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12
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF VENTURA

15 STEPHANIE WEHR, an individual,
16
17 Plaintiff,

18 v.

19 BRENT'S DELI, INC. a California corporation,
DOES 1 through 50 and ROE Corporations 1
20 through 50, inclusive,

21 Defendants.
22
23

Case No.:

Civil Unlimited Jurisdiction

PLAINTIFF'S COMPLAINT FOR:

1. **STRICT PRODUCT LIABILITY;**
2. **NEGLIGENCE;**
3. **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY; AND**
4. **NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

24
25 Plaintiff, STEPHANIE WEHR ("PLAINTIFF"), by and through undersigned counsel of record,
26 as and for a Complaint against Defendants, and each of them, alleges:
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PARTIES

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2 1. PLAINTIFF was and is a resident of the County of Ventura, State of California and, for
3 purposes of this action, is a California citizen.

4 2. Upon information and belief, Defendant Brent’s Deli, Inc. (“BRENT’S”), at all times
5 relevant to this action, is and was a California corporation, form unknown.
6

7 3. Upon information and belief, at all times relevant to this action, BRENT’S, Does 1-5
8 and Roe Corporations 1-5, and each of them, were and are the owners and operators of Brent’s Deli
9 located at 2799 Townsgate Road, Westlake Village, CA 91361 and 19565 Parthenia Street, Northridge,
10 CA 91324 (“PREMISES”).

11 4. PLAINTIFF is informed and believes and based upon such information and belief
12 alleges prior to August 2, 2014, Defendants BRENT’S, Does 1-50 and Roe Corporations 1-50, and
13 each of them, knew or should have known the PREMISES, including but not limited to its component
14 parts, products, employees and safety mechanisms, was/were contaminated with Salmonella; its chef
15 and employees did not know proper procedures for food handling, cooling and/or sanitizing; food was
16 not properly, stored and cooled; wiping cloths were not kept in sanitizing solutions between uses;
17 employees were not washing their hands before handling food or utensils; a refrigerator was not
18 operating properly; plumbing fixtures were in disrepair; flooring surfaces were damaged preventing
19 adequate cleaning; Defendants BRENT’S, Does 1-50 and Roe Corporations 1-50, and each of them,
20 knew or should have known of the probable dangerous consequences of Salmonella and the above
21 described conditions, yet they willfully, and deliberately failed to clean, repair, service and/or maintain
22 the PREMISES, failed to avoid the probable dangerous consequences in a conscious disregard for the
23 rights and safety of people eating, using and visiting the PREMISES, including PLAINTIFF.
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26 5. In committing the acts alleged in this Complaint, Defendants BRENT’S, Does 1-50 and
27 Roe Corporations 1-50, and each of them, and each of them, acted with full knowledge of the
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1 defective, unsafe and dangerous conditions. Defendants BRENT'S, Does 1-50 and Roe Corporations
2 1-50, and each of them, had numerous opportunities to remedy the dangerous condition but failed to do
3 so. In committing the acts described in this Complaint, Defendants acted in conscious disregard of the
4 rights and safety of the public and Plaintiff and are guilty of malice, oppression and/or fraud thereby
5 warranting an assessment of punitive damages in an amount appropriate to punish defendant and deter
6 others from engaging in similar wrongful conduct.
7

8 6. The true names and capacities, whether individual, corporate, associate or otherwise, of
9 Defendants named herein as Does 1 through 50 and Roe Corporations 1 through 50 are unknown to
10 PLAINTIFF, who therefore sues such Defendants by such fictitious names and will amend this
11 Complaint to show their true names and capacities when ascertained together with the proper charging
12 allegations. PLAINTIFF is informed and believes and thereupon alleges that each of the defendants
13 designated herein as a DOE or ROE are responsible in some manner and liable herein by reason of
14 negligence, malfeasance, nonfeasance, wanton and reckless misconduct, and conscious disregard, and
15 said defendants directly, legally and proximately caused the injuries and damages asserted in this
16 Complaint by such wrongful conduct.
17

