

Amended this 01st day of April 2021 pursuant to Rule 3.62.

Form 10
[Rule 3.25]

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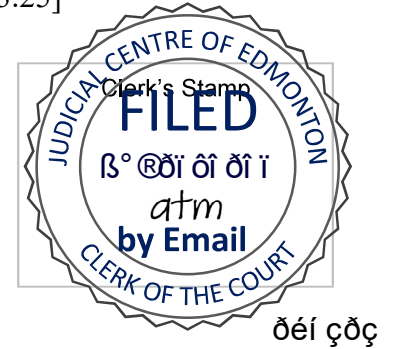
COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE EDMONTON

PLAINTIFF(S) SYDONNI ALLRIDGE, as REPRESENTATIVE PLAINTIFF

DEFENDANT(S) THOMSON INTERNATIONAL INC., and ABC CORPORATION

DOCUMENT **AMENDED STATEMENT OF CLAIM**



ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

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

Clint G. Docken, Q.C.
Guardian Law Group LLP
342 4 Ave SE
Calgary, Alberta
T2G 1C9
Phone: (403) 457-7778
Fax: 1 (877) 517-6373

A Class Proceeding pursuant to the
Class Proceedings Act, Chapter C-16.5

NOTICE TO DEFENDANT(S)

You are being sued. You are a defendant.

Go to the end of this document to see what you can do and when you must do it.

Statement of facts relied on:

A. LITIGANTS

1. The Representative Plaintiff, Sydonni Allridge, resides in the City of Edmonton in the Province of Alberta.
2. The Defendants Thomson International Inc. (“Thomson International”) is a food processor that grows, supplies, packages and/or sells produce and other food products. The Defendant’s products are sold through supermarkets, food service distributors, online and other retail and wholesale outlets. Thomson International is a corporation incorporated under the laws of the State of California, with its registered office in Bakersfield, California.
3. This action relates to the *Salmonella* contamination of onions grown and processed by Thomson International.
4. On July 30, 2020, The Canadian Food Inspection Agency (“CFIA”) issued a Food Recall Warning for red onions grown by Thomson International and imported from the USA and sold under various brand names.
5. On August 6, 2020, the CFIA issued an Updated Food Recall Warning to include another brand of red and jumbo onions that were grown by Thomson International.
6. On August 12, 2020, the CFIA further expanded the recall to include an additional brand containing red and yellow onions that were grown by Thomson International.
7. < > “Recalled Onions or Onion Products” are 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.
8. To date, hundreds of units of onions, and approximately 30 types of products containing onions grown, processed and distributed by the Defendant, have been recalled.

9. To date, more than 500 people have become ill, including people in Alberta, British Columbia, Saskatchewan, Manitoba, Ontario, Quebec and Prince Edward Island, from consuming Recalled Onions or Onion Products contaminated with *Salmonella*.
10. This class proceeding $\leq \geq$ concerns the Defendant's negligent growth, production quality control, monitoring, processing, storage, distribution and sale of the Recalled Onions or Onion Products and any further products that become recalled or otherwise cause illness to the Class due to being tainted with *Salmonella*.
11. The Plaintiff purchased products $\leq \geq$ in Alberta that contained Recalled Onions or Onion Products that had been grown and processed and distributed by the Defendant and were part of the Recalled Onions.
12. After consuming the Recalled Onions or Onion Products the Plaintiff became extremely ill with *Salmonella* (the "Illness"). The Plaintiff had symptoms including severe abdominal cramping, vomiting, and diarrhea and was hospitalized for testing and treatment.
13. The cause of the Plaintiff's Illness was related *Salmonella* infection from the Recalled Onions or Onion Products. The Plaintiff has suffered physical illness, mental distress, emotional trauma and fear for her health as a result of her Illness and as a result of the Recall.
14. As a result of the events described above, the Plaintiff incurred expenses, particulars of which will be provided prior to the trial of this matter.
15. Recalled Onions grown by the Defendant were sold in Canada, including Alberta, the United States and elsewhere through supermarkets, hypermarkets, food service distributors, online, and other retail and wholesale outlets.
16. At all material times, the Defendant grew, processed, stored and packaged a variety of onion and onion $\leq \geq$ products for profit in the Province of Alberta and elsewhere in Canada.

B. THE CLASS

17. The Plaintiff claims on behalf of herself and natural persons in Canada who:
 - a. Consumed Recalled Onions or Onion Products and suffered a physical illness or injury or died;

- b. Purchased Recalled Onions or Onion Products (for private, non-commercial consumption) and suffered an economic loss;
 - c. 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.
18. The Plaintiff claims on behalf of the “Family Class” 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. *Fatal Accidents Act*, R.S.N.B. 1973, c F-7;
 - vii. *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.Y. 2002, c 86;
 - xi. *Fatal Accidents Act*, R.S.N.W.T. (Nu) 1988, c F-3.

C. THE ONION RECALL

19. On July 30, 2020, The Public Health Agency of Canada issued a Public Health Notice and the CFIA issued a Food Recall Warning, regarding the outbreak of Salmonella infections linked to red onions imported from the United States. The CIFA table outlining the July 30, 2020 recall is as follows:

Brand	Product	Size	Codes	Additional information
Imperial Fresh	Red Onions – Jumbo	10 lb.	Product code 8399925	All products imported since May 24, 2020
Imperial Fresh	Red Onions – Jumbo	25 lb.	Product code 8313967	All products imported since May 24, 2020

20. On August 1, 2020, the CFIA issued an Updated Food Recall Warning to include all products made with or containing the onions imported since May 1, 2020, and sold under the brand names including Thomson International, Thomson International Premium, Thomson Premium, EI Competidor, Imperial Fresh, Onions 52, and Tender Loving Care.

