

COURT FILE NUMBER 2003 14303
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE EDMONTON
PLAINTIFF SYDONNI ALLRIDGE, as REPRESENTATIVE PLAINTIFF
DEFENDANTS THOMSON INTERNATIONAL INC., and ABC CORPORATION

DOCUMENT **ORDER**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
JAMES H. BROWN & ASSOCIATES
2400 SUN LIFE PLACE
10123 - 99 STREET NW
EDMONTON AB T5J 3H1
Telephone: (780) 428-0088
Facsimile: (780) 428-7788
File: 50301-4/RJM
Attention: Richard J. Mallett

GUARDIAN LAW GROUP LLP
342 - 4 Ave SE
CALGARY, AB T2G 1C9
Telephone: (403) 457-7778
Facsimile: 1 (877) 517-6373
Attention: Clint G. Docken, Q.C.

SISKINDS LLP
680 Waterloo Street
London, ON N6A 3V8
Tel: (877) 960-2445
Fax: (519) 660-7873
Attention: Charles M. Wright

DATE ON WHICH ORDER WAS PRONOUNCED: June 29, 2021
NAME OF JUDGE WHO MADE THIS ORDER: Justice K. Feth
LOCATION WHERE ORDER WAS PRONOUNCED: Edmonton, Alberta

UPON THE APPLICATION of the Plaintiff, Sydonni Allridge; **AND UPON READING** the Affidavit of Cheryl Farewell, sworn June 25, 2021; **AND UPON HEARING** submissions from counsel for the Plaintiff and counsel for the Defendant Thomson International Inc.; **AND UPON NOTING** the order of this Honourable Court made April 30, 2021 (the "April 2021 Order");

IT IS HEREBY ORDERED THAT:

1. The Definition of "Class" in the April 2021 Order is hereby amended as follows:
 - (a) All persons in Canada who:
 - (i) consumed Recalled Onions or Onion Products and suffered a physical illness or injury or died;
 - (ii) purchased Recalled Onions or Onion Products and suffered an economic loss;
 - (iii) purchased unidentifiable onions or onion products on or after May 1, 2020 ("Unidentifiable Onions or Onion Products") and disposed of such products, as a result of receiving notice of or communications regarding an alert issued by the Canadian Food Inspection Agency, the Public Health Agency of Canada, the U.S. Food and Drug Administration or the U.S. Centers for Disease Control and Prevention regarding the recall of onions or onion products due to possible *Salmonella* contamination and suffered an economic loss.
2. The common issues identified in the April 2021 Order are hereby amended as follows:
 - a) Were the Recalled Onions or Onion Products contaminated with *Salmonella enterica* ser Newport ("Salmonella Newport")?
 - b) What are the health risks associated with consumption of Salmonella Newport contaminated Recalled Onions or Onion Products?
 - c) If the Recalled Onions or Onion Products were contaminated with Salmonella Newport was the contamination caused or contributed to by the acts or omissions of the Defendant?
 - d) If the Recalled Onions or Onion Products were contaminated with Salmonella Newport, was that contamination caused by acts or omissions of any person or entity transporting or handling the Recalled Onions after they left the Defendant's possession?

- e) If the Recalled Onions or Onion Products were contaminated with Salmonella Newport, can that contamination be linked in a legally recognizable manner to Thomson's premises, equipment, and onions? If so, how?
- f) Did the Defendant store, handle or transport food products in locations other than the Defendant's premises in California? If so, where and to what extent?
- g) Was the Defendant responsible for verifying, approving or monitoring the procedures of subsequent purchasers and distributors in connection with the safe handling, storage and transport of food products purchased from the Defendant?

Negligence

- h) Did the Defendant owe a duty of care to the Class to:
 - i. Take such care as was reasonable in all the circumstances and follow best practices such that the Recalled Onions or Onion Products were safe or reasonably safe for consumption and that the ingestion of such products would not cause illness or injury;
 - ii. Establish and follow proper procedures with respect to the testing of the Recalled Onions or Onion Products to reasonably ensure that such products were safe for consumption and that consumption of such products would not cause illness or injury;
 - iii. To the extent that the Defendant stored, transported or handled Recalled Onions or Onion Products after title to the Recalled Onions or Onion Products was transferred to third parties, to develop and implement proper procedures for the safe handling, storage and transport of food products manufactured and/or marketed by them, so as to reduce the risk of material cross-contamination between different varieties or batches of food products.
 - iv. To distribute Recalled Onions or Onion Products that were safe for consumption and that consumption of such products would not cause illness or injury;
 - v. To develop and implement adequate control methods for dealing with situations of *Salmonella* contamination;
 - vi. Upon discovering possible *Salmonella* contamination:

- a. Take immediate and comprehensive steps to inform the CFIA or the public of the contamination;
 - b. Immediately remove any and all Recalled Onions or Onion Products from the marketplace;
 - c. Ensure that the retail channels in which the Recalled Onions or Onion Products were sold were adequately informed of the recall;
- vii. develop and implement proper practices and procedures with respect to safe production, processing and supply;
- viii. warn the public and remove any and all contaminated or possibly contaminated Recalled Onions or Onion Products from the marketplace, and take other appropriate remedial action.
- i) What was the applicable standard of care and did the Defendant fail to meet the applicable standard of care and so breach any of the duties of care owed to the Class?