18 7. The acts, conduct, and nonfeasance herein carried out by each and every representative,
19 employee or agent of each and every corporate or business defendant, were authorized, ordered, and
20 directed by the respective defendant's corporate or business employers, officers, directors and/or
21 managing agents; that in addition thereto, said corporate or business employers, officers, directors
22 and/or managing agents had advance knowledge of, authorized, and participated in the herein
23 described acts, conduct and nonfeasance of their representatives, employees, agents and each of them;
24 and that in addition thereto, upon the completion of the aforesaid acts, conduct and nonfeasance of the
25 employees and agents, the aforesaid corporate and business employers, officers, directors and/or
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1 managing agents respectively ratified, accepted the benefits of, condoned and approved of each and all
2 of said acts, conduct or nonfeasance of their co-employees, employers, and agents.

3 8. In addition, at all times herein relevant, each defendant, whether named herein or
4 designated as a DOE or ROE, was a principal, master, employer and joint venturer of every other
5 defendant, and every defendant was acting within the scope of said agency authority, employment and
6 joint venture.
7

8 JURISDICTION AND VENUE

9 9. This Court has jurisdiction in this matter pursuant to Code of Civil Procedure section
10 410.10 because the accident and/or injury occurred within Ventura County, State of California.

11 10. Venue is proper in this Court pursuant to Code of Civil Procedure sections 395 and
12 395.5, in that the accident occurred and Defendants' obligations and liabilities arose in Ventura
13 County, State of California.
14

15 FACTS

16 The Outbreak

17 11. In July 2014, public health investigators in California learned of an increase of case
18 patients diagnosed with *Salmonella* serotype Montevideo. The California Department of Public Health
19 (CDPH) Microbial Disease laboratory (MDL) conducted pulsed field gel electrophoresis (PFGE) on
20 isolates cultured from patient specimens. Seven patients were infected with an indistinguishable
21 genetic strain identified as JIXX01.0645, an uncommon genetic strain. Infected patients resided in
22 Ventura and Los Angeles counties in California.
23

24 12. Information gathered by local health investigators revealed that all seven infected
25 patients had eaten at the defendant Brent's Deli just prior to onset of their symptoms. Health officials
26 then initiated active surveillance of patients diagnosed with *Salmonella* Montevideo strain
27 JIXX01.0645. In total, 19 patients were identified with the unique and uncommon strain JIXX01.0645.
28

1 Two additional patients were infected with strain J1XX01.1565, a clonal derivative of the main
2 outbreak strain. Two infected patients were employees of Brent's Deli.

3 13. In total, eight patients were hospitalized and the dates of illness-onset ranged from April
4 30, 2014 to August 15, 2014.

5 **Brent's Deli On-Site Inspection**

6
7 14. On July 9, 2014, environmental health staff at the County of Ventura Environmental
8 Health Division conducted an on-site inspection at Brent's Deli. Multiple food safety violations were
9 noted including improper sanitation, cooling, and storage issues. The restaurant manager was advised
10 on the violations and instructed to correct all violations immediately.

11 15. Another on-site inspection, conducted on July 22, in follow-up to the previous
12 inspection, again revealed numerous food safety violations. Specifically, potentially hazardous foods
13 were not held at or below 41 degrees and were not properly cooled, wiping cloths were not kept in
14 sanitizing solutions between uses, employees were not properly washing their hands before handling
15 food or clean utensils, a refrigerator was not operating properly, plumbing fixtures were leaking and in
16 disrepair, and floor surfaces were damaged preventing adequate cleaning.

17
18 16. On July 22, Ventura County Environmental Health staff advised BRENT'S that a
19 person with a confirmed case of salmonellosis ate at this facility on 7/14/14 and 7/5/14. BRENT'S
20 confirmed they were aware of the complaint, yet they did not close or clean the PREMISES.

