CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

NO: 500-06-001154-216

(Class Action)
SUPERIOR COURT

P. ROY

Plaintiff

-vs.-

RESPIRONICS, INC., legal person duly constituted, having its head office at 1001 Murray Ridge Lane, City of Murraysville, State of Pennsylvania, 15668, USA

and

PHILIPS ELECTRONICS LTD., legal person duly constituted, having its principal establishment at 100-774 boul. Décarie, City of Montreal, Province of Quebec, H4L 3L5

Defendants

APPLICATION TO AUTHORIZE THE BRINGING OF A CLASS ACTION & TO APPOINT THE PLAINTIFF AS REPRESENTATIVE PLAINTIFF
(Art. 574 C.C.P and following)

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

I. GENERAL PRESENTATION

A) The Action

1. The Plaintiff wishes to institute a class action on behalf of the following class, of which he is a member, namely:

    - All persons residing in Quebec who purchased and/or used CPAP/BiPAP machines or ventilators (the “Recalled Breathing Machines”) designed and manufactured by PHILIPS, or any other group to be determined by the Court;

2. “Recalled Breathing Machines” includes the following affected devices manufactured before April 26, 2021:

    A. Trilogy 100
    B. Trilogy 200
    C. Garbin Plus, Aeris, LifeVent
    D. A-Series BiPAP Hybrid A30
    E. A-Series BiPAPV30 Auto
    F. A-Series BiPAP A40
    G. A-Series BiPAPA30
    H. E30
    I. DreamStation ASV
    J. DreamStation ST, AVAPS
    K. SystemOne ASV4
    L. C-Series ASV
    M. C-Series S/T and AVAPS
    N. OmniLab Advanced+
    O. SystemOne (Q-Series)
    P. DreamStation
    Q. DreamStation Go
    R. Dorma 400
    S. Dorma 500
    T. REMstar SE Auto

    The whole as appears more fully from a copy of the Defendants’ Recall Notification (US and Canada) / field safety notice (international markets) and from a copy of an extract from the Defendants’ website at www.philipssrcupdate.expertinquiry.com, produced here *en liasse* as **Exhibit R-1**;

3. On Health Canada’s Recalls and Safety Alerts, the affected Continuous Positive Airway Pressure (CPAP), Bi-Level Positive Airway Pressure (BiPAP), and Mechanical Ventilators are described as follows:

    A. BIPAP AUTOSV WITH SMARTCARD INT
    B. BIPAP AUTOSV WITH SMARTCARD INT, CORE PKG
    C. BIPAP SYNCHRONY VENTILATORY SUPPORT SYSTEM WITH SMARTCARD
    D. BIPAP SYNCHRONY VENTILATORY SUPPORT SYSTEM WITH SMARTCARD-CORE PACK
    E. TRILOGY 100 VENTILATOR, CANADA
    F. TRILOGY 100 VENTILATOR-INTERNATIONAL
    G. BIPAP AVAPS CORE PACKAGE, NORTH AMERICA
    H. BIPAP AUTOSV ADVANCED/ENCORE SMARTCARD
    I. BIPAP AUTOSV ADVANCED/ENCORE SMARTCARD/HEATED HUMIDIFIER
    J. TRILOGY 200, CANADA

K. BIPAP A30 SYSTEM-VENTILATOR
L. BIPAP A30 SYSTEM-VENTILATOR & SYSTEM ONE A-SERIES HEATED HUMIDIFIER
M. BIPAP A40, CANADA
N. BIPAP A40, CANADA, CORE PACKAGE

The whole as appears more fully from a copy of Health Canada's Recalls and Safety Alerts, produced herein as **Exhibit R-2**;

4. Health Canada's Recalls and Safety Alerts (Exhibit R-2) describes the problem with the Recalled Breathing Machines as follows:

> "Reason
>
> Philips has become aware of two (2) issues that may pose a risk for patients or users of Philips Respironics branded Continuous Positive Airway Pressure (CPAP), Bi-Level Positive Airway Pressure (BIPAP), and Mechanical Ventilators:
>
> 1. Philips has determined from user reports and testing that the Polyester-Based Polyurethane (PE-PUR) sound abatement foam used in Philips continuous and non-continuous ventilators may degrade under certain circumstances, and the degraded particles could potentially enter the air pathway of the device. This issue affects Philips Respironics branded CPAP's, Bi-Levels, and Mechanical Ventilators.
>
> 2. The results of testing performed by Philips indicate that the PE-PUR sound abatement foam used in these devices may emit certain chemicals. Our investigation to date indicates that this emission occurs during initial operation and may possibly continue throughout the device's useful life.
>
> These issues impact all device product platforms manufactured with Polyester Polyurethane (PE-PUR) sound abatement foam. There is no specific population of device serial numbers which are impacted."

