

PROVINCE OF QUÉBEC  
DISTRICT OF MONTREAL

SUPERIOR COURT  
(Class Action)

N°: 500-06-001071-204

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EVANGELINA MORFONIOS, personally and in her  
quality as heir and liquidator to THE ESTATE OF  
THE LATE OLGA SARLIS, [REDACTED]

[REDACTED]  
[REDACTED]  
Plaintiff

v.

VIGI SANTÉ LTÉE, a legal person, duly constituted  
according to law, with its head office located at 197  
Thornhill Street, in the city of Dollard-des-Ormeaux,  
district of Montreal, province of Quebec, H9B 3H8;

Defendant

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ORIGINATING APPLICATION FOR CLASS ACTION MODIFIED ON APRIL 4<sup>TH</sup>,  
2022  
(Articles 583 C.C.P.)

IN SUPPORT OF THE APPLICATION, EVANGELINA MORFONIOS, PLAINTIFF  
AND REPRESENTATIVE, RESPECTFULLY STATES THE FOLLOWING:

I. INTRODUCTION

A. The Authorization

1. On June 16<sup>th</sup> 2021, the Honorable Mr. Justice **Donald Bisson's, j.c.s., granted Ms. Morfonios' *Application for Authorization*** and granted her the status of representative of the Class Members, the whole as it more fully appears from a copy of the judgment that is part of the court's record;
2. In his authorizing judgment, the Honorable Mr. Justice Bisson, j.c.s., defined the Class Members as follows:

*Every person who resided at CHSLD Vigi Mont-Royal at any time in April and in May 2020, as well as their spouse, their family caregiver(s), their children and grandchildren, their heirs and successors;*

**(hereafter referred to as « the Group »)**

3. In his authorizing judgment, the Honorable Mr. Justice Bisson, j.c.s., established the main collective issues as follows:
  - a. Did the Defendant wrongfully and negligently omit to put in place in timely manner the isolation measures in accordance with the ministerial directives and INSPQ's recommendations including establishing a "hot zone" and a "cold zone", as well as wearing adequate protective equipment and adopting the indicated protection and distancing measures?
  - b. Did the Defendant wrongfully and negligently omit to train their staff in wearing protective equipment and in the appropriate preventive and protective measures?
  - c. Did the Defendant wrongfully and negligently fail to supply their staff with adequate protective equipment?
  - d. Did the Defendant wrongfully and negligently fail to maintain the ventilation system of the facility in accordance with the standard of care?
  - e. Does the Defendant's fault constitute gross negligence giving rise to exemplary damages?
  - f. Is the Defendant's fault the causation of the Group's damages?
  - g. What are the damages incurred by the members of the Group?

- h. Did the Defendant wrongfully and negligently fail to provide its residents with basic medical equipment, including oxygen and fluids, as well as basic medication needed for pain management and comfort care?
- i. Did the Defendant wrongfully and negligently omit to inform the families of the vulnerable residents of the presence of COVID-19 in the facility when the outbreak began and did he give them false information and false assurances as to the health condition of their loved ones?

#### B. The Originating application

- 4. The present Originating Application is a demand for compensation for the physical, moral and punitive damages that were and continue to be incurred by the Group as a result of the failure by the Defendant to provide the required level of care, services and measures in accordance with the provisions of the law, the ministerial directives and INSPQ following COVID-19;

#### II. THE PARTIES

- 5. The Plaintiff, Ms. Evangelina Morfonios, is the daughter, heir and liquidator of the estate of the late Olga Sarlis, born on February 24<sup>th</sup>, 1929 and deceased on April 28<sup>th</sup>, 2020, as appears from the will of Ms. Sarlis filed as Exhibit P-1, the death certificate of Ms. Sarlis filed as Exhibit P-27 and the SP-3 form from the Jewish General Hospital filed as Exhibit P-28;

5.1 Ms. Sarlis had three children: Plaintiff Evangelina Morfonios, Ourania Morfonios and Athanasia Morfonios;

- 6. The Defendant, Vigi Santé Inc., is a private institution under agreement that owns fifteen (15) Residential and Long-Term Care Centres (CHSLD), including CHSLD Vigi Mont-Royal located at 275, Brittany Avenue, in the Town of Mount Royal, province of Quebec, H3P 3C2, as appears from an extract of the *Registre des entreprises du*

Québec filed as Exhibit P-2;

7. From March 2016 until April 23<sup>rd</sup>, 2020, Ms. Sarlis resided at CHSLD Vigi Mont-Royal;
8. As a Residential and Long-Term Care Centre, the Defendant has the obligation, under article 83 of the *Act Respecting Health Services and Social Services* (hereafter referred to as "LSSSS"), "*to offer, on a temporary or permanent basis, an alternative environment, lodging, assistance, support and supervision services as well as rehabilitation, psychosocial and nursing care and pharmaceutical and medical services to adults who, by reason of loss of functional or psychosocial autonomy can no longer live in their natural environment, despite the support of their families and friends*";
9. As an institution under LSSSS, the Defendant has, by virtue of article 100 of LSSSS, the mission to "*ensure the provision of safe, continuous and accessible quality health or social services which respect the rights and spiritual needs of individuals and which aim at reducing or solving health and welfare problems and responding to the needs of the various population groups. To that end, institutions must manage their human, material, information, technological and financial resources effectively and efficiently and cooperate with other key players, including community organizations, to act on health and social determinants and improve the supply of services to the public. In addition, a local authority must elicit and facilitate such cooperation*";
10. The residents of CHSLD Vigi Mont-Royal have the right, under the LSSSS, to receive, with continuity and in a personalized and safe manner, health services and social services which are scientifically, humanly and socially appropriate;
11. The residents of CHSLD Vigi Mont-Royal also have the right, under the *Charter of Human Rights and Freedoms*, to their life, personal security, inviolability and freedom, to the safeguard of their dignity and to assistance when their life is in peril;
12. Despite the preceding, the residents of CHSLD Vigi Mont-Royal were treated in a faulty, negligent and unsafe manner, as will be further demonstrated in this

