

SUPERIOR COURT

(Class Action Chamber)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No.: 500-06-001044-201

DATE: November 4, 2025

BY THE HONOURABLE MARTIN F. SHEEHAN, J.S.C.

SARA HIMMICHE

Applicant

v.

DEVA CONCEPTS LLC.

Defendant

JUDGMENT ON APPLICATION TO DISCONTINUE

[1] Applicant, Ms. Sara Himmiche, wishes to discontinue her motion to be authorized to file a class action (the “**Quebec Application**”), filed on February 17, 2020, against Defendant, Deva Concepts LLC. (“**Deva**”).

[2] In her Athorization Motion, Applicant seeks to represent Quebec customers who purchased certain Deva products. She alleged that these products cause scalp irritation, excessive shedding, hair loss, thinning, breakage and/or balding during normal use by consumers.

[3] On February 1, 2022, the Applicant sought and obtained an order to stay the Québec Application in favour of a parallel national class action in British Columbia (the “**BC Action**”). No further steps have been taken in the Quebec Application since.

[4] The BC Action was never certified. It was discontinued with prejudice on May 22, 2025.¹

¹ Exhibit A-1.

ANALYSIS

1. Applicable Law

[5] Section 585 of the *Code of Civil Procedure* (“**C.C.P.**”), which requires the court to approve the discontinuance of a class action, is part of the chapter entitled “The Conduct of Class Actions.” It therefore applies to class actions once they have been authorized.

[6] Article 1010.1 of the former C.C.P., which stipulated that the provisions relating to the “conduct of the action” once authorized also applied, with the necessary adaptations, to the authorization stage, was not included in the new C.C.P.

[7] Thus, the need for court permission to withdraw an application for authorization remains unclear.

[8] When asked to rule on this issue, the Court of Appeal decided that it was not necessary to do so.²

[9] Nevertheless, it did set out a few principles that are important for the purposes of the present application.

[10] It noted that until the class action is authorized, we are only dealing with potential class members within an undefined group. Such potential members are often unaware of the existence of the class action given the lack of publicity surrounding its filing. In such a context, one may wonder what remedies are available to the judge faced with a request to discontinue. While it is difficult to imagine that the court could force the applicant to pursue the application, it is equally difficult to conceive that class counsel could be compelled to search for a putative member willing to step in a class representative.³

[11] On the other hand, it confirmed that the court has a duty to protect the putative members of the proposed class and the integrity of the judicial system. To do so, it may impose measures to ensure that putative members are informed of the discontinuance so that they have sufficient time to bring their own action if they so wish. The court must also ensure that the discontinuance does not undermine the integrity of the judicial system. This could be the case, for example, if the petitioner or his lawyers receive compensation in exchange for the discontinuance.⁴

[12] The Court of appeal concluded that, as long as the court has no reason to believe that the applicant's decision to withdraw may undermine the integrity of the justice system or the interests of putative members, it should not interfere with that decision and need not scrutinize the reasons behind it. The decision to withdraw an application for leave is one that rests with the applicant.⁵

² *École communautaire Belz c. Bernard*, 2021 QCCA 905, para. 11.

³ *Ibid.*, para. 16.

⁴ *Ibid.*, para. 23.

⁵ *Ibid.*, para. 21.

[13] If the court finds that the discontinuance does not jeopardize the integrity of the judicial system, it must allow the discontinuance while putting in place measures to protect the interests of potential members. Often, these measures will be limited to ensuring that potential members are notified of the withdrawal.

2. Discussion

[14] Over the course of the authorization phase, Deva shared with class counsel a significant number of documents and information pertaining to the products in dispute. A review of these documents has led class counsel to conclude that the class action has little chance of succeeding.

[15] Furthermore, class counsel has mentioned that he has been unsuccessful in retaining an expert who could identify a chemical or contamination-based flaw in the Deva products. Parallel litigation in the United States encountered similar issues.

[16] Since filing, class counsel has received very little response from potential class members. This lack of engagement further demonstrates that a class action may not be the right avenue here.

[17] Class counsel has met with the Applicant and explained the documents provided by the Defendant, the difficulties that would be encountered in pursuing the claim and obtained instructions to seek this dismissal. Applicant agrees with the proposed discontinuance.

[18] The class action in this case has not yet been authorized, and no hearing date has been set. The proposed class members will suffer no prejudice if this Application to Discontinue is granted because no release is granted to the Defendant in exchange for the discontinuance.

[19] The *Fonds d'aide aux actions collectives* did not provide funding to the Applicant.

[20] Given the circumstances, the Applicant's decision to discontinue will not harm the integrity of the judicial system.

[21] The Court authorizes the discontinuance and puts in place measures to ensure that potential class members are notified.

FOR THESE REASONS, THE COURT:

[22] **GRANTS** the Application to Discontinue an Application for Authorization to Institute a Class Action and to Obtain the Status of Representative;

[23] **AUTHORIZES** the Applicant to file the discontinuance filed as Exhibit A-2 within ten days of the present judgment;

[24] **PRAYS ACT** of Applicant's attorneys' undertaking to advise all class members who contacted them of the discontinuance and publish the present judgment:

24.1. on their website; and

24.2. on the Superior Court's class action registry within fifteen days of the date of this judgment, all in accordance with section 125 of the *Superior Court Guidelines for the Montreal Division*;

[25] **THE WHOLE** without costs.

MARTIN F. SHEEHAN, J.S.C.

Mtre Michael Simkin
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Attorney for the Defendant

Hearing date: Judgment rendered on the basis of the record.