

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

SUPERIOR COURT OF QUEBEC  
(CLASS ACTION)

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No.: 500-06-000675-138

K [REDACTED] AMRAM [REDACTED]  
[REDACTED]

*Petitioner*

vs.

**WACOAL CANADA INC.**, a legal person duly incorporated according to the Law, having its head office at 2400-1000 rue de la Gauchetière Ouest, in the City and District of Montreal, Province of Quebec, H3B 4W5;

-and-

**WACOAL AMERICA, INC.**, a legal person duly incorporated according to the Law, having its head office at 1 Wacoal Plz, in the City of Lyndhurst, State of New Jersey, 07071, USA;

*Respondents*

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**MOTION TO AUTHORIZE THE BRINGING OF A CLASS ACTION AND TO  
ASCRIBE THE STATUS OF REPRESENTATIVE  
(Art. 1002 C.C.P. and following)**

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**TO ONE OF THE HONOURABLE JUSTICES OF THE SUPERIOR COURT OF  
QUEBEC, SITTING IN AND FOR THE DISTRICT OF MONTREAL, THE  
PETITIONER RESPECTFULLY STATES THE FOLLOWING:**

**Introduction:**

1. Petitioner wishes to institute a class action on behalf of the following Group of which she is a member:

All residents of Canada (or subsidiary Quebec) who have purchased a Wacoal Anti-Cellulite iPant shapewear product including but not limited to iPant Anti-Cellulite Mid-Thigh Shaper, iPant Anti-Cellulite Long Leg Shaper, iPant Anti-Cellulite Hi-Waist Long Leg Shaper, iPant Anti-Cellulite Capri Legging and iPant Anti-Cellulite Shape Brief (hereinafter collectively the "**iPant Products**"), produced, marketed, advertised, sold and/or distributed by Respondents in Canada, or any other group to be determined by the Court.

(hereinafter referred to as "**Petitioner(s)**", the "**Class Member(s)**", the "**Class**", the "**Group Member(s)**", the "**Group**", or the "**Consumer(s)**");

2. Respondent Wacoal Canada Inc. (hereinafter "**Wacoal Canada**") is federally incorporated company domiciled in Montreal (Quebec), with its sole shareholder being Respondent **Wacoal America, Inc.** (hereinafter "**Wacoal USA**"), a company domiciled in New Jersey, USA, the whole as more fully appears from a copy of the *Registre des entreprises* CIDREQ report on Wacoal Canada, communicated herewith as **Exhibit R-1**;
3. Given their close ties, and as is more fully detailed below, the Respondents are being collectively referred to herein as either the "Respondents" or "Wacoal";
4. Wacoal develops, manufactures, markets, distributes, and sells foundation garments, namely "shapewear" and lingerie, more specifically the iPant Products, throughout the United States of America and throughout Canada (including in the Province of Quebec). Concerning the sales in Canada more specifically, the Wacoal products are available in various retail locations

across the country, the whole *inter alia* as more fully appears from certain extracts from the Respondents' "store locator tab" on their website, communicated herewith as **Exhibit R-2**;

**The situation:**

5. Respondents manufacture, market and sell "shapewear" which has been defined as undergarments for women who want a flawless, bulge-free silhouette;
6. In order to produce its iPant Products, Respondents use fabric produced by Nurel, S.A. (hereinafter "**Nurel**"), a Spanish company located in Zaragoza, Spain, which claims that its fabric is constructed with minerals and nutrients that are absorbed by the skin and can permanently change women's body shape and skin tone. Nurel promotes its said fabric under the name "Novarel Slim";
7. Nurel manufactures, markets and sells its fabric to lingerie companies, including Respondents, for use in shapewear;
8. Nurel differentiates its fabric by claiming *inter alia* that:

"Our researchers have developed a unique method that incorporates active principles embedded in the fibres in a homogeneous way. During the garment use, principles are released providing benefits to your skin.

