

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No.

Carolyn Marie Shirley,

Plaintiff,

v.

Navitas Naturals©, the Superfood Company™,  
and JOHN DOES 1-10,

Defendants.

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**COMPLAINT**

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COMES NOW the Plaintiff, by and through her attorneys of record, Montgomery Little & Soran, P.C., and Marler Clark, LLP, PS to file this complaint and alleges as follows:

**PARTIES**

1. The plaintiff, Carolyn Marie Shirley, is a resident of Fort Collins, Colorado.
2. The defendant Navitas Naturals©, the Superfood Company™, is a California Corporation. Its principal place of business is located in Novato, California.
3. Upon information and belief, the defendants John Does 1-10 are entities who participated in the manufacture, distribution, and/or sale of the contaminated food product that was the proximate cause of the plaintiff's injuries, and whose identities are not known to the plaintiff at this time. The plaintiff will seek leave of the Court to amend this complaint at such time that the identities of these parties become known.

## **JURISDICTION AND VENUE**

4. This Court has jurisdiction over the subject matter of this action pursuant to 28 USC § 1332(a) because the matter in controversy exceeds \$75,000.00, exclusive of costs, it is between citizens of different states, and because the defendants have certain minimum contacts with the State of Colorado such that the maintenance of the suit in this district does not offend traditional notions of fair play and substantial justice.

5. By virtue of defendants shipment of chia powder to Colorado, defendants should reasonably anticipate the sale and consumption of the chia powder within the State of Colorado and possibility of litigation in Colorado.

6. Venue in the United States District Court for the District of Colorado is proper pursuant to 28 USC § 1391(a)(3) because the defendants are subject to personal jurisdiction at the time this action is commenced, and because the provisions of 28 USC § 1391(a)(1) and (2) are inapplicable.

## **GENERAL ALLEGATIONS**

7. The CDC has reported that as of June 9, 2014, a total of 21 ill persons infected with the outbreak strains of Salmonella Newport (13 persons), Salmonella Hartford (6 persons), or Salmonella Oranienburg (2 persons) have been reported from 12 states. The number of ill persons identified in each state is as follows: Arizona (1), California (3), Colorado (1), Connecticut (3), Florida (1), Massachusetts (1), Michigan (1), New York (4), Ohio (1), Utah (1), Washington (1), and Wisconsin (3). Two ill persons infected with a strain of Salmonella Oranienburg have been identified in two U.S. states. Through product testing and interviews

with ill people, these illnesses have been combined with the Salmonella Newport and Salmonella Hartford infections previously identified as part of this investigation.

8. Collaborative investigation efforts of state, local, and federal public health and regulatory agencies indicate that organic sprouted chia powder is the likely source of this outbreak. Chia powder is made from ground dried chia seeds.

9. On June 4, 2014, Health Matters America, Inc., recalled products that contain sprouted chia seed powder and sprouted chia/flax seed powder due to possible Salmonella contamination. On June 6, 2014, Navitas Naturals expanded their existing recall to include additional expiration dates of products containing organic sprouted chia powder.

10. The Public Health Agency of Canada is collaborating with Provincial public health partners, the Canadian Food Inspection Agency, and Health Canada to investigate 34 Canadian cases of Salmonella infection linked to the consumption of sprouted chia seed powder. In Canada, two strains of Salmonella have been associated with this outbreak: Salmonella Newport and Salmonella Hartford. In total, 34 cases have been reported in British Columbia (6), Alberta (4), Ontario (22) and Quebec (2). Five cases have been hospitalized; four cases have been discharged and have recovered or are recovering. The status of one case was not provided to the Agency. No deaths have been reported. The investigation is ongoing but currently, 19 of 19 cases that have been interviewed have reported consumption of sprouted chia seeds or sprouted chia seed powder, and 16 of 19 cases specifically report sprouted chia seed powder.

11. As a part of this investigation, the Canadian Food Inspection Agency has issued food recall warnings for various products containing sprouted chia seeds and sprouted

chia seed powder under the brands Organic Traditions, Back 2 the Garden, Intuitive Path SuperFoods, Harmonic Arts Botanical Dispensary, Naturallyorganic, and Pete's Gluten Free. These products have been recalled and are being removed from the marketplace due to possible Salmonella contamination.

12. From late December 2013 through early June 2014, plaintiff purchased defendants chia powder at her local Sprouts Farmer's Market.

13. During that time period plaintiff consumed the chia powder daily.

14. Plaintiff fell ill on or about March 8, 2014, when she began suffering from severe gastrointestinal symptoms. Her condition worsened daily until she developed bloody diarrhea, in addition to her other symptoms. Plaintiff required treatment at Poudre Valley Hospital on or about March 12, 2014.

15. Plaintiff later submitted a stool specimen for testing, which was ultimately determined to be positive for Salmonella Oranienburg. The plaintiff was informed by health officials that the strain of Salmonella Oranienburg that infected her was the strain associated with the chia powder outbreak and recall.

16. During 2013 and 2014, plaintiff purchased defendants chia powder at her local Sprouts Farmer's Market.

17. During that time period plaintiff consumed the chia powder.

18. Plaintiff fell ill on or about March 14, 2014, when she began suffering from a gastrointestinal illness. Her condition worsened daily until she required hospitalization. While hospitalized, plaintiff tested positive for Salmonella Oranienburg. The plaintiff was informed

by health officials that the strain of Salmonella Oranienburg that infected her was the strain associated with the chia powder outbreak and recall.

