

CANADA

(Class Action)
SUPERIOR COURT

PROVINCE OF QUEBEC
DISTRICT OF MONTRÉAL

NO: 500-06-001090-204

ANDREA ASHLEY DUCHARME

Applicant

v.

THOMSON INTERNATIONAL, INC.

Defendant

JOINT APPLICATION TO TEMPORARILY STAY THE CLASS ACTION

(Articles 18, 25, 49, 168(1) and 577 of the *Code of Civil Procedure* ("C.C.P.")
and Article 3137 of the *Civil Code of Quebec* ("C.C.Q."))

TO THE HONOURABLE SYLVAIN LUSSIER, J.S.C., THE PARTIES JOINTLY AND
RESPECTFULLY SUBMIT THE FOLLOWING:

A. INTRODUCTION

1. The parties jointly seek a temporary stay of any and all proceedings related to the *Demande pour obtenir l'autorisation d'exercer une action collective et pour obtenir le statut de représentante* filed on August 27, 2020 (the "**Quebec Action**");
2. The basis of this application to stay the class action is the existence of parallel national class action in Alberta that was commenced on September 16, 2020 in *Sydonni Allridge v. Thomson International inc. and ABC Corporation* (the "**Alberta Action**"). A copy of the Statement of Claim in the Alberta Action, bearing court file number 2003 14303, is attached hereto as **Exhibit P-1**;
3. Two other class actions were also commenced in Ontario and British Columbia:
 - *Amber Furniss and Noreen Raja v. Thomson International, inc.*, bearing court file number CV-20-00001546-00CP (the "**Ontario Action**") filed on September 30, 2020. A copy of the Statement of Claim is attached hereto as **Exhibit P-2**;

- *Randel Patricia Weatherill v. Thomson International, inc.*, bearing court file number S2013315 (the "**BC Action**") filed on December 15, 2020. A copy of the Statement of Claim is attached hereto as **Exhibit P-3**;
4. The BC Action was then discontinued on May 31, 2021 as appears from the Notice of discontinuance bearing that date, attached hereto as **Exhibit P-4**;
 5. The Ontario Action was then discontinued on June 16, 2021, as appears from the Discontinuance Order bearing that date, attached hereto as **Exhibit P-5**;
 6. Therefore, the only pending class actions in Canada related to the subject-matter of this dispute are the Alberta Action and Quebec Action;
 7. Because the Alberta Action is, in all relevant aspects, essentially similar to the Quebec Action and involve a national class, including the Quebec members, the same object and most of the same defendants, it gives rise to a situation of partial *lis pendens*;
 8. Therefore, the parties request that the Quebec Action be stayed for a period ending after the final outcome of the proceedings in the below described Alberta Action;

B. THE QUEBEC ACTION

9. On August 27, 2020, the applicant Andrea Ashley Ducharme (the "**Applicant**") filed the Quebec Action. The Quebec Action was filed on behalf of Quebec residents who have consumed and/or bought red onions, or products containing red onions, produce by Thomson International, inc. (the "**Defendant**") that have been recalled due to Salmonella contamination. The proposed class is described in paragraph 1 of the *Demande en autorisation*:

« Toute personne résidant au Québec qui a acheté et/ou mangé les oignons rouges ou les aliments et/ou produits ayant été en contact et/ou contenant des oignons rouges produits, emballés, expédiés et/ou commercialisés par la défenderesse, ayant fait l'objet de rappels en raison d'une contamination à la bactérie Salmonella Newport à compter du 1^{er} mai 2020 (ci-après le « Groupe »)

Ce groupe exclu la défenderesse, sa société mère, ses filiales et ses sociétés affiliées. »