Application;

### III. CONTEXT

#### A) Evolution of the COVID-19 pandemic

13. On December 30<sup>th</sup>, 2019, municipal authorities in the city of Wuhan, China, revealed the existence of pneumonia of unknown origin, as appears from the notice filed as Exhibit P-31;
14. On January 2<sup>nd</sup>, 2020, the virus was isolated in a laboratory and receives the designation 2019-nCov, as appears from the article from the *China CDC Weekly* dated January 21<sup>th</sup>, 2020, filed as Exhibit-P-32;
15. On January 10<sup>th</sup>, 2020, DNA sequencing of the virus was publicly shared by a team of Chinese researchers, as appears from the DNA sequence document filed as Exhibit-33;
16. On January 20<sup>th</sup>, 2020, the National Health Commission of China confirmed that the new coronavirus is transmissible from human to human, as appears from the article from the newspaper *The Guardian* dated January 21<sup>th</sup>, 2020, filed as Exhibit P-34;
17. On January 22<sup>nd</sup>, 2020, the World Health Organization indicated for the first time that preliminary data suggested that older people with co-morbidities are the most vulnerable population to the new coronavirus, as appears from its situation report dated January 22<sup>nd</sup>, 2020, filed as Exhibit P-35;
18. On January 23<sup>rd</sup>, 2020, the city of Wuhan was quarantined, as appears from the **Reuters's article dated January 23<sup>rd</sup>, 2020, filed as Exhibit P-36**;

19. On January 26<sup>th</sup>, 2020, the first suspected case of the new coronavirus was identified in Canada, **as appears from the CTV New's article dated January 25<sup>th</sup>, 2020, filed as Exhibit P-37;**
20. On February (...) 6<sup>th</sup>, 2020, Info-Santé published a notice indicating that "*Les personnes les plus à risque de complications sont les personnes immunodéprimées, avec maladies chroniques et les personnes âgées*", **as appears from the notice filed as Exhibit P-30;**
21. On February 11<sup>th</sup>, 2020, the World Health Organization gave the new coronavirus disease the name COVID-19, **as appears from the BBC's article dated February 11<sup>th</sup>, 2020, filed as Exhibit-P-38;**
22. On February 28<sup>th</sup>, 2020, a first suspected case of COVID-19 was announced in Quebec, **as appears from the CBC New's article dated February 27<sup>th</sup>, 2020, filed as Exhibit P-39;**
23. On March 11<sup>th</sup>, 2020, the World Health Organization declared that the spread of COVID-19 represents a pandemic, **as appears from the BBC's article dated March 11<sup>th</sup>, 2020, filed as Exhibit P-40;**

#### B) Management of the COVID-19 pandemic in Quebec

24. On March 9<sup>th</sup>, 2020, the Government of Quebec opened three COVID-19 screening clinics, **as appears from the article from the newspaper *La Presse* dated March 9<sup>th</sup>, 2020, filed as Exhibit P-41;**
25. On March 12<sup>th</sup>, 2020, the Prime Minister of Quebec, Mr. François Legault, held his first daily press conference in connection with the COVID-19 crisis. On this occasion, he stated: "*Je demande évidemment aux Québécois de porter une attention spéciale aux personnes vulnérables, en particulier nos aînés. Que nos aînés habitent dans leur maison ou dans toutes sortes de centres d'hébergement, si vous revenez de*

*l'étranger ou si vous avez des symptômes comparables aux symptômes de la grippe, n'allez pas visiter les aînés. C'est important, ce sont les personnes qui sont les plus à risque";*

26. On March 13<sup>th</sup>, 2020, the Quebec government adopted a first public health emergency decree under section 118 of the *Public Health Act*. This decree was subsequently renewed on eight occasions at the time of the *Application for Authorization*;
27. On March 14<sup>th</sup>, 2020, the Quebec government announced a ban on all visits to CHSLDs, on the basis these facilities were particularly vulnerable to COVID-19 outbreaks due to the fragile health conditions of their elderly residents, as appears from the notice dated March 14<sup>th</sup>, 2020, filed as Exhibit P-42;
28. On March 16<sup>th</sup>, 2020, the Minister of Health and Social Services published directives indicating measures to be undertaken in order to prevent the spread of COVID-19 in CHSLDs, filed as Exhibit P-3, including:
  - a. The interdiction of regular visits except for humanitarian reasons, including end-of-life situations;
  - b. The interdiction for residents to go outside CHSLDs due to the risk they pose of bringing the virus back when they return;
  - c. The installation of hygiene stations at the entrances of CHSLDs, and the entrances of each unit and in common rooms;
  - d. The implementation, as soon as an infection is confirmed, of infection prevention and control measures in accordance with the best practices recommended by the infection prevention and control teams of the CISSS or CIUSSS;

- e. The observance of basic measures in infection prevention and control by everyone present in CHSLDs;
- f. The mandatory isolation of employees coming back from abroad for 14 days;
- g. The immediate withdrawal from the working environment of any employee showing symptoms of cough or fever;

