

CAUSE NO. _____

JACK AND LOIS STOWE,

Plaintiffs,

vs.

ANDREW & WILLIAMSON FRESH
PRODUCE, INC.

Defendant.

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IN THE DISTRICT COURT

HIDALGO COUNTY, TX

____TH JUDICIAL DISTRICT

PLAINTIFFS ORIGINAL PETITION

COME NOW Plaintiffs Jack and Lois Stowe, by and through their attorneys of record, asserting claims against the defendant, Andrew & Williamson Fresh Produce Inc., stating and alleging as follows:

I. DISCOVERY CONTROL PLAN

1. Pursuant to Rule 190.4 of the Texas Rules of Civil Procedure, Plaintiffs intends for discovery to be conducted under Level 3 as provided by Rule 190.3.

II. PARTIES

2. Plaintiffs are residents of Mission, Texas, and are citizens of the state of Texas.

3. Defendant, Andrew and Williamson Fresh Produce, Inc. ("AWFP") is a corporation organized and existing under the laws of the State of California, with its principal place of business, on information and belief, in San Diego, California. AWFP conducts substantial business in the

State of Texas. Specifically, at all relevant times, AWFPP was a company that participated in the manufacture, distribution, and/or sale of the contaminated food products that were the proximate cause of the Plaintiff's injuries.

III. JURISDICTION AND VENUE

4. The amount in controversy herein, exclusive of costs and interest, exceeds the minimal jurisdictional limits of this Court.

5. Venue is proper in Hidalgo County, Texas, pursuant to Section 15.002(a)(1) of the Texas Civil Practice and Remedies Code because the defendant conducts business in Hidalgo County, and because a substantial portion of the acts and omissions giving rise to Plaintiffs' causes-of-action occurred in Montgomery County, Texas.

6. The Court has general and specific personal jurisdiction over Defendant because it has sufficient contacts, generally and with regard to this specific action, such that the exercise of jurisdiction over it is proper and does not offend traditional notions of fair play and substantial justice. Defendant conducts and solicits business in Texas, derives substantial revenues and profits from its business in Texas, purposely directs its activities towards Texas and its residents, and purposely avails itself of the privilege of conducting business in Texas.

IV. GENERAL ALLEGATIONS

The *Salmonella* Poona Outbreak

7. The CDC, multiple states, and the U.S. Food and Drug Administration (FDA) are investigating a multistate outbreak of *Salmonella* Poona infections linked to imported cucumbers grown and packed by Rancho Don Juanito in Mexico and distributed by Andrew & Williamson Fresh Produce.

8. Public health investigators are using the PulseNet system to identify illnesses that may be part of this outbreak. CDC coordinates PulseNet, the national subtyping network of public health and food regulatory agency laboratories. DNA “fingerprinting” is performed on *Salmonella* bacteria isolated from ill people by using a technique called pulsed-field gel electrophoresis, or PFGE. PulseNet manages a national database of these DNA “fingerprints” to identify possible outbreaks. Three DNA “fingerprints” (outbreak strains) are included in this investigation.

9. As of September 8, 2015, a total of 341 people infected with the outbreak strains of *Salmonella* Poona have been reported from 30 states. The number of ill people reported from each state is as follows: Alaska (9), Arizona (66), Arkansas (6), California (72), Colorado (14), Hawaii (1), Idaho (8), Illinois (6), Kansas (1), Kentucky (1), Louisiana (4), Minnesota (12), Missouri (8), Montana (10), Nebraska (2), Nevada (7), New Mexico (18),

New York (4), North Dakota (1), Ohio (2), Oklahoma (8), Oregon (8), Pennsylvania (2), South Carolina (7), Texas (18), Utah (30), Virginia (1), Washington (10), Wisconsin (2), and Wyoming (3).

10. Among people for whom information is available, illnesses started on dates ranging from July 3, 2015 to August 30, 2015. Ill people range in age from less than 1 year to 99, with a median age of 15. Fifty-three percent of ill people are children younger than 18 years. Fifty-eight percent of ill people are female. Among 214 people with available information, 70 (33%) report being hospitalized. Two deaths have been reported from California (1) and Texas (1).

