

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL
No.: 500-06-001004-197

SUPERIOR COURT
(Class Action Chamber)

JEAN-FRANÇOIS BOURASSA

Plaintiff

v.

ABBOTT LABORATORIES CO. et al.

Defendants

APPLICATION TO AUTHORIZE A CLASS ACTION FOR SETTLEMENT
PURPOSES, AND TO APPROVE THE SETTLEMENT AGREEMENTS
(Articles 25, 49, 575, 579 and 590 C.C.P.)

TO THE HONOURABLE DONALD BISSON, J.S.C., OR TO ONE OF THE
HONOURABLE JUSTICES OF THE SUPERIOR COURT OF QUEBEC OF THE
JUDICIAL DISTRICT OF MONTREAL, PLAINTIFF RESPECTFULLY SUBMITS THE
FOLLOWING:

1. On May 23, 2019, an *Application for Authorization to Institute a Class Action and to Obtain the Status of Representative* (the “**Initial Application**”) was filed in the Superior Court of Quebec against numerous pharmaceutical companies alleged to have manufactured, sold, marketed and/or distributed opioid drugs in the Province of Quebec (the “**Class Action**”).
2. On December 17, 2021, Jean-François Bourassa (the “**Plaintiff**”) filed a *Re-Amended Application dated December 17, 2021 for Authorization to Institute a Class Action* for the sole purpose of being substituted as Plaintiff, which was subsequently authorized by the Court on January 17, 2022.
3. Four settlement agreements entered into by the Plaintiff with seven Defendants were approved by Justice Gary D.D. Morrison, J.S.C., in a judgment dated August 9, 2022. Subsequently, a settlement approval notice was published whereby Class Members (defined below) were informed of their right to opt-out of the whole Class Action and that they had to do so by September 16, 2022 (the “**Opt-Out Deadline**”). The notice explained the consequences of opting-out as follows:

Opting out means that you will not benefit from the Settlement Agreements or any decision(s) rendered in the Opioid Class Action which continues against the other Defendants. However, if you opt-out, you will preserve the right to sue the Defendants, including the Settling Defendants, by instituting your own individual action, at your own expense, regarding the allegations made in the Opioid Class Action;

4. All Class Members were thereby informed and had the opportunity to opt-out from the Class Action as a whole and, therefore, the parties submit that the requirement of article 579 (5) of the *Code of Civil Procedure* (“**CCP**”) has been met for the purpose of the present notices.
5. Moreover, in the event that the Class Action is authorized, Class Members will be given another opportunity to opt-out of the Class Action pursuant to article 576 al. 3 CCP.
6. On September 30, 2022, the Plaintiff filed a *Re-Amended Application dated September 30, 2022 for Authorization to Institute a Class Action, and to obtain the status of representative* (the “**Authorization Application**”) which was approved by the Court on November 7, 2022.
7. The class is defined as follows in the Authorization Application:

All persons in Quebec who have been prescribed and consumed any one or more of the opioids manufactured, marketed, distributed and/or sold by the Defendants between 1996 and the present day (“**Class Period**”) and who suffer or have suffered from Opioid Use Disorder, according to the diagnostic criteria herein described.

The Class includes the direct heirs of any deceased persons who met the above-mentioned description.

The Class excludes any person's claim, or any portion thereof, specifically in respect of the drugs OxyContin or OxyNeo, subject to the settlement agreement entered into in the court file no 200-06-000080-070.

(the “**Class**” or “**Class Members**”)

8. A hearing on the Authorization Application was held over seven days starting on November 7, 2022 before the Justice Morrison.
9. The Class Action Application alleges, *inter alia*, that during the Class Period, Aralez Pharmaceuticals Canada Inc. (“**Aralez**” or “**Settling Defendant**”), Valeant Canada Limited, Valeant Canada LP and 4490142 Canada Inc., F.K.A. as Meda Valeant Pharma Canada Inc. (together “**Valeant**” or “**Settling Defendant**”); and Church & Dwight Canada Corp. (“**Church & Dwight**” or “**Settling Defendant**”) (collectively, the “**Settling Defendants**”) manufactured, marketed, distributed and/or sold in the Province of Quebec certain opioid products, including:

