

CANADA

(Class Action)
SUPERIOR COURT

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

FELICE PICCOLO

NO: 500-06-000921-185

Plaintiff

-vs.-

JOHNSON & JOHNSON INC.

Defendant

**APPLICATION BY THE PLAINTIFF FOR APPROVAL OF
A CLASS ACTION SETTLEMENT**

(Arts. 590 and 591 C.C.P., art. 58 *Regulation of the Superior Court of Québec in civil matters*, CQLR c C-25.01, r 0.2.1, and arts. 30 & 32 of the *Act respecting the Fonds d'aide aux actions collectives*, CQLR c F-3.2.0.1.1)

TO THE HONOURABLE MR. JUSTICE DONALD BISSON OF THE SUPERIOR COURT, DISTRICT OF MONTREAL, DESIGNATED AS CASE-MANAGEMENT JUDGE OF THE PRESENT MATTER, YOUR PLAINTIFF STATES AS FOLLOWS:

A. INTRODUCTION AND BACKGROUND

1. On April 5, 2018, the Plaintiff filed an Application to Authorize the Bringing of a Class Action & to Appoint the Petitioner as Representative Plaintiff pursuant to art. 574 C.C.P. and following (the "Application for Authorization"), against the Defendant, as appears from the Court file;
2. The proposed class was defined as follows:
 - All persons residing in Canada who have purchased Aveeno Active Naturals Product(s) or any other group to be determined by the Court;Alternately (or as a subclass)
 - All persons residing in Quebec who have purchased Aveeno Active Naturals Product(s) or any other group to be determined by the Court;
3. The Application for Authorization alleges, *inter alia*, that the advertisements and representations made by the Defendant related to the Aveeno Active Naturals Products are false and/or misleading since they misrepresent to consumers that the ingredients inside the packaging are natural, whereas the Plaintiff alleges that those

ingredients are not natural and actually contain unnatural, synthetic, and potentially harmful ingredients (depending on the quantity);

4. The Defendant denies all allegations of wrongdoing, fault, liability, or damage of any kind to the Plaintiff or to the Class, and deny that it acted wrongfully in any way;
5. On August 22, 2021, the Parties executed a national settlement agreement to fully and finally settle all claims asserted in or related to the present class action (the "Settlement Agreement"), as appears from a copy of said Settlement Agreement, produced herein in English and in French as **Exhibit R-1**;
6. By judgment dated September 28, 2021, this Honourable Court *inter alia*:
 - (i) Authorized the class action for the purposes of settlement only on behalf of the following class described as:

<p>« Toutes les personnes qui ont acheté des Produits visés au Canada à la date du jugement approuvant les Avis d'action collective ou avant cette date et chacun de leurs conjoints, exécuteurs testamentaires, héritiers, successeurs, syndics de faillite, tuteurs, enfants en tutelle, mandataires et ayants droit, ainsi que toutes les personnes qui réclament par leur intermédiaire ou qui font valoir des demandes de réparation en double pour leur compte.</p> <p>Sont exclus du Groupe lié par le Règlement : (i) les personnes qui ont acheté les Produits visés aux fins de revente; (ii) les personnes qui présentent des réclamations pour des blessures corporelles découlant de l'utilisation des Produits visés; (iii) les Défenderesses ainsi que leurs dirigeants, administrateurs et employés, actuels ou anciens, ou les membres de leur famille immédiate; (iv) les personnes qui déposent une Demande d'exclusion valide en temps opportun; et (v) le juge saisi de la présente Action et les membres de sa famille immédiate »</p>	<p>"All persons who purchased Covered Products within Canada at any time on or before the date of the judgment approving the Class Notices and each of their spouses, executors, heirs, successors, bankruptcy trustees, guardians, wards, agents, and assigns, and all those who claim through them or who assert duplicative claims for relief on their behalf.</p> <p>Excluded from the Settlement Class are: (i) those who purchased Covered Products for purpose of resale; (ii) those with claims for bodily injuries arising from the use of Covered Products; (iii) Defendants and their current or former officers, directors and employees or members of their immediate families; (iv) any person who files a valid and timely Request for Exclusion; and (v) the Judge to whom this Action is assigned and any members of his/her immediate family.</p>
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- (ii) Approved the Class Notices to be published and disseminated in accordance with the Notice Program. This was accomplished on November 12, 2021 (the “Notice Date”);
 - (iii) Appointed Angeion Group as the Settlement Administrator;
 - (iv) Approved the Opt-Out Form and set the Opt-Out Deadline as 45 days following the publication of the Class Notice. There were no valid opt outs at any time; however, the Claims Administrator did receive and respond to 4 emails inquiring on the method to not be contacted again regarding this case – not having yet completed the steps to do so and the time limit has expired;
 - (v) Set the Objection Deadline as no later than 30 days prior to the Final Hearing Date. There were no objections at any time before or after this date;
7. The Parties selected January 3, 2022 as both the Opt-Out Deadline as well as the Objection Deadline for simplicity;
 8. By the present Application, the Plaintiff and the Defendant hereby jointly and respectfully ask this Honourable Court to approve the Settlement Agreement (Exhibit R-1) entered into between the Parties;
 9. Class Counsel considers the Settlement Agreement fair, reasonable and in the best interest of the Settlement Class Members, having regard to all the circumstances and the relevant criteria applicable to such approval;

