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IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE DISTRICT OF ARIZONA

Chris Walker, Cerissa Archambeault,
on behalf of P.K., minor,

Plaintiffs,

v.

Andrew & Williamson Fresh Produce,
Inc., 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. Plaintiff Chris Walker resides in Maricopa County, Arizona.

1 2. Plaintiff Cerissa Archambeault resides in Maricopa County, Arizona. Plaintiff
2 Cerissa Archambeault is the mother and legal guardian of P.K.

3
4 3. Defendant Andrew & Williamson Fresh Produce, Inc. is a corporation
5 organized and existing under the laws of California and conducts business
6 throughout the United States, including the State of Arizona. Its principal
7 place of business is in San Diego, California.

8 JURISDICTION AND VENUE

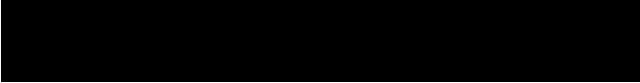
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10 4. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332. The
11 amount in controversy exceeds \$75,000 exclusive of interests and costs, and
12 this is an action by individual Plaintiffs against a Defendant with its principal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

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

22 **The *Salmonella* Poona Outbreak**

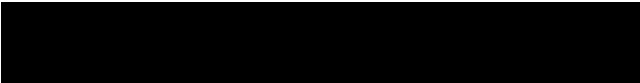
23
24 6. The CDC, multiple states, and the U.S. Food and Drug Administration (FDA)
25 are investigating a multistate outbreak of *Salmonella* Poona infections linked
26 to imported cucumbers grown and packed by Rancho Don Juanito in Mexico
27 and distributed by Andrew & Williamson Fresh Produce.
28



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

10
11 8. As of September 8, 2015, a total of 341 people infected with the outbreak
12 strains of *Salmonella* Poona have been reported from 30 states. The number
13 of ill people reported from each state is as follows: Alaska (9), Arizona (66),
14 Arkansas (6), California (72), Colorado (14), Hawaii (1), Idaho (8), Illinois (6),
15 Kansas (1), Kentucky (1), Louisiana (4), Minnesota (12), Missouri (8),
16 Montana (10), Nebraska (2), Nevada (7), New Mexico (18), New York (4),
17 North Dakota (1), Ohio (2), Oklahoma (8), Oregon (8), Pennsylvania (2),
18 South Carolina (7), Texas (18), Utah (30), Virginia (1), Washington (10),
19 Wisconsin (2), and Wyoming (3).
20
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22 9. Among people for whom information is available, illnesses started on dates
23 ranging from July 3, 2015 to August 30, 2015. Ill people range in age from
24 less than 1 year to 99, with a median age of 15. Fifty-three percent of ill
25 people are children younger than 18 years. Fifty-eight percent of ill people are
26 female. Among 214 people with available information, 70 (33%) report being
27
28



1 hospitalized. Two deaths have been reported from California (1) and Texas
2 (1).

3
4 10. Epidemiologic, laboratory, and traceback investigations have identified
5 imported cucumbers from Mexico and distributed by Andrew & Williamson
6 Fresh Produce as a likely source of the infections in this outbreak.

7
8 11. On September 4, 2015, Andrew & Williamson Fresh Produce voluntarily
9 recalled all cucumbers sold under the “Limited Edition” brand label during the
10 period from August 1, 2015 through September 3, 2015 because they may be
11 contaminated with *Salmonella*. The type of cucumber is often referred to as a
12 “slicer” or “American” cucumber. It is dark green in color and typical length is
13 7 to 10 inches. In retail locations it is typically sold in a bulk display without
14 any individual packaging or plastic wrapping. Limited Edition cucumbers were
15 distributed in the states of Alaska, Arizona, Arkansas, California, Colorado,
16 Florida, Idaho, Illinois, Kansas, Kentucky, Louisiana, Minnesota, Mississippi,
17 Montana, Nevada, New Jersey, New Mexico, Oklahoma, Oregon, South
18 Carolina, Texas, and Utah and reached customers through retail, food service
19 companies, wholesalers, and brokers. Further distribution to other states may
20 have occurred.
21
22

23 **Prior Cucumber *Salmonella* Outbreaks**

24
25 12. In 2013 the CDC collaborated with public health officials in many states and
26 the U.S. Food and Drug Administration (FDA) to investigate a multistate
27 outbreak of *Salmonella* Saintpaul infections linked to imported cucumbers
28 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.