10. The Quebec Action is in its early stages and no steps have yet been taken since its filing;

C. THE ALBERTA ACTION

11. The Alberta action was commenced on September 16, 2020;
12. Justice Kevin S. Feth of the Court of the Queen's Bench of Alberta was appointed to case manage the Alberta Action;
13. On April 30, 2021, the Alberta Action was certified as a national class action. A copy of the Certification Order is attached hereto as **Exhibit P-6**;
14. The class was originally described as :
 - " The Plaintiff claims on behalf of herself and natural persons in Canada who:
 - a) Consumed Recalled Onions and suffered a physical illness, injury or death. Where a death occurred, the Class includes the family members entitled to claim and the estate of the deceased;
 - b) Purchased Recalled Onions (for private, non-commercial consumption) and suffered an economic loss; or
 - c) Purchased Onion products (for private, non-commercial consumption) after July 31, 2020, and on, or after August 12, 2020, disposed of the onion products as a result of receiving notice of or communication regarding the alerts issued by the CFIA, the U.S. Food and Drug Administration and/or the U.S. Centres for Disease Control and Prevention regarding the recall of onion products that were grown by Thomson International ("Unidentifiable Onions") and suffered economic loss."
15. On June 29, 2021, Justice Feth granted an Amended Order, which *inter alia* modified the description of the class 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.

A copy of the June 29th 2021 Order is attached hereto as **Exhibit P-7**;

16. Counsel to the Plaintiffs in the Alberta Action are working in cooperation with counsel to the Applicant in the Quebec Action;
17. Counsel for all parties have confirmed their agreement to cooperate in seeking a stay of the present proceedings;

D. LIS PENDENS

18. The parties submit that there is *lis pendens* between the Quebec Action and the Alberta Action since there is an identity of parties, cause and object;
19. In this case, since the Quebec Action was filed before the Alberta Action, the stay of the Quebec action is not possible under section 3137 C.c.Q. because the Alberta Action was not "already pending before a foreign authority";
20. However, this court has the discretion to grant a stay of the Quebec Action within its inherent management jurisdiction under articles 18, 49, 158 and 577 C.C.P. and in accordance with the relevant case law;¹
21. This discretion of the court must be exercised with due regard for the protection of the rights and interests of Quebec residents;
22. In the present case, the stay should be granted because, beside the condition of the anteriority of the action, the other criteria relating to *lis pendens* provided for in article 3137 C.c.Q. are met:

(a) Same Parties

23. The Defendant in the Quebec Action is also named in the Alberta Action;
24. Both the Alberta Action and the Quebec Action propose a similar class which includes Quebec residents and legal persons;

¹ *FCA Canada inc. c. Garage Poirier & Poirier inc.*, 2019 QCCA 2213; *Blackette c. Blackberry Limited*, 2020 QCCS 2447.

(b) Same Cause

25. The essential facts in support of the Quebec Action and the Alberta Action are related to the Defendant's negligent growth, production, quality control, monitoring, processing, storage, distribution and sale of the recalled onions contaminated with Salmonella. The causes of action in both proceedings arise from the injuries or economic loss suffered by the members following the recalls of the onions, or products containing onions, produced by the Defendant and tainted with Salmonella;
26. More specifically, the legal duties allegedly owed by the Defendants and the alleged grounds of negligence listed in the Quebec Application for Authorization are largely reiterated by the Alberta Statement of Claim;

(c) Same Object

27. The object of the Quebec Action and the Alberta Action is the same: both seek the compensation of those who have allegedly suffered damages as a result of the Defendant's negligence in the production of their onions;

E. RECOGNITION OF AN ALBERTA JUDGMENT

28. A final decision in the Alberta Action is capable of recognition and enforcement in Quebec;
29. The Court of the Queen's Bench of Alberta has jurisdiction over the Applicant and the Defendant;
30. The Court of the Queen's Bench of Alberta will, moreover, respect the fundamental principles of procedure and public order;
31. The existence of the Quebec Action will not be a bar to the recognition and enforcement of the decision arising out of the Alberta Action since the parties will have the opportunity to seek a discontinuance of the Quebec Action if the Court of the Queen's Bench of Alberta grants the action on the merits. A decision in the Alberta Action can therefore result in enforcement and recognition in Quebec;
32. The Defendant further confirmed that if the Alberta Plaintiff is successful in his Alberta Action, the Defendant will not oppose the recognition and enforcement of the decision in