B) <u>The Defendants</u>

5. Defendant Respironics Inc. is an American corporation with its head office in Pennsylvania, USA. It is the manufacturer of the Recalled Breathing Machines and it is the registrant of several Canadian trademarks including BIPAP (TMA382361), REMSTAR (TMA383723), REMSTAR CHOICE (TMA421571), the whole as appears more fully from a said listings from the CIPO database, produced herein *en liasse* as **Exhibit R-3**;

6. Defendant Philips Electronics Ltd. is a federally-incorporated Canadian company with its head office Toronto, Ontario, the whole as appears more fully from a copy of the entry for Defendant Philips Electronics Ltd. from the *Registraire des*

entreprises, produced herein as **Exhibit R-4**. It is believed to be involved in the distribution and sale on the Recalled Breathing Machines in Canada;

7. Given the close ties between the Defendants and considering the preceding, both are solidarily liable for the acts and omissions of the other. Unless the context indicates otherwise, both Respondents will be referred to as "Philips" for the purposes hereof;

C) The Situation

a) Sleep Apnea – Explained

8. Sleep apnea is a serious and chronic sleep-related breathing disorder. The word apnea means 'no breathing', and sleep apnea refers to pauses in breathing that occur during sleep. On average, these pauses last for 10 to 30 seconds, until the brain reacts to overcome the problem, the whole as appears more fully from a copy of the Public Health Agency of Canada document entitled "What is the Impact of Sleep Apnea on Canadians? Fast Facts from the 2009 Canadian Community Health Survey – Sleep Apnea Rapid Response" dated 2013 and from a copy of the Statistics Canada Health Fact Sheet entitled "Sleep Apnea in Canada, 2016 and 2017" dated October 24, 2018, produced herein *en liasse* as **Exhibit R-5**;

9. The main types of sleep apnea are:

- Obstructive sleep apnea (OSA) or obstrucitve sleep apnea-hypopnea syndrome (OSAHS): the more common form that occurs when throat muscles relax;

- Central sleep apnea (CSA) or central sleep apnea-hypopnea syndrome (CSAHS): which occurs when your brain does not send proper signals to the muscles that control breathing;

- Complex Sleep Apnea Syndrome/ Mixed Sleep Apnea: also known as treatment-emergent central sleep apnea, which occurs when someone has both obstructive sleep apnea and central sleep apnea;

The whole as appears more fully from a copy of the Canadian Thoracic Journal article entitled "Canadian Thoracic Society guidelines: Diagnosis and treatment of sleep disordered breathing in adults" dated October 2006, from a copy of an extract from the website www.mayoclinic.org and from a copy of an extract from the Sleep Foundation website at www.sleepfoundation.org, produced herein *en liasse* as **Exhibit R-6**;

10. Studies have found sleep apnea is associated with cardiovascular, coronary artery disease and other cardiac related conditions, such as heart failure and cardiac arrhythmia, the whole as appears more fully from a copy of the Journal of Human Hypertension article entitled "Obstructive sleep apnea, hypertension and cardiovascular diseases" dated March 12, 2015 and from a copy of the Journal of

Thoracic Disease article entitled “Epidemiological aspects of obstructive sleep apnea” dated 2015, produced herein *en liasse* as **Exhibit R-7**;

11. Other known associated diseases of sleep apnea include obesity, diabetes, and depression. Sleep apnea affects both men and women and has personal, social and economic impacts that affect our overall healthcare system (Exhibit R-7), the whole as appears more fully from a copy of the Sleep Medicine Reviews article entitled “Gender differences in obstructive sleep apnea and treatment implications” dated December 2008, produced herein as **Exhibit R-8**;

