

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

LINA RIZZI

Plaintiffs

- and -

DR. VIVEK (VICK) HANDA, UPPER MIDDLE DENTAL and VICK HANDA DENTISTRY
PROFESSIONAL CORPORATION

Defendant

Proceeding under the Class Proceedings Act, 1992

STATEMENT OF CLAIM

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.



IF YOU PAY THE PLAINTIFF'S CLAIM, and \$10,000.00 for costs, within the time for serving and filing your statement of defence you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$5,000.00 for costs and have the costs assessed by the court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date JUN 28 2017

Issued by..........
Local Registrar

10th Floor, 393 University Avenue
Toronto, Ontario
M5G 1E6

TO: DR. VIVEK (VICK) HANDA
1900 Walkers Line
Burlington, ON
L7M 4W5

TO: UPPER MIDDLE DENTAL
1900 Walkers Line
Burlington, ON
L7M 4W5

TO: VICK HANDA DENTISTRY PROFESSIONAL CORPORATION
1900 Walkers Line
Burlington, ON
L7M 4W5

CLAIM

1. The Plaintiff claims the following relief:
 - (a) An Order pursuant to the *Class Proceedings Act*, 1992, SO 1992 c 6, amended, certifying this action as a Class Proceeding;
 - (b) An Order pursuant to the *Class Proceedings Act*, 1992, SO 1992 c 6, amended, appointing Lina Rizzi to act as the representative of the Class;
 - (c) General damages in the amount of \$5,000,000.00 or in such other amount as this Honourable Court deems appropriate;
 - (d) Special damages in the amount of \$5,000,000.00 or in such other amount as this Honourable Court deems appropriate;
 - (e) Special damages for the cost of past and future health services, including such insured health services as are provided by the Ontario Health Insurance Plan ("OHIP");
 - (f) A declaration that the Defendants owed a duty of care to the Plaintiff and Class Members to properly sterilize, prepare, store and handle the equipment, instruments and devices used by the Defendants to provide dental services to the Plaintiff and Class Members prior to June 9, 2017;
 - (g) A declaration that the Defendants breached the duty of care owed to the Plaintiff and Class Members with respect to the Defendants' improper and unsafe cleaning, disinfecting, sterilization, preparation, storage and handling of equipment, instruments and devices used to provide dental services to the Plaintiff and Class Members prior to June 9, 2017 and exposed the Plaintiff and Class Members to infectious diseases, such as hepatitis B, hepatitis C and human immunodeficiency virus (HIV);

- (h) A declaration that the Defendants were negligent in the cleaning, disinfecting, sterilization, preparation, storage and handling of equipment, instruments used to provide dental services prior to June 9, 2017 and exposed the Plaintiff and Class Members to infectious diseases, such as hepatitis B, hepatitis C and human immunodeficiency virus (HIV);
- (i) the cost of delivering Notice to the Class Members;
- (j) the cost of administering the distribution of all monies to the Class Members;
- (k) Such further and other damages as may be proven at trial;
- (l) Pre-judgment interest on the foregoing sums pursuant to section 128 of the *Courts of Justice Act*, RSO 1990, c C-43;
- (m) Post-judgment interest on the foregoing sums pursuant to section 129 of the *Courts of Justice Act*, RSO 1990, c C-43;
- (n) costs on a substantial indemnity basis, plus applicable taxes; and
- (o) such further and other relief as this Honourable Court may deem just.

THE PLAINTIFF AND CLASS MEMBERS

2. The Plaintiff is Lina Rizzi, a resident of Halton Region and a long-time patient of the defendant, Dr. Vivek (Vick) Hanna and his dental practice, Upper Middle Dental.
3. The Plaintiff brings this action pursuant to the *Class Proceedings Act*, 1992 on her own behalf and on behalf of all persons who received dental services from the Defendants prior to June 9, 2017, including:

- i. All persons resident or situated in Canada who were exposed to the risk of infection of hepatitis B, hepatitis C and human immunodeficiency virus (HIV) from improperly sterilized dental equipment, devices and instruments used by the Defendants while providing dental services to the Class Members prior to June 9, 2017 (the "Exposed Class");
 - ii. All persons resident or situated in Canada who contracted hepatitis B, hepatitis C and human immunodeficiency virus (HIV) from improperly sterilized dental equipment, devices and instruments used by the Defendants while providing dental services to the Class Members prior to June 9, 2017 (the "Infected Class");
 - iii. All persons who contracted infections or were put at risk of contracting an infection from the Exposed Class, or, where such person is deceased, the personal representative of the estate of the deceased ("Cross Infected Class");
 - iv. All spouses, parents, grandparents, children, grandchildren and siblings (within the meaning of section 61 of *the Family Law Act*, R.S.O. 1990, c.F-3, as amended) of the Exposed Class and/or the Infected Class (The "Family Law Claimants").
4. The Plaintiff states that there is an identifiable class that would be fairly and adequately represented by the Plaintiff; that the Plaintiff's and Class Members' claim raises common issues; and that a class proceeding would be the preferable procedure for the resolution of such common issues.

