

manufacture, preparation, service and sale of food to its customers at that location, and as such, was doing business in Davidson County, North Carolina. The defendant manufactured, prepared, served and sold to plaintiff food that was contaminated, causing his infection of *Salmonella* and related injuries, as described below.

II.

JURISDICTION AND VENUE

3. This court is vested with jurisdiction over the defendant because, at all times material hereto, this corporation was doing business in the State of North Carolina. This court is vested with original jurisdiction because the damages sought by the plaintiff are in excess of Twenty Five Thousand Dollars (\$25,000.00 USD).

4. The venue of this action is proper in Davidson County, pursuant to N.C. Gen. Stat. §§ 1-79 and 1-80, because the causes of action arose in this county, and because, at all times material hereto, the defendant was doing business in this county, and is deemed to be a resident of this county for these purposes.

III.

FACTUAL ALLEGATIONS

The Tarheel Q *Salmonella* Outbreak

5. The North Carolina Division of Public Health reports that at least 127 people have been sickened, and at least 7 hospitalized, in an outbreak of *Salmonella* that officials link to the Lexington Tarheel Q barbecue restaurant. *Salmonella* has been identified as a cause in at least 15 cases. All 127 people ate at Tarheel Q on West US Highway 64 in Lexington, in the days

before falling ill, officials said. About two-thirds of the people affected are from Davidson and Davie County.

***Salmonella* Infection**

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

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

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

6.4 Persons with diarrhea usually recover completely, although it may be several months before their bowel habits are entirely normal. A small number of persons who are

infected with *Salmonella* will go on to develop pains in their joints, irritation of the eyes, and painful urination. This is called Reiter's syndrome or reactive arthritis. It can last for months or years, and can lead to chronic arthritis, which is difficult to treat. Antibiotic treatment does not make a difference in whether or not the person later develops arthritis.

Plaintiff, David Lutz's *Salmonella* Infection

7. Plaintiff purchased and consumed chicken and barbeque "special" on June 9, 2015. Within days he began to suffer nausea, diarrhea and dehydration. On June 11, 2015 he sought medical treatment that including antibiotics. Plaintiff continues to suffer ongoing symptoms.

IV.

FIRST CAUSE OF ACTION

(Product Liability and Breach of Warranties)

8. The defendant manufactured and sold the adulterated food that injured the plaintiff. The defendant is the product manufacturer of the food that injured the plaintiff under the North Carolina Product Liability Act ("Act"), N.C. Gen. Stat. §§ 99B-1 et al, and similar statutes. The contaminated food that the defendant manufactured and sold, and that the plaintiff consumed, was a product within the meaning of the Act and similar statutes. The defendant was a product manufacturer and seller of the *Salmonella*-contaminated food that injured the plaintiff.

9. Under the Act, and similar statutes, the defendant owed to the plaintiff a duty to manufacture a product that was reasonably safe in construction, that did not materially deviate from applicable design specifications, and that otherwise did not deviate materially from identical units in the defendant's product line.

10. Under the Act, and similar statutes, the defendant owed to the plaintiff a duty to manufacture a product that conformed to its express warranties that the food it prepared and sold was, among other things, fit for human consumption, healthful, and suitable for all persons.

11. Under the Act, and similar statutes, the defendant owed to the plaintiff a duty to manufacture a product that conformed to their implied warranties, including the implied warranty of merchantability, and that was fit for human consumption.

12. The plaintiff alleges that the food that the defendant manufactured and sold, and that the plaintiff consumed, was not reasonably safe in construction and did not conform to the defendant's express or implied warranties, because it was contaminated and adulterated with *Salmonella*.

13. The plaintiff is a person who the defendant might reasonably have expected to use, consume or be affected by its contaminated food products.

14. Because the food that the defendant manufactured and sold, and that was later consumed by the plaintiff, was adulterated, was not reasonably safe in design and construction, was not fit for human consumption, lacked adequate warnings and instructions, and did not conform to the defendant's express or implied warranties, the defendant breached both express and implied warranties, and are liable to the plaintiff for the harm proximately caused to them by its manufacture and sale of contaminated and adulterated food products.

V.

SECOND CAUSE OF ACTION

(Negligence)

15. The defendant manufactured, distributed, and sold a food product that was adulterated, not fit for human consumption, and that was not reasonably safe as designed, manufactured, or sold.

16. The defendant was negligent in manufacturing, distributing, and selling a food product that was adulterated with *Salmonella*, not fit for human consumption, and not reasonably safe because it was contaminated with *Salmonella* and 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 humans.

17. The defendant had a duty to properly supervise, train, and monitor its employees, or the employees of their agents or subcontractors, engaged in the preparation of its food products, to ensure compliance with the defendant's operating standards and to ensure compliance with all applicable health regulations. The defendant failed to properly supervise, train, and monitor these employees engaged in the manufacture, preparation and delivery of the food product the defendant sold to its customers, and thus breached that duty.

18. The defendant owed a duty to the plaintiff to comply with all statutory and regulatory provisions that pertained or applied to the manufacture, distribution, storage, labeling, and sale of its food products, including all applicable local, state, and federal health and safety regulations, such as N.C. Gen. Stat. Article 12, Chapter 106, and the Federal Food, Drug and Cosmetics Act. The defendant, by its manufacture, distribution, storage, labeling, and sale of adulterated, unsafe, and unhealthy food products to the plaintiff, failed to conform to this duty.

19. The plaintiff, as consumer of the defendant's food products, is therefore among the class of persons designed to be protected by the statutory and regulatory provisions pertaining to the manufacture, distribution, storage, labeling, and sale of food by the defendant.

20. The defendant owed the plaintiff the duty to exercise reasonable care in the preparation and sale of its food products, as it was reasonably foreseeable that the defendant's manufacture and sale of food products contaminated with *Salmonella* would cause injury and harm to its customers, including the plaintiff. The defendant breached that duty, and thereby caused injury to the plaintiff.

VI.

DAMAGES

21. The plaintiff suffered general and special, incidental and consequential damages as the direct and proximate result of the acts and omissions of the defendant, which damages are in excess of Ten Thousand Dollars (\$10,000.00) and shall be fully proven at the time of trial. These damages include, but are not limited to: damages for wage loss; medical and medical-related expenses; travel and travel-related expenses; emotional distress; fear of harm and humiliation; physical pain; physical injury; and all other ordinary, incidental and consequential damages as would be anticipated to arise under the circumstances.

PRAYER FOR RELIEF

WHEREFORE, the plaintiff prays for the following relief:

- (1) For a trial by jury;
- (2) That the plaintiff each recover judgment for damages for such sums in excess of \$10,000.00, as shall be determined to fully and fairly compensate him for all general, special,

incidental and consequential damages respectively incurred by them as the direct and proximate result of the acts and omissions of the defendant;

(3) That the court awards the plaintiff his costs, disbursements and reasonable attorneys' fees incurred;

(4) That the court award the 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

(5) That the court awards such other and further relief as it deems necessary and equitable in the circumstances.

THIS the 29th day of June, 2015.

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