Novarel Fibres contain thousands of microcapsules specially designed to preserve, contain and release different kinds of active principles helping your skin feel better day after day";

the whole as more fully appears from an extract from the Novarel.com website, communicated herewith as **Exhibit R-3**;

### **Misleading Use of Statistics**

9. Nurel specifically claims “scientifically proven efficiency” for its so-called “micro-encapsulation technology”, claiming, among other purported results, to significantly reduce thigh perimeter, the whole as follows:

<b>Clinical study demonstrates:</b>	
· Significant decrease on thighs perimeter*	
· 65% efficacy of Redensifying Effect*	
· 76% Slimming Efficacy*	
<b>WOMEN AFTER 28 DAYS OF USE**</b>	
State ORANGE PEEL ASPECT reduction	63%
Feel their jeans LESS TIGHT	67%
Feel LIGHTNESS SENSATION	72%

\*Clinical and \*\*sensorial test undertaken on independent lab after 28 days / 8 hours per day.

the whole as more fully appears from a screenshot of the Novarel Slim information webpage found on Nurel’s product website at [www.nurel.com/saludBellezaSlim.do](http://www.nurel.com/saludBellezaSlim.do), communicated herewith as **Exhibit R-4**;

10. Furthermore, Nurel provides its “Novarel Slim” branding tags called “hangtags” to Respondents for attachment to Respondents’ shapewear, including the iPant Products sold Canada, the whole as more fully appears from a print out of Nurel’s website, communicated herewith as **Exhibit R-5** and from a copy of the “Novarel Slim” hangtag that was attached to Petitioner’s iPant shapewear, communicated herewith as **Exhibit R-6**;

11. By attaching the “Novarel Slim” hangtags on the iPant Products, Respondents are reiterating and promulgating as their own representations to Consumers the deceptive and misleading clinical studies and statistical efficiency claims made by Nurel. Respondents clearly engage their own liability in this regard;

12. Respondents charge a significant premium for the shapewear made with Nurel's cosmeto-textile than for equivalent non-nutrient infused shapewear, despite the fact that the purported nutrients cannot permanently cure cellulite, destroy fat, nor cause weight loss, the whole as more fully appears *inter alia* from an extract from the Wacoal website, communicated herewith as **Exhibit R-7**;

13. The use of the above detailed misleading statistics is just another way that Wacoal deceives Consumers in its marketing of the iPant Products;

**Nurel Claims that its Novarel Slim Fabric will destroy Fat and Cellulite.**

14. Nurel claims that, based on several years of research and development, it is the "first company worldwide in developing and patenting an internal micro-encapsulation technology for Nylon fibres" which is said to "maintain and enhance skin beauty" the whole as more fully appears from a printout of the Novarel technology tab found on the Novarel website, communicated herewith as **Exhibit R-8**;

15. Nurel claims that its Novarel Slim fabric contains the following active ingredients: caffeine, retinol and vitamin E, as well as fatty acids and aloe vera. Nurel claims that these ingredients in the Novarel Slim fabric are scientifically-proven to control cellulite and reduce fat, the whole as more fully appears from an extract from the Novarel website (which also reiterates the statistics mentioned above), communicated herewith as **Exhibit R-9**;

16. Contrary to Nurel's representations, the Novarel Slim fabric cannot and does not reduce cellulite or destroy fat permanently or long-term;

17. Despite Wacoal's knowledge of the foregoing, it continues to design its marketing and advertising campaign for the iPant Products to include Nurel's

indicia of scientific research and discovery and promises of specific results for the sole purpose of misleading and deceiving consumers. In sum, Wacoal dupes Consumers with false and misleading promises of product results based on purported scientific discoveries for which it knows it cannot deliver. Wacoal does so with one goal in mind – reaping enormous profits at the expense of Consumers;

18. As a result of Respondents' false, deceptive or misleading representations, Petitioner and the Class Members have suffered damages in the form of out of pocket losses, and have not received the benefit of what was promised and represented by Respondents;

19. Wacoal presumably controls its own distribution channels, advertising campaigns, and labelling decisions related to iPant Products and are therefore responsible for these false, deceptive or misleading representations, detailed hereinabove;

20. In marketing and promoting its "Anti-Cellulite" shapewear iPant Products, Respondents refer to and reiterate to Consumers the representations and claims made by Nurel, the whole as mentioned above and as follows:

**"WHY IT WORKS**

Wacoal's iPant offers superior comfort and smoothing along with amazing cosmetic benefits.