29. On March 21<sup>st</sup>, 2020, the Minister of Health and Social Services updated the directives referenced in the previous paragraph, filed as Exhibit P-4, adding specific directives aimed at managing a COVID-19 outbreak in CHSLDs, including:

- a. Keeping patients in CHSLDs during the outbreak and implementing measures aimed at preventing the transmission of the disease to other residents and personnel members;
- b. Establishing a specific confinement area in each CHSLD and planning a dedicated team trained in the best practices in infection prevention and control, to work exclusively with the clientele transferred in the confinement area, and ensure the availability of personal protective equipment in said areas;
- c. Allocating an entire floor or unit as a confinement area or, if this is not possible, placing a physical barrier delimiting the confinement area and maintaining spatial separation of at least 2 meters between residents;

30. On March 24<sup>th</sup>, 2020, the Regional Public Health Director of Montreal, Dr. Mylène Drouin, sent an internal note to health care workers confirming that sustained community transmission in the region of Montreal was now present, as appears from the article from the newspaper *La Presse* dated March 30<sup>th</sup>, 2020, filed as Exhibit P-43;



31. On March 25<sup>th</sup>, 2020, the Minister of Health and Social Services updated the directives referenced in paragraph 29, with specific directives concerning the separation of patients with suspected or confirmed cases, filed as Exhibit P-5, including:

- a. Establishing distinct zones:
  - i. Cold zone for patients without COVID-19;
  - ii. Hot zone for patients with suspected cases, under investigation or with confirmed cases;
- b. Adopting measures to prevent the contamination of personnel members and patients in the cold zone;
- c. Ensuring the personnel dedicated to the hot zone changes clothes when leaving the hot zone;
- d. Adopting a written procedure regarding the modalities of exit from the hot zone to avoid contaminating the environment of CHSLDs;
- e. Avoiding placing patients under investigation in the same room as patients confirmed to be COVID-19 positive;

32. On April 3<sup>rd</sup>, 2020, the *Institut national de santé publique du Québec* (INSPQ) published a document titled *Port du masque de procédure en milieux de soins lors d'une transmission communautaire soutenue*, filed as Exhibit P-6, outlining protection measures to implement in regions where sustained community transmission was **documented, including**: "*That all healthcare workers (hospitals, medical clinics, CHSLDs, home care) who provide health care services and who are less than 2 metres from a patient continuously wear a procedure mask*";

33. On April 4<sup>th</sup>, 2020, during his daily press conference, the National Public Health Director of Quebec, Dr. Horacio Arruda, confirmed that there was sustained community transmission in all regions of the province of Quebec;

34. On April 11<sup>th</sup>, 2020, the Minister of Health and Social Services updated the directives referenced in paragraph 31, as appears from the updated directives filed as Exhibit P-7, including:

- a. Ensuring the support of infection prevention and control teams in each CHSLD that has suspected cases, cases under investigation or confirmed cases;
- b. **Systematically monitoring employees' symptoms before each shift;**
- c. Taking necessary means to ensure that infection prevention and control means are respected at all times by everyone present in the living environment;
- d. Providing training to all personnel as soon as possible regarding infection prevention and control measures, including handwashing and the use of personal protective equipment;

#### IV. POOR MANAGEMENT OF THE COVID-19 PANDEMIC BY THE DEFENDANT

34.1 Before the events in issue, Ms. Sarlis suffered from dementia but was otherwise healthy;

34.2 Ms. Sarlis was sharing a room with another resident, and these two residents were sharing a bathroom with the two residents of the neighboring room;

34.3 The Plaintiff and her siblings visited Ms. Sarlis on average once to twice a week, and a caregiver, Ms. Lambetia Markakis, was present every day to provide care for Ms. Sarlis;

34.4 The caregiver was the wife of Mr. Nicolas Markakis, a resident in the neighboring room with which Ms. Sarlis and her roommate shared a bathroom;

34.5 Over the years, the family of Ms. Sarlis noticed severe neglect in the care provided to her mother by the Defendant and its employees and in the overall state of the facility, including:

- a. **Systemic neglect in changing her mother's diaper and cleaning her bed;**
- b. Her mother being left in her wheelchair daylong, spending the days in the hallway and falling asleep while crooked in her wheelchair, resulting in severe back problems;
- c. **Neglect in her mother's personal hygiene, including poor nail care and cleaning, broken teeth and only one to two baths a week;**
- d. Neglect in feeding her mother and other residents;
- e. Significant cleanliness issues in the facility;
- f. Significant ventilation issues resulting in abnormally warm temperatures in the summer and persistent foul smells of urine and feces;

34.6 On March 14th, 2020, all visitors were forbidden inside the facility, with the exception of visitors for humanitarian reasons including end-of-life situations, due to the new directives in place in the context of the COVID-19 pandemic;

35. On April 6<sup>th</sup> 2020, the Plaintiff and her sister Ourania saw Ms. Sarlis through a videoconference call organized by employees of the Defendant, where she noted that the employee in charge of the videoconference call had no procedure mask on, in violation of the INSPQ recommendations dated April 3<sup>rd</sup>, 2020, and she took a photo of the screen with her phone, filed as Exhibit P-22;

35.1 During this call, the Plaintiff noted that her mother looked healthy and happy and they played Greek music to cheer their mother:

