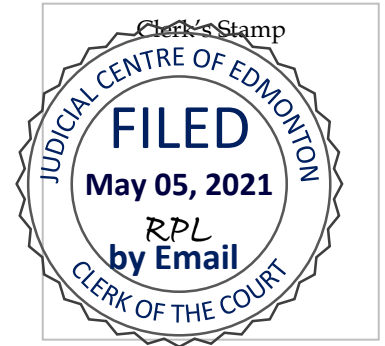


COURT FILE NUMBER 2003 14303  
COURT COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE EDMONTON  
PLAINTIFF(S) SYDONNI ALLRIDGE, as PLAINTIFF REPRESENTATIVE  
DEFENDANT(S) THOMSON INTERNATIONAL INC., and ABC CORPORATION  
DOCUMENT **CERTIFICATION ORDER**



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**DATE ON WHICH ORDER WAS PRONOUNCED:** April 30, 2021

**NAME OF JUDGE WHO MADE THIS ORDER:** K. Feth

**LOCATION WHERE ORDER WAS PRONOUNCED:** Edmonton

**UPON THE APPLICATION** by the Representative Plaintiff, Sydonni Allridge; **AND UPON READING** the Affidavit of Sydonni Allridge, the Affidavit of Rebekah DeVinney; the Affidavit of Dawn Hill, and the other materials submitted; **AND UPON HEARING** submissions from Counsel for the parties;

**IT IS HEREBY ORDERED THAT:**

1. This action is certified as a class proceeding.
2. The Definition of the “Class” is as follows:
  - a. All natural 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 (for private, non-commercial consumption) 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 issued by the Canadian Food Inspection Agency, 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.
3. The definition of the “Family Class” is as follows:
  - a. 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.
- 
- 4. “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 CFIA, U.S. Food and Drug Administration 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.
  - 5. A process whereby putative members of the Class can request to opt-out of the class proceeding, including any related time limits for opting-out, shall be determined by further order of this Court.
  - 6. If a putative member of the Class opts out of the class proceeding, his or her Family Class Members shall be deemed to have opted out of the class proceeding.
  - 7. The nature of the claims are as follows:
    - a. That the Defendant was negligent in the production, processing and supply of Recalled Onions or Onion Products, with the result that such products were contaminated with *Salmonella* Newport.
    - b. That the Defendant failed to meet adequate standards and practices with the result that Recalled Onions or Onion Products entered the marketplace.
    - c. That, upon discovering that *Salmonella* Newport contaminated Recalled Onions or Onion Products had entered the marketplace, the Defendant did not take adequate steps to:
      - i. ensure that the *Salmonella* Newport contaminated Recalled Onions or Onion Products were removed from the marketplace as soon as reasonably possible; or
      - ii. warn the Class that the *Salmonella* Newport contaminated Recalled Onions or Onion Products had entered the marketplace and that consuming such products could result in serious health consequences.
    - d. The Defendant was in breach of the Sale of Goods Legislation and Consumer Protection Legislation as defined in paragraph 8 of this order.

8. The following issues are certified as common issues:

- 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?

**Negligence**

- d) 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 distribute Recalled Onions or Onion Products that were safe for consumption and that consumption of such products would not cause illness or injury;
  - iv. To develop and implement adequate control methods for dealing with situations of *Salmonella* contamination;
  - v. Upon discovering possible *Salmonella* contamination:
    - a. Fail to take immediate and comprehensive steps to inform the CFIA or the public of the contamination;
    - b. Fail to immediately remove any and all Recalled Onions or Onion Products from the marketplace;
    - c. Fail to ensure that the retail channels in which the Recalled Onions or Onion Products were sold were adequately informed of the recall;

- vi. develop and implement proper practices and procedures with respect to safe production, processing and supply;
  - vii. 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.
- e) 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**

- f) 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;
  - 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.