The iPant is constructed of Novarel Slim® nylon microfibers with embedded microcapsules containing **caffeine** to promote fat destruction; **vitamin E** to prevent the effects of aging; **ceramides** to restore and maintain the skin's smoothness; and **retinol** and **aloe vera** to moisturize and increase the firmness of the skin.

The iPant with LYCRA® beauty fabric shapes and sculpts as it releases ingredients into your skin while you move throughout the day.

## HOW IT WORKS

It is recommended to wear the iPant 8 hours a day, 7 days a week for 28 days.

Novarel Slim® test results show most women reported improved appearance, a reduction in thigh measurement and that their cloths felt less tight.

Active ingredients are still present after 100 washes.

Let Wacoal give you Hope on a Hanger!";

the whole as more fully appears from a copy of Wacoal's iPant – Anti Cellulite Shapewear online catalogue, communicated herewith as **Exhibit R-10**;

21. Respondents' website, [www.wacoal-america.com](http://www.wacoal-america.com) serves all American users, as well as all Canadian users, as the Canadians are automatically redirected to the aforementioned website upon choosing Canada on the [www.wacoal.com](http://www.wacoal.com) website; the whole as more fully appears from the printout of the Wacoal global site, communicated herewith as **Exhibit R-11**;

22. Indeed, all content available to American consumers is also available to Canadian Consumers;

23. When selecting a product on the iPant Anti-Cellulite shapewear section of Respondent's [www.wacoal-america.com](http://www.wacoal-america.com) website, a youtube link is found on the "Details" tab, redirecting the Consumer to Respondents' video clip containing Respondent's deceptive marketing campaign for its iPant Products, the whole as more fully appears from extracts from Wacoal's website and from the screen shot of the youtube video in question, communicated herewith as, *en liasse*, **Exhibit R-12**;

24. Wacoal also permits that its same Anti-Cellulite, cellulite eliminating, and fat destruction/reducing representations are made on the websites of its own

distributers such as macys.com, Nordstrom.com and freshpair.com, the whole as more appears from copies of the iPant Product descriptions from the aforementioned third party websites, communicated herewith, as though recited at length herein, *en liasse*, as **Exhibit R-13**;

25. Each of these R-13 sources repeat the same central marketing theme as the other iPant advertisements, and provides consumers access 24 hours a day, 7 days a week, to Wacoal's deceptive advertising campaign for the iPant Products. In fact, the macy's website describes the product as follows (R-13):

**"Take shaping to the next level with Wacoal's new anti-cellulite iPant. This long leg shaper with LYCRA® beauty fabric provides moderate control while releasing slimming and age-defying ingredients into your skin as you move. Style #809171**

- Nylon/spandex; gusset lining: cotton
- Hand wash
- Imported
- Anti-cellulite
- Provides moderate control and shaping
- Pull-on style with seamless hems for invisibility and lined gusset for breathability
- Hits above knee
- **Nylon microfibers embedded with microcapsules containing caffeine to promote fat destruction, vitamin E to prevent the effects of aging, ceramides to restore skin's natural smoothness, and retinol and aloe vera to moisture and increase skin's firmness**
- **It is recommended to wear the iPant 8 hours a day, 7 days a week for 28 days**
- **Active ingredients continue to release after 100 washes"**  
(emphasis added)

26. The freshpair website states the following (R-13):

**"Wacoal iPant Long Leg Shaper (809171):**

- **Anti-cellulite shapewear**
- **Novarel Slim nylon fabric infused with fat-reducing, cellulite-smoothing active ingredients**
- **Instantly slimmer silhouette**
- Smoother, firmer skin
- Seamless front, sleek design features laser cut edges and



- disappears under clothes
- **Active ingredients last for up to 100 washes**
- Cotton lined gusset

