



Amended pursuant to the Supreme Court Rule 24(1)(a)
Original filed February 6, 2009

NO. S-090937
VANCOUVER REGISTRY



IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

SHARON LYNN LOGAN

PLAINTIFF

AND:

DERMATECH, INTRADERMAL DISTRIBUTION INC. and
VIVIER PHARMA INC.

DEFENDANTS

Brought pursuant to the *Class Proceedings Act*, R.S.B.C. 1996 c. 50

AMENDED WRIT OF SUMMONS

(Name & address of each plaintiff)

SHARON LYNN LOGAN, 4974 Vista View Crescent, Nanaimo, BC V9V 1R3

(Name & address of each defendant)

DERMATECH,
10 rue Saint Claude, Paris, France 75003.

INTRADERMAL DISTRIBUTION INC.,
442 rue Aimé Vincent at Vaudreuil-Dorion, Beauharnois District, Québec J7V 5V5

VIVIER PHARMA INC.,
292 rue Adrien Patenaude at Vaudreuil-Dorion, Beauharnois District, Québec J7V 5V5

ELIZABETH THE SECOND, by the Grace of God, of the United Kingdom, Canada and Her other Realms and Territories, Queen, Head of the Commonwealth, Defender of the Faith.

To the defendant(s): DERMATECH, INTRADERMAL DISTRIBUTION INC. and
VIVIER PHARMA INC.

TAKE NOTICE that this action has been commenced against you by the plaintiff(s) for the claim(s) set out in this writ.

IF YOU INTEND TO DEFEND this action, or if you have a set off or counterclaim which you wish to have taken into account at the trial, YOU MUST

- (a) GIVE NOTICE of your intention by filing a form entitled "Appearance" in the above Registry of

this Court, at the address shown below, within the Time for Appearance provided for below and YOU MUST ALSO DELIVER a copy of the Appearance to the plaintiff's address for delivery, which is set out in this writ, and

- (b) If a statement of claim is provided with this writ of summons or is later served on or delivered to you, FILE a Statement of Defence in the above registry of this court within the Time for Defence provided for below and DELIVER a copy of this Statement of Defence to the plaintiff's address for delivery.

YOU OR YOUR SOLICITOR may file the Appearance and the Statement of Defence. You may obtain a form of Appearance at the Registry.

JUDGMENT MAY BE TAKEN AGAINST YOU IF

- (a) YOU FAIL to file the Appearance within the Time for Appearance provided for below, or
- (b) YOU FAIL to file the Statement of Defence within the time for Defence provided for below.

TIME FOR APPEARANCE

If this Writ is served on a person in British Columbia, the time for appearance by that person is 7 days from the service (not including the day of service).

If this Writ is served on a person outside British Columbia, the time for appearance by that person after service, is 21 days in the case of a person residing anywhere within Canada, 28 days in the case of a person residing in the United States of America, and 42 days in the case of a person residing elsewhere.

[or, where the time for appearance has been set by order of the court, within that time]

TIME FOR DEFENCE

A Statement of Defence must be filed and delivered to the plaintiff within 14 days after the later of

- (a) the time that the Statement of Claim is served on you (whether with this writ of summons or otherwise) or is delivered to you in accordance with the Rules of Court, and
- (b) the end of the time for Appearance provided for above.

[or, if the time for defence has been set by order of the court, within that time.]

(1) The address of the registry is:

Law Courts
800 Smithe Street,
Vancouver, B.C. V6Z 2E1

(2) The ADDRESS FOR DELIVERY is:

ROSENBERG & ROSENBERG
671D Market Hill
Vancouver, B.C. V5Z 4B5
Fax number for delivery: 879-4934

(3) The name and office address of the plaintiff's solicitor is:

DAVID M. ROSENBERG
ROSENBERG & ROSENBERG
671D Market Hill
VANCOUVER, BC V5Z 4B5

The Plaintiff's claim is set out on the Statement of Claim Attached and is brought pursuant to the *Class Proceedings Act*, R.S.B.C. 1996 c. 50.

The Plaintiff claims the right to serve this Writ of Summons on the Defendants, outside British Columbia without leave pursuant to Rule 13(1) of the *BC Supreme Court Rules* and section 10 of the *Court Jurisdiction and Proceedings Transfer Act*, R.S.B.C. 2003, c. 28 and amendments thereto, on the ground that the proceeding concerns a tort committed in British Columbia, and concerns a business carried on in British Columbia.