DEFENDANTS

5. The Defendant, Dr. Vivek (Vick) Handa, is a Dentist carrying on the practice of dentistry at Upper Middle Dental in the Region of Halton, Province of Ontario ("Handa").
6. The Defendant, Upper Middle Dental, is the dental practice owned and operated by Handa in the Region of Halton, Province of Ontario (Upper Middle Dental").

7. The Defendant, Vick Handa Dentistry Professional Corporation, is an active corporation duly incorporated according to the laws of Ontario, bearing Ontario Corporation Number 1573168.
8. Unless otherwise stated, Handa, Upper Middle Dental and Vick Handa Dentistry Professional Corporation will be referred to herein as "the Defendants".
9. Jointly and/or severally, the Defendants at all material times owed a duty of care to the Plaintiff and Class Members to properly sterilize, prepare, store and handle the equipment, instruments and devices used by the Defendants to provide dental services to the Plaintiff and Class Members.

**FACTS IN SUPPORT OF THE CLAIM FOR
DAMAGES AND DECLARATORY RELIEF**

10. The Plaintiff attended at Upper Middle Dental at least once in 2015. During this visit or visits, the Defendants used various sharp and invasive dental instruments, equipment and devices during the course of providing dental services to the Plaintiff.
11. The Plaintiff attended at Upper Middle Dental at least once in 2016. During this visit or visits, the Defendants used various sharp and invasive dental instruments, equipment and devices during the course of providing dental services to the Plaintiff.
12. During the Plaintiff's visits to Upper Middle Dental in 2015 and 2016, the Defendants performed various dental services and procedures on her using sharp and invasive dental instruments, equipment and devices, including filling a cavity and cleaning her teeth.
13. The Defendants negligently exposed the Plaintiff and Class Members to infectious diseases, such as hepatitis B, hepatitis C and HIV, due to the Defendants' use of improperly cleaned instruments, equipment and devices used for dental procedures. The Defendants knew, or ought reasonably to have known, that exposing members of the Class to an infectious disease may cause illness, injury or death. In this case, illness and injury can include foreseeable mental injury beyond mere psychological upset, which is serious and prolonged and rises above the ordinary annoyances, anxieties and fears that come with living in a civil society.

14. On June 9, 2017, Halton Region Health Department staff and a member of the Royal College of Dental Surgeons of Ontario conducted an inspection of Upper Middle Dental upon receiving a complaint or as part of a reportable disease investigation. The results of the inspection identified that an immediate health hazard was present at Upper Middle Dental due to the failure to properly clean, disinfect, sterilize and store equipment and devices used in patient care services. A verbal order was issued to cease and desist all patient care services until infection prevention and control (IPAC) practices were in compliance with the Ontario IPAC standard, because compliance with the standards prevents potential transmission of an infectious disease to patients and staff members. A written order was issued on June 13, 2017.
15. On or about June 19, 2017, the Halton Region Medical Officer of Health informed the Plaintiff, Class Members and the general public that any individuals who had ever been a patient of the Defendants were exposed to infectious diseases, such as hepatitis B, hepatitis C and human immunodeficiency virus (HIV) due to the Defendants' use of improperly cleaned instruments used for dental procedures. The Plaintiff and Class Members, as patients of the Defendants, were told to contact their physician or go to a walk-in clinic to discuss testing for hepatitis B, hepatitis C, and HIV.
16. Sometime on or after June 19, 2017, the Plaintiff through social media discovered that any individuals who had ever been a patient of the Defendants were exposed to infectious diseases, such as hepatitis B, hepatitis C and human immunodeficiency virus (HIV) due to the Defendants' use of improperly cleaned instruments used for dental procedures.
17. The Plaintiff has or will have scheduled an appointment with a physician to arrange for testing to determine if she has contracted hepatitis B, hepatitis C, and/or HIV.
18. The Plaintiff has or will undergo extended and invasive medical testing to determine if she has contracted hepatitis B, hepatitis C and/or HIV.
19. The Plaintiff has and will continue to suffer mental disturbance that is serious and prolonged and rises above the ordinary annoyances, anxieties and fears that come with living in civil society.

20. The Plaintiff and Class Members unknowingly infected or exposed various family members, friends and associates to hepatitis B, hepatitis C and HIV, who in turn may have infected others with hepatitis B, hepatitis C and HIV. In addition, the Plaintiff and Class Members exposed various family members, friends and associates to the risk of having been exposed to these viruses.

