

C A N A D A

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

NO: 500-06-001321-245

(Class Action)
SUPERIOR COURT

JOYCE [REDACTED]
[REDACTED]

Applicant

v.

DANONE INC., legal person having its head office at 100 rue De Lauzon, City of Boucherville, District of Longueuil, Province of Quebec, J4B 1E6

and

WAL-MART CANADA CORP., legal person having a principal establishment at 17000 Trans-Canada Highway, Kirkland, district of Montreal, Province of Quebec, H9J 2M5

and

JORIKI INC., legal person having its head office at 3431 McNicoll Avenue, Scarborough, Province of Ontario, M1V 2V3

Defendants

AMENDED APPLICATION TO AUTHORIZE THE BRINGING OF A CLASS ACTION
(ARTICLES 571 AND FOLLOWING C.C.P.)

I. INTRODUCTION

1. Applicant seeks to institute a class action on behalf of the following class of which she is a member:

Class: All persons in Canada who purchased <u>or ingested</u> the Various Silk and Great Value brand plant based refrigerated beverages recalled due to <i>Listeria monocytogenes</i>. (hereinafter referred to as the “Class”)	Groupe: Toutes les personnes au Canada ont acheté <u>ou ingéré</u> les diverses boissons végétales réfrigérées de marque Silk et Great Value rappelé en raison de la bactérie <i>Listeria monocytogenes</i>. (ci-après le « Groupe »)
<u>Family Class:</u> <u>All persons in Canada who, by virtue of a personal relationship with one or more Class Members, have standing to claim damages pursuant to the <i>Civil Code of Quebec</i>, section 61(1) of the <i>Family Law Act</i>, R.S.O. 1990, c. f.3, as amended, or analogous provincial legislation.</u> (the “Family Class”)	<u>Groupe Famille :</u> <u>Toutes les personnes au Canada qui, en vertu d’une relation personnelle avec un ou plusieurs membres du Groupe, ont qualité pour agir pour réclamer des dommages en vertu du <i>Code civil du Québec</i>, de l’article 61(1) de la <i>Loi sur le droit de la famille</i>, L.R.O. 1990, c. f.3, telle qu’amendée, ou d’une législation provinciale analogue.</u> (le « Groupe Famille »)

2. On July 8, 2024, the Public Health Agency of Canada (PHAC) issued a recall of the following plant based refrigerated beverages sold or distributed by the Defendants, as it appears from **Exhibit P-1** (all with best before dates up to and including “24 OC 04” and product code contains “7825”, except for the Silk Coconut Unsweetened with a best before date up to and including “24 SE 27”):

Great Value	Almond Beverage Unsweetened Original	1.89 L	6 81131 34208 7
Great Value	Almond Beverage Original	1.89 L	6 81131 34209 4
Great Value	Almond Beverage Vanilla	1.89 L	6 81131 34210 0
Silk	Almond & Coconut Unsweetened	1.89 L	0 25293 00250 0
Silk	Almond Original	1.89 L	0 25293 00100 8
Silk	Almond Dark Chocolate	1.89 L	0 25293 00135 0
Silk	Almond Unsweetened	1.89 L	0 25293 00150 3

Silk	Almond Unsweetened Vanilla	1.89 L	0 25293 00188 6
Silk	Almond Vanilla	1.89 L	0 25293 00168 8
Silk	Coconut Original	1.89 L	0 25293 00152 7
Silk	Coconut Unsweetened	1.89 L	0 25293 00244 9
Silk	Oat Original	1.75 L	0 36632 07240 5
Silk	Oat Vanilla	1.75 L	0 36632 07241 2
Silk	Oat Dark Chocolate	1.75 L	0 36632 07239 9
Silk	Oat Unsweetened	1.75 L	0 36632 07532 1
Silk	Oat Unsweetened Vanilla	1.75 L	0 56800 72749 4
Silk	Almond & Cashew Unsweetened	1.75 L	0 36632 07235 1
Silk	Almond & Cashew Unsweetened Vanilla	1.75 L	0 36632 07234 4