35.2 Between April 7th and April 23rd, 2020, Ourania called and e-mailed Ms. Myrna Aoun, the Director of Health Care and Coordinator of Clinical Services on multiple occasions, to inquire about her mother, and Ms. Aoun consistently reassured her that her mother was fine:

36. On April 13<sup>th</sup>, 2020, Ourania was informed by Ms. Sarlis's caregiver, Ms. Lambetia Markakis, **that the caregiver's husband, Mr. Nicolas Markakis**, with whom Ms. Sarlis shares a bathroom, had been diagnosed with COVID-19 on the same day;

36.1 On that same day, Ms. Markakis's husband was transferred to the Jewish General Hospital and on April 16<sup>th</sup>, 2020, the caregiver's husband passed away;

37. On April 13<sup>th</sup>, 2020, the Minister of Health and Social Services published for the first time a list of residences for elderly and vulnerable patients with confirmed COVID-19 cases, filed as Exhibit P-8, revealing that the Defendant had an outbreak with 40 confirmed cases, or approximately 18% of its 223 residents;

38. The Plaintiff and other family members had not been informed of the situation by the Defendant or its personnel prior to the publication of this list;

39. In the following days, the number of confirmed cases in residents and members of the personnel increased dramatically, creating a situation of crisis and a severe shortage of personnel, and requiring the dispatching of emergency personnel from the CIUSSS du Centre-Ouest-de-~~l'~~**Île**-de-Montréal and other institutions;

40. On April 17<sup>th</sup>, 2020, the Defendant had 76 confirmed cases among residents, as appears from the updated list by the Minister of Health and Social Services filed as Exhibit P-9;

41. On that same day, the employee who had stood next to Ms. Sarlis without a procedure mask on April 6<sup>th</sup> was confirmed to be COVID-19 positive and pulled from work, as were at least three out of the five members of the videoconference team, as appears from the e-mail filed as Exhibit P-29;
42. On April 19<sup>th</sup>, 2020, the Defendant had 91 confirmed cases among residents, as appears from the updated list by the Minister of Health and Social Services filed as Exhibit P-10;
43. On April 20<sup>th</sup>, 2020, the Defendant had 156 confirmed cases among residents, as appears from the updated list by the Minister of Health and Social Services filed as Exhibit P-11;
44. On April 21<sup>st</sup>, 2020, during a videoconference call, the Plaintiff learned that her mother had contracted COVID-19 and was shocked to realize that Ms. Sarlis was lying in bed, unresponsive, even though the Director of Health Care and Coordinator of Clinical Services, Ms. Myrna Aoun, consistently reassured her that her mother was fine, as appears from a photo of the screen taken during this phone call filed as Exhibit P-23;

**44.1 On that same day, the Plaintiff called her mother's doctor to find out more about her symptoms. The doctor told her that he was not able to take her temperature and that as a result he could not administer any medication to relieve her fever;**

45. On April 22<sup>nd</sup>, 2020, the union representing the personnel of the Defendant, the *Professionnel(le)s en soins de santé unis* (PSSU-FIQP), filed a complaint with the *Commission des normes, de l'équité, de la santé et de la sécurité du travail* (CNESST) against Vigi Santé Itée, due to the growing number of employees infected with COVID-19;
46. As a result of the severe infection rate among employees, healthcare workers and doctors from the CIUSSS du Centre-Ouest-de-**l'Île**-de-Montréal and from the Montreal Heart Institute were dispatched to the Defendant;

47. On April 23<sup>rd</sup>, 2020, a registered nurse who had been dispatched to the Defendant, Catherine Lévesque, published a video and a comment on Facebook, filed as Exhibit P-12.2, in which she denounced the situation of the residence, which she described **as a “big human carnage”**, including:

- a. Shortage of oxygen for patients in respiratory distress;
- b. Shortage of basic medication;
- c. Shortage of intravenous fluids to hydrate patients;
- d. Multiple patients in end-of-life situations unable to receive comfort medication due to shortages in medication and personnel;
- e. Deaths of multiple patients in inhumane conditions;
- f. Deceased patients remaining in their bed for over 24 hours;
- g. Inability to provide basic care including replacing bandages;
- h. Severe shortage of personnel, leaving her alone to take care of her entire unit and unable to respond to calls for help from patients;
- i. Severe shortage in testing kits, resulting in significant delays in testing residents and personnel members.

48. In a response to a comment on the video, filed as Exhibit P-12.2, mentioned in the previous paragraph, **Ms. Lévesque adds:** *“Je n’ai pas filmé mes chambres de patients car il y aurait une révolution ... attendre des pleurs, des cris détresse, des gens qui sont sans défense, gelé comme des balles, de la nourriture à ce vomir dessus et des dirigeants qui n’osent pas parler et aiment mieux mettre la poussière sous le tapis,*

*la dangerosité des soins car tous les patients sont changés de place et les plans soins et médicaments sont pas reclassés et mis à jour plans de traitements, etc.. bref.. je veux bien croire que j'y arrive de peine et misère mais vous avez rien vu..”*  
(sic);

49. On April 23<sup>rd</sup>, 2020, the Defendant had 163 confirmed cases among residents, as appears from the updated list by the Minister of Health and Social Services filed as Exhibit P-13;

50. On April 23<sup>rd</sup>, 2020, Athanasia, the Plaintiff’s sister, called the doctor on duty in Ms. Sarlis’ area at CHSLD Vigi Mont-Royal, whose name is not confirmed at the time of this filing, for an update. The doctor told her that he was not able to take her temperature and that as a result he could not administer any medication to relieve her fever. The doctor also mentioned that Ms. Sarlis had not been eating and drinking for several days, a fact of which the Plaintiff and her sisters had not been informed prior to that conversation;

