whole at the entire cost of Defendants within such delay as shall be determined by this Honourable Court;

B) **Applicant's claim for punitive damages (ss. 37, 38, 41, 53, 219, 228 and 272 *CPA*; ss. 1 and 49 of Quebec's *Charter*)**

66. The punitive damages provided for in section 272 *CPA* have a preventive objective, that is, to discourage the repetition of such undesirable conduct;

67. Not only did Allergan violate the *CPA* by failing to inform the Applicant of an important fact (s. 228 violation), they intentionally continue selling textured breast implants in Canada, and this despite the increase of the number of cancers and ruptures reported to Allergan in the last few years;

68. This behavior also triggers a s. 1 *Charter* violation, because the Applicant's personal security has been compromised as a result of Allergan's gross and intentional negligence, giving rise to a claim in punitive damages under s. 49;

69. Allergan's violations were intentional, malicious, vexatious, and dangerous;

70. Allergan demonstrates through its behavior that it was more concerned about its bottom line than about the safety and health of Class members;

71. In these circumstances, Applicant's claim for punitive damages is justified;

2) The claims of the members of the Group raise identical, similar or related issues of law or fact:

72. All Class members, regardless of which of the Defendants they contracted with, have a common interest both in proving the commission of a prohibited businesses practice (the violation of ss. 37, 38, 41, 53 and/or 228 *CPA* in the present case) by all of the Defendants and in maximizing the aggregate of the amounts unlawfully charged to them by Defendants;

73. The nature of the interest necessary to establish the standing of the Applicant must be viewed from the perspective of the common interest of the proposed Class and not solely from the perspective of the Applicant / representative plaintiff;

74. In this case, the legal and factual backgrounds at issue are common to all the members of the Class, namely whether the Defendants failed to mention an important fact concerning the health risks associated to textured breast implants;

75. The claims of every member of the Class are founded on very similar facts to the Applicant's claims against Allergan;

76. Health Canada's safety warning, Exhibit P-4, confirms that all Defendants are implicated;

77. Requiring a separate class action against each Defendant based on very similar questions of fact and identical questions of law would be a waste of resources;

78. All Class members are entitled to expect that the Defendants guarantee the quality of the textured breast implants they design, manufacture, market and sell, and that they inform the public of important facts concerning same;

79. Consequently, all Class members not only overpaid the Defendants when they purchased their textured breast implants (or when they paid to have them replaced), but are also at risk of injury or cancer;

80. By reason of the Defendants' unlawful conduct, Applicant and members of the Class have suffered damages, which they may collectively claim against the Defendants;

81. Each Class member is justified in claiming at least one or more of the following as damages:

- Reimbursement of the costs of the initial breast implant surgery;
- Reimbursement of implant replacement costs;
- Trouble and inconvenience;
- Moral damages;

- Punitive damages pursuant to s. 272 CPA; and

- Punitive damages for violation of s. 1 of Quebec's *Charter*.

82. All of these damages to Class members are a direct and proximate result of the Defendants' misconduct;

83. The claims of every Class member are founded on very similar facts to the Applicant's claim;

84. Individual questions, if any, pale by comparison to the numerous common questions that are significant to the outcome of the present Application;

85. The damages sustained by the Class members flow, in each instance, from a common nucleus of operative facts, namely, the Defendants' misconduct with respect to the withholding of an important fact from Class members concerning textured breast implants;

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

a) Are the textured breast implants affected by a safety defect?

b) Are the textured breast implants fit for the purposes for which goods of that kind are ordinarily used?

c) Did the Defendants omit to disclose the serious health risks related to textured breast implants?

d) Is the Defendants' responsibility engaged in view of the: (i) *Consumer Protection Act*; (ii) *Quebec Civil Code*; or (iii) Quebec *Charter*?

e) If the Defendants' responsibility is engaged, are Class members entitled to:

i. a reduction of their obligations and, if so, in what amount?

ii. Reimbursement of replacement costs?

iii. An injunctive order forcing the Defendants to replace the textured implants free of charge?

iv. damages for trouble and inconvenience resulting from the Defendants' misrepresentations and illegal practice and, if so, in what amount?

v. moral damages and, if so, in what amount?

vi. punitive damages and, if so, in what amount?

f) Did Defendants act in bad faith?

g) When does prescription start for Class members and what are the factors common to the Class members regarding the impossibility in fact to act?