3. On July 17, 2024, the Public Health Agency of Canada provided an update and issued a public health notice regarding the outbreak of Listeria infections, including 9 hospitalizations and 2 deaths, Applicant disclosing **Exhibit P-2**; On August 12, 2024, the Agency updated the data and reported 20 laboratory-confirmed cases of Listeria monocytogenes illness in Quebec, Ontario, Alberta and Nova Scotia, 15 hospitalizations and 3 deaths (**Exhibit P-2.1**). Applicant believes that the numbers are significantly higher as further detailed at paragraphs 26.1 and 26.2 below;
4. On July 17, 2024, Defendant Danone Inc. ("**Danone**") issued a public statement in which its president, Frédéric Guichard, stated "*Food safety, quality, and the health of our consumers are, and will always be, at the core of everything we do*", Applicant disclosing **Exhibit P-3**. Clearly, Danone failed to live up to this standard with respect to Class members;
 - 4.1 On August 7, 2024, the Canadian Food Inspection Agency released its "*Statement on the food safety investigation related to the recall of various Silk and Great Value brand plant-based refrigerated beverages*", stating that Danone's third-party manufacturer is Defendant Joriki Inc. ("**Joriki**"), as it appears from **Exhibit P-8**;

5. Defendant Wal-Mart Canada Corp. (“**Wal-Mart**”) simply posted a hyperlink on its website to the Public Health Agency of Canada website, as it appears from **Exhibit P-4**;

II. THE PARTIES

6. Defendant Danone Inc. operates in the “industrie du lait de consommation” and “fabrication et distribution de produits laitiers”, with its head office in the province of Quebec, the whole as appears from the *CIDREQ* report, **Exhibit P-5** (Danone also confirms its head offices are in Quebec in Exhibit P-3);
7. Applicant discloses the *CIDREQ* report for Defendant Wal-Mart Canada Corp. as **Exhibit P-6**. The “Great Value” line is one of Wal-Mart’s retail brands;
- 7.1 Defendant Joriki Inc. is Danone’s third-party manufacturer, Joriki Inc., with its head office in Scarborough, Ontario. According to the Canadian Food Inspection Agency (Exhibit P-8), all affected products were made on a dedicated production line at Joriki’s facility in Pickering, Ontario;
8. The Applicant is a consumer who has been purchasing and ingesting plant based refrigerated beverages, including those recalled by Public Health Agency of Canada, for several years;

III. CONDITIONS REQUIRED TO AUTHORIZE THIS CLASS ACTION (s. 575 C.C.P.):

A) THE FACTS ALLEGED APPEAR TO JUSTIFY THE CONCLUSIONS SOUGHT:

9. Applicant purchased and ingested a variety the following recalled products on a weekly or bi-weekly basis from the IGA in Côte St-Luc:
 - Silk Almond unsweetened;
 - Silk Almond unsweetened vanilla;
 - Silk Oat unsweetened;
 - Silk Oat vanilla unsweetened;
 - Silk Almond & cashew unsweetened;
 - Silk Almond & cashew unsweetened vanilla.
10. Applicant’s legal syllogism is notably based on sections 37, 38 and 53 of the CPA and article 1469 and 1473 of the Civil Code of Québec;
11. Obviously, Applicant would have never purchased or ingested these products had she been aware of the health risks;
12. Given that Applicant and her family (including children) have already consumed the recalled products, it is impossible for her to return them to IGA for a refund, because she does not have the product/cartons and did not keep her receipts;