50.1 On that same day, the family insisted that Ms. Sarlis be taken to the Jewish General Hospital:

51. **On that same day, Ms. Aoun, the Defendant’s Director of Health Care and Coordinator of Clinical Services**, called Ourania and falsely told her that her mother was fine;

51.1 On that same day, Ms. Sarlis was transferred to the Jewish General Hospital;

51.2 On that same day, Ourania attempted to go to the Jewish General Hospital to see her mother, but was denied due to the hospital’s COVID-19 visitation policies;

51.3 As Ourania was driving back from the hospital, she received a phone call from the emergency room doctor informing her that her mother was in very critical condition, dehydrated, unresponsive, with labored breathing and in obvious pain, and probably too far gone for the treating team to be able to help her;

51.4 Approximately 30 minutes after this first phone call, the emergency room doctor called Ourania again to inform her that he was able to stabilize her mother and that she was now receiving fluids, antibiotics and oxygen;

51.5 On that same day, the Plaintiff and her sister Ourania were allowed to talk to their mother on the phone. Ourania became very emotional and started telling her mother how much she loves her, that she came to the hospital to see her but that she was not allowed in. She told Ms. Sarlis not to be scared and that they would see each other as soon as she got better;

51.6 During this phone call, the Plaintiff could hear her mother groaning and moaning trying to speak what sounded like a distressed call for help, or a state of utter fear, leaving the Plaintiff in emotional distress over the situation and, to this day, traumatized;

51.7 On April 24<sup>th</sup>, 2020, the Plaintiff attempted to contact their mother once again but was told that she was unresponsive and that she was being kept comfortable with morphine;

52. On April 24<sup>th</sup>, 2020, the Defendant had 172 confirmed cases among residents, as appears from the updated list by the Minister of Health and Social Services filed as Exhibit P-14;

53. On April 28<sup>th</sup>, 2020, the Plaintiff received a phone call from a doctor on duty at the COVID-19 unit of the Jewish General Hospital, Dr. Vinh-Kim Nguyen, informing her that her mother had passed away 3 minutes earlier;

53.1 On that same day, the Plaintiff asked for pictures of her mother's body in order to make sure she could identify her;

54. On that same day, a nurse, Ms. Carla Jomaa, sent photos to the Plaintiff, filed as Exhibits P-24, **which show the Plaintiff's mother with her mouth open and her face tense**, indicating that she did not pass away peacefully and without pain,



- plunging the Plaintiff and her sisters in a persistent distress which continues to this day;
55. **In the subsequent days, the Plaintiff was informed that her mother’s roommate, as well as her neighbor’s roommate who was sharing a bathroom with them, both contracted COVID-19 and subsequently passed away;**
56. On April 29<sup>th</sup>, 2020, the CNESST opened an investigation into working conditions at the Defendant as well as three other CHSLDs belonging to Vigi Itée: Vigi Dollard-des-Ormeaux, Vigi Pierrefonds and Vigi Reine-Elisabeth;
57. On May 1<sup>st</sup>, 2020, members of the Canadian Armed Forces were dispatched at the Defendant, one of 20 CHSLDs in the province to receive such help due to the severity of the outbreak and shortage in personnel.
58. On May 1<sup>st</sup>, 2020, **Ms. Juliana D’Onofrio**, personnel management agent for the Defendant, e-mailed the CNESST inspector, Ms. Julie Martel, to answer some questions pertaining to her investigation, as appears from the e-mail filed as Exhibit P-15;
59. In this e-mail, **Ms. D’Onofrio explained** that a ventilation test was conducted by **INSPQ, that a “technical problem” was found and that this problem was subsequently corrected;**
60. On May 3<sup>rd</sup>, 2020, a nurse (...) mentioned in a *Journal de Montréal* article that the presence of the military did not solve the severe shortage in equipment and personnel, and that shortages in oxygen were such that the personnel had to choose which residents could receive it, as appears in the article filed as Exhibit P-16;
61. On May 5<sup>th</sup>, 2020, the CNESST filed its intervention report into the situation at the Defendant, as appears from the CNESST intervention reports jointly filed as Exhibit P-17, finding:

- a. Severe shortages in employees making it impossible to have teams dedicated to hot zones, with some shifts having only one nurse for the entire facility;
  - b. Severe shortages in personal protective equipment;
  - c. Employees circulating between hot zones and cold zones without respecting the protocols established by INSPQ and by the Ministry of Health and Social Services;
62. As a result of the situation outlined in the previous paragraph, Ms. Martel granted the employees a derogation under article 51.5 of the *Act Respecting Occupational Health and Safety* on the basis that there was a risk for the health, the safety or the physical integrity of employees;
63. On May 8<sup>th</sup>, 2020, a memo was sent by the Infection Prevention and Control (IPAC) team of the CIUSSS du Centre-Ouest-de-~~l'~~Île-de-Montréal to all the staff working at the Defendant, filed as Exhibit P-18 (**hereinafter referred to as "the memo"**);
64. This memo informed the personnel that an onsite investigation by the IPAC was underway under the direction of Dr. Yves Longtin, microbiologist and chief of IPAC **at the Jewish General Hospital**, "*[i]n light of the prevalence of COVID-19 amongst experienced healthcare workers deployed to Vigi Mont-Royal*";
65. The memo indicated **that** "*preliminary results indicate the presence of viral RNA in a location that is not high touch. By extrapolation, this suggests long distance spread of the virus*";
66. The memo implemented a number of measures to mitigate the risk, including:
- a. The implementation of ventilation controls;
  - b. **The moving of the "clean zone" outside of the facility;**