Sale of Goods Legislation Claims

- i) Are class members who bought the Recalled Onions or Onion Products “buyers” within the meaning of the “*Sale of Goods*” legislation, as amended, as follows:
- j) *Sale of Goods Act*, R.S.A. 2000, c. s-2, s. 16;
 - ii) *Sale of Goods Act*, R.S.B.C. 1996, c. 140, s. 18;
 - iii) *Civil Code of Quebec*, C.Q.L.R. c. CCQ-1991;
 - iv) *Sale of Goods Act*, C.C.S.M., c S10, s. 16;
 - v) *Sale of Goods Act*, R.S.O. 1990, c. s.1, s. 15;
 - vi) *Sale of Goods Act*, R.S.N.B. 1973, c S-1, s. 15;
 - vii) *Sale of Goods Act*, R.S.N.L. 1990, s S-6, s.16
 - viii) *Sale of Goods Act*, R.S.N.S. 1989, c.408, s.17
 - ix) *Sale of Goods Act*, R.S.N.W.T. 1988, c S-2, s. 18;
 - x) *Consolidation Sale of Goods Act*, R.S.N.W.T. 1988, c. S-2, s. 18;

- xi) *Sale of Goods Act*, R.S.P.E.I. 1988, c S-1, s. 16;
 - xii) *Sale of Goods Act*, R.S.S. 1978, c S-1, s. 16; and
 - xiii) *Sale of Goods Act*, R.S.Y. 2002, c 198, s. 15.
- k) Is the Defendant, having agreed to sell the Recalled Onions or Onion Products, a “seller” within the meaning of the *Sale of Goods* legislation?
 - l) Are the Recalled Onions or Onion Products “goods” within the meaning of the *Sale of Goods* legislation?
 - m) Were Recalled Onions or Onion Products supplied by the Defendant to the Class, under contracts of sale such that sufficient privity of contract existed?
 - n) Was there an implied condition that the Recalled Onions or Onion Products would be reasonably fit for their ordinary purpose?
 - o) Was there an implied condition that the Recalled Onions or Onion Products were of merchantable quality?
 - p) Was there an implied warranty or condition as to the quality and fitness of the Recalled Onions or Onion Products for their ordinary purpose?
 - q) Did the Defendant breach any such warranties and conditions?

Consumer Protection Legislation Claims

- q) Did the Defendant engage in unfair or deceptive practices, representations, unconscionable, false or misleading acts or representations in breach of and within the meaning of the “Consumer Protection Legislation”, as amended, as follows:
 - i. *Consumers Protection Act*, R.S.A. 2000, c-26-3;
 - ii. *Business Practices and Consumer Protection Act*, S.B.C. 2004, c 2;
 - iii. *Consumer Protection and Business Practice Act*, S.S. 2013, c.C-30.2;
 - iv. *The Business Practices Act*, C.C.S.M., c B120, and the *Consumer Protection Act*, C.C.S.M., c.C200;
 - v. *Consumer Protection Act*, 2002, S.O. 2002, c.30, SchA;
 - vi. *Consumer Protection Act*, S.Q.L.R. c. P-40.1;

- vii. *Consumer Product Warranty and Liability Act*, S.N.B. 1978, c. C-18.1;
 - viii. *Consumer Protection Act*, R.S.N.S. 1989, c 92;
 - ix. *Consumer Protection and Business Practice Act* S.N.L. 2009 c. C-31.1;
 - ix. *Business Practices Act*, R.S.P.E.I. 1988, c B-7, and *Consumer Protection Act* RSPPEI 1988, c. C-19;
 - x. *Consumer Protection Act*, R.S.Y. 2002, c 20;
 - xi. *Consumer Protection Act*, R.S.N.W.T. 1988, c C-17; and
 - xii. *Consumer Protection Act*, R.S.N.W.T.(Nu) 1988, c C-17.
- r) If so, does that conduct entitle some or all members of the Class to a remedy under Consumer Protection Legislation? If so, whom is entitled and for what form(s) of remedy?
- s) Are the Class Members entitled, to the extent necessary, to a waiver of any notice requirements under Consumer Protection Legislation?

Damages

- t) Subsequent to the recall of the Recalled Onions, were any purchasers of the Recalled Onions or Onion Products entitled to obtain a full refund of the purchase price of those products? If so and they did not, are such purchasers who were entitled to but failed to obtain a refund nevertheless entitled to pursue economic losses in connection with the purchase price of the Recalled Onions or Onion Products?
- u) Subsequent to the recall of the Recalled Onions, were any purchasers of the Recalled Onions or Onion Products entitled to full or partial recovery of the purchase price of those products through insurance? If so and they did not, are such purchasers who were entitled to but failed to claim insurance coverage nevertheless entitled to pursue economic losses in connection with the purchase price of the Recalled Onions or Onion Products?
- v) Are some or all Class Members entitled to recover one or more of the following categories of damages:
- i. For persons who purchased Recalled Onions or Onion Products for consumption, did not consume the Recalled Onions or Onion Products and did not receive a full refund, damages equivalent to the purchase price;

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- ii. For persons who purchased Recalled Onions or Onion Products for consumption and consumed the product but did not get sick, damages equivalent to the purchase price of the product;
 - iii. For persons who consumed Recalled Onions or Onion Products and experienced resulting illness:
 - a. damages for any out-of-pocket expenses;
 - b. damages for past and future income loss;
 - c. damages for any past and future care expense;
 - d. damages for pain and suffering and loss of enjoyment of amenities of life;
 - e. damages for past and future loss of earning capacity;
 - f. damages for past and future loss of housekeeping and yardwork capacity;
 - iv. For persons who used the Recalled Onions or Onion Products to make goods which they subsequently had to throw out, damages equivalent to the retail price of those goods;
 - v. For persons who purchased Unidentifiable Onions or Onion Products and disposed of the such products as a result of receiving notice of or communications regarding an alert issued by Canadian Food Inspection Agency, the Public Health Agency of Canada, the U.S. Food and Drug Administration and/or the U.S. Centres for Disease Control and Prevention, and did not receive a full refund for such purchases, damages equivalent to the purchase price.
 - vi. For persons who purchased Recalled Onion Products for commercial purposes and disposed of the Recalled Onion Products and did not receive a full refund, damages equivalent to the purchase price and any out-of-pocket expenses associated with clean-up costs and other costs related to the disposal, destruction and replacement of the Recalled Onion Products.
 - vii. Where a person suffered illness or injury as a result of consumption of Recalled Onions or Onion Products:
 - a. Damages for the person's spouse for loss of consortium;
 - b. Damages for the person's dependants for loss of care, guidance and companionship.

