

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

(“Class Action”)  
SUPERIOR COURT

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No:

John Brandone,  
residing at 10315 Thomas-Paine, Montreal,  
H1C 0B6

Berta Ricciutti ,  
residing at 10339 Thomas-Paine, Montreal,  
H1C 0C3

and

Vince Basciano  
residing at 10331 Thomas-Paine, Montreal,  
H1C 0B6

Applicants

-vs-

Recy-Beton Inc.  
10575 Boul Henri-Bourassa Est, Rivières-des-  
Prairies, Montreal, H1C 1G6

Defendant

**APPLICATION FOR AUTHORIZATION TO INSTITUTE  
A CLASS ACTION, TO OBTAIN THE STATUS OF REPRESENTATIVES and INJUNCTION**  
(Articles 509 ff and 571 ff., *C.C.P.*)  
(Arts. 19-21 *Environment Quality Act* (Q-2))

**APPLICANTS RESPECTFULLY SUBMIT:**

1. Applicants John Brandone, Berta Ricciutti, and Vince Basciano wish to institute a class action on behalf of the natural persons forming part of this class, of which the Applicants are members:

All Quebec residents including owners, tenants or subtenants of immovable property, staff and students at daycares, primary and secondary schools as well as "involuntary residents", in the Borough of Rivière des Prairies, Montreal that have suffered silica dust, particle pollution and/or inhaled silica dust and asphalt pollution since December 30, 2017;

2. The class described in paragraph 1 is composed of the following sub-classes:
- A. Persons who have rented property in Rivieres-des-Prairies, Quebec since December 30, 2017;
  - B. Persons who have owned property in Rivieres-des-Prairies, Quebec since December 30, 2017;
  - C. Staff and students at daycares, primary and secondary schools in Rivieres-des-Prairies, Quebec since December 30, 2017;
  - D. Persons who have been “involuntary residents” at the Institute Philippe-Pinel located at 10905 Blvd Henri-Bourassa Est in Rivieres-des-Prairies, Quebec since December 30, 2017;
  - E. Persons who have been “involuntary residents” at the Rivieres-des-Prairies detention facility since December 30, 2017;
  - F. Flora and Fauna and Public Trust lands and air in Rivieres-des-Prairies;

#### **FACTS GIVING RISE TO INDIVIDUAL ACTIONS BY THE APPLICANTS**

3. The facts on which the Applicants’ personal claims against the Defendant are based are:
- A. There have been continuous excessive emissions of silica dust, dust, and asphalt pollution emanating from Defendant’s concrete and asphalt recycling facility as appears in photos and videos shown in **Exhibit R-3a** located at 10575 Boul Henri-Bourassa Est, Pointe-aux-Trembles in the Borough of Rivieres-des-Prairies located on the island of Montreal. The residential zone in question is identified in **Exhibits R-2 en liasse**;
  - B. All of the class members are neighbors within the meaning of Art. 976 C.C.Q. and have suffered abnormal, excessive, and unreasonable neighbourhood annoyance from silica and asphalt pollution;
  - C. The Defendant intentionally and unconscionably polluted residential areas, daycares, primary and secondary schools, the Etablissements de detention de Riviere-des-Prairies, the Pinel Institute, and Public Trust lands, air, flora and fauna with silica dust, dust (as seen in **Exhibits R-7, R-9, R-11**), asphalt VOC’s and CO<sub>2</sub>, (as seen in **Exhibit R-12 en liasse**), lead paint, (as shown in photographs in **Exhibit R-3c**). The defendant committed faults and were negligent in neither mitigating nor curtailing the pollution alleged herein;
    - a. Class members suffer from the cumulative effects of unreasonable and excessive levels of silica dust produced and emitted in a residential area by the Defendant’s recycling activity permitted by the Defendant’s willful blindness, gross negligence, and failure to protect citizens’ fundamental rights;
    - b. Class members suffer from the cumulative effects of unreasonable and excessive levels of dust produced and emitted in a residential area by the Defendant’s recycling activity including the willful blindness, gross negligence, and failure to protect citizens’ fundamental rights;
    - c. Class members suffer from the cumulative effects of unreasonable and excessive levels of Volatile Organic Compounds (VOC’s), and, in particular during the summer, Carbon Dioxide (CO<sub>2</sub>) emissions from Defendant’s asphalt recycling activity, produced and