21. On August 1, 2020, Thomson International conducted a voluntary recall of red, yellow, white and sweet yellow onions shipped from May 1, 2020 to present sold under the brand names Thomson Premium, TLC Thomson International, and Tender Loving Care, EI Competitor, Hartley’s Best, Onions 52, Majestic, Imperial Fresh, Kroger, Utah Onions and Food Lion, because of possible salmonella contamination.

Brand	Product	Size	UPC	Codes	Additional information
<ul style="list-style-type: none"> • EI Competidor • Imperial Fresh • Onions 52 • Tender Loving Care • Thomson International 	<ul style="list-style-type: none"> • Yellow Onions • Red Onions • White Onions • Sweet Yellow Onions 	All sizes including bulk	Variable	All products imported since May 1, 2020	<ul style="list-style-type: none"> • Mesh Sack • Carton • Box

Brand	Product	Size	UPC	Codes	Additional information
<ul style="list-style-type: none">• Thomson International Premium• Thomson Premium					

22. The onions were <> distributed to wholesalers, retailers and food service establishments in Canada, the United States of America, and the District of Columbia. The investigations by the CFIA, U.S. Food and Drug Administration and the U.S. Centres for Disease Control and Prevention are ongoing. The CFIA issued Food Recall Warnings for products made with these onions that may have been distributed in all provinces and territories in Canada.
23. On August 5, 2020, the CFIA issued notification of the recall of additional products containing the onions, sold under the brand name Imperial Fresh to include white diced 3/8” onions.
24. On August 7, 2020, the CFIA issued notification that products containing the onions, sold under the brand name Jim M. Koo Produce are included in the Recall.
25. On August 7, 2020, the CFIA updated the Food Recall Warning issued on August 1, 2020 to include additional distribution information of the Recalled Products or Onion Products, imported since May 1, 2020.
26. The Food Recall Warning on August 7, 2020 was updated on August 12, 2020 by the CFIA to include products containing the onions sold under the brand name Krown.
27. On August 14, 2020, the CFIA Food Recall Warning was further updated to include Modern brand Tarragon Remoulade and Modern Meat brand crab cakes made with onions grown by Thomson International.
28. The Public Health Agency of Canada advised all individuals across Canada, and all retailers, distributors, manufactures and food service establishments such as hotels, restaurants, cafeterias, hospitals and nursing homes across Canada, not to eat, use, sell or serve any red, white, yellow or swell yellow onions from Thomson

International of Bakersfield, California, or products made with these onions. The products may have been sold with or without a label and may include additional brands.

29. The CFIA stated the Recalled Onions or Onion Products were at risk of being contaminated with *Salmonella*. The CIFA's table as of August 14, 2020 of Recalled Products is as follows:

	<ul style="list-style-type: none"> • Yellow Onions • Red Onions • White Onions • Sweet Yellow Onions 	All sizes including bulk	Variable	All products imported since May 1, 2020	<ul style="list-style-type: none"> • Mesh Sack • Carton • Box 	Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Ontario, Possibly National, Quebec, Saskatchewan, Yukon
Fresh is Best Salsa & Co.	Mild Fresh Salsa	375 mL	6 28130 03751 4	BBD: 21 SEP 2020 25 SEP 2020 28 SEP 2020 02 OCT 2020	None	Alberta, British Columbia, Saskatchewan, Manitoba
Fresh is Best Salsa & Co.	Medium Fresh Salsa	375 mL	6 28130 03752 1	BBD: 21 SEP 2020 25 SEP 2020 28 SEP 2020 02 OCT 2020 05 OCT 2020	None	Alberta, British Columbia, Saskatchewan, Manitoba
Fresh is Best Salsa & Co.	Hot Fresh Salsa	375 mL	6 28130 03753 8	BBD: 21 SEP 2020 25 SEP 2020 28 SEP 2020 02 OCT 2020	None	British Columbia
Fresh is Best Salsa & Co.	Extra Hot Fresh Salsa	375 mL	6 28130 03754 5	BBD: 21 SEP 2020 25 SEP 2020 28 SEP 2020 02 OCT 2020	None	British Columbia
Fresh is Best Salsa & Co.	Salsa Fresca	2.2 L	6 28130 00221 5	BBD: 28 SEP 2020 05 OCT 2020	None	British Columbia
Fresh is Best Salsa & Co.	Savory Southwestern Black Bean & Corn Salsa	220 mL	6 28130 02204 6	BBD: 15 AUG 2020 21 AUG 2020 28 AUG 2020	None	Alberta, British Columbia
Fresh is Best Salsa & Co.	Tropical Fruit Salsa	220 mL	None	BBD: 06 AUG 2020	None	British Columbia
Freshpoint Foodservice	Onion, Jumbo (yellow)	5 lb / 2.27 kg	None	345 122 to 345 214	All products sold from May 1, 2020 up to and including August 1, 2020 Product code 246010	British Columbia, Nunavut

Freshpoint Foodservice	Onion, Red	5 lb / 2.27 kg	None	345 122 to 345 214	All products sold from May 1, 2020 up to and including August 1, 2020 Product code 246154	British Columbia, Nunavut
Imperial Fresh	<ul style="list-style-type: none"> • Yellow Onions • Red Onions • White Onions • Sweet Yellow Onions 	All sizes including bulk	Variable	All products imported since May 1, 2020	<ul style="list-style-type: none"> • Mesh Sack • Carton • Box 	Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Ontario, Possibly National, Quebec, Saskatchewan, Yukon

