SUPERIOR COURT
(Class Action Chamber)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

N° : 500-06-001004-197

DATE : August 9, 2022

PRESIDING: THE HONOURABLE GARY D.D. MORRISON, J.S.C.

JEAN-FRANÇOIS BOURASSA

Applicant

v.

ROXANE LABORATORIES INC.
BOEHRINGER INGELHEIM (CANADA) LTD.
HIKMA LABS INC.
BGP PHARMA ULC
MYLAN PHARMACEUTICALS ULC
MERCK FROSST CANADA & CO.
SANIS HEALTH INC.

Settling Respondents

JUDGMENT
(authorization of class action for settlement purposes)

JM2455

[1] The Court is being asked by Mr. Bourassa, the proposed representative plaintiff ("Applicant"), and seven of approximately thirty-three named respondents to authorize the class action for the sole purpose of approving the proposed settlements.

[2] The context of this application is as follows.

[3] Applicant Bourassa, who replaced the previous applicant Mr. Camarda in January 2022, seeks to institute a class action against the numerous respondents, all of whom allegedly manufactured, marketed, distributed and/or sold opioid medication to Quebec residents from 1996 onwards.

[4] The putative class is defined as follows[1]:

> *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, subject to the settlement agreement entered into in the court file no 200-06-000080-070, provided that such settlement agreement becomes effective as a result of the issuance of the requisite court approvals.*

[5] The definition contains a conditional exclusion regarding a settlement agreement in another legal action, which in fact relates to a prior Canadian-wide class action involving two specific drugs that would otherwise be included in the present class-action proceedings.

[6] Another exclusion, or what respondents qualify as a "carve-out", is stated as follows at paragraph 2.4.2 of the Re-Amended Application:

> [...] *However, to the extent that any of the opioids listed in the following paragraphs were solely and exclusively available for use in a hospital setting (e.g., not available at any time during the Class Period to be prescribed for use in the home), such opioids are not the subject of the present Class Action.*

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1 Re-Amended Application to authorize a class action, para. 1.

[7] Accordingly, and subject to the exclusion and carve out, the putative class would comprise all persons in Quebec who have been prescribed and have consumed respondents' opioid medication and who suffer or have suffered from Opioid Use Disorder, as well as their heirs.

[8] The proposed class action seeks compensatory, individual pecuniary and punitive damages.

[9] As regards the legal nature of the intended class action, Applicant argues that it is based on civil liability for injury caused by a safety defect regarding the medication, including the lack of sufficient warnings as to the risks and dangers involved in the use thereof, the whole as per Articles 1468 and 1469 *Civil Code of Quebec.*

[10] Respondents generally do not agree with Mr. Bourassa's characterization of his legal syllogism, which they consider to be an oversimplification of his legal burden.

[11] That will be argued at the contested authorization hearing scheduled for the upcoming judicial year.

[12] Suffice it to say, for the present purposes, the seven (7) settling respondents (the "Settling Respondents") are not debating the nature of the proposed class action. Rather, they seek, without admission, the approval of their settlement agreements, of which there are four (4).

1. PROPOSED SETTLEMENTS

[13] There are four (4) distinct settlement agreements, being the following:

1. Roxane Laboratories Inc. ("Roxane") and Boehringer Ingelheim (Canada) Ltd. ("BI"), for their own interests as well as for Hikma Labs Inc. ("Hikma"), the whole referred to as the R&B Settlement, dated July 14, 2021, with Addendum dated January 13, 2022, for an amount of $125,000;

2. BGP Pharma ULC ("BGP") and Mylan Pharmaceuticals ULC ("Mylan"), dated January 12, 2022, referred to as the B&M Settlement, for an amount of $199,000 USD;

3. Merck Frosst Canada & Co. ("Merck"), referred to as the Merck Settlement, dated February 7, 2022, for an amount of $145,000;

4. Sanis Health Inc. ("Sanis"), referred to as the Sanis Settlement, dated February 16, 2022, for an amount of $180,000.

[14] Considering the currency conversion from US dollars envisaged by the B&M Settlement, these four settlements would make available for all putative class members an amount of approximately $700,000.

[15] The settling parties explain that the Settling Respondents only had minimal sales or a marginal role during a short time span throughout the entire class period, which provides context to the settlement amounts and also, will assist the class in "ensuring the resources are directed against other Defendants".

[16] In keeping with all four settlement agreements, the money would be paid and deposited into class counsel's trust account, with interest to accrue to the benefit of all class members.

[17] Since all putative class members are to benefit from the capital and interest, and not only those who demonstrated that they consumed the products of the Settling Respondents, no immediate distribution is to be made. The settlement agreements all stipulate that distribution will be made in accordance with a future court order.