B. THE SETTLEMENT AGREEMENT

10. The Plaintiff and the Defendant have agreed to the terms of the Settlement Agreement, which is subject to the approval of this Honourable Court, without any admission of liability whatsoever by the Defendant and for the sole purpose of resolving the dispute between the Parties;
11. The following is a summary of the key terms of the Settlement Agreement:

- (i) Settlement Fund and Cash Payments [s. IV. A. of the Settlement Agreement]:

The Defendant shall establish the Settlement Fund in the amount of US\$675,000.00, less the Notice and Claim Administration Expenses already paid by the Defendant, to be held in an interest-bearing escrow account within 30 days of the Final Judgment Approving Settlement.

Settlement Class Members are eligible to receive CA\$3.15 for each purchase of a Covered Product¹ for up to a maximum of 20 Covered Products (up to

¹ “Covered Product” is defined at s. II. A. 14. of the Settlement Agreement.

CA\$63.00) purchased during the Class Period², without the need to present a proof of purchase. However, the actual amount paid to individual claimants will depend upon the number of valid claims made;

These awards may be subject to a pro rata adjustment, upward (up to a maximum of CA\$126.00 per household) or downward, depending on the number of claims approved;

(ii) Claims Process [ss. IV. and V. of the Settlement Agreement]:

To receive a payment award, a Settlement Class Member must submit a valid and timely Claim Form to the Settlement Administrator by the Claims Deadline of March 11, 2022 (120 days after the Class Notice Date of November 12, 2021). Claim Forms are available at the Settlement Website and can be submitted electronically or by mail;

(iii) Injunctive Relief [s. IV. of the Settlement Agreement]:

As part of the consideration for the Agreement, the Defendant agrees to remove the term “Active Naturals” from the front label of all in-market Covered Products, where applicable, and if the term “Active Naturals” remains on the back or side of the label and if the product is not comprised entirely of naturally-derived ingredients, the Defendant agrees to include language on the back or side of the label that the Covered Products contain both naturally derived and non-naturally derived ingredients;

Given the logistics of designing and implementing label changes for the large number of Covered Products, they will be updated on a rolling basis from March 1, 2021 to June 30, 2023;

The Settlement Agreement does not preclude the Defendant from making further changes to the advertising and marketing of any of its product labels or marketing as the Defendant sees fit, provided that those changes do not conflict with the provisions of the Settlement Agreement;

(iv) Attorneys’ Fees and Expenses [ss. IV. C. and X. of the Settlement Agreement]:

The award of Attorneys’ Fees and Expenses will be paid from the Settlement Fund in the amount of US\$202,500, plus applicable taxes (representing 30% of the Settlement Fund), which amount must be approved by the Court at the Settlement Approval Hearing;

(v) Administration Expenses [ss. IV. A. I. and VI. of the Settlement Agreement]:

² The “Class Period” means any time prior to the date of the judgment approving the Class Notices; i.e. anytime before September 28, 2021.