- viii. Where a person died as a result of the consumption of Recalled Onions or Onion Products, damages including the following:
 - a. Damages for bereavement for family members;
 - b. Damages for loss of care, guidance and companionship;
 - c. Damages for dependency on the deceased's income and services;
 - d. Damages for funeral and other expenses;
 - e. Damages pursuant to the various provincial and territorial wrongful death and fatal accident statutes, as amended, as follows:
 - i. *Family Compensation Act*, R.S.B.C. 1996, c 1206;
 - ii. *Fatal Accidents Act*, R.S.A. 2000, c F-8;
 - iii. *Fatal Accidents Act*, R.S.S. 1978, c F-11;
 - iv. *Fatal Accidents Act*, C.C.S.M. c F50
 - v. *Family Law Act*, R.S.O. 1990, c F.3;
 - vi. *Civil Code of Quebec*, C.Q.L.R. c. CCQ-1991;
 - vii. *Fatal Accidents Act*, R.S.N.B. 1973, c F-7;
 - viii. *Fatal Injuries Act*, R.S.N.S. 1989, c 163;
 - ix. *Fatal Accidents Act*, R.S.N.L. 1990, c F-6;
 - x. *Fatal Accidents Act*, R.S.P.E.I. 1988, c F-5;
 - xi. *Fatal Accidents Act*, R.S.N.W.T. 1988 c.F-3;
 - xii. *Fatal Accidents Act*, R.S.Y. 2002, c 86;
 - xiii. *Fatal Accidents Act*, R.S.N.W.T. (Nu) 1988, c F-3.
 - f. Damages on behalf of the deceased's estate pursuant to the various provincial and territorial survival of actions statutes.
- ix. For persons who bought Recalled Onions or Onion Products and used such products to create additional goods, additional damages for throwing out the additional goods.
- x. Does the conduct of the Defendants merit an award of punitive damages?

- xii. Are Class Members entitled to any other category of damages? If so, what categories of damages are Class Members entitled to?
 - xiii. Can damages to the Class be determined, in whole or in part, on an aggregate, class-wide, basis? If so, what are the aggregate damages?
 - xiii. If the answer to x) is yes, should an award of punitive damages be made against the Defendant? If so, in what amount?
- 3. The Short Form and Long Form Notices of Certification are approved substantially in the forms attached hereto as Schedules "A" and "B".
 - 4. The Notice Plan attached hereto as Schedule "C" is hereby approved.
 - 5. The revised Litigation Plan dated June 28, 2021 attached hereto as Schedule "D" is hereby approved.



J.C.Q.B.A.

ONION RECALL CLASS ACTION

You may be entitled to participate in a class action that has been certified in relation to onions that were recalled in Canada starting May 1, 2020.

A class action against Thomson International has been certified on behalf of all persons in Canada, including corporations, who:

- (a) consumed Recalled Onions or Onion Products and suffered a physical illness or injury or died;
- (b) purchased Recalled Onions or Onion Products and suffered an economic loss;
- (c) purchased unidentifiable onions or onion products on or after May 1, 2020 and disposed of such products, as a result of receiving notice of or communications regarding an alert issued by the Canadian Food Inspection Agency, the Public Health Agency of Canada, the U.S. Food and Drug Administration or the U.S. Centers for Disease Control and Prevention regarding the recall of onions or onion products due to possible *Salmonella* contamination and suffered an economic loss.

The claims have not been proven and the Defendant denies any fault or liability and will vigorously defend the action.

IMPORTANT INFORMATION:

For important details see the "Long Form Notice" available from Class Counsel at www.jameshbrown.com or www.siskinds.com.

If you want to exclude yourself from the Onion Recall Class Action you must notify Class Counsel by September 30, 2021 in the manner described in the "Long Form Notice".

If you have questions contact Class Counsel: Richard J. Mallett of James H. Brown & Associates at onionrecall@jameshbrown.com, 1-800-616-0088 or Madeline A. McKinnon of Siskinds LLP at onionrecall@siskinds.com, 1-800-461-6166.



ONION RECALL CLASS ACTION

NOTICE OF CERTIFICATION

READ THIS NOTICE CAREFULLY AS IT MAY AFFECT YOUR RIGHTS

This notice is directed at anyone in Canada who purchased and/or consumed Recalled Onions.

IMPORTANT DEADLINE:

Opt-Out Deadline – for Class Members that do not wish to be a member of the class action. (See pages 2-3 for further details).

September 30, 2021

“**Recalled Onions or Onion Products**” are defined as onions from Thomson International Inc. or products containing such onions, that were identified in notices issued by the Canadian Food Inspection Agency, U.S. Food and Drug Administration and/or US Centers for Disease Control and Prevention on or after May 1, 2020 regarding the *Salmonella* outbreak linked to onions imported from the United States.

WHAT IS A CLASS ACTION?

A class action is a lawsuit filed by one person on behalf of a large group of people.

WHAT IS THIS CLASS ACTION ABOUT?

A national class action has been certified in Alberta in connection with the recall of onions, being Court of Queen’s Bench of Alberta Action No. 2003 14303 (the “Class Action”).

The Class Action alleges that Thomson International Inc. did not meet industry standards with respect to the production and distribution of onions with the result that *Salmonella* contaminated onions entered the marketplace and some Canadians consumed the onions, became ill or died.

Symptoms associated with *Salmonella* may include stomach cramps, nausea, vomiting, gastroenteric issues, kidney dysfunction and other serious consequences.

As well, the Class Action seeks recovery for economic losses for persons, including corporations, who purchased recalled onions or onion products and for persons, including corporations, who disposed of onions or onion products due to the recall.

The claims have not been proven and the Defendant denies any fault or liability and will vigorously defend the action.

WHO IS AFFECTED BY THE CLASS ACTION?

