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**Attorneys for Plaintiff**

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

William Levy,  
  
Plaintiff,  
  
v.  
  
Andrew and Williamson Sales, Co., a  
California corporation,  
  
Defendant.

NO.  
  
**COMPLAINT**  
  
**DEMAND FOR JURY TRIAL**

Plaintiff, by and through undersigned counsel, and for his claims against the Defendant, alleges as follows:

**PARTIES**

1. Plaintiff William Levy resides in Maricopa County, Arizona.



1 2. Defendant Andrew and Williamson Sales, Co. is a corporation organized and  
2 existing under the laws of California and conducts business throughout the  
3 United States, including the State of Arizona. Its principal place of business is  
4 in San Diego, California.  
5

### 6 JURISDICTION AND VENUE

7 3. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332. The  
8 amount in controversy exceeds \$75,000 exclusive of interests and costs, and  
9 this is an action by an individual plaintiff against a Defendant with its principal  
10 place of business in another state.  
11

12 4. Venue in this judicial district is proper pursuant to 28 U.S.C. § 1391(a)(2)  
13 because a substantial part of the events or omissions giving rise to the claim  
14 occurred in this judicial district and because the Defendant was subject to  
15 personal jurisdiction in this judicial district at the time of the commencement of  
16 the action.  
17

### 18 FACTUAL ALLEGATIONS

#### 19 **The *Salmonella* Poona Outbreak**

20  
21 5. The CDC, multiple states, and the U.S. Food and Drug Administration (FDA)  
22 are investigating a multistate outbreak of *Salmonella* Poona infections linked  
23 to imported cucumbers grown and packed by Rancho Don Juanito in Mexico  
24 and distributed by Andrew & Williamson Sales, Co.  
25

26 6. Public health investigators are using the PulseNet system to identify illnesses  
27 that may be part of this outbreak. CDC coordinates PulseNet, the national  
28 subtyping network of public health and food regulatory agency laboratories.



1 DNA "fingerprinting" is performed on *Salmonella* bacteria isolated from ill  
2 people by using a technique called pulsed-field gel electrophoresis, or PFGE.  
3 PulseNet manages a national database of these DNA "fingerprints" to identify  
4 possible outbreaks. Three DNA "fingerprints" (outbreak strains) are included  
5 in this investigation.  
6

- 7
- 8 7. As of September 15, 2015, a total of 418 people infected with the outbreak  
9 strains of *Salmonella* Poona have been reported from 31 states. The number  
10 of ill people reported from each state is as follows: Alaska (10), Arizona (72),  
11 Arkansas (6), California (89), Colorado (16), Hawaii (1), Idaho (14), Illinois (6),  
12 Indiana (2), Kansas (1), Kentucky (1), Louisiana (4), Minnesota (20), Missouri  
13 (8), Montana (13), Nebraska (2), Nevada (9), New Mexico (22), New York (4),  
14 North Dakota (2), Ohio (2), Oklahoma (10), Oregon (8), Pennsylvania (2),  
15 South Carolina (8), Texas (20), Utah (37), Virginia (1), Washington (15),  
16 Wisconsin (9), and Wyoming (4).  
17
- 18 8. Among people for whom information is available, illnesses started on dates  
19 ranging from July 3, 2015 to September 3, 2015. Ill people range in age from  
20 less than 1 year to 99, with a median age of 17. Fifty-two percent of ill people  
21 are children younger than 18 years. Fifty-three percent of ill people are  
22 female. Among 290 people with available information, 91 (31%) report being  
23 hospitalized. Two deaths have been reported from California (1) and Texas  
24 (1).  
25  
26  
27  
28



1 9. Epidemiologic, laboratory, and traceback investigations have identified  
2 imported cucumbers from Mexico and distributed by Andrew & Williamson  
3 Sales, Co. as a likely source of the infections in this outbreak.  
4

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

### 21 **Prior Cucumber *Salmonella* Outbreaks**

22 11. In 2013 the CDC collaborated with public health officials in many states and  
23 the U.S. Food and Drug Administration (FDA) to investigate a multistate  
24 outbreak of *Salmonella* Saintpaul infections linked to imported cucumbers  
25 supplied by Daniel Cardenas Izabal and Miracle Greenhouse of Culiacán,  
26 Mexico and distributed by Tricar Sales, Inc. of Rio Rico, Arizona. A total of 84  
27 persons infected with the outbreak strain of *Salmonella* Saintpaul were  
28