21
22 17. Because of continuing reports of ill customers, Ventura County Environmental Health
23 staff conducted yet another inspection on August 11. This inspection revealed inadequate holding
24 temperatures for corned beef and improper thawing. On August 12, the restaurant was closed and a
25 third-party company was hired to oversee cleaning. The restaurant reopened the following day.

26 18. The outbreak investigation was closed on October 1, 2014 after no reports of illnesses
27 had been received after the last report on August 16, 2014.
28

1 **Salmonella Infections**

2 19. *Salmonella* is an enteric bacterium, which means that it lives in the intestinal tracts of
3 humans and other animals. *Salmonella* bacteria are usually transmitted to humans by eating foods
4 contaminated with human or animal feces. Contaminated foods usually look and smell normal.
5 Contaminated foods are often of animal origin, such as beef, poultry, milk, or eggs, but all foods,
6 including vegetables, may become contaminated. An infected food handler who neglects to wash his
7 or her hands with soap and warm water after using the bathroom may also contaminate food.
8

9 20. Once in the lumen of the small intestine, the bacteria penetrate the epithelium, multiply,
10 and enter the blood within 24 to 72 hours. As few as 15-20 cells of *Salmonella* bacteria can cause
11 salmonellosis or a more serious typhoid-like fever. Variables such as the health and age of the host,
12 and virulence differences among the serotypes, affect the nature and extent of the illness. Infants,
13 elderly, hospitalized, and immune suppressed persons are the populations that are the most susceptible
14 to disease, and suffer the most severe symptoms.
15

16 21. The acute symptoms of *Salmonella* gastroenteritis include the sudden onset of nausea,
17 abdominal cramping, and bloody diarrhea and mucous over a period of days. There is no real cure for
18 *Salmonella* infection, except treatment of the symptoms. Persons with severe diarrhea may require
19 rehydration, often with intravenous fluids.
20

21 22. Persons with diarrhea usually recover completely, although it may be several months
22 before their bowel habits are entirely normal. A small number of persons who are infected with
23 *Salmonella* will go on to develop pains in their joints, irritation of the eyes, and painful urination. This
24 is called Reiter's syndrome and/or reactive arthritis. It can last for months or years, and can lead to
25 chronic arthritis, which is difficult to treat. Antibiotic treatment does not make a difference in whether
26 or not the person later develops arthritis.
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1 **Stephanie Wehr’s Salmonella Infection**

2 23. On Saturday August 2, 2014, after BRENT’S knew its facility was contaminated with
3 Salmonella, Stephanie Wehr and her family ate at Brent’s Deli for lunch. She consumed a corn beef
4 sandwich on egg bread, potato salad, onion rings, pickle and iced tea.

5 24. The following day at work, Stephanie began to not feel well and went to bed early—
6 around 7:00 P.M.—upon returning home. Unfortunately, just three hours later, she was woken up by
7 severe abdominal cramping and pain, greater than 30 episodes of uncontrollable diarrhea, nausea,
8 vomiting, sweating, fever of 100.3 and chills. She recalls soiling many pairs of underwear and her
9 symptoms persisted throughout the night until she left for work at 5:00 A.M. the following morning.
10

11 25. Arriving at work at 7 A.M., Stephanie’s chills, sweats, fever, abdominal pain and
12 uncontrolled diarrhea persisted. After a co-worker of hers expressed concern, Stephanie consulted her
13 manager, who agreed to let her return home early.
14

15 26. Stephanie recalls crying at the office because she “knew that something was wrong,”
16 but she had to stay for an additional two hours until she could find someone to cover her shift.

17 27. After she was able to find someone to cover her shift, Stephanie contacted Kaiser
18 Appointment Center via telephone to get an urgent appointment. As Stephanie left work and walked to
19 her truck, she had uncontrollable diarrhea and defecated on herself while wearing her scrubs. She left
20 work and drove directly to Kaiser Oxnard to be evaluated by a physician for her continuing symptoms.
21

22 28. Stephanie was evaluated that morning. Her temperature was 99.9 and her weight
23 150lbs. Her evaluating physician diagnosed her with gastroenteritis, gave her a Zofran injection, a
24 Zofran prescription, and then sent her home.