Quebec, provided that the Alberta decision is final, enforceable and non-appealable in that jurisdiction;

F. PROTECTION OF THE RIGHTS AND INTERESTS OF QUEBEC CLASS MEMBERS

33. The stay of the Quebec Action in favour of the proceeding in Alberta is consistent with the court's duty to protect the rights and interests of Quebec residents;
34. The causes of action advanced in the Alberta Action are equivalent to the wrongs alleged in the Quebec Action, such that if the rights and interests of the proposed class members in the Quebec Action were adjudicated in Alberta, those rights and interests would be similarly treated;
35. Moreover, Alberta law, like Quebec law, recognizes and provides remedies for injuries arising from duty of cares alleged in the Quebec Action and the Alberta Action;
36. The Alberta Action is already certified and moving toward a hearing on the merits and is therefore much further advanced than the Quebec Action, which is yet to be authorized;
37. Therefore, the Alberta Action will advance the rights and interests of Quebec residents by ensuring that their rights and interests are adjudicated in an efficient and timely manner before an experienced case-management judge;
38. Also, by prosecuting the recalled onions class actions in a single proceeding, Quebec residents will benefit from judicial economy and their counsel will not invest time and costs simultaneously in two jurisdictions;
39. Quebec residents will not suffer any prejudice because the Quebec Action is not dismissed but is only stayed. In the event that the Alberta Action is not efficiently conducted or the final order in Alberta disadvantages Quebec members, this Court may lift the stay of the proceedings in the Quebec Action if the circumstances so warrant;
40. Furthermore, if the Applicant seeks to discontinue the Quebec Action at any stage and this Court is not satisfied that the rights and interests of the Quebec class members will be protected, the court will continue to be seized of the matter and will have the jurisdiction to disallow or not such a discontinuance;

G. THE DISCRETION OF THE COURT AND INTEREST OF JUSTICE

41. As stated here above, it is within this Court's discretion to stay the Quebec Action in order to allow the Alberta Action to proceed in an efficient manner and to avoid a multiplicity of proceedings with potentially conflicting decisions;
42. For the purpose of prosecuting the class actions commenced in Alberta and Quebec in an efficient manner and to avoid conflicting decisions, the Applicant and the Defendant have agreed to undertake steps to proceed with the above-referred action in a cooperative manner;
43. Granting a stay of the proceedings will be consistent with the principle of proportionality;
44. Granting a stay of the proceedings will likewise avoid potential contradictory judgments and multiple proceedings, which will be both expensive and taxing on limited judicial resources;

H. CONCLUSIONS

45. For these reasons, the parties respectfully submit that it is in the interests of justice to stay the Quebec Action for a period ending after the final outcome in the Alberta Action;
46. Further, it is in the interests of justice to avoid the risk of conflicting judgments, while preserving the rights of Quebec resident members;
47. In addition, the parties undertake to report to the Court on the status of the proceedings in the Alberta Action and on any significant development, at least every six months;
48. The Applicant has also confirmed in an e-mail dated May 20, 2021 that she agrees that the Quebec Action should be stayed in favour of the Alberta Action, attached hereto as **Exhibit P-8**;

WHEREFORE, MAY IT PLEASE THIS HONOURABLE COURT TO:

GRANT the Joint Application to Stay the Quebec Action;

STAY any and all proceedings related to the *Demande pour obtenir l'autorisation d'exercer une action collective et pour obtenir le statut de représentante* for a period ending thirty (30) days after the final outcome in the Alberta Action *Sydonni Allridge v.*

Thomson International inc. and ABC Corporation bearing court file number 2003 14303, and all related proceedings are completed;

ORDER counsel for the parties to inform the Court promptly, and at least, every six (6) months of the progress and any significant development in *Sydonni Allridge v. Thomson International inc. and ABC Corporation* bearing court file number 2003 14303;

RESERVE the Court's discretion to lift the stay on request or on its own initiative if the circumstances so warrant;

ALL OF WHICH IS SOUGHT without costs.