- emitted in a residential area by the Defendant including willful blindness, gross negligence and failure to protect citizens' fundamental rights;
- d. Class members risk exposure to lead paint due to the presence of painted concrete, included in recycled material, (as seen in **Exhibit 3**), the risks of which are documented in **Exhibit R12a**;
  - e. Intentional damage to Flora and Fauna and breach of the Public Trust Doctrine;
  - f. Greenwashing;
- D. The Defendant, by its actions, omissions, faults (Art. 1457 *C.C.Q.*) gross negligence, and bad faith, has contravened Articles 1 (right to life and personal security), Art. 2 (right to assistance where one's life is in peril), Art. 6 (peaceable enjoyment of property), Art. 7 (inviolability of the home), Art. 39 (child's right to protection, security and attention), Art. 46 (the right to fair and reasonable conditions of employment which have regard for health, safety and physical well being), Art. 46.1 (right to a healthful environment where biodiversity is preserved), Art. 48 (right of a handicapped person to protection against any form of exploitation). Pursuant to Art. 49 (right to injunctive relief and moral and punitive damages) of the *Quebec Charter of Human Rights and Freedoms* CQLR c. C-12, injunctive relief is available as a remedy;
- E. The Defendant is in flagrant breach of (i) its Certificate of Authorization to operate a cement and asphalt recycling facility; (ii) numerous provisions of the *Environment Quality Act*, (c. Q-2) articles 19.1 to 21; (iii) applicable regulatory provisions including the *Clean Air Regulation* (c. Q-2, r 4.1), concerning air quality as it applies to concrete facilities, which indicate a failure to adhere to the standards incumbent upon it within the meaning of article 1457 *C.C.Q.*
- F. In particular, the Defendant has acted intentionally, willfully, and negligently in its failure to suppress and curtail hazardous silica emissions and other dust by water suppression, by covering of piles, by ensuring piles are sized at or under 5 metres, (as seen in **Exhibit R-10**), and by creating sufficient wind barriers to protect residents from the cumulative effects of its airborne silica and dust pollution. In addition, the recycled asphalt is not covered, there are no leaching ponds, and leachate CO<sub>2</sub>s and PAHs are released into the environment;
- G. Defendant, well aware of the risks of silica, dust, CO<sub>2</sub> and PAHs, intentionally, willfully and negligently failed to protect residents from the deleterious cumulative effects of silica dust, dust and asphalt pollution, in particular as concerns children, the under privileged and the disabled;
- H. Defendant has engaged in greenwashing, presenting its toxic facility as environmentally friendly, as appears from the website included as **Exhibit R-6**, for which moral and exemplary damages should be awarded;
- I. Defendant's pollution has contaminated the soil and gardens of members' immovable property;
- J. Defendant must be presumed to have moved piles of toxic rock and dust to the neighbours' property, despite attempts to block access to it, as appears from photos produced as **Exhibit R-3b**;
- K. Defendant has breached the Public Trust doctrine by contaminating public lands including the Golf Club de L'île de Montreal golf course, Parc Marie Le-Franc, Parc de la Coulee-Grou, Parc Yves-Theriault, Parc Armand-Vanasse, Parc-Nature Pointe-au-Prairies and the foreshore (10 meter band) and the atmospheric Public Trust right to clean air;