The Class Action has been certified on behalf of the following "Class" or "Class Members", as:

All persons in Canada who:

- i. consumed Recalled Onions or Onion Products and suffered a physical illness or injury or died;
- ii. purchased Recalled Onions or Onion Products and suffered an economic loss;
- iii. purchased unidentifiable onions or onion products on or after May 1, 2020 ("Unidentifiable Onions or Onion Products") and disposed of such products, as a result of receiving notice of or communications regarding an alert issued by the Canadian Food Inspection Agency, the Public Health Agency of Canada, the U.S. Food and Drug Administration or the U.S. Centers for Disease Control and Prevention regarding the recall of onions or onion products due to possible *Salmonella* contamination and suffered an economic loss.

and

All individuals who by reason of their relationship to a member of the Class are entitled to make claims under any of the following or similar statutes in Canada or the common law as a result of the death of or other injury to such member of the Class:

- i. *Family Compensation Act*, R.S.B.C. 1996, c 126;
- ii. *Fatal Accidents Act*, R.S.A. 2000, c F-8;
- iii. *Fatal Accidents Act*, R.S.S. 1978, c F-11;
- iv. *Fatal Accidents Act*, C.C.S.M. c F50
- v. *Family Law Act*, R.S.O. 1990, c F.3;
- vi. *Civil Code of Quebec*, C.Q.L.R. c. CCQ-1991;
- vii. *Fatal Accidents Act*, R.S.N.B. 1973, c F-7;
- viii. *Fatal Injuries Act*, R.S.N.S. 1989, c 163;
- ix. *Fatal Accidents Act*, R.S.N.L. 1990, c F-6;
- x. *Fatal Accidents Act*, R.S.P.E.I. 1988, c F-5;
- xi. *Fatal Accidents Act*, R.S.Y. 2002, c 86;
- xii. *Fatal Accidents Act*, R.S.N.W.T. (Nu) 1988, c F-3;
- xiii. *Fatal Accidents Act*, R.S.N.W.T. 1988 c.F-3.

WHAT HAPPENS NEXT?

No Class Member will have to pay for any expenses or legal costs. However, if the action is successful at trial or is settled, Class Counsel will be entitled to a fee in an amount to be approved by the Court.

Class Members will receive notice of any major steps in the litigation, including settlement. If the Class Action is settled, you will have an opportunity to “object” to the settlement and the amount of Class Counsel fees if you do not think they are appropriate.

WHAT DO I NEED TO DO?

If you want to be a member of the Class Action, you do not need to do anything. However, in order to protect your rights, you should:

1. Register online at www.jamesbrown.com or www.siskinds.com to receive updates;
2. Keep copies of any invoices, receipts, credit card statements or other documents that establish your purchase of Recalled Onions; and
3. If you suffered personal injury or illness after consuming Recalled Onions, contact Class Counsel. Class Counsel can assist in the process of obtaining medical records that might be necessary.

EXCLUDING YOURSELF FROM THE CLASS ACTION

If the Class Action is not successful, that result will bind all Class Members. If the Class Action is successful, or settles before trial, Class Members may be entitled to compensation in the manner in which the Court orders and will be bound by that result. You will not be permitted to bring other legal proceedings in relation to the matters alleged in the Class Action against the Defendant. Conversely, if you are a Class Member who opts out of the Class Action (an “**Opt-Out Party**”), you will not be able to make a claim in the Class Action but will maintain the right to pursue your own claim against the Defendant relating to the matters alleged in the Class Action. Your right to pursue a claim in a separate proceeding will not be effected, but any limitation period (i.e. a time limit in which you must commence a claim) that was paused by the commencement of the class proceedings will resume running from the date of the opt-out.

If you are a Class Member and wish to opt out, you must submit an election to do so, together with required supporting documentation (“**Opt-Out Election**”), to Class Counsel.

The following is the opt-out procedure:

A person may only opt out of the Class Action by sending a written request to Class Counsel. The request to opt out must disclose the name, address, email address and phone number of the person seeking to opt out of the Class Action. Additionally, each request to opt out must contain the executed statement: “I hereby request that I be excluded from the Onion Recall Class Action”.

A list of the information needed to submit a valid Opt-Out Election can be obtained from Class Counsel. Class Counsel must receive your Opt-Out Election no later than **5:00 pm EST on September 30, 2021** ("**Opt-Out Deadline**"). Opt-Out Elections may be sent electronically or by mail or courier to one of the following Class Counsel firms:

Richard J. Mallett
James H. Brown & Associates
2400 Sun Life Place, 10123 99 Street, Edmonton, AB T5J 3H1
Phone: (780) 428-0088
Fax: (780) 428-7788
onionrecall@jameshbrown.com

Madeline McKinnon
Siskinds LLP
680 Waterloo St, PO Box 2520, London, ON N6A 3V8
Phone: (800) 461-6166
Fax: (519) 660-7703
onionrecall@siskinds.com

An Opt-Out Election that does not contain all of the required information will not be valid, which means that you will be part of the Class Action.

WHERE CAN I ASK MORE QUESTIONS?

For information on the Onion Recall Class Action:

- www.jameshbrown.com or www.siskinds.com
- Or by telephone: 1-800-616-0088 or 1-800-461-6166

There is **no charge** to speak with Class Counsel to discuss the Class Action, to have your questions answered, or to retrieve a copy of the Opt-Out form, or related documents.

This notice was authorized by the Alberta Court of Queen's Bench.

PLAN OF NOTICE

NOTICE OF CERTIFICATION

The Short Form Notice of Certification will be disseminated as follows:

Internet Publication

Electronic publication of the Short Form Notice of Certification will occur, in English and French, on Class Counsel's respective websites.

Newspaper Publication

Print publication of the Short Form Notice of Certification will be at least a 1/6 page in size and will occur as soon as practicable following the issuance of the Notice Approval Order. Print publication will be made once in English, in the weekday editions of *The Globe and Mail, national edition*, and once in French, in the weekday edition of *Le Journal de Montréal*.

Digital Media

A national digital notice campaign will be established by the Claims Administrator using display advertisements (abridged form) directing potential Class Members to the dedicated website. The advertisements will be distributed through Facebook, or through substantially similar platforms, and through Post Media Network, and the following websites: calgaryherald.com, edmontonjournal.com, vancouver.sun.com, globeandmail.com, journaldemontreal.com, journaldequebec.com, and Saltwire.com. Display ads will be strategically placed in either English or French based on the language choice of the website being viewed. The display ads will be monitored to ensure that they reach the target audience, and ad placement will be adjusted based on the results of digital reporting, as necessary. The digital ad campaign will run for a period of one month starting after the day the Short Form Notice of Certification is published in the newspapers.

