

CANADA

(Class Action)
SUPERIOR COURT

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

M. HÉBERT

NO: 500-06-001085-204

Petitioner

-vs.-

ANGITA PHARMA INC., legal person duly incorporated, having its head office at 504-1570 rue Ampère, City of Boucherville, Province of Quebec, J4B 5Z5

and

THE JEAN COUTU GROUP (PJC) INC., legal person duly incorporated, having its head office at 11011 boul. Maurice-Duplessis, City of Montreal, Province of Quebec, H1C 1V6

Respondents

**APPLICATION TO AUTHORIZE THE BRINGING OF A CLASS ACTION
& TO APPOINT THE PETITIONER AS REPRESENTATIVE
(Art. 574 C.C.P. and following)**

TO ONE OF THE HONOURABLE JUSTICE OF THE SUPERIOR COURT, SITTING IN AND FOR THE DISTRICT OF MONTREAL, YOUR PETITIONER STATE AS FOLLOWS:

I. GENERAL PRESENTATION

A) The Action

1. Petitioner wishes to institute a class action on behalf of the following class, of which she is a member, namely:
 - All persons who have a pharmacy record that was accessed by Angita Pharma or any other group to be determined by the Court;
2. This is a case of the intentional violation of Class Members' privacy rights; Respondent Angita Pharma was given access to customers' confidential pharmacy



records for profit. This access was unauthorized and illegal; Respondent Jean Coutu was reckless or grossly negligent for failing to put in place safeguards that would prevent this type of conduct from being able to take place;

3. Over 200 pharmacists (73 of which are affiliated with Jean Coutu) have been accused by their professional order, the *Ordre des pharmaciens du Québec*, of allowing Respondent Angita Pharma access to their clients' confidential files;
4. The names of the other pharmacies have not yet been revealed at this time. The Petitioner reserves the right to amend her proceeding pending the results of the investigation;
5. The pharmacists that have been named in the disciplinary complaint work in Montreal, Quebec City, Sherbrooke, Terrebonne, Drummondville, Thetford Mines, Brossard, and elsewhere in Quebec;
6. The *Ordre des pharmaciens du Québec's* investigation revealed that representatives of the Respondent Angita Pharma had allegedly contacted the pharmacists and promised them financial benefits if they helped the company prioritize certain generic drugs distributed by the company over others;
7. In addition, these pharmacists allowed an Angita Pharma representative access to their patients' confidential records in order to make financial projections of how much money they could expect to receive. They also allowed an Angita Pharma employee to place a reminder note in certain patients' files so that they would be offered the company's generic drug when they refill their prescriptions;
8. Pharmacists who had an agreement with Angita Pharma were receiving significant kickbacks in the range of 30% to 70% on the drugs that they bought;
9. Class Members entrusted their most sensitive medical data to their pharmacy based on their reasonable belief that it would be kept confidential, safe, and secure. Instead, the Respondents either breached professional secrecy or allowed professional secrecy to be breached, monetized Class Members' pharmacy files and allowed them to be mined for insight about their medical conditions and medications;
10. As a result of Respondent Jean Coutu's false and/or misleading representations (or omission to state an important fact) regarding the safety of the data under its control and/or in its possession, Class Members have trusted and have filled their prescriptions, however, had they known the truth – that their sensitive personal and private data was being compromised – they would have gone elsewhere;
11. By reason of the Respondents' intentional, reckless, and/or gross negligence Class Members' personal and private information have been compromised, entitling them



to claim damages for, *inter alia*: (a) trouble and inconvenience, (b) stress and anxiety, and (c) punitive damages;

B) The Respondents

(i) Angita Pharma Inc.