[18] As well, opt-out provisions are envisaged, particularly in the B&M, Merck and Sanis Settlements, which stipulate the existence of threshold levels. Below those levels, which are stated as being at 10 in the latter two, the Settling Respondent is entitled to terminate its settlement agreement.

[19] Very similar provisions, if not identical in certain cases, are required for the Court's settlement approval order. All four agreements provide draft models of such orders, which are almost identical to the conclusions provided in the draft judgement submitted by the settling parties along with their joint application.

[20] An "essential" and "material" term of all the settlement agreements relates to the issue of waiver and renunciation of solidarity by Applicant Bourassa and all class members.

[21] The four agreements contain, in this regard, essentially the same wording as presented to the Court in the March 25, 2022, version of the suggested draft court order. Those waiver and renunciation provisions read as follows:

> a) *the Plaintiff Bourassa 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 Bourassa and the Class Members shall henceforth only be able to claim and recover damages, including punitive damages, interest 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 Releasees 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.*

[22] Certain non-settling parties have expressed concern regarding the wording of those provisions, as well as regards other elements of the proposed settlements. These issues will be included in the Court's analysis.

2. APPLICABLE LEGAL PRINCIPLES

[23] Article 590, *Code of Civil Procedure*, stipulates that a transaction pertaining to a class action is only valid if approved by the court, and this after notice has been given to class members in order that they may voice their views prior to the court making its decision as to approval.

[24] The reason for requiring the court's approval and the criteria to be applied for such approval have been described as follows by Justice André Prévost in his oft-cited decision in the matter of *Pellemans* v. *Lacroix*[2]:

> [19] Cette exigence découle du rôle de gardien et de protecteur des droits des membres réservé au tribunal. En effet, les membres visés par un recours collectif ne sont pas proprement dit des parties à l'instance et bien que le représentant agisse en leur nom, il n'est pas tenu en principe de les consulter relativement à la conduite du recours.
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> [20] Appelé à approuver une transaction, le tribunal doit tout d'abord s'assurer qu'elle est juste, équitable et dans le meilleur intérêt des membres du groupe. Les critères devant le guider sont généralement les suivants :
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> - les probabilités de succès du recours;
> - l'importance et la nature de la preuve administrée;
> - les termes et les conditions de la transaction;

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2 2011 QCCS 1345, paras. 19-21.

- la recommandation des procureurs et leur expérience;
- le coût des dépenses futures et la durée probable du litige;
- la recommandation d'une tierce personne neutre, le cas échéant;
- le nombre et la nature des objections à la transaction;
- la bonne foi des parties;
- l'absence de collusion.

> [21] L'analyse de ces critères constitue un exercice délicat puisque l'habituel débat contradictoire fait place à l'unanimité des parties qui ont signé la transaction et qui ont tout intérêt à la voir approuvée par le tribunal. D'une part, le juge n'a généralement qu'une connaissance limitée des circonstances et des enjeux du litige. D'autre part, il doit en principe encourager le règlement des litiges par la voie de la négociation, ceci étant généralement dans le meilleur intérêt des parties. Le Tribunal doit donc se montrer vigilant.
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> [Reference omitted.]

[25] The principle that courts should encourage settlements, thereby giving effect to the will of the parties, unless contrary to public order or some other legal impediment, has been confirmed in other decisions of the Superior Court[3].

3. CONCERNS RAISED BY NON-SETTLING RESPONDENTS AND THE FONDS D'AIDE AUX ACTIONS COLLECTIVES ("FONDS")

[26] Concerns were raised during the authorization and approval hearing regarding the following issues:

1. opt-out requirements in relation to a partial settlement;
2. undistributed settlement amounts;
3. discontinuance provision;
4. certain proposed modifications to paragraphs 15, 16 and 24 of the proposed draft order;
5. the Bar Order and related solidarity provisions at paragraph 28 of the proposed draft order.

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[3] *Markus* c. *Reebok Canada inc.*, 2012 QCCS 3562, para. 20; *M.G.* v. *Association Selwyn House*, J.E. 2009-605 (C.S.).

3.1. Opt-out requirements

[27] A concern was raised as to the requirement that all class members, even those who were never prescribed and never consumed opioid products manufactured, marketed, distributed or sold by any of the Settling Respondents, are required to opt-out even in the context of a partial settlement and this without knowing the ultimate amount they may receive or when, and otherwise without having a distribution plan in hand.

[28] Such a requirement may generally not be considered ideal, but in the Court's view, it is not contrary to a just and equitable settlement in the best interests of the class.

[29] What is envisaged in the settlement agreements is that all putative class members will benefit from the settlement amounts to be paid without being required to establish that they acquired product emanating from a Settling Respondent.

[30] Accordingly, there is nothing fundamentally unjust or inequitable in applying the same rule to all class members.

