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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

BRYAN CLAYTON,

Plaintiff,

v.

FEMEX, LLC, an Arizona limited liability  
company, d/b/a/ Federico's Mexican Food,

Defendant.

NO.

COMPLAINT

Tort/Products Liability

1. Strict Products Liability
2. Negligence
3. Negligence *Per Se*
4. Breach of Warranties

DEMAND FOR JURY TRIAL

Plaintiff, Bryan Clayton, by and through undersigned counsel, and for his claims  
against the Defendant, alleges as follows:

PARTIES

1. Plaintiff BRYAN CLAYTON resides in Maricopa County, Arizona.
2. Defendant FEMEX, LLC is an Arizona limited liability company that owns and operates the retail foodservice establishment named "Federico's Mexican Food" located at 13132 W. Camelback Rd. in Litchfield Park, Arizona.

**JURISDICTION AND VENUE**

3. The acts and events hereinafter alleged occurred in Maricopa County, Arizona.

4. Venue is proper under A.R.S. § 12-401.

**FACTUAL ALLEGATIONS**

5. On or about August 2, 2013, Federico's Mexican Food restaurant located at 13132 W. Camelback Rd. in Litchfield Park, Arizona voluntarily closed for business after an epidemiological investigation by the Maricopa County Department of Public Health and Environmental Services and the Arizona Department of Health Services revealed that the restaurant was the source of an E. coli O157:H7 outbreak.

6. As of this date, at least eleven (11) of the fifteen (15) individuals with suspected E. coli O157:H7 infections interviewed by public health officials either have purchased food from or eaten at this particular Federico's Mexican Food—i.e., the restaurant located at 13132 W. Camelback Rd. in Litchfield Park, Arizona. No other Federico's Mexican Food restaurant locations presently are suspected as the source of any illnesses in this outbreak.

7. On or about July 27, 2013, Plaintiff BRYAN CLAYTON purchased and consumed chicken tacos from Defendant FEMEX, LLC's Federico's Mexican Food restaurant located at 13132 W. Camelback Rd. in Litchfield Park, Arizona. On or about July 29, 2013, Plaintiff's parents purchased and Plaintiff consumed a takeout meal consisting of at least one chicken burrito from the same restaurant location.

8. On or about July 30, 2013, Plaintiff BRYAN CLAYTON developed symptoms caused by the E. coli O157:H7 infection that he acquired from the meal(s) purchased at Defendant FEMEX, LLC's restaurant in the several days prior.

1 Symptoms initially consisted of severe abdominal cramps, diarrhea and other  
2 gastrointestinal problems.

3 9. On or about July 31, 2013, as his condition worsened, Plaintiff BRYAN CLAYTON  
4 sought medical care at the office of his family physician.

5 10. On August 1, 2013, Plaintiff BRYAN CLAYTON was evaluated at the emergency  
6 room at West Valley Hospital, where he was treated for dehydration and submitted  
7 blood and urine for testing. He ultimate was discharged from West Valley Hospital.

8 11. In the days that followed, Plaintiff BRYAN CLAYTON continued to experience  
9 severe gastrointestinal symptoms, including grossly bloody bouts of diarrhea.  
10 Plaintiff was hospitalized at West Valley Hospital, where he remains as of the date  
11 of this filing.  
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13  
14 **COUNT ONE**  
**STRICT PRODUCTS LIABILITY**

15 12. Plaintiff incorporates herein by reference the allegations in paragraphs 1–11.

16 13. Defendant FEMEX, LLC is a product manufacturer, distributor and seller of the  
17 product that injured Plaintiff BRYAN CLAYTON.

18 14. Defendant FEMEX, LLC owed a duty to Plaintiff BRYAN CLAYTON to manufacture  
19 and distribute a product that was reasonably safe in construction, that did not  
20 materially deviate from applicable design specifications, and that did not otherwise  
21 deviate in some material way from otherwise identical units in its product line, but  
22 failed to do so.  
23

24 15. Defendant FEMEX, LLC owed a duty to Plaintiff BRYAN CLAYTON to manufacture  
25 and distribute a product that conformed to its express warranties, i.e., that the food  
26 was, among other things, not adulterated and was fir for human consumption, but  
27 failed to do so.  
28

1 16. Defendant FEMEX, LLC owed a duty to Plaintiff BRYAN CLAYTON to manufacture  
2 and distribute a product that confirmed to its implied warranties, including, but not  
3 limited to, the implied warranty that the food was for human consumption, but failed  
4 to do so.

5  
6 17. The product that infected Plaintiff BRYAN CLAYTON with E. coli O157:H7 was not  
7 reasonably safe in construction, and did not conform to Defendant FEMEX, LLC  
8 express or implied warranties, because it was contaminated and adulterated with,  
9 among other things, E. coli O157:H7.

10 18. Because the product was not reasonably safe in construction, and did not conform  
11 to Defendant FEMEX, LLC's express or implied warranties, Defendant is strictly  
12 liable to Plaintiff BRYAN CLAYTON for the harm proximately caused by the  
13 contaminated food.

14  
15 19. As a direct and proximate result of Defendant FEMEX , LLC's culpable acts and  
16 omissions, Plaintiff BRYAN CLAYTON suffered severe and permanent personal  
17 injuries, as well as substantial economic loss.

18 **COUNT TWO**  
19 **NEGLIGENCE**

20 20. Plaintiff incorporates herein by reference the allegations in paragraphs 1–19.

21 21. Defendant FEMEX, LLC breached duties of reasonable care that it owed to Plaintiff  
22 BRYAN CLAYTON by manufacturing, distributing and selling a product that was not  
23 reasonably safe.