12. Respondent Angita Pharma Inc. (“Angita Pharma”) is a Canadian pharmaceutical company with its head office in Boucherville, Quebec. Angita Pharma manufactures more than 55 generic drugs, including Alendronate, Allopurinol, Amitriptyline, Amlodipine, Amoxicillin, Atenolol, Atrovastatin, Azithromycin, Celecoxib, Citalopram, Duloxetine, Escitalopram, Ezetimibe, Fluoxetine, Gabapentin, Irbesartan, Losartan, Metoprolol-L, Montelukast, Moxifloxacin, Olmesartan, Pantoprazole Sodium, Paroxetine, Perindopril, Pravastatin, Pregabalin, Quetiapine, Ramipril, Ranitidine, Risperidone, Rosuvastatin, Sertraline, Sildenafil, Simvastatin, Tadalafil, Topiramate, and Zopiclone (“Angita Pharma’s Generic Drugs”), the whole as appears more fully from a copy of an extract from the *Registraire des entreprises* and from copies of various extracts from Respondent Angita Pharma’s website at <http://angitapharma.ca> produced herein *en liasse* as **Exhibit R-1**;

13. Respondent Angita Pharma is the registrant of the trade-mark “ANGITA PHARMA” (TMA1005311), which was filed on May 9, 2011, the whole as appears more fully from a copy of the trade-mark from the CIPO database, produced herein as **Exhibit R-2**;

(ii) The Jean Coutu Group (PJC) Inc.

14. Respondent The Jean Coutu Group (PJC) Inc. (“Jean Coutu”) is a Canadian drugstore chain with its head office in Montreal, Quebec. It has between 400 and 550 franchised locations in New Brunswick, Ontario and Quebec under the PJC Jean Coutu, PJC Clinique, and PJC Santé banners. Its main competitors include Pharmaprix (Shoppers Drug Mart), Familiprix, Uniprix, Proxim, and Brunet, the whole as appears more fully from a copy of an extract from the *Registraire des entreprises*, produced herein as **Exhibit R-3**;

15. Jean Coutu is the registrant of *inter alia* the trade-marks “PJC” (TMA785765), which was filed on November 20, 2009, “PJC JEAN COUTU” (TMA784804), which was filed on November 20, 2009, “PJC JEAN COUTU SANTÉ” (TMA787498), which was filed on February 19, 2010, and “JEAN COUTU SANTÉ” (TMA787495), which was filed on February 19, 2010, the whole as appears more fully from a copy of the trade-marks from the Canadian Intellectual Property Office (CIPO), produced herein *en liasse* as **Exhibit R-4**;

C) The Situation

I. The Details



16. The situation as detailed herein was revealed first by the *Journal de Montreal* in October 2019, the whole as appears more fully from a copy of the *Journal de Montreal* article entitled “Des pharmaciens auraient offert vos infos à une pharmaceutique” dated October 1, 2019 and from a copy of the *Journal de Quebec* article entitled “Fuite de données: la Commission d’accès à l’information enquêtera sur des pharmaciens” dated October 2, 2019, produced herein *en liasse* as **Exhibit R-5**;
17. The *Journal de Montreal* revealed that Angita Pharma’s drug sales allow pharmacists to pocket up to 70% of the price in kickbacks. This is far greater than the 15% maximum offered by other companies. In other words, a pharmacist can, for example, receive up to \$70 for a drug that he or she bought for \$100 (Exhibit R-5);
18. The agreement between the pharmacists and Respondent Angita Pharma involved drugs that are not listed by the *Régie de l’assurance maladie du Québec*, but are instead covered by some private insurers, which gave the manufacturer more latitude to pay large kickbacks to the pharmacists;
19. Angita Pharma sells generic drugs that are intended exclusively for patients with private insurance. Since it does not sell drugs listed by the *Régie de l’assurance maladie du Québec*, it does not have to respect the 15% professional allowance limit for kickbacks and instead offered between 30% and 70% to pharmacists;
20. Angita Pharma would have accessed the software that contained patient files and used this to identify patients with private insurance to prioritize the sale of its own generic drugs;
21. On October 2, 2019, the *Ordre des pharmaciens du Québec* gave the following statement:
- « Le respect de la confidentialité est fondamental et à la base même de la relation de confiance entre un professionnel et son patient. Le Code de déontologie des pharmaciens est d’ailleurs clair sur le sujet : le pharmacien doit respecter le secret de tout renseignement obtenu sur ses patients et ne doit pas en faire usage en vue d’en tirer un avantage »
- The whole as appears more fully from a copy of the Press Release entitled « Réaction de l’Ordre des pharmaciens du Québec – Enquête sur la confidentialité des patients en pharmacie » dated October 2, 2019, produced herein as **Exhibit R-6**;
22. The *Ordre des pharmaciens du Québec* indicated that a motion had been deposited on October 2, 2019 to the National Assembly asking the *Commission d’accès à l’information* to investigate the matter (Exhibit R-6);



