

# SUPERIOR COURT

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

No: 500-06-000935-185

DATE: January 25, 2019

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BY THE HONOURABLE CHANTAL TREMBLAY, J.S.C.

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**KENNETH AITCHISON**  
Plaintiff

v.

**TEVA CANADA LIMITED**  
and  
**SANDOZ CANADA INC.**  
and  
**PRO DOC LIMITÉE**  
and  
**SANIS HEALTH INC.**  
and  
**SIVEM PHARMACEUTICALS ULC**  
Defendants

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JUDGMENT ON A JOINT APPLICATION TO STAY THE CLASS ACTION

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[1] **CONSIDERING** that the parties jointly seek a stay of the Application for Authorization to Institute a Class Action and to Obtain the Status of Representative which was filed on or about July 16, 2018, by Applicant Kenneth Aitchison (**Québec Class Action**) pending the final judgment of the national class action before the Ontario Superior Court of Justice in *Gloria Palmer v. Teva Canada Limited and al*, court docket number CV-18-00601555-00CP (**Ontario Class Action**), or earlier as may be further requested by the parties or ordered by this Court;

[2] **CONSIDERING** that the Ontario Class Action was also filed by Plaintiff's counsel and raises the same issues and includes the same members as those of the Québec Class Action,

[3] **CONSIDERING** that the joint application seeks to avoid the possibility of contradictory judgments and to ensure a sound and efficient use of judicial resources, all the while protecting the interests of the putative class members who are Québec residents;

[4] **CONSIDERING** that the conditions of article 3137 of *Québec Civil Code* are met given that the Québec Class Action was filed three days after the Ontario Class Action and both proceedings concern the same parties, are based on the same facts and have the same subject;

[5] **CONSIDERING** that the Court is of the view that the temporary stay of the Québec Class Action in favour of the Ontario Class Action will serve the rights and interests of Québec members in accordance with article 577 of the *Code of Civil Procedure* for the following reasons:

- a) The causes of action asserted in the Ontario Class Action include all the ones asserted in the Québec Class Action;
- b) The parties are represented by the same counsel in Ontario and Québec and in the context of the stay, counsel for the Applicant and for the Defendants, both in Ontario and Québec, have agreed to cooperate to ensure the efficient conduct of the proceedings and coordination of the Québec Class Action and the Ontario Class action;
- c) The Plaintiff Kenneth Aitchison will be added as a Plaintiff in the Ontario Class Action;
- d) The class counsel in the Ontario Class Action has established a bilingual website and registration system and have lawyers who are bilingual and available to respond to any inquiries that putative class members in Québec Class Action may have;
- e) The Ontario Class Action was commenced on July 13, 2018. The class counsel has been working on the preliminary steps for the preparation of the certification record; reaching an agreement on the venue with defence counsel and forming a consortium with counsel in the Mazerella Class Action filed in British Columbia. The Honourable Mr. Justice Perrell has now been assigned as the case managing judge and it is anticipated that a case conference will be convened shortly after the present ruling;
- f) Beside the Ontario Class Action, five other related putative class actions have also been filed and are pending in Canadian provinces (**Other Parallel Class**

**Actions**). Three of the Other Parallel Class Actions, in Saskatchewan, Alberta and the Gibson Class Action in British Columbia, have been instituted by Merchant Law Group LLP. The Mazerella Class Action in British Columbia has been instituted by Rice Harbut Elliot LLP and the Haghighi Class Action in British Columbia has been instituted by Hammerberg Lawyers LLP;

- g) The Québec Class Action was filed on July 16, 2018, and has not yet progressed except for the present joint application;

[6] **CONSIDERING** the Plaintiff Kenneth Aitchison agrees that the Québec Class Action should be temporarily stayed in favour of the Ontario Class Action and also agrees to be added as a Plaintiff in the Ontario Class Action;

[7] **CONSIDERING** that the parties undertake to provide this Court, on a semi-annual basis, with an update on the status of the Ontario Class Action, and to advise this Court within 30 days of any significant development in the Ontario Class Action that may affect the course of the Québec Class Action;

[8] **CONSIDERING** the principles of proportionality and judicial economy;


**WHEREFORE, THE COURT:**

[9] **GRANTS** the Joint Application to Temporarily Stay the Class Action;

[10] **STAYS** the present Class Action until a final judgment is rendered in the putative class action filed by Gloria Palmer before the Ontario Superior Court of Justice in court docket number CV-18-00601555-00CP, or earlier as may be subsequently requested by the parties or ordered by this Court;

[11] **PRAYS ACT** of the parties' undertaking to provide this Court, on a semi-annual basis, with an update on the status of the Ontario Class Action and to advise this Court within 30 days of any significant development in the Ontario Class Action that may affect the course of the Québec Action, including but limited to providing a copy of any and all judgments rendered in the Ontario Class Action, and **ORDERS** the parties to comply with said undertaking;

[12] **THE WHOLE**, without legal costs.

  
CHANTAL TREMBLAY, J.S.C.

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