The Wacoal iPant Long Leg Shaper is your **anti-cellulite solution!** Here's how it works: On the outside, this high-waisted mid-thigh shaper instantly slims and tones from your tummy through your thighs. **On the inside, the special nylon fabric infuses your skin with fat-blasting caffeine, smoothing ceramides, anti-aging vitamin E, moisturizing aloe vera and retinol to even out skin tone and firm. Simply put on the iPant and let it do all the work for you. The key to the cellulite smoothing benefits is to wear the iPant for 28 days straight, 8 hours a day, so you'll probably want to get two pairs to ensure you always have a fresh pair. Wacoal studies show most women who followed the iPant regimen reported improved overall appearance, a reduction in thigh measurement and that their clothes felt less tight. Wear the Wacoal iPant Long Leg Shaper and tell your cellulite to take a hike. ”**

(emphasis added)

27. These deceptive claims are once again reiterated on the Nordstrom website which states the following (R-13):

**“A revolutionary shaper that offers two-in-one slimming power. Firm-compression fabric helps sculpt the tummy, hips and thighs, while cosmetic ingredients embedded in the fabric release with every movement to help firm and smooth the skin, working to eliminate cellulite.**

- Firm compression.
- Cotton-lined gusset.
- **Active ingredients caffeine, retinol, ceramides, vitamin E, fatty acids and aloe vera last approximately 100 washes.**
- Nylon/Lycra® spandex; hand wash.
- By Wacoal; imported.
- Lingerie.”

(emphasis added)

**Cellulite is a non-serious medical condition that cannot be “cured” through topical applications.**

28. According to the well-known and well-respected Mayo Clinic, cellulite refers to the appearance of dimpled skin on the thighs, hips, buttocks and abdomen. Cellulite is most common in areas of fat deposits and is the result of the unevenness of fatty tissue beneath the skin surface, the whole as more fully appears from an extract from the Mayo Clinic website, filed herewith as **Exhibit R-14**;

29. Cellulite is caused by fibrous connective cords that tether the skin to the underlying muscle, with the fat lying in between. As the fat cells accumulate, they push up against the skin, while the long, tough cords are pulling down. This creates an uneven surface or dimpling;

30. Moreover, Nurel explains the cause of cellulite on its website as follows:

**What is and what causes cellulite?**

It affects approximately 90% of women.

Cellulite is caused by clumps of fat filled cells pushing up against the skin tissue giving an orange peel aspect on: hips, thighs, buttocks, and abdomen.

the whole as more fully appears from the Novarel Slim information webpage (Exhibit R-4);

31. Cellulite is much more common in women than in men, and at least 8 out of 10 women have some degree of cellulite because fat is typically distributed in

women in the thighs, hips and buttocks;

32. While cellulite is not a serious medical condition, cellulite can be unsightly and may cause embarrassment;

33. According to the Mayo Clinic, "[m]any devices, products and creams claim to treat cellulite but there is little or no scientific evidence to support these claims. If you do find a cellulite treatment that improves your skin, the results aren't likely to last long term.", as appears from the printout of the Mayo Clinic website (Exhibit R-14);

34. The Mayo Clinic (Exhibit R-14) warns consumers that most treatments have not been proven effective in removing cellulite, including but not limited to:

"Vigorous massage. Some cellulite treatments are based on the concept that vigorous massage will increase blood flow, remove toxins and reduce excess fluid in cellulite-prone areas. One method in particular, Endermologie (also referred to as Lipomassage), uses a hand-held machine to knead the skin between rollers. You may notice a slight improvement to your skin after this treatment, but the results are typically short-lived.

Mesotherapy. This procedure involves injecting a solution - which may contain a combination of aminophylline, hormones, enzymes, herbal extracts, vitamins and minerals - under the skin. This treatment can cause several unwanted effects, including infection, rashes, and bumpy or uneven skin contours.

Cellulite creams. Creams that contain a variety of ingredients, such as vitamins, minerals, herbal extracts and antioxidants, are often marketed as the cure for cellulite. But no studies show that these creams offer any improvement. And in some cases, the ingredients in these products cause skin reactions or rashes.  
(emphasis added)

35. As explained more fully herein, Wacoal has made and continues to make deceptive, false or misleading claims and promises to consumers about the

efficacy of its iPant Products in a pervasive marketing scheme that confuses and misleads Consumers about the true effects of the iPant Products. In reality, the iPant Products do not and cannot live up to the efficacy claims made by Wacoal because none of their ingredients can provide the promised results;

36. Respondents reiterates and promulgates these same misrepresentations in order to prey upon women's insecurities about their body image, the whole in order to earn profit;