13. On July 18, 2024, the Applicant tried to complete an online request for refunds for the above listed recalled products that she purchased and ingested, but the Defendant's form required her to provide a picture of the carton, which the Applicant does not have, as it appears from Danone's refund form disclosed as **Exhibit P-7**;
14. The reason why the Applicant does not have the cartons is because her recycling bin was picked up on Tuesday, July 16, 2024 and her garbage bin was picked up on Wednesday, July 17, 2024;
15. On July 18, 2024, the Applicant went to the IGA where she purchased the recalled beverages from to ask for a refund. The clerk escalated the situation by calling in a manager, and the manager then escalated to a director, but IGA ultimately refused to refund her because she did not have a receipt or the cartons;
16. Offering refunds for products that have been consumed and cartons that have been disposed of is a completely inadequate refund program; Applicant believes that following discovery it will be proven that the Defendants issued very few refunds, if any at all, as many Class members are in a similar situation;
17. Applicant hereby claims compensatory, moral and punitive damages, as well as damages from trouble and inconvenience, on her behalf and on behalf of all Class and Family Class members, pursuant to the Civil Code, the *Consumer Protection Act*, the Quebec Charter and the Common Law as well as the analogous provincial legislation (for Class and Family Class members residing outside of Quebec);
18. The Applicant's damages are a direct and proximate result of the Defendants' omissions, breaches and negligence, as well as the inadequacy of their "refund" programs;

B) THE CLAIMS OF THE MEMBERS OF THE CLASS RAISE IDENTICAL, SIMILAR OR RELATED ISSUES OF LAW OR FACT:

19. All Class members Family Class members have a common interest in proving the Defendants' liability solidarily;
20. Each Class and Family Class member is also justified in claiming damages and punitive damages against the Defendants;
21. All of the damages to the Class and Family members are a direct and proximate result of the Defendants' misconduct;
22. Individual questions, if any, pale by comparison to the common questions that are significant to the outcome of the present Application;
23. **The recourses of the Class and Family members raise identical, similar or related questions of fact or law, namely:**

- a) Are the recalled Silk and Great Value brand plant based refrigerated beverages affected by a safety risk?
- b) Are the recalled Silk and Great Value brand plant based refrigerated beverages fit for the purposes for which goods of that kind are ordinarily used?
- c) Is the Defendants' responsibility engaged in view of the *Consumer Protection Act*, the Civil Code of Quebec, the Quebec *Charter*, or the Common Law as well as the analogous provincial legislation (for Class and Family Class members residing outside of Quebec)?
- d) Were the Defendants negligent in the management of the recall programs?
- e) If the Defendants' responsibility is engaged, are Class members or Family Class members entitled to compensatory, moral or punitive damages, or damages for trouble and inconvenience, and in what amounts?
- f) What is the Defendants' liability to the Class members and Family Class members for all of the claims asserted in connection with the recalled Silk and Great Value brand plant based refrigerated beverages covered by this class action?
- g) Are the Defendants solidarily liable?

C) THE COMPOSITION OF THE CLASS

- 24. The composition of the Class makes it difficult or impracticable to apply the rules for mandates to take part in judicial proceedings on behalf of others or for consolidation of proceedings;
- 25. Applicant estimates that tens of thousands of the various recalled Silk and Great Value brand plant based refrigerated beverages were sold across Canada, if not more;
- 26. Class members are very numerous and are dispersed across the province and Canada;
- 26.1 Following the initial filing of this proposed class action and the media reports that ensued, communicated *en liasse* as **Exhibit P-9**, more than 4,900 individuals signed up to Class Counsel's website established for this case (www.lpclex.com/silk), as it appears from the redacted list filed **under seal** and confidentially as **Exhibit P-10**;
- 26.2 As it appears from the comments in Exhibit P-10, there is an important number of individuals who have experienced symptoms and health issues after ingesting the recalled products;

27. These facts demonstrate that it would be impossible to contact each and every Class member to obtain mandates and to join them in one action;
28. In these circumstances, a class action is the only appropriate procedure for all of the members of the Class to effectively pursue their respective rights and have access to justice without overburdening the court system;

D) THE CLASS MEMBER REQUESTING TO BE APPOINTED AS REPRESENTATIVE PLAINTIFF IS IN A POSITION TO PROPERLY REPRESENT THE CLASS MEMBERS

