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

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

32. The defendant is liable to the plaintiff for breaching express and implied warranties that it made regarding the adulterated food product that the plaintiff 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.

33. The plaintiff alleges 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.

34. The plaintiff alleges 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.

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

COUNT THREE
NEGLIGENCE

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.
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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 17th day of September 2015.
2

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

4 

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

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11 Attorneys for Plaintiff
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CERTIFICATE OF SERVICE

I hereby certify that on the 17th 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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