The Defendant will pay the Notice and Claims Administration Expenses directly to the Settlement Administrator out of the Settlement Fund. Notice and Claims Administration Expenses are the reasonable fees and expenses incurred by the Settlement Administrator for administering the Settlement;

(vi) Releases [s. IX. of the Settlement Agreement]:

Upon the Effective Date³, and subject to fulfillment of all of the terms of the Agreement, each and every Releasing Party shall be permanently barred and enjoined from initiating, asserting and/or prosecuting any Released Claim against any Released Party in any court or any forum;

The U.S. Settlement

12. Substantially similar allegations were made in a class action filed in the United States (southern district of New York), which settled in *Goldemberg, et al. v. Johnson & Johnson Consumer Companies, Inc.*, case No. 7:13-cv-03073, as appears from a copy of the Joint Stipulation of Settlement dated May 26, 2017, produced herein as **Exhibit R-2**;
13. The U.S. Joint Stipulation of Settlement was approved by the Honourable Judge Nelson S. Román of the U.S. District Court for the Southern District of New York on November 1, 2017, as appears from a copy of the Order and Judgment dated November 1, 2017, produced herein as **Exhibit R-3**;
14. The U.S. settlement was funded by a US\$6.75 million settlement fund. Of that amount, USD \$2.25 million was paid as attorneys' fees (33% of the US settlement fund) and the balance went to pay notice costs, claims administration, service awards, US\$10,000 service awards to each of the 3 plaintiffs (US\$30,000) and eligible claimants;
15. Each claimant was entitled to claim US\$2.50 for each purchase of a covered product for up to 20 covered products (\$50.00), without any proof of purchase – there was no limit where there was a proof of purchase;

Distinct Features of the Canadian Settlement

16. The Canadian settlement was structured to maximize efficiency and compensation to the class by minimizing costs, while ensuring that Class Members receive similar per person compensation as U.S. class members (given the currency exchange rate);
17. At the time of the negotiations, US\$2.50 was the equivalent of CA\$3.15 (a 26% differential);

³ "Effective Date" is defined at s. II. A. 16 of in the Settlement Agreement as 30 days after the Final Judgment Approving Settlement.

18. Based on the U.S. settlement experience, counsel for the parties predicted that there would be approximately 19,699 approved claims in Canada (i.e. 196,997 x 10%) of this, very few, if any, would provide proof of purchase;
19. For this reason, the “proof of purchase” category was eliminated in the context of the Canadian Settlement, as the additional costs to administer a claims process involving proof of purchase would outweigh any potential benefit and diminish payments to Settlement Class Members;

C. THE CLASS NOTICES

20. In accordance with the Settlement Agreement and this Honourable Court’s Judgment approving the Class Notices dated September 28, 2021, notice was effectuated on November 12, 2021 via a Canada-wide press release, through Digital & Social Media Campaign, by posting on the Settlement Website at www.aveenoactivenaturals.ca, and by email to every person who had registered with Class Counsel (at the time this was 13,654 persons⁴), the whole as appears more fully from a copy of the Settlement Administrator Affidavit dated January 25, 2022, produced herein as **Exhibit R-4**;

D. APPROVAL OF THE SETTLEMENT AGREEMENT

21. It is respectfully submitted that the Settlement Agreement is fair, reasonable and in the best interest of the Settlement Class Members for the following reasons:
 - i) The Probability of Success
22. While the Plaintiff maintains that his action is well-founded and that the allegations contained therein have merit, the Defendant vigorously denies and contests his claims and allegations;
23. It is clear that the parties would have entered into a serious and contradictory debate between experts that would have necessitated deciding the accuracy of the Defendant’s marketing claims, as well as whether these claims had influenced a consumer’s buying decision and, if so, whether a premium price had been paid in reliance thereupon. This would have necessitated chemistry and marketing experts;
24. Further, the methodology for the calculation of damages is invariably controversial and oftentimes the subject of competing and expensive expert reports. This would have necessitated economics and statistics experts;
25. The Defendant also advances defences against class authorization based on the different individual understandings of “Active Naturals”;

⁴ This number has grown by almost 1,300 persons since the Class Notice was sent by email and is now 14,921 persons.