- g) Is the Defendant, having agreed to sell the Recalled Onions or Onion Products, a “seller” within the meaning of the *Sale of Goods* legislation?
- h) Are the Recalled Onions or Onion Products “goods” within the meaning of the *Sale of Goods* legislation?
- i) Were Recalled Onions or Onion Products supplied by the Defendant to the Class, under contracts of sale such that sufficient privity of contract existed?
- j) Was there an implied condition that the Recalled Onions or Onion Products would be reasonably fit for their ordinary purpose?
- k) Was there an implied condition that the Recalled Onions or Onion Products were of merchantable quality?
- l) Was there an implied warranty or condition as to the quality and fitness of the Recalled Onions or Onion Products for their ordinary purpose?
- m) Did the Defendant breach any such warranties and conditions?

**Consumer Protection Legislation Claims**

- n) 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  
*Consumer Protection Act*, R.S.N.W.T.(Nu) 1988, c C-17.

**Damages**

- o) 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:
    - 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 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. 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.
  
- vii. 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;
    - viii. *Fatal Accidents Act*, R.S.N.L. 1990, c F-6;
    - ix. *Fatal Accidents Act*, R.S.P.E.I. 1988, c F-5;
    - x. *Fatal Accidents Act*, R.S.N.W.T. 1988 c.F-3;
    - xi. *Fatal Accidents Act*, R.S.Y. 2002, c 86;
    - xii. *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.



- viii. 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.
  - ix. Does the conduct of the Defendants merit an award of punitive damages?
  - x. Are Class Members entitled to any other category of damages? If so, what categories of damages are Class Members entitled to?
  - xi. 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?
  - xii. If the answer to ix) is yes, should an award of punitive damages be made against the Defendant? If so, in what amount?
- 9. The form and content of the notice of certification and the method of disseminating the notice of certification (the "Notice Plan") shall be determined by further order of this Court;
  - 10. Any person who validly opts out pursuant to any future Order of this Court shall be excluded from the Class and the continuing litigation against the Defendant, including any settlements or judgments;
  - 11. Any person who falls within the Class who does not validly opt out pursuant to any future Order of this Court and the Notice Plan shall be deemed to have elected to participate in this action, and shall be for all purposes a Class Member for the duration of this action;
  - 12. Sydonni Allridge is appointed as Representative Plaintiff for the Class and Family Class.
  - 13. Guardian Law Group LLP, James H. Brown & Associates LLP, Thomson Rogers and Siskinds LLP are hereby appointed as Class Counsel.
  - 14. The Litigation Plan as appended as Schedule "A" to this order is hereby approved.
  - 15. The Parties are at liberty to amend the Litigation Plan by consent or upon further Order of this Court.

16. Costs of this application shall be as agreed between the parties or as directed by the Court upon further application.


At Edmonton, Alberta

  
\_\_\_\_\_  
J.C.Q.B.A.

APPROVED AS TO THE ORDER GRANTED  
this 4 day of May, 2021.

James H. Brown & Associates LLP

Per: \_\_\_\_\_

  
Richard J. Mallett  
Counsel for the Plaintiff

APPROVED AS TO THE ORDER GRANTED  
this \_\_\_\_\_ day of May, 2021.

Guardian Law Group LLP

Per: \_\_\_\_\_

Clint G. Docken, Q.C.  
Counsel for the Plaintiff

APPROVED AS TO THE ORDER GRANTED  
this \_\_\_\_\_ day of May, 2021.

McLennan Ross LLP

Per: \_\_\_\_\_

Stuart Chambers  
Counsel for the Defendant

16. Costs of this application shall be as agreed between the parties or as directed by the Court upon further application.

At Edmonton, Alberta

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J.C.Q.B.A.


APPROVED AS TO THE ORDER GRANTED  
this \_\_\_\_\_ day of May, 2021.

