

CANADA

PROVINCE OF QUÉBEC  
DISTRICT OF MONTREAL

No.: 500-06-001286-232

**SUPERIOR COURT**  
(Class Actions)

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**OLIVIER ARCHAMBAULT**, natural  
person, residing at [REDACTED]  
[REDACTED]

Applicant

v.

**AGROPECUARIA MALICHITA, S.A. DE  
C.V.**, legal person having its head office  
at Malecón Malpica 189-1 Col., Centro,  
Guaymas, Sonora México, CP 85400

and

**SOFIA PRODUCE, LLC DBA  
TRUFRESH**, legal person having its head  
office at 4928 North Gardner River Way,  
Tucson, Arizona, 85718, United States

Defendants

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**APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION AND  
APPOINT APPLICANT AS CLASS REPRESENTATIVE**

(Art. 571 C.C.P. and following)

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**TO ONE OF THE HONOURABLE JUSTICES OF THE SUPERIOR COURT, SITTING  
IN AND FOR THE DISTRICT OF MONTREAL YOUR APPLICANT STATES AS  
FOLLOWS:**

**I. OVERVIEW**

1. This proposed class action seeks to recover harms and losses suffered as a result of valueless and dangerous cantaloupes infected or likely infected with Salmonella bacteria, as well as other food items process alongside the infected cantaloupe products that the Defendants manufactured, packaged, exported, or sold into the stream of commerce in Quebec.

***The Class***

2. The Applicant seeks to bring this class action on their own behalf and on behalf of the following class of persons:

*All individuals in Quebec, including their heirs, successors or any person who met these requirements, who purchased and/or consumed Recalled Cantaloupes or Recalled Products.*

Or any other class or period that the Court determines.

(Hereby referred to as the "Class", "Class Members", and "Class Period")

3. "**Recalled Cantaloupes**" or "**Recalled Products**" herein refers to all the cantaloupes and any food items associated with cantaloupe products, included but not limited to other fruit like honeydew, pineapple, watermelon and various fruit trays, the whole as outlined in Canada Food Inspection Agency recall notices issued in October and November 2023 that regard Salmonella-contaminated or likely contaminated cantaloupes produced, packaged, shipped, distributed, sold, and/or marketed by the defendants.

## II. THE PARTIES

### *The Applicant and the Class*

4. On or around October 28, 2023, a whole cantaloupe was delivered to the Applicant's residence within an ODD Bunch subscription box.
5. During the week starting October 30, 2023, the Applicant also bought a whole cantaloupe from a Maxi store in Montreal's southwest neighborhood.
6. Commencing the week of November 6, 2023, the Applicant cut and ate these cantaloupes.
7. Following consuming the cantaloupes, the Applicant suffered severe illness including intense abdominal cramping and vomiting.
8. The Applicant sought care at the Verdun Hospital's Emergency Room. While admitted, laboratory analyses confirmed the existence of Salmonella, subsequently necessitating the Applicant's transfer to the Infectious Diseases section on the hospital's 5th floor.
9. From November 12 to November 18, 2023, the Applicant remained at Verdun Hospital, undergoing comprehensive testing and treatment due to the seriousness of his illness.

10. The Applicant's illness directly resulted from a Salmonella infection originating from the Recalled Products. This caused significant physical distress, mental anguish, emotional trauma, and heightened apprehension regarding the Applicant's health.
11. The Applicant received no value in return for the money he spent purchasing two Recalled Cantaloupes. Class Members similar received no value for any purchases of Recalled Cantaloupes during the Class Period.