[31] It is also understandable that Settling Respondents may want to negotiate on opt-out threshold so as to increase their chances of concluding a settlement that will put an end to the risk of their facing numerous individual claims for the same issues as are brought forward in the proposed class action.

[32] The Court considers that there is nothing fundamentally wrong with the idea of an opt-out threshold so long as it is not, in a given case, contrary to public order or some other legal impediment. Such is not the case in the present matter.

[33] As for the class members not having a distribution plan in hand, actually there is a preliminary plan to the extent that a future distribution will need be made in accordance with a future court order. The Court will address this matter further in the next section.

3.2. Undistributed settlement amounts

[34] First and foremost, the fact that a distribution will only be made in the future is not per se contrary to the best interests of class members.

[35] Other class-action settlements have been authorized which left for the future the distribution of funds[4].

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4 See: *9085-4886 Quebec inc.* c. *Visa Canada Corporation*, 2015 QCCS 5921, para. 19.

[36] The Court does not consider this to be contrary to the best interests of the class members in the present matter.

[37] The Fonds raised concerns about the lack of a distribution plan. It also seeks to ensure that:

a) The amounts are held in a separate interest-bearing trust account with a recognized financial institution;

b) Court approval will be required in relation to the payment of fees and disbursements to class counsel, including the reimbursement of amounts due to the Fonds;

c) A requirement need be imposed for a distribution plan containing the method and modalities of payment, with required undertakings;

d) Provisions be made as to the possibility of a residual amount being paid to the Fonds;

e) A report on the administration of the settlement funds and their distribution should be required.

[38] As mentioned, the four settlement agreements all clearly provide that the settlement funds will be held in a class counsel trust account, that interest will accrue to the benefit of class members and, further, that no payment will be made except in conformity with a court order.

[39] Given the settlement agreements as drafted, there is no reason provided by others which convince the Court that it should be concerned that class counsel, well known and experienced as they are, will not be depositing the settlement funds into an interest-bearing account at a recognized financial institution. The Fonds in particular has not raised in this regard any specific reason or explanation for the Court to be concerned in relation to the present class counsel.

[40] One should also keep in mind that class counsel, as members of the Quebec Bar Association, have professional obligations to satisfy in relation to their trust accounts, compliance with which is within the authority of their professional association.

[41] Had the settlement agreements been silent concerning these issues, or had specific problems been identified in relation to class counsel and their trust accounts, the Court would intervene. However, that is not the case in relation to these aspects of the proposed settlements in the present case. The Court is to protect the interests of putative class members and to ensure compliance with the law. It is not the Court's role,

however, nor that of others to insist on perfection or to attempt to second-guess the parties as regards the drafting of their settlement agreements.

[42] As regards items b) to e) raised by the Fonds, the Court is of the view that as important as those subject are, it is premature to provide for same at this stage.

[43] The settlement agreements, as already mentioned, provide for a future court order being required prior to any distribution. The financial issues can be addressed at that time.

[44] As for payment of fees and disbursements, that too will be dealt with when class counsel seek the Courts' approval for their fees and disbursements, which they have yet to do.

[45] There is no reason provided to the Court to entice it to intervene at this stage in this regard.

3.3. Discontinuance

[46] The Fonds raises the concern that if the Court were, as requested by the settling parties, to approve the "discontinuance" of the class action without costs, that could undermine the integrity of the judicial system.

[47] That certainly sounds very serious. But in the Court's view, in the present matter, it is at best an academic debate.

[48] It is correct to observe that paragraph 29 of the suggested draft order does seek the approval of "the discontinuance of the Class Action without costs".

[49] But this is in no way an attempt to hide the existence of a settlement out of Court.

[50] The motion before the Court seeks the approval of settlements. The agreements themselves are clearly settlement agreements. Settling Respondents will be paying money for the benefit of class members. The settling parties are pleading the criteria applicable to settlements as opposed to those related to traditional discontinuances.

[51] Moreover, the draft order contains numerous references to the proposed settlements, including in its conclusions. In fact, each and every conclusion leading up to paragraph 29, as well as every conclusion thereafter, contains either the word "settlement", settling" or "non-settling".

[52] There can be no doubt that what the parties intend is to settle and that the Court is to either authorize a class action and approve the settlements, or not.

[53] The parties clearly want to terminate the class-action proceedings against the Settling Respondents. Article 213 C.C.P. stipulates that the effect of a discontinuance is to terminate the proceedings.

[54] According to Article 220 C.C.P., parties may terminate a proceeding by making a transaction, which can then be formalized by filing a notice of settlement with the court. These legal concepts are not contradictory.

[55] In the context of class-action proceedings, a representative plaintiff must have the court's authorization to discontinue the application (Art. 585 C.C.P.) or the court's approval in the case of a transaction (Art. 590 C.C.P.).