29. The Applicant requests that she be appointed the status of representative plaintiff for the following main reasons:
 - a) she is a member of the Class and has a personal interest in seeking the conclusions proposed herein;
 - b) she is competent, in that he has the potential to be the mandatary of the action if it had proceeded under article 91 of the *Code of Civil Procedure*;
 - c) her interests are not antagonistic to those of other Class members;
30. Additionally, the Applicant respectfully adds that:
 - a) she has the time, energy, will and determination to assume all the responsibilities incumbent upon her in order to diligently carry out the action;
 - b) after learning about the situation, she mandated her attorneys to file the present application for the sole purpose of having her rights, as well as the rights of other Class members, recognized and protected so that they can be adequately compensated;
 - c) she understands the nature of the action; and
 - d) she wants to hold the Defendants accountable so that they put measures in place for the future so that such serious safety issues do not repeat themselves, especially for a staple product such as milk that entire families – including young children – consume.
31. As for identifying other Class members, the Applicant draws certain inferences from the situation and realizes that by all accounts, there is a very significant number of Class members that find themselves in an identical situation, and that it would not be useful to attempt to identify each of them given their sheer numbers. Nonetheless, Exhibit P-10 demonstrates that more than 4,900 individuals have signed up to Class Counsel's website established for this case;
32. For the above reasons, the Applicant respectfully submits that her interest and competence are such that the present class action could proceed fairly and in the

best interest of Class members;

IV. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

33. The action that the Applicant wishes to institute on behalf of the members of the Class and Family Class is an action in damages;
34. The conclusions that the Applicant wishes to introduce by way of an originating application are:

GRANT the Representative Plaintiff's action against the Defendants on behalf of all Class and Family Class Members;

CONDEMN the Defendants, solidarily, to pay compensatory, moral and punitive damages, and damages for trouble and inconvenience, to the Representative Plaintiff and the Class and Family Class members in amounts to be determined on the merits;

ORDER the collective recovery of all damages to the Class and Family Class members;

CONDEMN the Defendants, solidarily, to pay interest and the 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 and Family 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 at all levels, including the cost of all exhibits, notices, the cost of management of claims and the costs of experts, if any, including the costs of experts required to establish the amount of the collective recovery orders.

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

V. JURISDICTION AND NATIONAL CLASS

36. The Applicant requests that this class action be exercised before the Superior Court in the district of Montreal. This Court has jurisdiction to authorize a national class action pursuant to article 3148(1) CCQ.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

1. **GRANT** the present application;
2. **AUTHORIZE** the bringing of a class action in the form of an originating application in damages;
3. **APPOINT** the Applicant the status of Representative Plaintiff of the persons included in the Class and Family Class herein described as:

Class: All persons in Canada who purchased <u>or ingested</u> the Various Silk and Great Value brand plant based refrigerated beverages recalled due to Listeria monocytogenes. (hereinafter referred to as the “Class”)	Groupe: Toutes les personnes au Canada ont acheté <u>ou ingéré</u> les diverses boissons végétales réfrigérées de marque Silk et Great Value rappelé en raison de la bactérie Listeria monocytogenes. (ci-après le « Groupe »)
<u>Family Class:</u> <u>All persons in Canada who, by virtue of a personal relationship with one or more Class Members, have standing to claim damages pursuant to the Civil Code of Quebec, section 61(1) of the Family Law Act, R.S.O. 1990, c. f.3, as amended, or analogous provincial legislation.</u> <u>(the “Family Class”)</u>	<u>Groupe Famille :</u> <u>Toutes les personnes au Canada qui, en vertu d’une relation personnelle avec un ou plusieurs membres du Groupe, ont qualité pour agir pour réclamer des dommages en vertu du Code civil du Québec, de l’article 61(1) de la Loi sur le droit de la famille, L.R.O. 1990, c. f.3, telle qu’amendée, ou d’une législation provinciale analogue.</u> <u>(le « Groupe Famille »)</u>

4. **IDENTIFY** the principle questions of fact and law to be treated collectively as the following:
 - a) Are the recalled Silk and Great Value brand plant based refrigerated beverages affected by a safety risk?
 - b) Are the recalled Silk and Great Value brand plant based refrigerated beverages fit for the purposes for which goods of that kind are ordinarily used?
 - c) Is the Defendants’ responsibility engaged in view of the *Consumer Protection Act*, the *Civil Code of Quebec*, the *Quebec Charter*, or the

Common Law as well as the analogous provincial legislation (for Class and Family Class members residing outside of Quebec)?