### ***The Defendants***

12. The Defendant, Agropecuaria Malichita, S.A. de C.V., ("**AM**") is a company incorporated pursuant to the laws of State of the Sonora, Mexico, with an address for service at Malecón Malpica 189-1 Col., Centro, Guaymas, Sonora México, CP 85400. AM is the grower of both the Malichita and Rudy branded cantaloupes.
13. The Defendant, Sofia Produce, LLC dba Trufresh ("**Trufresh**") is a company incorporated pursuant to the laws of Arizona, with an address for service at 4928 North Gardner River Way, Tucson, Arizona, 85718, United States. Trufresh is the owner of the Malichita brand trademark in the United States and exports cantaloupes to Canada, as seen on the copy of the MALICHITA Trademark Status & Document Retrieval, US Registration Number 5931648 included in support of this Application as **Exhibit P-1**.
14. At all material times, the Defendants AM and Trufresh are merchants and/or distributors under the definition of the *Consumer Protection Act*.

### **III. Factual Background**

#### ***Importing the Cantaloupes into Canada***

15. Mexico holds a prominent position among the top global exporters of cantaloupes.
16. Originating from Guaymas, Sonora, Mexico, the Malichita and Rudy brands are produced by AM.
17. Operating under the name "Trufresh," Sofia Produce manages the distribution of these cantaloupes to Quebec, Canada, and the USA.
18. Across Canada, including Quebec, various local grocery stores offer cantaloupes sourced from different parts of the world.
19. The initial phase of the supply chain involves farms cultivating cantaloupes, which are then harvested and shipped into Canada, including Quebec.

20. Farms have the option to sell their produce to a local distribution company or handle the export process themselves.
21. Upon clearing customs and inspection, the cantaloupes proceed to warehouses owned by wholesale distributors. Retailers acquire these products from distributors, who subsequently transport them to grocery stores or supermarkets for display, sale, and eventual consumption by Canadian and Quebec consumers.

### ***The Role of Canadian Health and Food Inspection Agencies***

22. As federal-government agencies within the Government of Canada's Department of Health, both the Canadian Food Inspection Agency ("**Canada Food Agency**") and the Public Health Agency of Canada ("**Canada Health Agency**") work in tandem to respond to risks to public health.
23. The Canada Food Agency implements regulations and inspection processes throughout the food supply chain, including monitoring and investigating food-borne illness outbreaks, taking action to address any identified risks and to further prevent the spread of bacteria, such as Salmonella.
24. Any company that chooses to import produce into Canada, including Quebec, must be registered with Canada Food Agency.
25. When the Canada Food Agency inspections identify a risk to public health, Canada Health Agency works in tandem to issue recalls to address this risk. Canada Health Agency employs sophisticated laboratory techniques, specifically whole genome sequencing, to analyze Salmonella samples obtained from affected individuals.
26. The genetic analysis method utilized by Canada Health Agency helps identify if affected individuals share a common Salmonella strain. This method significantly contributes to swiftly detecting and handling outbreaks. Canada Health Agency promptly issues public health notices when necessary, ensuring vital information reaches the broader population.

### ***Canada Food Agency Food Recall Warnings and Notifications***

27. On November 1, 2023, Canada Food Agency announced a recall of cantaloupes sold between October 22, 2023, to November 1, 2023, under the Malichita brand in Quebec, Prince Edward Island and Nova Scotia ("**Nov 1 Recall**"). The Nov 1 Recall was conducted after testing conducted by Canada Food Agency confirmed positive cases of the bacteria Salmonella in the Recalled Cantaloupes, as seen on the copy of the Recall Warning dated November 1, 2023, proffered in support of this Application as **Exhibit P-2**.
28. The Nov 1 Recall emphasized the severity of Salmonella infection, stating that:

*“Food contaminated with Salmonella may not look or smell spoiled but can still make you sick. Young children, pregnant women, the elderly and people with weakened immune systems may contract serious and sometimes deadly infections. Healthy people may experience short-term symptoms such as fever, headache, vomiting, nausea, abdominal cramps and diarrhea. Long-term complications may include severe arthritis.”*

As seen on **Exhibit P-2**.