Krown	Red Onion	4.54 kg / 10 lb	None	All units sold up to and including August 5, 2020	None	<ul style="list-style-type: none"> • Frontier Foods, 311 Centre St., Frontier, SK • Pip's Country Store, 4806 Selkirk Ave., Edgewater, BC • Northern, 2 Inuit St. (Box 281), Kugluktuk, NU • Northern, Mackenzie Dr. (Box 143), Tulita, NT • Northern, 807 Tetlit Gwich'in Rd. (Box 60), Fort McPherson, NT • Edgewood General Store, Box 16, Edgewood, BC • Northern, Box 158, Ulukhaktok, NT • Northern, 991 Mistassiniy Rd. (Box 90), Wabasca, AB • Northern, 41 Breynat St. (Box 47), Fort Smith, NT • Whitemud Grocer, 220 Centre St., Val Marie, SK • Rock Creek General Store, 4105 Hwy. 3, Rock Creek, BC • Hidden Valley Foods, 108 Maple Ave. S, Eastend, SK • Slocan Village Market, 519 Harold St., Slocan, BC • Balfour Superette, 7824 Hwy. 3A, Balfour, BC
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Krown	Yellow Onion	4.54 kg / 10 lb	None	All units sold up to and including August 5, 2020	None	<ul style="list-style-type: none"> Loon Lake Fine Foods, PO Box 189, Makwa Sahgaiehcan First Nation, Loon Lake, SK Lac La Hache Food Mart, Box 100, Lac La Hache, BC Clinton Budget Foods, 1429 Cariboo Hwy., Clinton, BC The Store, 5 Main St. (Box 68), Acadia Valley, AB Balfour Superette, 7824 Hwy. 3A, Balfour, BC J & D Meat & Groceries, 435 Elliot St., Quesnel, BC Clarke's General Store, 5750 Horsefly Rd., Horsefly, BC Buffalo River Mini Mart, Chief Pierre Nezaroché St., Dillon, SK
Modern	Tarragon Remoulade	250 mL	8 47004 00014 4	Best before date: SEP 23 2020	None	British Columbia, Manitoba, and possibly other provinces and territories.
Modern Meat	'Crab' Cakes	300 g	8 47004 00009 0	Best before date: JAN 18 2021	None	British Columbia, Manitoba, and possibly other provinces and territories.
Modern Meat	'Crab' Cakes	6 × 50 g	8 47004 00009 0	Best before date: JAN 18 2021	None	British Columbia, Manitoba, and possibly other provinces and territories.
None	Greek Salad	Variable	Starts with 0 205106	All best before dates up to and including AU.11.20	None	British Columbia
None	Greek Pasta Salad	Variable	Starts with 0 205130	All best before dates up to and including AU.11.20	None	British Columbia
None	Curried Quinoa Kale Salad	Variable	Starts with 0 205117	All best before dates up to and including AU.11.20	None	British Columbia

None	Gourmet Sandwiches Entertaining	Variable	Starts with 257369	All packed on dates up to and including August 7, 2020	None	Sold at various IGA, Safeway, Sobeys and Thrifty Foods locations in Alberta, British Columbia, Saskatchewan and Manitoba
None	Gourmet Sandwiches Sm	Variable	Starts with 240060	All packed on dates up to and including August 7, 2020	None	Sold at various IGA, Safeway, Sobeys and Thrifty Foods locations in Alberta, British Columbia, Saskatchewan and Manitoba
Onions 52	<ul style="list-style-type: none"> • Yellow Onions • Red Onions • White Onions • Sweet Yellow Onions 	All sizes including bulk	Variable	All products imported since May 1, 2020	<ul style="list-style-type: none"> • Mesh Sack • Carton • Box 	Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Ontario, Possibly National, Quebec, Saskatchewan, Yukon
Skeena Select	BBQ Beef Sub	295 g	0 204157 706994	All best before dates up to and including AU.11.20	None	British Columbia
Skeena Select	Pizza Sub	405 g	0 204109 706997	All best before dates up to and including AU.10.20	None	British Columbia
Skeena Select	Broccoli Salad	Variable	Starts with 0 205116	All best before dates up to and including AU.11.20	None	British Columbia

Skeena Select	Chicken Quesadilla	280 g	0 205153 105996	All best before dates up to and including AU.11.20	None	British Columbia
Tender Loving Care	<ul style="list-style-type: none"> • Yellow Onions • Red Onions • White Onions • Sweet Yellow Onions 	All sizes including bulk	Variable	All products imported since May 1, 2020	<ul style="list-style-type: none"> • Mesh Sack • Carton • Box 	Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Ontario, Possibly National, Quebec, Saskatchewan, Yukon

Thomson International	<ul style="list-style-type: none"> • Yellow Onions • Red Onions • White Onions • Sweet Yellow Onions 	All sizes including bulk	Variable	All products imported since May 1, 2020	<ul style="list-style-type: none"> • Mesh Sack • Carton • Box 	Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Ontario, Possibly National, Quebec, Saskatchewan, Yukon
Thomson International Premium	<ul style="list-style-type: none"> • Yellow Onions • Red Onions • White Onions • Sweet Yellow Onions 	All sizes including bulk	Variable	All products imported since May 1, 2020	<ul style="list-style-type: none"> • Mesh Sack • Carton • Box 	Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Ontario, Possibly National, Quebec, Saskatchewan, Yukon
Thomson Premium	<ul style="list-style-type: none"> • Yellow Onions • Red Onions • White Onions • Sweet Yellow Onions 	All sizes including bulk	Variable	All products imported since May 1, 2020	<ul style="list-style-type: none"> • Mesh Sack • Carton • Box 	Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Ontario, Possibly National, Quebec, Saskatchewan, Yukon

30. On September 14, 2020, The Public Health Agency of Canada issued an updated Public Health Notice regarding the outbreak of Salmonella infections linked to < > the Recalled Onions or Onion Products.