James H. Brown & Associates LLP

Per: \_\_\_\_\_  
Richard J. Mallett  
Counsel for the Plaintiff

APPROVED AS TO THE ORDER  
GRANTED this \_4th\_ day of May, 2021.

Guardian Law Group LLP

Per:  \_\_\_\_\_  
Clint G. Docken, Q.C.  
Counsel for the Plaintiff

APPROVED AS TO THE ORDER GRANTED  
this \_\_\_\_\_ day of May, 2021.

McLennan Ross LLP

Per: \_\_\_\_\_  
Stuart Chambers  
Counsel for the Defendant

16. Costs of this application shall be as agreed between the parties or as directed by the Court upon further application.

At Edmonton, Alberta

---

J.C.Q.B.A.

APPROVED AS TO THE ORDER GRANTED  
this \_\_\_\_\_ day of May, 2021.

James H. Brown & Associates LLP

Per: \_\_\_\_\_  
Richard J. Mallett  
Counsel for the Plaintiff


APPROVED AS TO THE ORDER GRANTED  
this \_\_\_\_\_ day of May, 2021.

Guardian Law Group LLP

Per: \_\_\_\_\_  
Clint G. Docken, Q.C.  
Counsel for the Plaintiff

APPROVED AS TO THE ORDER GRANTED  
this 4th day of May, 2021.

McLennan Ross LLP

Per:  \_\_\_\_\_  
Stuart Chambers  
Counsel for the Defendant

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	<b>LITIGATION PLAN</b>
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**PLAINTIFF'S LITIGATION PLAN**

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**ARTICLE 1**

**INTERPRETATION**

**Defined Terms**

2.1. 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 natural 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 (for private, non-commercial consumption) 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

issued by the Canadian Food Inspection Agency, 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, U.S. Food and Drug Administration 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, 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.
- 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 will work to reach agreement on the form and content of the notice of certification and the method of disseminating the notice of certification, to be approved by the Court. If the Parties are unable to agree on the form and content of the notice of certification and/or the method of disseminating the notice of certification, the Parties will ask the Court to determine the form and content of the notice of certification and/or the method of disseminating the notice of certification, as applicable.
- 3.3 The costs of disseminating the notice of certification shall be paid by the Defendant.

#### **Opt-Out Procedure**

- 3.4 The notice of certification shall advise putative class members of their rights to opt out of the Class Action.
- 3.5 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".

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

3.6 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**

3.7 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.

3.8 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.

3.9 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.

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

### **Questioning**

- 3.11 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.
- 3.12 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.
- 3.13 The Plaintiff may ask the Court for an order allowing for the questioning of multiple representatives of the Defendant, if necessary.
- 3.14 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**

- 3.15 The Plaintiff anticipates the exchange of expert reports in accordance with Part 5, Division 2 (*Experts and Expert Reports*) of the *Rules of Court*.

- 3.16 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.
- 3.17 The Plaintiff will provide any expert reports within 6 months of completion of questioning. The Defendant will provide any responding expert reports within 3 months of receipt of the Plaintiff's expert reports; and the Plaintiff will provide any reply reports within 2 months of receipt of the Defendant's expert reports.
- 3.18 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**

- 3.19 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**

- 3.20 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**

- 3.21 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 Products contaminated with *Salmonella enterica* ser Newport (“*Salmonella* Newport”)?
- 4.2 What are the health risks associated with consumption of *Salmonella* Newport contaminated onions?
- 4.2.1 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?