12. If left untreated, sleep apnea can increase the risk of health complications. Sleep disturbances and repeated reductions in blood oxygen levels result in excessive daytime fatigue/sleepiness, reduced quality of life, and impaired cognitive function such as memory loss, poor concentration, and depression. Additionally, sleepiness, which is the primary symptom of sleep apnea, increases the risk of motor vehicle collisions and work-related injuries (Exhibit R-5);

13. Untreated sleep apnea is also associated with serious health conditions that include (Exhibits R-5 and R-6):

    - Hypertension (high blood pressure). Sudden drops in blood oxygen levels during sleep apnea increase blood pressure and strain the cardiovascular system;

    - Heart problems, including ischemic heart disease[1], irregular heart beat, heart failure, stroke, recurrent heart attacks, and exacerbation of existing heart disease, which can lead to sudden death;

    - Cerebrovascular disease[2];

    - Depression;

    - Type 2 diabetes;

    - Metabolic syndrome. this includes high blood pressure, abnormal cholesterol levels, high blood sugar, and increased waist circumference;

    - Complications with medications and surgery: obstructive sleep apnea is also a concern with certain medications and general anesthesia;

    - Liver problems: nonalcoholic fatty liver disease;

[1] Ischemic heart disease is a condition of recurring chest pain or discomfort that occurs when a part of the heart does not receive enough blood.

[2] Cerebrovascular disease refers to a variety of conditions that affect the supply of blood to the brain. These can include several types of stenosis, aneurysms and vascular malformations, and can lead to transient ischemic attacks, hemorrhaging and strokes.

- Worsening of ADHD;

14. An estimated 5.4 million (22%) Canadian adults have been diagnosed with sleep apnea or are at high risk of experiencing obstructive sleep apnea, the whole as appears more fully from a copy of the Canadian Respiratory Journal article entitled "Sleep laboratory test referrals in Canada: Sleep Apnea Rapid Response Survey" dated January/February 2014, produced herein as **Exhibit R-9**;

15. An estimated 858,900 Canadian adults 18 years and older reported being told by a health professional that they have sleep apnea (Exhibit R-5):

    - The prevalence of self-reported sleep apnea was 3% among adults ages 18 years and older; this rose to 5% in individuals 45 years and older;

    - Three out of four Canadians reporting sleep apnea (75%) were 45 years and older;

    - The prevalence of self-reported sleep apnea in adult men was nearly double that in adult women;

    - 25% of adults reporting sleep apnea rated their general health as fair or poor compared to 11% in the general population;

16. Continuous Positive Airway Pressure ("CPAP") and Bilevel Positive Airway Pressure ("BiPAP") machines are commonly used to treat sleep apnea; ventilators treat respiratory failure. These devices express air into patients' airways. CPAP and BiPAP machines are intended for daily use and ventilators are used continuously while needed. Without these devices, some patients may experience severe symptoms, including heart attack, stroke, and death by asphyxiation;

17. Sleep apnea patients typically use these machines every night when they sleep. Symptoms may return quickly without continued use;

b) <u>The Recall</u>

18. On April 26, 2021, the Defendants released the following announcement:

> "Regulatory Update
>
> Philips has determined from user reports and testing that there are possible risks to users related to the sound abatement foam used in certain of Philips' sleep and respiratory care devices currently in use. The risks include that the foam may degrade under certain circumstances, influenced by factors including use of unapproved cleaning methods, such as ozone*, and certain environmental conditions involving high humidity and temperature. The majority of the affected devices are in the first-generation DreamStation product family. Philips' recently launched next-generation CPAP platform, DreamStation 2, is not affected. Philips is in the process of engaging with the

> relevant regulatory agencies regarding this matter and initiating appropriate actions to mitigate these possible risks. Given the estimated scope of the intended precautionary actions on the installed base, Philips has taken a provision of EUR 250 million."

