

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA

JEFF ANDERSON, Resident of Illinois,

Plaintiff,

vs.

TRIPLE T MEATS INC., an Iowa
corporation, and
FAREWAY STORES, INC.,
an Iowa corporation,

Defendants.

Case No. Case No. 4:18-cv-51

FIRST AMENDED COMPLAINT

COMPLAINT

COMES NOW the Plaintiff, Jeff Anderson, by and through his attorneys of record, Wandro and Associates, P.C., and Marler Clark, L.L.P., P.S., complaining of the Defendants, Triple T Meats Inc. and Fareway Stores Inc., and alleges and states as follows:

PARTIES

1. At all times relevant to this action, the Plaintiff, Jeff Anderson, resides in Illinois. The Plaintiff is a citizen of the State of Illinois.

2. At all times relevant to this action, the Defendant, Triple T Meats Inc., was an Iowa corporation with its principal place of business located at 401 Sherman Avenue, Ackley, Iowa. Triple T Meats Inc. is a citizen of the State of Iowa. At all times relevant to this action, Triple T Meats Inc. was a manufacturer, distributor, and seller of Chicken Salad to customers, including Fareway Stores Inc. and the Plaintiff, across Iowa, Minnesota, Illinois, Nebraska, and South Dakota.

3. At all times relevant to this action, the Defendant, Fareway Stores Inc., was an Iowa corporation with its principal place of business located at 2300 8th Street, Boone, Iowa. Fareway Stores Inc. is a citizen of the State of Iowa. At all times relevant to this action, Fareway Stores Inc. was a manufacturer, distributor and seller of Chicken Salad to customers across Iowa, Minnesota, Illinois, Nebraska, and South Dakota.

JURISDICTION AND VENUE

4. 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, exclusive of costs; it is between citizens of different states; and because both Triple T. Meats Inc. and Fareway Stores Inc. have certain minimum contacts with the State of Iowa such that the maintenance of this suit in this district does not offend traditional notions of fair play and substantial justice.

5. Venue in the United States District Court for the Southern District of Iowa is proper pursuant to 28 USC § 1391(a)(1) and (2) because both Triple T. Meats Inc. and Fareway Stores Inc. were subject to personal jurisdiction in this judicial district at the time of the commencement of the action, and 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.

FACTS

The Outbreak

6. According to the Iowa Department of Health, to date there are at least 115 cases of *Salmonella* in Iowa, 2 cases of *Salmonella* in South Dakota, 1 case of *Salmonella* in Minnesota, 1 case of *Salmonella* in Nebraska, and 1 case of *Salmonella* in Illinois, caused by consumption of Chicken Salad products manufactured and sold by Defendant Fareway.

7. On February 14, 2018, the U.S. Department of Agriculture's Food Safety and Inspection Service (FSIS) issued a public health alert due to concerns about illnesses reported in the state of Iowa linked to the consumption of Fareway's Chicken Salad products. These products were produced between December 15, 2017, and February 13, 2018. The alert stated, "[t]he following product is subject to the public health alert: Varying weights of "Fareway Chicken Salad" sold in plastic deli containers with a Fareway store deli label. This product was shipped to all Fareway grocery stores in Iowa, Illinois, Minnesota, Nebraska and South Dakota and sold directly to consumers who shopped at Fareway."

8. The *Salmonella* contamination of the Chicken Salad products was discovered following reports of illness in Iowa. On February 9, 2018, the Iowa Department of Public Health notified FSIS of an investigation of *Salmonella* illnesses within the state of Iowa. FSIS continues to work with public health partners at the Iowa Department of Public Health and Department of Inspections and Appeals on this investigation. Updated information will be provided as it becomes available.

9. Defendant Fareway's chicken salad is produced by Defendant Triple T Specialty Meats in Ackley, Iowa.

10. The Iowa Department of Inspections and Appeals licenses and regulates grocery stores and traced the suspect chicken salad back to Defendant Triple T's Ackley plant.

11. The chicken salad produced by Defendant Triple T is distributed to Defendant Fareway's stores in five-pound containers. Defendant Fareway repackages the chicken salad received in five-pound containers into smaller plastic deli containers for sale to consumers as the Chicken Salad products.

