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

Mike and Staci Ross, a married couple,  
and on behalf of their minor children,  
J. R. and B.R.,

Plaintiffs,

—against—

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

Defendant.

**Case No.:**

**COMPLAINT FOR DAMAGES**

**JURY DEMAND**

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COME NOW the plaintiffs, by and through their attorneys of record, asserting claims against the defendant, Andrew and Williamson Sales, Co., (“defendant”), and states and alleges as follows:

## **I. PARTIES**

1. The plaintiffs, Mike and Staci Ross, a thirty-one and thirty-five year old married couple, and their minor children, B.R. and J.R., seven-month and two-year-old boys, are residents of Surprise, Arizona, and thus, are citizens of the State of Arizona for purposes of diversity jurisdiction.

2. The defendant 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. The defendant is, therefore, a citizen of the State of Arizona for purposes of diversity jurisdiction. Further, the defendant is authorized to do, and in fact does, business in the State of Arizona.

## **II. JURISDICTION AND VENUE**

3. This Court has jurisdiction over the subject matter of this action pursuant to 28 USC § 1332(a) because the matter in controversy exceeds \$75,000.00, exclusive of costs, it is between citizens of different states, and because the defendant has certain minimum contacts with the State of Arizona such that the maintenance of the suit in this district does not offend traditional notions of fair play and substantial justice.

4. Venue in the United States District Court for the District of Arizona is proper pursuant to 28 USC § 1391(a)(2) because a substantial part of the events or omissions giving rise to the plaintiff's claims and causes of action 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.

### III. GENERAL 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 to imported cucumbers grown and packed by Rancho Don Juanito in Mexico and distributed by Andrew and Williamson Sales Co.

6. 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.

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

8. Among people for whom information is available, illnesses started on dates ranging from July 3, 2015 to September 3, 2015. Ill people range in age from less than 1 year to 99, with a median age of 17. Fifty-two percent of ill people are children younger than 18 years. Fifty-three percent of ill people are female. Among 290 people with available information, 91 (31%) report being hospitalized. Two deaths have been reported from California (1) and Texas (1).

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

10. On September 4, 2015, Andrew and Williamson Sales Co. 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.

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

11. 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.

12. 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.

### *Salmonella*

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**

15. 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.

16. 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.

17. *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.

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

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

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

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

21. On the following morning, J.R. was taken to see his pediatrician. He was examined and told that he likely had a stomach virus that would run its course. The

doctor's main concern was keeping J.R. hydrated because he was having difficulty getting and keeping fluids down, was having fevers, and was having frequent diarrhea.

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

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

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

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

### **B.R.'s *Salmonella* Illness**

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

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

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



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

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

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

32. Mike and Staci turned in the stool samples that they had collected on August 5. B.R. was also seen again and prescribed a medication to use after every diaper change. It was also noticed that B.R. had developed an anal fissure from the amount and frequency of bloody diarrhea.

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

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

35. Mike and Staci worked tirelessly at trying to mitigate B.R.'s symptoms by trying to have him take Tylenol, using cold compresses, and giving him lukewarm baths

to try and bring his fever down. Because Mike was working 11.5 hours per day, this was taking its toll on Staci.

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

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

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

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

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

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

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

#### **IV. CAUSES OF ACTION**

##### **Strict Liability—Count I**

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

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

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

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

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

48. The plaintiffs suffered injury and damages as a direct and proximate result of the defective and unreasonably dangerous condition of the adulterated food product that the defendant manufactured, distributed, and/or sold.

**Breach of Warranty—Count II**

49. 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.

50. 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.

51. 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.

52. 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.

**Negligence—Count III**

53. The defendant owed to the plaintiffs a duty to use reasonable care in the

manufacture, distribution, and sale of its food product, the breach of which duty would have prevented or eliminated the risk that the defendant's food products would become contaminated with *Salmonella* or any other dangerous pathogen. The defendant breached this duty.

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

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

56. The defendant had a duty to use ingredients, supplies, and other constituent materials that were reasonably safe, wholesome, free of defects, and that otherwise complied with applicable federal, state, and local laws, ordinances and regulations, and that were clean, free from adulteration, and safe for human consumption, but it failed to do so, and was therefore negligent.

57. As a direct and proximate result of the defendant's acts of negligence, the plaintiffs sustained injuries and damages in an amount to be determined at trial.

#### **Negligence Per Se—Count IV**

58. The defendant had a duty to comply with all applicable state and federal

regulations intended to ensure the purity and safety of its food product, including the requirements of the Federal Food, Drug and Cosmetics Act (21 U.S.C. § 301 *et seq.*), and the Arizona adulterated food statutes (A.R.S. § 36-901 *et seq.*).

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

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

#### **V. DAMAGES**

61. The plaintiffs have suffered general, special, incidental, and consequential damages as the direct and proximate result of the acts and omissions of the defendant, in an amount that shall be fully proven at the time of trial. These damages include, but are not limited to: damages for general pain and suffering; damages for loss of enjoyment of life, both past and future; medical and medical related expenses, both past and future; travel and travel-related expenses, past and future; emotional distress, past and future; pharmaceutical expenses, past and future; and all other ordinary, incidental, or consequential damages that would or could be reasonably anticipated to arise under the circumstances.

#### **PRAYER FOR RELIEF**

WHEREFORE, the plaintiffs pray for judgment against defendant as follows:

A. Ordering compensation for all general, special, incidental, and consequential damages suffered by the plaintiffs as a result of the defendant's conduct;

- B. Ordering statutory prejudgment interest;
- C. Awarding plaintiffs reasonable attorneys' fees and costs, to the fullest extent allowed by law; and
- D. Granting all such additional and/or further relief as this Court deems just and equitable.

DATED: September 15, 2015

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