



Jonathan V. O'Steen, Esq. – State Bar #024043
O'STEEN & HARRISON, PLC
300 W. Clarendon Ave., Suite 400
Phoenix, Arizona 85013-3424
(602) 252-8888
(602) 274-1209 FAX
josteen@vanosteen.com

William D. Marler, Esq. – WSBA #17233 (*Pro Hac Vice* Pending)
MARLER CLARK, L.L.P., P.S.
1301 Second Ave., Suite 2800
Seattle, Washington 98101
(206) 346-1876
(206) 346-1898 FAX
bmarler@marlerclark.com
Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE DISTRICT OF ARIZONA

Mike Ross and Staci Ross, husband
and wife, on behalf of J.R. and B.R.,
minors,

Plaintiffs,

v.

Andrew and Williamson Sales, Co., a
California corporation,

Defendant.

NO.

COMPLAINT

DEMAND FOR JURY TRIAL

Plaintiffs, by and through undersigned counsel, and for their claims against the
Defendant, alleges as follows:



PARTIES

1. Plaintiffs Mike Ross and Staci Ross reside in Maricopa County, Arizona. Plaintiffs are the parents and legal guardians of J.R. and B.R., ages two years old and seven months, respectively.
2. Defendant Andrew and Williamson Sales, Co. is a corporation organized and existing under the laws of California and conducts business throughout the United States, including the State of Arizona. Its principal place of business is in San Diego, California.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332. The amount in controversy exceeds \$75,000 exclusive of interests and costs, and this is an action by individual Plaintiffs against a Defendant with its principal place of business in another state.
4. Venue in this judicial district is proper pursuant to 28 U.S.C. § 1391(a)(2) because a substantial part of the events or omissions giving rise to the claim occurred in this judicial district and because the Defendant was subject to personal jurisdiction in this judicial district at the time of the commencement of the action.

FACTUAL ALLEGATIONS

The *Salmonella* Poona Outbreak

5. The CDC, multiple states, and the U.S. Food and Drug Administration (FDA) are investigating a multistate outbreak of *Salmonella* Poona infections linked



1 to imported cucumbers grown and packed by Rancho Don Juanito in Mexico
2 and distributed by Andrew & Williamson Sales, Co.

3
4 6. Public health investigators are using the PulseNet system to identify illnesses
5 that may be part of this outbreak. CDC coordinates PulseNet, the national
6 subtyping network of public health and food regulatory agency laboratories.
7 DNA "fingerprinting" is performed on *Salmonella* bacteria isolated from ill
8 people by using a technique called pulsed-field gel electrophoresis, or PFGE.
9 PulseNet manages a national database of these DNA "fingerprints" to identify
10 possible outbreaks. Three DNA "fingerprints" (outbreak strains) are included
11 in this investigation.
12

13
14 7. As of September 15, 2015, a total of 418 people infected with the outbreak
15 strains of *Salmonella* Poona have been reported from 31 states. The number
16 of ill people reported from each state is as follows: Alaska (10), Arizona (72),
17 Arkansas (6), California (89), Colorado (16), Hawaii (1), Idaho (14), Illinois (6),
18 Indiana (2), Kansas (1), Kentucky (1), Louisiana (4), Minnesota (20), Missouri
19 (8), Montana (13), Nebraska (2), Nevada (9), New Mexico (22), New York (4),
20 North Dakota (2), Ohio (2), Oklahoma (10), Oregon (8), Pennsylvania (2),
21 South Carolina (8), Texas (20), Utah (37), Virginia (1), Washington (15),
22 Wisconsin (9), and Wyoming (4).
23

24
25 8. Among people for whom information is available, illnesses started on dates
26 ranging from July 3, 2015 to September 3, 2015. Ill people range in age from
27 less than 1 year to 99, with a median age of 17. Fifty-two percent of ill people
28 are children younger than 18 years. Fifty-three percent of ill people are