Quebec, August 18th, 2021

Siskinds Desmeules

SISKINDS DESMEULES AVOCATS
Mtre. Karim Diallo
Mtre Frédérique Langis
karim.diallo@siskinds.com
frederique.langis@siskinds.com
320-43, rue de Buade
Quebec, Quebec, G1R 4A2
Telephone: 418-694-2009
Fax: 418-694-0281

Lawyer of the Applicant

Montreal
Quebec, August 18, 2021

David E. Legal

D.E. LEGAL
Mtre David Ettetdgui
david@delegal.ca
4115 Sherbrooke St. West, Suite 420
Westmount, Quebec, H3Z 1K9
Telephone: 514-316-3600
Fax: 514-316-3601

Lawyer of Thomson International Inc

Montreal AK
Quebec, August 18, 2021

Leonard Kliger, Avocat

Leonard, Kliger, Avocat
Mtre Andrew Kliger
akliger@leonardkliger.com
1255, Phillips-Square, Suite 808
Montreal, Quebec, H3B 3G1
Telephone: 514-281-1720
Fax: 514-281-0678

Lawyer of Thomson International Inc.

AFFIDAVIT

I, the undersigned, FRÉDÉRIQUE LANGIS, lawyer, exercising my profession at Siskinds Desmeules, Avocats, s.e.n.c.r.l., located at 43 rue De Buade, Quebec, Quebec, G1R 4A2, do solemnly affirm as follows:

1. I am one of the lawyers for the Applicant;
2. All of the facts alleged in the Joint Application to Temporarily Stay the Class Action are true.

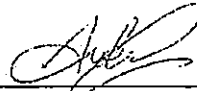
AND I HAVE SIGNED at Quebec City,
this 18th day of August 2021.

In consideration of the current health emergency measures, I sign this declaration remotely and request that it be recognized as an original.


FRÉDÉRIQUE LANGIS

I, Audrey Blackburn, an employee of Siskinds, Desmeules, Avocats, s.e.n.c.r.l., having a place of business at 43, rue de Buade, Suite 320, Quebec, Quebec, G1R 4A2, hereby declare that I have verified the identity of the declarant with his driver's licence and that I have seen her, by videoconference, sign this affidavit on August 18, 2021, at 17:00.

SOLEMNLY AFFIRMED BEFORE ME AND I HAVE SIGNED at St-Bruno, this 18th day of August 2021.


Audrey Blackburn (#230001)
Commissioner for Oaths
for all judicial districts of Quebec

NOTICE OF PRESENTATION

TAKE NOTICE that the Joint Application to Temporarily Stay the Class Action will be presented for adjudication before the Honourable Justice Sylvain Lussier of the Superior Court, at the Montreal Courthouse, located at 1, Notre -Dame Street East, at a date and time to be set by the Court.

Quebec, August 18th, 2021

Siskinds Desmeules

**SISKINDS DESMEULES AVOCATS,
s.e.n.c.r.l.**

Mtre. Karim Diallo
Mtre Frédérique Langis
karim.diallo@siskinds.com
frederique.langis@siskinds.com
320-43, rue de Buade
Quebec, Quebec, G1R 4A2
Telephone: 418-694-2009
Fax: 418-694-0281

Lawyer of the Applicant

Montreal
Quebec, August 14, 2021

D.E. Legal

D.E. LEGAL
Mtre David Etedgui
david@delegal.ca
4115 Sherbrooke St. West, Suite 420
Westmount, Quebec, H3Z 1K9
Telephone: 514-316-3600
Fax: 514-316-3601

Lawyer of Thomson International Inc

Montreal AC
Quebec, August 18, 2021

Leonard Kliger, Avocat

Leonard, Kliger, Avocat
Mtre Andrew Kliger
akliger@leonardkliger.com
1255, Phillips-Square, Suite 808
Montreal, Quebec, H3B 3G1
Telephone: 514-281-1720
Fax: 514-281-0678

Lawyer of Thomson International Inc.