The Long Form Notice of Certification will be disseminated as follows:

Direct Notice

Class Counsel will send the Long Form Notice of Certification by email to any person who has requested it or who has registered to receive updates through Class Counsel's websites. The Long Form Notice of Certification will be sent by direct mail to persons who have requested to receive updates in this manner. Where the person is located in Quebec (or specifically requests), the Long Form Notice of Certification will be sent in French. Where the person is located outside Quebec (or specifically requests), the Long Form Notice of Certification will be sent in English.

Class Counsel will send the Long Form Notice of Certification to each of the Provincial and Territorial Health Insurers.

The Defendant will provide the Long Form Notice of Certification to any individual, of whom they are aware, who has filed individual litigation relating to the same or similar matters raised in the class action

Internet Publication

Electronic publication of the Long Form Notice of Certification will occur in the English and French on Class Counsel's respective websites.

The Claims Administrator

The Claims Administrator will send the Long Form Notice of Certification by email to any person who requests it. The Long Form Notice of Certification will be sent by direct mail to persons who have requested to receive updates in this manner. Where the person is located in Quebec (or specifically requests), the Long Form Notice of Certification will be sent in French. Where the person is located outside Quebec (or specifically requests), the Long Form Notice of Certification will be sent in English.

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| COURT FILE NUMBER | 2003 14303 |
| COURT | COURT OF QUEEN'S BENCH OF ALBERTA |
| JUDICIAL CENTRE | EDMONTON |
| PLAINTIFF | SYDONNI ALLRIDGE, as REPRESENTATIVE PLAINTIFF |
| DEFENDANTS | THOMSON INTERNATIONAL INC., and ABC CORPORATION |
| DOCUMENT | LITIGATION PLAN |
| ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT | JAMES H. BROWN & ASSOCIATES 2400 SUN LIFE PLACE 10123 - 99 STREET NW EDMONTON AB T5J 3H1 Telephone: (780) 428-0088 Facsimile: (780) 428-7788 File: 50301-4/RJM Attention: Richard J. Mallett GUARDIAN LAW GROUP LLP 342 4 Ave SE CALGARY, AB T2G 1C9 Telephone: (403) 457-7778 Facsimile: 1 (877) 517-6373 Attention: Clint G. Docken, Q.C. |

**PLAINTIFF'S LITIGATION PLAN No. 2
DATED AS OF JUNE 28, 2021**

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ARTICLE 1

INTERPRETATION

Defined Terms

1.1 In this litigation plan:

- i. **“Class Action”** means Alberta Court of Queen’s Bench Action No. 2003 14303 (Edmonton);
- ii. **“Class Counsel”** means James H. Brown & Associates LLP, Guardian Law, Thomson Rogers and Siskinds LLP;
- iii. **“Court”** means the Alberta Court of Queen’s Bench;
- iv. **“CPA”** means the *Class Proceedings Act*, SA 2003, c C-16.5;
- v. The **“Class”** means the following:
 - a. All persons in Canada who:
 - i. consumed Recalled Onions or Onion Products and suffered a physical illness or injury or died;
 - ii. purchased Recalled Onions or Onion Products and suffered an economic loss;
 - iii. purchased unidentifiable onions or onion products (for private, non-commercial consumption) on or after May 1, 2020 (“Unidentifiable Onions or Onion Products”) and disposed of such products, as a result of receiving notice of or communications regarding an alert

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issued by the Canadian Food Inspection Agency, Public Health Agency of Canada, the U.S. Food and Drug Administration or the U.S. Centres for Disease Control and Prevention regarding the recall of onions or onion products due to possible *Salmonella* contamination and suffered an economic loss.

- b. The **“Family Class”** means all individuals who by reason of their relationship to a member of the Class are entitled to make claims under any of the following or similar statutes in Canada or the common law as a result of the death of or other injury to such member of the Class:
- i. *Family Compensation Act*, R.S.B.C. 1996, c 126;
 - ii. *Fatal Accidents Act*, R.S.A. 2000, c F-8;
 - iii. *Fatal Accidents Act*, R.S.S. 1978, c F-11;
 - iv. *Fatal Accidents Act*, C.C.S.M. c F50
 - v. *Family Law Act*, R.S.O. 1990, c F.3;
 - vi. *Civil Code of Quebec*, C.Q.L.R. c. CCQ-1991;
 - vii. *Fatal Accidents Act*, R.S.N.B. 1973, c F-7;
 - viii. *Fatal Injuries Act*, R.S.N.S. 1989, c 163;
 - ix. *Fatal Accidents Act*, R.S.N.L. 1990, c F-6;
 - x. *Fatal Accidents Act*, R.S.P.E.I. 1988, c F-5;
 - xi. *Fatal Accidents Act*, R.S.Y. 2002, c 86;
 - xii. *Fatal Accidents Act*, R.S.N.W.T. (Nu) 1988, c F-3.
- c. **“Recalled Onions” or Recalled Products or Products** means onions from Thomson International Inc. or products containing such onions, that were identified in notices issued by the Canadian Food and Inspection Agency, Public Health Agency of Canada, U.S. Food and Drug Administration

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and/or US Centres for Disease Control and Prevention on or after May 1, 2020 regarding the *Salmonella* outbreak linked to onions imported from the United States.

- d. **“Unidentifiable Onions or Onion Products”** means purchased unidentifiable onions or onion products (for private, non-commercial consumption) on or after May 1, 2020 and disposed of such products, as a result of receiving notice of or communications regarding an alert issued by the Canadian Food Inspection Agency, Public Health Agency of Canada, the U.S. Food and Drug Administration or the U.S. Centres for Disease Control and Prevention regarding the recall of onions or onion products due to possible *Salmonella* contamination and suffered an economic loss.

ARTICLE 2.