3) The composition of the Class:

87. The composition of the Class makes it difficult or impracticable to apply the rules for mandates to take part in judicial proceedings on behalf of others or for consolidation of proceedings;

88. Combined, the Defendants have sold hundreds of millions of dollars' worth of breast implants to Class members;

89. The number of persons included in the Class is likely in the tens of thousands (in France alone it is reported that 500,000 women have breast implants, Exhibit P-2);

90. The names and addresses of all persons included in the Class are not known to the Applicant, however, all are likely in the possession of Defendants;

91. Class members are very numerous and are dispersed across the province, across Canada and elsewhere;

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

93. In these circumstances, a class action is the only appropriate procedure for all of the Class members to effectively pursue their respective rights and have access to justice without overburdening the court system;

4) The Class member appointed as representative plaintiff is in a position to properly represent the class members:

94. Applicant requests that she be appointed the status of representative plaintiff for the following main reasons:

a) She is a member of the Class and has a personal interest in seeking the conclusions that she proposes herein;

b) She is competent, in that she has the potential to be the mandatary of the action if it had proceeded under article 91 of the *Code of Civil Procedure*;

c) Her interests are not antagonistic to those of other Class and Sub-Class members;

95. Additionally, Applicant respectfully adds that:

a) She contacted and mandated her attorneys to file the present application for the sole purpose 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 Defendants' illegal behavior and so that the Defendants can be held accountable for their misconduct;

b) She is aware of several other Class members in the same situation as her;

c) She has the time, energy, will and determination to assume all the responsibilities incumbent upon her in order to diligently carry out the action;

d) She cooperates and will continue to fully cooperate with her attorneys, who have experience in consumer protection-related class actions;

e) She understands the nature of the action;

III. DAMAGES

96. During the Class Period the Defendants generated major revenues while intentionally ignoring the law in Quebec, failing to inform Class members of an important fact and neglecting to recall and cease using dangerous textured breast implants;

97. Consequently, the Defendants have breached several obligations imposed on them by legislation in Quebec, including:

a) Quebec's *Consumer Protection Act*, including sections 37, 38, 41, 53, 215, 219 and 228, thus rendering s. 272 applicable;

b) The *Civil Code of Quebec*, including sections 1399-1401, 1407, 1437, 1469, 1473, 1726, 1728, 1729, 1730;

c) The Quebec *Charter*, section 1, thus rendering s. 49 applicable.

98. Moreover, Defendants failed in their obligation and duty to act in good faith and with honesty in their representations and in the performance of their obligations;

99. In light of the foregoing, the following damages may be claimed solidarily against the Defendants (i.e. between the respective manufacturing and distributing entities):

a) compensatory damages, in an amount to be determined, on account of the damages suffered; and

b) punitive damages, in an amount to be determined, for the breach of obligations imposed pursuant to s. 272 *CPA* and s. 49 of the *Charter*;

IV. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

100. The action that the Applicant wishes to institute on behalf of the members of the Class is an action in damages and injunctive relief;

101. The conclusions that the Applicant wishes to introduce by way of an Originating Application are:

GRANT Plaintiff's action against Defendants on behalf of all Class members;

DECLARE the Defendants solidarily liable for the damages suffered by the Applicant and each of the Class members;

CONDEMN the Defendants solidarily 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 solidarily to pay to each Class member punitive damages, in an amount to be determined, and **ORDER** collective recovery of these sums;