- c. The limitation of the time spent by personnel members inside the facility to two hours at a given time;
- d. Urgent and sustained environmental cleaning of all surfaces;
- e. Enhanced personal protective equipment including impermeable gowns, gloves, shoe covers, cowls, face shields and N95 masks;

67. On May 8<sup>th</sup>, 2020, internal data by the Defendant indicated that all its 223 residents were infected as well as a total of 145 employees, and that 68 residents had died as a result of the virus, as appears from Exhibit P-19;

68. On May 11<sup>th</sup>, 2020, the Ministry of Health and Social Services published the list of the eight (8) CHSLDs which were granted exemptions to allow significant relatives back in the facilities, four (4) of which belong to the Defendant including Vigi Mont-Royal, as appears from the list filed as Exhibit P-20;

69. The reasons outlined for exempting CHSLD Vigi Mont-Royal were that the COVID-19 outbreak in this CHSLD was not under control, putting the wellbeing of significant relatives at risk, and that a ventilation issue had to be solved before significant relatives were allowed back in;

70. On May 14<sup>th</sup>, 2020, Professor Caroline Duchaine, a researcher who took air samples from Vigi Mont-Royal, indicated in an interview with journalist Anne-Marie Dussault on ICI RDI, filed as Exhibit P-21, the following:

- a. In the previous week, following air sampling inside the facility by the IPAC team, it was found that the entire ventilation system of the building was not functional, and that the lack of ventilation had allowed for the virus to accumulate in the environment;
- b. On May 9<sup>th</sup>, 2020, the ventilation was repaired and restarted and a thorough disinfection was conducted;

71. On May 5<sup>th</sup>, 2020, the CNESST filed an additional intervention report into the situation **at the Defendant's facility, as appears from the CNESST intervention reports jointly filed as Exhibit P-25, indicating the following facts regarding the ventilation at the Defendant's facility:**

- a. On April 13<sup>th</sup>, 2020, CIUSSS du Centre-Ouest-de-l'Île-de-Montréal sent a team of managers and an infection prevention and control representative **at the Defendant's facility in order to assess the situation and counsel the Defendant in its management of the outbreak;**
- b. On April 15<sup>th</sup>, 2020, the director of the facility contacted the CIUSSS du Centre-Ouest-de-l'Île-de-Montréal to indicate that many nurses and **orderlies working in the Defendant's facility were sick and that dotation in personnel was becoming critical;**
- c. Following complaints by personnel members related to air quality, the CIUSSS had its Occupational Health and Safety team conduct an air quality **analysis, which found that "ventilation and air exchange are almost non-existent", leading to fears that numerous viral particles expelled by COVID-19 positive residents would remain in the air for a long time, thereby putting residents and personnel at risk of contamination;**
- d. Despite an intervention of the CIUSSS with the Defendant and a visit of the facility by a ventilation expert, a second analysis demonstrated once again **a ventilation and air exchange that were "almost non-existent";**
- e. **Several CIUSSS personnel members sent to work in the Defendant's facility developed a COVID-19 infection following their work shifts there;**
- f. On May 5<sup>th</sup>, 2020, the Technical Services department of the CIUSSS contacted the engineering firm retained by the Defendant and consulted a ventilation specialist in an attempt to ensure the adequate repair of the ventilation;

- g. On May 6<sup>th</sup>, 2020, repairs were conducted on the ventilation system;
- h. On that same day, the PCI team was worried about the number of workers who contracted COVID-19 and proceeded to analyze surfaces that are not accessible to personnel and that are located at a distance of over three (3) meters of residents;
- i. On May 7<sup>th</sup>, 2020, four (4) out of six (6) samples taken on these surfaces were found to be positive for COVID-19, leading the PCI team to send out the May 8<sup>th</sup>, 2020 memo outlined in paragraphs 63 to 66;
- j. Following these test results, a thorough decontamination of the **Defendant's facility had to be undertaken, which included the withdrawal of residents from the care units, the storage of residents' personal belongings** and a cleaning of all surfaces with bioplanet;
- k. On May 11<sup>th</sup>, 2020, an air quality analysis was conducted on site demonstrating that the air exchange was adequate;
- l. On or about May 17<sup>th</sup>, the thorough decontamination of the facility was **"probably" completed;**

72. On May 19<sup>th</sup>, 2020, the Canadian Armed Forces filed its intervention report regarding its deployment mentioned at paragraph 57, filed as Exhibit P-26, indicating;

- a. The totality of the 223 residents were infected with COVID-19;
- b. **Numerous staff members "ran away" after receiving the memo outlined in paragraphs 63 to 66, causing a decrease in medical staff and leaving residents without proper medical care;**
- c. No systems for controlling personal protective equipment were in place when the army intervention started on May 1<sup>st</sup>, 2020, causing the

disappearance of reserves of personal protective equipment during the first week of intervention;

- d. A delivery of narcotics appeared to have gone missing and supply within the care units was difficult. A lack of medical equipment was often noted during shift changes and the military had to intervene on several occasions to offer solutions to allow the nursing staff to do their job safely;
- e. Infection control and prevention measures were not followed by employees despite constant reminders from the military;
- f. The Defendant had difficulties with the management and assiduity of its personnel;