- L. The Defendant is liable pursuant to the Quebec *Civil Code*, the Quebec *Charter*, section 20 of the Quebec *Environment Quality Act* [Q-2], for breaches of the rights to and right of Flora and Fauna in Rivieres-des-Prairies and breach of the Public Trust Doctrine as concerns public land and air;
  - M. Defendant's repeated faults (Art. 1457 C.C.Q.), cause continuing bodily, moral and material injury including health damages and damage to the environment for which reparation is due;
  - N. The class members are entirely justified in having the damages immediately curtailed. The injunctive relief set out herein is warranted, in the public interest, and in the interest of future generations, especially considering the precautionary principle, as the damage alleged herein is impossible to reverse and becomes worse over time;
  - O. It is in the interest of justice, proportionality, fairness and the precautionary principle that collective recovery and the amount to be awarded each individual member be assessed using an average determined for each zone or sub-group. Sub-groups will be determined using a point system weighing concentration of pollutants per year, number and extent of exposures, the susceptibility of the victims and the parties' patrimonial position (Art. 1621 C.C.Q.);
  - P. The Defendant intentionally failed to protect and breached the *Charter* rights of the children, teaching and daycare staff, involuntary residents and the disabled, for which exemplary and punitive damages should be awarded;
  - Q. Exposure to Crystalline Silica can result in both respiratory and non-respiratory health effects. Of the respiratory effects, Silicosis leads to Pneumoconiosis. It is recognized that there are links between Crystalline Silica Exposure and other health concerns, including, Rheumatoid Arthritis, Scleroderma, Sjogern's Syndrome, Lupus and Renal Disease. NIOSH (1996) believes further attention should be given to these atypical health effects. Crystalline Silica dust, classified as a known human carcinogen, causes lung cancer. Silica dust inhalation is a clear and present health danger to residents of Rivieres-des-Prairies. The cost of mitigation and medical monitoring should be borne by the Defendant due to their gross negligence and intent to pollute;
  - R. Exposure to asphalt pollution and dust can result in respiratory irritation leading to chronic bronchitis and reduced lung function and heart disorders. Toxin inhalation is a clear and present health danger to inhabitants of Rivieres-des-Prairies and the cost of mitigation and medical monitoring should be borne by the Defendant due to their gross negligence and intent to pollute;
4. The facts giving rise to the personal claim of The Representatives are as follows:
    - a. All Representatives have been subject to excessive and unreasonable exposure of dust due to recycling operations of the Defendant;
    - b. All Representatives have experienced daily dust contamination due to recycling operations at Defendant;
    - c. All Representatives complain of loss of enjoyment of their property due to excessive and unreasonable dust contamination;
    - d. All Representatives are worried about the long term health affects from silica exposure;
  5. The sub-class of tenants in particular have faced, in addition to the facts alleged in 4.A to 4.D, loss of enjoyment of property;

**CLASS MEMBERS' CLAIMS RAISE IDENTICAL, SIMILAR OR RELATED ISSUES OF LAW OR FACT (575 (1))**

6. The identical, similar or related questions of law or fact between each member of the class and the Defendant which Applicant wish to have decided by the class action are:
- A. Whether the inconvenience, discomfort, stress, economic and health problems that were suffered by each of the members of the class were caused by/or created as a result of Defendant's pollution;
  - B. Whether the pollution described herein contravene Art. 20 *in fine* E.Q.A.;
  - C. Whether the pollutants resulting from Defendant's operations constitute "contaminants", "pollutants" and/or "hazardous material" within the meaning of Art. 1 of the E.Q.A.;
  - D. Whether the pollution constitutes a nuisance within the meaning of Article 976 C.C.Q. as it exceeds that which is reasonable and tolerable in a residential environment;
  - E. Whether Defendants pollution constitutes a fault;
  - F. Whether the pollution was a respiratory irritant causing increased health problems and triggering episodes for those with existing respiratory ailments such as Asthma and Hypersensitivity Pneumonitis;
  - G. Whether Defendant's pollution was intentional and whether punitive, exemplary and treble damages are warranted pursuant to *Ciment du St. Laurent Inc. vs. Barrette* [2008] 3 S.C.R. 392. Applicant claims that all involuntary exposure to harm should be compensated by treble damages as set out in the *Ford Pinto* line of jurisprudence;
  - F. Whether Defendant:
    - i) committed willful errors, acts and omissions with regard to environmental protection;
    - ii) As a result of the foregoing, liable to punitive or exemplary damages are due by operation of Section 49 of the *Quebec Charter* for unlawful and intentional breaches of fundamental Charter rights; (See *De Montigny v. Brossard (Succession)* [2010] 3 S.C.R. 64 and *Hinse vs Canada* 2015 SCC 35 C.C.Q. and assessed punitive and compensatory damages pursuant to Sec. 41 of the *Quebec Charter* for "unlawful and intentional interference" with *Charter* Rights.);
  - G. Whether, even if Defendant is able to prove it complied with all regulatory requirements, which is denied, civil liability under Art. 976 C.C.Q. is triggered, even in the absence of fault as abnormal inconvenience has arisen from abuse of the right of property pursuant to *Drysdale vs. Dugas* and *Ciment St-Laurent*;
  - H. Whether Applicant and each member of the class *has a right* to claim damages, *including* moral, exemplary and Charter damages, from the Defendant;
  - I. Whether Defendant was at fault in not taking sufficient measures to assure that the resulting pollution did not create nuisance, exceed safe levels, or constitute an abuse of right, and whether their actions in this regard were intentional and/or fraudulent;