Dated: February 6, 2009

David M. Rosenberg,
Solicitor for the Plaintiff

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VIVIER PHARMA INC.**

DEFENDANTS

Brought pursuant to the *Class Proceedings Act*, R.S.B.C. 1996 c. 50

AMENDED STATEMENT OF CLAIM

1. The Plaintiff, Sharon Lynn Logan, is an optician who lives in Nanaimo, British Columbia.
2. The Defendant, Dermatech, is a certified company located in Paris, France, that develops and markets injectable implants for medical aesthetics. The corporate headquarters of Dermatech in Paris, France, is located at 10 rue Saint Claude, 75003.
3. For servicing its clients outside France, Dermatech implemented a distribution network of marketing companies.

4. The Defendant, Intradermal Distribution Inc. ("Intradermal"), is a marketing company that has its head office at 442 rue Aimé Vincent at Vaudreuil-Dorion, Beauharnois District, Province of Québec.
5. Intradermal is the exclusive distributor of Dermalive in Canada.
6. Dermatech conceived, produced and marketed Dermalive.
7. Dermalive is an injectable permanent filler containing plastic particles which stimulate collagen growth in the soft tissue to plump out dimples and wrinkles.
8. On May 19, 2003, Dermalive's licence as a medical product was suspended in France.
9. Dermatech, as the manufacturer of Dermalive, applied to Health Canada to have Dermalive licenced as a medical device. Health Canada licenced Dermalive as a Class 3 medical device on July 11, 2003, and again on March 30, 2004. The licences issued to Dermatech for Dermalive as a Class 3 medical device continued until July 23, 2007. During the time that Dermalive was approved by Health Canada, it remained a licenced Class 3 medical device as that term is used in the *Food and Drugs Act Medical Devices Regulations*, SOR/98-282 ("*Medical Devices Regulations*").

10. The Defendant, Vivier Pharma Inc. ("Vivier"), is a pharmaceutical company which researches, develops and sells innovative dermatological products. Vivier's head office is at 292 rue Adrien Patenaude at Vaudreuil-Dorion, Beauharnois District, Province of Québec.
11. Vivier produced Dermalive for Dermatech in Canada.
12. Dermatech, Intradermal and Vivier (collectively, the "Defendants") are jointly and severally responsible for the conception, fabrication, distribution, and sale of Dermalive in Canada. The Defendants continued to make, distribute, and market Dermalive in Canada despite the discovery that the use of Dermalive has serious adverse side effects.
13. The Defendants knew, or should have known, that Dermalive was dangerous, yet the Defendants continued to make the product Dermalive available in Canada even though it was foreseeable that it would be used by the Plaintiff and other consumers in Canada and could cause harm to the Plaintiff and those other consumers.
14. The statutory and regulatory scheme under the *Food and Drugs Act*, R.S. 1985, c. F-27, imposes private law duties on manufacturers of medical devices. Section 19 of the *Food and Drugs Act* imposes a duty of care on the seller and explicitly places the obligation for the safety of devices like Dermalive on the manufacturer and distributor. The *Food and Drugs Act* and the Regulations passed pursuant to that *Act*, including the *Medical Devices Regulations*, mandate that the medical devices industry is responsible for product safety, recalling dangerous products, and warning consumers. The Defendants have failed to

comply with the *Act* and its *Regulations* and such failure has resulted in harm to the Plaintiff and others.

15. On May 18, 2006, Sharon Lynn Logan (the "Plaintiff") had Dermalive injected into her nasolabial areas, lip line, lip roll edges and marionette area. Approximately five or six months after being injected with Dermalive, the Plaintiff developed lumps in her face.
16. The Plaintiff suffered an inflammatory reaction from being injected with Dermalive. The reaction became progressively worse, causing areas of her face to become ropey and indurated. These areas included her nasolabial regions bilaterally, as well as her upper lip and chin.
17. The Plaintiff suffered facial granulomas as a result of being injected with Dermalive.
18. The Plaintiff suffered scarring as a result of being injected with Dermalive.
19. The Plaintiff has suffered pain and continues to suffer pain as a result of being injected with Dermalive.
20. The Plaintiff has lost wages as a result of being injected with Dermalive.
21. The Plaintiff has suffered disfigurement, including facial disfigurement which prevents her from smiling properly, as a result of being injected with Dermalive.