[56] As mentioned, the settling parties are seeking the Court's approval of their settlement agreements. It is all very transparent.

[57] What difference then does it make in the present instance that in addition to referring to the parties' agreements as a settlement, they also ask the Court to approve the discontinuance of the class action?

[58] In the Court's view, there is no practical difference, and doing so neither brings the judicial system into disrepute, nor does it contravene public order. It is, in the context of the present case, much ado about nothing and, at best, is purely an academic endeavour.

3.4. Certain modifications to paragraphs 15, 16 and 24 of the draft order

[59] As the Court understands it, in the days leading up to the authorization and settlement approval hearing, discussions were had between the settling and the non-settling respondents as to the wording of the draft order.

[60] Those discussions resulted in the Applicant's newly proposed draft order dated March 28, 2022.

[61] Two of these three modifications, at paragraphs 15 and 16, are to a great extent merely belts-and-suspenders wording that add nothing of substantive importance.

[62] Of course, if all the settling parties agreed, adding these words would not be problematic. But certain Settling Respondents do not agree to the changes.

[63] The two paragraphs in question are the following; the newly added words are typed in italics for comparative purposes:

> [15] **AUTHORIZES** the class action for the sole purpose of approving the Settlement Agreements *and without prejudice to the Non-Settling Defendants' rights and recourses*;
>
> [16] **APPOINTS** Plaintiff as having the status of Representative Plaintiff for purposes of the present settlements only, *without prejudice to the Non-Settling Defendants' rights and recourses to dispute his status*;

[64] In the Court's view, the pre-existing words "for the sole purpose" and "for purposes of the present settlement only" negate the necessity to add the without-prejudice wording. The Court does not consider it appropriate to impose on Settling Respondents unwanted wording when it is not necessary, or even useful, at this stage. The absence of those additional words is not detrimental to the non-settling parties in the present matter.

[65] As regards paragraph 24, however, the Court considers that the suggested modification brings some appropriate clarity and reduces unnecessary confusion, and thus is in the best interests of the putative class members. The modified wording is as follows, once again with the newly added words in italics:

> [24] **DECLARES** that the Class Action against the Settling Defendants is settled out-of-Court for all legal intents and purposes whatsoever *under the specific terms of this Judgment*;

[66] In fact, in the Court's view, additional further clarity would come from using the following words instead of those modified ones: "... in accordance with the present judgment".

[67] Such clarity is useful since certain settlement agreements can be terminated by Settling Respondents in the event that the opt-out threshold is surpassed. It is accordingly required for both approval and implementation purposes.

[68] Although it is not generally the role of the court to rewrite settlement agreements, including their annexes, certain authority to do so was specifically provided by all four settlement agreements. The parties all agreed that the Court in granting a settlement approval order could order "any other measure the Court should deem required to facilitate the approval, implementation or administration of this Settlement Agreement"[5].

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[5] R&B Settlement, para. 12(g); B&M Settlement, para. 6.7(g); Merck Settlement, para. 13(m); Sanis Settlement, para. 13(m).

3.5. The Bar Order and related solidarity provisions at paragraph 28 of the proposed draft order

[69] The waiver and renunciation provisions are cited above, at paragraph 21 hereof.

[70] The provisions used for the draft order are essentially the same as those identified in the conclusions of the judgment rendered in 2021 by now Chief Justice Paquette in the matter of *California States Teachers' Retirement System* v. *Bausch Health Companies Inc. et al.*[6].

[71] In the days prior to the hearing, counsel for non-settling respondent Pro Doc submitted a revised draft order, which a Settling Respondent has described as a complete re-write.

[72] Contrary to what counsel for Pro Doc suggested, it is not for the settling parties to demonstrate their reasons for not accepting his re-write of the waiver and renunciation clauses. It is incumbent on the non-settling party who contests the settlement wording to demonstrate the necessity for using his suggestions so that the court can decide in the best interests of the class members.

[73] In the Court's view, Pro Doc has not demonstrated that the Court should so intervene by adopting its wording and imposing it on the settling parties.

[74] The wording of the settling parties is sufficiently clear from the perspective of both the class members and the non-settling respondents in that they know that the class members are renouncing to their right to claim the proportionate liability of the Settling Respondents from the non-settling ones and, further, that the Court retains its authority to determine that proportionate liability.

[75] As for the Bar Order at paragraph 28c), Pro Doc argues that not only is it unclear and imprecise, but it is of no legal value whatsoever in Quebec civil law.

[76] As for the clarity of the wording, the Court considers it to be sufficiently clear.

[77] That said, Pro Doc is correct to point out that the usefulness of such orders under Quebec law has been questioned in prior case law.