- J. Whether the Defendants action constitute an abuse of right thereby removing any authorization given through their certificate of authorization;
- K. Whether the awarding of treble damages is justified in the circumstances;

### **COMPOSITION OF THE CLASS RECOMMENDS A CLASS ACTION (ART. 575 (3))**

7. The composition of the class makes the application of articles 91 or 143 of the *Code of Civil Procedure* difficult or impractical because:

- A. The number of physical persons affected, at least 102,000, makes it impossible for these persons to meet together and negotiate a specific mandate in virtue of which they might name a mandatary, or act as plaintiffs together in the same case, as contemplated by Arts. 91 or 143 C.C.P. as well as the fact that some of them are under the age of 18;
- B. It would be highly impracticable, costly, uneconomical, unjust, and inconsistent with the rule of proportionality, if not entirely impossible for each of the persons herein identified as class members to pursue an individual action, in particular given their economic and physical circumstances;
- C. All the members of the class are affected in the same or a very similar manner, although to different degrees, by the behavior of the Defendant, and their interests will be better protected in a class action where the Court will have broad powers to protect the rights of absent parties than they would be if a few of these parties took individual actions;
- D. Class action proceedings are the most effective, efficient and appropriate legal proceedings available to ensure that each of the Class members' rights are duly protected and preserved both now and in the future, in particular as concerns environmental matters\_as noted in *Comité d'Environnement de la Baie Inc. c. Société d'Électrolyse et de Chimie Alcan Ltée.*, 1990 CanLii 3338 (QCCA), [1990] R.J.Q. 665 where the Quebec Court of Appeal stated that class actions suits are by far the most appropriate manner of litigating environmental claims given the large number of victims and the exceptional cost of such litigation;
- E. Moreover, due to the significant experts' costs associated with the litigation of this matter, it is in the best interests of each of the members of the Class, and of justice, that the institution of a class action be authorized.

### **CONCLUSIONS SOUGHT**

8. The conclusions sought by the Applicant are:

**DECLARE** the Defendant has contravened Articles 1, 2, 6, 7, 39, 46, 46.1 and 48 of the Charter of Human Rights and Freedoms;

**ORDER** the Defendant to take, within 3 months, all measures necessary to ensure that further pollution of this nature does not occur;

**CONDEMN** the Defendant to pay each owner on average \$15,000 per year for damage to property;

**CONDEMN** the Defendant to pay to tenants on average \$8,500 per year to compensate for loss of enjoyment of property;

**CONDEMN** the Defendant to remediate at their expense all environmental damage to residences and Public Trust land in the identified zone;

**CONDEMN** the Defendant to pay to “involuntary residents” \$10,000 for each year of neighborhood annoyance to compensate for the loss of enjoyment of property;