26. Were the Plaintiff to continue to litigate this case, there is of course the risk that he might not succeed in authorizing a class. Further, even if the class action were authorized, there is the possibility that the Plaintiff would not be able to prove a vital element of his claims, for example, that the alleged representations made any material difference in the consumers' buying decisions;
27. A potential appeal of a decision on the merits in this proceeding would increase litigation costs and cause delay;
28. These risks are abated through the Settlement Agreement which guarantee a good recovery to Settlement Class Members;
29. The settlement allows the Class to obtain compensation now, rather than continuing to face costly and time-consuming litigation;

ii) The Amount and Nature of Discovery

30. Class Counsel has performed significant legal and factual research, including, but not limited to, the review of the following:
 - a. The U.S. legal proceedings and the subsequent settlement agreement reached therein, including its expert reports, certification record, and various judgments rendered therein;
 - b. Many peer-reviewed scientific studies on the effects of the unnatural ingredients contained in the Aveeno Products;
 - c. Consultation with experts;
31. As a result, Class Counsel was in an advantageous position to assess the relative strengths and weaknesses of the case and to make an informed assessment of the Settlement Agreement as being fair, reasonable, and in the best interest of the Settlement Class Members;

iii) The Terms, Conditions, and Modalities of the Settlement Agreement

32. The details regarding the Settlement are set out in detail above. Suffice it to say that the Settlement Fund of US\$675,000.00 as well as the injunctive relief to correct the alleged false advertising is significant all of which were negotiated at arms'-length and which are similar in fairness to the U.S. settlement;
33. The mechanism to make a claim is fast and easy as the Claim Form can be filled out online at the Settlement Website www.aveenoactivenaturals.ca and submitted to the Settlement Administrator electronically or by email;
34. Class Members' questions can be answered in French and English by visiting the

Settlement Website (FAQs), or by calling the toll-free phone number⁵ established by the Settlement Administrator. Class Counsel also maintains a toll-free phone number that is always available to Class Members;⁶

iv) The Recommendation of Experienced Counsel

35. Class Counsel, which has extensive expertise in the area of class actions, has negotiated and is recommending the terms and conditions of the Settlement Agreement;
36. Counsel for the Defendant, Blake, Cassels & Graydon LLP, also has extensive experience in the area of class actions;
37. Class Counsel has come to this opinion in the context of having been immersed in the facts and legal issues, having been involved in an intense negotiation process;
38. Class Counsel believes that the Settlement Agreement provides substantial relief and benefits to the Settlement Class, particularly so in light of the risks that would arise from continuing the litigation against the Defendant;

v) Approval of the Plaintiff

39. The Plaintiff has been advised of the terms and conditions of the Settlement Agreement and has accordingly provided his instructions to enter into the Settlement on his own behalf and to seek court approval of the Settlement on behalf of all Settlement Class Members;

vi) The Future Expenses and the Probable Length of the Litigation

40. If the case were to proceed in an adversarial fashion, there would undoubtedly be protracted and costly litigation, including expert evidence and potential appeals;
41. Plaintiff and Class Counsel have weighed the costs and benefits to be obtained under the Settlement against the costs, risks and delays associated with the continued prosecution of this litigation and the likely appeals of any rulings in favour of either the Class or Defendant;
42. The Settlement Agreement provides substantial monetary and non-monetary benefits to the Class while avoiding the significant expenses, delays, and risks attendant to motion practice related to summary judgment, not to mention trial;
43. It is in the interests of judicial economy, proportionality and the Class Members that they receive compensation as quickly as possible;

⁵ The Settlement Administrator's toll-free phone number is 1-855-680-0660.