29. This Nov 1 Recall was updated on November 14, 17 and 24, 2023, all information set out in the November 24, 2023 version proffered in support of this Application as **Exhibit P-2** and summarized below:

- a. On November 14, 2023, Canada Food Agency expanded the Nov 1 Recall to include cantaloupes sold in British Columbia, Alberta, New Brunswick, and Newfoundland (“**Nov 14 Recall Update**”). The Nov 1 Recall was expanded to include these provinces after laboratory testing and supplier data confirmed the Malichita branded cantaloupes containing Salmonella were sold in these provinces.
- b. On November 17, 2023, Canada Food Agency updated the Nov 1 Recall to include information regarding the confirmed illnesses reported in the Nov 17 Notice (“**Nov 17 Recall Update**”).
- c. On November 24, 2023, Canada Food Agency updated the Nov 1 Recall to include Rudy brand cantaloupes sold between October 10, 2023, and November 14, 2023 (“**Nov 24 Recall Update**”).

30. Additional secondary recalls have been issued for products that were made using Recalled Cantaloupes and Recalled Products. Canada Food Agency also began recalling pre-cut chunks, fruit salads, or platters that used the cantaloupes identified in the November 1 Recall.

31. On November 10, 2023, Canada Food Agency announced a recall of Groupe Tomapure and Fruit Pure branded cantaloupe products sold in Ontario and Quebec, as the products contained cantaloupes subject to the Nov 1 Recall, as appears on the copy of the screenshot of the Notification entitled Groupe Tomapure and Fruit Pure brand cantaloupe products recalled due to Salmonella dated November 10, 2023 proffered in support of this Application as **Exhibit P-3**.

32. The Recalled Products were distributed throughout Quebec.

## **Canada Health Agency Notices and Investigation**

33. On November 17, 2023, Canada Food Agency published a notice that Salmonella outbreaks were reported in Quebec, Ontario, and British Columbia ("**Nov 17 Public Health Notice**"). The Nov 17 Public Health Notice identified the Malichita brand cantaloupes as the most likely cause of the Salmonella outbreak:

*"Based on the investigation findings to date, consumption of Malichita brand cantaloupe has been identified as the likely source of the outbreak. Some of the individuals who became sick reported having eaten cantaloupe before their illnesses occurred."*

As appears on the copy of the screenshot of Canada Health Agency's Notice published on November 17, included in support of this Application as **Exhibit P-4**.

34. The Nov 17 Public Health Notice stated that across Canada, there have been 14 laboratory-confirmed cases of Salmonella Soahanina and Sundsvall Salmonella illness linked to the outbreak in British Columbia, Ontario, and Quebec.
35. The Nov 17 Notice confirmed that additional Salmonella infections were also under investigation.
36. Between November 22 and December 7, 2023, Canada Health Agency published an updated Public Health Notices, copies of which are found in **Exhibit P-4** and summarized below:
- a. On November 22, 2023, Canada Health Agency updated the Nov 17 Public Health Notice, indicating that they have now identified 26 laboratory-confirmed cases of Salmonella linked to the cantaloupes subject to the Nov 1 Recall and that cases of Salmonella have been identified in British Columbia, Ontario, Quebec, Prince Edward Island, and Nova Scotia ("**Nov 22 Health Notice**").
  - b. On November 24, 2023, Canada Health Agency updated their public health notice, indicating that they have identified 63 laboratory-confirmed cases of Salmonella linked to the cantaloupes ("**Nov 24 Health Notice**").
  - c. On December 1, 2023, Canada Health Agency updated their public health notice, indicating that they have identified 66 laboratory-confirmed cases of Salmonella linked to the Recalled Cantaloupes. The notice further stated that 19 individuals have been hospitalized and one death has occurred due to Salmonella infection ("**Dec 1 Health Notice**"). The Dec1 Health Notice confirmed that Canada Food Agency investigation confirmed that the outbreak strains of Salmonella that made people sick were the same strain as found in the samples of the Recalled Products.