ORDER the Defendants to supply to each Class member breast implants of equal or superior quality to the textured implants subject of the current action, free of any known health risks, and to pay the entire costs of the removal of the current textured breast implants and the implantation of the replacement implants, the whole at the entire cost of Defendants within such delay as shall be determined by this Honourable Court;

CONDEMN the Defendants solidarily to pay interest and the additional indemnity on the above sums according to law from the date of service of the *Application to Authorize the Bringing of a Class Action and to Appoint the Status of Representative Plaintiff*;

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 solidarily to bear the costs of the present action including the cost of notices, the cost of management of claims and the costs of experts, if any, including the costs of experts required to establish the amount of the collective recovery orders;

RENDER any other order that this Honourable Court shall determine;

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

V. JURISDICTION

103. The Applicant suggests that this class action be exercised before the Superior Court of the province of Quebec, in the district of Montreal, because she is a consumer and resides in Montreal;

VI. PRESCRIPTION AND IMPOSSIBILITY TO ACT

104. Prescription should not run against Class members because it is impossible in fact for them to act;

105. Indeed, Class members could not have acted previously as they had no reason to doubt, prior to the European recall and ban on textured implants, that such safety risks were associated to their implants;

106. In the present case, the Defendants' conduct (consisting of continuing to market and sell textured breast implants in Canada) misleads Class members and the Court has found that such conduct causes an impossibility to act.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

1. **GRANT** the present application;

2. **AUTHORIZE** the bringing of a class action in the form of an Originating Application in damages;

3. **APPOINT** the Applicant the status of representative plaintiff of the persons included in the Class herein described as:

   Class:

   All consumers in Canada (alternatively in Quebec) who have received textured surface breast implants manufactured, marketed or sold by Allergan Inc., Inamed Corporation, Mentor Worldwide LLC or Ideal Implant Inc.

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

   a) Are the textured breast implants affected by a safety defect?

   b) Are the textured breast implants fit for the purposes for which goods of that kind are ordinarily used?

   c) Did the Defendants omit to disclose the serious health risks related to textured breast implants?

d) Is the Defendants' responsibility engaged in view of the: (i) *Consumer Protection Act*; (ii) *Quebec Civil Code*; or (iii) Quebec *Charter*?

e) If the Defendants' responsibility is engaged, are Class members entitled to:

i. a reduction of their obligations and, if so, in what amount?

ii. Reimbursement of replacement costs?

iii. An injunctive order forcing the Defendants to replace the textured implants free of charge?

iv. damages for trouble and inconvenience resulting from the Defendants' misrepresentations and illegal practice and, if so, in what amount?

v. moral damages and, if so, in what amount?

vi. punitive damages and, if so, in what amount?

f) Did Defendants act in bad faith?

g) When does prescription start for Class members and what are the factors common to the Class members regarding the impossibility in fact to act?

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

GRANT Plaintiff's action against Defendants on behalf of all Class members;

DECLARE the Defendants solidarily liable for the damages suffered by the Applicant and each of the Class members;

CONDEMN the Defendants solidarily 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 solidarily to pay to each Class member punitive damages, in an amount to be determined, and **ORDER** collective recovery of these sums;

ORDER the Defendants to supply to each Class member breast implants of equal or superior quality to the textured implants subject of the current action, free of any known health risks, and to pay the entire costs of the removal of the current textured breast implants and the implantation of the replacement implants, the

whole at the entire cost of Defendants within such delay as shall be determined by this Honourable Court;

CONDEMN the Defendants solidarily to pay interest and the additional indemnity on the above sums according to law from the date of service of the *Application to Authorize the Bringing of a Class Action and to Appoint the Status of Representative Plaintiff*;

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 solidarily to bear the costs of the present action including the cost of notices, the cost of management of claims and the costs of experts, if any, including the costs of experts required to establish the amount of the collective recovery orders;

RENDER any other order that this Honourable Court shall determine;

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

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

8. **ORDER** the publication of a notice to the members of the Class in accordance with article 579 C.C.P. within sixty (60) days from the judgement to be rendered herein in the "News" sections of the Saturday editions of LA PRESSE, Le Journal de Montreal, the MONTREAL GAZETTE and the National Post;