22. The Plaintiff would never have agreed to being injected with Dermalive if:
- a. she had been suitably warned by the Defendants of the risks associated with Dermalive; and
 - b. the product Dermalive had not been available in Canada as a licenced medical device.
23. The Defendants were negligent in failing to warn the Plaintiff and Health Canada of the known risks and dangers associated with the use of Dermalive. The Defendants were negligent in failing to warn consumers of the known risks associated with the use of Dermalive. The Defendants were negligent in manufacturing, marketing, and selling Dermalive in Canada and to the Plaintiff.
24. The Defendants severally and jointly owed a duty of care to the Plaintiff to ensure that the product Dermalive was safe for its intended use. Particulars of the Defendants' negligence include:
- a. a failure to disclose and to warn the Plaintiff and class members that Dermalive had potentially serious adverse effects;
 - b. marketing Dermalive in such a way as to give the Plaintiff and class members no reason to suspect that Dermalive had potentially harmful and serious adverse effects;
 - c. marketing Dermalive when it was unreasonable in all of the circumstances for it to have done so; and
 - d. failing to recall Dermalive sooner.
25. The Defendants solicited, offered, advertised, sold and supplied Dermalive for the personal use of the Plaintiff and other class members. These actions constituted "consumer

transactions" within the meaning of *Business Practices and Consumer Protection Act*, S.B.C. 2004, c.2 ("BPCPA"). With respect to those transactions, the Plaintiff and class members who purchased Dermalive for personal use are "consumers" and the Defendants are "suppliers" within the meaning of the BPCPA.

26. The conduct of the Defendants in their solicitations, offers, advertisements, promotions, sales and supply of Dermalive, as particularized above, had the capability, tendency or effect of deceiving or misleading consumers regarding the safety and contents of Dermalive. The Defendants' conduct in its solicitations, offers, advertisements, promotions, sales and supply of Dermalive were deceptive acts and practices contrary to s. 4 of the BPCPA. The Defendants' deceptive acts and practices included the failure to properly disclose all material facts regarding the risks associated with the use of Dermalive.
27. As a result of the Defendants' deceptive acts and practices, the Plaintiff and class members have suffered loss and damages. The Plaintiff seeks damages and statutory compensation pursuant to ss. 171 and 172 of the BPCPA on her own behalf and on behalf of class members who purchased Dermalive for their personal use, including disgorgement of any revenue or profits obtained by the Defendants from the sale of Dermalive.
28. As a result of the Defendants' negligence and the Defendants' deceptive acts and practices, the Plaintiff and class members have suffered and will continue to suffer loss and damage. Such loss and damage was foreseeable by the Defendants. Particulars of the loss and damage

suffered by the Plaintiff and class members which were caused or materially contributed to by the aforementioned acts of the Defendants include:

- a. pain, suffering and loss of quality and enjoyment of life;
- b. damages for past and future loss of income; and
- c. special damages and expenses, including medical expenses.

29. The Defendants' conduct was reprehensible and departed to a marked degree from ordinary standards of decent behaviour. The Defendants' reckless disregard for public safety and prescribed statutory duties is deserving of punishment and condemnation by means of an award of punitive damages. This case raises issues of general deterrence. A punitive damage award in this case is necessary to express society's condemnation of the Defendants' conduct, to advance public safety, and to achieve the goals of both specific and general deterrence.
30. The conduct of the Defendants as set out above shows reckless disregard for the well-being of the public, the Plaintiff and members of the potential class. The Defendants' negligence was callous and arrogant and offends the ordinary community standards of moral and decent conduct. The actions, omissions, or both of the Defendants involved such want of care as could only have resulted from actual conscious indifference to the rights, safety or welfare of the Plaintiff and all other members of the proposed class. The Plaintiff on her own behalf and on behalf of all proposed class members hereby claims aggravated and exemplary damages.
31. The Plaintiff claims, on her own behalf, and on behalf of a class of similarly situated persons resident in British Columbia and elsewhere in Canada:

- a. an Order certifying this action as a class proceeding;
- b. general damages;
- c. special damages;
- d. aggravated and exemplary damages;
- e. punitive damages;
- f. damages and statutory compensation available under the BPCPA;
- g. pre-judgment interest;
- h. costs; and
- i. such further and other relief as this Honourable Court may deem just.

Place of Trial: Law Courts, 800 Smithe Street, Vancouver, B.C.

DATED at the City of Vancouver, Province of British Columbia, this 6th day of February, 2009.

The Plaintiff claims the right to serve this Statement of Claim on the Defendants, outside British Columbia without leave pursuant to Rule 13(1) of the *BC Supreme Court Rules* and section 10 of the *Court Jurisdiction and Proceedings Transfer Act*, R.S.B.C. 2003, c. 28 and amendments thereto, on the ground that the proceeding concerns a tort committed in British Columbia, and concerns a business carried on in British Columbia.

David M. Rosenberg
Solicitor for the Plaintiff

THIS WRIT OF SUMMONS AND STATEMENT OF CLAIM is filed and delivered by David M. Rosenberg of the law firm of Rosenberg & Rosenberg, Solicitors for the Plaintiff, whose place of business and address for delivery is 671D Market Hill Road, Vancouver, B.C. V5Z 4B5. Telephone: 604-879-4505 Facsimile: 604-879-4934