23. Metro Inc., the parent company of Respondent Jean Coutu released a statement on June 1, 2020 whereby it claimed that after the situation was revealed in the fall of 2019, it had requested that pharmacy-owners review the access they had granted to their staff at each pharmacy, the whole as appears more fully from a copy of the Statement by the President of the Jean Coutu Group, Alain Champagne dated June 1, 2020, produced herein as **Exhibit R-7**;
24. On June 1, 2020, there was a hearing before the Disciplinary Board of the *Ordre des pharmaciens du Québec* regarding the pharmacists' breach of ethical obligations (Exhibit R-7);
25. On July 15, 2020, La Presse published an article detailing the situation, the whole as appears more fully from a copy of the La Presse article entitled "Des pharmaciens auraient monnayé l'accès aux dossiers de leurs clients" dated July 15, 2020, produced herein as **Exhibit R-8**;
26. Class Members' pharmacy records are sensitive. The more sensitive the data is, the higher level of protection an organization must employ (PIPEDA, Principle 4.7.2);
27. In addition, there was a high probability of misuse of Class Members' personal and private information and that Class Members would be harmed;
28. The Respondents should have established adequate security safeguards to prevent and detect unauthorized access to personal and private information;

II. The Applicable Laws and Regulations

29. The above-described breach of professional secrecy is in breach of s. 60.4 of the *Professional Code*, CQLR c C-26, which provides that every professional must preserve the secrecy of all confidential information that becomes known to him in the practice of his profession, unless released by the client, where so ordered or expressly authorized by law:

<p>60.4. Le professionnel doit respecter le secret de tout renseignement de nature confidentielle qui vient à sa connaissance dans l'exercice de sa profession.</p> <p>Il ne peut être relevé du secret professionnel qu'avec l'autorisation de son client ou lorsque la loi l'ordonne ou l'autorise par une disposition expresse.</p> <p>...</p>	<p>60.4. Every professional must preserve the secrecy of all confidential information that becomes known to him in the practice of his profession.</p> <p>He may be released from his obligation of professional secrecy only with the authorization of his client or where so ordered or expressly authorized by law.</p> <p>..</p>
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30. In addition, these pharmacists were in breach of *Code of Ethics of Pharmacists*, CQLR c P-10, r 7 and were enabled to be in breach due to lack of proper oversight in *inter alia* the following ways:

8. Le pharmacien doit exercer la pharmacie dans le respect des droits et des libertés fondamentaux de la personne.	8. Pharmacists must practise having due respect for fundamental human rights and freedoms.
9. Lorsqu'il fournit à son patient un service pharmaceutique, le pharmacien doit s'abstenir de collaborer avec une personne autre que celles visées à l'article 39 ou une personne visée par un règlement adopté en application du paragraphe a du premier alinéa de l'article 10 de la Loi sur la pharmacie (chapitre P-10).	9. When providing pharmaceutical services to patients, pharmacists must refrain from collaborating with a person other than those referred to in section 39 or a person to whom a regulation made pursuant to subparagraph a of the first paragraph of section 10 of the Pharmacy Act (chapter P-10) refers.
12. Le pharmacien doit s'assurer qu'aucune des activités qu'il exerce dans le cadre d'une fonction ou d'une entreprise, et qui ne constituent pas l'exercice de la pharmacie, ne compromette le respect de ses obligations déontologiques, notamment celle de préserver l'honneur, la dignité et l'intégrité de la profession.	12. Pharmacists must ensure that none of the activities they engage in in connection with an office or an enterprise, and that does not constitute the practice of pharmacy, compromises compliance with their obligations of professional conduct, including the duty to preserve the honour, dignity and integrity of the profession.
15. Le pharmacien doit mettre en place dans sa pharmacie les mesures de sécurité requises afin de préserver la confidentialité des renseignements personnels et l'intégrité de ses inventaires et médicaments.	15. Pharmacists must implement in their pharmacy the safety measures necessary to protect the confidentiality of personal information and the integrity of inventories and medications.
21. Le pharmacien doit avoir une conduite irréprochable envers toute personne avec laquelle il entre en relation dans l'exercice de la pharmacie.	21. Pharmacists must conduct themselves in a manner beyond reproach in dealing with every person with whom they establish a relationship in the practice of pharmacy.
22. Le pharmacien doit s'abstenir d'abuser de la relation professionnelle établie avec son patient.	22. Pharmacists must refrain from taking advantage of the professional relationship established with patients.
23. Le pharmacien doit chercher à établir et à maintenir avec son patient une relation de confiance et s'abstenir d'exercer la pharmacie d'une façon impersonnelle.	23. Pharmacists must seek to establish and maintain a relationship of trust with patients and refrain from practising in an impersonal manner.