- d) Were the Defendants negligent in the management of the recall programs?
 - e) If the Defendants' responsibility is engaged, are Class members or Family Class members entitled to compensatory, moral or punitive damages, or damages for trouble and inconvenience, and in what amounts?
 - f) What is the Defendants' liability to the Class members and Family Class members for all of the claims asserted in connection with the recalled Silk and Great Value brand plant based refrigerated beverages covered by this class action?
 - g) Are the Defendants solidarily liable?
5. **IDENTIFY** the conclusions sought by the class action to be instituted as being the following:
- a) **GRANT** the Representative Plaintiff's action against the Defendants on behalf of all Class and Family Class Members;
 - b) **CONDEMN** the Defendants, solidarily, to pay compensatory, moral and punitive damages, and damages for trouble and inconvenience, to the Representative Plaintiff and the Class and Family Class members in amounts to be determined on the merits;
 - c) **ORDER** the collective recovery of all damages to the Class and Family Class members;
 - d) **CONDEMN** the Defendants, solidarily, to pay interest and the additional indemnity on the above sums according to law from the date of service of the Application to Authorize a Class Action;
 - e) **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;
 - f) **ORDER** that the claims of individual Class and Family Class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;
 - g) **CONDEMN** the Defendants, solidarily, to bear the costs of the present action at all levels, including the cost of all exhibits, notices, the cost of management of claims and the costs of experts, if any, including the costs of experts required to establish the amount of the collective recovery orders.

6. **ORDER** the publication of a notice to the Class and Family Class Members in accordance with article 579 C.C.P., pursuant to a further order of the Court, and **ORDER** the Defendants to pay for said publication costs;
7. **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 and Family Class that have not exercised their means of exclusion will be bound by any judgement to be rendered herein;
8. **DECLARE** that all members of the Class and Family 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;
9. **RENDER** any other order that this Honourable Court shall determine;
10. **THE WHOLE** with costs, including the court stamp, bailiff fees, stenographer fees and publication fees.

Montreal, August 14, 2024

(s) LPC Avocats

LPC AVOCATS

Mtre Joey Zukran / Mtre Léa Bruyère

Attorneys for the Applicant

276 Saint-Jacques Street, Suite 801

Montréal, Québec, H2Y 1N3

Telephone: (514) 379-1572

Telecopier: (514) 221-4441

Email: jzukran@lpclex.com

SUMMONS
(ARTICLES 145 AND FOLLOWING C.C.P)

Filing of a judicial application

Take notice that the Applicant has filed this Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff in the office of the Superior Court in the judicial district of **Montreal**.

Defendant's answer

You must answer the application in writing, personally or through a lawyer, at the courthouse of **Montreal** situated at **1 Rue Notre-Dame E, Montréal, Quebec, H2Y 1B6**, within 15 days of service of the Application or, if you have no domicile, residence or establishment in Québec, within 30 days. The answer must be notified to the Applicant's lawyer or, if the Applicant is not represented, to the Applicant.

Failure to answer

If you fail to answer within the time limit of 15 or 30 days, as applicable, a default judgement may be rendered against you without further notice and you may, according to the circumstances, be required to pay the legal costs.

Content of answer

In your answer, you must state your intention to:

- negotiate a settlement;
- propose mediation to resolve the dispute;
- defend the application and, in the cases required by the Code, cooperate with the Applicant in preparing the case protocol that is to govern the conduct of the proceeding. The protocol must be filed with the court office in the district specified above within 45 days after service of the summons or, in family matters or if you have no domicile, residence or establishment in Québec, within 3 months after service;
- propose a settlement conference.

The answer to the summons must include your contact information and, if you are represented by a lawyer, the lawyer's name and contact information.

Change of judicial district

You may ask the court to refer the originating Application to the district of your domicile or residence, or of your elected domicile or the district designated by an agreement with the plaintiff.