25 29. Upon returning home, Stephanie’s symptoms continued to worsen. She was now
26 suffering a 103 degree fever, chills, ongoing diarrhea, excruciating abdominal pain with cramping,
27 nausea, and vomiting. She could not tolerate any sips of Gatorade or other liquids. She had one saltine
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1 cracker, which was then vomited up and she continued to defecate uncontrollably in her underwear,
2 sweatpants, and in her bed sheets. She recalls feeling “severely weak” and like she “was going to pass
3 out.”

4 30. Stephanie laid there in the fetal position when possible, due to her severe abdominal
5 cramping. She had not been able to take her prescribed medications for her underlying Sjogren’s
6 because of her nausea and vomiting.
7

8 31. Stephanie again called Kaiser on the morning of August 5. By this time, she could
9 barely move, was very short of breath, and weak. She was seen at Kaiser later that day and her heart
10 rate was an astounding 118. In addition, she had lost 10 pounds since her previous visit just one day
11 before. She had to be transported by wheelchair to the exam room because she was too weak, and the
12 Physician’s Assistant could not examine her abdomen because it was severely tender to the touch.
13

14 32. Stephanie was referred to Ventura Community Memorial Hospital for a CT scan and
15 immediate blood work. She was picked up from Kaiser and driven directly to the hospital. She was
16 admitted on that same day and not discharged until five days later. Her diagnosis was Salmonella
17 poisoning.

18 33. Stephanie’s Salmonella infection caused her to miss a total of six weeks of work and to
19 incur substantial medical expenses.

20 **FIRST CAUSE OF ACTION**
21 **STRICT LIABILITY CLAIM**
22 **(Violation of Federal Food Drug and Cosmetic Act, 21 U.S.C. § 342(a), and California's Sherman**
23 **Food, Drug, and Cosmetic Laws, California Health and Safety Code § 109875, et seq.)**

24 34. PLAINTIFF repeats and realleges the preceding paragraphs as though fully set forth
25 herein.

26 35. Defendants BRENT’S, Does 1-50 and Roe Corporations 1-50, and each of them,
27 each of which is in the business of manufacturing or selling food products or food ingredients, are in
28 the chain of distribution for the subject product—that is, the meal that the plaintiff purchased and

1 consumed. As a result of being the manufacturer of the subject products, Brent's Deli meals and the
2 ingredients used to manufacture the same, the defendants are each participants in the enterprise
3 responsible for placing the subject product in the stream of commerce and, thus, subject to strict
4 liability under the laws of California.

5
6 36. The meal that the plaintiff purchased and consumed was a ready-to-eat product,
7 intended for consumption without further preparation, cooking, or other step that might eliminate the
8 presence of Salmonella or other pathogens. Similarly, the ingredients used to manufacture the meal
9 was supplied for the particular purpose of being used as part of a ready-to-eat product, intended for
10 consumption without further preparation, cooking, or other step that might eliminate the presence of
11 Salmonella or other pathogens

12
13 37. A ready-to-eat product contaminated with Salmonella is adulterated within the meaning
14 of Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 342(a), and implementing regulations, and
15 California's Sherman Food, Drug, and Cosmetic Act, CA Health & Safety Code § 110545. *See* 21
16 C.F.R. §109.3(c) and (d). In addition, a ready-to-eat product contaminated with Salmonella is
17 defective, unreasonably dangerous, and not fit for human consumption. The subject product was
18 adulterated, as well as being defective, unreasonably dangerous, and not fit for human consumption.

19
20 38. The subject product was expected by the defendants to reach all consumers, and to be
21 consumed by them, without any substantial change, and the subject product did in fact did reach the
22 PLAINTIFF without any substantial change in the product.

23
24 39. PLAINTIFF consumed the subject product, having received the same without any
25 substantial change occurring, and she consumed the product in the manner expected and intended,
26 including when she consumed it.