9. **ORDER** that said notice be published on the Defendants' various websites, Facebook pages and Twitter accounts, in a conspicuous place, with a link stating "Notice of a Class Action";

10. **ORDER** the Defendants to send an Abbreviated Notice by regular mail and by e-mail (when the email address is available) to each Class member, to their last known addresses, with the subject line "Notice of a Class Action";

11. **ORDER** the Defendants and their representatives to supply class counsel, within thirty (30) days of the judgment rendered herein, all lists in their possession or under their control permitting to identify Class Members, including their names,

addresses, phone numbers and email addresses;

12. RENDER any other order that this Honourable Court shall determine;

13. THE WHOLE with legal costs including publications fees.

Montreal, January 3, 2019

(s) Joey Zukran

LPC AVOCAT INC.
Per: Me Joey Zukran
Co-Counsel for Applicant

Montreal, January 3, 2019

(s) Tiger Banon Inc.

TIGER BANON INC.
Co-Counsel for Applicant

SUMMONS

(ARTICLES 145 AND FOLLOWING C.C.P.)

Filing of a judicial application

Take notice that the Applicant has filed this Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff in the office of the Superior Court in the judicial district of **Montreal**.

Defendant's answer

You must answer the application in writing, personally or through a lawyer, at the courthouse of **Montreal** situated at **1 Rue Notre-Dame E, Montréal, Quebec, H2Y 1B6**, within 15 days of service of the Application or, if you have no domicile, residence or establishment in Québec, within 30 days. The answer must be notified to the Applicant's lawyer or, if the Applicant is not represented, to the Applicant.

Failure to answer

If you fail to answer within the time limit of 15 or 30 days, as applicable, a default judgement may be rendered against you without further notice and you may, according to the circumstances, be required to pay the legal costs.

Content of answer

In your answer, you must state your intention to:

- negotiate a settlement;
- propose mediation to resolve the dispute;
- defend the application and, in the cases required by the Code, cooperate with the Applicant in preparing the case protocol that is to govern the conduct of the proceeding. The protocol must be filed with the court office in the district specified above within 45 days after service of the summons or, in family matters or if you have no domicile, residence or establishment in Québec, within 3 months after service;
- propose a settlement conference.

The answer to the summons must include your contact information and, if you are represented by a lawyer, the lawyer's name and contact information.

Change of judicial district

You may ask the court to refer the originating Application to the district of your domicile or residence, or of your elected domicile or the district designated by an agreement with the plaintiff.

If the application pertains to an employment contract, consumer contract or insurance contract, or to the exercise of a hypothecary right on an immovable serving as your main residence, and if you are the employee, consumer, insured person, beneficiary of the insurance contract or hypothecary debtor, you may ask for a referral to the district of your domicile or residence or the district where the immovable is situated or the loss occurred. The request must be filed with the special clerk of the district of territorial jurisdiction after it has been notified to the other parties and to the office of the court already seized of the originating application.

Transfer of application to Small Claims Division

If you qualify to act as a plaintiff under the rules governing the recovery of small claims, you may also contact the clerk of the court to request that the application be processed according to those rules. If you make this request, the plaintiff's legal costs will not exceed those prescribed for the recovery of small claims.

Calling to a case management conference

Within 20 days after the case protocol mentioned above is filed, the court may call you to a case management conference to ensure the orderly progress of the proceeding. Failing this, the protocol is presumed to be accepted.