<p>24. Le pharmacien ne doit pas prendre avantage ou tenter de prendre avantage de l'état de dépendance ou de vulnérabilité d'une personne à laquelle il offre ou fournit des services pharmaceutiques.</p> <p>Il ne doit pas non plus pactiser de quelque manière que ce soit avec un tiers dans le but de fournir ses services pharmaceutiques à une personne dans un état de dépendance ou de vulnérabilité.</p>	<p>24. No pharmacist may take advantage or attempt to take advantage of the state of dependence or vulnerability of a person to whom pharmaceutical services are provided.</p> <p>No pharmacist may conspire with a third person in any manner to provide pharmaceutical services to a person in a state of dependence or vulnerability.</p>
<p>44. Le pharmacien doit subordonner son intérêt personnel, et celui de la société de pharmaciens dans laquelle il exerce la pharmacie ou dans laquelle il a des intérêts, à celui de son patient.</p>	<p>44. Pharmacists must subordinate their personal interests, and those of the partnership or joint-stock company of pharmacists in which they practise or in which they have an interest, to those of their patients.</p>
<p>52. Le pharmacien doit prévenir toute situation où il serait en conflit d'intérêts, notamment lorsque les intérêts en présence sont tels qu'il pourrait être porté à préférer certains d'entre eux à ceux de son patient ou que son intégrité et sa loyauté envers celui-ci pourraient être affectées.</p>	<p>52. Pharmacists must avoid any situation in which they would be in a conflict of interest if the interests are such that the pharmacists may be inclined to favour certain interests over to those of their patients, or such that their integrity and loyalty towards the patients could be affected.</p>
<p>55. Le pharmacien doit s'acquitter de ses obligations professionnelles avec intégrité.</p>	<p>55. Pharmacists must discharge their professional obligations with integrity.</p>
<p>62. Le pharmacien doit respecter le secret de tout renseignement de nature confidentielle obtenu dans l'exercice de la pharmacie. Il doit notamment éviter de révéler qu'une personne a fait appel à ses services.</p>	<p>62. Pharmacists must preserve the secrecy of all confidential information obtained in the practice of pharmacy. They must avoid disclosing that a person has requested their services.</p>
<p>63. Le pharmacien ne peut être relevé du secret professionnel qu'avec l'autorisation de son patient ou lorsque la loi l'ordonne.</p>	<p>63. Pharmacists may be released from their obligation of professional secrecy only with the authorization of the patient or where so required by law.</p>
<p>64. Le pharmacien doit éviter les conversations indiscrettes au sujet d'un patient et des services pharmaceutiques qui lui sont fournis.</p>	<p>64. Pharmacists must avoid any indiscreet conversation about a patient and the pharmaceutical services provided to a patient.</p>
<p>65. Le pharmacien doit respecter le besoin de confidentialité de son patient</p>	<p>65. Pharmacists must respect the patient's need for confidentiality before</p>