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6 *California States Teachers' Retirement System* v. *Bausch Health Companies Inc. et al.*, Montreal S.C., Nos. 500-11-055722-181 and 500-17-106044-186, August 13, 2021, J. Paquette.

[78] In *Jacques* v. *Pétroles Therrien inc.*[7], Justice Bélanger, then of the Superior Court, declined to issue a bar order being of the view that it was not useful given that there can be no recursory claim against a solidary debtor with respect to whom the creditor has renounced solidarity.

[79] In 2016, in the matter of *B2B Trust* v. *Samson & Associés*[8], Justice Morissette of the Court of Appeal confirmed that the renunciation of solidarity by the creditor as regards a specific debtor renders inadmissible all claims against the latter's codebtors for this proportionate share of the debt. He further confirmed that there is no reason for this principle not to also apply in the case of a class action.

[80] That said, the settling parties argue that it is a necessary component of their settlement, and in this regard, it is useful to note that many if not all of the Settling Respondents operate in jurisdictions where bar orders not to sue are commonplace.

[81] The desire for such parties to benefit from the comfort of their traditional settlement provisions is something the Court accepts to take into consideration in order to promote a settlement that is otherwise in the best interests of the class members. To put such a settlement at risk simply due to the lack of usefulness does not appear to be in the best interests of the class members.

[82] And without looking to overstate the case, maintaining the bar order will also provide more clarity for non-settling respondents than would simply striking the clause.

[83] In the Court's view, the wording as proposed by the settling parties in the March 25 version is acceptable and in the best interests of the class members.

4. APPLICATION OF THE LEGAL PRINCIPLES

[84] In the Court's view, the proposed class action, for the purposes of settlement, satisfies the criteria set forth at Article 575(1) to (4) C.C.P. in relation to the Settling Respondents.

[85] No one contests that conclusion in the context of the partial settlements.

[86] As regards the probability of success, and inversely the risk of failure, the challenge of course is for the Applicant to demonstrate that his legal syllogism applies to the Settling Respondents, who had minimal sales or a marginal role, given the requirement that class members have suffered Opioid Use Disorder.

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7 2010 QCCS 5676, paras. 61 and following.
8 2016 QCCA 1569, paras. 6-7.

[87] Moreover, in order to succeed, Applicant will likely face a potentially long and costly process.

[88] The terms and conditions of the proposed settlements have, for the most part, already been analysed above, and the Court is of the view that the settlements are in the best interests of the class members in that regard.

[89] Class counsel are very experienced in both class actions and other major multi-party civil and commercial litigation. They recommend the settlement as being advantageous to their clients, and this without even seeking at this stage the payment of their fees and expenses.

[90] Although the Fonds does not promote the settlement per se, and apart from certain concerns it has expressed, as discussed above, it does not speak against authorizing the action and approving the settlements. Nor do most non-settling respondents.

[91] Moreover, class counsel advised the Court that there are no substantive objections from putative class members to the settlements subsequent to the notices issued pursuant to the Court's approval of same.

[92] There were a limited number of communications received from identified putative class members voicing an objection, all of which were said to have been withdrawn after class counsel provided explanations.

[93] Also, two emails containing objections were apparently received from senders who did not provide either their specific names or reasons for their objections.

[94] In addition, there is no demonstration or even suggestion of collusion or bad faith. Good faith is to be presumed, and nothing demonstrates that there is no good faith.

[95] In the Court's view, the applicable criteria having been met, the class actions against the Settling Respondents should be authorized for settlement purposes and the four settlement agreements approved, being fair, just, equitable and in the best interests of the class members.

5. SETTLEMENT APPROVAL NOTICES

[96] For the most part, the proposed settlement approval notices are satisfactory.

[97] However, due to the opt-out provisions in the context of partial settlements, the Court is of the view that certain clarifications are required for approval purposes so as to provide class members with additional clarity.

[98] Accordingly, the following modifications thereto must be made to the English version and repeated in the French version:

- At page 2, between the 2nd and 3rd paragraph of the Opting Out section, the following additional paragraph is to be added:

  > The need to opt out so as not to be bound applies to all class action members and not only to those who consumed prescription opioid medication manufactured, marketed, distributed and/or sold by any of the Settling Respondents.

- At page 2, in the 2nd paragraph of the Opting Out section, after the first sentence ending by the words "against the other Defendants", the following additional sentence is to be added:

  > If you do opt out, you will be opting out of the entire Opioid Class Action and not just the class action pertaining to the present settlement agreements.

- At page 2, after the addition of the above sentence, a new paragraph is to be added, commencing with the existing words "However, if you opt-out,".