Exhibits supporting the application

In support of the Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff, the Applicant intends to use the following exhibits:

Exhibit P-1: Copy of Reuters news article dated December 19, 2018, titled "*Allergan stops sales of textured breast implants in Europe*";

Exhibit P-2: Copy of Le Monde news article published December 18, 2018, titled "Le Monde news article titled "*L'entreprise Allergan devra rappeler tous ses implants mammaires textures*";

Exhibit P-3: Copy of the November 29, 2018, CBC – Radio-Canada "Implant Files" investigation article;

Exhibit P-4: Copy of November 24, 2017 Health Canada publication titled "*Breast Implants - Risk of Anaplastic Large Cell Lymphoma (BIA-ALCL)*";

Exhibit P-5: Copy of the French version of the Natrelle brochure;

Exhibit P-6: Copy of the July 13, 2016 quotation form provided to Applicant by Dr. X;

Exhibit P-7: Copy of Applicant's deposit receipt for $5000 dated July 29, 2016;

Exhibit P-8: Copy of Applicant's final invoice dated September 15, 2016;

Exhibit P-9: Copy of document titled "*Canadian Device Registration – Natrelle Silicone-Filled Breast Implants*", dated September 15, 2016;

Exhibit P-10: Copy of both sides of Applicant's blue Allergan "ID Card";

Exhibit P-11: Copy of the November 22, 2018 article published on the Europe1 website titled "*Des prothèses Allergan pointées du doigt après des cas de lymphomes : "Nous avons recommandé à nos chirurgiens d'arrêter d'en poser*";

Exhibit P-12: 16-minute excerpt of the November 27, 2018 *France 2* "Cash Investigation" on implants (done in partnership with the International Consortium of Investigative Journalists);

These exhibits are available on request.

Notice of presentation of an application

If the application is an application in the course of a proceeding or an application under Book III, V, excepting an application in family matters mentioned in article 409, or VI of the Code, the establishment of a case protocol is not required; however, the application must be accompanied by a notice stating the date and time it is to be presented.

Montreal, January 3, 2019

(s) Joey Zukran

LPC AVOCAT INC.
Per: Me Joey Zukran
Co-Counsel for Applicant

Montreal, January 3, 2019

(s) Tiger Banon Inc.

TIGER BANON INC.
Co-Counsel for Applicant

NOTICE OF PRESENTATION

(articles 146 and 574 al. 2 C.C.P.)

TO: **ALLERGAN INC.**
500-85 Enterprise Boulevard
Markham, Ontario, L6G 0B5

ALLERGAN USA INC.
5 Giralda Farms
Madison, New Jersey, 07940, U.S.A.

ALLERGAN PLC
Clonshaugh Business and Technology Park
Coolock, Dublin, Ireland, D17 E400

Defendants

Mentor Worldwide LLC
33 Technology Drive
Irvine, California, 92618, U.S.A.

JOHNSON & JOHNSON Inc.
88 McNabb Street
Markham, Ontario, L3R 5L2

Ideal Implant Incorporated
5005 LBJ Freeway, Suite 900
Dallas, Texas, 75244, U.S.A.

Clarion Medical Technologies
125 Fleming Drive
Cambridge, Ontario, N1T 2B8

Defendants

TAKE NOTICE that Applicant's *Application to Authorize the Bringing of a Class Action and to Appoint the Status of Representative Plaintiff* will be presented before the Superior Court at **1 Rue Notre-Dame E, Montréal, Quebec, H2Y 1B6**, on the date set by the coordinator of the Class Action chamber.

Montreal, January 3, 2019

(s) Joey Zukran

LPC AVOCAT INC.
Per: Me Joey Zukran
Co-Counsel for Applicant

Montreal, January 3, 2019

(s) Tiger Banon Inc.

TIGER BANON INC.
Co-Counsel for Applicant

500-06-000966-198

(Class Action)
SUPERIOR COURT
DISTRICT OF MONTREAL

KAREN [redacted]

Applicant

-vs.-

ALLERGAN INC. ET ALS.

Defendants

APPLICATION TO AUTHORIZE THE BRINGING OF A CLASS ACTION AND TO APPOINT THE STATUS OF REPRESENTATIVE PLAINTIFF
(ARTICLES 571 AND FOLLOWING C.C.P.)

ORIGINAL

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BL 6059 **N/D**: JZ-191