- d. On December 7, 2023, Canada Health Agency updated their public health notice, indicating that they had identified 129 laboratory confirmed cases of *Salmonella* linked to the cantaloupes subject to the Nov 24 Recall Update. The notice further stated that 44 individuals have been hospitalized and 5 deaths have occurred, as a result of the *Salmonella* infection (“**Dec 7 Health Notice**”).

### ***Trufresh Recalls***

37. On November 8, 2023, Trufresh, in tandem with the United States Food and Drug Administration (“**FDA**”), issued a recall of all of their Malichita cantaloupes sold between October 16, 2023 and October 23, 2023, due to the potential they are contaminated with *Salmonella*. The release states that the cantaloupes were distributed to Canada and that Trufresh conducted the recall after Canada Food Agency announced a similar recall of cantaloupes packaged in the same label and bearing the same PLU due to *Salmonella*, that had been sold to the Canadian Import Companies (“**Nov 8 Trufresh Recall**”), as set out on the copy of Trufresh’s recall published by the FDA on November 9, 2023 included in this Application as **Exhibit P-5**.
38. On November 15, 2023, Trufresh expanded the Nov 8 Trufresh Recall to include additional sales order numbers (“**Nov 15 Trufresh Recall**”), as set out on the copy of Trufresh’s recall update included in this Application as **Exhibit P-6**.

### ***Additional Investigations***

39. The United States Centre for Disease Control is also investigating an outbreak of *Salmonella* caused by the same genetic strain as the illnesses reported in Canada, as seen on the copy of the Investigation Details posted by the USA Centers for Disease Control and Prevention on November 30, 2023, included in support of this Application as **Exhibit P-7**.

## **IV. THE DEFENDANTS’ NEGLIGENCE**

40. The Defendants held significant responsibilities towards the Applicant and Class Members, ensuring the safe manufacture and distribution of cantaloupes and associated products, conducting thorough testing, implementing stringent measures against *Salmonella* contamination, and promptly informing the public of any tainted or potentially tainted items found in the market.
41. However, between October 10, 2023, and November 24, 2023, the Defendants placed valueless products into the stream of commerce, products that jeopardized consumer safety. These activities involved the manufacture, production, distribution, marketing, labeling, and/or sale of Recalled Cantaloupes and Recalled Products.

42. Despite being aware or reasonably expected to be aware of the potential risks posed by contamination, the Defendants did not provide adequate measures to prevent such occurrences.

## **V. DAMAGES**

### ***Health Consequences Associated with Salmonella***

43. Salmonella causes severe gastroenteritis with symptoms appearing within 6 to 72 hours, including fever, nausea, vomiting, diarrhea, headaches, and abdominal cramps, lasting 4-7 days, potentially fatal.

44. It can lead to conditions such as arthritis, inflammatory bowel syndrome, immune deficiencies, and in extreme cases, death.

45. Due to the negligence of the Defendants, there has been adverse consequences for the Applicant and Class Members, resulting in physical ailments, mental distress, emotional trauma, health-related concerns, financial losses, and other damages resulting from their consumption of the Recalled Cantaloupes or Recalled Products.

46. Additionally, the Applicant and Class Members were burdened with disposing of the Recalled Cantaloupes or Recalled Products, resulting in considerable losses for various businesses, such as restaurants, catering services, retail outlets, and food establishments.

47. Furthermore, unbeknownst to the natural persons who are consumers under the *Consumer Protection Act*, the Recalled Cantaloupes forming the object of the contract were not fit for the purposes for which the consumers purchased them and were not durable in normal use for a reasonable length of time. Rather than obtaining a product that they were able to consume safely, the proposed Class Members obtained a product that was without value given it was contaminated or likely was contaminated by salmonella.

## **VI. THE APPLICANT'S PERSONAL CLAIM AGAINST THE DEFENDANTS**

48. On or around October 28, 2023, the Applicant, a Montreal resident, received an individual Recalled Cantaloupe at his residential address via an ODD Bunch subscription box delivery.

