

Jason Edward Ochs, KSB No. 22282
OCHS LAW FIRM
323 S. David Street
Casper, WY 82601
(307) 234-3239 telephone
(307) 235-6910 facsimile
Jason@ochslawfirm.com

William D. Marler, Esq. (*Pro Hac Vice* Pending)
MARLER CLARK, L.L.P., P.S.
1301 Second Avenue, Suite 2800
Seattle, WA 98101
(206) 346-1876
bmarler@marlerclark.com
Attorneys for plaintiff

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS
WICHITA DIVISION**

MONICA RIOS,

Plaintiff,

No. 6:15-cv-1311-EFM-TJJ

v.

ANDREW & WILLIAMSON SALES
CO.;

**COMPLAINT
Jury Trial Demanded**

Defendant.

COMES NOW the plaintiff, MONICA RIOS, by and through her attorneys of record and alleges as follows:

I. PARTIES

1.1 The plaintiff resides in Wichita, Sedgwick County, Kansas. The plaintiff is a citizen of the State of Kansas.

1.2 The Defendant Andrew & Williamson Sales Co., (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 Kansas.

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 671 *Salmonella* Poona illnesses in 34 states. A&W’s cucumbers caused the *Salmonella* Poona illnesses suffered by the plaintiff, 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 Kansas 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 Kansas, Wichita Division, 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

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 29, 2015, a total of 671 people infected with the outbreak strains of *Salmonella* Poona have been reported from 34 states. The number of ill people reported from each state is as follows: Alabama (1), Alaska (13), Arizona (112), Arkansas (9), California (164), Colorado (17), Hawaii (1), Idaho (22), Illinois (8), Indiana (2), Iowa (5), Kansas (2), Kentucky (1), Louisiana (5), Minnesota (34), Missouri (10), Montana (14), Nebraska (5), Nevada (13), New Mexico (30), New York (5), North Dakota (3), Ohio (2), Oklahoma (12), Oregon (19), Pennsylvania (2), South Carolina (9), South Dakota (1), Texas

(33), Utah (51), Virginia (1), Washington (21), Wisconsin (38), and Wyoming (6).

3.4 Among people for whom information is available, illnesses started on dates ranging from July 3, 2015 to September 21, 2015. Ill people range in age from less than 1 year to 99, with a median age of 17. Fifty-one percent of ill people are children younger than 18 years. Fifty-four percent of ill people are female. Among 459 people with available information, 131 (29%) 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 In the several days before the onset of Ms. Rios's *Salmonella* illness, she consumed cucumbers purchased at a Wichita Wal-Mart location, which were sold under the Fat

Boy label. The cucumbers were contaminated by Salmonella bacteria, and had been manufactured and distributed by the defendant.

3.14 Ms. Rios's symptoms began on or about August 9, 2015. On August 10, 2015, she was seen in the emergency room, and on August 11, 2015 she was hospitalized at Wesley Medical Center. She would remain hospitalized through August 16, during which period she submitted a stool sample that ultimately tested positive for Salmonella.

3.15 After discharge from the hospital, Ms. Rios continued to suffer from the effects of her Salmonellosis illness. She has been contacted by officials from the State of Kansas and Sedgwick County Health Departments, and is a confirmed case in defendant's Salmonella outbreak linked to cucumbers.

IV. CAUSES OF ACTION

Product Liability—Count I

4.1 The defendant manufactured, distributed, and sold the adulterated, *Salmonella*-contaminated cucumbers that caused the Plaintiff's Salmonella illness.

4.2 By offering cucumbers for sale to the general public, the defendant impliedly warranted that the cucumbers were safe to eat, that they was not adulterated with a harmful pathogen, and that the cucumbers had been safely prepared under sanitary conditions.

4.3 The defendant breached the implied warranties with regard to the food that it manufactured and sold to the plaintiff, which breach constituted the proximate cause of the Plaintiff's Salmonella illness, injuries and losses.

4.4 Cucumbers that are contaminated with *Salmonella* are unsafe and thus defective when used in a reasonably foreseeable manner—*i.e.*, consuming them.

4.5 *Salmonella*-contaminated cucumbers are unfit for human consumption, and unreasonably dangerous to an extent beyond that contemplated by the ordinary consumer.

4.6 The cucumbers that the Plaintiff purchased and consumed were contaminated with *Salmonella* and were therefore defective and unreasonably dangerous.

4.7 The cucumbers that the Plaintiff purchased and consumed were contaminated with *Salmonella* when they left the defendant's control. The cucumbers that the Plaintiff purchased and consumed were therefore defective and unreasonably dangerous when they left the defendant's control.

4.8 The Plaintiff's consumption of the contaminated cucumbers caused her to become infected with *Salmonella* and suffer injury and damages as a direct and proximate result.

4.9 The defendant is liable to the plaintiff for all harm proximately caused by the manufacture, distribution, and sale of unsafe and defective cucumbers.

Negligence—Count II

4.10 The defendant owed to the plaintiffs 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.

4.11 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.

4.12 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.

4.13 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.

4.14 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.

4.15 As a direct and proximate result of the defendant's acts and omissions of negligence, the plaintiffs sustained injuries and 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 demands a jury trial.

PRAYER FOR RELIEF

WHEREFORE, the plaintiff prays for judgment against the 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. Awarding plaintiffs their reasonable attorneys fees and costs, to the fullest extent allowed by law; and
- C. Granting all such additional and/or further relief as this Court deems just and equitable.

DATED this 5th day of October, 2015.


Jason Edward Ochs, KSB No. 22282
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323 S. David Street
Casper, WY 82601
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Pending)

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

1301 Second Avenue, Suite 280

Seattle, WA 98101

(206) 346-1876

bmarler@marlerclark.com

Attorneys for plaintiff