**CONDEMN** the Defendant to pay all minor and disabled class members \$13,000 for the breach of their *Charter* rights;

**CONDEMN** the Defendant to pay each class member \$25,000 for moral damages including stress and inconvenience;

**ORDER** the collective recovery of said damages; and

**AUTHORIZE** the distribution of the balance in equal amounts between the members of the class;

**ORDER** that the precautionary principle be applied to the legislation, regulation, monitoring, abatement and remediation of the resulting pollution in Rivieres-des-Prairies, Montreal;

**MAKE ANY OTHER ORDER** this Honourable Court deems appropriate.

**THE CLASS MEMBERS APPOINTED AS REPRESENTATIVE PLAINTIFF’S ARE IN A POSITION TO PROPERLY REPRESENT THE CLASS (ART 575 (4))**

9. The Applicants request that they be ascribed the status of Representatives.
10. The Applicant John Brandone is in a position to represent the members adequately, for the following reasons:
  - A. He lives in a neighbourhood directly affected by the silica dust contamination and resulting pollution described herein and has been a victim of the pollution for over three years;
  - B. He has taken numerous steps to acquaint himself with the nature of the problems created as a result of the contamination and is informed on the impacts and consequences of this activity as it affected those in the neighbourhood identified under the description of class presented above;
  - C. He went door to door collecting signatures, **Exhibit R-1**, and discussing in great detail the silica dust contamination with about 30 class members;

- D. He gathered the names, addresses and phone numbers of persons who have been affected by silica dust contamination and resulting pollution (Exhibit R-1) and also gathered information on the nature of the various harm and inconvenience suffered by those persons;
  - E. He possesses all the personal, moral and intellectual qualities to see this class action through to its final resolution and will act for the benefit of the members of the class;
  - F. He has acquainted himself with the concerns of each of the Affiants and has been present and involved at every stage of the proceedings;
  - G. He has no conflict of interest with the class members;
11. The Applicant Berta Ricciutti is in a position to represent the members of the class who are tenants adequately, for the following reasons:
- A. She lives in a neighbourhood directly affected by the silica dust contamination and resulting pollution described herein and has been a victim of the pollution for over three years;
  - B. She has taken numerous steps to acquaint herself with the nature of the problems created as a result of the contamination and is informed on the impacts and consequences of this activity as it affected those in the neighbourhood identified under the description of class presented above;
  - C. She possesses all the personal, moral and intellectual qualities to see this class action through to its final resolution and will act for the benefit of the members of the class;
  - D. She has acquainted herself with the concerns of each of the Affiants and has been present and involved at every stage of the proceedings;
  - E. She has no conflict of interest with the class members;
12. The Applicant Vince Basciano is in a position to represent the members of the class adequately, for the following reasons:
- A. He lives in a neighbourhood directly affected by the silica dust contamination and resulting pollution described herein and has been a victim of the pollution for over three years;
  - B. He has taken numerous steps to acquaint himself with the nature of the problems created as a result of the contamination and is informed on the impacts and consequences of this activity as it affected those in the neighbourhood identified under the description of class presented above;
  - C. He possesses all the personal, moral and intellectual qualities to see this class action through to its final resolution and will act for the benefit of the members of the class;
  - D. He has acquainted himself with the concerns of each of the Affiants and has been present and involved at every stage of the proceedings;



- E. He has no conflict of interest with the class members;
13. The Applicants request that the class action be brought before the Superior Court of the District of Montreal for the following reasons:
- A. The Defendant allowed pollution in Rivieres-des-Prairies, Montreal, Quebec;
- B. The pollution complained of that caused the harm suffered by Applicant and the other class members was carried out in the Province of Québec;
- C. Applicant as well as the members of the class which they represent, all reside in Montreal the Province of Québec;
- D. There exists no better suited forum or district to render justice in the present dispute;

**WHEREFORE, APPLICANT PRAY THIS HONOURABLE COURT TO:**

**GRANT** the present Motion;

**AUTHORIZE** the institution of a class action as follows:

**ATTRIBUTE** to Applicants the status of Representative plaintiffs for the purpose of bringing the class action for the benefit of the following class of natural persons, namely:

All Quebec residents including owners, tenants or subtenants of immovable property, staff and students at daycares, primary and secondary schools as well as "involuntary residents", in the Borough of Riviere des Prairies, Montreal that have suffered silica dust, particle pollution and/or inhaled silica dust and asphalt pollution since December 30, 2017.