1 reported from 18 states. The number of ill persons identified in each state was  
2 as follows: Arizona (11), California (29), Colorado (2), Idaho (2), Illinois (3),  
3 Louisiana (1), Maryland (1), Massachusetts (1), Minnesota (9), Nevada (1),  
4 New Mexico (2), North Carolina (3), Ohio (3), Oregon (2), South Dakota (2),  
5 Texas (7), Virginia (3), and Wisconsin (2). Among persons for whom  
6 information was available, illness onset dates ranged from January 12, 2013  
7 to April 28, 2013. Ill persons ranged in age from less than 1 year to 89 years,  
8 with a median age of 27 years. Sixty-two percent of ill persons were female.  
9 Among 60 persons with available information, 17 (28%) were hospitalized. No  
10 deaths were reported.  
11  
12

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

### 21 ***Salmonella***

22 13. The term *Salmonella* refers to a group or family of bacteria that variously  
23 cause illness in humans. The taxonomy and nomenclature of *Salmonella*  
24 have changed over the years and are still evolving. Currently, the Centers for  
25 Disease Control and Prevention (CDC) recognizes two species, which are  
26 divided into seven subspecies. These subspecies are divided into over 50  
27 serogroups based on somatic (O) antigens present. The most common  
28

1 *Salmonella* serogroups are A, B, C, D, E, F, and G. Serogroups are further  
2 divided into over 2,500 serotypes. *Salmonella* serotypes are typically  
3 identified through a series of tests of antigenic formulas listed in a document  
4 called the Kauffmann-White Scheme published by the World Health  
5 Organization Collaborating Centre for Reference and Research on  
6 *Salmonella*.  
7

- 8  
9 14. *Salmonella* is an enteric bacterium, which means that it lives in the intestinal  
10 tracts of humans and other animals, including birds. *Salmonella* bacteria are  
11 usually transmitted to humans by eating foods contaminated with animal  
12 feces or foods that have been handled by infected food service workers who  
13 have practiced poor personal hygiene. Contaminated foods usually look and  
14 smell normal. Contaminated foods are often of animal origin, such as beef,  
15 poultry, milk, or eggs, but all foods, including vegetables, may become  
16 contaminated. Many raw foods of animal origin are frequently contaminated,  
17 but thorough cooking kills *Salmonella*.  
18  
19

### 20 **Medical Complications of Salmonellosis**

- 21 15. The term reactive arthritis refers to an inflammation of one or more joints,  
22 following an infection localized at another site distant from the affected joints.  
23 The predominant site of the infection is the gastrointestinal tract. Several  
24 bacteria, including *Salmonella*, induce septic arthritis. The resulting joint pain  
25 and inflammation can resolve completely over time or permanent joint  
26 damage can occur.  
27  
28



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

12  
13 17. *Salmonella* is also a cause of a condition called post infectious irritable bowel  
14 syndrome (IBS), which is a chronic disorder characterized by alternating  
15 bouts of constipation and diarrhea, both of which are generally accompanied  
16 by abdominal cramping and pain. In one recent study, over one-third of IBS  
17 sufferers had had IBS for more than ten years, with their symptoms remaining  
18 fairly constant over time. IBS sufferers typically experienced symptoms for an  
19 average of 8.1 days per month.  
20  
21

### 22 **William Levy's *Salmonella* Illness**

23 18. During the month of July, 2015, William Levy ate cucumbers that he had  
24 purchased at the Winco at 330 W. Bell Rd, Phoenix, Arizona every day.  
25

26 19. On August 2, William began to experience myriad symptoms, including  
27 nausea, vomiting, diarrhea that eventually turned bloody, severe stomach  
28



1 cramping, muscle aches, fatigue, and headache. And on that same day,  
2 William carried a fever that spiked as high as 106.7°F.

3  
4 20. When his symptoms grew too severe, William sought emergency medical  
5 attention at the Mayo Clinic Hospital in Scottsdale, Arizona. Upon his arrival at  
6 the emergency room, William was admitted to the hospital. Because of the  
7 severity of his symptoms, William required two days of hospitalization before  
8 he was deemed well enough to return home.