⁶ Class Counsel's toll-free phone number is 1-888-909-7863. This is the general line for the law firm and was not created specifically for the present settlement. However, each lawyer has an extension and can be reached directly.

vii) The Number and Nature of any Opt Outs and/or Objectors

44. Both the Opt-Out Deadline and the Objection Deadline expired on January 3, 2022 and there have been none of either (although, as explained above, there were 4 email inquiries requesting not to be contacted);
45. Although not determinative, the fact that there no (or very few if we consider these email inquiries to be valid) opt outs and no objections is strongly indication of significant support for the Settlement among Class Members;

viii) The Good Faith of the Parties and the Absence of Collusion

46. The Settlement was the product of good faith, adversarial, and arm's length negotiations over the course of many months;

ix) Positive Claim Rate

47. While not a formal approval criterion, a positive claim rate (coupled with a low objection/ opt-out rate) can be indicative that Class Members favour the settlement and consider the relief as fair and proper. As of August 16, 2016, there have been 29,165 claims filed, which is an exceptional claim rate in Class Counsel's experience;

E. ATTORNEYS' FEES AND EXPENSES

48. In accordance with the Settlement Agreement (see s. X) and the Class Notice, Attorneys' Fees and Expenses are being requested in amount of US\$202,500.00 plus applicable taxes, representing 30% of the Settlement Fund;
49. It is respectively submitted that the Attorneys' Fees and Expenses are fair, reasonable and justified in the circumstances for the reasons that follow;

i) The Mandate Agreement with the Plaintiff/ Class Representative

50. The mandate agreement entered into by the Plaintiff provides for compensation on the basis of a percentage of 30 percent of the amounts recovered or on the basis of a 3.5 times multiplier, whichever is higher:

"3. In accordance with paragraph 2 above, I hereby consent to have my attorneys withhold, retain and keep as payment on any amount of money received on behalf of myself and on behalf of all other members of the class:

a. all disbursements incurred;

and

b. attorneys' fees with regard to the present class action of the higher of the following two calculations:

(i) an amount equal to thirty percent (30%) of the total amount received, including interest, from any source whatsoever, whether by settlement or by judgment;

or

(ii) an amount equal to multiplying the total number of hours worked on by the attorneys in accordance with their hourly rates, which range between \$375 and \$775 per hour. This amount will then be multiplied by a multiplier of 3.5 to arrive at the total fee.

[The hourly rates are reviewed on an annual basis and are, therefore, subject to possible increases]

c. all applicable taxes on said amounts in paragraphs (a) and (b)

These attorneys' fees extend to all sums received for and in the name of the whole class affected by the present class action, and are in addition to the judicial fees and/or cost awards that can be attributed by law or the courts to the attorneys;

In the case where a specific amount of money is not awarded collectively or in the aggregate, whether by settlement or by judgment, or where each class member is compensated only for their individual claim, section b. (i) above shall be read to mean thirty percent (30%) of the total value as if every possible class member made such a claim."

51. In accordance with the mandate agreement, the calculations are as follows:

a. Disbursements	CA\$ 2,715.00
b. 30%	US\$202,500.00
x	(plus applicable taxes)
US\$675,000.00 (the Settlement Fund)	Approx. CA\$253,493.55
	(converted at an assumed exchange rate of 1.25)
TOTAL	\$ 361,469.80
	(plus applicable taxes)

Or

Lawyer	Time Spent	Hourly Rate	Amount
Jeff Orenstein Called to the QC Bar 2002 Called to the ON Bar 2011	263.25	\$675-\$775	\$ 186,093.80

Andrea Grass Called to the NY Bar 2009 Called to the QC Bar 2012 Called to the ON Bar 2013 Called to the CAL Bar 2015	270.5	\$475-\$575	\$ 135,687.50
Totals			\$ 321,731.30
		Multiplier (3.5)	\$1,126,059.55
Disbursements			\$ 2,715.00
		Total	\$1,128,774.55 (plus applicable taxes)

52. Therefore, the Settlement Agreement provides for less than the Mandate Agreement and reflects a compromise arrived at between the Parties;

ii) Time and Expenses Incurred by Class Counsel

53. As of the date of this Application, the combined dollar value of Class Counsel's unbilled time in prosecuting this litigation is approximately CA\$321,731.30;

54. Based on past experience and involvement in the post-settlement administration of previous class action settlements, the work involved for Class Counsel's ongoing future obligations to the settlement process beyond the final approval hearing will continue. In particular, Class Counsel estimates that such work will be valued in the region of CA\$30,000, which will bring the total base to approximately CA\$351,731.30;

