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**Attorneys for plaintiff**

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH

JANETTE PAINTER,

Plaintiff,

NO.

v.

**COMPLAINT**

ANDREW AND WILLIAMSON SALES,  
CO.  
dba  
ANDREW & WILLIAMSON FRESH  
PRODUCE, Inc.;

Jury Trial Demanded

Defendant.

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COMES NOW the plaintiff, JANETTE PAINTER, by and through her attorneys of record and allege as follows:

## **I. PARTIES**

1.1 The plaintiff resides in Spanish Fork, Utah. The plaintiff is a citizen of the State of Utah.

1.2 The Defendant Andrew and Williamson Sales, Co. dba Andrew & Williamson Fresh Produce, Inc., (hereinafter “A&W”) is a California corporation with its principal place of business in California as well. A&W is, therefore, a foreign corporation and not a citizen of the State of Utah.

1.3 A&W imports, manufactures, distributes, and sells a variety of fresh produce products, including cucumbers. A&W imported, manufactured, distributed, and sold the cucumbers that the Centers for Disease Control and Prevention has determined to be the cause of an outbreak of at least 418 *Salmonella* Poona illnesses in 31 states, including 37 illnesses in the State of Utah alone. A&W’s cucumbers caused the *Salmonella* Poona illnesses suffered by the plaintiffs, as set forth in more detail below.

## **II. JURISDICTION AND VENUE**

2.1 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 Utah such that the maintenance of the suit in this district does not offend traditional notions of fair play and substantial justice.

2.2 Venue in the United States District Court for the District of Utah is proper

pursuant to 28 USC § 1391(a)(2) because a substantial part of the events or omissions giving rise to the plaintiffs' 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**

3.1 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 Defendant A&W.

3.2 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.

3.3 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).

3.4 Among people for whom information is available, illnesses started on dates ranging from July 3, 2015 to August 30, 2015. Ill people range in age from less than 1 year to 99, with a median age of 15. Fifty-three percent of ill people are children younger than 18 years. Fifty-eight percent of ill people are female. Among 214 people with available information, 70 (33%) report being hospitalized. Three deaths have been reported from Arizona (1), California (1) and Texas (1).

3.5 On September 4, 2015, A&W 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 *Salmonella* Outbreaks Linked to Cucumbers**

3.6 In 2014 a total of 275 cases were reported from 29 states and the District of Columbia. An additional 18 suspected cases not meeting the case definition were excluded from the analysis because they were found to be temporal outliers and unlikely to be related. 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. A total of 101 patients were interviewed using the supplemental questionnaire about exposures in the week before illness onset. This questionnaire focused on leafy greens and tomatoes and contained smaller sections on fruit, vegetables, and seafood common to the Delmarva region.

3.7 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**

3.8 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*.

3.9 *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**

3.10 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.

3.11 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.

3.12 *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.

### **The Plaintiff's Illness**

3.13 Janette Painter purchased ten cucumbers from a Macey's grocery in Spanish Fork, Utah, in the days leading up to the onset of her illness, as described below. The cucumbers that she purchased had been imported, manufactured, distributed and sold by A&W, and were contaminated by *Salmonella* Poona.

3.14 Ms. Painter consumed the contaminated cucumbers on August 8 and 9, 2015, and fell ill the evening of August 9, 2015 with gastrointestinal symptoms.

3.15 Ms. Painter's illness worsened dramatically on Monday, August 10. On Tuesday, August 11, she was hospitalized as a result of her illness. She would stay in the hospital for seven days, spending five days in the intensive care unit because her kidneys had failed. She also developed blood poisoning as a result of her *Salmonella* infection.

3.16 Ms. Painter has continued to suffer from symptoms of illness ever since her discharge from the hospital.

3.17 During her hospitalization, Ms. Painter tested positive for *Salmonella* Poona, matching the strain involved in the above-described Salmonella outbreak associated with A&W's cucumbers.

## **IV. CAUSES OF ACTION**

### **Strict Liability—Count I**

4.1 At all times relevant hereto, the defendant manufactured and sold the

adulterated food product that is the subject of the action.

4.2 The adulterated food product that the defendant manufactured, distributed, 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* Poona, a harmful pathogen.

4.3 The adulterated food product that the defendant manufactured, distributed, or sold reached the plaintiff without any change in its defective condition. The adulterated food product that the defendant manufactured, distributed, or sold was used in the manner expected and intended, and was consumed by plaintiff.

4.4 Plaintiff 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, or sold.

#### **Negligence—Count II**

4.5 The defendant owed to the plaintiff a duty to use reasonable care in the manufacture, distribution, and sale of its food product, the observance of which duty would have prevented or eliminated the risk that the defendant's food products would become contaminated by *Salmonella* or any other dangerous pathogen. The defendant breached this duty.

4.6 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.

4.7 The plaintiff is 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.

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

4.9 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 the defendant failed to do so and was therefore negligent.

4.10 As a direct and proximate result of the defendant's acts and omissions of negligence, the plaintiff sustained injuries and damages in an amount to be proven at trial.

### **Negligence Per Se—Count III**

4.11 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 Utah Wholesome Food Act (Utah Code Ann. § 4-5-1 through 20).

4.12 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 harmful pathogen.

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

#### **DAMAGES**

4.23 The plaintiff has 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.

#### **JURY DEMAND**

The plaintiff hereby demand a jury trial.

#### **PRAYER FOR RELIEF**

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

- A. Ordering compensation for all general, special, incidental, and consequential damages suffered by the plaintiff as a result of the defendant's conduct;
- B. Awarding plaintiffs statutory pre- and post-judgment interest;
- C. Awarding plaintiff her 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 22, 2015.

THE FAERBER LAW FIRM, P.C.

*/s/ Jared Faerber*

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MARLER CLARK, LLP, PS

*/s/ William D. Marler*

*(signed by Filing Attorney with permission of  
Attorney William D. Marler)*

*/s/ Jared Faerber*

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JS 44 (Rev. 12/12)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**  
Jannette Painter

**DEFENDANTS**  
Andrew and Williamson Sales Co. dba Andrew & Williamson Fresh Produce, Inc.

(b) County of Residence of First Listed Plaintiff Utah County, UT  
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant San Diego County, CA.  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)

Attorneys (If Known)

See attachment

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |                                       |                            |   |                            |                                       |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
|   | <b>PTF</b>                            | <b>DEF</b>                 |   | <b>PTF</b>                 | <b>DEF</b>                            |
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4            |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input checked="" type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**V. ORIGIN** (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 USC 1332(a)

Brief description of cause:  
Personal injury as a result of food poisoning.

**VII. REQUESTED IN COMPLAINT:**

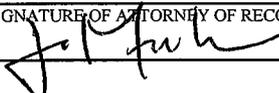
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.      **DEMAND \$** \_\_\_\_\_      CHECK YES only if demanded in complaint:  
**JURY DEMAND:**     Yes     No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE \_\_\_\_\_

DOCKET NUMBER \_\_\_\_\_

DATE: 09/22/2015      SIGNATURE OF ATTORNEY OF RECORD: 

**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

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