The whole as appears more fully from a copy of The Globe and Mail article entitled "Philips delivers Q1 sales of EUR 3.8 billion, with 9% comparable sales growth; net income amounts to EUR 40 million and Adjusted EBITA margin improves 390 basis points to 9.5%" dated April 26, 2021 and from a copy of an extract from the Defendants' website at www.philips.ca, produced herein *en liasse* as **Exhibit R-10**;

19. On June 14, 2021, the company issued a Recall Notification and stated:

> "To date, Philips has produced millions of Bi-Level PAP, CPAP and mechanical ventilator devices using the PE-PUR sound abatement foam. Despite a low complaint rate (0.03% in 2020), Philips determined based on testing that there are possible risks to users related to this type of foam. The risks include that the PE-PUR foam may degrade into particles which may enter the device's air pathway and be ingested or inhaled by the user, and the foam may off-gas certain chemicals. The foam degradation may be exacerbated by use of unapproved cleaning methods, such as ozone,** and high heat and high humidity environments may also contribute to foam degradation.
>
> Therefore, Philips has decided to voluntarily issue a recall notification* to inform patients and customers of potential impacts on patient health and clinical use related to this issue, as well as instructions on actions to be taken."

The whole as appears more fully from a copy of said Recall Notification dated June 14, 2021, produced herein as **Exhibit R-11**;

20. Philips has known about these dangers for years but did nothing to warn the public or its customers about these hazards until April 26, 2021 and did not recall the Recalled Breathing Machines until June 14, 2021;

21. The Recall Notification (Exhibit R-7) advises patients and customer to the following actions:

> "For patients using affected BiLevel PAP and CPAP devices: Discontinue use of your device and work with your physician or Durable Medical Equipment (DME) provider to determine the most appropriate options for continued treatment. To continue use of your device due to lack of alternatives, consult with your physician to determine if the benefit of continuing therapy with your device outweighs the risks identified in the recall notification.*
>
> For patients using affected life-sustaining mechanical ventilator devices: Do not stop or alter your prescribed therapy until you have talked to your

physician. Philips recognizes that alternate ventilator options for therapy may not exist or may be severely limited for patients who require a ventilator for life-sustaining therapy, or in cases where therapy disruption is unacceptable. In these situations, and at the discretion of the treating clinical team, the benefit of continued usage of these ventilator devices may outweigh the risks identified in the recall notification.*"

22. Despite the recall, Philips has yet to repair or replace the affected devices, which many patients rely upon on a daily basis to treat serious medical conditions – leaving Class Members instead to either buy or rent new devices;

c) The Safety Hazard

23. The recall notification (U.S. and Canada) / field safety notice (International Markets) informs customers and users of potential impacts on patient health and clinical use related to this issue. Possible health risks include exposure to degraded sound abatement foam, for example caused by unapproved cleaning methods such as ozone, and exposure to chemical emissions from the foam material, the whole as appears more fully from a copy of an extract from the Defendants' Sleep and Respiratory Care Update – Frequently Asked Questions, produced herein as **Exhibit R-12**;

24. There are two issues related to the polyester-based polyurethane (PE-PUR) sound abatement foam used in these devices:

1) PE-PUR foam may degrade into particles which may enter the device's air pathway and be ingested or inhaled by the user, and

2) The PE-PUR foam may off-gas certain chemicals.

The foam degradation may be exacerbated by use of unapproved cleaning methods, such as ozone (see FDA safety communication on use of ozone cleaners), and off-gassing may occur during initial operation and may possibly continue throughout the device's useful life, the whole as appears more fully from a copy of the Philips letter from the Medical Leader, Philips Sleep and Respiratory Care, produced herein as **Exhibit R-13**;

II. FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE PLAINTIFF

25. The Plaintiff is a 53-year-old male who works as an airline pilot. He was diagnosed by his physician with hypopnea on or about October 2006. This condition involves him being constantly be woken up almost every minute because he is not getting enough air into his lungs, leaving him very tired the next day. The Plaintiff cannot risk being to be tired during work hours, considered that his job requires the safe handling of an airplane (as well as the passengers inside of it);

26. Hypopnea is a sleep breathing disorder that causes shallow breathing episodes. This restricted breathing lowers blood oxygen levels and, if left untreated, can be a

risk factor for conditions like cardiovascular disease and diabetes. Sleep apnea and hypopnea are closely related, however, the main difference is that people stop breathing entirely during an apnea event rather than only breathing shallowly, like they do during a hypopnea;

27. The Plaintiff owns 3 Recalled Breathing Machines which he uses every single night: (a) DreamStation CPAP ProHumHT (b) REMstar Pro C-Flex+ (c) REMstar Auto A-Flex. All of these dev ices were 100% paid for under his health insurance plan, which allows him to buy 1 device every 5 years;

28. On June 22, 2021, the Plaintiff received an email from his sleep clinic (*La clinique du sommeil des Laurentides*) informing him about the Defendants' recall and referring him to the Defendants' recall webpage. The email advised as follows:

> La clinique du sommeil tient à informer ses patients que l'entreprise Philips à annoncer un rappel volontaire pour des millions d'unités de la pression positive des voies respiratoires à deux niveaux Philips (PAP à deux niveaux), de la pression positive continue des voies respiratoires (PPC) et des ventilateurs mécaniques. Bien que nous n'en sommes pas responsables.