- At page 2, in the 4th paragraph, starting with the words "Your opt-out letter must be completed", the words "11:59 p.m. on" must be added after the words "and mailed before" and before the words "[insert Opt-Out Deadline]".

- At page 2, in the 5th paragraph, the words "11:59 p.m. on" must be added after the words "postmarked before" and before "[insert Opt-Out Deadline]."

FOR THESE REASONS, THE COURT:

[99] **GRANTS** the Plaintiff's Settlement Approval Applications;

[100] **AUTHORIZES** the class action for the sole purpose of approving the Settlement Agreements;

[101] **APPOINTS** Jean-François Bourassa as having the status of Representative Plaintiff for purposes of the present settlements only;

[102] **ORDERS** that for the purposes of this Judgment, the definitions and defined terms contained in the various respective Settlement Agreements shall apply to the parties to each thereof and are incorporated by reference herein;

[103] **DECLARES** that the Settlement Agreements are fair, reasonable and in the best interests of the Class Members;

[104] **APPROVES** the R&B Settlement between the Plaintiff and Defendants Roxane Laboratories Inc. and Boehringer Ingelheim (Canada) Ltd.;

[105] **APPROVES** the B&M Settlement between the Plaintiff and Defendants BGP Pharma ULC and Mylan Pharmaceuticals ULC;

[106] **APPROVES** the MFC Settlement between the Plaintiff and Defendant Merck Frosst Canada & Co.;

[107] **APPROVES** the Sanis Settlement between the Plaintiff and Defendant Sanis Health Inc.;

[108] **APPROVES** the payments of the Settlement Amounts by the Settling Defendants to the Plaintiff, as set forth in the Settlement Agreements;

[109] **DECLARES** 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;

[110] **DECLARES** that, by operation of this Settlement Approval Order, unless the B&M Settlement is terminated in accordance with the provisions of paragraphs 3.5, 3.6 and 7.1 of the B&M Settlement, the Releasing Parties will be deemed to have fully, finally, and forever released, relinquished and discharged the Released Parties from all Released Claims, as those terms are defined in the B&M Settlement, for all legal intents and purposes whatsoever;

[111] **DECLARES** that, unless the MFC Settlement is terminated in accordance with the provisions of paragraph 20 of the MFC Settlement, the Releasing Parties, upon the present Settlement Approval Order becoming final, will be deemed to have, and by operation of this Settlement 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 MFC Settlement Agreement, for all legal intents and purposes whatsoever;

[112] **DECLARES** that, unless the Sanis Settlement is terminated in accordance with the provisions of paragraph 20 of the Sanis Settlement, the Releasing Parties, upon the present Settlement Approval Order becoming final, will be deemed to have, and by operation of this Settlement 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 Sanis Settlement Agreement, for all legal intents and purposes whatsoever;

[113] **DECLARES** that:

a) the Plaintiff Bourassa 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 Bourassa and the Class Members shall henceforth only be able to claim and recover damages, including punitive damages, interest 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 Releasees 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.

[114] **APPROVES** the discontinuance of the Class Action without costs (including any previously accrued or awarded costs) as against the Settling Defendants, as well as Releasee Hikma Labs Inc.;

[115] **APPROVES** 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;

[116] **ORDERS** 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;

[117] **DECLARES** that Class Members who wish to opt out of the Class Action must do so on or before 11:59 p.m. on the date that is 30 days after the date on which the Settlement Approval Order Notice is first published in accordance with the present Judgment;

[118] **DECLARES** that the Class Members who do not opt out shall be bound by this Judgment and the Settlement Agreements, as well as any other judgments that would be rendered in connection with the Class Action;

[119] **ORDERS** and **DECLARES** that the Releases shall become effective pursuant to the terms and conditions provided for in the respective Settlement Agreements;

[120] **THE WHOLE** without legal costs.

Gary D.D. Morrison, J.S.C.

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Mtre. Francis Rouleau
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For Purdue Frederick Inc. and Purdue Pharma

Mtre. Nathalie Guilbert
For the Fonds d'aide aux actions collectives

Date of Hearing : March 28, 2022

ANNEX

Quebec Opioid Class Action

Jean-François Bourassa v. Abbott Laboratories Ltd. et al.
No. 500-06-001004-197

PLEASE READ THIS NOTICE CAREFULLY AS IT MAY AFFECT YOUR RIGHTS

In 2019, an application for authorization of a class action against several defendants ("**Defendants**") who manufactured, marketed, distributed and/or sold prescription opioids to Quebec residents between 1996 and the present day was filed in the Superior Court of Quebec, and was last amended on December 17, 2021. This class action (the "**Opioid Class Action**") seeks to compensate every resident of Quebec who suffers, or has suffered from, opioid use disorder following the use of prescription opioid products (the "**Class Members**").