**Wacoal Misrepresents that its "Anti-Cellulite iPant" will Promote Fat Destruction:**

37. Upon the launch of Respondents' so-called "revolutionary" iPant Product, the Respondents issued a press release claiming that iPant Products eliminates cellulite, the whole as follows:

"works with your body to visually reduce the appearance of cellulite from your waist, hips and thighs as you move. The first in America to utilize Novarel Slim technology in shapewear, Wacoal's iPant will help you redefine your silhouette and reshape your lower body in 28 days **with lasting results.**" (emphasis added);

the whole as more fully appears from the news release dated January 26, 2011 (hereinafter the "**News Release**"), a copy of which is communicated herewith, as though recited at length, as **Exhibit R-15**;

38. In its News Release (Exhibit R-15), Respondents also claim that the:

"The iPant incorporates Novarel Slim, a new nylon microfiber constructed of tiny, porous capsules that contain caffeine, a well-known stimulant that increases blood flow and has fat burning properties. In addition, Novarel Slim also includes Retinol, Ceramides, Vitamin E and Aloe Vera as active ingredients. Novarel Slim reacts to the natural friction created between the garment and your skin during wear, **releasing active ingredients and overtime visibly reducing the appearance of cellulite**. The technology is hypoallergenic and will remain effective up to 100 washes." (emphasis added);

39. On its website and online catalogue, Exhibit R-10, Wacoal recommends Consumers "to wear the iPant 8 hours a day, 7 days a week for 28 days" stating "Novarel Slim test results show most women reported improved appearance, a reduction in thigh measurement and that their clothes felt less tight";

40. Wacoal preys upon the insecurities of Consumers by referring to its iPant product as "HOPE ON A HANGER.", the whole as appears from Wacoal's online catalogue (Exhibit R-10);

41. Respondents' message of "Hope on a Hanger" and in French "*La minceur a un nom: le nouveau iPant de Wacoal*", as well as some of Respondents' other representations mentioned hereinabove, are also reiterated on the hangtags which are directly attached to the shapewear undergarments themselves, copies of the hangtags which were attached to Petitioner's purchased iPant Products are communicated herewith, as **Exhibit R-16**, as though recited at length herein;

42. Through the means described above, Respondents represented, expressly and/or implicitly, that regular use of iPant Products results in significant

reductions in body size. In truth and in fact, regular use of iPant Products does not result in significant reductions in body size;

43. Therefore, the advertisements and representations made by the Respondent as set forth above were, and are, false or misleading. The acts and practices of the Respondents as alleged herein constitute unfair or deceptive acts or practices, as well as false advertisements;

44. As a result, Consumers were induced into purchasing iPant Products under the premise that it would cause them to lose weight, a false and misleading representation, thereby vitiating their consent and entitling them to claim a refund for the purchase price of the product;

#### **The Results of Wacoal's Deceptive Conduct**

45. Wacoal's uniform marketing campaign leaves consumers with the mistaken belief and general impression that its iPant Products are uniquely able to provide certain permanent fat destruction effects;

46. In addition to the material misrepresentations as described herein, Respondents' actions are likewise actionable based on their material omissions, which similarly induced Petitioner and the other Class Members to purchase the iPant Products;

47. For example, Respondents have failed to disclose the following:

- That none of the iPant Products provide the promised benefits that cannot be found in other, less expensive products;
- That none of the iPant Products can destroy and burn fat, or eliminate cellulite;
- That Respondents know that their references to results from "scientific", "clinical" and "sensorial" tests will not translate to actual results for Consumers;

- That Respondents' "clinical studies" are not scientific and are instead designed to support Respondents' marketing materials;

48. Wacoal is in a position to actually know, or should know, that the promised results are not possible, namely that its iPant Products do not contain any ingredients or combination of ingredients that can reduce fat and eliminate cellulite, or provide any of the other promised permanent results. Wacoal's fails to disclose that its iPant Products do not provide the permanent results as promised;

49. Until such time as Wacoal ceases to engage in deceptive and misleading advertising of the iPant Products, Class Members will continue to be harmed;

