

CANADA

(Class Action)
SUPERIOR COURT

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

NO: 500-06-000921-185

FELICE PICCOLO

Plaintiff

-vs.-

JOHNSON & JOHNSON INC.
and
JOHNSON & JOHNSON
and
**JOHNSON & JOHNSON CONSUMER
COMPANIES, INC.**

Defendants

APPLICATION BY THE PLAINTIFF FOR:

- (A) PERMISSION TO DISCONTINUE AGAINST 2 OF THE 3 DEFENDANTS;
(B) AUTHORIZATION OF A CLASS ACTION FOR SETTLEMENT PURPOSES;
(C) APPROVAL OF THE CLASS NOTICE;
(D) APPROVAL OF THE NOTICE PROGRAM;
(E) APPROVAL OF THE CLAIM FORM;
(F) APPROVAL OF THE OPT-OUT FORM; AND
(G) APPOINTMENT OF THE SETTLEMENT ADMINISTRATOR;**

(Arts. 574, 575, 576, 579, 580, 581, 585, 590, and 591 C.C.P.
and arts. 63, 65, and 69 R.P.C.S.)

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 article 574 C.C.P. and following (the "Application for Authorization"), against the Defendants, as appears from the Court file;
2. The proposed class was defined as the following:

- 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 Defendants 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, when in fact, they are not natural and actually contain unnatural, synthetic, and potentially harmful ingredients (depending on the quantity);
 4. The Defendants strongly deny all allegations of wrongdoing, fault, liability, or damage of any kind to the Plaintiff or the Class, and denies that it acted improperly or wrongfully in any way;
 5. On or about August 22, 2021, a national out-of-court settlement was executed between the Parties to the present matter (the “Settlement Agreement”), as appears from a copy of said Settlement Agreement, produced herein as **Exhibit R-1**;
 6. The Settlement Agreement applies to persons who are members of the following Settlement Class (see Section II. Definitions A. 40. “Settlement Class” of the Settlement Agreement):

“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.

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.”

7. The Plaintiff and the Defendants have agreed to the terms of the Settlement Agreement, the whole subject to the approval of this Honourable Court;
8. The Plaintiff and the Defendants hereby respectfully ask this Honourable Court, *inter alia*, to:

- a) Allow the discontinuance of the present action against Defendants Johnson & Johnson and Johnson & Johnson Consumer Companies, Inc.;
 - b) Authorize the bringing of a class action against the Defendant Johnson & Johnson inc. for settlement purposes only;
 - c) Approve the Class Notice (the Short-Form version and the Long-Form version), draft copies of which are filed in support of the present Application in English and in French as **Exhibits R-2** and **R-3**, respectively;
 - d) Approve the Notice Program as outlined herein;
 - e) Approve the Claim Form, a copy of which is filed in support of the present Application in English and in French as **Exhibit R-4**;
 - f) Approve the Opt-Out Form, a copy of which is filed in support of the present Application in English and in French as **Exhibit R-5**; and
 - g) Approve Angeion Group as the Settlement Administrator;
9. Substantially similar allegations were made in a class action filed in the United States, which was subsequently settled¹;

B. AUTHORIZATION OF THE CLASS ACTION FOR SETTLEMENT PURPOSES

10. The Plaintiff respectfully asks that this Honorable Court authorize the bringing of a class action and to appoint himself as Representative Plaintiff of the Settlement Class Members;
11. The Defendants are consenting to the authorization of the present case as a class proceeding for the purposes of settlement only, which consent shall be withdrawn should the Settlement Agreement not be approved by this Honourable Court²;
12. When the defendants consent to the authorization of a class action for settlement purposes, the analysis of the criteria set forth at article 575 C.C.P. must still be met, but is flexible, and takes into account the fact of the settlement³;
13. The Application for Authorization dated April 5, 2018, and the Exhibits in support thereof, provide ample reasons to grant the present Application;

¹ *Goldemberg v. Johnson & Johnson Consumer Companies, Inc.*, U.S. District Court for the Southern District of New York, Case No. 7:13-cv-3073.

² *Communication Méga-Sat inc. c. LG Philips LCD Co. Ltd.*, 2013 QCCS 5592; *Lavoie c. Régie de l'assurance maladie du Québec*, 2013 QCCS 866; *Option Consommateurs c. Infineon Technologies, a.g.*, 2012 QCCS 6405; *9085-4886 Québec inc. c. Visa Canada Corporation*, 2014 QCCS 6701.

