

SUPERIOR COURT

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTRÉAL

No.: 500-06-000966-198

DATE: November 12, 2020

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

KAREN BASAL
Plaintiff

v.

ALLERGAN INC.
and
ALLERGAN USA INC.
and
ALLERGAN PLC
and
MENTOR WORLDWIDE LLC
and
JOHNSON & JOHNSON
Defendants

JUDGMENT ON TEMPORARY STAY

[1] **CONSIDERING** the Applicant's *Application to Authorize the Bringing of a Class Action and to Appoint the Status of Representative Plaintiff* filed on January 3, 2019;

[2] **CONSIDERING** the Applicant's *Application to Temporarily Stay the Class Action* filed on August 14, 2020 (the "**Application**"), whereby the Applicant requests that the class action she filed against the Defendants (the "Quebec Action") be temporarily stayed with respect to Allergan Inc., Allergan USA Inc. and Allergan PLC, until a final judgment is rendered in the putative class action in court docket number CV-19-00620507-00CP of the Superior Court of Justice of Ontario (the "Ontario Allergan

Action”) and that the Quebec Action be temporarily stayed with respect to Mentor Worldwide LLC and Johnson & Johnson, until a final judgment is rendered in the putative class action in docket number VLC-S-S-190084 of the Supreme Court of British Columbia (the “B.C. Mentor Action”);

[3] **CONSIDERING** that the Quebec Action and the B.C. Mentor Action were filed on the same day, raise overlapping legal and factual issues and that the members of the Quebec Action are included in the class definition of the B.C. Mentor Action;

[4] **CONSIDERING** that the Quebec Action and the Ontario Allergan Action raise the same legal and factual issues and that the members of the Quebec Action are included in the class definition of the Ontario Allergan Action;

[5] **CONSIDERING** that counsel for the Quebec Action and the Ontario Allergan Action intend to name the Applicant, Ms. Basal, as a co-plaintiff in the Ontario Allergan Action;

[6] **CONSIDERING** that class counsel for the Quebec Action is part of a consortium with class counsel for the Ontario Allergan Action (Rochon Genova LLP, Thomson Rogers LLP and Rice Harbut Elliott LLP) and class counsel for the B.C. Allergan Action (Rice Harbut Elliott LLP) and are cooperating to prosecute this case as a national class action before the Superior Court of Justice of Ontario;

[7] **CONSIDERING** that class counsel for the Quebec Action is part of a consortium with class counsel for the B.C. Mentor Action (Rice Harbut Elliott LLP) and are cooperating to prosecute this case as a national class action before the Supreme Court of British Columbia;

[8] **CONSIDERING** that there is no authorization hearing yet scheduled for the Quebec Action and that the Kibalian Plaintiffs’ certification motion record in the Ontario Allergan Action is to be served by December 31, 2020, with a certification hearing to be heard on December 1-3, 2021;¹

[9] **CONSIDERING** that a certification hearing commenced on October 13 and 14, 2020, in Raye Whelan’s action against the Allegan Defendants before the court of Queen’s bench of Alberta, court docket number 1901-08347 (where she is represented by Merchant Law Group LLP), and that counsel for the Allergan consortium (Rochon Genova LLP, Thompson Rogers, LLP, Rice Harbut Elliott LLP, LPC Avocat Inc. and Tiger Banon Inc.) were present to oppose certification of Ms. Whelan’s proposed national class action in Alberta and to seek a stay in favour of the proposed national class in the Ontario Allegan Action;

¹ See reasons for judgment from the Initial Case Conference in *Kibalian v. Allergan PLC et al.*, 2020 ONSC 2417.

[10] **CONSIDERING** that if Ms. Whelan's claim is not stayed and after the conclusion of all appeals in the Whelan action and/or certification proceedings in the Ontario Allergan Action, Merchant Law Group LLP is granted carriage of a national class, the Applicant will ask the Court to lift the temporary stay of the Quebec Action as against the Allergan Defendants;

[11] **CONSIDERING** that the Court is satisfied that the rights and interests of the Quebec class members will be protected in the Ontario Allergan Action and in the B.C. Mentor Action and that Quebec class counsel will keep Quebec class members and the Court informed of all important developments in the Ontario Allergan Action and the B.C. Mentor Action;

[12] **CONSIDERING** articles 18, 49, 158 and 577 C.C.P. and the relevant case law;²

[13] **CONSIDERING** that class counsel has undertaken to provide this Court with an update on the status of the Ontario Allergan Action and the B.C. Mentor Action on a semi-annual basis and to advise this Court within thirty (30) days of any significant development in the Ontario Allergan Action or the B.C. Mentor Action that may affect the course of the Quebec Action or the rights of Quebec class members;