55. As of the date of this Application, Class Counsel has expended CA\$2,715.00 in disbursements, which have been reasonably incurred in prosecuting this litigation;

56. The fee requested by Class Counsel at this time represents an abatement on the base fee incurred by counsel to date, with the anticipated work to be conducted by Class Counsel leading up to the Settlement Approval hearing and its role during the claims administration not yet accounted for;

iii) The Experience of Class Counsel

57. CLG has specialized in class action litigation since 2010. As such, the vast majority of its work is done on a contingency basis, meaning that for cases that are not successful, the firm receives no payment for work performed, which in some cases is quite significant;

58. Mtre Jeff Orenstein has been a member of the Quebec Bar since 2002 and the Ontario Bar since 2011 and has been involved in numerous, complex class actions since 2005. Mtre Josef Fridman has been a member of the Bar since 1971 and acts as counsel to the firm with extensive legal experience. Mtre Andrea Grass has been

a member of the Quebec Bar since 2012, the New York Bar since 2009, the Ontario Bar since 2013, and the California Bar since 2015. A copy of the biography of CLG is attached in support of the present Application as **Exhibit R-5**;

iv) The Time and Effort Dedicated

59. Over the past approximately 4 years, Class Counsel has dedicated significant time to the present file, as detailed above, all without any guarantee of payment;
60. Even before initiating this class action, the Plaintiff and Class Counsel exhaustively investigated the viability of the claims against Defendant, identified the relevant products, and obtained copies of allegedly false and misleading product labels and advertisements;
61. At all times, this litigation was complex and risky. Class Counsel conducted extensive legal and factual research in support of this claim and conducted protracted settlement negotiations;
62. Class Counsel did secure a Canada-wide class by convincing the Defendant to consent to national jurisdiction for the sole purpose of the Settlement Agreement;
63. The process of finalizing the Settlement Agreement and the related exhibits and other documents continued for many months following the achievement of a settlement in principle. Further work was also undertaken in anticipation of the Notice Approval and Settlement Approval Hearings (including the preparation of the present Application materials);
64. Further, Class Counsel has been, and will be, maintaining regular contact with the Settlement Administrator with respect to the ongoing processing of claims and any related future issues;

v) The Difficulties of this Case

65. The questions raised by this action include the following: Were the Defendant's representations false or misleading? Did consumers rely on the alleged representations? If so, was a premium price associated with these alleged representations?;
66. A very significant amount of time and financial resources would have been necessary to resolve these questions;

vi) The Importance of the Issue

67. The issues of alleged false or misleading advertising and consumer protection are directly related to the access to justice of many thousands of persons;
68. Consumer protection laws are in place to *inter alia* prevent businesses from gaining an unfair advantage over consumers through unjust practices. If the Settlement is

approved, his class action will serve to compensate consumers that allegedly spent more for skincare products than they would absent the alleged representations and, as such, has fulfilled its purpose;

69. Often, claims of this nature are consumer claims involving complicated evidentiary and technical issues, but yet relatively small sums of money. Questions of consumer protection often can only be pursued through class actions because individually, a person would not have the means to obtain justice against large corporations who have considerable financial resources at their disposal;
70. If it were not for this class action, Settlement Class Members would have been unlikely to institute individual actions to recover damages;

vii) The Risk Assumed

71. As is oftentimes the case in class actions, the risk of success or failure is borne entirely by Class Counsel. In the present case, Class Counsel took on the entire case on a contingency basis;
72. This meant that neither the Plaintiff, nor any Class Members were asked to contribute any fees for the time spent on the file, nor for any of the disbursements made on their behalf by Class Counsel;
73. No request for any funding was made to the *Fonds d'aide aux actions collectives*;
74. Further, the Mandate Agreement provides:
 - “4. The parties agree that neither the Representative nor the members of the class will be required to pay any fees, disbursements, costs or taxes whatsoever, other than those provided for in paragraph 3 of the present Agreement.”