³ *Vallée c. Hyundai Auto Canada Corp.*, 2014 QCCS 3778; *Schachter c. Toyota Canada inc.*, 2014 QCCS 802; *Markus c. Reebok Canada inc.*, 2012 QCCS 3562; *Richard c. Volkswagen Group Canada inc.*, 2012 QCCS 5534.

14. The principal question of fact and law of whether or not the Defendants' engaged in unfair, false, misleading, or deceptive acts or practices regarding the manufacturing, distributing, marketing, advertising, promoting, packaging, labelling, selling, and/or representing the Aveeno Active Naturals Products as natural – is common to all Settlement Class Members and would have advanced the litigation in a not insignificant way;
15. The facts alleged (which are disputed by the Defendants and have not been proven in court) appear to justify the conclusions sought⁴;
16. The composition of the Settlement Class makes it difficult or impracticable to apply the rules for mandates to sue on behalf of others for consolidation of proceedings because:
 - a) Potential Settlement Class Members, of which there are many, are dispersed across the country;
 - b) Given the costs and risks inherent in instituting an action before the courts, people could hesitate to institute individual actions against the Defendants;
 - c) Individual litigation of the factual and legal issues raised would increase delay and expenses to all parties and would place an unjustifiable burden on the court system;
17. The Plaintiff, who is requesting to be appointed as the Representative Plaintiff, will fairly, properly, and adequately protect and represent the interest of the Settlement Class Members since it:
 - a) Is a Settlement Class Member;
 - b) Provided his attorneys with relevant information and instructed them to proceed with the proceedings;
 - c) Ensured that the Settlement Class Members would be kept up-to-date through its attorneys' website;
 - d) Participated in the settlement negotiations by providing input to his attorneys, ultimately instructing his attorneys to sign the Settlement Agreement;
 - e) Has a good understanding of what this class action is about and what the settlement provides to Settlement Class Members;
 - f) Has performed its responsibilities as Plaintiff of the Settlement Class and will continue to do so insofar as the proposed settlement is concerned;

⁴ Arts. 7 and 1457 of the Civil Code of Québec, LRQ, c C-1991, ss., 215, 216, 218, 219, 220 a), 221 c), d), f), g), 228, 239, 253, 270, and 272 of the Consumer Protection Act, CQLR c P-40.1, and ss. 36, and 52 of the Competition Act, RSC 1985, c C-34.

- g) Has always acted in the best interests of the Settlement Class Members;
- h) Has not indicated any potential conflict of interest with the Settlement Class Members;

C. CLASS NOTICE

18. By agreement with the Defendants, the Plaintiff seeks approval of the Class Notice in 2 forms: (i) Short Form Notice (Exhibit R-2) and (ii) Long Form Notice (Exhibit R-3), which shall be made available to Class Members in accordance with the Settlement Agreement and with the Notice Program (Exhibit R-4), which provides the following:
- A) Canada Nationwide press release, which is disseminate to all major Canadian new outlets;
 - B) Targeted digital banner ads, social media advertisements (paid Facebook and Instagram campaigns), and Google AdWords intended to generate 13,220,893 total impressions;
 - C) Posted on the Settlement Website;
 - D) Posted on Class Counsel's Website at www.clg.org, which has approximately 1,500 visitors per day;
 - E) By email to all 13,654 persons who have given their contact information to Class Counsel;
 - F) A summary posting on Class Counsel's Facebook, (37,0005 "likes"), Twitter (2,905 "followers"), and Instagram (1,844 "followers") pages;
19. The Class Notice satisfies the following criteria:
- a) It contains a plain and concise description of the nature of the class action, the history of the litigation, and the authorization for the class action for settlement purposes;
 - b) It outlines the details of the Settlement Agreement, including information on the identity of Settlement Class Members and how the proposed Settlement will provide them compensation;
 - c) It provides a description of the right to opt out of the Settlement, including the Opt-Out Deadline and the procedure for exercising this right;
 - d) It provides a description of the right to object to the Settlement, including the objection deadline and the procedure for exercising this right; and
 - e) It provides the date and location of the Final Approval Hearing;

20. The Parties propose that Angeion Group be appointed as the Settlement Administrator for the purposes of administering and overseeing the Claims Process, Notice Program, opt-outs and objections. Angeion Group has prepared a proposal where the estimate for with entire process, including their own fees and the Notice Program will be a total of \$164,612, the whole as appears more fully from a copy of Angeion Group's Settlement Administration Plan, produced herein as **Exhibit R-6**;
21. The present Application is well-founded in fact and in law.