31. The CFIA advised consumers not consume and to throw out or return the Recall Onions or Onion Products to the place of purchase. To date, hundreds of units of Recalled Onions and Onion Products have been included in the recall and this is the largest onion recall in Canadian history.

D. POSSIBLE HEALTH CONSEQUENCES ASSOCIATED WITH *SALMONELLA*

32. Consumption of food contaminated with *Salmonella* can cause serious and potentially life-threatening illnesses. Symptoms may include abdominal pain, diarrhea, vomiting and fever. and bloody diarrhea. Some people might suffer more serious consequences, including seizures or strokes, and some may need blood transfusions and kidney dialysis. Others may live with permanent kidney damage or other permanent health complications. In the most severe cases, people may die.

E. NEGLIGENCE

33. The Defendant is liable to the Plaintiff and the other Class members in negligence.

34. At all material times the Defendant owed a duty of care to the Plaintiff and other Class members to take all reasonable steps and follow all best practices such that its products were safe or reasonably safe for consumption and that ingestion of those products would not cause illness or injury.

35. The Plaintiff and the other class members plead that the Defendant breached its duty and the standard of care expected in the circumstances.

36. The Defendant owed to the Plaintiff and other similarly situated persons in Alberta and elsewhere in Canada the following duties of care and other duties, among others:

- a. < > 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;
- b. < > 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;
- c. To develop and implement adequate control methods for dealing with situations of *Salmonella* contamination; and/or

- d. Upon discovering that *Salmonella* contaminated onions entered the marketplace, to warn the Class of the *Salmonella* contamination, take immediate and comprehensive steps to remove any and all contaminated and/or possibly contaminated onion products from the marketplace, or take any other appropriate remedial action.
37. The Plaintiff and the other class members state that the Defendant breached its duty of care, particulars of which include:
- a. Failing to test < > the Recalled Onions and Onion Products thoroughly prior to marketing and distribution.
 - b. Failing to implement, ensure and follow quality control and assurance processes in the processing, storage and distribution of < > the Recalled Onions and Onion Products.
 - c. Failing to recall all < > tainted products immediately upon learning that people were becoming ill after ingesting them.
 - d. Failing to adopt technological advances in laboratory testing of Recalled Onions and Onion Products and advances in equipment.
 - e. Failing to devote sufficient financial resources to staffing personnel with expertise in food safety.
 - f. Failing to implement adequate procedures for the cleaning of equipment in order to prevent the contamination of food products, or, in the alternative, failed to ensure such procedures were followed.
 - g. Failing to implement adequate procedures to ensure that outside contaminants were not brought into area where the onions were grown and/or processed, or, in the alternative, failed to ensure such procedures were followed.
 - h. Failing to employ and properly train competent staff on proper, safe or adequate food handling techniques.
 - i. Failing to take adequate steps to ensure that its Recalled Onions and Onion Products were safe for consumption and that consumption of such products would not cause illness or injury.

- j. Failing to adequately train employees regarding product safety and failing to implement adequate safety measures.
- k. Failing to implement adequate cleaning and maintenance procedures.
- l. Failing to conduct adequate and regular testing on < > Recalled Onion or Onion Products to ensure that they were safe for consumption and that consumption of such products would not cause illness or injury; and
- m. 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. SALE OF GOODS ACT CLAIMS

38. In this Statement of Claim, “Sale of Goods Legislation” refers to, as amended:

- a. *Sale of Goods Act*, RSA 2000, c. s-2, s. 16;
- b. *Sale of Goods Act*, RSBC 1996, c. 140, s. 18;
- c. *Civil Code of Quebec*, LRQ, c C-1991, s 1726;
- d. *Sale of Goods Act*, CCSM, c S10, s. 16;
- e. *Sale of Goods Act*, RSO 1990, c. s.1, s. 15;
- f. *Sale of Goods Act*, RSNB 1973, c S-1, s. 15;
- g. *Sale of Goods Act*, RSNL 1990, s S-6, s.16
- h. *Sale of Goods Act*, RSNS 1989, c.408, s.17

- i. *Sale of Goods Act*, RSNWT 1988, c S-2, s. 18;
- j. *Consolidation Sale of Goods Act*, RSNWT 1988, c. S-2, s. 18;
- k. *Sale of Goods Act*, RSPEI 1988, c S-1, s. 16;
- l. *Sale of Goods Act*, RSS 1978, c S-1, s. 16; and
- m. *Sale of Goods Act*, RSY 2002, c 198, s. 15.

(a) Alberta

39. The Plaintiffs pleads and reply upon the *Sale of Goods Act*, RSA 2000, c. s-2, s.16, and amendments thereto, and pleads that there is an implied warranty or condition that the Products are reasonably fit for the intended purpose and of merchantable quality.