73. On March 23<sup>rd</sup>, 2021, the Tribunal administrative du travail rendered a decision concerning administrative review requests of numerous CNESST decisions, including some of those jointly filed as Exhibit P-25, in which it found that the Defendant has not adequately implemented measures to properly delineate hot zones, warm zones, cold zones and buffer zones in between and had not provided its personnel working in these zones with adequate personal protective equipment;

#### V. COMPLAINTS AGAINST THE DEFENDANT

74. The Defendant's liability is sought for the following reasons:

- a. The Defendant is a private institution under agreement within the meaning of the *Act respecting health services and social services*;
- b. At all relevant times, the Defendant had the obligation to safeguard the life, health, safety, dignity and the well-being of the residents of CHSLD Vigi Mont-Royal;

- c. At all relevant times, the Defendant had the obligation to provide the residents of CHSLD Vigi Mont-Royal health services and social services which are scientifically, humanly and socially appropriate, with continuity and in a personalized and safe manner;
- d. The Defendant knew or ought to have known the specific risks that COVID-19 presented for the residents of CHSLD Vigi Mont-Royal, which were among the most vulnerable part of the population;
- e. The Defendant knew or ought to have known the directives from the Ministry of Health and Social Services, including those filed as exhibits P-3, P-4, P-5 and P-7, as well as the recommendations by INSPQ, including the one filed as exhibit P-6;
- f. The Defendant failed to supply its staff with adequate personal protective equipment, exposing staff and residents to an increased risk of infection, in a context where this equipment nevertheless remained available in sufficient quantity in Quebec;
- g. The Defendant wrongly and negligently omitted to train its staff in wearing protective equipment and in adequate prevention and protection measures in accordance with the norms mentioned at paragraph 74e, exposing staff and residents to an increased risk of infection;
- h. The Defendant's **employee** wrongly and negligently did not wear a procedure mask despite standing next to the Plaintiff's **mother and closer than two** meters from her for a long period during the April 6<sup>th</sup>, 2020 videoconference with the Plaintiff, in violation of the norms set by INSPQ on April 3<sup>rd</sup>, 2020 and filed as exhibit P-6;
- i. The Defendant wrongly and negligently omitted to put in place in a timely manner the isolation measures in accordance with the ministerial directives mentioned in paragraph 74e, including establishing a "hot zone" and a "cold

zone", as well as wearing adequate protective equipment and adopting the indicated protection and distancing measures;

j. The Defendant failed to provide the residents and the staff with a sanitary environment and a safe facility;

k. The Defendant knew or ought to have known that the ventilation system of the building was non-functional for months before the pandemic and before the sampling conducted on May 8<sup>th</sup>, 2020;

l. The Defendant acted recklessly by neglecting to maintain, monitor and repair its ventilation system in accordance with the norms in place, including the *Guide de la qualité de l'air intérieur dans les établissements de santé et de services sociaux*, creating conditions in which the virus spread at an unprecedented pace to the totality of the residents in less than two weeks;

m. The Defendant failed to supply its facility with basic medical equipment including oxygen and hydration solute and with basic medication required to manage pain and ensure the comfort of residents;

n. The Defendant **neglected to inform vulnerable residents' families of the** presence of COVID-19 in the facility when the outbreak started and provided them with erroneous information and false reassurances about the health condition of their loved ones;

75. The faults by the Defendant outlined in the previous paragraph resulted in the rapid spread of the disease to residents and personnel member, resulting in multiple deaths and a severe shortage of personnel which created an unprecedented situation of systemic maltreatment towards vulnerable residents;

## VI. DAMAGES



76. The faults of the Defendant as described in paragraph 74 are the direct and probable cause of the massive outbreak of COVID-19 which infected the totality of the 223 residents of CHSLD Vigi Mont-Royal in April and May 2020, resulting in one of the most devastating outbreaks in a Quebec residential facility both in terms of the number of people infected, the number of deaths and the rate of residents affected;
77. The members of the Group are entitled to claim compensation for the physical and moral damages caused by the Defendant's faults;
78. Due to the Defendant's faults, the residents of CHSLD Vigi Mont-Royal who are members of the Group suffered and are still suffering the following damages:
  - a. They have experienced and are still experiencing significant physical distress related to the symptoms of COVID-19, being particularly vulnerable to this disease due to their age and health condition;
  - b. They have experienced and are still experiencing significant psychological distress associated due to their having to live this ordeal alone, their relatives being prohibited from visiting, and because of their fear of dying;
  - c. They have been and continue to be the victims of systemic abuse and neglect, not receiving the basic health care required by their condition and basic hygiene in a timely manner due in particular to the severe shortage of staff caused by the Defendant's faults;
  - d. They have experienced and are still experiencing a lot of anxiety, sadness, pain, suffering and inconvenience due to their situation caused by the Defendant's faults;
  - e. The Defendant's faults have caused the deaths of at least 68 residents;

