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

Elisabeth Barber,

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 her claims against the Defendant, alleges as follows:

PARTIES

1. Plaintiff Elisabeth Barber 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. Andrew and Williamson Sales, Co. imports,
5 manufactures, distributes, and sells a variety of fresh produce products,
6 including cucumbers. Andrew and Williamson Sales, Co. imported,
7 manufactured, distributed, and sold the cucumbers that the Centers for
8 Disease Control and Prevention has determined to be the cause of an
9 outbreak of at least 418 *Salmonella* Poona illnesses in 31 states, including 72
10 illnesses and a death in the state of Arizona alone. Andrew and Williamson
11 Sales, Co.'s cucumbers caused the *Salmonella* Poona illnesses suffered by
12 Plaintiff Elisabeth Barber, as set forth in more detail below.

16 JURISDICTION AND VENUE

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



The *Salmonella* Poona Outbreak

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2 5. The CDC, multiple states, and the U.S. Food and Drug Administration (FDA)
3 are investigating a multistate outbreak of *Salmonella* Poona infections linked
4 to imported cucumbers grown and packed by Rancho Don Juanito in Mexico
5 and distributed by Andrew & Williamson Sales, Co.
6
- 7 6. Public health investigators are using the PulseNet system to identify illnesses
8 that may be part of this outbreak. CDC coordinates PulseNet, the national
9 subtyping network of public health and food regulatory agency laboratories.
10 DNA "fingerprinting" is performed on *Salmonella* bacteria isolated from ill
11 people by using a technique called pulsed-field gel electrophoresis, or PFGE.
12 PulseNet manages a national database of these DNA "fingerprints" to identify
13 possible outbreaks. Three DNA "fingerprints" (outbreak strains) are included
14 in this investigation.
15
- 16 7. As of September 15, 2015, a total of 418 people infected with the outbreak
17 strains of *Salmonella* Poona have been reported from 31 states. The number
18 of ill people reported from each state is as follows: Alaska (10), Arizona (72),
19 Arkansas (6), California (89), Colorado (16), Hawaii (1), Idaho (14), Illinois (6),
20 Indiana (2), Kansas (1), Kentucky (1), Louisiana (4), Minnesota (20), Missouri
21 (8), Montana (13), Nebraska (2), Nevada (9), New Mexico (22), New York (4),
22 North Dakota (2), Ohio (2), Oklahoma (10), Oregon (8), Pennsylvania (2),
23 South Carolina (8), Texas (20), Utah (37), Virginia (1), Washington (15),
24 Wisconsin (9), and Wyoming (4).
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- 1 8. Among people for whom information is available, illnesses started on dates
2 ranging from July 3, 2015 to September 3, 2015. Ill people range in age from
3 less than 1 year to 99, with a median age of 17. Fifty-two percent of ill people
4 are children younger than 18 years. Fifty-three percent of ill people are
5 female. Among 290 people with available information, 91 (31%) report being
6 hospitalized. Two deaths have been reported from California (1) and Texas
7 (1).
8
- 9 9. Epidemiologic, laboratory, and traceback investigations have identified
10 imported cucumbers from Mexico and distributed by Andrew & Williamson
11 Sales, Co. as a likely source of the infections in this outbreak.
12
- 13 10. On September 4, 2015, Andrew & Williamson Sales, Co. voluntarily recalled
14 all cucumbers sold under the "Limited Edition" brand label during the period
15 from August 1, 2015 through September 3, 2015 because they may be
16 contaminated with *Salmonella*. The type of cucumber is often referred to as a
17 "slicer" or "American" cucumber. It is dark green in color and typical length is
18 7 to 10 inches. In retail locations it is typically sold in a bulk display without
19 any individual packaging or plastic wrapping. Limited Edition cucumbers were
20 distributed in the states of Alaska, Arizona, Arkansas, California, Colorado,
21 Florida, Idaho, Illinois, Kansas, Kentucky, Louisiana, Minnesota, Mississippi,
22 Montana, Nevada, New Jersey, New Mexico, Oklahoma, Oregon, South
23 Carolina, Texas, and Utah and reached customers through retail, food service
24 companies, wholesalers, and brokers. Further distribution to other states may
25 have occurred.
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Prior Cucumber *Salmonella* Outbreaks

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11. In 2014 a total of 275 cases were reported from 29 states and the District of Columbia linked to cucumbers grown in the Delmarva region on Maryland. 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.

12. 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

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13. 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*.