1 female. Among 290 people with available information, 91 (31%) report being
2 hospitalized. Two deaths have been reported from California (1) and Texas
3 (1).
4

5 9. Epidemiologic, laboratory, and traceback investigations have identified
6 imported cucumbers from Mexico and distributed by Andrew & Williamson
7 Sales, Co. as a likely source of the infections in this outbreak.
8

9 10. On September 4, 2015, Andrew & Williamson Sales, Co. voluntarily recalled
10 all cucumbers sold under the "Limited Edition" brand label during the period
11 from August 1, 2015 through September 3, 2015 because they may be
12 contaminated with *Salmonella*. The type of cucumber is often referred to as a
13 "slicer" or "American" cucumber. It is dark green in color and typical length is
14 7 to 10 inches. In retail locations it is typically sold in a bulk display without
15 any individual packaging or plastic wrapping. Limited Edition cucumbers were
16 distributed in the states of Alaska, Arizona, Arkansas, California, Colorado,
17 Florida, Idaho, Illinois, Kansas, Kentucky, Louisiana, Minnesota, Mississippi,
18 Montana, Nevada, New Jersey, New Mexico, Oklahoma, Oregon, South
19 Carolina, Texas, and Utah and reached customers through retail, food service
20 companies, wholesalers, and brokers. Further distribution to other states may
21 have occurred.
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24

25 **Prior Cucumber *Salmonella* Outbreaks**

26 11. In 2013 the CDC collaborated with public health officials in many states and
27 the U.S. Food and Drug Administration (FDA) to investigate a multistate
28 outbreak of *Salmonella* Saintpaul infections linked to imported cucumbers

1 supplied by Daniel Cardenas Izabal and Miracle Greenhouse of Culiacán,
2 Mexico and distributed by Tricar Sales, Inc. of Rio Rico, Arizona. A total of 84
3 persons infected with the outbreak strain of *Salmonella* Saintpaul were
4 reported from 18 states. The number of ill persons identified in each state was
5 as follows: Arizona (11), California (29), Colorado (2), Idaho (2), Illinois (3),
6 Louisiana (1), Maryland (1), Massachusetts (1), Minnesota (9), Nevada (1),
7 New Mexico (2), North Carolina (3), Ohio (3), Oregon (2), South Dakota (2),
8 Texas (7), Virginia (3), and Wisconsin (2). Among persons for whom
9 information was available, illness onset dates ranged from January 12, 2013
10 to April 28, 2013. Ill persons ranged in age from less than 1 year to 89 years,
11 with a median age of 27 years. Sixty-two percent of ill persons were female.
12 Among 60 persons with available information, 17 (28%) were hospitalized. No
13 deaths were reported.

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16
17 12. In 2014 a total of 275 cases were reported from 29 states and the District of
18 Columbia linked to cucumbers grown in the Delmarva region on Maryland.
19 Illness onset dates ranged from May 25 to September 29, 2014. Median age
20 of patients was 42 years (range = <1–90 years); 66% (174 of 265) were
21 female. Thirty-four percent (48 of 141) were hospitalized; one death was
22 reported in an elderly man with bacteremia.
23

24 ***Salmonella***

25
26 13. The term *Salmonella* refers to a group or family of bacteria that variously
27 cause illness in humans. The taxonomy and nomenclature of *Salmonella*
28 have changed over the years and are still evolving. Currently, the Centers for

1 Disease Control and Prevention (CDC) recognizes two species, which are
2 divided into seven subspecies. These subspecies are divided into over 50
3 serogroups based on somatic (O) antigens present. The most common
4 *Salmonella* serogroups are A, B, C, D, E, F, and G. Serogroups are further
5 divided into over 2,500 serotypes. *Salmonella* serotypes are typically
6 identified through a series of tests of antigenic formulas listed in a document
7 called the Kauffmann-White Scheme published by the World Health
8 Organization Collaborating Centre for Reference and Research on
9 *Salmonella*.