avant de lui prodiguer ses conseils et ses services pharmaceutiques.	giving advice and providing pharmaceutical services.
66. Le pharmacien doit prendre les mesures raisonnables à l'égard de ses employés et du personnel qui travaille avec lui pour que soit préservé le secret des renseignements de nature confidentielle.	66. Pharmacists must take reasonable measures with respect to the employees and personnel with whom they work to ensure that the secrecy of confidential information is preserved.
67. Le pharmacien ne doit pas faire usage de renseignements de nature confidentielle au préjudice d'un patient ou en vue d'obtenir directement ou indirectement un avantage pour lui-même ou pour autrui.	67. Pharmacists must not use confidential information to the detriment of a patient or to obtain directly or indirectly any benefit for themselves or another person.
76. Le pharmacien doit s'acquitter de ses obligations professionnelles avec dignité.	76. Pharmacists must discharge their professional obligations with dignity.
77. Outre ceux visés aux articles 59 et 59.1 du Code des professions (chapitre C-26) et celui qui peut être déterminé en application du paragraphe 1 du deuxième alinéa de l'article 152 de ce Code, les actes suivants sont dérogoratoires à la dignité de la profession: 1° commettre une négligence dans l'exercice de sa profession; ... 4° obtenir de la clientèle par l'entremise d'un intermédiaire ou s'entendre à cette fin avec un tel intermédiaire;	77. In addition to the acts referred to in sections 59 and 59.1 of the Professional Code (chapter C-26) and the act that may be determined pursuant to subparagraph 1 of the second paragraph of section 152 of the Code, the following acts are derogatory to the dignity of the profession: (1) being negligent in the practice of pharmacy; ... (4) obtaining clients through an intermediary or making an arrangement with an intermediary for that purpose;

31. The Petitioner and Class Members' claim for damages is based on breaches of the following legislation:

- a) Articles 3, 35, 36, 37, 1457 and 1621 of the *Civil Code of Quebec*, LRQ, c C-1991
- b) Articles 5 and 49 of the *Charter of Human Rights and Freedoms*, RDQ, c C-12;
- c) Articles 1, 2, 10, 13, 17 of the *Act respecting the Protection of Personal and Private Information in the Private Sector*, RSQ, c P-39.1;
- d) Sections 2, 3, and 5 the *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5, as well as its sections 4.1, 4.3, 4.7 to 4.7.4 of its Schedule 1; and



- e) Articles 219, 228, 253, and 272 of the *Consumer Protection Act*, CQLR c P-40.1;

II. FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE PETITIONER

32. Petitioner has frequented the following Jean Coutu stores in the last several years to purchase prescription medications:
- a) Jean Coutu located at 155 rue Notre-Dame, Repentigny, Quebec, J6A 5L3 (for the last 6 months or longer);
 - b) Jean Coutu located at 12675 Sherbrooke Street East, Pointe-aux-Trembles, Quebec, H1A 3W7 (for the last 6-7 years);
 - c) Jean Coutu located at 8697 Rue Hochelaga, Montreal, Quebec, H1L 6J5 (occasionally over the last year);
33. Each Jean Coutu store possesses a pharmacy record on the Petitioner which is strictly confidential in nature;
34. It is safe to say that her personal, private, and confidential information has been compromised;
35. Petitioner had every reason to believe, and did indeed believe, that Respondent Jean Coutu would safeguard her personal, private, and confidential information from any unauthorized access – it failed in this duty by allowing Respondent Angita Pharma to access her pharmacy records;
36. Petitioner would have refused to do business with any pharmacy that would not have strictly protected her confidential records, in violation of their duty of professional secrecy;
37. Petitioner found out about this unauthorized access and the entire situation on July 15, 2020 when it hit the news;
38. Petitioner's damages are a direct and proximate result of the Respondents' conduct;
39. In consequence of the foregoing, Petitioner is justified in claiming damages;

III. FACTS GIVING RISE TO INDIVIDUAL ACTIONS BY EACH MEMBER OF THE CLASS

40. Every member of the Class has a pharmacy record that was accessed by Angita Pharma and has or will suffer the following damages *inter alia*:



- a) trouble and inconvenience;
- b) stress and anxiety; and
- c) punitive damages;