Aralez	Valeant	Church & Dwight
Fiorinal-C 1/4	M.O.S. products	Atasol 15mg
Fiorinal-C 1/2	Onsolis	Atasol 30mg
Durela	Ralivia	
	Kadian	
	Cophylac	
	Painex	

(collectively, the “**Opioid Products**”);

10. Aralez has represented and provided evidence that each of its Opioid Product represented only a very small share of its total sales in the Province of Quebec, and the units sold for each Opioid Product always represented under 0.1 % of the opioid medication market in the Province of Quebec, and that Aralez had, and still has, minimal sales and a marginal role in the sale and/or distribution of opioid products during the Class Period, as more fully appears from the sworn declaration of Dr. Bernard Chiasson, Ph.D., Vice-President, Operations and Chief Scientific Officer at Nuvo Pharmaceuticals Inc. doing business as Miravo Healthcare, the parent company of Aralez (the “**Chiasson Affidavit**”), filed as **Exhibit R-1A**;
11. Valeant has represented and provided evidence that each Opioid Product, with the exception of Painex (never sold in Canada), represented only a very small share of the Settling Defendant’s total sales in the Province of Quebec, and the Settling Defendant’s sale of Opioid Products in Quebec never exceeded 1.5% of overall opioid sales in any given year during the Class Period, as more fully appears from the sworn declarations of Mr. Tibor Kapusy, Director of the regulatory affairs group for Bausch Health, Canada Inc., an entity related to Valeant (the “**Kapusy Affidavit**”) and Mr. Daniel Yelin, Assistant General Counsel, Head of Legal Canada for Bausch Health, Canada Inc. (the “**Yelin Affidavit**”), filed *en liasse* as **Exhibit R-2A**;
12. Church & Dwight has represented and provided evidence that it manufactured and sold only one prescription opioid product in two different concentrations during part of the Class Period (2001 to 2020), and sales of such opioids represented a small share of the Settling Defendant’s total sales in the Province of Quebec with its total aggregate sales of such opioids for the relevant period was less than CAD \$3 million, as more fully appears from the sworn declaration of Ms. Elaine Moreau, Head of Global GXP Compliance and former Director, Quality and Regulatory Affairs Canada, for C&D (the “**Moreau Affidavit**”), filed as **Exhibit R-3A**;

Proposed Settlements

13. Following settlement discussions, settlement agreements were executed between the Plaintiff and the Setting Defendants as follows:
 - a) the settlement agreement with Aralez (the “**Aralez Settlement**”), dated November 10, 2022, filed as **Exhibit R-1**;

- b) the settlement agreement with Valeant (the “**Valeant Settlement**”), dated December 13, 2022, filed as **Exhibit R-2**; and
- c) the settlement agreement with Church & Dwight (the “**Church & Dwight Settlement**”), dated December 22, 2022, filed as **Exhibit R-3**.

(collectively, the “**Settlement Agreements**”)

14. Each Settlement Agreement provides for a full and final release of all claims against the Settling Defendants, in exchange for the payment of the following amounts (collectively, the “**Settlement Amounts**”):
- a) one hundred and forty-five thousand dollars (CA \$145,000) by the Settling Defendant Aralez, as appears more fully from Exhibit R-1;
 - b) three hundred and fifty thousand dollars (CA \$350,000) by the Settling Defendant Valeant, as appears more fully from Exhibit R-2; and
 - c) one hundred and forty-five thousand dollars (CA \$145,000) by the Settling Defendant Church & Dwight, as appears more fully from Exhibit R-3;

The Settlement Amounts are inclusive of all amounts, including interest and costs, and Class Counsel’s legal fees (which shall be fixed by the Court), apart from the cost of Notices to Class Members;