9  
10 21. While at the hospital, William submitted both blood and stool samples for  
11 testing. The lab results from William's samples ultimately came back positive  
12 for *Salmonella*. William's positive *Salmonella* infection was reported to the  
13 Phoenix Board of Health.

14  
15 22. William was soon contacted by Robert at the Phoenix Board of Health who  
16 asked William a series of questions in order to identify the foods that William  
17 had eaten.

18  
19 23. Today, William continues on his recovery. He continues to experience head  
20 and body pain and fatigue. William has also had a difficult time ridding his  
21 body of the *Salmonella* bacteria. He has required follow-up doctor visits as  
22 recent as September 15, when he was again seen at the Mayo Clinic for  
23 pneumonia and high fever—relapse number three.

24  
25 **CAUSES OF ACTION**

26 **COUNT ONE**  
27 **STRICT PRODUCTS LIABILITY**

28 24. Plaintiff incorporates herein by reference the allegations in paragraphs 1–23.





1 25. The defendant was at all times relevant hereto the manufacturer and seller of  
2 the adulterated food product that is the subject of the action.

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

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

12 28. The defendant owed a duty of care to the plaintiff 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 29. The defendant owned a duty of care to the plaintiff to design, prepare, serve,  
18 and sell food that was fit for human consumption, and that was safe to the  
19 extent contemplated by a reasonable consumer. The defendant breached  
20 this duty.

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

1  
2  
3 31. Plaintiff incorporates herein by reference the allegations in paragraphs 1–30.

4 32. The defendant is liable to the plaintiff for breaching express and implied  
5 warranties that it made regarding the adulterated food product that the plaintiff  
6 purchased. These express and implied warranties included the implied  
7 warranties of merchantability and/or fitness for a particular use. Specifically,  
8 the defendant expressly warranted, through its sale of food to the public and  
9 by the statements and conduct of its employees and agents, that the food it  
10 prepared and sold was fit for human consumption and not otherwise  
11 adulterated or injurious to health.  
12  
13

14 33. The plaintiff alleges that the *Salmonella*-contaminated food that the defendant  
15 sold to them would not pass without exception in the trade and was therefore  
16 in breach of the implied warranty of merchantability.  
17

18 34. The plaintiff alleges that the *Salmonella*-contaminated food that the defendant  
19 sold to them was not fit for the uses and purposes intended, *i.e.* human  
20 consumption, and that this product was therefore in breach of the implied  
21 warranty of fitness for its intended use.  
22

23 35. As a direct and proximate cause of the defendant's breach of warranties, as  
24 set forth above, the plaintiff sustained injuries and damages in an amount to  
25 be determined at trial.  
26

27 **COUNT THREE**  
**NEGLIGENCE**

28 36. Plaintiff incorporates herein by reference the allegations in paragraphs 1–35.



1 37. The defendant owed to the plaintiff 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 38. 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 plaintiff  
10 is among the class of persons designed to be protected by these statutes,  
11 laws, regulations, safety codes or provision pertaining to the manufacture,  
12 distribution, storage, and sale of similar food products.  
13

14 39. 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 40. 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.  
25  
26  
27  
28



1 41. As a direct and proximate result of the defendant's acts of negligence, the  
2 plaintiff sustained injuries and damages in an amount to be determined at  
3 trial.  
4

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

7 42. Plaintiff incorporates herein by reference the allegations in paragraphs 1–42.

8 43. 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 44. 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 45. As a direct and proximate result of conduct by the defendant that was  
20 negligent *per se*, the plaintiff sustained injury and damages in an amount to  
21 be determined at trial.  
22

23 **DAMAGES**

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



1 damages for loss of enjoyment of life, both past and future; medical and  
2 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**, Plaintiff prays for the following relief:

- 11 1. That the Court award Plaintiff judgment against Defendant, in such sums  
12 as shall be determined to fully and fairly compensate the Plaintiff 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 Plaintiff his costs, disbursements and reasonable  
18 attorneys' fees incurred.  
19  
20 3. That the Court award Plaintiff 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**

Plaintiff demands 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 17<sup>th</sup> day of September 2015.  
2

3 **O'STEEN & HARRISON, PLC**

4 

5 \_\_\_\_\_  
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**CERTIFICATE OF SERVICE**

I hereby certify that on the 17<sup>th</sup> 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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