COMMUNICATING WITH CLASS MEMBERS

- 2.1. Class Counsel will regularly report to class members through a website developed and maintained for the purposes of providing information about the Class Action and as otherwise provided in this Litigation Plan. The website shall include an electronic form that persons can complete in order to receive additional information about the Class Action.
- 2.2. Class Counsel shall provide a toll-free number operational in Canada that putative class members can contact for information about the Class Action.
- 2.3. Class Counsel will provide class members with updates of all major steps in the Class Action.

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- 2.4. Class Counsel will designate a person to answer communications from class members concerning the Class Action.

ARTICLE 3

LITIGATION STEPS PRIOR TO THE COMMON ISSUES TRIAL

- 3.1. The Parties shall attend case management conferences, as necessary, regarding the remaining steps in the Class Action, which are described below.

Notice of Certification

- 3.2 The parties have reached agreement on a Notice Plan for certification, wording of a short form and long form notice for certification, and an allocation of costs of the Notice Plan, and will seek Court approval of these items

Opt-Out Procedure

- 3.3 The notice of certification shall advise putative class members of their rights to opt out of the Class Action.
- 3.4 The following opt-out procedure is proposed:
 - a. A person may only opt out of the Class Action by sending a written request to Class Counsel at an address to be specified in the notice of certification. The request to opt out must disclose the name, address, email address and phone number of the person seeking to opt out of the Class Action. Additionally, each request to opt out must contain the executed statement: "I hereby request that I be excluded from the Thomson International Inc. Class Action".

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b. Written requests to opt out must be postmarked no later than sixty (60) days after the notice of certification is first published.

3.5 Within sixty (60) days of the opt-out deadline, Class Counsel will provide to counsel for the Defendants copies of all opt-out requests received.

Document Exchange and Management

3.6 In accordance with Part 5, Division 1, Subdivision 2 (*Disclosing and Identifying Relevant and Material Records*) of the *Alberta Rules of Court*, the Parties shall provide documentary discovery. Documentary discovery shall occur within 6 months of the filing of the certification order, unless the Parties agree or the Court orders otherwise. Any application to the Court to extend the deadline for documentary discovery must be brought within 6 months of the filing of the certification order.

3.7 The Parties will attempt to reach an agreement regarding the production of documentary discovery by electronic means. If the Parties are unable to reach agreement in this regard, the Parties may seek directions from the Court.

3.8 Class Counsel are able to manage the intake and organization of the documents that will likely be produced by the Defendants, and will use data management systems to organize, code and manage the documents.

3.9 The same data management systems will be used to organize and manage all relevant documents in the possession of the Plaintiff.

Questioning

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- 3.10 The Parties will conduct questioning in accordance with Part 5, Division 1, Subdivision 3 (*Questions to Discover Relevant and Material Records and Relevant and Material Information*) of the *Rules of Court*. Questioning shall occur within 6 months of completion of documentary discovery, unless the Parties agree or the Court orders otherwise. Any application to the Court to extend the deadline for questioning must be brought within 6 months of completion of documentary discovery.
- 3.11 The Plaintiff will undertake questioning of the Defendant in accordance with the *Rules of Court*. Until the production of documents has been completed, the Plaintiff cannot estimate the time required for the questioning, including undertakings and refusals.
- 3.12 The Plaintiff may ask the Court for an order allowing for the questioning of multiple representatives of the Defendant, if necessary.
- 3.13 The Parties may elect to conduct questioning in person, in whole or in part, by written questions in accordance with Rule 5.22, or by video-conferencing.

Expert Reports

- 3.14 The Plaintiff anticipates the exchange of expert reports in accordance with Part 5, Division 2 (*Experts and Expert Reports*) of the *Rules of Court*.
- 3.15 The Plaintiff has retained experts in the areas of food safety and Salmonella illnesses. The Plaintiff may determine that it would be appropriate to retain additional experts.
- 3.16 The Plaintiff will provide any expert reports within 6 months of completion of questioning. The Defendant will provide any responding expert reports within 5 months of receipt of

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the Plaintiff's expert reports; and the Plaintiff will provide any reply reports within 2 months of receipt of the Defendant's expert reports.

- 3.17 The Parties may agree to extend the deadlines for the exchange of expert reports or may seek an order from the Court in this regard.

Other Applications

- 3.18 Although no applications other than those indicated in this litigation plan are currently anticipated by the Plaintiff, additional applications may be required and will be scheduled as the case progresses.

Participation in Mediation

- 3.19 The parties will participate in mediation/ADR as may be agreed upon by the Parties or as directed by the Court.

Clarification of the Common Issues

- 3.20 Following certification, questioning and the exchange of expert opinions and before the trial of the common issues, any Party may ask the Court for an order to clarify and/or redefine the common issues, if required.

ARTICLE 4

THE COMMON ISSUES FOR TRIAL

- 4.1. Were the Recalled Onions or Onion Products contaminated with Salmonella enterica ser Newport ("Salmonella Newport")?
- 4.2. What are the health risks associated with consumption of Salmonella Newport contaminated Recalled Onions or Onion Products?
- 4.3. If the Recalled Onions or Onion Products were contaminated with Salmonella Newport was the contamination caused or contributed to by the acts or omissions of the Defendant?

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- 4.4. If the Recalled Onions or Onion Products were contaminated with Salmonella Newport, was that contamination caused by acts or omissions of any person or entity transporting or handling the Recalled Onions after they left the Defendant's possession?
- 4.5. If the Recalled Onions or Onion Products were contaminated with Salmonella Newport, can that contamination be linked in a legally recognizable manner to Thomson's premises, equipment, and onions? If so, how?
- 4.6. Did the Defendant store, handle or transport food products in locations other than the Defendant's premises in California? If so, where and to what extent?
- 4.7. Was the Defendant responsible for verifying, approving or monitoring the procedures of subsequent purchasers and distributors in connection with the safe handling, storage and transport of food products purchased from the Defendant?