(b) British Columbia

40. The Plaintiffs pleads and reply upon the *Sale of Goods Act*, RSBC 1996 c. 140, s. 18, and amendments thereto, and pleads that there is an implied warranty or condition that the Products are reasonably fit for the intended purpose and of merchantable quality.

(c) Quebec

41. < >

(d) Manitoba

42. The Plaintiffs pleads and reply upon the *Sale of Goods Act*, CCSM c. S10, s. 16, and amendments thereto, and pleads that there is an implied warranty or condition that the Products are reasonably fit for the intended purpose and of merchantable quality.

(e) Ontario

43. The Plaintiffs pleads and reply upon the *Sale of Goods Act*, RSO 1990 c. s.1, s. 15 and amendments thereto, and pleads that there is an implied warranty or condition that the Products are reasonably fit for the intended purpose and of merchantable quality.

(f) New Brunswick

44. The Plaintiffs pleads and reply upon the *Sale of Goods Act*, RSNB 1973 c. S-1, s. 15, and amendments thereto, and pleads that there is an implied warranty or condition that the Products are reasonably fit for the intended purpose and of merchantable quality.

(g) Newfoundland

45. The Plaintiffs pleads and reply upon the *Sale of Goods Act*, RSNL 1990, c S-6, s. 16, and amendments thereto, and pleads that there is an implied warranty or condition that the Products are reasonably fit for the intended purpose and of merchantable quality.

(h) Nova Scotia

46. The Plaintiffs pleads and reply upon the *Sale of Goods Act*, RSNS 1989, c.408, s.17, and amendments thereto, and pleads that there is an implied warranty or condition that the Products are reasonably fit for the intended purpose and of merchantable quality.

(i) Northwest Territories

47. The Plaintiffs pleads and reply upon the *Sale of Goods Act*, RSNWT 1998, c. S-2, s. 18, and amendments thereto, and pleads that there is an implied warranty or condition that the Products are reasonably fit for the intended purpose and of merchantable quality.

(j) Nunavut

48. The Plaintiffs pleads and reply upon the *Consolidation of Goods Act*, RSNWT 1998, c S-2, s.18, and amendments thereto, and pleads that there is an implied warranty or condition that the Products are reasonably fit for the intended purpose and of merchantable quality.

(k) Prince Edward Island

49. The Plaintiffs pleads and reply upon the *Sale of Goods Act*, RSPEI 1998, c S-1, s. 16, and amendments thereto, and pleads that there is an implied warranty or condition

that the Products are reasonably fit for the intended purpose and of merchantable quality.

(l) Saskatchewan

50. The Plaintiffs pleads and reply upon the *Sale of Goods Act*, RSS 1978 c. S-1, s. 16, and amendments thereto, and pleads that there is an implied warranty or condition that the Products are reasonably fit for the intended purpose and of merchantable quality.

(m) Yukon

51. The Plaintiffs pleads and reply upon the *Sale of Goods Act*, RSY 2002, c. 198, s. 15, and amendments thereto, and pleads that there is an implied warranty or condition that the Products are reasonably fit for the intended purpose and of merchantable quality.

52. The Plaintiffs and class members who bought the Recalled Onions or Onion Products are “buyers” within the meaning of the *Sale of Good Legislation*.

53. The Defendant, having agreed to sell the < > Recalled Onions or Onion Products to the Plaintiffs and Class Members, is a “seller” within the meaning of the *Sale of Goods Legislation*.

54. The < > Recalled Onions or Onion Products are chattels personal and are “goods” within the meaning of the Sale of Goods Legislation.

55. The < > Recalled Onions or Onion Products were supplied by the Defendant to the Plaintiffs and class members under contracts of sale. Sufficient privity of contract existed between the Defendant and the Plaintiffs and between the Defendant and each class member.

56. In each contract of sale, there was:

- a. An implied condition that the < > Recalled Onions or Onion Products were reasonably fit for their ordinary purpose, where the Plaintiffs and class members expressly or by implication made known to the Defendant the particular purpose for which the Products were required;
- b. An implied condition that the < > Recalled Onions or Onion Products were of merchantable quality; and

- c. An implied warranty or condition as to the quality and fitness of the < > Recalled Onions or Onion Products for their ordinary purpose.
57. The Defendant breached the implied warranties and conditions. The Plaintiffs and class members reasonably expected that the < > Recalled Onions or Onion Products were safe, of merchantable quality, and reasonably fit for its ordinary purpose. The Plaintiffs repeat the material facts in regards to the negligence claim with respect to this statutory claim.
58. As a result of the Defendant's breach of the implied warranties and conditions, the Plaintiffs and class members have suffered damages and those who purchased the < > Recalled Onions or Onion Products are entitled to statutory remedies pursuant to the *Sale of Goods Legislation*.

G. BREACH OF CONSUMER LEGISLATION

(a) Alberta Consumer Protection Legislation

59. Each of the Plaintiff and some of the other Class members are a "consumer" within the meaning of Section 1(1) of the Consumer Protection Act, R.S.A. 2000, c. 26.3 (the "Alberta CPA").
60. Each of the purchases by the Plaintiff or the other Class members of Recalled Onions or Onion Products is a "consumer transaction" within the meaning of the Alberta CPA. These consumer transactions took place in Alberta.
61. Each of the Defendants was a "supplier" within the meaning of the Alberta CPA in relation to the consumer transactions for the purchase by the Plaintiff or the other Class members of Recalled Onions or Onion Products.
62. By placing its brands, names, logos and trademarks on the Recalled Onions or Onion Products and by placing those products in the stream of commerce, the Defendants represented that the Recalled Onions or Onion Products were of high quality, safe for consumption, and manufactured and packaged with adherence to the strictest of food safety standards (collectively, the "Representations").
63. In making the Representations, the Defendants' breached the Alberta CPA which deems it an "unfair practice" for a supplier to do or say anything that might reasonably deceive or misled a consumer. The Defendants' Representations misled consumers regarding the Recalled Onions or Onion Products as those products were not of high

quality, safe for consumption, or manufactured and packaged with adherence to the strictest of food safety standards.