50. Wacoal sets the price and charges a premium for its iPant Products. Petitioner and the other Class Members would not have paid premium prices for the iPant Products – or would not have bought them at all – had they not been exposed to Wacoal's false or deceptive advertising about the iPant Products and had instead known the truth regarding Wacoal's deceptive marketing promises and omissions relating thereto;

51. As a result, and because of Wacoal's deceptive marketing, Petitioner and the other Class Members have suffered damages related to their purchases of the iPant Products;

52. Without knowing the truth as to the lack of efficacy of the iPant Products, Petitioner and the other Class Members paid premiums for iPant Products and/or received totally worthless products;

## **FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE PETITIONER**

53. In fall 2013, Petitioner purchased two (2) pairs of the iPant Anti-Cellulite long leg shaper products (one pair in black and a second pair in natural nude), at the Bay department store in Montreal, at a price of \$75 each (plus applicable taxes)<sup>1</sup>;
54. In fact, Petitioner purchased the products in question after reading the hangtags attached to the iPant Anti-Cellulite Products (Exhibit R-16), including the "clinical study" and statistical results found on the Novarel hangtag (Exhibit R-6). Petitioner trusted and relied upon Respondents' representations to the effect that the iPant Products would reduce the cellulite found on her lower body, improve her appearance, reduce her thigh measurement and that her clothes would feel less tight;
55. She therefore purchased the iPant Products and used the iPant Products for the recommended period of 28 days, the whole as recommended by Respondents (as detailed hereinabove);
56. After failing to notice any of the claimed benefits following the recommended period of use, Petitioner reviewed the hangtags attached to the products, which she had kept, and visited the Novarel.com website which is listed on the Novarel Slim hangtag itself (R-6), and she viewed the youtube videos linked to Respondents' website (mentioned above), the whole in order to obtain further information on the so-called results and the purported benefits of the product;
57. Encouraged by the claims and statistics found on the Respondents' and the Nurel and Novarel websites, Petitioner decided to continue using the iPant

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<sup>1</sup> Petitioner did not retain the sales receipt since she was specifically told by the Bay's clerk, at the time of purchase, that she would not be able to return or exchange such undergarments, for hygienic purposes.



Products for several more weeks with the hope of obtaining the purported results;

58. However after many weeks of continued use, Petitioner did not notice any improved appearance, reduction in thigh measurement, nor did her clothes feel less tight, the whole notwithstanding the false representations made by Respondents (detailed hereinabove);

59. Petitioner's disappointment of not obtaining the purported results led her to search online for more information concerning the efficacy of the iPant Products. Petitioner discovered that an American class action lawsuit had been filed in relation to Respondent's iPant Products;

60. In fact, on November 5, 2013, a "Class Action Complaint and Demand for Jury Trial" was filed before the United States District Court, Eastern District of New York, Eastern Division, in Court file No CV-06122 (hereinafter the "**US Class Action**"), a copy of which is filed herewith, as though recited at length herein, as **Exhibit R-17**;

61. The US Class Action describes in great detail the nature and extent of the misleading advertising campaign, representations and claims made by Respondents concerning the iPant Products and also refers to other relevant documents or opinions on these issues, all of which Petitioner relies upon in order to further satisfy her burden of demonstration herein;

62. As was done in the United States of America, Respondents engaged in similar, if not identical, misleading advertising campaign, representations and claims in Canada (using the same websites as mentioned above) and Respondents knew or should have known that Canadian consumers would be affected and influenced by both Canadian and American campaigns;

63. Petitioner would not have purchased and would not have used the iPant Products in question if it were not for the false representations and false promises made by Respondents (detailed above);

**FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY EACH OF THE MEMBERS OF THE GROUP**

64. Each Class member has purchased an iPant Product;

65. Every Class Member's consent when purchasing iPant Products was vitiated as a result of the false and/or misleading statements made by Respondents, which are described hereinabove;

66. Every Class Member would not have purchased iPant Products at all, or would not have paid the inflated price paid for iPant Products, if it wasn't for Respondents' misleading marketing campaign, representations and claims described above regarding iPant Products supposed fat reducing and cellulite eliminating effects;