Negligence

- 4.8. Did the Defendant owe a duty of care to the Class to:
 - i. Take such care as was reasonable in all the circumstances and follow best practices such that the Recalled Onions or Onion Products were safe or reasonably safe for consumption and that the ingestion of such products would not cause illness or injury;
 - ii. Establish and follow proper procedures with respect to the testing of the Recalled Onions or Onion Products to reasonably ensure that such products were safe for consumption and that consumption of such products would not cause illness or injury;
 - iii. To the extent that the Defendant stored, transported or handled Recalled Onions or Onion Products after title to the Recalled Onions or Onion Products was transferred to third parties, to develop and implement proper procedures for the safe handling, storage and transport of food products manufactured and/or marketed by them, so as to reduce the risk of material cross-contamination between different varieties or batches of food products.
 - iv. To distribute Recalled Onions or Onion Products that were safe for consumption and that consumption of such products would not cause illness or injury;
 - v. To develop and implement adequate control methods for dealing with situations of *Salmonella* contamination;

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- vi. Upon discovering possible *Salmonella* contamination:
 - a. Take immediate and comprehensive steps to inform the CFIA or the public of the contamination;
 - b. Immediately remove any and all Recalled Onions or Onion Products from the marketplace;
 - c. Ensure that the retail channels in which the Recalled Onions or Onion Products were sold were adequately informed of the recall;
 - vii. develop and implement proper practices and procedures with respect to safe production, processing and supply;
 - viii. warn the public and remove any and all contaminated or possibly contaminated Recalled Onions or Onion Products from the marketplace, and take other appropriate remedial action.
- 4.9. What was the applicable standard of care and did the Defendant fail to meet the applicable standard of care and so breach any of the duties of care owed to the Class?

Sale of Goods Legislation Claims

- 4.9 Are class members who bought the Recalled Onions or Onion Products “buyers” within the meaning of the “*Sale of Goods*” legislation, as amended, as follows:
- i) *Sale of Goods Act*, R.S.A. 2000, c. s-2, s. 16;
 - ii) *Sale of Goods Act*, R.S.B.C. 1996, c. 140, s. 18;
 - iii) *Civil Code of Quebec*, C.Q.L.R. c. CCQ-1991;
 - iv) *Sale of Goods Act*, C.C.S.M., c S10, s. 16;
 - v) *Sale of Goods Act*, R.S.O. 1990, c. s.1, s. 15;
 - vi) *Sale of Goods Act*, R.S.N.B. 1973, c S-1, s. 15;
 - vii) *Sale of Goods Act*, R.S.N.L. 1990, s S-6, s.16
 - viii) *Sale of Goods Act*, R.S.N.S. 1989, c.408, s.17
 - ix) *Sale of Goods Act*, R.S.N.W.T. 1988, c S-2, s. 18;
 - x) *Consolidation Sale of Goods Act*, R.S.N.W.T. 1988, c. S-2, s. 18;

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- xi) *Sale of Goods Act*, R.S.P.E.I. 1988, c S-1, s. 16;
 - xii) *Sale of Goods Act*, R.S.S. 1978, c S-1, s. 16; and
 - xiii) *Sale of Goods Act*, R.S.Y. 2002, c 198, s. 15.4.10 Is the Defendant, having agreed to sell the Recalled Onions or Onion Products, a “seller” within the meaning of the *Sale of Goods* legislation?
- 4.10 Are the Recalled Onions or Onion Products “goods” within the meaning of the *Sale of Goods* legislation?
 - 4.11 Were Recalled Onions or Onion Products supplied by the Defendant to the Class, under contracts of sale such that sufficient privity of contract existed?
 - 4.12 Was there an implied condition that the Recalled Onions or Onion Products would be reasonably fit for their ordinary purpose?
 - 4.13 Was there an implied condition that the Recalled Onions or Onion Products were of merchantable quality?
 - 4.14 Was there an implied warranty or condition as to the quality and fitness of the Recalled Onions or Onion Products for their ordinary purpose?
 - 4.15 Did the Defendant breach any such warranties and conditions?

Consumer Protection Legislation Claims

- 4.16 Did the Defendant engage in unfair or deceptive practices, representations, unconscionable, false or misleading acts or representations in breach of and within the meaning of the “Consumer Protection Legislation”, as amended, as follows:
 - i. *Consumers Protection Act*, R.S.A. 2000, c-26-3;
 - ii. *Business Practices and Consumer Protection Act*, S.B.C. 2004, c 2;
 - iii. *Consumer Protection and Business Practice Act*, S.S. 2013, c.C-30.2;
 - iv. *The Business Practices Act*, C.C.S.M., c B120, and the *Consumer Protection Act*, C.C.S.M., c.C200;
 - v. *Consumer Protection Act*, 2002, S.O. 2002, c.30, SchA;
 - vi. *Consumer Protection Act*, S.Q.L.R. c. P-40.1;
 - vii. *Consumer Product Warranty and Liability Act*, S.N.B. 1978, c. C-18.1;
 - viii. *Consumer Protection Act*, R.S.N.S. 1989, c 92;

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- ix. *Consumer Protection and Business Practice Act* S.N.L. 2009 c. C-31.1;
- ix. *Business Practices Act*, R.S.P.E.I. 1988, c B-7, and *Consumer Protection Act* RSPPEI 1988, c. C-19;
- x. *Consumer Protection Act*, R.S.Y. 2002, c 20;
- xi. *Consumer Protection Act*, R.S.N.W.T. 1988, c C-17; and
- xii. *Consumer Protection Act*, R.S.N.W.T.(Nu) 1988, c C-17.

- 4.17 If so, does that conduct entitle some or all members of the Class to a remedy under Consumer Protection Legislation? If so, whom is entitled and for what form(s) of remedy?
- 4.18 Are the Class Members entitled, to the extent necessary, to a waiver of any notice requirements under Consumer Protection Legislation?