**NEGLIGENCE**

- 4.3 Did the Defendant owe a duty of care to the Class to:
  - a. Take such care as was reasonable in all the circumstances and follow best practices such that the Recalled Products were safe or reasonably safe for consumption and that the ingestion of such products would not cause illness or injury;
  - b. Establish and follow proper procedures with respect to the testing of the Recalled Products and Recalled Products to reasonably ensure that such Products were safe for consumption and that consumption of such Products would not cause illness or injury;
  - c. To distribute onion Recalled Products that were safe for consumption and that consumption of such products would not cause illness or injury;
  - d. To develop and implement adequate control methods for dealing with situations of *Salmonella* contamination;

- e. Upon discovering possible *Salmonella* contamination:
  - i. Failing to take immediate and comprehensive steps to inform the CFIA or the public of the contamination;
  - ii. Failing to immediately remove any and all affected products from the marketplace;
  - iii. Failing to ensure that the retail channels in which the Recalled Onions or Onion Products were sold were adequately informed of the recall;
- f. develop and implement proper practices and procedures with respect to safe production, processing and supply;
- g. warn the public and remove any and all contaminated or possibly contaminated Recalled Products from the marketplace, and take other appropriate remedial action.

4.4 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**

4.5 Are class members who bought the Recalled Products “buyers” within the meaning of the *Sale of Goods* legislation, as amended as follows?

- a. *Sale of Goods Act*, R.S.A. 2000, c. s-2, s. 16;
- b. *Sale of Goods Act*, R.S.B.C. 1996, c. 140, s. 18;
- c. *Civil Code of Quebec*, C.Q.L.R., c. CCQ-1991;
- d. *Sale of Goods Act*, C.C.S.M., c S10, s. 16;
- e. *Sale of Goods Act*, R.S.O. 1990, c. s.1, s. 15;

- f. *Sale of Goods Act*, R.S.N.B. 1973, c S-1, s. 15;
  - g. *Sale of Goods Act*, R.S.N.L. 1990, s S-6, s.16
  - h. *Sale of Goods Act*, R.S.N.S. 1989, c.408, s.17
  - i. *Sale of Goods Act*, R.S.N.W.T. 1988, c S-2, s. 18;
  - j. *Consolidation Sale of Goods Act*, R.S.N.W.T. 1988, c. S-2, s. 18;
  - k. *Sale of Goods Act*, R.S.P.E.I. 1988, c S-1, s. 16;
  - l. *Sale of Goods Act*, R.S.S. 1978, c S-1, s. 16; and
  - m. *Sale of Goods Act*, R.S.Y. 2002, c 198, s. 15.
- 4.6 Is the Defendant, having agreed to sell the Recalled Products, a “seller” within the meaning of the *Sale of Goods* legislation?
- 4.7 Are the Recalled Products “goods” within the meaning of the *Sale of Goods* legislation?
- 4.8 Were Recalled Products supplied by the Defendant to the Class under contracts of sale such that sufficient privity of contract existed?
- 4.9 Was there an implied condition that the Recalled Products were reasonably fit for their ordinary purpose?
- 4.10 Was there an implied condition that the Recalled Products were of merchantable quality?
- 4.11 Was there an implied warranty or condition as to the quality and fitness of the Products for their ordinary purpose?
- 4.12 Did the Defendant breach any such warranties and conditions?



## CONSUMER PROTECTION LEGISLATION CLAIMS

4.13 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 defined in paragraph 67 of the Amended Statement of Claim as follows:

- a. *Consumers Protection Act*, R.S.A. 2000, c-26-3 as amended;
- b. *Business Practices and Consumer Protection Act*, S.B.C. 2004, c 2, as amended;
- c. *Consumer Protection and Business Practice Act*, S.S. 2013, c.C-30.2;
- d. *The Business Practices Act*, C.C.S.M., c B120, as amended and the *Consumer Protection Act*, C.C.S.M., c.C200, as amended;
- e. *Consumer Protection Act*, 2002, S.O. 2002, c.30, SchA, as amended;
- f. *Consumer Protection Act*, S.Q.L.R. c. P-40.1, as amended;
- g. *Consumer Product Warranty and Liability Act*, S.N.B. 1978, c. C-18.1, as amended;
- h. *Consumer Protection Act*, R.S.N.S. 1989, c 92, as amended;
- i. *Consumer Protection and Business Practice Act* S.N.L. 2009 c. C-31.1, as amended;
- j. *Business Practices Act*, R.S.P.E.I. 1988, c B-7, and *Consumer Protection Act* RSPPEI 1988, c. C-19 as amended;

- k. *Consumer Protection Act*, R.S.Y. 2002, c 20, as amended;
- l. *Consumer Protection Act*, R.S.N.W.T. 1988, c C-17, as amended; and
- m. *Consumer Protection Act*, R.S.N.W.T.(Nu) 1988, c C-17, as amended.