41. All of these damages to the Class Members are a direct and proximate result of the Respondents' conduct;

IV. CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION

A) The composition of the Class makes it difficult or impractical to apply the rules for mandates to sue on behalf of others or for consolidation of proceedings

42. Petitioner is unaware of the specific number of persons who have a pharmacy record at Jean Coutu or any other of the pharmacies that gave access to Respondent Angita Pharma and the nature of such information is confidential, so the Plaintiff does not have specific details thereof. Nevertheless, given the nature of the case, it is safe to say that tens of thousands of people have been affected by the breach;

43. Class Members are numerous and are scattered across the entire province;

44. In addition, given the costs and risks inherent in an action before the courts, many people will hesitate to institute an individual action against the Respondents. Even if Class Members themselves could afford such individual litigation, it would place an unjustifiable and enormous burden on the court and, at the very least, is not in the interests of judicial economy. Further, individual litigation of the factual and legal issues raised by the conduct of the Respondents would increase delay and expense to all parties and to the court system;

45. This class action overcomes the dilemma inherent in an individual action whereby the legal fees alone would deter recovery and thereby in empowering the consumer, it realizes both individual and social justice as well as rectifies the imbalance and restore the parties to parity;

46. Also, a multitude of actions instituted in different territorial and judicial districts, risks having contradictory judgments on issues of fact and law that are similar or related to all members of the Class;

47. These facts demonstrate that it would be impractical, if not impossible, to contact each and every member of the Class to obtain mandates and to join them in one action;



48. In these circumstances, a class action is the only appropriate procedure and the only viable means for all of the members of the Class to effectively pursue their respective rights and have access to justice;

B) The claims of the members of the Class raise identical, similar or related issues of law or fact

49. Individual issues, if any, pale by comparison to the numerous common issues that will advance the litigation significantly;

50. The damages sustained by the Class Members flow, in each instance, from a common nucleus of operative facts, namely, the Respondents' misconduct;

51. The claims of the Class Members raise identical, similar or related issues of fact or law, namely:

- a) Did Angita Pharma violate Class Members' privacy rights by accessing their pharmacy records? And, if so, was such conduct intentional?
- b) Did Jean Coutu violate Class Members' privacy rights by failing to prevent third parties from gaining access to its customers' pharmacy records? And if so, was such conduct reckless or grossly negligent?
- c) Should an award of aggregate damages be made?
- d) Are the Respondents or any of the Respondent liable to pay punitive damages to Class Members? And, if so, in what amount?

52. The interests of justice favour that this application be granted in accordance with its conclusions;

V. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

53. The action that the Petitioner wishes to institute on behalf of the members of the Class is an action in damages;

54. The conclusions that the Petitioner wish to introduce by way of an application to institute proceedings are:

GRANT the Representative Plaintiff's action against the Defendants on behalf of all Class members;

CONDEMN the Defendants to pay the Representative Plaintiff an amount of \$100 *sauf à parfaire*;

DECLARE that an award of aggregate damages should be made;



CONDEMN the Defendants to pay damages, including punitive damages, in an amount to be determined;

ORDER collective recovery of all damages to the Class members;

CONDEMN the Defendants to pay interest and additional indemnity on the above sums according to law from the date of service of the Application to Authorize a Class Action;

ORDER the Defendants to deposit in the office of this court the totality of the sums which forms part of the collective recovery, with interest and costs;

ORDER that the claims of individual Class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

CONDEMN the Defendants, solidarily, to bear the costs of the present action including expert and notice fees;

RENDER any other order that this Honourable Court shall determine and that is in the interest of the members of the Class;

A) Petitioners request that they be attributed the status of representatives of the Class

55. The Petitioner is a member of the Class;

56. The Petitioner is ready and available to manage and direct the present action in the interest of the members of the Class that she wishes to represent and is determined to lead the present file to a final resolution of the matter, the whole for the benefit of the Class, as well as, to dedicate the time necessary for the present action before the Courts and the *Fonds d'aide aux actions collectives*, as the case may be, and to collaborate with her attorneys;

57. The Petitioner has the capacity and interest to fairly and properly protect and represent the interest of the members of the Class;