19. As of the time of the filing of this complaint, plaintiff is still recovering from her Salmonella infection.

20. Plaintiff's Salmonella infection resulted directly from her consumption of chia powder contaminated with Salmonella.

### **FIRST CLAIM FOR RELIEF**

#### **(Strict Product Liability)**

21. The plaintiff hereby incorporates paragraphs 1 through 16 by this reference as if each paragraph was set forth herein in its entirety.

22. The defendants are product manufacturers and sellers within the meaning of the Colorado Product Liability Act, C.R.S. §§13-21-401 et seq. The defendants manufactured the food that was the source of the plaintiff's injuries. The Salmonella-contaminated food that was the source of the plaintiff's injuries was a product within the meaning of the Act.

23. The defendants' food product that was the source of the plaintiff's illness and injuries was defective, and was unreasonably dangerous to the consumer, because it was contaminated and adulterated with Salmonella, a potentially deadly pathogen.

24. The food product manufactured by the defendants reached the plaintiff without substantial change in the condition in which it was sold.

25. The defendants' defective Salmonella contaminated food product caused the plaintiff's Salmonella infection and subsequent damages.

26. The defendants were the sellers of the defective Salmonella-contaminated food product.

27. The defendants were engaged in the business of selling food products.

28. Because the defendants manufactured the food product that was the source of the plaintiff's illness and the plaintiff's injuries and losses, which food was defective and not reasonably safe due to Salmonella contamination, the defendants are strictly liable to the plaintiff for the harm proximately caused by their sale of defective food.

## **SECOND CLAIM FOR RELIEF**

### **(Breach of Warranties)**

29. The plaintiff hereby incorporates paragraphs 1 through 24 by this reference as if each paragraph was set forth herein in its entirety.

30. The defendants owed a duty to the plaintiff to manufacture and sell a food product that conformed to its express and implied warranties, including, but not limited to, the implied warranty of merchantability and the implied warranty of fitness for a particular use or purpose.

31. The food product manufactured and sold by the defendants was contaminated with the Salmonella bacteria. Such contaminated food products would not pass without exception in the trade, and the sale of such food products was thus in breach of the implied warranty of merchantability.

32. The food product manufactured and sold by the defendants was contaminated with the Salmonella bacteria, and was not fit for the uses and purposes intended by either the plaintiff or the defendants, i.e., human consumption. The sale was thus a breach of the implied warranty of fitness for its intended use.

33. Because the defendants manufactured and sold food that was in breach of their express and implied warranties, the defendants are liable to the plaintiff for the harm proximately caused by their sale of contaminated food.

**THIRD CLAIM FOR RELIEF**

**(Negligence and Negligence per se)**

34. The plaintiff hereby incorporates paragraphs 1 through 29 by this reference as if each paragraph was set forth herein in its entirety.

35. The defendants negligently manufactured, distributed and sold a food product that was not reasonably safe.

36. The defendants were negligent in manufacturing, distributing and selling a product that was not reasonably safe because adequate warnings or instructions were not provided, including, but not limited to, the warning that their product may contain Salmonella, and thus should not be given to, or eaten by, people.

37. The defendants had a duty to comply with all statutory and regulatory provisions that pertained or applied to the manufacture, distribution, storage, labeling, and sale of their food products, including, but not limited to, the Federal Food, Drug, and Cosmetics Act, which bans the manufacture, sale and distribution of any “adulterated” food, but failed to do so.

38. In the manufacture and production of their finished product, the defendants owed to the plaintiff a duty to use supplies and raw materials that were in compliance with applicable federal, state, and local laws, ordinances and regulations; that were from safe and reliable sources; and that were clean, wholesome, free from spoilage and adulteration, and safe for human consumption, but failed to do so.

39. The plaintiff is among the class of persons designed to be protected by the statutory and regulatory provisions pertaining to the defendants' manufacture, distribution, storage, labeling, and sale of their food.

40. As a result of the defendants' negligence, and as a result of the defendants' violation of statutes designed to protect the plaintiff from contaminated foods, the defendants are liable to plaintiff for her Salmonella illness and for the plaintiff's injuries and losses.

### **DAMAGES**

41. The plaintiff hereby incorporate paragraphs 1 through 36 by this reference as if each paragraph was set forth herein in its entirety.

42. The plaintiff has suffered general and special, incidental and consequential damages as the direct and proximate result of the acts and omissions of the defendants, which damages shall be fully proven at the time of trial. Such damages include, but are not limited to, damages for loss of enjoyment of life, both past and future; medical and medical related expenses, both past and future; travel and travel-related expenses, past and future; emotional distress and future emotional distress; pharmaceutical expenses, past and future; wage loss; and other ordinary, incidental and consequential damages as would be anticipated to arise under the circumstances.

### **PRAYER FOR RELIEF**

WHEREFORE, the Plaintiff prays:

A. That the Court award the plaintiff judgment against the defendants in such sums as shall be determined to fully and fairly compensate the plaintiff for all general, special,

incidental and consequential damages incurred, or to be incurred, by the plaintiff as the direct and proximate result of the acts and omissions of the defendants;

B. That the Court award the plaintiff her costs, including experts fees, and reasonable attorneys' fees incurred;

C. That the Court award such other and further relief as it deems necessary and proper in the circumstances.

**PLAINTIFF HEREBY DEMAND TRIAL TO A JURY OF SIX PERSONS ON ALL ISSUES SO TRIABLE.**

DATED This 19<sup>th</sup> Day of June, 2014

*s/ John R. Riley*

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