15. The Settlement Agreements are made without any admission of liability on the part of the Settling Defendants;
16. As the Settling Defendants had minimal sales of prescription opioids in the Province of Quebec during the Class Period, the Plaintiff believes that the settlement of the Class Action as against the Settling Defendants is in the best interests of the Class Members;
17. The Settlement Amounts will be deposited into the Class Counsel’s Trust Account in accordance with the Settlement Agreements and the funds shall not be paid out except in accordance with an order of the Court, as provided for in Exhibits R-1, R-2 and R-3;
18. If the Settlement Agreements are approved by the Court, the class action will continue against the remaining Defendants (the “**Non-Settling Defendants**”), excluding any other Defendants who have entered into settlement agreements with the Plaintiff which have been approved by the Court;

Authorization of the Class Action for Settlement Purposes

19. The Settling Defendants have consented to the authorization of the class action and designation of the Plaintiff as the Class Representative, for the sole purpose of submitting the Settlement Agreements to this Court for approval;

WHEREFORE, MAY IT PLEASE THIS HONOURABLE COURT TO:

GRANT the present Application;

AUTHORIZE the class action for the sole purpose of approving the Settlement Agreements between the Plaintiff and the Settling Defendants;

APPOINT the Jean-François Bourassa as having the status of Representative Plaintiff for purposes of the present settlement only;

ORDER that for the purposes of this Judgment, the definitions and defined terms contained in the various Settlement Agreements apply to the parties to each thereof and are incorporated by reference herein;

DECLARE that the Settlement Agreements are fair, reasonable and in the best interests of the Class Members;

APPROVE the Aralez Settlement Agreement between the Plaintiff and Defendant Aralez;

APPROVE the Valeant Settlement Agreement between the Plaintiff and Defendants Valeant Canada Limited, Valeant Canada LP and 4490142 Canada Inc., F.K.A. as Meda Valeant Pharma Canada Inc.;

APPROVE the Church & Dwight Settlement Agreement between the Plaintiff and Defendant Church & Dwight Canada Corp.;

APPROVE the payments of the Settlement Amounts by the Settling Defendants to the Plaintiff, as set forth in the Settlement Agreements;

DECLARE that the Class Action against the Settling Defendants is settled out-of-Court for all legal intents and purposes whatsoever, in accordance with the specific terms contained in the present judgement;

DECLARE that, by operation of this Settlement Approval Order, unless the Aralez Settlement Agreement is terminated in accordance with the provisions of Section III thereof, the Releasing Parties, upon the present Settlement Approval Order becoming final, will be deemed to have, and by operation of this Approval Order will have, fully, finally, and forever released, relinquished and discharged the Released Parties from all Released Claims, as those terms are defined in the Aralez Settlement Agreement, for all legal intents and purposes whatsoever;

DECLARE that, by operation of this Settlement Approval Order, unless the Valeant Settlement Agreement is terminated in accordance with the provisions of Section III thereof, the Releasing Parties, upon the present Settlement Approval Order becoming final, will be deemed to have, and by operation of this Approval Order will have, fully, finally, and forever released, relinquished and discharged the Released Parties from all Released Claims, as those terms are defined in the Valeant Settlement Agreement, for all legal intents and purposes whatsoever;

DECLARE that, by operation of this Settlement Approval Order, unless the Church & Dwight Settlement Agreement is terminated in accordance with the provisions of Section III thereof, the Releasing Parties, upon the present Settlement Approval Order becoming final, will be deemed to have, and by operation of this Approval Order will have, fully, finally, and forever released, relinquished and discharged the Released Parties from all Released Claims, as those terms are defined in the Church & Dwight Settlement Agreement, for all legal intents and purposes whatsoever;

DECLARE that:

- a) the Plaintiff and the Class Members expressly waive and renounce the benefit of solidarity against the Non-Settling Defendants with respect to the facts, deeds or other conduct of the Releasees, and the Non-Settling Defendants are thereby released with respect to the proportionate liability of the Releasees proven at trial or otherwise, if any;
- b) the Plaintiff and the Class Members shall henceforth only be able to claim and recover damages in the present Class action, including punitive damages, interest, additional indemnity, fees and costs attributable to the conduct of the Non-Settling Defendants, and/or other applicable measure of proportionate liability of the Non-Settling Defendants;
- c) any claims in warranty or any other claim or joinder of parties to obtain any contribution or indemnity from the Released Parties or relating to the Released Claims shall be inadmissible and void in the context of the present Class Action; and
- d) this Court shall have full authority to determine the proportionate liability of the Releasees at the trial, or other disposition of the proceedings, whether or not the Releasees appear at the trial or other disposition, and the proportionate liability shall be determined as if the Releasees are parties to the proceedings;