27
28 40. PLAINTIFF was infected with Salmonella as a result of consuming the defective and
unreasonably dangerous subject product. Furthermore, Ms. Wehr suffered severe and continuing

1 injuries as alleged above, as a direct and proximate result of the consumption of the subject product.
2 Accordingly, the defendants are each strictly liable to PLAINTIFF for all damages proximately caused
3 by the manufacture and sale of a defective and unreasonably dangerous food product or food product
4 ingredient.

5
6 **SECOND CAUSE OF ACTION**
BREACH OF IMPLIED WARRANTY CLAIM

7 41. PLAINTIFF repeats and realleges the preceding paragraphs as though fully set forth
8 herein.

9 42. Defendants BRENT'S, Does 1-50 and Roe Corporations 1-50, and each of them,
10 impliedly warranted that the subject food products were of merchantable quality, and thus were safe
11 and fit for human consumption. PLAINTIFF purchased and consumed the subject product, and
12 reasonably relied upon the skill and judgment of defendants as to whether the products were of
13 merchantable quality and fit for human consumption.

14 43. Defendants BRENT'S, Does 1-50 and Roe Corporations 1-50, and each of them,
15 breached these implied warranties in that subject products were contaminated with Salmonella. As a
16 direct, legal and proximate result of the breach of implied warranties, PLAINTIFF suffered and may
17 continue to suffer injury, harm, special damages and economic loss.

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20 **THIRD CAUSE OF ACTION**
NEGLIGENCE & NEGLIGENCE PER SE CLAIMS

21 44. PLAINTIFF repeats and realleges the preceding paragraphs as though fully set forth
22 herein.

23 45. Defendants BRENT'S, Does 1-50 and Roe Corporations 1-50, and each of them, were
24 negligent in the manufacture, sale, or distribution of the subject products, thus causing the subject
25 outbreak, and thus also causing PLAINTIFF'S injury.

26 46. More specifically, the defendants each owed a duty to properly supervise, train, and
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1 monitor employees, or the employees of their agents or subcontractors, in the preparation of the
2 product or product-ingredients it sold, doing so to ensure compliance with the each defendant's own
3 specifications and performance standards, as well as to ensure compliance with all applicable health
4 regulations, including the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 342(a), implementing
5 regulations, 21 C.F.R. §109.3(c) and (d), FDA Good Manufacturing Practices regulations, 21 C.F.R.
6 Part 110, Subparts (A)-(G), and California's Sherman Food, Drug, and Cosmetic Act, CA Health &
7 Safety Code § 110545. The defendants violated one or more of the safety requirement that the law
8 imposes and, as a result, breached duties owed to the plaintiff, and injuring the plaintiff as a direct and
9 proximate result of such breaches.
10

11 47. Defendants BRENT'S, Does 1-50 and Roe Corporations 1-50, and each of them, each
12 additionally owed a duty to comply with statutory and regulatory provisions that pertained or applied
13 to either the import, manufacture, distribution, storage, or sale of their product or product-ingredients,
14 including, but not limited to, the Federal Food, Drug, and Cosmetics Act, § 402(a), as codified at 21
15 U.S.C. § 342(a), which bans the manufacture, sale and distribution of any "adulterated" food, and
16 California's Sherman Food, Drug, and Cosmetic Act, CA Health & Safety Code § 110545, which
17 imposes an identical ban on such adulteration.
18

19 48. Under both federal and applicable state law, food is adulterated if it contains a
20 "poisonous or deleterious substance, which may render it injurious to health." Salmonella is such a
21 substance. Thus, by either manufacture, distribution, storage, or sale of the subject product or the
22 subject product's ingredients, the defendants breached their statutory and regulatory duties, and the
23 plaintiffs were each injured as a direct and proximate result of such breaches.
24

25 49. Defendants BRENT'S, Does 1-50 and Roe Corporations 1-50, and each of their
26 negligent acts and omissions included, but were not limited to:

27 (a) Failure to prevent the contamination of the product or product-ingredients by
28

1 Salmonella, including the failure to implement or non-negligently perform inspection and monitoring
2 of the product or product-ingredients such that its adulterated condition would be discovered prior to
3 its sale or distribution to the public for human consumption.