11. On September 4, 2015, Andrew & Williamson Fresh Produce voluntarily recalled all cucumbers sold under the "Limited Edition" brand label during the period from August 1, 2015 through September 3, 2015 because they may be contaminated with *Salmonella*. The type of cucumber is often referred to as a "slicer" or "American" cucumber. It is dark green in color and typical length is 7 to 10 inches. In retail locations it is typically sold in a bulk display without any individual packaging or plastic wrapping. Limited Edition cucumbers were distributed in the states of Alaska, Arizona, Arkansas, California, Colorado, Florida, Idaho, Illinois, Kansas, Kentucky, Louisiana, Minnesota, Mississippi, Montana, Nevada, New Jersey, New Mexico, Oklahoma, Oregon, South Carolina, Texas, and

Utah and reached customers through retail, food service companies, wholesalers, and brokers. Further distribution to other states may have occurred.

12. The Texas Department of State Health Services is urging people to follow national guidance not to eat recalled cucumbers that may be contaminated with *Salmonella*, a bacteria that can make people sick. The guidance was issued in connection with a multi-state *Salmonella* Poona outbreak that appears to be linked to imported cucumbers from Mexico distributed by Andrew & Williamson Fresh Produce, a California company. The investigation has identified 341 confirmed *Salmonella* Poona cases nationwide, including 18 in Texas. The Texas count includes one death, a person with serious underlying health conditions who died in late August.

Prior *Salmonella* Outbreaks Linked to Cucumbers

13. In 2014 a total of 275 cases were reported from 29 states and the District of Columbia. An additional 18 suspected cases not meeting the case definition were excluded from the analysis because they were found to be temporal outliers and unlikely to be related. Illness onset dates ranged from May 25 to September 29, 2014. Median age of patients was 42 years (range = <1–90 years); 66% (174 of 265) were female. Thirty-four percent (48 of 141) were hospitalized; one death was reported in an elderly man with

bacteremia. A total of 101 patients were interviewed using the supplemental questionnaire about exposures in the week before illness onset. This questionnaire focused on leafy greens and tomatoes and contained smaller sections on fruit, vegetables, and seafood common to the Delmarva region.

14. In 2013 the CDC collaborated with public health officials in many states and the U.S. Food and Drug Administration (FDA) to investigate a multistate outbreak of *Salmonella* Saintpaul infections linked to imported cucumbers supplied by Daniel Cardenas Izabal and Miracle Greenhouse of Culiacán, Mexico and distributed by Tricar Sales, Inc. of Rio Rico, Arizona. A total of 84 persons infected with the outbreak strain of *Salmonella* Saintpaul were reported from 18 states. The number of ill persons identified in each state was as follows: Arizona (11), California (29), Colorado (2), Idaho (2), Illinois (3), Louisiana (1), Maryland (1), Massachusetts (1), Minnesota (9), Nevada (1), New Mexico (2), North Carolina (3), Ohio (3), Oregon (2), South Dakota (2), Texas (7), Virginia (3), and Wisconsin (2). Among persons for whom information was available, illness onset dates ranged from January 12, 2013 to April 28, 2013. Ill persons ranged in age from less than 1 year to 89 years, with a median age of 27 years. Sixty-two percent of ill persons were female. Among 60

persons with available information, 17 (28%) were hospitalized. No deaths were reported.

Salmonella

15. The term *Salmonella* refers to a group or family of bacteria that variously cause illness in humans. The taxonomy and nomenclature of *Salmonella* have changed over the years and are still evolving. Currently, the Centers for Disease Control and Prevention (CDC) recognizes two species, which are divided into seven subspecies. These subspecies are divided into over 50 serogroups based on somatic (O) antigens present. The most common *Salmonella* serogroups are A, B, C, D, E, F, and G. Serogroups are further divided into over 2,500 serotypes. *Salmonella* serotypes are typically identified through a series of tests of antigenic formulas listed in a document called the Kauffmann-White Scheme published by the World Health Organization Collaborating Centre for Reference and Research on *Salmonella*.