10
11
12 14. *Salmonella* is an enteric bacterium, which means that it lives in the intestinal
13 tracts of humans and other animals, including birds. *Salmonella* bacteria are
14 usually transmitted to humans by eating foods contaminated with animal
15 feces or foods that have been handled by infected food service workers who
16 have practiced poor personal hygiene. Contaminated foods usually look and
17 smell normal. Contaminated foods are often of animal origin, such as beef,
18 poultry, milk, or eggs, but all foods, including vegetables, may become
19 contaminated. Many raw foods of animal origin are frequently contaminated,
20 but thorough cooking kills *Salmonella*.

23 **Medical Complications of Salmonellosis**

24
25 15. The term reactive arthritis refers to an inflammation of one or more joints,
26 following an infection localized at another site distant from the affected joints.
27 The predominant site of the infection is the gastrointestinal tract. Several
28 bacteria, including *Salmonella*, induce septic arthritis. The resulting joint pain



1 and inflammation can resolve completely over time or permanent joint
2 damage can occur.

3
4 16. The reactive arthritis associated with Reiter's may develop after a person eats
5 food that has been tainted with bacteria. In a small number of persons, the
6 joint inflammation is accompanied by conjunctivitis (inflammation of the eyes),
7 and uveitis (painful urination). *Id.* This triad of symptoms is called Reiter's
8 Syndrome. Reiter's syndrome, a form of reactive arthritis, is an uncommon
9 but debilitating syndrome caused by gastrointestinal or genitourinary
10 infections. The most common gastrointestinal bacteria involved are
11 *Salmonella*, *Campylobacter*, *Yersinia*, and *Shigella*. A triad of arthritis,
12 conjunctivitis, and urethritis characterizes Reiter's syndrome, although not all
13 three symptoms occur in all affected individuals.
14
15

16 17. *Salmonella* is also a cause of a condition called post infectious irritable bowel
17 syndrome (IBS), which is a chronic disorder characterized by alternating
18 bouts of constipation and diarrhea, both of which are generally accompanied
19 by abdominal cramping and pain. In one recent study, over one-third of IBS
20 sufferers had had IBS for more than ten years, with their symptoms remaining
21 fairly constant over time. IBS sufferers typically experienced symptoms for an
22 average of 8.1 days per month.
23
24

25 **J.R.'s *Salmonella* Illness**

26 18. On the morning of July 28, J.R. woke up early and was not acting like himself.
27 Despite this, he went to swim class that morning. On the way home from
28 swim class, Mike and Staci stopped to pick up food.



1 19. Upon returning home, J.R. did not eat. Instead, J.R. fell asleep and took a
2 long nap at a time that was much earlier than normal.

3 20. When J.R. woke up, he was still not feeling well, and felt warm. Having his
4 temperature checked revealed that he was carrying a 101.7°F fever.

5 21. On the following morning, J.R. was taken to see his pediatrician. He was
6 examined and told that he likely had a stomach virus that would run its
7 course. The doctor's main concern was keeping J.R. hydrated because he
8 was having difficulty getting and keeping fluids down, was having fevers, and
9 was having frequent diarrhea.

10 22. For the next several days, J.R. remained extremely ill, with fevers ranging
11 from 101.5°F to 102.5°F. And J.R.'s symptoms of severe diarrhea, painful
12 stomach cramping, and vomiting continued. He was barely able to eat or
13 drink.

14 23. J.R. was having such frequent diarrhea that he was unable to sleep. And
15 when he was able to dose off, diarrhea and fevers often woke him up
16 throughout the night.

17 24. Mike and Staci worked tirelessly to mitigate J.R.'s symptoms. They had to
18 keep J.R. on Tylenol for the fevers, and were constantly trying to keep him
19 hydrated by trying to get him to drink fluids, eat ice, and eat popsicles, be he
20 did not feel well enough to eat or drink much, and dehydration was a
21 continued concern.