**IDENTIFY** as follows the principal questions of fact and of law to be treated collectively in the class action proceedings:

- A. The inconvenience, discomfort, stress, economic and potential health problems that are suffered by each of the members of the class are caused by/or created as a result of silica dust and asphalt pollution;
- B. Presumptive evidence of causality that given the "serious, precise and concordant" facts alleged this Honourable Court is justified in coming to a presumption of fact that the pollution is a result of improper operation of the recycling facility and a failure to properly monitor and moderate dust production using industry standard mitigation methods;
- C. The pollution constitutes a nuisance within the meaning of Article 976 C.C.Q. as it exceeds that which is reasonable and tolerable in a residential environment;
- D. The pollution constitutes an abuse of right within the meaning of Articles 6 and 7 C.C.Q. as the right is exercised in bad faith, with the intent to injure another or exercised unreasonably;
- E. Whether exemplary and treble damages are warranted pursuant to *Ciment du St. Laurent Inc. vs. Barrette* [2008] 3 S.C.R. 392 and, as concerns exemplary damages, against governments, *Hinse vs.*

*Canada* [2015] S.C.C. 35, art. 1457 C.C.Q. and s. 49 of the *Quebec Charter* as well as L. Perret “*De l’impact de la charte des droits et libertés de la personne sur le droit civil des contrats et de la responsabilité*” (1981), 12 R.D.J. 121 at page 170. Applicant claims that all involuntary exposure should be compensated by treble damages as set out in the Ford Pinto line of jurisprudence;

- F. Whether, even if Defendant is able to prove it complied with regulatory requirements, which is denied, civil liability under Art. 976 C.C.Q. is triggered, in the absence of fault as abnormal inconvenience has arisen from abuse of property rights as per *Drysdale vs. Dugas* and *Ciment St-Laurent*;
- G. The right of the Applicant and each member of the class to claim damages, as well as moral, exemplary and Charter damages, from the Defendant;
- H. Whether, having knowledge of the nuisance and/or abuse of right, Defendant was at fault in not acting in a timely manner to curtail the pollution;
- I. Whether the class should be defined as:

All Quebec residents including owners, tenants or subtenants of immovable property, staff and students at daycares, primary and secondary schools as well as "involuntary residents", in the Borough of Riviere des Prairies, Montreal that have suffered silica dust, particle pollution and/or inhaled silica dust and asphalt pollution since December 30, 2017;

**IDENTIFY** as follows the conclusions sought with relation to such questions:

**DECLARE** that Defendant has contravened Articles 1, 2, 6, 7, 39, 46, 46.1 and 48 of the *Charter of Human Rights and Freedoms*;

**ORDER** the Defendant to take, within three (3) months, all measures necessary to ensure that further pollution of this nature does not occur;

**ORDER** Defendant to pay for medical monitoring and health damages for class members;

**CONDEMN** Defendant to remediate at its expense all environmental damage to residences, flora and fauna and trust lands in the identified zone;

**CONDEMN** Defendant to pay each owner on average \$15,000 per year for property damage and contamination of soil and gardens;

**CONDEMN** the Defendant to pay to tenants on average \$8,500 per year to compensate for loss of enjoyment of property;

**CONDEMN** the Defendant to pay to “involuntary residents” \$10,000 for each year of neighborhood annoyance to compensate for the loss of enjoyment of property;