49. During the week starting October 30, 2023, the Applicant purchased an individual Recalled Cantaloupe with cash from a Maxi store located in Montreal's southwest neighborhood.



50. As a physical person who acquired these Recalled Cantaloupes for personal use, the Applicant is a consumer under section 1e) of the *Consumer Protection Act*.
51. The Applicant purchased these Recalled Cantaloupes under the pretense that he was obtaining food product that was safe for consumption and not contaminated with salmonella.
52. During the week starting November 6, 2023, the Applicant consumed these two Recalled Cantaloupes.
53. Around November 11, 2023, the Applicant began grappling with severe symptoms, notably abdominal pain, diarrhea, vomiting, and fever.
54. By November 12, 2023, the Applicant's condition had escalated, prompting a visit to Verdun Hospital's Emergency Room due to considerable gastrointestinal distress and persistent vomiting.
55. On or around November 14, 2023, lab tests revealed Salmonella, leading to extensive testing and treatment, resulting in hospitalization. Subsequently, the same day the Applicant was relocated to the hospital's Infectious Disease section on the 5th floor, receiving daily intravenous antibiotics and isolated from visitors.
56. On or around November 18, 2023, the Applicant was discharged, and he persisted in experiencing fatigue for several days following the hospitalization.
57. The Defendants had a duty to grow and distribute cantaloupes that were fit for consumption. In growing, distributing and/or selling cantaloupes containing salmonella the Defendants failed to uphold this duty.
58. The Applicant suffered significant harm as a result of consuming Recalled Cantaloupes, including Salmonella poisoning requiring hospitalization.
59. Economic losses ensued from purchasing two whole cantaloupe that had no value. .
60. All asserted damages, inconveniences, and losses directly resulted from the Defendants' negligence and/or breach of the *Consumer Protection Act*.

## **VII. THE FACTS GIVING RISE TO CLAIMS HELD BY CLASS MEMBERS**

61. The facts that give rise to the personal claim of the Applicant are the same as each personal claim belonging to members of the class against the Defendants.
62. Every class member purchased and/or consumed the Recalled Cantaloupes. Each class member suffered financial and/or non-financial damages resulting from the purchase and/or consumption of the Recalled Products, including but not limited to:

- a) Physical harm to individuals who became ill after consuming the Recalled Products;
- b) Emotional distress arising from anxiety and the risk of falling ill due to consuming the Recalled Products;
- c) Loss of income in the past and future;
- d) Need for medical treatment in the past and future;
- e) Material harm associated with the need to discard the inedible Recalled Products due to potential contamination with Salmonella bacteria.

63. All damages suffered by each group member directly stems from the defendants' negligence and/or breach of the *Consumer Protection Act*.

#### **VIII. IDENTICAL, SIMILAR OR RELATED QUESTIONS OF FACT OR LAW**

64. The conclusions sought by each Class Member are the same and raise identical, similar, or related questions of fact and law, namely:

- a) Were the defendants negligent or did they breach their duty of care by permitting the distribution of Recalled Cantaloupes into Quebec?
- b) Did the defendants undertake all necessary precautions to ensure their Recalled Cantaloupes were uncontaminated by the Salmonella bacteria?
- c) Did the defendants implement appropriate measures to inform and safeguard consumers or businesses that acquired the Recalled Products?
- d) To what degree have the Applicant and the Group members suffered damages?
- e) Are the Applicant and Class Members entitled to punitive damages, and if yes, what is the extent of these damages?
- f) Did the Defendants breach the Consumer Protection Act, and if so, are Class Members entitled to compensatory or punitive damages?
- g) Are Class Members entitled to collective recovery for any damages or losses?

#### **IX. THE COMPOSITION OF CLASS MAKES RULES OF MANDATE IMPRACTICAL**

65. The composition of the Class makes it difficult and/or impractical to apply the rules of mandates to take part in judicial proceedings on behalf of others for consolidation of proceedings pursuant to articles 59 or 67 C.C.P.