24 22. Defendant FEMEX, LLC was negligent in manufacturing, distributing and selling a  
25 product that was not reasonably safe because it was contaminated with E. coli  
26 O157:H7 and because adequate warnings or instructions were not provided,  
27

1 including, but not limited to, the warning that the product may contain, or be  
2 contaminated by, E. coli O157:H7.

3 23. Defendant FEMEX, LLC had a duty to comply with all applicable federal and state  
4 statutory and regulatory provisions that pertained or applied to the manufacture,  
5 distribution, storage, labeling and sale of food products, including, but not limited to,  
6 the Federal Food, Drug, and Cosmetics Act, which bans the manufacture, sale and  
7 distribution of any "adulterated" food, but failed to do so. Plaintiff BRYAN  
8 CLAYTON is among the class of persons intended to be protected by the statutory  
9 and regulatory provisions pertaining to Defendant's manufacture, distribution,  
10 storage, labeling and sale of food.  
11

12 24. Defendant FEMEX, LLC had a duty to use supplies and/or raw materials in  
13 producing and distributing products that were in compliance with applicable federal,  
14 state, and local laws, ordinances and regulations; that were from safe and reliable  
15 sources; that were clean, wholesome and free from contamination and adulteration;  
16 and that were safe for human consumption, but failed to do so.  
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18 25. The wrongful acts alleged above were each substantial and proximate causes of  
19 Plaintiff BRYAN CLAYTON's injuries and damages.  
20

21 **COUNT THREE**  
**NEGLIGENCE *PER SE***

22 26. Plaintiff incorporates herein by reference the allegations in paragraphs 1–25.

23 27. Defendant FEMEX, LLC owed Plaintiff BRYAN CLAYTON a duty to comply with all  
24 statutory and regulatory provisions that pertained or applied to the manufacture,  
25 distribution, storage, labeling and sale of its food products (including the Recalled  
26 Product), including the applicable provisions of the federal Food, Drug and  
27 Cosmetic Act, and the Arizona adulterated food statutes (A.R.S. § 36-901 *et seq.*).  
28

1 28. The food that Defendant FEMEX, LLC manufactured and sold, and that Plaintiff  
2 consumed, was "adulterated" within the meaning of the Federal Food, Drug and  
3 Cosmetic Act, and the Arizona adulterated food statutes (A.R.S. § 36-901 *et seq.*),  
4 because (*inter alia*): it contained a deleterious substance that rendered it injurious to  
5 health; it consisted in whole or in part of a diseased, contaminated, filthy, putrid or  
6 decomposed substance, or was otherwise unfit for food; and/or it had been  
7 produced, prepared, packaged or held under insanitary conditions whereby it  
8 became unwholesome or injurious to health.

10 29. Defendant FEMEX, LLC violated federal, state and local food safety regulations by  
11 its manufacture and sale of adulterated food.

12 30. The federal, state and local food safety regulations applicable here, and as set forth  
13 above, establish a positive and definite standard of care in the manufacture and  
14 sale of food, and the violation of these regulations constitute negligence *per se*.

15 31. Plaintiff BRYAN CLAYTON was in the class of persons intended to be protected by  
16 these statutes and regulations

17 32. The wrongful acts alleged above were each substantial and proximate causes of  
18 Plaintiff BRYAN CLAYTON's injuries and damages.

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20 **COUNT FOUR**  
21 **BREACH OF WARRANTIES**

22 33. Plaintiff incorporates herein by reference the allegations in paragraphs 1–32.

23 34. Defendant FEMEX, LLC is liable to Plaintiff BRYAN CLAYTON for breaching  
24 express and implied warranties made to him, or for which Plaintiff was the intended  
25 third-party beneficiary, with respect to the product that caused Plaintiff's infection  
26 and resulting injuries.  
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1 35. The contaminated product was not fit for the uses and purposes intended by  
2 Defendant FEMEX, LLC, as represented by Defendant, and thus was in breach of  
3 implied warranties of fitness for its intended use.

4 36. The wrongful acts alleged above were each substantial and proximate causes of  
5 Plaintiff BRYAN CLAYTON's injuries and damages.  
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7 **DAMAGES**

8 37. Plaintiff has suffered general and special, incidental and consequential damages as  
9 the direct and proximate result of the acts and omissions of Defendant FEMEX, LLC  
10 in an amount in excess of the minimum jurisdictional limits of the Court, which  
11 damages shall be fully proven at the time of trial. These damages include, but are  
12 not limited to: damages for general pain and suffering; damages for loss of  
13 enjoyment of life, both past and future; medical and medical related expenses, both  
14 past and future; travel and travel-related expenses, past and future; emotional  
15 distress, and future emotional distress; pharmaceutical expenses, past and future;  
16 related wage and lost earning capacity damages; and all other ordinary, incidental  
17 and consequential damages as would be anticipated to arise under the  
18 circumstances.  
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21 **PRAYER FOR RELIEF**

22 **WHEREFORE**, Plaintiff prays for the following relief:

- 23 1. That the Court award Plaintiff judgment against Defendant, in such sums as  
24 shall be determined to fully and fairly compensate Plaintiff for all general, special,  
25 incidental and consequential damages incurred, or to be incurred, as the direct  
26 and proximate result of the acts and omissions of Defendant, in an amount to be  
27 proven at trial.  
28 2. That the Court award plaintiff her costs, disbursements and reasonable  
attorneys' fees incurred.

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3. That the Court award Plaintiff the opportunity to amend or modify the provisions of this Complaint as necessary or appropriate after additional or further discovery is completed in this matter, and after all appropriate parties have been served; and
4. That the Court award such other and further relief as it deems necessary and proper in the circumstances.

**JURY DEMAND**

Plaintiff demands a trial by jury on all issues so triable with the maximum number of jurors permitted by law.

DATED this 5<sup>th</sup> day of August 2013.

**O'STEEN & HARRISON, PLC**



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