64. The Plaintiffs and Class members who purchased and/or consumed Recalled Onions or Onion Products claim the full purchase price of those goods and damages, pursuant to Alberta CPA.

65. In this Amended Statement of Claim, “Consumer Protection Legislation” refers to the Alberta CPA and the following legislation and regulations thereunder or similar legislation:

- a. Consumers Protection Act, RSA 2000, c-26-3 as amended;
- b. Business Practices and Consumer Protection Act, SBC 2004, c 2, as amended;
- c. Consumer Protection and Business Practice Act, SS 2013, c.C-30.2;
- d. The Business Practices Act, CCSM, c B120, as amended and the Consumer Protection Act, CCSM, c.C200, as amended;
- e. Consumer Protection Act, 2002, SO 2002, c.30, SchA, as amended;
- f. Consumer Product Warranty and Liability Act, S.N.B. 1978, c. C-18.1, as amended;
- g. Consumer Protection Act, RSNS 1989, c 92, as amended;
- h. Consumer Protection and Business Practice Act SNL 2009 c. C-31.1, as amended;
- i. Business Practices Act, RSPEI 1988, c B-7, and Consumer Protection Act RSPEI 1988, c. C-19 as amended;
- j. Consumer Protection Act, RSY 2002, c 20, as amended;
- k. Consumer Protection Act, RSNWT 1988, c C-17, as amended; and
- l. Consumer Protection Act, RSNWT(Nu) 1988, c C-17, as amended.

(b) British Columbia Consumer Protection Legislation

66. The Plaintiff pleads and relies upon the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2, ss. 1, 4, 171, 173 and 203:

- a. it is a deceptive act or practice for a supplier to make an oral, written, visual, descriptive or other representation that has the capability, tendency or effect of deceiving or misleading a consumer. A representation by a supplier that goods are of a particular standard, quality, grade, style or model if they are not constitutes a deceptive act or practice. A supplier is defined to include a person, who in the course of business, participates in a consumer transaction by (i) supplying goods to a consumer, or (ii) soliciting, offering, advertising or promoting with respect to the supply of goods by a supplier to a consumer for whether or not privity of contract exists between that person and the consumer;
- b. it is a deceptive practice to make a representation, including a failure to disclose, that has the capability or effect of deceiving or misleading a person, and to make a representation that the subject of a consumer transaction is of a particular standard, quality, grade, style or model if it is not.

(c) Saskatchewan Consumer Protection Legislation

67. The Plaintiff pleads and relies upon *The Consumer Protection Act and Business Practice Act* SS 2013, c.C.30.2 and states that:

- a. it is an unfair practice contrary to *The Consumer Protection and Business Practice Act* for a supplier to do or say anything, if as a result a consumer might reasonably be deceived or misled, to make a false claim, representing that goods are of a particular standard, quality, grade, style or model if they are not. A supplier includes a person who carries on the business of manufacturing, importing, producing or assembling goods; and
- b. unfair practices described in *The Consumer Protection and Business Practice Act* are unfair practices for the purposes of the Act, notwithstanding that there is no privity of contract between the supplier and any specific consumer affected by the unfair business practice.

(d) Manitoba Consumer Protection Legislation

68. The Plaintiff pleads and relies upon *The Business Practices Act*, CCSM c. B120 and *Consumer Protection Act* C.C.S.M. c.C 200, and states that:

- a. it is an unfair practice for a supplier to do or say anything, if as a result a consumer might reasonably be deceived or misled, to make a false claim, representing that goods are of a particular standard, quality, grade, style or

model if they are not. A supplier includes a person who is carrying on or is engaged in the business of manufacturing, producing or assembling goods; and

- b. unfair business practices exist and are unfair, notwithstanding that there is no privity of contract between the supplier and any specific consumer affected by the unfair business practice.

(e) Ontario Consumer Protection Legislation

69. The Plaintiff pleads and relies upon the *Consumer Protection Act*, SO 2002, c. 30 SchA, as amended and states that:

- a. it is an unfair practice for a person to make a false, misleading or deceptive representation that goods are of a particular standard, quality or grade;
- b. it is an unconscionable representation to make a statement that is misleading and the consumer is likely to rely on his or her detriment.

(f) New Brunswick Consumer Protection Legislation

70. The Plaintiff pleads and relies upon the *Consumer Product Warranty and Liability Act*, S.N.B. 1978, c. C-18.1, and 27, and states that:

- a. statements made in writing on a product or its container or in a label, tag, sign or document attached to the product are express warranties;
- b. it is an implied warranty that products are fit for the purpose for which products of that kind are normally used and that the product complies with all mandatory federal and provincial standards in relation to health, safety and quality; and
- c. the warranties provided in the *Consumer Product Warranty and Liability Act* apply in the absence of a contract between a consumer and a manufacturer.

