

STATE OF INDIANA)
)SS:
COUNTY OF HAMILTON)

IN THE HAMILTON SUPERIOR COURT

JACOB NOVERO,)
)
) Plaintiff,)
)

v.)

CAUSE NO.

CAITO FOODS, LLC,)
)
) Defendant.)

COMPLAINT

COMES NOW the plaintiff, Jacob Novero, by and through counsel, David A. Wilson, David Wilson Law Offices, P.C., and William D. Marler, Marler Clark, L.L.P., P.S. (pending admission *pro hac vice*), complaining of the defendant, Caito Foods, LLC, and alleges and states as follows:

PARTIES

1. At all times relevant to this action, Jacob Novero (“plaintiff”) resided in Fishers, Hamilton County, Indiana.

2. At all times relevant to this action, the defendant Caito Foods, LLC, (“defendant”) operated, at its principal place of business located at 3120 North Post Road, Indianapolis, Marion County, Indiana, a fresh fruit and produce processing and distribution business. It is at this location that the defendant processed and distributed the *Salmonella*-contaminated food products that were the source of the subject outbreak and plaintiff’s injuries, described below.

FACTS

The *Salmonella* Outbreak

3. The CDC, public health and regulatory officials in several states, and the U.S. Food and Drug Administration are investigating a multistate outbreak of *Salmonella* Adelaide infections.

4. Public health investigators are using the PulseNet system to identify illnesses that may be part of this outbreak. PulseNet is the national subtyping network of public health and food regulatory agency laboratories coordinated by CDC. DNA fingerprinting is performed on *Salmonella* bacteria isolated from ill people by using techniques called pulsed-field gel electrophoresis (PFGE) and whole genome sequencing (WGS). CDC PulseNet manages a national database of these DNA fingerprints to identify possible outbreaks. WGS gives a more detailed DNA fingerprint than PFGE.

5. As of June 7, 2018, 60 people infected with the outbreak strain of *Salmonella* Adelaide have been reported from five states – Illinois, Indiana, Michigan, Missouri, and Ohio.

6. Illnesses started on dates ranging from April 30, 2018, to May 28, 2018. Ill people range in age from less than 1 year to 97, with a median age of 67. Sixty-five percent are female. Out of 47 people with information available, 31 (66%) have been hospitalized. No deaths have been reported.

7. Illnesses that occurred after May 20, 2018, might not yet be reported due to the time it takes between when a person becomes ill and when the illness is reported. This takes an average of 2 to 4 weeks.

8. Epidemiologic and preliminary traceback evidence indicates that pre-cut melon supplied by the Caito Foods, LLC of Indianapolis, Indiana is the likely source of this multistate *Salmonella* outbreak.

9. In interviews, ill people answered questions about the foods they ate and other exposures in the week before they became ill. Twenty-five (64%) of 39 people interviewed reported eating pre-cut melon purchased from grocery stores, including cantaloupe, watermelon, or a fruit salad mix with melon. An additional seven people reported consuming melons but did not specify if it was pre-cut.

10. Information collected from stores where ill people shopped indicates that Caito Foods, LLC supplied pre-cut melon to these stores. On June 8, 2018, Caito Foods, LLC recalled fresh cut watermelon, honeydew melon, cantaloupe, and fresh-cut fruit medley products containing one of these melons produced at the Caito Foods facility in Indianapolis, Indiana. The products were packaged in clear, plastic clamshell containers and distributed in Georgia, Illinois, Indiana, Kentucky, Michigan, Missouri, North Carolina and Ohio. The pre-cut melon sold at Walmart, Costco, Jay C, Payless, Whole Foods, Sprouts, Trader Joe's, Walgreens and Kroger stores.

The *Salmonella* Bacteria

11. *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.

12. *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.

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

14. 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

15. 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.

16. *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. 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.

The Plaintiff's Injuries

17. Plaintiff purchased the defendant's cut melon product from the Walmart Supercenter in Noblesville, Indiana on or about Saturday, May 12, 2018, using his mother's EBT card. The plaintiff ate the melon on Mother's Day, Sunday May 13, 2018. The container was clear and had honeydew melon, cantaloupe melon, watermelon, and blueberries. The plaintiff purchased a total of three containers on this date.

18. Late the next day, plaintiff began to feel ill and as the week progressed he became sicker. Soon, plaintiff began experiencing significant amounts of diarrhea. On Saturday, May 19, 2018, plaintiff went to the IU Saxony Hospital where he was treated with IV fluids and potassium because of his dehydration and low electrolyte levels. On Sunday, May 20, plaintiff returned to provide a stool sample and he received fluids as tests revealed he was still dehydrated. The next day plaintiff went to his primary care doctor for ongoing symptoms. His physician ordered a STAT CT scan, the results of which showed he had a colitis. The plaintiff was referred to a colon/rectal specialist.

19. That night plaintiff also began having blood in his stool, so he went to Community North hospital. In the Emergency Room, he was given pain medicine for left sided pain and yet another bag of fluid for dehydration. Blood tests from this night showed that his iron was low. The ER physician wrote prescriptions for pain medications and nausea medicine.

20. On Thursday the 24th, plaintiff was seen by a specialist who decided to schedule a colonoscopy the next day. While plaintiff was undergoing the procedure, IU Saxony Hospital

called plaintiff to inform him that the stool sample he provided had *Salmonella* and he needed to take a prescription; Ciprofloxacin.