ORDER APPROVING THE SETTLEMENT AGREEMENTS

On _____, 2022, Justice Morrison of the Superior Court of Quebec issued an order authorizing the Opioid Class Action (the "**Order**") for the settlement purposes and approving the following four (4) settlement agreements entered into with several Defendants (the "**Settling Defendants**"):

1) a settlement agreement with Roxane Laboratories Inc. and Boehringer Ingelheim (Canada) Ltd. which provides for a full and final release of all claims against them, as well as against Hikma Labs Inc., in exchange for the payment of CAD $125,000 (the "**R&B Settlement**");

2) a settlement agreement with BGP Pharma ULC and Mylan Pharmaceuticals ULC which provides for a full and final release from all claims against them in exchange for the payment of USD $199,000 (the "**B&M Settlement**");

3) a settlement agreement with Merck Frosst Canada & Co. ("**MFC**") that provides for the full and final release from all claims against it in exchange for the payment of CAD $145,000 (the "**MFC Settlement**") and;

4) a settlement agreement with Sanis Health Inc. ("**Sanis**") that provides for the full and final release from all claims against it in exchange for the payment of CAD $180,000 (the "**Sanis Settlement**")

(collectively the "**Settlement Agreements**").

The Order and the Settlement Agreements are available on Class Counsel's website: https://tjl.quebec/en/class-actions/opioid-use-disorder/

The Settling Defendants deny all allegations of wrongdoing made against them in the Opioid Class Action and have entered into the Settlement Agreements without any admission of liability whatsoever and strictly to avoid the costs, delays and disruption resulting from protracted litigation.

The Settlement Agreements allow the Plaintiff to continue the Opioid Class Action against the remaining Defendants.

OPTING OUT OF THE CLASS ACTION

If you do not want to be bound by the approved Settlement Agreements or any decision which would be rendered in connection with the Opioid Class Action, you must opt-out of the Opioid Class Action.

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.

If you decide to opt-out of the entire Opioid Class Action, you must complete and submit before [insert Opt-Out Deadline] a written opt-out letter containing all the following information:

- ✓ The name of the lawsuit and court file number, being: *Bourassa v. Abbott Laboratories Ltd. et. al.* **No. 500-06-001004-197**;
- ✓ Your full name and current address;
- ✓ The name and address of your lawyer, if you have one;
- ✓ A statement that you are a Class Member;
- ✓ A statement that you want to opt-out of the Opioid Class Action; and
- ✓ Your signature and the date on which you signed the opt-out letter.

Your opt-out letter must be completed and mailed before [insert Opt-Out Deadline] to the following address:

Montreal Court House Clerk of the Superior Court of Quebec (C.S.M. **500-06-001004-197**) 1, Notre-Dame Street East, Montreal (QC) H2Y 1B6	Att. Opioid Class Action 750 Côte de la Place d'Armes, Suite 90 Montreal (QC) H2Y 2X8 Fax : 514-871-8800 info@tjl.quebec

Your opt-out letter must be postmarked before [insert Opt-Out Deadline].

If you do not comply with these opt-out procedures, you will remain a Class Member. As a Class Member, your rights will be determined by all judgments rendered in the Opioid Class Action.

If you have any questions, please do not hesitate to contact Class Counsel representing the Plaintiff and the Class Members:

FISHMAN FLANZ MELAND PAQUIN LLP
4100-1250 René-Lévesque Blvd. West
Montreal QC H3B 4W8
Tel. 514-932-4100
Fax 514-932-4170
info@ffmp.ca

TRUDEL JOHNSTON & LESPÉRANCE
750 Côte de la Place d'Armes
Montreal, QC H2Y 2X8
Tel. 514-871-8385
Fax 514-871-8800
info@tjl.quebec

Action collective sur les opioïdes au Québec

Jean-François Bourassa c. Abbott Laboratories Ltd. et al.

N° 500-06-001004-197

VEUILLEZ LIRE ATTENTIVEMENT CET AVIS, CAR IL PEUT AFFECTER VOS DROITS

En 2019, une demande pour autorisation d'exercer une action collective contre plusieurs défenderesses (« **Défenderesses** ») qui ont fabriqué, commercialisé, distribué et/ou vendu des opioïdes sur ordonnance à des résidents du Québec entre 1996 et ce jour a été déposée à la Cour supérieure du Québec, et a été modifiée pour la dernière fois le 17 décembre 2021. Cette action collective (l'« **Action collective sur les opioïdes** ») vise à indemniser chaque résident du Québec qui souffre, ou a souffert, d'un trouble lié à l'utilisation d'opioïdes suite à la consommation d'opioïdes sur ordonnance (les « **Membres du groupe** »).