APPROVE the discontinuance of the Class Action without costs (including any previously accrued or awarded costs) as against the Settling Defendants;

APPROVE the form and content of the French and English versions of the Settlement Approval Notice attached *en liasse*, as an Annex, and as modified by the present Judgment;

ORDER Class Counsel, within 10 days of the date of this Judgment, to post the Settlement Approval Notice in both English and French on its Facebook page and website for a period of at least 90 days, as well as in the online registry of class actions offered by the Superior Court of Quebec, and to email the said Settlement Approval Notice in both English and French to each person who has registered on Class Counsel's website to receive information regarding the Class Action;

DECLARE that the Class Members who have not already opted out by the Opt-Out Deadline are bound by this Judgment and the Settlement Agreements, as well as any other judgments that would be rendered in connection with the Class Action;

ORDER and **DECLARE** that the Releases shall become effective pursuant to the terms and conditions provided for in the respective Settlement Agreements;

THE WHOLE without legal costs unless contested.

MONTREAL, 25, 2023

(s) Fishman Flanz Meland Paquin

**FISHMAN FLANZ MELAND PAQUIN
LLP**

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MONTREAL, 25, 2023

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LIST OF EXHIBITS


Exhibit R-1	Aralez Settlement Agreement dated November 10, 2022 between the Plaintiff and Aralez, together with Schedules A, B, C, D and E
Exhibit R-1A	Affidavit of Dr. Bernard Chiasson, dated November 10, 2022
Exhibit R-2	Valeant Settlement Agreement dated December 13, 2022 between the Plaintiff and Valeant Canada Limited ("Valeant Limited"), Valeant Canada LP ("Valeant LP") and 4490142 Canada Inc., F.K.A. as Meda Valeant Pharma Canada Inc. ("4490142") (together " Valeant "), together with Schedules A, B, C, D and E
Exhibit R-2A (en liasse)	Affidavits of Mr. Tibor Kapusy and Mr. Daniel Yelin, both dated December 13, 2022
Exhibit R-3	Church & Dwight Settlement Agreement dated December 22, 2022 between the Plaintiff and Church & Dwight, together with Schedules A, B, C, D and E
Exhibit R-3A	Affidavit of Ms. Elaine Moreau, dated December 22, 2022

AFFIDAVIT

I, **Margo Siminovitch**, Attorney, practicing my profession at 1250, boul. René Lévesque West, Suite 4100, Montréal, Quebec, H3B 4W8, solemnly affirm that:

1. I am one of the attorneys for Plaintiff in the present matter;
2. I have read the present *Application to Authorize a Class Action for Settlement Purposes, and to Approve the Settlement Agreements* and all of the facts alleged therein are true and correct.

AND I HAVE SIGNED:



Margo Siminovitch

SOLEMNLY AFFIRMED BEFORE ME
in the City of Montreal,
this 25th day of January, 2023




Commissioner for Oaths for Quebec

NOTICE OF PRESENTATION

To: The Service List

TAKE NOTICE that the *Application to Authorize a Class Action for Settlement Purposes, and to Approve the Settlement Agreements* will be presented for decision before one of the Honourable Justices of the Superior Court, sitting in and for the District of Montreal, on a **date and time to be determined by the Court**, in a room of the Montreal courthouse to be designated by the Court or by means of a digital hearing.

DO GOVERN YOURSELVES ACCORDINGLY.

MONTREAL, January 25, 2023

(s) Fishman Flanz Meland Paquin

FISHMAN FLANZ MELAND PAQUIN LLP

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MONTREAL, January 25, 2023

(s) Trudel Johnston & Lespérance

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