12. On February 21, 2018, FSIS announced that Defendant Triple T was recalling approximately 20,630 pounds of ready-to-eat chicken salad products that, “may be contaminated with *Salmonella* Typhimurium,” and which were produced on various dates between January 2, 2018, and February 7, 2018.

The *Salmonella* Bacteria

13. *Salmonella* is the second most common intestinal infection in the United States. More than 7,000 cases of *Salmonella* were confirmed in 2009; however, the majority of cases go unreported. The Centers for Disease Control and Prevention estimates that over 1 million people in the U.S. contract *Salmonella* each year, and that an average of 20,000 hospitalizations and almost 400 deaths occur from *Salmonella* poisoning, according to a 2011 report.

14. *Salmonella* infection usually occurs when a person eats food contaminated with the feces of animals or humans carrying the bacteria. *Salmonella* outbreaks are commonly associated with eggs, meat, and poultry, but these bacteria can also contaminate other foods such as fruits and vegetables. Foods that are most likely to contain *Salmonella* include raw or undercooked eggs, raw milk, contaminated water, and raw or undercooked meats.

15. Symptoms of *Salmonella* infection, or Salmonellosis, range widely, and are sometimes absent altogether. The most common symptoms include diarrhea, abdominal cramps, and fever.

16. Typical Symptoms of *Salmonella* infection: Appear 6 to 72 hours after eating contaminated food and last for 3 to 7 days without treatment.

- Diarrhea
- Abdominal Cramps
- Fever of 100 F to 102 F
- Bloody diarrhea
- Vomiting
- Headache

- Body Aches

17. Complications of *Salmonella* poisoning are more likely to occur among young children and people age 65 or older. Possible complications like Reactive Arthritis are thought to occur in 2 to 15 percent of *Salmonella* patients. Symptoms include inflammation of the joints, eyes, or reproductive or urinary organs. On average, symptoms appear 18 days after infection. Irritable Bowel Syndrome can also be a long-term complication.

18. *Salmonella* infections generally last 3 to 7 days, and often do not require treatment. People with severe dehydration may need rehydration through an IV. Antibiotics are recommended for those at risk of invasive disease, including infants under three months old. Typhoid fever is treated with a 14-day course of antibiotics. Unfortunately, treatment of *Salmonella* has become more difficult as it has become more resistant to antibiotics. Finding the right antibiotic for a case of *Salmonella* is crucial to treating this bacterial infection.

Jeff Anderson's Consumption of Fareway Chicken Salad and *Salmonella* Infection

19. The Andersons purchased Fareway Chicken Salad on February 1, 2018 from the Fareway store in Moline, Illinois. Jeff consumed the product on February 1 and 2, 2018.

20. On Sunday, February 4, Jeff became ill with diarrhea, body aches, and chills. His symptoms became so severe that Jeff required emergency medical attention on February 6, 2018.

21. In the emergency room, Jeff underwent several tests and he was given an IV for dehydration. He was also prescribed pain medication due his abdominal pain.

22. Jeff had stool tests performed which came back positive for *Salmonella* on February 8, 2018.

23. Jeff continues to suffer from loose bowel movements and fatigue. He has also lost significant wages due to his illness.

COUNT I
(Strict Product Liability)

24. The Plaintiff incorporates the preceding paragraphs of this Complaint, by this reference, as if each of these paragraphs were set forth here in its entirety.

25. The Defendants manufactured, distributed, and sold the adulterated Chicken Salad that injured the Plaintiff.

26. The Defendants manufactured a food product, including Chicken Salad, for sale to the public.

27. Food that is contaminated by *Salmonella* is unsafe when put to the use reasonably foreseeable considering the nature of the product. Namely, *Salmonella*-contaminated food is unfit for human consumption.

28. The Chicken Salad that the Plaintiff purchased and consumed was contaminated with *Salmonella* when it left the control of the Defendants. The Plaintiff's consumption of the contaminated food caused him to become infected by *Salmonella* and to suffer injuries as a direct and proximate result of that consumption.

29. The Defendants are strictly liable to the Plaintiff for the harm proximately caused by the manufacture and sale of an unsafe and defective food product.

COUNT II
(Negligence)

30. The Plaintiff incorporates the preceding paragraphs of this Complaint, by this reference, as if each of these paragraphs were set forth here in its entirety.