16. *Salmonella* is an enteric bacterium, which means that it lives in the intestinal tracts of humans and other animals, including birds. *Salmonella* bacteria are usually transmitted to humans by eating foods contaminated with animal feces or foods that have been handled by infected food service workers who have practiced poor personal hygiene. 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. Many raw foods of animal origin are frequently contaminated, but thorough cooking kills *Salmonella*.

Medical Complications of Salmonellosis

17. The term reactive arthritis refers to an inflammation of one or more joints, following an infection localized at another site distant from the affected joints. The predominant site of the infection is the gastrointestinal tract. Several bacteria, including *Salmonella*, induce septic arthritis. The resulting joint pain and inflammation can resolve completely over time or permanent joint damage can occur.

18. The reactive arthritis associated with Reiter's may develop after a person eats food that has been tainted with bacteria. In a small number of persons, the joint inflammation is accompanied by conjunctivitis (inflammation of the eyes), and uveitis (painful urination). *Id.* This triad of symptoms is called Reiter's Syndrome. Reiter's syndrome, a form of reactive arthritis, is an uncommon but debilitating syndrome caused by gastrointestinal or genitourinary infections. The most common gastrointestinal bacteria involved are *Salmonella*, *Campylobacter*, *Yersinia*, and *Shigella*. A triad of arthritis, conjunctivitis, and urethritis characterizes

Reiter's syndrome, although not all three symptoms occur in all affected individuals.

19. *Salmonella* is also a cause of a condition called post infectious irritable bowel syndrome (IBS), which is a chronic disorder characterized by alternating bouts of constipation and diarrhea, both of which are generally accompanied by abdominal cramping and pain. In one recent study, over one-third of IBS sufferers had had IBS for more than ten years, with their symptoms remaining fairly constant over time. IBS sufferers typically experienced symptoms for an average of 8.1 days per month.

The Plaintiffs' Illness

20. In May 2015, Jack and Lois Stowe drove from Texas to Minnesota to visit family. On August 7, Lois Stowe's birthday, Jack Stowe decided to treat he and his wife to lunch at the Red Lobster in Maplewood, Minnesota, which is a suburb of St. Paul. They were served a salad with cucumbers in it at the table. The cucumbers, which had been manufactured and distributed by the defendant, were contaminated by *Salmonella* Poona bacteria.

21. Lois's illness began on August 11, 2015, on which date she became ill with nausea, severe diarrhea and, ultimately, dehydration. Jack also began to feel ill with similar symptoms on the same date.

22. Lois's family took rushed her to the Cuyuna Regional Medical Center on August 12, where she was seen in the ER and admitted to the hospital. Lois spent 8 days in the hospital receiving IV fluids to correct the severe dehydration-induced kidney failure that she had developed.

23. A stool culture taken while hospitalized confirmed that Lois was part of the *Salmonella* Poona outbreak linked to defendant's cucumbers.

24. Jack continued to feel sick and had diarrhea during this time, but he did not seek medical attention because he was not as sick as Lois was.

25. After Lois was discharged from the hospital, she was so weak and deconditioned that she could hardly walk. Ever since discharge from the hospital, she has done her best to stay hydrated and regain her former health, but she has continued to feel poorly, with no appetite and very lethargic. She has received additional medical treatment for her ongoing injuries.

V. CAUSES OF ACTION

STRICT LIABILITY

26. The plaintiffs reincorporate allegations contained in paragraphs 1 – 25.

27. The food product at issue in this suit was designed, manufactured, constructed, marketed and/or distributed by and through the agents and/or representatives of the defendant.

28. The defendant was regularly engaged in the business of supplying or placing products, like the product in question, in the stream of commerce for use by the consuming public, including the plaintiffs. Further, such conduct in selling items such as the food product was solely for commercial purposes.

29. The food product in question remained unchanged from the time it was originally manufactured, distributed and sold by the defendant until it reached the plaintiffs. The product in question was defective and in an unreasonably dangerous condition when it left the hands of defendant and remained defective and unreasonably dangerous at all times thereafter until it ultimately caused the plaintiffs' illnesses and damages.