79. Due to the Defendant's faults, caregivers, children and grandchildren of the residents of CHSLD Vigi Mont-Royal who are members of the Group have suffered and are still suffering the following damages:
- a. They have experienced and are still experiencing significant psychological distress due to the situation of their loved ones at CHSLD Vigi Mont-Royal;
  - b. Being ill-informed of the health and the situation of their loved ones due to the negligence of the Defendant, they experienced and continue to experience a great anguish regarding the situation of their loved ones, constantly wondering about their well-being and comfort;
  - c. In the case of deceased residents, they retain a trauma related to the particularly difficult circumstances of their end of life, their not being able to be present at the time of their death and the conditions imposed by public health for the disposal of the body;
  - d. They maintain the sincere and unwavering conviction that but for the Defendant's faults, their relatives would not have found themselves in such a situation;
80. The heirs and beneficiaries of deceased persons may claim, in addition to the sums provided for the moral damages suffered by their deceased relatives, additional damages resulting from the death of the person, including, as the case may be, a claim for *solatium doloris*, for the loss financial support if applicable and for funeral costs;
81. Due to the exceptional nature and the gross negligence of Defendant's faults, the Plaintiff demands a sum in payment for exemplary damages on behalf of the group;
82. The present application is well founded in fact and in law;

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT the Class Action against the Defendant;

DECLARE the Defendant responsible for the damages suffered by the Plaintiff and the members of the Group, according to the following parameters:

- For each resident of CHSLD Vigi Mont-Royal, regardless of their COVID-19 infection:
  - An amount of \$20,000 to each member to compensate the pain and suffering, stress and inconvenience the member encountered due to the situation prevailing at Vigi Mont-Royal;
  - A sum of \$2,500 to each member's children to compensate the pain and suffering, stress and inconvenience associated with anxiety about their parent's situation and their possible contamination with COVID-19;
  - A sum of \$500 to each member's grandchildren in compensation for the pain and suffering, stress and inconvenience associated with anxiety about the situation of their grandparent's situation and their possible contamination with COVID-19;
- For residents of CHSLD Vigi Mont-Royal who were infected with COVID-19 and who survived the infection:
  - An additional amount of \$30,000 to each member to compensate the pain and suffering, stress and inconvenience associated with the COVID-19 contamination which resulted from the Respondent's misconduct;
  - Full reimbursement of expenses incurred or to be incurred as a result of the Respondent's misconduct;
  - An additional amount to be determined for each member who wishes to present proof of a particular and more significant loss on an individual basis during the assessment of the damages, which the member will be entitled to provided that one of the following is put in evidence:

- The member has undergone a hospital stay in an intensive care unit;
    - The member has undergone a hospital stay;
    - The member was not sent to the hospital although the member should have been considering his or her condition and/or his or her level of care required it, whether it was for hospital care or comfort care that the Respondent failed to provide;
    - The member suffered pecuniary losses;
  - A sum of \$10,000 to each **member's children in compensation for the pain and suffering, stress and inconvenience associated with their parent's contamination with COVID-19;**
  - **A sum of \$2,500 to each member's grandchildren in compensation for the pain and suffering, stress and inconvenience associated with the contamination of their grandparents with COVID-19;**
  - **An additional \$5,000 to each member's caregiver, in addition to the amounts provided above if the caregiver is a child or grandchild of the resident;**
- For spouses, children, grandchildren, heirs and successors of residents of CHSLD Vigi Mont-Royal who died as a result of COVID-19 or the situation of institutional maltreatment caused by the outbreak:
    - An amount of \$100,000 to each surviving spouse, in their personal quality, to compensate for the pain and suffering, stress and inconvenience suffered, as well as to compensate for the grief caused by the loss of a loved one (*solatium doloris*) which resulted **from the Respondent's misconduct;**
    - A sum of \$30,000 to each of the heirs and successors of the deceased in compensation for the pain, stress and inconvenience suffered, as well as in compensation for the grief caused by the loss of a loved one (*solatium doloris*) **due to the Respondent's misconduct**, the whole subject to proof of their status as heir or assign;
    - An amount of \$30,000 to the surviving spouse, in their quality of heir to the deceased, if applicable, or to the estate of the deceased,

as the case may be, in compensation for the physical and moral suffering suffered by the deceased before his death (*pretium doloris*) **due to of the Respondent's misconduct;**

- o Full reimbursement of disbursements and funeral expenses incurred **and to be incurred as a result of the Respondent's misconduct;**
- o An additional amount to be determined for each member who wishes to present proof of a particular and more significant loss on an individual basis during the assessment of the damages, which the member will be entitled to provided that there is evidence that he suffered financial losses due to COVID-19, the whole in connection with the alleged misconduct;

CONDEMN the Defendant to pay each member of the Group compensation for the damages they suffered;

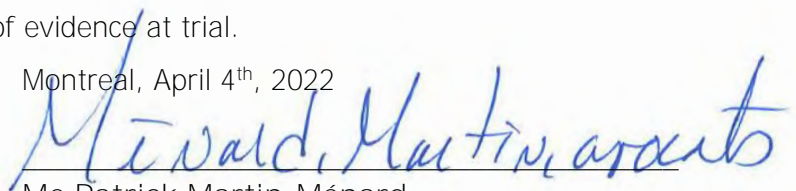
CONDEMN the Defendant to pay the Plaintiff **and the class action's members the** sum of one million dollars (\$1,000,000) in punitive damages due to the exceptional nature and the gross negligence of Defendant's **faults;**

CONDEMN the Defendant to pay the interest at the legal rate on the said sums, plus the additional indemnity provided by law, to accrue from the date of service of the present *Application*;

ORDER the collective enforcement of the Group's claims;

THE WHOLE with costs, including expert fees necessary for the drafting of their reports and the tendering of evidence at trial.

Montreal, April 4<sup>th</sup>, 2022



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Plaintiff's attorney - Our file: 33 291 (PMM)

NO :

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**COUR**  
DISTRICT DE

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Notre dossier :

Code : BM 1315



*Ménéard, Martin*  
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