(g) Nova Scotia Consumer Protection Legislation

71. The Plaintiff pleads and relies upon the *Consumer Protection Act*, RSNS 1989, c 92, as amended and states that:

- a. Goods should be reasonably fit the purposes and be of merchantable quality and shall be free from latent defects;
- b. It is an unfair practice for a person to make a false, misleading or deceptive representation that goods are of a particular quality.

(h) Newfoundland and Labrador Consumer Protection Legislation

72. The Plaintiff pleads and relies upon the *Consumer Protection and Business Practice Act* SNL 2009 c. C-31.1, as amended and states that:

- a. It is an unfair trade practice to represent that goods have characteristics, ingredients or benefits that they do not have or that goods are of a particular standard, quality or grade if they are not;

(i) Prince Edward Island Consumer Protection Legislation

73. The Plaintiff pleads and relies upon the *Business Practices Act*, RSPEI 1988, c B-7, and *Consumer Protection Act* RSPEI 1988, c. C-19 as amended and states that:

- a. A false, misleading or deceptive consumer representation is an unfair practice;
- b. An unfair practice includes a representation that goods have characteristics, ingredients or are of a particular standard, quality or grade if they are not.

(j) Yukon Territory Consumer Protection Legislation

74. The Plaintiff pleads and relies upon the *Consumer Protection Act*, RSY 2002, c 4, as amended and states that:

- a. Goods must be of merchantable quality and be reasonably fit for the purpose intended;
- b. Goods are to be free from latent defects;
- c. Representation cannot be made that particular goods are of a particular quality if they are not.

(k) Northwest Territories Consumer Protection Legislation

75. The Plaintiff pleads and relies upon the *Consumer Protection Act*, RSNWT 1988, c C-17, as amended and states that:

- a. Goods must be of merchantable quality and be reasonably fit for the purpose intended;
- b. Goods are to be free from latent defects;
- c. Representation cannot be made that particular goods are of a particular quality if they are not.

(I) Nunavut Territory Consumer Protection Legislation

76. The Plaintiff pleads and relies upon the Consumer Protection Act, RSNWT(Nu) 1988, c C-17, as amended and states that:

- a. Goods must be of merchantable quality and be reasonably fit for the purpose intended;
- b. Goods are to be free from latent defects;
- c. Representation cannot be made that particular goods are of a particular quality if they are not.

Breaches of the Consumer Protection Legislation

77. The Plaintiff pleads that the Defendants breached the above Consumer Protection Legislation in that:

- a. The Class members were consumers or purchasers and the Defendant a supplier or seller of goods as referenced in the Consumer Protection Legislation.
- b. The Recalled Onions or Onion Products were not of merchantable quality, reasonably fit for the intended purpose or durable for a reasonable period of time having regard to the use to which the Recalled Onions or Onion Products would normally be put; and
- c. The Defendants engaged in unfair and unconscionable practices by:
 - (1) making false, misleading and deceptive representations to the Class members;
 - (2) Representing that Recalled Onions or Onion Products was of a particular standard, quality or grade, when they were not;
 - (3) Failing to disclose that the Recalled Onions or Onion Products were defective; and
 - (4) Making representations about the quality or safety of Recalled Onions or Onion Products that were not based on adequate and proper testing;
 - (5) Making representations that Recalled Onions or Onion Products were of high quality, safe for consumption, and manufactured and packaged in adherence to the strictest of food standards when they were not.

78. The said representations were made with the intention that consumers and purchasers, including the Plaintiff and Class, would rely upon them and consumers and purchasers, including the Plaintiff and Class, reasonably relied on these representations when purchasing Recalled Onions or Onion Products.

79. The Plaintiff seeks:

- a. a declaration that the representations and unfair practices were made in violation of the various parallel provisions of the Consumer Protection Legislation;
- b. damages pursuant to the various parallel provisions of the Consumer Protection Legislation.

H. VICARIOUS LIABILITY

80. The Plaintiff pleads that the Defendant can only act through its employees, directors, officers and agents and is vicariously liable for their acts and omissions as hereinafter pleaded. The acts and omissions particularized and alleged in this claim to have been done by the Defendant was authorized, ordered or done by the Defendant's employees, directors, officers and agents while engaging in the management, direction, control and transaction of the Defendant's business and are therefore acts and omissions for which the Defendant is vicariously liable.

H. PUNITIVE DAMAGES

81. The Plaintiff and the other class members plead that the Defendant's conduct in terms of quality control, monitoring, processing, storage, distribution and sale of Recalled Onions and Onion Products was egregious, fell far below acceptable standards and was in disregard of the health of the Plaintiff and the other class members, and motivated by economic considerations such as the maintaining of revenue and market share. Such conduct renders the Defendant liable to pay punitive damages.

I. DAMAGES

82. The Plaintiff and the other class members plead that they would not have purchased or consumed the Recalled Onions or Onion Products had they known of the defective nature of the quality control, monitoring, processing, storage, distribution and sale of the said Recalled Onions and Onion Products or if the recall had been conducted by the Defendant on a timely basis.

83. The Plaintiff and other Class members experienced physical injury as a result of consuming Recalled Onions or Onion Products which were contaminated with Salmonella, including symptoms of abdominal cramping, vomiting, headache, fever, and diarrhea.
84. The Plaintiff and other Class members suffered psychological injuries as a consequence of their physical injuries. The Plaintiff and other Class members suffered psychological injuries as a result of fearing for their health and their lives, as well as fearing for the health and lives of family members who also consumed Recalled Onions or Onion Products. They have lost and will continue to lose enjoyment of life.
85. As a further result of the breaches as pleaded above, the Plaintiff and Class similarly situated have suffered loss and damages, the particulars of which include:
- 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 damages equivalent to the purchase price;
 - b. For persons who purchased Recalled Onions or Onion Products which were not of merchantable quality, damages equivalent to the purchase price under the Sales of Goods Acts;
 - 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 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.