30. At the time the product was placed into the stream of commerce, it was, or should have been, reasonably expected and foreseeable that the food product would be used by persons such as plaintiffs in the manner and application in which it was being used, *i.e.* for consumption.

31. At the time the food product left control of the defendant, it was defective and unreasonably dangerous in that it was not adequately

manufactured or marketed to minimize the risk of injury or death. Specifically, the food was contaminated with *Salmonella*.

32. The above unreasonably dangerous defects, among others, in the product in question were the proximate and producing cause of the plaintiffs' illnesses and damages.

33. The plaintiffs further contend that defendant is not entitled to a rebuttal presumption that it is not liable for any injury to plaintiffs caused by its formulation, labeling or design of the food product because it has not established that the product's formulation, labeling and design complied with the mandatory standards adopted by the Federal Government or agency or that such standards apply to this product. Additionally, in the event that the defendant does establish compliance with a standard, the plaintiffs will present evidence that the standard is inadequate to protect the public from unreasonable risks of injury or damage.

NEGLIGENCE, NEGLIGENCE *PER SE*

34. The plaintiffs reincorporate allegations contained in paragraphs 1 – 33.

35. The defendant owed a duty to the plaintiffs to take reasonable care to prevent the manufacture, distribution, and sale of food products contaminated with *Salmonella* or other foodborne pathogens.

36. The defendant owed a duty to the plaintiffs to maintain its premises, equipment, and facilities, and supervise its employees, in a reasonable manner to prevent the contamination of the food products that it manufactured, distributed and/or sold by *Salmonella*, or other pathogens.

37. The defendant owed a duty to the plaintiffs to comply with all applicable laws and regulations relating to the manufacture, distribution, and sale of food, requiring that such food be free of pathogens, and unadulterated.

38. The plaintiffs were among the class of persons, namely consumers, intended to be protected by laws related to the manufacture, distribution, and sale of food that was free from pathogens and unadulterated.

39. The defendant breached these duties. The defendant's breach of these duties was the proximate cause of the plaintiffs' illnesses and damages.

BREACH OF IMPLIED WARRANTY

40. The plaintiffs reincorporate allegations contained in paragraphs 1-39.

41. The defendant, through its manufacture, distribution, and sale of food to consumers impliedly warranted that its food products were fit

for their intended purpose, *i.e.* consumption; and would pass through trade without exception.

42. The defendant, in manufacturing, distributing, and selling food products contaminated with *Salmonella* breached these implied warranties.

43. The defendant's breach of these implied warranties was the proximate cause of the plaintiffs' illnesses and damages.

VI. DAMAGES

44. As a proximate result of Defendant's conduct, Plaintiffs suffered injuries and damages, including the following:

- (a) past and future physical pain and suffering;
- (b) past and future mental anguish;
- (c) past and future medical expenses;
- (d) past and future lost wages and loss of earning capacity;
and
- (e) past and future physical impairment.

VII. INTEREST

45. The plaintiffs claim pre-judgment and post-judgment interest at the maximum amount allowed by law.

VIII. DEMAND FOR A JURY TRIAL

46. The plaintiffs hereby demand that this case be set for a trial by jury. The cost for a jury trial is enclosed with the filing of this, the plaintiffs' Original Petition and Jury Demand.

XI. CONCLUSION AND PRAYER

WHEREFORE, PREMISES CONSIDERED, the plaintiffs respectfully pray that upon final trial of this matter, they recover a judgment against the defendant that includes:

- (a) a judgment from the defendant, in an amount sufficient to fully compensate the plaintiffs for her damages and in an amount that exceeds the minimal jurisdictional limits of this Court;
- (b) pre-judgment interest as provided by law;
- (c) post-judgment interest as provided by law;
- (d) cost of suit; and
- (e) all such other and further relief, both general and special, at law or in equity, to which the plaintiffs may show themselves justly entitled.

Respectfully submitted,

By: _____


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