4 (b) Failure to properly supervise, train, and monitor their employees, or the
5 employees of their agents or subcontractors, on how to ensure the manufacture, distribution or sale of
6 food product free of adulteration by potentially lethal pathogens.

8 50. The federal and state food safety regulations applicable here, and as set forth above,
9 establish a positive and definite standard of care in the import, manufacture, distribution or sale of
10 food, and the violation of these regulations constitutes negligence *per se*.

11 51. PLAINTIFF was in the class of persons intended to be protected by these statutes and
12 regulations, and were injured as the direct and proximate result of the defendants' violation of
13 applicable federal, state and local food safety regulations.

15 52. Defendants BRENT'S, Does 1-50 and Roe Corporations 1-50, and each of them,
16 breached the aforementioned duties as alleged above, which breach constituted the proximate cause of
17 injury to the plaintiff.

18 **FOURTH CAUSE OF ACTION**
19 **NEGLIGENT INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

20 53. PLAINTIFF repeats and realleges the preceding paragraphs as though fully set forth
21 herein.

22 54. Defendants BRENT'S, Does 1-50 and Roe Corporations 1-50, and each of them, knew
23 or should have known their failure to exercise due care in the performance of their duties would cause
24 Plaintiff severe emotional distress.

25 55. As a proximate result of Defendants' acts as alleged above, PLAINTIFF suffered
26 severe emotional distress and mental suffering all to their detriment.

28 **DAMAGES**

1 56. PLAINTIFF has suffered general and special, incidental and consequential damages as
2 the direct and proximate result of the acts and omissions of the defendants, which damages shall be
3 fully proven at the time of trial, including, but not limited to, damages for loss of enjoyment of life,
4 both past and future; medical and medical related expenses, both past and future; wage and economic
5 loss, past and future; emotional distress, and future emotional distress; medical and pharmaceutical
6 expenses, past and future; and other ordinary, incidental and consequential damages as would be
7 anticipated to arise under the circumstances.
8

9 **PUNITIVE DAMAGES**

10 57. In committing the acts alleged in this Complaint, Defendants BRENT'S, Does 1-50 and
11 Roe Corporations 1-50, and each of them, knew or should have known of the defective, unsafe and
12 dangerous conditions of the meals that they manufactured and sold to PLAINTIFF. Defendants
13 BRENT'S, Does 1-50 and Roe Corporations 1-50, and each of them, had numerous opportunities to
14 remedy the Salmonella contamination at their restaurant but failed to do so. In committing the acts
15 described in this Complaint, the defendants acted in conscious disregard of the rights and safety of
16 PLAINTIFF and are guilty of malice, oppression and/or fraud thereby warranting an assessment of
17 punitive damages in an amount appropriate to punish the defendant and deter others from engaging in
18 similar wrongful conduct.
19

20 **PRAYER FOR RELIEF**

21 WHEREFORE, PLAINTIFF prays as follows:

- 22 (1) For general damages according to proof;
23 (2) For medical, hospital, and related expenses according to proof;
24 (3) For loss of earnings according to proof;
25 (4) For punitive damages;
26 (5) For damages to the plaintiff's property;
27
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1 (6) For costs of suit herein incurred; and

2 (7) For such other and further relief as this Court may deem proper.

3 **JURY TRIAL DEMANDED**

4
5 Dated: January 22, 2015

Respectfully submitted,

6
7 **Quirk Law Firm, LLP**

8 _____
9 By: Trevor M. Quirk

10 Respectfully submitted,
11 **MARLER CLARK, LLP PS**

12 _____
13 By: William D. Marler (pro hac vice pending)
14 Attorneys for Plaintiffs