C A N A D A

(Class Action)
SUPERIOR COURT

PROVINCE OF QUEBEC
DISTRICT OF MONTRÉAL

NO: 500-06-001090-204

ANDREA ASHLEY DUCHARME

Applicant

v.

THOMSON INTERNATIONAL, INC.

Defendant

**LIST OF EXHIBITS IN SUPPORT OF THE JOINT APPLICATION
TO TEMPORARILY STAY THE CLASS ACTION**

- Exhibit P- 1:** Statement of Claim of the Alberta Action in *Sydonni Allridge v. Thomson International inc. and ABC Corporation*, court file number 2003 14303;
- Exhibit P- 2:** Statement of Claim of the Ontario Action in *Amber Furniss and Noreen Raja v. Thomson International, inc.*, court file number CV-20-00001546-00CP;
- Exhibit P- 3:** Statement of Claim of the British Columbia Action in *Randel Patricia Weatherill v. Thomson International, inc.*, court file number S2013315;
- Exhibit P- 4:** Notice of discontinuance in the British Columbia Action dated May 31, 2021;
- Exhibit P- 5:** Order of the Superior Court of Justice of Ontario discontinuing the Ontario Action dated June 16, 2021;
- Exhibit P- 6:** Certification order from the Court of the Queen's Bench of Alberta dated April 30, 2021;
- Exhibit P- 7:** Order of the Court of the Queen's Bench of Alberta amending the Alberta Action's class dated June 29, 2021;
- Exhibit P- 8:** Email from Andrea Ashley Ducharme dated May 20, 2021.

Quebec, August 18th, 2021

Siskinds Desmeules

**SISKINDS DESMEULES AVOCATS,
s.e.n.c.r.l.**

Mtre. Karim Diallo
Mtre Frédérique Langis
karim.diallo@siskinds.com
frederique.langis@siskinds.com
320-43, rue de Buade
Quebec, Quebec, G1R 4A2
Telephone: 418-694-2009
Fax: 418-694-0281

Lawyer of the Applicant

Montreal
Quebec, August 18, 2021

D.E. Legal

D.E. LEGAL

Mtre David Ettegui
david@delegal.ca
4115 Sherbrooke St. West, Suite 420
Westmount, Quebec, H3Z 1K9
Telephone: 514-316-3600
Fax: 514-316-3601

Lawyer of Thomson International Inc

Montreal
Québec, August 18, 2021

Leonard Kliger Avocat

Leonard, Kliger, Avocat
Mtre Andrew Kliger
akliger@leonardkliger.com
1255, Phillips-Square, Suite 808
Montreal, Quebec, H3B 3G1
Telephone: 514-281-1720
Fax: 514-281-0678

Lawyer of Thomson International Inc.

C A N A D A
PROVINCE DE QUÉBEC
DISTRICT DE MONTRÉAL

(Chambre des actions collectives)
COUR SUPÉRIEURE

NO : 500-06-001090-204

ANDREA ASHLEY DUCHARME

Appelant

v.

THOMSON INTERNATIONAL, INC.

Defendant

**JOINT APPLICATION TO TEMPORARILY STAY
THE CLASS ACTION**

(Articles 18, 25, 49, 168 (1) and 577 of the Code of
Civil Procedure ("C.C.P.") and Article 3137 of the
Civil Code of Quebec ("C.C.Q."))

BB-6852

Me Karim Diallo

Me Frédérique Langis

Casier 15

N/D : 67-252

SISKINDS DESMEULES |

Avocats s.e.n.c.r.l.

43, rue de Buade, bureau 320, Québec (Québec) G1R 4A2

TÉLÉPHONE

418-694-2009 (Sans frais 1-877-735-3842)

TÉLÉCOPIEUR

418-694-0281

NOTIFICATION

notification@siskinds.com

siskinds.com/qc