67. For all of the reasons more fully detailed hereinabove, Petitioner respectfully submits that Wacoal intentionally promulgated and used its iPant Product marketing in an abusive manner, making it liable to pay punitive and exemplary damages to the Class Members, in an amount to be determined by the Court;

68. Wacoal's said actions show a malicious, oppressive and high-handed conduct that represents a marked departure from ordinary standards of decency when dealing with customers. In that event, punitive damages should be awarded to Class Members;

**CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION**

69. The composition of the Group makes the application of Articles 59 or 67 C.C.P. impractical for the following reasons;
70. Petitioner is unaware of the specific number of persons who purchased iPant Products, however it is safe to estimate that it is in the tens of thousands (if not more) since it is sold across the country, including in major department stores such as the Bay;
71. Class Members are numerous and are scattered across the entire province and country;
72. 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 the Class Members themselves could afford such individual litigation, the Court system could not as it would be overloaded. 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;
73. Moreover, a multitude of actions instituted risks having contradictory judgments on questions of fact and law that are similar or related to all Class Members;
74. These facts demonstrate that it would be impractical, if not impossible, to contact each and every Class Member to obtain mandates and to join them in one action;
75. In these circumstances, a class action is the only appropriate procedure for all of the Class Members to effectively pursue their respective rights and have

access to justice;

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

77. The recourses of the Members raise identical, similar or related questions of fact or law, namely:

- a. were the claims and/or representations Respondents made regarding iPant Products false, unfair, misleading or deceptive;
- b. Did Respondents make claims and/or representations that iPant Products have certain fat reducing and cellulite eliminating properties, uses or benefits that they do not have;
- c. Did Respondents knowingly make a misleading statement in connection with the consumer transaction that the consumer was likely to rely upon to his detriment;
- d. Did Respondents know or should they have known that the representations and advertisements regarding the products were unsubstantiated false and/or misleading;
- e. Did Respondents engage in false and/or misleading advertising;
- f. Did Respondents represent that iPant Products have a characteristic, ingredient, use or benefit that they do not have;
- g. Did the Class Members that purchased iPant Products suffer monetary damages and, if so, what is the measure of said damages;

- h. Are the Class Members entitled to an award of punitive damages and, if so, what is the measure of said damages;

78. The majority of the issues to be dealt with are issues common to every Class Member;

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

### **NATURE OF THE ACTION AND CONCLUSIONS SOUGHT**

80. The action that the Petitioner wishes to institute for the benefit of the Class Members is an action in damages and for injunctive relief;

81. The conclusions that the Petitioner wishes to introduce by way of a motion to institute proceedings are:

**GRANT** the class action of the Petitioner and each of the Class Members;

**ORDER** Defendants to cease from continuing its unfair, false, misleading, and/or deceptive conduct;

**DECLARE** Defendants solidarily liable for the damages suffered by the Petitioner and each of the Class Members;

**CONDEMN** the Defendants solidarily to pay to each of the Class Members a sum to be determined in compensation of the damages suffered, and **ORDER** collective recovery of these sums;

**CONDEMN** the Defendants solidarily to pay to each of the Class Members a sum to be determined in punitive and/or exemplary damages, and **ORDER** collective recovery of these sums;

**CONDEMN** the Defendants solidarily to pay interest and additional indemnity on the above sums according to Law from the date of service of the motion 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, additional indemnity, 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 experts' fees and notice fees;

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

**THE WHOLE** with full costs and expenses including expert's fee and publication fees to advise members;

82. Petitioner suggests that this class action be exercised before the Superior Court in the District of Montreal for the following reasons:

- a. Many Class Members, including Petitioner, are domiciled in the District of Montreal;

- b. The iPant Products are sold in the District of Montreal;
  - c. Respondent Wacoal Canada Inc. is domiciled in the District of Montreal and has no other establishments in Canada, according to the CIDREQ report (Exhibit R-1);
  - d. Petitioner's undersigned attorneys practice law in the District of Montreal;
83. Petitioner, who is requesting to obtain the status of representative, will fairly and adequately protect and represent the interest of the Class Members since Petitioner:
- a. is a member of the class who purchased and used the iPant Product based on Respondents' above-detailed false representations and misleading advertising;
  - b. understands the nature of the action and has the capacity and interest to fairly and adequately protect and represent the interests of the Class Members;
  - c. is available to dedicate the time necessary for the present action before the Courts of Quebec and to collaborate with Class Counsel in this regard;
  - d. is ready and available to manage and direct the present action in the interest of the Class Members and is determined to lead the present file until a final resolution of the matter, the whole for the benefit of the Class Members;
  - e. does not have interests that are antagonistic to those of other Class Members;