31. The Defendants designed, manufactured, distributed, and sold Chicken Salad that was contaminated with *Salmonella*, a deadly pathogen.

32. The Defendants owed a duty to all persons who purchased and consumed its product, including the Plaintiff, to manufacture and sell Chicken Salad that was safe to eat, that was not adulterated with deadly pathogens, like *Salmonella*, and that was not in violation of applicable food and safety regulations. The Defendants breached this duty.

33. The Defendants owed a duty to all persons who purchased and consumed its products, including the Plaintiff, to ensure that any representations regarding the certifications its products had undergone prior to distribution and sale were made with reasonable care. The Defendants breached this duty.

34. The Defendants had a duty to comply with all statutes, laws, regulations, or safety codes pertaining to the manufacture, distribution, storage, and sale of its food products, but failed to do so, and were therefore negligent. The Plaintiff was 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.

35. The Defendants breached the duties owed to the ultimate consumers of Chicken Salad by committing the following acts and omissions of negligence:

a. Failed to adequately maintain or monitor the sanitary conditions of their products, premises, equipment and employees, and the products, premises, equipment and employees of other entities in the supply chain of the subject Chicken Salad;

b. Failed to properly operate their facilities and equipment in a safe, clean, and sanitary manner;

c. Failed to apply their food safety policies and procedures to ensure the safety and sanitary conditions of their food products, premises, and employees;

d. Failed to apply food safety policies and procedures that met industry standards for the safe and sanitary production of food products, and the safety and sanitary condition of their premises and employees;

e. Failed to prevent the transmission of *Salmonella* to consumers of their Chicken Salad;

f. Failed to properly train their employees and agents how to prevent the transmission of *Salmonella* on their premises, from their facilities or equipment, or in their food products;

g. Failed to properly supervise their employees and agents to prevent the transmission of *Salmonella* on their premises, from their facilities or equipment, or in their food products;

h. Failed to test their Chicken Salad for microbial pathogens, like *Salmonella*.

36. The Defendants had a duty to comply with all statutory and regulatory provisions that pertained or applied to the manufacture, distribution, storage, labeling, and sale of their food products. The Defendants breached this duty.

37. The Defendants owed a duty to the Plaintiff to use reasonable care in the manufacture, distribution, and sale of their food products, to prevent contamination with *Salmonella*. The Defendants breached this duty.

38. The Plaintiff's injuries proximately and directly resulted from the negligence of the Defendants, and from the Defendants' violations of statutes, laws, regulations, and safety codes pertaining to the manufacture, distribution, storage, and sale of food.

**COUNT III
(Breach of Warranty)**

39. The Plaintiff incorporates the preceding paragraphs of this Complaint, by this reference, as if each of these paragraphs were set forth here in its entirety.

40. By offering Chicken Salad for sale to the public, the Defendants impliedly warranted that such Chicken Salad was safe to eat, that it was not adulterated with a deadly pathogen, and that the Chicken Salad had been safely prepared under sanitary conditions.

41. The Defendants breached the implied warranties about the food they manufactured and sold to the Plaintiff, which was consumed by the Plaintiff causing the Plaintiff's injuries and losses.

42. The Plaintiff's injuries proximately and directly resulted from the Defendants' breach of implied warranties, and the Plaintiff is thus entitled to recover for all actual, consequential, and incidental damages that flow directly and in a foreseeable fashion from these breaches.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays as follows:

- (1) That the Court award the Plaintiff judgment against Defendants for damages.
- (2) That the Court award all such other sums as shall be determined to fully and fairly compensate the Plaintiff for all general, special, incidental and consequential damages incurred, or to be incurred, by the Plaintiff as the direct and proximate result of the acts and omissions of the Defendants;

(3) That the Court award the Plaintiff his costs, disbursements, and reasonable attorneys' fees incurred;

(4) That the Court award the Plaintiff 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

(5) That the Court award such other and further relief as it deems necessary and proper in the circumstances.

JURY TRIAL DEMAND

The Plaintiff demands trial by jury on all issues raised herein.

Dated this 22nd day of February, 2018.

Respectfully submitted,

\s\ Steven Wandro

Steven Wandro AT0008177

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