13. 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

14. 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*.

15. *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

16. 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

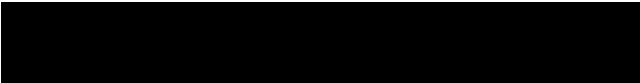
and inflammation can resolve completely over time or permanent joint damage can occur.

17. 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.

18. *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.

P.K.'s *Salmonella* Illness

19. The plaintiff consumed cucumbers that were purchased during the first two weeks of August from Safeway and Bashas on multiple occasions. The



1 plaintiff became ill on or about August 14, 2015, and complained of nausea,
2 abdominal cramping, and diarrhea.

3
4 20. On August 16, the plaintiff's diarrhea continued to intensify. He also began
5 carrying a 103 degree fever and his diarrhea turned bloody.

6 21. That day, the plaintiff was seen at the Emergency Room of St. Joseph's
7 Hospital. But because he was so ill, the decision was made to transfer him to
8 treatment at Phoenix Children's Hospital.

9
10 22. At Phoenix Children's Hospital the plaintiff submitted stool samples that tested
11 positive for the outbreak strain of *Salmonella* Poona, which was confirmed by
12 the Maricopa Health Department.

13
14 23. The plaintiff remained hospitalized from August 16 through August 19, where
15 he received IV therapy for dehydration and antibiotic therapy to combat the
16 *Salmonella* Poona bacteria. This caused the plaintiff to miss the school during
17 the week of August 17 through the 21. He is presently convalescing.

18 **Chris Walker's *Salmonella* Illness**

19
20 24. Chris Walker purchased and consumed cucumbers on a Jimmy John's club
21 sandwich on August 1, 2015.

22 25. The following day, Chris developed severe cramping with nausea and
23 vomiting. And by that evening, he has was suffering from multiple bouts of
24 diarrhea per hour. Although Chris went to work that evening, he felt extremely
25 ill.
26
27
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26. On August 3 and 4, 2015, Chris's symptoms continued and worsened. He sought medical treatment on August 4, 2015 and produced a stool sample to be submitted for testing.

27. Because of his severe illness, Chris was required to miss work during the entire week. He continued to push clear fluids and to suffer from almost constant diarrhea.

28. Chris's stool sample came back positive for *Salmonella* Poona, and was confirmed by the Maricopa Department of Health. Chris was prescribed a two-week course of the powerful antibiotic Cipro.

29. Once Chris's immediate symptoms began to subside, he thought that he was in the clear. However, Chris developed hemorrhoids and other gastro complications as a result of his *Salmonella* Poona infection. Chris is currently being treated by a specialist and has been scheduled for a colonoscopy.

CAUSES OF ACTION

COUNT ONE **STRICT PRODUCTS LIABILITY**

30. Plaintiffs incorporate herein by reference the allegations in paragraphs 1–29.

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

32. 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.

1 33. The adulterated food product that the defendant manufactured, distributed,
2 and/or sold was delivered to the plaintiffs without any change in its defective
3 condition. The adulterated food product that the defendant manufactured,
4 distributed, and/or sold was used in the manner expected and intended, and
5 was consumed by the plaintiffs.
6

7 34. The defendant owed a duty of care to the plaintiffs to design, manufacture,
8 and/or sell food that was not adulterated, which was fit for human
9 consumption, that was reasonably safe in construction, and that was free of
10 pathogenic bacteria or other substances injurious to human health. The
11 defendant breached this duty.
12

13 35. The defendant owned a duty of care to the plaintiffs to design, prepare, serve,
14 and sell food that was fit for human consumption, and that was safe to the
15 extent contemplated by a reasonable consumer. The defendant breached
16 this duty.
17

18 36. The plaintiffs suffered injury and damages as a direct and proximate result of
19 the defective and unreasonably dangerous condition of the adulterated food
20 product that the defendant manufactured, distributed, and/or sold.
21

22 **COUNT TWO**
23 **BREACH OF WARRANTY**

24 37. Plaintiffs incorporate herein by reference the allegations in paragraphs 1–36.