The whole as appears more fully from a copy of the email from *La Clinique de sommeil* dated June 22, 2021, produced herein as **Exhibit R-14**;

29. The Plaintiff filled out the Defendants' repair and replacement program registration online for 1 of his devices and received a registration number. However, no timeline was given as to when his device would be remedied;

30. The Plaintiff tried to stop using his devices for 2 nights of sleep, but he was noticeably both physically and emotionally exhausted because of the interruptions in his sleep caused by his hypopnea;

31. The aviation industry is highly regulated in Canada under the *Aeronautics Act*, RSC 1985, c A-2 and the *Canadian Aviation Regulations*, SOR/96-433;

32. The *Canadian Aviation Regulations* outline regulations pertaining to flight crew medical requirements, and Subpart 424 contains the medical standards. There is no specific medical guidance to civil aviation medical examiners regarding OSA; however, the regulations include "fatigue risk management promotion", which includes Transport Canada's mandatory training in sleep disorders detection and management, the whole as appears more fully from a copy of the Transportation Safety Board of Canada Aviation Investigation Report A15H0002 dated March 29, 2015 and from a copy of the Transport Canada document entitled "Developing and Implementing a Fatigue Risk Management System" dated April 2007, produced herein *en liasse* as **Exhibit R-15**;

33. Transport Canada relies on pilots who have been diagnosed with sleep apnea to accurately report symptoms that interfere with their daily lives, such as ongoing daytime sleepiness;

34. In order for the Plaintiff to effectively manage his sleep apnea to maintain his medical certification to be a pilot, to be able to reduce his aeromedical risk and to be able to continue his livelihood of piloting airplanes safely, he must sleep with a breathing machine;

35. On July 7, 2021, the Plaintiff went to his sleep clinic, where he confirmed that all of his 3 devices were part of the recall. The clinic registered his other 2 devices to the Defendants' repair and replacement program. Again, no timeline was given as to when his devices would be remedied;

36. The Plaintiff's sleep clinic had a waiting list for any replacement devices (that were not part of the recall) and he would need to pay full price, but because it had not been 5 years since his last purchase, his insurance would not cover these costs;

37. On July 7, 2021, the Plaintiff purchased 2 new devices, a Res-Med Airsense 10 AutoSet avec HumidAir for $999.99 plus shipping and handling for a total cost of $1,005.53 CPAP and a Res-Med AirMini auto ultra-portable travel machine (with N20 setup (no mask)) for $1,060.00 plus shipping and handling for a total cost of $1,090.00. Together, the Plaintiff has spent a total cost of $2,095.53, the whole as appears more fully from copies of the Amazon receipts dated July 7, 2021, produced herein *en liasse* as **Exhibit R-16**;

38. The Plaintiff has suffered, at least, the following damages:

    a) The purchase price of the 2 new devices (i.e. $2,095.53);
    b) Trouble and inconvenience;
    c) Possible physical injuries (only time will tell);
    d) Emotional injuries, as he is fearful of the long-term health consequences of having breathed in debris, particles, chemicals, and volatile organic compounds (VOCs);

39. The Plaintiff is also entitled to punitive damages as a result of the Defendants' behaviour;

40. The Plaintiff's damages are a direct and proximate result of the Defendants' conduct;

41. In consequence of the foregoing, the Plaintiff is justified in claiming damages;

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

42. Every member of the Class has purchased and/or worn a Recalled Breathing Machine;

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

    a) The purchase price of the Recalled Breathing Machines;

    b) The purchase price or rental of another CPAP, BiPAP, or Ventilators for the period of time between when it was discovered that the Recalled Breathing Machines were not safe to use and when the Defendants repair, replaced or otherwise modified the Recalled Breathing Machines to correct the safety defect;

    c) Physical injuries suffered, including but not limited to, headache/dizziness, irritation (eyes, nose, respiratory tract, skin), inflammatory response, hypersensitivity, nausea/vomiting, asthma, adverse effects to other organs (e.g. kidneys and liver) and toxic carcinogenic affects;

    d) Emotional injuries after discovering that they had inhaled debris, particles, chemicals, and volatile organic compounds (VOC) from the Recalled Breathing Machines, including fear and anxiety of future bodily injury;

    e) Trouble and inconvenience;

    f) Out-of-pocket expenses associated with medical monitoring services;

    g) Punitive damages;