If the application pertains to an employment contract, consumer contract or insurance contract, or to the exercise of a hypothecary right on an immovable serving as your main

residence, and if you are the employee, consumer, insured person, beneficiary of the insurance contract or hypothecary debtor, you may ask for a referral to the district of your domicile or residence or the district where the immovable is situated or the loss occurred. The request must be filed with the special clerk of the district of territorial jurisdiction after it has been notified to the other parties and to the office of the court already seized of the originating application.

Transfer of application to Small Claims Division

If you qualify to act as a plaintiff under the rules governing the recovery of small claims, you may also contact the clerk of the court to request that the application be processed according to those rules. If you make this request, the plaintiff's legal costs will not exceed those prescribed for the recovery of small claims.

Calling to a case management conference

Within 20 days after the case protocol mentioned above is filed, the court may call you to a case management conference to ensure the orderly progress of the proceeding. Failing this, the protocol is presumed to be accepted.

Exhibits supporting the application

In support of the Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff, the Applicant intends to use the following exhibits:

- Exhibit P-1:** July 8, 2024, Public Health Agency of Canada recall notice;
- Exhibit P-2:** July 17, 2024, update provided by the Public Health Agency of Canada;
- Exhibit P-2.1:** August 12, 2024, update provided by the Public Health Agency of Canada;
- Exhibit P-3:** July 17, 2024, public statement issued by Danone;
- Exhibit P-4:** Extract of Wal-Mart's website;
- Exhibit P-5:** Extract of the enterprises' information statement from the Quebec enterprise register ("CIDREQ") for Danone Inc.;
- Exhibit P-6:** Extract of the enterprises' information statement from the Quebec enterprise register ("CIDREQ") for Wal-Mart Canada Corp.;
- Exhibit P-7:** Danone refund Form;
- Exhibit P-8:** August 7, 2024, statement from the Canadian Food Inspection

Agency titled “Statement on the food safety investigation related to the recall of various Silk and Great Value brand plant-based refrigerated beverages”;

Exhibit P-9: En liasse, news articles reporting on the proposed class action;

Exhibit P-10: [UNDER SEAL] Confidential list of Class members and their comments as registered on Class Counsel’s website www.lpclex.com/silk.

These exhibits are available on request.

Notice of presentation of an application

If the application is an application in the course of a proceeding or an application under Book III, V, excepting an application in family matters mentioned in article 409, or VI of the Code, the establishment of a case protocol is not required; however, the application must be accompanied by a notice stating the date and time it is to be presented.

Montreal, August 14, 2024

(s) LPC Avocats

LPC AVOCATS

Mtre Joey Zukran / Mtre Léa Bruyère
Attorneys for the Applicant
276 Saint-Jacques Street, Suite 801
Montréal, Québec, H2Y 1N3
Telephone: (514) 379-1572
Telecopier: (514) 221-4441
Email: jzukran@lpclex.com

NOTICE OF PRESENTATION
(articles 146 and 574 al. 2 C.C.P.)

TO: DANONE INC.
100 rue De Lauzon
Boucherville, Quebec, J4B 1E6

WAL-MART CANADA CORP.
17000 Trans-Canada Highway
Kirkland, Quebec, H9J 2M5

JORIKI INC.
3431 McNicoll Avenue
Scarborough, Ontario, M1V 2V3

DEFENDANTS

TAKE NOTICE that Applicant's *Amended Application to Authorize the Bringing of a Class Action* will be presented before the Superior Court at **1 Rue Notre-Dame E, Montréal, Quebec, H2Y 1B6**, on the date set by the coordinator of the Class Action Division.

Montreal, August 14, 2024

(s) LPC Avocats

LPC AVOCATS

Mtre Joey Zukran / Mtre Léa Bruyère
Attorney for the Applicant
276 Saint-Jacques Street, Suite 801
Montréal, Québec, H2Y 1N3
Telephone: (514) 379-1572
Telecopier: (514) 221-4441
Email: jzukran@lpclex.com