14. *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



1 15. The term reactive arthritis refers to an inflammation of one or more joints,
2 following an infection localized at another site distant from the affected joints.
3 The predominant site of the infection is the gastrointestinal tract. Several
4 bacteria, including *Salmonella*, induce septic arthritis. The resulting joint pain
5 and inflammation can resolve completely over time or permanent joint
6 damage can occur.
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8 16. The reactive arthritis associated with Reiter's may develop after a person eats
9 food that has been tainted with bacteria. In a small number of persons, the
10 joint inflammation is accompanied by conjunctivitis (inflammation of the eyes),
11 and uveitis (painful urination). *Id.* This triad of symptoms is called Reiter's
12 Syndrome. Reiter's syndrome, a form of reactive arthritis, is an uncommon
13 but debilitating syndrome caused by gastrointestinal or genitourinary
14 infections. The most common gastrointestinal bacteria involved are
15 *Salmonella*, *Campylobacter*, *Yersinia*, and *Shigella*. A triad of arthritis,
16 conjunctivitis, and urethritis characterizes Reiter's syndrome, although not all
17 three symptoms occur in all affected individuals.
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21 17. *Salmonella* is also a cause of a condition called post infectious irritable bowel
22 syndrome (IBS), which is a chronic disorder characterized by alternating
23 bouts of constipation and diarrhea, both of which are generally accompanied
24 by abdominal cramping and pain. In one recent study, over one-third of IBS
25 sufferers had had IBS for more than ten years, with their symptoms remaining
26 fairly constant over time. IBS sufferers typically experienced symptoms for an
27 average of 8.1 days per month.
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Elisabeth Barber's *Salmonella* Illness

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2 18. Elisabeth Barber is a 46-year-old resident of Mesa, Arizona. On August 7,
3 2015, she purchased raw cucumbers from a Fry's Food Stores grocery store
4 in Mesa. Later that same day, she prepared the cucumbers raw for a
5 California roll that she did not share with anyone else.
6

7 19. The next morning, Saturday, August 8, 2015, Ms. Barber was awakened with
8 terrible stomach cramps, which was soon followed by the onset of diarrhea.
9 Ms. Barber suffered from episodes of explosive, painful diarrhea almost
10 hourly over the next few days. During that time, she also suffered from night
11 sweats, headaches, and shaking chills and fevers.
12

13 20. By Tuesday, August 10, 2015, Ms. Barber realized that her illness not
14 susceptible to at-home treatment. She presented to FastMed Urgent care,
15 where her temperature was measured at 102°F. After an initial assessment
16 and urinalysis, the urgent care doctor told her she was too sick for them to
17 care for her, and she was told to go to the ER.
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19 21. Ms. Barber left the urgent care office and drove herself to Mountain Vista
20 Medical Center in Mesa, Arizona. In the emergency room, she was given two
21 (2) liters of IV fluids and IV antibiotics. She also gave a stool sample in the
22 emergency room and had blood work done. After a few hours of observation,
23 she was stable enough to be discharged home to continue her convalescence
24 on her own, and she was given a prescription for ten days of Ciprofloxacin.
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26 22. Ms. Barber continued to have stomach cramps and diarrhea, along with
27 terrible headaches, for the next 3–4 weeks. The emergency room doctor
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1 gave her a note to be off work, but she went back to work on August 13, 2015
2 despite the fact that she continued to suffer from difficult gastrointestinal
3 symptoms. She was unable to take more time because she had run out
4 of sick leave and had no available vacation time.
5

6 23. About two days after Ms. Barber's emergency room visit, the hospital called
7 her to tell her that her stool sample had tested positive for *Salmonella*. The
8 health department called her a couple of weeks later to ask her questions
9 about what she ate and where, informing her she was part of a larger
10 *Salmonella* Poona outbreak linked to cucumbers.
11

12 **CAUSES OF ACTION**

13 **COUNT ONE**
14 **STRICT PRODUCTS LIABILITY**

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

16 25. The defendant was at all times relevant hereto the manufacturer and seller of
17 the adulterated food product that is the subject of the action.
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19 26. The adulterated food product that the defendant manufactured, distributed,
20 and/or sold was, at the time it left the defendant's control, defective and
21 unreasonably dangerous for its ordinary and expected use because it
22 contained *Salmonella*, a deadly pathogen.
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24 27. The adulterated food product that the defendant manufactured, distributed,
25 and/or sold was delivered to the plaintiff without any change in its defective
26 condition. The adulterated food product that the defendant manufactured,
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1 distributed, and/or sold was used in the manner expected and intended, and
2 was consumed by the plaintiff.