44. The Defendants engaged in wrongful conduct, while at the same time obtaining significant sums of money from Class Members;

45. All of these damages to the Class Members are a direct and proximate result of the Defendant's conduct;

IV. CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION

A) The composition of the Class makes it difficult or impracticable to apply the rules for mandates to sue on behalf of others or for consolidation of proceedings

46. The Plaintiff is not privy to the specific number of persons who purchased and/or wore the Recalled Breathing Machines; however, it is safe to estimate that it is in the tens of thousands. Nevertheless, the Defendants are in possession of records that could easily establish the size of the class to a reasonable degree of exactitude;

47. Class Members are numerous and are scattered across the entire province of Quebec;

48. In addition, given the costs and risks inherent in an action before the courts, many people will hesitate to institute an individual action against the Defendant. Even if the Class Members themselves could afford such individual litigation, it would place

an unjustifiable burden on the courts and, at the very least, is not in the interests of judicial economy. Furthermore, individual litigation of the factual and legal issues raised by the conduct of the Defendants would increase delay and expense to all parties and to the court system;

49. This class action overcomes the dilemma inherent in an individual action whereby the legal fees alone would deter recovery and thereby in empowering the consumer, it realizes both individual and social justice as well as rectifies the imbalance and restore the parties to parity;

50. Also, a multitude of actions instituted in different judicial districts risks having contradictory judgments on questions of fact and law that are similar or related to all members of the Class;

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

52. In these circumstances, a class action is the only appropriate procedure and the only viable means for all of the members of the Class to effectively pursue their respective rights and have access to justice;

B) <u>The claims of the members of the Class raise identical, similar or related issues of law or fact</u>

53. Individual issues, if any, pale by comparison to the common issues that are significant to the outcome of the litigation;

54. The damages sustained by the Class Members flow, in each instance, from a common nucleus of operative facts, namely, the Defendants' misconduct;

55. The claims of the members raise identical, similar or related issues of fact or law, namely:

a) Do the Recalled Breathing Machines pose a health danger?

b) Were the Defendants negligent in marketing and selling the Recalled Breathing Machines?

c) Did the Defendants fail to warn consumers regarding the risks of the Recalled Breathing Machines?

d) Are the Recalled Breathing Machines unfit for the purpose for which they were intended?

e) Did the Defendants know or should they have known about the risks associated with the use of the Recalled Breathing Machines?

f) Did the Defendants engage in false advertising when it represented that the Recalled Breathing Machines were safe or omitted to disclose material facts regarding the Recalled Breathing Machines safety?

g) Are the Defendants liable to pay compensatory damages to the Class Members?

h) Are the Defendants liable to pay punitive damages to the Class Members and, if so, in what amount?

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

V. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

57. The action that the Plaintiff wishes to institute on behalf of the members of the Class is an action in damages;

58. The conclusions that the Plaintiff wishes to introduce by way of an application to institute proceedings are:

GRANT the class action of the Plaintiff and each of the members of the Class;

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

CONDEMN the Defendants to pay to each member of the Class a sum to be determined in compensation of the damages suffered, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay punitive damages to each of the members of the Class, and ORDER collective recovery of these sums;

RESERVE the right of each of the members of the Class to claim future damages related to the use of Recalled Breathing Machines;

CONDEMN the Defendants to pay interest and additional indemnity on the above sums according to law from the date of service of the application to authorize a class action;

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;

CONDEMN the Defendants to bear the costs of the present action including expert and notice fees;

RENDER any other order that this Honourable Court shall determine and that is in the interest of the members of the Class;

A) <u>The Plaintiff requests that he be designated as representative of the Class</u>