66. All the facts alleged in the preceding paragraphs make it difficult, if not impossible, to trace each and every person involved in this lawsuit and to contact each member of the Group to obtain a mandate or proceed by joining actions.
67. Class Members are numerous and are scattered across Quebec.
68. The Applicant does not know the exact number of individuals who purchased and/or consumed the Recalled Products, which are distributed throughout Canada, including Quebec, however as of December 7, 2023, Canada Health Agency reported that there were 91 laboratory-confirmed cases in the province, which represents approximately 70% of the total 129 laboratory-confirmed cases nationwide, as seen on **Exhibit P-4**.
69. In the circumstances, it would be impracticable and impossible for the Applicant to obtain a mandate from each Class Member or to join them all into a single action.
70. Moreover, the modest amount that each or some Class Member are likely entitled to claim against the Defendants makes it likely that the majority of these Class Members would hesitate to file their own individual action against the Defendants, never mind the fact that the costs associated with initiating an individual claim to pursue one's right before the courts would be largely more significant than the amount each member can hope to obtain as a result of such individual actions.
71. In the circumstances, the class action procedure is the only appropriate procedure for the proposed Class Members to access justice and pursue their respective claims against the Defendants effectively and efficiently.
72. It would be impossible for the Applicant to retrace and contact every Member to seek a joinder or a mandate of all their claims.

**X. THE PROPOSED CLASS REPRESENTATIVE**

73. The Applicant seeks to be appointed the status of representative Applicant for the following reasons.
74. The Applicant is a Class Member and has a personal interest in seeking the conclusions sought.
75. The Applicant has the time, energy, will and determination to assume and perform the duties incumbent upon him that are required to carry out the proposed class action.
76. The Applicant acts in good faith with the only goal in accessing justice and the relief sought for themselves and for the other Class Members.
77. The Applicant does not have any circumstances that would put them in conflict with the other members of the class.

## **XI. THE NATURE OF THE CLASS ACTION**

78. The nature of the action the Applicant intends to bring on behalf of the Class Members is an action in compensatory and punitive damages.
79. The defendants showed negligence in quality control, monitoring, treatment, storage, distribution, sales, public notification, and timely recall of the Recalled Products, placing the Applicant and group members at risk of contracting Salmonella bacteria.
80. The defendants failed in their duty of care, which constitutes negligence amounting to a civil fault.
81. The defendants breached the *Consumer Protection Act*.

## **XII. THE CONCLUSIONS SOUGHT**

82. The conclusions that the Applicant wishes to introduce by way of an originating application are:
- a) **GRANT** the Applicant's originating application.
  - b) **GRANT** the class action by the Applicant on behalf of all members of the Group.
  - c) **CONDEMN** the Defendants to pay the Applicant and the members of the Group damages for all losses suffered, in an amount to be determined by the Court with interest at the legal rate, plus the indemnity provided for by law in accordance with article 1619 of the Civil Code of Quebec, from the date of service of the Application for Authorization to institute a class action and to obtain the status of class representative.
  - d) **CONDEMN** the Defendants to pay the Applicant and the members of the Group punitive and/or exemplary damages in an amount to be determined by the Court.
  - e) **ORDER** the Defendants to cover the costs incurred for any necessary investigation to establish their liability in the matter, including extrajudicial legal fees, extrajudicial disbursements, and any other amount the Court deems appropriate to award.
  - f) **ORDER** the collective recovery of the Class Members' claims.
  - g) **RENDER** any other order that this Honourable Court shall determine and that is in the interest of the members of the Class.
  - h) **THE WHOLE WITH** costs, including all expert fees, notice fees, and expenses of the administrator, if any.

## **DISTRICT**

83. The Applicant suggests that the proposed class action should be brought before the Superior Court of the district of Montreal for the following reasons:

- a) Defendants' Recalled Products are sold in numerous business establishments in the judicial District of Montreal.
- b) Many Class Members are domiciled or work in the District of Montreal.
- c) Applicant's legal counsel practice law in the District of Montreal.