Damages

- 4.19 Subsequent to the recall of the Recalled Onions, were any purchasers of the Recalled Onions or Onion Products entitled to obtain a full refund of the purchase price of those products? If so and they did not, are such purchasers who were entitled to but failed to obtain a refund nevertheless entitled to pursue economic losses in connection with the purchase price of the Recalled Onions or Onion Products?
- 4.20 Subsequent to the recall of the Recalled Onions, were any purchasers of the Recalled Onions or Onion Products entitled to full or partial recovery of the purchase price of those products through insurance? If so and they did not, are such purchasers who were entitled to but failed to claim insurance coverage nevertheless entitled to pursue economic losses in connection with the purchase price of the Recalled Onions or Onion Products?
- 4.21 Are some or all Class Members entitled to recover one or more of the following categories of damages:
- i. For persons who purchased Recalled Onions or Onion Products for consumption, did not consume the Recalled Onions or Onion Products and did not receive a full refund, damages equivalent to the purchase price;
 - ii. For persons who purchased Recalled Onions or Onion Products for consumption and consumed the product but did not get sick, damages equivalent to the purchase price of the product;
 - iii. For persons who consumed Recalled Onions or Onion Products and experienced resulting illness:

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- a. damages for any out-of-pocket expenses;
 - b. damages for past and future income loss;
 - c. damages for any past and future care expense;
 - d. damages for pain and suffering and loss of enjoyment of amenities of life;
 - e. damages for past and future loss of earning capacity;
 - f. damages for past and future loss of housekeeping and yardwork capacity;
- iv. For persons who used the Recalled Onions or Onion Products to make goods which they subsequently had to throw out, damages equivalent to the retail price of those goods;
- v. For persons who purchased Unidentifiable Onions or Onion Products and disposed of the such products as a result of receiving notice of or communications regarding an alert issued by Canadian Food Inspection Agency, the Public Health Agency of Canada, the U.S. Food and Drug Administration and/or the U.S. Centres for Disease Control and Prevention, and did not receive a full refund for such purchases, damages equivalent to the purchase price.
- vi. For persons who purchased Recalled Onion Products for commercial purposes and disposed of the Recalled Onion Products and did not receive a full refund, damages equivalent to the purchase price and any out-of-pocket expenses associated with clean-up costs and other costs related to the disposal, destruction and replacement of the Recalled Onion Products.
- vii. Where a person suffered illness or injury as a result of consumption of Recalled Onions or Onion Products:
- a. Damages for the person's spouse for loss of consortium;
 - b. Damages for the person's dependants for loss of care, guidance and companionship.
- viii. Where a person died as a result of the consumption of Recalled Onions or Onion Products, damages including the following:
- a. Damages for bereavement for family members;
 - b. Damages for loss of care, guidance and companionship;
 - c. Damages for dependency on the deceased's income and services;
 - d. Damages for funeral and other expenses;
 - e. Damages pursuant to the various provincial and territorial wrongful death and fatal accident statutes, as amended, as follows:
 - i. *Family Compensation Act*, R.S.B.C. 1996, c 1206;

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- ii. *Fatal Accidents Act*, R.S.A. 2000, c F-8;
 - iii. *Fatal Accidents Act*, R.S.S. 1978, c F-11;
 - iv. *Fatal Accidents Act*, C.C.S.M. c F50
 - v. *Family Law Act*, R.S.O. 1990, c F.3;
 - vi. *Civil Code of Quebec*, C.Q.L.R. c. CCQ-1991;
 - vii. *Fatal Accidents Act*, R.S.N.B. 1973, c F-7;
 - viii. *Fatal Injuries Act*, R.S.N.S. 1989, c 163;
 - ix. *Fatal Accidents Act*, R.S.N.L. 1990, c F-6;
 - x. *Fatal Accidents Act*, R.S.P.E.I. 1988, c F-5;
 - xi. *Fatal Accidents Act*, R.S.N.W.T. 1988 c.F-3;
 - xii. *Fatal Accidents Act*, R.S.Y. 2002, c 86;
 - xiii. *Fatal Accidents Act*, R.S.N.W.T. (Nu) 1988, c F-3.
- ix. Damages on behalf of the deceased's estate pursuant to the various provincial and territorial survival of actions statutes.
 - x. For persons who bought Recalled Onions or Onion Products and used such products to create additional goods, additional damages for throwing out the additional goods.
 - xi. Does the conduct of the Defendants merit an award of punitive damages?
 - xii. Are Class Members entitled to any other category of damages? If so, what categories of damages are Class Members entitled to?
 - xiii. Can damages to the Class be determined, in whole or in part, on an aggregate, class-wide, basis? If so, what are the aggregate damages?
 - xiv. If the answer to x) is yes, should an award of punitive damages be made against the Defendant? If so, in what amount?

ARTICLE 5

LITIGATION STEPS FOLLOWING THE COMMON ISSUES TRIAL

Case Conference to Establish Procedures for Resolution of Individual Issues

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- 5.1. Following the common issue trial, assuming success in favour of the Plaintiff, the Parties shall attend a case management conference to determine the process to be followed in bringing the Class Action to a final resolution, including the resolution of individual issues relating to causation and damages.
- 5.2. As part of that case conference, the Plaintiff will ask the Court to approve procedures to be followed for determining the individual issues, in accordance with ss. 28 and 29 of the CPA. The procedures to be followed shall take into account the complexity and value of the claim. Any Party may make submissions regarding the procedures to be followed for determining the individual issues.

Notice of the Resolution of Common Issues and Claim Procedure

- 5.3. Class Counsel will prepare a notice, the form and content of which is to be approved by the Court, informing class members of the resolution of the common issues and the claim procedure (the "Notice of Resolution"). The Plaintiff may ask that the Notice of Resolution be published in the same or similar manner as the notice of certification.
- 5.4. The Plaintiff will ask the Court to order that the Defendants pay all administration costs, including the costs of the Notice of Resolution. If the Court does not so order, the Plaintiff will seek an order that these costs be paid out of the damages payable to class members after payment of counsel fees, disbursements and applicable taxes, but before any distribution to eligible class members.

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ARTICLE 6

AMENDMENT OF LITIGATION PLAN

- 6.1. This litigation plan may be amended from time to time by directions given at case conferences or by further order of the Court.