86. 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; and

87. Where a person died as a result of the consumption of Recall Onions or Onion Products, damages are claimed 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;
- f. Damages on behalf of the deceased's estate including pursuant to the various provincial and territorial survival of actions statutes.

88. The Plaintiff and Class Members have incurred hospital, medical, nursing, medication and other out-of-pocket expenses and will incur future care costs. They have lost income and will continue to lose income in the future.

89. The Defendant is liable to pay damages to the Plaintiff and to the other Class members including, but not limited to, damages on account of out-of-pocket expenses associated with buying the products on the Recall List and such further and other particulars as may be provided prior to the trial of the common issues.

90. As a result of illness from consuming Recalled Onions or Onion Products and the acts or omissions of the Defendant, some of the Class Members received healthcare services, health services, insured services, treatment or other services and became beneficiaries of such services pursuant to the healthcare legislation of the Province or Territory in which each Class Member resided or received treatment.

91. A claim is hereby advanced for the cost of such services under the applicable Provincial and Territorial Legislation including the *Health Care Costs Recovery Act*, S.B.C. 2008, *Health Services Insurance Act*, C.C.S.M.c. H-35, *Health Services Act*, R.S.N.B. 1973 c. H-3, *Health Services and Insurance Act*, R.S.N.S. 1989, c. 197, *Health Insurance Act*, R.S.O. 1990 c.H-6, *Health Insurance Act*, R.S.Q. c.A-29, and *The Department of Health Act* R.S.S.c.P-17, *Health Care Insurance Plan Act*, R.S.Y. 2002 c-107, *Hospital Insurance and Health and Social Services Administration Act*, R.S. N.W.T., 1988 c.T-3, *Hospital Insurance and Health and Social Services Administration Act*, R.S.N.W.T (Nu) 1988 c.T-3, and the regulations thereunder and amendments thereto.
92. The trial of this action will not likely take more than twenty-five days to complete.
93. The Plaintiff and the other class members propose that this action be tried in the City of Edmonton in the Province of Alberta.
94. The Plaintiffs have sufficient facts and grounds to serve this Statement of Claim *ex juris* outside of Alberta and outside of Canada, since the within claims arise out of and relate to torts and breaches of statutes committed in Alberta and are governed by the law of Alberta and have a real and substantial connection to Alberta.

REMEDY SOUGHT:

95. The Plaintiff and the Class therefore claims against the Defendant:
- a. A declaration that the Recalled Onions or Onion Products were contaminated with *Salmonella*;
 - b. A declaration that the Defendant is liable to the Plaintiff and the other Class Members for the damages caused by the Recalled Onions or Onion Products;
 - c. Alternatively, a declaration that the Defendant was negligent in the manufacturing, processing and packaging of the Recalled Products;
 - d. Certification of this action;
 - e. Damages, in the sum of \$25,000,000.00:
 - 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 for the Recalled Onions or Onion Products, 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 in fit or of merchantable quality;
 - 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, 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.
 - 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 Recall Onions or Onion Products, damages are claimed 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;
 - f. Damages on behalf of the deceased's estate including pursuant to the various provincial and territorial survival of actions statutes.
- viii. For persons who bought Recalled Onions or Onion Products and used it to create additional goods, additional damages for throwing out the additional goods.
- ix. < >
- x. Special damages;
- xi. Punitive damages;
- xii. Interest pursuant to the *Judgment Interest Act*, R.S.A. 2000, c. J 1 as may be allowed;
- xiii. Past and future care costs pursuant to *Health Care Costs Recovery Act*, S.B.C. 2008, *Health Services Insurance Act*, C.C.S.M.c. H-35, *Health Services Act*, R.S.N.B. 1973 c. H-3, *Health Services and Insurance Act*, R.S.N.S. 1989, c. 197, *Health Insurance Act*, R.S.O. 1990 c.H-6, *Health Insurance Act*, R.S.Q. c.A-29, and *The Department of Health Act* R.S.S.c.P-17, *Health Care Insurance Plan Act*, R.S.Y. 2002 c-107, *Hospital Insurance and Health and Social Services Administration Act*, R.S. N.W.T., 1988 c.T-3, *Hospital Insurance and Health and Social Services Administration Act*, R.S.N.W.T (Nu) 1988 c.T-3 and the regulations thereunder and amendments thereto;
- xiv. A declaration that the representations, unfair and unconscionable practices referred to herein constitute breaches of the applicable Consumer Protection Legislation.

- xv. Damages pursuant to the applicable *Consumer Protection Legislation and Sale of Goods Legislation*:
- xvi. Costs of this action on a solicitor/client basis; and
- xvii. Such further and other relief as this Honourable Court may allow or counsel may advise.

NOTICE TO THE DEFENDANT(S)

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice in the office of the

clerk of the Court of Queen's Bench at Edmonton, Alberta, AND serving your statement of defence

or a demand for notice on the plaintiffs' address for service.

WARNING

If you do not file and serve a statement of defence or a demand for notice within your time period,

you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing

either of these things, a court may give a judgment to the plaintiffs against you.