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

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

PERMETTRE le désistement de la présente action collective contre les Défendeurs Johnson & Johnson et Johnson & Johnson Consumer Companies, Inc.; **ALLOW** the discontinuance of the present class action against Defendants Johnson & Johnson and Johnson & Johnson Consumer Companies, Inc.;

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

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

AUTORISER l'exercice d'une action collective contre le Défendeur Johnson & Johnson Inc. pour les fins d'un règlement hors cour seulement **AUTHORIZE** the bringing of a class action against the Defendant Johnson & Johnson Inc. for the purposes of the settlement only;

ATTRIBUER au Requérante le statut de représentant du groupe ci-après décrit : **APPOINT** the Plaintiff the status of representative of the class herein described as:

« 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

“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

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.

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 »;

claim through them or who assert duplicative claims for relief on their behalf.

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”;

FIXER l'audition de la Demande d'approbation de l'Entente de règlement (l'« Audience d'approbation définitive ») qui aura lieu à une heure et à une date à déterminer, où cette Cour devra alors décider :

- a) s'il convient d'approuver l'Entente de règlement comme étant juste, raisonnable et dans le meilleur intérêt des Membres du groupe lié par le règlement;
- b) si la demande des Avocats du Groupe relativement aux frais, débours et taxes applicables devrait être accordée; et
- c) tout autre sujet que la Cour jugera appropriée;

ORDONNER que la date et l'heure de l'Audience d'approbation finale soient indiquées dans les Avis d'action collective, mais qu'elles puissent être ajournées par ce Cour sans autre publication d'un avis

SET the hearing of the Application for Approval of the Settlement Agreement (“Final Approval Hearing”) to be held at a time and on a date to be determined, at which time this Court will be asked to decide:

- a) whether to approve the Settlement Agreement as fair, reasonable and in the best interest of the Settlement Class Members;
- b) whether Class Counsel's application for fees, disbursements and applicable taxes should be granted; and
- c) any other matters as the Court may deem appropriate;

ORDER that the date and time of the Final Approval Hearing shall be set forth in the Class Notices, but may be subject to adjournment by this Court without further publication of any notice to members of the

aux Membres du groupe lié par le règlement autrement qu'en affichant une toute nouvelle date et heure pour cette audience sur le site Web du règlement établi et maintenu par l'Administrateur du règlement;

APPROUVER la forme et le contenu des Avis d'action collective (dans leurs versions française et anglaise) essentiellement en conformité avec l'Avis abrégé et l'Avis détaillé communiqués comme Pièces R-2 et R-3;

APPROVE the form and content of the Class Notices (both French and English versions) substantially in conformity with the Short-Form and Long-Form notices communicated as Exhibits R-2 and R-3;

ORDONNER que les Avis d'action collective soient diffusés conformément au Programme de notification;

ORDER that the Class Notices be disseminated in accordance with the Notice Program;

NOMMER Angeion Group comme Administrateur du règlement afin d'accomplir les tâches qui lui sont dévolues en vertu de l'Entente de règlement;

APPOINT Angeion Group as the Settlement Administrator for the purposes of accomplishing the tasks that devolve to it pursuant to the Settlement Agreement;

DÉCLARER que les Parties à l'Entente de règlement n'ont aucune responsabilité pour l'administration du règlement et n'auront aucune responsabilité ou obligation financière quelle qu'elle soit en ce qui concerne les actes, la négligence ou les malversations de l'Administrateur du règlement, ni en ce qui concerne l'investissement, la distribution ou l'administration des fonds du règlement une fois qu'ils ont été remis à l'Administrateur du règlement;

DECLARE that the Parties to the Settlement Agreement have no responsibility for the administration of the settlement and shall not have any liability or financial obligation whatsoever with respect to any acts, negligence or malfeasance of the Settlement Administrator, nor in relation to the investment, distribution or administration of monies in the Settlement Funds once they have been remitted to the Settlement Administrator;

ORDONNER que, conformément aux termes de l'Entente de règlement, tous les coûts associés à la diffusion des Avis d'action collective en vertu du Programme de notification soient payés à même le Fonds de règlement;

ORDER that, in accordance with the terms of the Settlement Agreement, all costs associated with the dissemination of the Class Notices pursuant to the Notice Program shall be paid from the Settlement Fund;