21. The colonoscopy revealed that plaintiff had ulcers in his intestines, so a biopsy was performed for testing. After the procedure, plaintiff was then prescribed a steroid which was later changed on the follow-up visit.

22. The day after Memorial Day, plaintiff went back to Community North hospital for ongoing pain in his lower left side. He was again given pain medicine and another IV. On May 31, he received the results from the colonoscopy. The biopsy showed colitis inflammation due to the *Salmonella* infection, thereby ruling out Ulcerative Colitis and Crohn's Disease. The plaintiff was given a prescription to help the ulcers in the intestines and was told to finish the antibiotics. The plaintiff was also put on a special diet high in protein and no vegetables, fruits, or nuts.

23. The plaintiff was scheduled for follow up on June 7. At this appointment plaintiff still had lower left side pain, nausea, and loose stool. The physician ordered another round of stool samples as well as a gallbladder ultrasound. On June 10, he returned to IU Saxony for lower left side pain and continuing diarrhea. This visit led to another round of antibiotics and a visit to an additional colon/rectal specialist.

24. The plaintiff was seen by this specialist on June 12. The specialist increased the number of antibiotics plaintiff was required to take and scheduled an appointment for June 21. The plaintiff is currently still having bowel issues and pain. He has not been able to work.

COUNT I—STRICT PRODUCT LIABILITY

25. The plaintiff incorporates the preceding paragraphs of this complaint, by this reference, as if each and every of these paragraphs was set forth here in its entirety.

26. The defendant processed and distributed the adulterated food product that injured the plaintiff, and therefore manufactured it.

27. The defendant manufactures food products, including processed melon, for sale to the public, including in this instance to plaintiff.

28. 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.

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

30. The defendant is strictly liable to plaintiff for the harm proximately caused by the manufacture and sale of an unsafe and defective food product.

COUNT II--NEGLIGENCE

31. Plaintiff incorporates the preceding paragraphs of this complaint, by this reference, as if each and every of these paragraphs was set forth here in its entirety.

32. The defendant designed, manufactured, distributed, and sold food products that were contaminated with *Salmonella*, a harmful pathogen.

33. The defendant owed a duty to all persons who consumed its products, including plaintiff, to manufacture and sell food products that were safe to eat, that were not adulterated with harmful pathogens, like *Salmonella*, and that were not in violation of applicable food and safety regulations.

34. The defendant had a duty to comply with all statutory and regulatory provisions that pertained or applied to the manufacture, distribution, storage, labeling, and sale of its food products. The defendant's manufacture, distribution, and sale of the *Salmonella*-contaminated food products that caused plaintiff's injuries was in breach of the duties imposed upon this defendant under said statutory and regulatory provisions. Plaintiff was among the class of persons designed to be protected by these statutes and regulations pertaining to the manufacture, distribution, storage, and sale of similar food products. As a result, these defendant's actions in manufacturing, distributing, and selling the subject food products constituted negligence *per se*, for which negligence it is liable.

35. The defendant breached the duties owed to the ultimate consumers of its food products by committing the following acts and omissions of negligence:

35.1 Failed to adequately maintain or monitor the sanitary conditions of its products, premises, equipment and employees;

35.2 Failed to properly operate its facilities and equipment in a safe, clean, and sanitary manner;

35.3 Failed to apply its food safety policies and procedures to ensure the safety and sanitary conditions of its food products, premises, and employees;

35.4 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 its premises and employees;

35.5 Failed to prevent the transmission of *Salmonella* to consumers of its food products;

35.6 Failed to properly train its employees and agents how to prevent the transmission of *Salmonella* on its premises, from its facility or equipment, or in its food products;

35.7 Failed to properly supervise its employees and agents to prevent the transmission of *Salmonella* on its premises, from its facility or equipment, or in its food products.

36. The defendant owed a duty to plaintiff to use reasonable care in the manufacture, distribution, and sale of its food products, to prevent contamination with *Salmonella*. The defendant breached this duty.

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

COUNT III—BREACH OF WARRANTY

38. Plaintiff incorporate the preceding paragraphs of this complaint, by this reference, as if each and every of these paragraphs were set forth here in its entirety.

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

40. The defendant breached the implied warranties with regard to the food products it manufactured and sold to plaintiff, and that plaintiff consumed, causing plaintiff's injuries and losses.

41. Plaintiff's injuries proximately and directly resulted from the defendant's breach of implied warranties, and 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

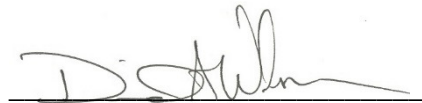
WHEREFORE, plaintiff prays as follows:

- (1) That the Court award plaintiff judgment against defendant for damages.
- (2) That the Court award all such other sums as shall be determined to fully and fairly compensate plaintiff for all general, special, incidental and consequential damages incurred, or to be incurred, by plaintiff as the direct and proximate result of the acts and omissions of the defendant;
- (3) That the Court award plaintiff his costs, disbursements, pre-judgment interest and reasonable attorneys' fees incurred;
- (4) 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
- (5) That the Court award such other and further relief as it deems necessary and proper in the circumstances.

JURY TRIAL DEMAND

Plaintiff, by counsel, demands a trial by jury on all issues raised herein.

Respectfully submitted,



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