- f. has given the mandate to the undersigned attorneys to obtain all relevant information to the present action and intends to keep informed of all developments;
- g. has given the mandate to the undersigned attorneys to post the present matter on their firm website in order to keep the Class Members informed of the progress of these proceedings and in order to more easily be contacted or consulted by said Class Members;
- h. is, with the assistance of the undersigned attorneys, ready and available to dedicate the time necessary for this action and to collaborate with other Class Members and to keep them informed;

84. The present motion is well founded in fact and in law.

**FOR THESE REASONS, MAY IT PLEASE THE COURT:**

**GRANT** the present Motion;

**AUTHORIZE** the bringing of a class action in the form of a motion to institute proceedings in damages and for injunctive relief;

**ASCRIBE** the Petitioner the status of representative of the persons included in the Class herein described as:

All residents of Canada (or subsidiary Quebec) who have purchased a Wacoal Anti-Cellulite iPant shapewear product including but not limited to iPant Anti-Cellulite Mid-Thigh Shaper, iPant Anti-Cellulite Long Leg Shaper, iPant Anti-Cellulite Hi-Waist Long Leg Shaper, iPant Anti-Cellulite Capri Legging and iPant Anti-Cellulite Shape Brief (hereinafter collectively the "**iPant Products**"), produced, marketed, advertised, sold and/or distributed by



Respondents in Canada, or any other group to be determined by the Court.

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

- a. were the claims and/or representations Respondents made regarding iPant Products false, unfair, misleading or deceptive;
- b. Did Respondents make claims and/or representations that iPant Products have certain fat reducing and cellulite eliminating properties, uses or benefits that they do not have;
- c. Did Respondents knowingly make a misleading statement in connection with the consumer transaction that the consumer was likely to rely upon to his detriment;
- d. Did Respondents know or should they have known that the representations and advertisements regarding the products were unsubstantiated false and/or misleading;
- e. Did Respondents engage in false and/or misleading advertising;
- f. Did Respondents represent that iPant Products have a characteristic, ingredient, use or benefit that they do not have;
- g. Did the Class Members that purchased iPant Products suffer monetary damages and, if so, what is the measure of said damages;
- h. Are the Class Members entitled to an award of punitive damages

and, if so, what is the measure of said damages;

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

**GRANT** the class action of the Petitioner and each of the Class Members;

**ORDER** Defendants to cease from continuing its unfair, false, misleading, and/or deceptive conduct;

**DECLARE** Defendants solidarily liable for the damages suffered by the Petitioner and each of the Class Members;

**CONDEMN** the Defendants solidarily to pay to each of the Class Members a sum to be determined in compensation of the damages suffered, and **ORDER** collective recovery of these sums;

**CONDEMN** the Defendants solidarily to pay to each of the Class Members a sum to be determined in punitive and/or exemplary damages, and **ORDER** collective recovery of these sums;

**CONDEMN** the Defendants solidarily to pay interest and additional indemnity on the above sums according to Law from the date of service of the motion 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, additional indemnity, 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 experts' fees and notice fees;

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

**THE WHOLE** with full costs and expenses including expert's fee and publication fees to advise members;

**DECLARE** that all Class Members who have not requested their exclusion from the Group in the prescribed delay to be bound by any judgment to be rendered on the class action to be instituted;

**FIX** the delay of exclusion at thirty (30) days from the date of the publication of the notice to the Class Members;

**ORDER** the publication of a notice to the Class Members in accordance with Article 1006 C.C.P., pursuant to a further Order of the Court, and **ORDER** Respondents to pay for said publication costs;

**THE WHOLE** with costs including all publication costs.

**MONTREAL, NOVEMBER 13, 2013**

**LEX GROUP INC.**

(s) Lex Group Inc.

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**Per: David Assor**

Attorneys for Petitioner