CAUSE OF ACTION

21. The Defendants at all material times owed a duty of care to the Plaintiff and Class Members to properly sterilize, prepare, store and handle the equipment, instruments and devices used by the Defendants to provide dental services to the Plaintiff and Class Members.
22. The Defendants negligently breached the duty of care owed to the Plaintiff and Class Members. The particulars of the negligent breach of the duty of care owed by the Defendants to the Plaintiff and Class Members include, but is not limited to:
 - a. They failed to adequately clean, disinfect, sterilize, prepare, handle and store equipment, instruments and devices used to provide patient care services to the Plaintiff and Class Members;
 - b. They failed to comply with the guidelines developed by the Royal College of Dental Surgeons of Ontario and endorsed by the Ontario Dental Association regarding cleaning, disinfecting, sterilizing and storage of the equipment and instruments used to provide dental services to the Plaintiff and Class Members;
 - c. They failed to follow proper infection prevention and control standards, resulting in an infection prevention and control lapse;
 - d. They failed to follow the standards set by the Provincial Infectious Diseases Advisory (PIDAC) as outlined in "Infection Prevention and Control for Clinical Office Practice" and the Canadian Standards for "Medical Device Reprocessing";
 - e. They failed to comply with the requirements of various governmental authorities regarding the cleaning, disinfecting, sterilization, preparation, storage and handling

of equipment, devices and instruments used to provide dental services to the Plaintiff and Class Members;

- f. They failed to take proper care in the circumstances;
- g. They failed to exercise the skill, knowledge and judgment of the ordinary and prudent dentist and dental practice;
- h. They failed to meet the minimum standards of practice for preventing transmission of infectious diseases in a dental practice;
- i. They failed to employ and properly train competent staff on proper, safe or adequate equipment, device and instrument cleaning, disinfecting, sterilizing, preparation, storage and handling techniques;
- j. They failed to adequately supervise the work of their employees to ensure proper, safe or adequate equipment, device and instrument cleaning, disinfecting, sterilizing, preparation, storage and handling techniques;
- k. They failed to warn the Plaintiff and the Class Members of the potential exposure to hepatitis B, hepatitis C and HIV in a timely fashion;
- l. They failed to regularly and properly conduct spore sample tests to ensure that the sterilizing equipment was working properly;
- m. They failed to provide services to the Class Members, including the Plaintiff, that would be fit and safe for human application;
- n. In all of the circumstances of this case, the Defendants conducted their affairs leading to these occurrences in a high-handed and arrogant manner and with a wanton and callous disregard for the safety of the Plaintiff and Class Members;
- o. Such further and other particulars which may become known to the Plaintiff and which will be proven at the trial of this action and are within the knowledge of the Defendants.

23. Further, or in the alternative, Class Members, including the Plaintiff, had a reasonable expectation that Defendants and their employees would discharge their duties with reasonable skill and care without infecting them with or exposing them to any potentially fatal or infectious diseases such as hepatitis B, hepatitis C or HIV. Moreover, even if the Class Members, including the Plaintiff, had examined the potentially contaminated equipment, devices and instruments, there were no defects that such an examination could have revealed in the circumstances.
24. The Plaintiff pleads and relies upon the provisions of the *Ontario Health Insurance Act*, R.S.O. 1990, c. H-6, as amended, and includes in this claim the cost of past and future insured services provided by OHIP to herself and the other Class members.
25. The Plaintiff pleads and relies upon the provisions of the *Negligence Act*, R.S.O. 1990, c. N. 1, as amended.

**DAMAGES ARE FORESEEABLE RESULT OF
NEGLIGENT BREACH OF DUTY OF CARE**

26. The damages of the Plaintiff and the Class Members were caused by the negligence of the Defendants.
27. As a result of the negligence of the Defendants, the Plaintiff and Class Members have sustained the following damages:
 - a. The Plaintiff and the Class Members have been put at risk of contracting infectious diseases including hepatitis B, hepatitis C and HIV;
 - b. The Plaintiff and the Class Members will require medical examinations and invasive tests to monitor their conditions;
 - c. the Plaintiff and the Class Members will require treatment for any infectious diseases they may develop as a result of the negligence and breach of the duty of care of the Defendants;

- d. The Plaintiff and the Class Members have suffered mental disturbances that are serious and prolonged, and rise above the ordinary annoyances, anxieties and fears that come with living in civil society;
 - e. Some of the class members have become carriers of Hepatitis B and C and HIV and are a danger to their family members, friends and associates;
 - f. Some of the Class Members may die as a result of their illnesses.
28. The damages of the Plaintiff and Class Members include, but are not limited to, pain and suffering, nervous shock, mental distress, loss of income, impairment of earning ability, future care costs, medical costs, loss of amenities and enjoyment of life, and out of pocket expenses.
29. As a result of the negligence of the Defendants, the Family Law Claimants are entitled to damages pursuant to section 61 of the *Family Law Act*. The damages for these proposed Class Members include pecuniary losses resulting from the injury or death of their family member, expenses incurred in visiting their family member during his or her treatment and recovery, a reasonable allowance for loss of income and the value of nursing, housekeeping and other services rendered to their family member, an amount to compensate for the loss of guidance, care and companionship reasonably expected to be received from their family member if the misconduct at issue had not occurred.
30. Damages will also be claimed by the Plaintiff and Class Members, on a subrogated basis, in an amount equal to the cost of past and future health services, including such insured health services as are provided by the Ontario Health Insurance Plan ("OHIP").

PLACE OF TRIAL

31. The Plaintiff proposes that the trial in this action take place in the City of Toronto, in the Province of Ontario.

Date of Issue: JUN 28 2017

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RIZZI

- and -

HANDA et al.

Court File No.: *CV-17-577970-000P*

ONTARIO SUPERIOR COURT OF JUSTICE

Proceeding commenced at TORONTO

STATEMENT OF CLAIM

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