ORDONNANCE APPROUVANT LES ENTENTES DE RÈGLEMENTS

Le _____ 2022, le juge Morrison de la Cour supérieure du Québec a rendu une ordonnance autorisant l'Action collective sur les opioïdes (l'« **Ordonnance** ») aux fins de règlements et approuvant les quatre ententes de règlements suivantes conclues avec plusieurs Défenderesses (les « **Défenderesses visées par les règlements** ») :

1) une entente de règlement avec Roxane Laboratories Inc. et Boehringer Ingelheim (Canada) Ltd. qui prévoit une quittance complète et définitive de toute réclamation à leur encontre, ainsi que contre Hikma Labs Inc., en échange du paiement de CA 125 000 $ (le « **Règlement R&B** ») ;

2) une entente de règlement avec BGP Pharma ULC et Mylan Pharmaceuticals ULC qui prévoit une quittance complète et définitive de toute réclamation à leur encontre en échange du paiement de 199 000 USD (le « **Règlement B&M** ») ;

3) une entente de règlement avec Merck Frosst Canada & Co. ("**MFC**") qui prévoit une quittance complète et définitive de toute réclamation à son encontre en échange du paiement de CA 145 000 $ (le « **Règlement MFC** »); et

4) une entente de règlement avec Sanis Health Inc. (« **Sanis** ») qui prévoit une quittance complète et définitive de toute réclamation à son encontre en échange du paiement de CA 180 000 $ (le « **Règlement Sanis** »)

(collectivement, les « **Ententes de règlement** »).

L'Ordonnance et les Ententes de règlement sont disponibles sur le site web des Avocats du groupe : https://tjl.quebec/recours-collectifs/dependance-aux-opioides/

Les Défenderesses visées par les règlements nient toutes les allégations d'actes répréhensibles portées contre elles dans le cadre de l'Action collective sur les opioïdes et ont conclu les Ententes de règlement sans aucune admission de responsabilité, dans le seul but d'éviter les coûts, les retards et les perturbations résultant d'un litige prolongé.

Les Ententes de règlement permettent au Demandeur de poursuivre l'Action collective sur les opioïdes contre les autres Défenderesses.

S'EXCLURE DE L'ACTION COLLECTIVE

Si vous ne souhaitez pas être lié par les Ententes de règlements approuvées ou encore par tout autre décision qui serait rendue en lien avec l'Action collective sur les opioïdes, vous devez vous exclure de l'Action collective sur les opioïdes.

Si vous vous excluez, cela signifie que vous ne bénéficierez pas des Ententes de règlements ni d'aucune autre décision rendue dans l'Action collective sur les opioïdes, qui continue à l'encontre des autres Défenderesses. Par contre, si vous vous excluez, vous allez préserver le droit de poursuivre les Défenderesses, y compris les Défenderesses visées par les règlements, en exerçant votre propre recours individuel, à vos frais, concernant les allégations formulées dans l'Action collective sur les opioïdes.

Si vous décidez de vous exclure complètement de l'Action collective sur les opioïdes, vous devez compléter et envoyer une lettre d'exclusion écrite avant le [insérer le délai d'exclusion], contenant toutes les informations suivantes :

- ✓ Le nom et le numéro de dossier du tribunal, à savoir : *Bourassa c. Abbott Laboratories Ltd. et. al.* **No. 500-06-001004-197**;
- ✓ Votre nom complet et votre adresse;
- ✓ Le nom et l'adresse de votre avocat, si vous en avez un;
- ✓ Une déclaration à l'effet que vous êtes un Membre du groupe;
- ✓ Une déclaration à l'effet que vous souhaitez vous exclure de l'Action collective sur les opioïdes; et
- ✓ Votre signature et la date à laquelle vous avez signer votre lettre d'exclusion.

Votre lettre d'exclusion doit être complétée et envoyée par la poste avant le [insérer le délai d'exclusion] aux adresses suivantes :

Palais de justice de Montréal Greffe de la Cour supérieure du Québec (C.S.M. **500-06-001004-197**) 1, rue Notre-Dame Est Montréal (Québec) H2Y 1B6	Att. Action collective sur les opioïdes 750, Côte de la Place d'Armes, bureau 90 Montreal (QC) H2Y 2X8 Fax : 514-871-8800 info@tjl.quebec

Votre lettre d'exclusion doit être timbrée avant le [insérer le délai d'exclusion].

Si vous ne respectez pas cette procédure d'exclusion, vous allez demeurer un Membre du groupe. En tant que Membre du groupe, vos droits seront déterminés par tout jugement rendu dans l'Action collective sur les opioïdes.

Si vous avez des questions, n'hésitez pas à contacter les avocats représentant le Demandeur et les Membres du groupe :

FISHMAN FLANZ MELAND PAQUIN LLP
4100-1250, boul. René-Lévesque. Ouest

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