59. The Plaintiff is a member of the Class;

60. The Plaintiff is ready and available to manage and direct the present action in the interest of the members of the Class that he wishes to represent and is determined to lead the present dossier until a final resolution of the matter, the whole for the benefit of the Class, as well as, to dedicate the time necessary for the present action before the Courts and the *Fonds d'aide aux actions collectives*, as the case may be, and to collaborate with his attorneys;

61. The Plaintiff has the capacity and interest to fairly, properly, and adequately protect and represent the interest of the members of the Class;

62. The Plaintiff has given the mandate to his attorneys to obtain all relevant information with respect to the present action and intends to keep informed of all developments;

63. The Plaintiff, with the assistance of his attorneys, is ready and available to dedicate the time necessary for this action and to collaborate with other members of the Class and to keep them informed;

64. The Plaintiff has given instructions to his attorneys to put information about this class action on their website and to collect the coordinates of those Class Members that wish to be kept informed and participate in any resolution of the present matter, the whole as will be shown at the hearing;

65. The Plaintiff is in good faith and has instituted this action for the sole goal of having his 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 the Defendants' conduct;

66. The Plaintiff understands the nature of the action;

67. The Plaintiff's interests do not conflict with the interests of other Class Members and further, the Plaintiff has no interest that is antagonistic to those of other members of the Class;

68. The Plaintiff is prepared to be examined out-of-court on his allegations (as may be authorized by the Court) and to be present for Court hearings, as may be required and necessary;

69. The Plaintiff has spent time researching this issue on the internet and meeting with his attorneys to prepare this file. In so doing, he is convinced that the problem is widespread;

B) <u>The Plaintiff suggests that this class action be exercised before the Superior Court of Justice in the district of Montreal</u>

70. A great number of the members of the Class reside in the judicial district of Montreal and in the appeal district of Montreal;

71. The Plaintiff's attorneys practice their profession in the judicial district of Montreal;

72. The present application is well founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT the present application;

AUTHORIZE the bringing of a class action in the form of an application to institute proceedings in damages;

APPOINT the Plaintiff as representative of the persons included in the Class herein described as:

- All persons residing in Quebec who purchased and/or used CPAP/BiPAP machines or ventilators (the "Recalled Breathing Machines") designed and manufactured by PHILIPS, or any other group to be determined by the Court;

IDENTIFY the principal issues of fact and law to be treated collectively as the following:

a) Do the Recalled Breathing Machines pose a health danger?

b) Were the Defendants negligent in marketing and selling the Recalled Breathing Machines?

c) Did the Defendants fail to warn consumers regarding the risks of the Recalled Breathing Machines?

d) Are the Recalled Breathing Machines unfit for the purpose for which they were intended?

e) Did the Defendants know or should they have known about the risks associated with the use of the Recalled Breathing Machines?

f) Did the Defendants engage in false advertising when it represented that the Recalled Breathing Machines were safe or omitted to disclose material facts regarding the Recalled Breathing Machines safety?

g) Are the Defendants liable to pay compensatory damages to the Class Members?

h) Are the Defendants liable to pay punitive damages to the Class Members and, if so, in what amount?

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

GRANT the class action of the Plaintiff and each of the members of the Class;

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

CONDEMN the Defendants to pay to each member of the Class a sum to be determined in compensation of the damages suffered, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay punitive damages to each of the members of the Class, and ORDER collective recovery of these sums;

RESERVE the right of each of the members of the Class to claim future damages related to the use of Recalled Breathing Machines;

CONDEMN the Defendants to pay interest and additional indemnity on the above sums according to law from the date of service of the application to authorize a class action;

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;

CONDEMN the Defendants to bear the costs of the present action including expert and notice fees;

RENDER any other order that this Honourable Court shall determine and that is in the interest of the members of the Class;

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

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

ORDER the publication of a notice to the members of the group in accordance with article 579 C.C.P. within sixty (60) days from the judgment to be rendered herein in LA PRESSE, the MONTREAL GAZETTE and LE SOLEIL;

ORDER that said notice be available on the Defendant’s website(s), as well as its Facebook page(s) and Twitter account(s) with a link stating “Notice to Recalled Breathing Machine Users”;

RENDER any other order that this Honourable Court shall determine and that is in the interest of the members of the Class;

THE WHOLE with costs, including all publication and dissemination fees.

Montreal, July 9, 2021

(s) Andrea Grass

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Per: Me Andrea Grass
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