ORDONNER que les frais du Plan de notification et de l'Administrateur du

ORDERS that the costs of the Notice Plan and of the Settlement Administrator will be

règlement seront payés suivant les termes de l'Entente de règlement;

paid for in accordance with the Settlement Agreement;

APPROUVER la forme et le contenu du Formulaire d'exclusion essentiellement conforme à la formulaire communiqué comme Pièce R-4;

APPROVES the form and content of the Claim Form substantially in conformity with the form communicated as Exhibit R-4;

APPROUVER la forme et le contenu du Formulaire de réclamation essentiellement conforme à la formulaire communiqué comme Pièce R-5;

APPROVES the form and content of the Opt-Out Form substantially in conformity with the form communicated as Exhibit R-5;

ORDONNER que les membres du Groupe de règlement peuvent s'exclure de l'action collective en envoyant une demande écrite d'exclusion à l'Administrateur du règlement à l'adresse indiquée dans l'Avis détaillé, ainsi qu'en envoyant une copie dudit Formulaire d'exclusion au Greffe de la Cour supérieure du Québec à l'adresse suivante :

ORDER that members of the Settlement Class may opt out of the class action by sending a written request to opt out to the Settlement Administrator at the address specified in the Long-Form Notice, as well as, send a copy of said Opt-Out Form to the Clerk of the Superior Court of Québec at the following address:

Cour supérieure du Québec
Division des action collectives
Palais de justice de Montréal
1, rue Notre-Dame Est
Montréal, Québec, H2Y 1B6
N° de dossier : 500-06-000921-185

Superior Court of Québec
Class Action Division
Montreal Courthouse
1 Notre-Dame Street East
Montreal, Québec, H2Y 1B6
File No.: 500-06-000921-185

La demande d'exclusion doit contenir les informations spécifiées dans l'Avis détaillé. Les demandes écrites d'exclusion doivent être reçues par l'Administrateur du règlement ou porter le cachet de la poste, si posté par courrier prépayé de première classe, au plus tard 45 jours après la publication des Avis d'action collective;

The request to opt out must contain the information specified in the Long-Form Notice. Written requests to opt out must be received by the Settlement Administrator or postmarked, if mailed by prepaid first class mail, no later than 45 days following the publication of the Class Notices;

DÉCLARER que tous les Membres du Groupe lié par le règlement qui n'ont pas demandé leur exclusion sont liés par tout jugement à rendre sur l'action collective de la manière prévue par la loi;

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

ORDONNER que chaque Membre du groupe lié par le règlement qui souhaite s'exclure de l'action collective :

- | | |
|--|---|
| <p>a) ne sera pas lié par l'Entente de règlement;</p> <p>b) n'aura pas le droit de recevoir une part des bénéfices payables en rapport avec celles-ci; et</p> <p>c) cessera d'être un Membre du groupe lié par le règlement;</p> | <p>ORDER that that each Settlement Class Member who wishes to opt out of the class action:</p> <p>a) will not be bound by the Settlement Agreement;</p> <p>b) will not be entitled to receive any share of benefits payable in connection with same; and</p> <p>c) will cease to be a Settlement Class Member;</p> |
|--|---|

DÉCLARER que les Membres du groupe lié par le règlement peuvent s'opposer à l'Entente de règlement en envoyant une objection en temps opportun à l'Administrateur du règlement au plus tard 30 jours avant la date de l'Audience d'approbation définitive. Toutes les objections doivent contenir les informations spécifiées dans l'Avis détaillé;

DECLARE that the Settlement Class Members may object to the Settlement Agreement by mailing a timely objection to the Settlement Administrator no later than 30 days prior to the Final Hearing Date. All objections must contain the information specified in the Long-Form Notice;

LE TOUT sans frais de justice.

THE WHOLE without legal costs.

Montreal, September 20, 2021

(S) Jeff Orenstein

CONSUMER LAW GROUP INC.

Per: Me Jeff Orenstein
Attorneys for the Plaintiff

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 the Defendants

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 by way of telephone conference or as the Court so decides.

Montreal, September 20, 2021

(S) Jeff Orenstein

CONSUMER LAW GROUP INC.

Per: Me Jeff Orenstein
Attorneys for the Plaintiff

N°: 500-06-000921-185

(Class Action)
SUPERIOR COURT
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(Arts. 574, 575, 576, 579, 580, 581, 585, 590, and 591 C.C.P.
and arts. 63, 65, and 69 R.P.C.S.)

COPY

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