## **DAMAGES**

4.14 Are some or all Class Members entitled to recover one or more of the following categories of damages:

- a. 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 for the Recalled Onions or Onion Products, damages equivalent to the purchase price;
- b. 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;
- c. For persons who consumed Recalled Onions or Onion Products and experienced resulting illness:
  - i. damages for any out-of-pocket expenses;
  - ii. damages for past and future income loss;
  - iii. damages for any past and future care expense;
  - iv. damages for pain and suffering and loss of enjoyment of amenities of life;
  - v. damages for past and future loss of earning capacity;
  - vi. damages for past and future loss of housekeeping and yardwork capacity;
- d. 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;
- e. For persons who purchased Unidentifiable Onions, disposed of the Unidentifiable Onions in response to receiving notice of a communication regarding the alert issued by CFIA, 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.

f. Where a person suffered illness or injury as a result of consumption of Recalled Onions or Onion Products:

- i. Damages for the person's spouse for loss of consortium;
- ii. Damages for the person's dependants for loss of care, guidance and companionship.

g. Where a person died as a result of the consumption of Recall Onions, damages including the following:

- i. Damages for bereavement for family members;
- ii. Damages for loss of care, guidance and companionship;
- iii. Damages for dependency on the deceased's income and services;
- iv. Damages for funeral and other expenses;
- v. Damages pursuant to the various provincial and territorial wrongful death and fatal accident statutes:

- a. *Family Compensation Act*, R.S.B.C. 1996, c 1206;
- b. *Fatal Accidents Act*, R.S.A. 2000, c F-8;
- c. *Fatal Accidents Act*, R.S.S. 1978, c F-11;
- d. *Fatal Accidents Act*, C.C.S.M. c F50
- e. *Family Law Act*, R.S.O. 1990, c F.3;
- f. *Civil Code of Quebec*, C.Q.L.R., c. CCQ-1991;
- g. *Fatal Accidents Act*, R.S.N.B. 1973, c F-7;
- h. *Fatal Injuries Act*, R.S.N.S. 1989, c 163;
- i. *Fatal Accidents Act*, R.S.N.L. 1990, c F-6;
- j. *Fatal Accidents Act*, R.S.P.E.I. 1988, c F-5;
- k. *Fatal Accidents Act*, R.S.N.W.T. 1988 c.F-3;
- l. *Fatal Accidents Act*, R.S.Y. 2002, c 86;

m. *Fatal Accidents Act*, R.S.N.W.T. (Nu) 1988, c F-3.

- h. For persons who bought Recalled Onions or Onion Products and used it to create additional goods, additional damages for throwing out the additional goods.
- i. For persons who purchased Unidentifiable Onion products, disposed of the Unidentifiable Onions in response to receiving notice of a communication regarding the alerts issued by CFIA and did not receive a full refund for such purchases, damages equivalent to the purchase price;

- 4.15 Does the conduct of the Defendants merit an award of punitive damages?
- 4.16 Are Class Members entitled to any other category of damages? If so, what categories of damages are Class Members entitled to?
- 4.17 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?
- 4.18 If the answer to 4.15 is yes, should an award of punitive damages be made against the Defendants? If so, in what amount?

## **ARTICLE 5**

### **LITIGATION STEPS FOLLOWING THE COMMON ISSUES TRIAL**

#### **Case Conference to Establish Procedures for Resolution of Individual Issues**

- 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.

### **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.