75. Given that in the case of failure, Class Counsel receives nothing, in the case of success, they should be properly compensated for their efforts and for the financial risk that they have assumed;
76. Class Counsel has worked diligently over the past 4 years to advance this litigation to the point of settlement. Class Counsel's current fee request reflects a reduction on the time expended in bringing about the present settlement with the Defendant. To conserve and to safeguard the important societal benefits preserved by class actions, especially in the area of consumer protection, it is important that Class Counsel receive a fair multiplier or premium on their time to provide the appropriate incentive to future counsel;

viii) The Professional Services are Unusual and Require Specific Expertise

77. There are only a small number of attorneys who take on class action matters in Quebec and in Canada;

78. This type of work requires particular expertise and professionalism;
79. Often, in this type of work, communication with the public is also necessary, (e.g. by communicating with class members, maintaining and updating a functional and informative website, etc.). This requires the firm to be more proactive to protect the interests of the class members whom they represent;

ix) The Result Obtained

80. In terms of monetary compensation, the results obtained in this case were very good for Settlement Class Members and the injunctive relief is also very good;

x) Fees Not Contested

81. The Defendant takes no position regarding the Attorneys' Fees and Expenses as requested herein;
82. Further, no Settlement Class Member has indicated any intention to contest the Settlement Agreement or the request for Attorneys' Fees and Expenses despite being informed that such a hearing would take place as seen from the published Class Notice:

“Class Counsel’s legal fees and expenses to be paid from the Settlement Fund are of US\$202,500 converted into Canadian dollars (plus taxes) representing 30% of the Settlement Fund, subject to Court approval.”

83. The present Application is well-founded in fact and in law.

**PAR CES MOTIFS, PLAISE AU FOR THESE REASONS, MAY IT PLEASE
TRIBUNAL : THIS HONOURABLE COURT TO:**

ACCORDER la présente Demande; **GRANT** the present Application;

ORDONNER que, pour les fins du Jugement, les définitions énoncées à l'Entente de règlement, R-1, s'appliquent et y sont incorporées par renvoi; **ORDER** that for the purposes of this Judgment, the definitions contained in the Settlement Agreement, R-1, shall apply and are incorporated by reference;

ORDONNER qu'en cas de conflit entre le présent Jugement et l'Entente de règlement, ce Jugement prévaudra; **ORDER** that in the event of a conflict between this Judgment and the Settlement Agreement, this Judgment shall prevail;

DÉCLARER que l'Entente de règlement est valide, juste, raisonnable et dans le meilleur intérêt des Membres du Groupe; **DECLARE** that the Settlement Agreement is valid, fair, reasonable and in the best interest of the Settlement Class Members;

APPROUVER l'Entente de règlement conformément à l'article 590 du Code de Procédure Civile;

APPROVE the Settlement Agreement pursuant to article 590 of the Code of Civil Procedure;

DÉCLARER que l'Entente de règlement constitue une transaction au sens des articles 2631 et suivant du Code Civil du Québec et que ce Jugement ainsi que l'Entente de règlement lient toutes les Parties et tous les Membres du Groupe qui ne se sont pas exclus en temps utile;

DECLARE that the Settlement Agreement is a transaction within the meaning of articles 2631 and following of the Civil Code of Quebec and that this Judgment and the Settlement Agreement are binding on all parties and all Settlement Class Members who have not excluded themselves in a timely manner;

DÉCLARER qu'aux fins de l'administration et de l'exécution de L'Entente de règlement et du présent jugement, cette Cour conservera un rôle de surveillance continue et la Défenderesse reconnaît la compétence de cette Cour uniquement aux fins de l'approbation, de la mise en œuvre, de l'administration et de l'application de l'Entente de règlement et ce Jugement, sous réserve des modalités et conditions énoncées dans l'Entente de règlement;

DECLARE that for purposes of administration and enforcement of the Settlement Agreement and this Judgment, this Court will retain an ongoing supervisory role and the Defendant acknowledges the jurisdiction of this Court solely for the purpose of approving, implementing, administering and enforcing the Settlement Agreement and this Judgment, and subject to the terms and conditions set out in the Settlement Agreement;