[14] **CONSIDERING** that a stay is consistent with the principles of proportionality and judicial economy and will avoid the risk of contradictory judgments and multiple proceedings;

[15] **CONSIDERING** the submissions of counsel for the Applicant and counsel for the Defendants and the representations made on all sides;

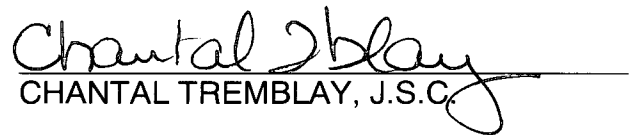
PAR CES MOTIFS, LE TRIBUNAL :	FOR THESE REASONS, THE COURT:
[16] ACCUEILLE la demande;	[16] GRANTS the present Application;
[17] SUSPENDS la présente action en ce qui concerne les défenderesses Allergan inc., Allergan USA inc. et Allergan PLC jusqu'à ce qu'un jugement final soit rendu dans l'action collective déposée par Takwihin Kibalian et Yeghia Kibalian devant la Cour supérieure de justice de l'Ontario, dossier numéro CV-19-00620507-00CP, ou plus tôt, tel qui pourra être demandé ultérieurement par la	[17] STAYS the present action with respect to Defendants Allergan Inc., Allergan USA Inc. and Allergan PLC, until a final judgment is rendered in the putative class action filed by Takwihin Kibalian and Yeghia Kibalian before the Superior Court of Justice of Ontario in court docket number CV-19-00620507-00CP, or earlier as may be subsequently requested by the

² *FCA Canada inc. c. Garage Poirier & Poirier inc.*, 2019 QCCA 2213; *Blackette c. Blackberry Limited*, 2020 QCCS 2447.

demanderesse ou ordonné par le Tribunal;	Applicant or ordered by the Court;
<p>[18] PREND ACTE que si la demande de Mme Whelan contre les défenderesses Allergan devant la Cour du Banc de la Reine de l'Alberta, numéro de dossier 1901-08347, n'est pas suspendue et qu'après la conclusion de tous les appels dans l'action Whelan et/ou la procédure de certification dans l'action Allergan en Ontario, Merchant Law Group LLP se voit accorder « carriage » d'un groupe national, la demanderesse demandera au Tribunal de lever la suspension temporaire de l'action québécoise en ce qui concerne les défenderesses Allergan;</p>	<p>[18] TAKES ACT that if Ms. Whelan's claim against the Allergan Defendants in the Court of Queen's Bench of Alberta, court docket number 1901-08347, is not stayed and after the conclusion of all appeals in the Whelan action and/or certification proceedings in the Ontario Allergan Action, Merchant Law Group LLP is granted carriage of a national class, the Applicant will ask the Court to lift the temporary stay of the Quebec Action as against the Allergan Defendants;</p>
<p>[19] SUSPENDS la présente action en ce qui concerne les défenderesses Mentor Worldwide LLC et Johnson & Johnson inc. jusqu'à ce qu'un jugement final soit rendu dans l'action collective déposée par Denée Jessana Bosco, Kimberly Dawne Hestdalen, Stephanie Nicole Marto et Jaime Lyn Hoolsema devant la Cour suprême de la Colombie-Britannique, dossier numéro VLC-S-S-190084, ou plus tôt, tel qui pourra être demandé ultérieurement par la demanderesse ou ordonné par le Tribunal;</p>	<p>[19] STAYS the present action with respect to Defendants Mentor Worldwide LLC and Johnson & Johnson Inc., until a final judgment is rendered in the putative class action filed by Denée Jessana Bosco, Kimberly Dawne Hestdalen, Stephanie Nicole Marto and Jaime Lyn Hoolsema before the Supreme Court of British Columbia in court docket number VLC-S-S-190084, or earlier as may be subsequently requested by the Applicant or ordered by the Court;</p>
<p>[20] PREND ACTE de l'engagement des avocats du groupe de fournir au Tribunal une mise à jour sur une base bisannuelle de l'état de l'action Allergan en Ontario et de l'action Mentor en Colombie-Britannique et d'aviser le Tribunal dans les 30 jours de tout développement important dans l'une ou l'autre de ces actions qui pourrait affecter l'action québécoise;</p>	<p>[20] TAKES ACT of Class Counsel's undertaking to provide this Court with an update on the status of the Ontario Allergan Action and the B.C. Mentor Action on a semi-annual basis, and to advise this Court within 30 days of any significant development in either of those actions that may affect the course of the Quebec Action;</p>

[21] **LE TOUT**, sans les frais de justice.

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


CHANTAL TREMBLAY, J.S.C.

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