22 25. Because of his illness, J.R. was unable to complete the last two days of his
23 swimming class.



B.R.'s *Salmonella* Illness

1
2 26. Very early on the morning on August 1, 2-15, B.R. woke up and started
3 having soft to loose stools. Later that day and into Sunday, B.R. began to
4 develop a low-grade fever, and diarrhea.
5

6 27. Once on Sunday, and once on Monday, B.R. had blood in his stool.

7 28. On Monday afternoon, B.R. was taken to see his pediatrician. B.R.'s doctor
8 said it was possible that he had a stomach virus like they thought J.R. had,
9 but she recognized that blood in the stool is not typical of a stomach virus.
10

11 29. Mike and Staci were given instructions and materials to collect multiple stool
12 samples. This frustrated Mike and Staci because they were told that it would
13 take three to five days to get the results back and that B.R. could not be
14 treated until the doctors knew what was causing his symptoms.
15

16 30. B.R.'s diarrhea started to come more and more frequently, and blood was
17 becoming more common as well. There were times when B.R. would have
18 diarrhea three to four times an hour, and by Wednesday, B.R. was having
19 about fifteen to thirty dirty diapers a day with very bloody diarrhea.
20

21 31. Because of the constant diarrhea, B.R. began to develop a horrible diaper
22 rash. His entire bottom was broken out in a severe diaper rash, and the skin
23 started to crack open. He was in so much pain that when Mike and Staci
24 changed his diaper he would cry so hard that he would almost throw up.
25

26 32. Mike and Staci turned in the stool samples that they had collected on August
27 5. B.R. was also seen again and prescribed a medication to use after every
28



1 diaper change. It was also noticed that B.R. had developed an anal fissure
2 from the amount and frequency of bloody diarrhea.

3
4 33. On Thursday afternoon, B.R.'s fever spiked. From that point on his fevers
5 mostly ranged from 102°F to 104°F. And at times, the thermometer would
6 indicate temperatures that were closer to 105°F.

7
8 34. Mike and Staci noticed that B.R.'s heart rate would increase dramatically, he
9 was somewhat lethargic, and that his fevers were not easy to break.

10
11 35. Mike and Staci worked tirelessly at trying to mitigate B.R.'s symptoms by
12 trying to have him take Tylenol, using cold compresses, and giving him
13 lukewarm baths to try and bring his fever down. Because Mike was working
14 11.5 hours per day, this was taking its toll on Staci.

15
16 36. On Friday, after B.R. started vomiting, Mike and Staci were advised by B.R.'s
17 pediatrician to take him to the emergency room. Mike left work early so that
18 Mike and Staci could take B.R. to Banner Thunderbird Medical Center
19 Emergency Room. During this time, Staci's mom had to watch their oldest
20 son.

21
22 37. Once in the emergency room, Mike and Staci became more worried because
23 B.R. was only six months old and had not yet received his six month
24 vaccinations because he had been sick.

25
26 38. After waiting in the emergency room for a few hours, the emergency room
27 physician examined B.R. B.R. was given a dose of Motrin, and after a few
28 hours of observation, was sent home.



1 39. Over the next few days, B.R.'s bloody diarrhea and fevers continued. And on
2 August 10, a nurse from B.R.'s pediatrician's office called to notify Mike and
3 Staci that the preliminary findings from B.R.'s stool samples was *Salmonella*.
4 The following day, B.R.'s pediatrician called to confirm his *Salmonella*
5 infection. B.R.'s pediatrician stated that it was rare for someone of B.R.'s age
6 to contract *Salmonella* and that he most likely contracted it from J.R.

8 40. At this time, B.R.'s symptoms had started to improve and for this reason, his
9 pediatrician did not treat him with antibiotics.