**CONDEMN** the Defendant to pay all minor and disabled class members \$13,000 for the breach of their *Charter* rights;

**CONDEMN** the Defendant to pay each class member \$25,000 for moral damages including stress and inconvenience;

**ORDER** Defendant to pay all publication costs;

**ORDER** the collective recovery of said damages; and

**AUTHORIZE** the distribution of the balance in equal amounts between class members;

**DECLARE** that any member who has not requested his or her exclusion from the group be bound by any judgment to be rendered on the class action, in accordance with the law;

**FIX** the delay for exclusion at thirty (30) days following the Notice to Members, and that at the expiry members of the group who have not requested exclusion be bound by any judgment;

**ORDER** the publication at any date convenient to this Honourable Court of a Notice to Members in the Le Journal de Montréal, The Montreal Gazette, or any other appropriate newspaper or publication and further **ORDER** all costs of publication be borne by Defendant;

**REFER** the present record to the Chief Justice of this Honourable Court so that he or she may determine the district in which the class action is to be brought;

**ORDER** that should the class action be in another district, the clerk of the Court, upon receiving the decision of the Chief Justice, transmit the present record to the clerk of the district designated.

**THE WHOLE** with costs.

**MONTREAL**, this 30<sup>th</sup> day of December, 2020

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CHARLES O'BRIEN

Lorax Litigation for Brandone, Ricciutti and Basciano

**NOTICE TO DEFENDANT**  
**(Art. 119 C.C.P.)**

**TAKE NOTICE** that the Petitioner has filed this application in the office of the Superior Court of the judicial district of Montreal.

To file an answer to this application, you must first file an appearance, personally or by advocate, at the courthouse of Montreal, located at 1 Notre Dame Street East, Montreal, Quebec within 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 10-day period.

If you file an appearance, the application will be presented before the Court on **on a date and in a room to be determined** of the Courthouse. On that date, the Court may exercise such powers as are necessary to ensure the orderly progress of the proceeding, unless you make a written agreement with the Plaintiffs in Warranty's advocate on a timetable for the orderly progress of the proceeding.

In support of the Motion, Petitioners allege the Exhibits, referred to in the links in the proceedings and provided on the attached USB key.

### **Request for transfer of a small claim**

If the amount claimed by the Plaintiff does not exceed \$15,000 exclusive of interest and if you could have filed such an action in Small Claims Court, you may request of the clerk for the action to be disposed of pursuant to the rules of Book VIII, C. C. P. (R.S.Q., c. C-25). If you do not make such a request, you could be liable for costs.

Montreal, Quebec, this 30th day of December, 2020.

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Charles O'Brien for Petitioners

In support of the Motion Seeking Authorization, Petitioners allege the following Exhibits, referred to in the links or available on request: *(provided on the attached USB key)*

**Exhibit R-1:** Silica Collective Action sign up sheets;

**Exhibit R-2:** Silica dust exposure simulation Maps;

**Exhibits R-3, en liasse:**

**Exhibits R-3a:** Recy-Beton pictures;

**Exhibits R-3b:** Illegal dumping pictures;

**Exhibits R-3c:** Painted concrete pictures;

**Exhibit R-4:** IRMI "Expert Commentary – Silica the Next Environment Issue";

**Exhibit R-5:** IRSST. Report R-771 "Construction workers exposure to Crystalline Silica"; **Exhibit R-6:** Green washing: Recy-Beton web site screen captures;

**Exhibit R-7:** United States Environmental Protection Agency; "Ambient Levels and Noncancer Health Effects of Inhaled Crystalline and Amorphous Silica: Health Issue Assessment" ; EPA/600/R-95/115; November 1996

<https://nepis.epa.gov/Exe/ZyNET.exe/P100CTTF.TXT?ZyActionD=ZyDocument&Client=EPA&Index=1995+Thru+1999&Docs=&Query=&Time=&EndTime=&SearchMethod=1&TocRestrict=n&Toc=&TocEntry=&QField=&QFieldYear=&QFieldMonth=&QFieldDay=&IntQFieldOp=0&ExtQFieldOp=0&XmlQuery=&File=D%3A%5Czyfiles%5CIndex%20Data%5C95thru99%5CTxt%5C00000031%5CP100CTTF.txt&User=ANONYMOUS&Password=anonymous&SortMethod=h%7C-&MaximumDocuments=1&FuzzyDegree=0&ImageQuality=r75g8/r75g8/x150y150g16/i425&Display=hpfr&DefSeekPage=x&SearchBack=ZyActionL&Back=ZyActionS&BackDesc=Results%20page&MaximumPages=1&ZyEntry=1&SeekPage=x&ZyPURL>

**Exhibit R-8:**

Environmental Assessment Report 2017; *Air Quality in Montreal*; Service de l'environnement.