## **FOR THESE REASONS, MAY IT PLEASE THE COURT:**

**GRANT** the present application;

**AUTHORIZE** the bringing of a class action in the form of an originating application in specific performance and in damages;

**APPOINT** the Applicant, Olivier Archambault, the status of Representative Applicant of the persons included in the Class herein described as follows:

*All individuals in Quebec, including their heirs, successors or any person who met these requirements, who purchased and/or consumed Recalled Cantaloupes or Recalled Products.*

**IDENTIFY** the principal questions of fact and law to be treated collectively as the following:

- d) Were the defendants negligent or did they breach their duty of care by permitting the distribution of Recalled Cantaloupes into Quebec?
- e) Did the defendants undertake all necessary precautions to ensure their Recalled Cantaloupes were uncontaminated by the Salmonella bacteria?
- f) Did the defendants implement appropriate measures to inform and safeguard consumers or businesses that acquired the Recalled Products?
- g) To what degree have the Applicant and the Group members suffered damages?
- h) Are the Applicant and Class Members entitled to punitive damages, and if yes, what is the extent of these damages?

- i) Did the Defendants breach the Consumer Protection Act, and if so, are Class Members entitled to compensatory or punitive damages?
- j) Are Class Members entitled to collective recovery for any damages or losses?

**IDENTIFY** as follows the conclusions sought by the class action in relation thereof:

- k) **GRANT** the Applicant's originating application.
- l) **GRANT** the class action by the Applicant on behalf of all members of the Group.
- m) **CONDEMN** the Defendants to pay the Applicant and the members of the Group damages for all losses suffered, in an amount to be determined by the Court with interest at the legal rate, plus the indemnity provided for by law in accordance with article 1619 of the Civil Code of Quebec, from the date of service of the Application for Authorization to institute a class action and to obtain the status of class representative.
- n) **CONDEMN** the Defendants to pay the Applicant and the members of the Group punitive and/or exemplary damages in an amount to be determined by the Court.
- o) **ORDER** the Defendants to cover the costs incurred for any necessary investigation to establish their liability in the matter, including extrajudicial legal fees, extrajudicial disbursements, and any other amount the Court deems appropriate to award.
- p) **ORDER** the collective recovery of the Class Members' claims.
- q) **RENDER** any other order that this Honourable Court shall determine and that is in the interest of the members of the Class.
- r) **THE WHOLE WITH** costs, including all expert fees, notice fees, and expenses of the administrator, if any.

**DECLARE** that any member who has not requested their exclusion from the class be bound by any judgment to be rendered on the class action, in accordance with law;

**FIX** the delay for exclusion from the Class at 60 days from the date of notice to the Class and after the expiry of such delay the members of the class who have not requested exclusion be bound by any such judgment;

**ORDER** the publication of a notice to the members of the Class according to the terms to be determined by the Court;

**THE WHOLE** with legal costs, including the cost of all notices.

Montréal, December 12, 2023

*Slater Vecchio*

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**SLATER VECCHIO**

**Me Saro Turner**

**Me Al Bixi**

**Me Andrea Roulet**

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## SUMMONS

(Articles 145 and following CCP)

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### Filing of a judicial application

Take notice that the Applicant has filed this Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff in the office of the Superior Court in the judicial district of Montreal.

### Exhibits supporting the application

In support of the *Application for authorization to Institute a Class Action*, the Applicant relies on the following exhibits:

- Exhibit P-1:** Copy of the MALICHITA Trademark Status & Document Retrieval, US Registration Number 5931648
- Exhibit P-2:** Copy of the Canadian Food Inspection Agency food recall warnings between October 10, 2023 and November 24, 2023
- Exhibit P-3:** Screenshot of the Notification entitled Groupe Tomapure and Fruit Pure brand Cantaloupe products recalled due to Salmonella dated November 10, 2023
- Exhibit P-4:** Copy of the Public Health Agency of Canada Public Health Notices of November 22, November 24, December 1, and December 7, 2023
- Exhibit P-5:** Copy of Trufesh recall published by the FDA on November 9, 2023
- Exhibit P-6:** Copy of Trufesh recall published by the FDA on November 15, 2023
- Exhibit P-7:** Copy of the Investigation Details posted by the USA Centers for Disease Control and Prevention on November 30, 2023

The exhibits in support of the application are available upon request.