11 41. Over the next few weeks, Mike and Staci received multiple phone calls from
12 the Maricopa County Department of Public Health. These phone calls were
13 very lengthy and the nurses asked question after question about what B.R.
14 had eaten.

16 42. During one of the conversations, the nurse informed Mike and Staci that the
17 strain of *Salmonella* was Poona. The nurse notified Mike and Staci that there
18 was an outbreak of *Salmonella* Poona in their area, and that they were
19 attempting to determine its cause. Mike and Staci later learned that it was
20 from cucumbers.

22 **CAUSES OF ACTION**

23
24 **COUNT ONE**
STRICT PRODUCTS LIABILITY

25 43. Plaintiffs incorporate herein by reference the allegations in paragraphs 1–42.

26 44. The defendant was at all times relevant hereto the manufacturer and seller of
27 the adulterated food product that is the subject of the action.
28



1 45. The adulterated food product that the defendant manufactured, distributed,
2 and/or sold was, at the time it left the defendant's control, defective and
3 unreasonably dangerous for its ordinary and expected use because it
4 contained *Salmonella*, a deadly pathogen.
5

6 46. The adulterated food product that the defendant manufactured, distributed,
7 and/or sold was delivered to the plaintiffs without any change in its defective
8 condition. The adulterated food product that the defendant manufactured,
9 distributed, and/or sold was used in the manner expected and intended, and
10 was consumed by the plaintiffs.
11

12 47. The defendant owed a duty of care to the plaintiffs to design, manufacture,
13 and/or sell food that was not adulterated, which was fit for human
14 consumption, that was reasonably safe in construction, and that was free of
15 pathogenic bacteria or other substances injurious to human health. The
16 defendant breached this duty.
17

18 48. The defendant owned a duty of care to the plaintiffs to design, prepare, serve,
19 and sell food that was fit for human consumption, and that was safe to the
20 extent contemplated by a reasonable consumer. The defendant breached
21 this duty.
22

23 49. The plaintiffs suffered injury and damages as a direct and proximate result of
24 the defective and unreasonably dangerous condition of the adulterated food
25 product that the defendant manufactured, distributed, and/or sold.
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COUNT TWO
BREACH OF WARRANTY

50. Plaintiffs incorporate herein by reference the allegations in paragraphs 1–49.

51. The defendant is liable to the plaintiffs for breaching express and implied warranties that it made regarding the adulterated food product that the plaintiffs purchased. These express and implied warranties included the implied warranties of merchantability and/or fitness for a particular use. Specifically, the defendant expressly warranted, through its sale of food to the public and by the statements and conduct of its employees and agents, that the food it prepared and sold was fit for human consumption and not otherwise adulterated or injurious to health.

52. The plaintiffs allege that the *Salmonella*-contaminated food that the defendant sold to them would not pass without exception in the trade and was therefore in breach of the implied warranty of merchantability.

53. The plaintiffs allege that the *Salmonella*-contaminated food that the defendant sold to them was not fit for the uses and purposes intended, *i.e.* human consumption, and that this product was therefore in breach of the implied warranty of fitness for its intended use.

54. As a direct and proximate cause of the defendant's breach of warranties, as set forth above, the plaintiffs sustained injuries and damages in an amount to be determined at trial.

COUNT THREE
NEGLIGENCE

55. Plaintiffs incorporate herein by reference the allegations in paragraphs 1–54.



1 56. The defendant owed to the plaintiffs a duty to use reasonable care in the
2 manufacture, distribution, and sale of its food product, the breach of which
3 duty would have prevented or eliminated the risk that the defendant's food
4 products would become contaminated with *Salmonella* or any other
5 dangerous pathogen. The defendant breached this duty.
6

7 57. The defendant had a duty to comply with all statutes, laws, regulations, or
8 safety codes pertaining to the manufacture, distribution, storage, and sale of
9 its food product, but failed to do so, and was therefore negligent. The
10 plaintiffs are among the class of persons designed to be protected by these
11 statutes, laws, regulations, safety codes or provision pertaining to the
12 manufacture, distribution, storage, and sale of similar food products.
13