[http://ville.montreal.qc.ca/pls/portal/docs/PAGE/ENVIRO\\_FR/MEDIA/DOCUMENTS/VDM\\_BILANQUALITEAIR\\_2017\\_EN.PDF](http://ville.montreal.qc.ca/pls/portal/docs/PAGE/ENVIRO_FR/MEDIA/DOCUMENTS/VDM_BILANQUALITEAIR_2017_EN.PDF)<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3683189/>

**Exhibit R-9:** Bhagia, LJ; “Non-Occupational Exposure to Silica Dust”; *Indian Journal of Occupational Health*; Gujarat, India; Sept-Dec 2012; 16(3): 95-100.

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3683189/>

**Exhibit R-10:** Pile height estimation;

**Exhibit R-11:** Akbar-Khanzadeh, Farhang and Brillhart, Randall; “Respirable Crystalline Silica Dust Exposure During Concrete Finishing (Grinding) Using Hand-held Grinders in the Construction Industry”; *The Annals of Occupational Hygiene*, Volume 46, Issue 3, April 2002, Pages 341–346, Oxford University Press; April 2002

<https://academic.oup.com/annweh/article/46/3/341/271651>

**Exhibits R-12, en liasse:**

**Exhibit R-12a:** “Recycling Revisited - Contamination Risk from Lead Based Paint on Concrete”; IPPTS Associates <https://ipptsassociates.co.uk/>

**Exhibit R-12b:** “Inflammatory responses to secondary organic aerosols (SOA) generated from biogenic and anthropogenic precursors”; Wing y. Tse et al; September 26, 2017; *Copernicus Publications on behalf of the European Geosciences Union*. [Inflammatory responses to secondary organic aerosols \(SOA\) generated from biogenic and anthropogenic precursors](#)

**Exhibit R-12c:** Shedivy, Ryan and Edil, Tuncer B; “Leaching Characteristics of Recycled Asphalt Pavement Used as Unbound Road Base”; University of Wisconsin System Solid Waste Research Program: Student Project Report; May 2012

[https://www.wisconsin.edu/waste-research/download/2012\\_student\\_reports/12%20MSN%20Shedivy%20&%20Meier%20leaching%20of%20asphalt%20pavement\[1\].pdf](https://www.wisconsin.edu/waste-research/download/2012_student_reports/12%20MSN%20Shedivy%20&%20Meier%20leaching%20of%20asphalt%20pavement[1].pdf)

**Exhibit R-12d:** “Asphalt-related emissions are a major missing nontraditional source of secondary organic aerosol precursors”; Peeyush Khare et al, *Science Advances*, vol 6, No 36; September 2, 2020 <https://advances.sciencemag.org/content/6/36/eabb9785>

**Exhibits R-13 en liasse:**

**Exhibit R-13a:** “Lignes directrices relatives à la gestion de Béton, de brique et d’asphalte issus des travaux de construction et de démolition et des résidus du secteur de la pierre de taille”; *Ministère du développement durable, de l’environnement et des parcs*; 2009.

<http://www.environnement.gouv.qc.ca/matieres/valorisation/lignesdirectrices/beton-brique-asphalte.htm>

**Exhibit R-13b:** Lamare, Eugene and Singh, OP; “Effect of cement dust on soil physico-chemical properties around cement plants in Jaintia Hills, Meghalaya”; *Environmental Engineering Research* 2020; 25(3): 409-417

<http://eeer.org/journal/view.php?number=1060>