25 38. The defendant is liable to the plaintiffs for breaching express and implied
26 warranties that it made regarding the adulterated food product that the
27 plaintiffs purchased. These express and implied warranties included the
28

1 implied warranties of merchantability and/or fitness for a particular use.
2 Specifically, the defendant expressly warranted, through its sale of food to the
3 public and by the statements and conduct of its employees and agents, that
4 the food it prepared and sold was fit for human consumption and not
5 otherwise adulterated or injurious to health.
6

7 39. The plaintiffs allege that the *Salmonella*-contaminated food that the defendant
8 sold to them would not pass without exception in the trade and was therefore
9 in breach of the implied warranty of merchantability.
10

11 40. The plaintiffs allege that the *Salmonella*-contaminated food that the defendant
12 sold to them was not fit for the uses and purposes intended, *i.e.* human
13 consumption, and that this product was therefore in breach of the implied
14 warranty of fitness for its intended use.
15

16 41. As a direct and proximate cause of the defendant's breach of warranties, as
17 set forth above, the plaintiffs sustained injuries and damages in an amount to
18 be determined at trial.
19

20 **COUNT THREE**
21 **NEGLIGENCE**

22 42. Plaintiffs incorporate herein by reference the allegations in paragraphs 1–41.

23 43. The defendant owed to the plaintiffs a duty to use reasonable care in the
24 manufacture, distribution, and sale of its food product, the breach of which
25 duty would have prevented or eliminated the risk that the defendant's food
26 products would become contaminated with *Salmonella* or any other
27 dangerous pathogen. The defendant breached this duty.
28

1 44. 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
4 plaintiffs are among the class of persons designed to be protected by these
5 statutes, laws, regulations, safety codes or provision pertaining to the
6 manufacture, distribution, storage, and sale of similar food products.
7

8 45. 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.
13

14 46. 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 47. As a direct and proximate result of the defendant's acts of negligence, the
21 plaintiffs sustained injuries and damages in an amount to be determined at
22 trial.
23

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

27 48. Plaintiffs incorporate herein by reference the allegations in paragraphs 1–47.
28

1 49. 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 50. 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 51. As a direct and proximate result of conduct by the defendant that was
13 negligent *per se*, the plaintiffs sustained injury and damages in an amount to
14 be determined at trial.
15

16 **DAMAGES**

17 52. The plaintiffs have suffered general, special, incidental, and consequential
18 damages as the direct and proximate result of the acts and omissions of the
19 defendant, in an amount that shall be fully proven at the time of trial. These
20 damages include, but are not limited to: damages for general pain and
21 suffering; damages for loss of enjoyment of life, both past and future; medical
22 and 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, Plaintiffs pray for the following relief:

1. That the Court award Plaintiffs judgment against Defendant, in such sums as shall be determined to fully and fairly compensate the Plaintiffs 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 Plaintiffs their costs, disbursements and reasonable attorneys' fees incurred.
3. That the Court award Plaintiffs the opportunity to amend or modify the provisions of this complaint as necessary or appropriate after additional or further discovery is completed in this matter, and after all appropriate parties have been served; and
4. That the Court award such other and further relief as it deems necessary and proper in the circumstances.

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JURY DEMAND

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

RESPECTFULLY SUBMITTED this 9th day of September 2015.

O'STEEN & HARRISON, PLC



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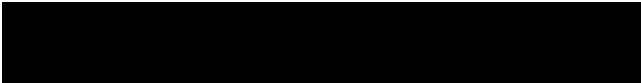
William D. Marler

Attorneys for Plaintiffs



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CERTIFICATE OF SERVICE

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I hereby certify that on the 9th 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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