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4 28. The defendant owed a duty of care to the plaintiff to design, manufacture,
5 and/or sell food that was not adulterated, which was fit for human
6 consumption, that was reasonably safe in construction, and that was free of
7 pathogenic bacteria or other substances injurious to human health. The
8 defendant breached this duty.

9
10 29. The defendant owned a duty of care to the plaintiff to design, prepare, serve,
11 and sell food that was fit for human consumption, and that was safe to the
12 extent contemplated by a reasonable consumer. The defendant breached
13 this duty.

14
15 30. The plaintiff suffered injury and damages as a direct and proximate result of
16 the defective and unreasonably dangerous condition of the adulterated food
17 product that the defendant manufactured, distributed, and/or sold.

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19 **COUNT TWO**
NEGLIGENCE

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

21
22 32. The defendant owed to the plaintiff a duty to use reasonable care in the
23 manufacture, distribution, and sale of its food product, the breach of which
24 duty would have prevented or eliminated the risk that the defendant's food
25 products would become contaminated with *Salmonella* or any other
26 dangerous pathogen. The defendant breached this duty.
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1 33. The defendant had a duty to comply with all statutes, laws, regulations, or
2 safety codes pertaining to the manufacture, distribution, storage, and sale of
3 its food product, but failed to do so, and was therefore negligent. The plaintiff
4 is among the class of persons designed to be protected by these statutes,
5 laws, regulations, safety codes or provision pertaining to the manufacture,
6 distribution, storage, and sale of similar food products.
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8 34. The defendant had a duty to properly supervise, train, and monitor its
9 respective employees, and to ensure their compliance with all applicable
10 statutes, laws, regulations, or safety codes pertaining to the manufacture,
11 distribution, storage, and sale of similar food products, but it failed to do so,
12 and was therefore negligent.
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14 35. The defendant had a duty to use ingredients, supplies, and other constituent
15 materials that were reasonably safe, wholesome, free of defects, and that
16 otherwise complied with applicable federal, state, and local laws, ordinances
17 and regulations, and that were clean, free from adulteration, and safe for
18 human consumption, but it failed to do so, and was therefore negligent.
19

20 36. As a direct and proximate result of the defendant's acts of negligence, the
21 plaintiff sustained injuries and damages in an amount to be determined at
22 trial.
23

24
25 **COUNT THREE**
26 **NEGLIGENCE *PER SE***

27 37. Plaintiff incorporates herein by reference the allegations in paragraphs 1–36.
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1 38. The defendant had a duty to comply with all applicable state and federal
2 regulations intended to ensure the purity and safety of its food product,
3 including the requirements of the Federal Food, Drug and Cosmetics Act (21
4 U.S.C. § 301 *et seq.*), and the Arizona adulterated food statutes (A.R.S. § 36-
5 901 *et seq.*)
6

7 39. The defendant failed to comply with the provisions of the health and safety
8 acts identified above, and, as a result, was negligent *per se* in its
9 manufacture, distribution, and sale of food adulterated with *Salmonella*, a
10 deadly pathogen.
11

12 40. As a direct and proximate result of conduct by the defendant that was
13 negligent *per se*, the plaintiff sustained injury and damages in an amount to
14 be determined at trial.
15

16 **DAMAGES**

17 41. Plaintiff has suffered general, special, incidental, and consequential damages
18 as the direct and proximate result of the acts and omissions of the defendant,
19 in an amount that shall be fully proven at the time of trial. These damages
20 include, but are not limited to: damages for general pain and suffering;
21 damages for loss of enjoyment of life, both past and future; medical and
22 medical related expenses, both past and future; travel and travel-related
23 expenses, past and future; emotional distress, past and future;
24 pharmaceutical expenses, past and future; and all other ordinary, incidental,
25 or consequential damages that would or could be reasonably anticipated to
26 arise under the circumstances.
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PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief:

1. That the Court award Plaintiff judgment against Defendant, in such sums as shall be determined to fully and fairly compensate the Plaintiff for all general, special, incidental and consequential damages incurred, or to be incurred, as the direct and proximate result of the acts and omissions of Defendant, in an amount to be proven at trial.
2. That the Court award Plaintiff her costs, disbursements and reasonable attorneys' fees incurred.
3. That the Court award such other and further relief as it deems necessary and proper in the circumstances.

JURY DEMAND

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

RESPECTFULLY SUBMITTED this 20th day of September 2015.

O'STEEN & HARRISON, PLC



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MARLER CLARK, L.L.P., P.S.

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Attorneys for Plaintiff



CERTIFICATE OF SERVICE

I hereby certify that on the 20th 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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