58. The Petitioner has given the mandate to her attorneys to obtain all relevant information with respect to the present action and intends to keep informed of all developments;

59. The Petitioner, with the assistance of her attorneys, is ready and available to dedicate the time necessary for this action and to collaborate with other members of the Class and to keep them informed;

60. The Petitioner has given instructions to her attorneys to put information about this class action on its website and to collect the coordinates of those Class Members

that wish to be kept informed and participate in any resolution of the present matter, the whole as will be shown at the hearing;

61. The Petitioner is in good faith and has instituted this action for the sole goal of having her rights, as well as the rights of other Class Members, recognized and protected so that they may be compensated for the damages that they have suffered as a consequence of the Respondents' conduct;

62. The Petitioner understand the nature of the action;

63. The Petitioner's interests are not antagonistic to those of other members of the Class;

64. The Petitioner is prepared to be examined out-of-court on her allegations (as may be authorized by the Court) and to be present for Court hearings, as may be required and necessary;

65. The Petitioner has spent time researching this issue on the internet and meeting with her attorneys to prepare this file. In so doing, she is convinced that the problem is widespread;

B) Petitioner suggests that this class action be exercised before the Superior Court of justice in the district of Montreal

66. A great number of the members of the Class reside in the judicial district of Montreal and in the appeal district of Montreal;

67. The Petitioner's attorneys practice their profession in the judicial district of Montreal;

68. The present application is well founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT the present application;

AUTHORIZE the bringing of a class action in the form of an application to institute proceedings in damages;

APPOINT the Petitioner as representative of the persons included in the class herein described as:

- All persons who have a pharmacy record that was accessed by Angita Pharma or any other group to be determined by the Court;

IDENTIFY the principle issues of fact and law to be treated collectively as the following:



- a) Did Angita Pharma violate Class Members' privacy rights by accessing their pharmacy records? And, if so, was such conduct intentional?
- b) Did Jean Coutu violate Class Members' privacy rights by failing to prevent third parties from gaining access to its customers' pharmacy records? And if so, was such conduct reckless or grossly negligent?
- c) Should an award of aggregate damages be made?
- d) Are the Respondents or any of the Respondent liable to pay punitive damages to Class Members? And, if so, in what amount?

IDENTIFY the conclusions sought by the class action to be instituted as being the following:

GRANT the Representative Plaintiff's action against the Defendants on behalf of all Class members;

CONDEMN the Defendants to pay the Representative Plaintiff an amount of \$100 *sauf à parfaire*;

DECLARE that an award of aggregate damages should be made;

CONDEMN the Defendants to pay damages, including punitive damages, in an amount to be determined;

ORDER collective recovery of all damages to the Class members;

CONDEMN the Defendants to pay interest and additional indemnity on the above sums according to law from the date of service of the Application to Authorize a Class Action;

ORDER the Defendants to deposit in the office of this court the totality of the sums which forms part of the collective recovery, with interest and costs;

ORDER that the claims of individual Class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

CONDEMN the Defendants, solidarily, to bear the costs of the present action including expert and notice fees;

RENDER any other order that this Honourable Court shall determine and that is in the interest of the members of the Class;



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

FIX the delay of exclusion at thirty (30) days from the date of the publication of the notice to the members, date upon which the members of the Class that have not exercised their means of exclusion will be bound by any judgment to be rendered herein;

ORDER the publication of a notice to the members of the group in accordance with article 579 C.C.P. within sixty (60) days from the judgment to be rendered herein in The Montreal Gazette and *La Presse*;

ORDER that said notice be available on the Respondents' websites, Facebook pages, and Twitter accounts with a link stating "Notice to persons with pharmacy records that were accessed by Angita Pharma";

ORDER that said notice be sent by individual letters emailed and/or mailed to Class Members by using the Respondents' customer list;

RENDER any other order that this Honourable Court shall determine and that is in the interest of the members of the Class;

THE WHOLE with costs, including all publication and dissemination fees.

Montreal, July 16, 2020

(S) Jeff Orenstein

CONSUMER LAW GROUP INC.
Per: Me Jeff Orenstein
Attorneys for the Petitioner

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