14 58. The defendant had a duty to properly supervise, train, and monitor its
15 respective employees, and to ensure their compliance with all applicable
16 statutes, laws, regulations, or safety codes pertaining to the manufacture,
17 distribution, storage, and sale of similar food products, but it failed to do so,
18 and was therefore negligent.
19

20 59. The defendant had a duty to use ingredients, supplies, and other constituent
21 materials that were reasonably safe, wholesome, free of defects, and that
22 otherwise complied with applicable federal, state, and local laws, ordinances
23 and regulations, and that were clean, free from adulteration, and safe for
24 human consumption, but it failed to do so, and was therefore negligent.
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1 60. As a direct and proximate result of the defendant's acts of negligence, the
2 plaintiffs sustained injuries and damages in an amount to be determined at
3 trial.
4

5 **COUNT ONE**
6 **NEGLIGENCE *PER SE***

7 61. Plaintiffs incorporate herein by reference the allegations in paragraphs 1–60.

8 62. The defendant had a duty to comply with all applicable state and federal
9 regulations intended to ensure the purity and safety of its food product,
10 including the requirements of the Federal Food, Drug and Cosmetics Act (21
11 U.S.C. § 301 *et seq.*), and the Arizona adulterated food statutes (A.R.S. § 36-
12 901 *et seq.*).
13

14 63. The defendant failed to comply with the provisions of the health and safety
15 acts identified above, and, as a result, was negligent *per se* in its
16 manufacture, distribution, and sale of food adulterated with *Salmonella*, a
17 deadly pathogen.
18

19 64. As a direct and proximate result of conduct by the defendant that was
20 negligent *per se*, the plaintiffs sustained injury and damages in an amount to
21 be determined at trial.
22

23 **DAMAGES**

24 65. The plaintiffs have suffered general, special, incidental, and consequential
25 damages as the direct and proximate result of the acts and omissions of the
26 defendant, in an amount that shall be fully proven at the time of trial. These
27 damages include, but are not limited to: damages for general pain and
28



1 suffering; damages for loss of enjoyment of life, both past and future; medical
2 and medical related expenses, both past and future; travel and travel-related
3 expenses, past and future; emotional distress, past and future;
4 pharmaceutical expenses, past and future; and all other ordinary, incidental,
5 or consequential damages that would or could be reasonably anticipated to
6 arise under the circumstances.
7

8
9 **PRAYER FOR RELIEF**

10 **WHEREFORE**, Plaintiffs pray for the following relief:

- 11 1. That the Court award Plaintiffs judgment against Defendant, in such sums
12 as shall be determined to fully and fairly compensate the Plaintiffs for all
13 general, special, incidental and consequential damages incurred, or to be
14 incurred, as the direct and proximate result of the acts and omissions of
15 Defendant, in an amount to be proven at trial.
16
17 2. That the Court award Plaintiffs their costs, disbursements and reasonable
18 attorneys' fees incurred.
19
20 3. That the Court award Plaintiffs the opportunity to amend or modify the
21 provisions of this complaint as necessary or appropriate after additional or
22 further discovery is completed in this matter, and after all appropriate
23 parties have been served; and
24
25 4. That the Court award such other and further relief as it deems necessary
26 and proper in the circumstances.
27
28

JURY DEMAND

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

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1 RESPECTFULLY SUBMITTED this 15th day of September 2015.
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3 **O'STEEN & HARRISON, PLC**

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5 _____
6 Jonathan V. O'Steen
7 300 W. Clarendon Ave., Suite 400
8 Phoenix, Arizona 85013-3424

9 **MARLER CLARK, L.L.P., P.S.**

10 William D. Marler

11 Attorneys for Plaintiffs
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CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of September 2015, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing.

/s/ Jonathan V. O'Steen

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