### Defendants' answer

You must answer the application in writing, personally or through a lawyer, at the courthouse of Montreal situated at 1 Rue Notre-Dame Est, Montreal, Québec, H2Y 186, within 15 days of service of the Application or, if you have no domicile, residence or



establishment in Québec, within 30 days. The answer must be notified to the Applicant's lawyer or, if the Applicant is not represented, to the Applicant.

### **Failure to answer**

If you fail to answer within the time limit of 15 or 30 days, as applicable, a default judgement may be rendered against you without further notice and you may, according to the circumstances, be required to pay the legal costs.

### **Content of answer**

In your answer, you must state your intention to:

- negotiate a settlement;
- propose mediation to resolve the dispute;
- defend the application and, in the case required by the Code, cooperate with the Applicant in preparing the case protocol that is to govern the conduct of the proceeding. The protocol must be filed with the court office in the district specified above within 45 days after service of the summons or, in family matters or if you have no domicile, residence or establishment in Québec, within 3 months after service;
- propose a settlement conference.

The answer to the summons must include your contact information and, if you are represented by a lawyer, the lawyer's name and contact information.

### **Change of judicial district**

You may ask the court to refer the originating Application to the district of your domicile or residence, or of your elected domicile or the district designated by an agreement with the plaintiff.

If the application pertains to an employment contract, consumer contract or insurance contract, or to the exercise of a hypothecary right on an immovable serving as your main residence, and if you are the employee, consumer, insured person, beneficiary of the insurance contract or hypothecary debtor, you may ask for a referral to the district of your domicile or residence or the district where the immovable is situated or the loss occurred. The request must be filed with the special clerk of the district of territorial jurisdiction after it has been notified to the other parties and to the office of the court already seized of the originating application.

## **Transfer of application to Small Claims Division**

If you qualify to act as a plaintiff under the rules governing the recovery of small claims, you may also contact the clerk of the court to request that the application be processed according to those rules. If you make this request, the plaintiff's legal costs will not exceed those prescribed for the recovery of small claims.

## **Calling to a case management conference**

Within 20 days after the case protocol mentioned above is filed, the court may call you to a case management conference to ensure the orderly progress of the proceeding. Failing this, the protocol is presumed to be accepted.

## **Notice of presentation of an application**

If the application is an application in the course of a proceeding or an application under Book III, V, excepting an application in family matters mentioned in article 409, or VI of the Code, the establishment of a case protocol is not required; however, the application must be accompanied by a notice stating the date and time it is to be presented.

Montréal, December 12, 2023

*Slater Vecchio*

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### **SLATER VECCHIO**

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**NOTICE OF PRESENTATION**

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**TO:**

**AGROPECUARIA MALICHITA,  
S.A. DE C.V.**, legal person having  
its head office at Malecón Malpica  
189-1 Col., Centro, Guaymas,  
Sonora México, CP 85400

**SOFIA PRODUCE, LLC DBA  
TRUFRESH**, legal person having its  
head office at 4928 North Gardner  
River Way, Tucson, Arizona, 85718,  
United States

**TAKE NOTICE** that Applicant's *Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff* will be presented before the Superior Court at 1 Rue Notre-Dame E, Montréal, Quebec, H2Y 1B6, on the date set by the coordinator of the Class Action chamber.

**GOVERN YOURSELF ACCORDINGLY.**

Montréal, December 12, 2023

*Slater Vecchio*

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**SLATER VECCHIO**

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**Me Al Brix**  
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