DÉCLARE que la présente action collective est réglée hors cours sans frais de justice;

DECLARES that the present action is hereby settled out-of-court without legal costs;

APPROUVER le paiement aux Procureurs du Groupe de leurs honoraires extrajudiciaires et des débours de 202 500, 00\$US plus les taxes applicables conformément à l'Entente de règlement;

APPROVE the payment to Class Counsel of its extrajudicial fees and disbursements of US\$202,500.00 plus applicable taxes as provided for in the Settlement Agreement;

APPROUVER le paiement aux Procureurs du Groupe de leurs débours d'un montant de 2 715,00\$ plus les taxes applicables;

APPROVE the payment to Class Counsel of its disbursements in the amount of \$2,715.00 plus applicable taxes;

ORDONNER que les prélèvements du Fonds d'aide aux action collectives prévus à l'Entente de règlement soient remis conformément à la *Loi sur le fonds d'aide aux actions collectives* et s.1(1) du

ORDER that the levies for the *Fonds d'aide aux action collectives* as provided for in the Settlement Agreement be remitted according to the *Act respecting the Fonds d'aide aux actions*

Règlement sur le pourcentage prélevé par le Fonds d'aide aux actions collectives; *collectives and s.1(1) of the Regulation respecting the percentage withheld by the Fonds d'aide aux actions collectives;*

DÉCLARER qu'en cas de conflit entre la version française et la version anglaise du présent Jugement, la version anglaise prévaudra; **DECLARE** that in the event of a conflict between the French version and the English version of this Judgment, the English version shall prevail;

LE TOUT, sans frais de justice.

THE WHOLE, without legal costs.

Montreal, January 26, 2022

Andrea Grass

CONSUMER LAW GROUP INC.

Per: Me Andrea Grass
Attorneys for the Plaintiff

CONSUMER LAW GROUP INC.

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SOLEMN DECLARATION

I, Andrea Grass, attorney, practicing my profession at 1030 rue Berri, Suite 102, Montreal, Quebec, H2L 4C3, solemnly affirm:

1. That I am one of the attorneys for the Representative Plaintiff in this matter;
2. That I have taken cognizance of the Application attached and the facts alleged therein are accurate to the best of my knowledge;
3. That said Application is made in good faith.

AND I HAVE SIGNED

(S) Andrea Grass

Andrea Grass

Solemnly affirmed before me at Montreal
this 26th day of January 2022

(S) Michelle Fridman, #219648

Commissioner of Oaths
for the judicial district of Montreal

NOTICE OF PRESENTATION

TO: Me Robert Torralbo
Me Simon Seida

BLAKE, CASSELS & GRAYDON S.E.N.C.R.L./s.r.l.
1 Place Ville Marie, Bureau 3000
Montréal (Québec) H3B 4N8

Attorneys for Defendant

TAKE NOTICE that the present application will be presentable for adjudication before the Honourable Mr. Justice Donald Bisson of the Superior Court, at the Palais de Justice in Montreal, located at 1 Notre Dame East, in Quebec, Canada, H2Y 1B6 on **February 2, 2022 at 9h30 A.M.** in room 15.04.

Montreal, January 26, 2022

(S) Andrea Grass

CONSUMER LAW GROUP INC.

Per: Me Andrea Grass
Attorneys for the Plaintiff

CONSUMER LAW GROUP INC.

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N°: 500-06-000921-185

(Class Action)
SUPERIOR COURT
DISTRICT OF MONTREAL

FELICE PICCOLO

Plaintiff

-vs.-

JOHNSON & JOHNSON INC.

Defendant

**APPLICATION BY THE PLAINTIFF FOR APPROVAL
OF A CLASS ACTION SETTLEMENT**

(Arts. 590 and 591 C.C.P., art. 58 *Regulation of the Superior Court of Québec in civil matters*, CQLR c C-25.01, r 0.2.1, and arts. 30 & 32 of the *Act respecting the Fonds d'aide aux actions collectives*, CQLR c F-3.2.0.1.1)

COPY

Me Jeff Orenstein (Ext. 2)

Me Andrea Grass (Ext. 3)

CONSUMER LAW GROUP INC.

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