

between citizens of different states, and because the Defendant has certain minimum contacts with the State of Illinois such that maintenance of the 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 Northern District of Illinois is proper pursuant to 28 U.S.C. § 1391(a)(2) because a substantial part of the events or omissions giving rise to Plaintiff's claims and causes action occurred in this judicial district, and because the defendant is subject to personal jurisdiction in this judicial district at the time of the commencement of the action.

FACTS

The Outbreak

6. According to the Centers for Disease Control and Prevention (CDC), as of December 4, 2019, 102 people infected with an outbreak strain of *E. coli* O157:H7 have been reported from 23 states, and 2 cases have been reported in Canada. Epidemiologic, laboratory, and traceback evidence indicate that romaine lettuce from the Salinas, California growing region is the likely source of this outbreak.

7. CDC has advised that consumers not eat and retailers not sell any romaine lettuce grown in the Salinas, California, growing region. This includes all use-by dates and brands of romaine lettuce from this region.

8. The Food and Drug Administration (FDA) and state health departments continue to trace the source of the romaine lettuce eaten by ill people. Investigation is ongoing to determine the source of contamination and if additional products are linked to illness. This

outbreak is caused by the same strain of *E. coli* O157:H7 that caused outbreaks linked to leafy greens in 2017 and to romaine lettuce in 2018.

Prior Outbreaks Linked to Lettuce and Other Leafy Greens

9. *E. coli* O157:H7 outbreaks associated with lettuce and other leafy greens are by no means a new phenomenon. Outlined below is a list of *E. coli* outbreaks involving contaminated lettuce or leafy greens in the past decade:

Date	Vehicle	Etiology	Confirmed Cases	States/Provinces
Sept. 2009	Lettuce: Romaine or Iceberg	<i>E. coli</i> O157:H7	29	Multistate
Sept. 2009	Lettuce	<i>E. coli</i> O157:H7	10	Multistate
April 2010	Romaine	<i>E. coli</i> O145	33	5:MI, NY, OH, PA, TN
Oct. 2011	Romaine	<i>E. coli</i> O157:H7	60	Multistate
April 2012	Romaine	<i>E. coli</i> O157:H7	28	1:CA Canada
June 2012	Romaine	<i>E. coli</i> O157:H7	52	Multistate
Sept. 2012	Romaine	<i>E. coli</i> O157:H7	9	1:PA
Oct. 2012	Spinach and Spring Mix Blend	<i>E. coli</i> O157:H7	33	Multistate
Apr. 2013	Leafy Greens	<i>E. coli</i> O157:H7	14	Multistate
Aug. 2013	Leafy Greens	<i>E. coli</i> O157:H7	15	1:PA
Oct. 2013	Ready-To-Eat Salads	<i>E. coli</i> O157:H7	33	Multistate
Apr. 2014	Romaine	<i>E. coli</i> O126	4	1:MN

Date	Vehicle	Etiology	Confirmed Cases	States/Provinces
Apr. 2015	Leafy Greens	<i>E. coli</i> O145	7	3:MD, SC, VA
June 2016	Mesclun Mix	<i>E. coli</i> O157:H7	11	3:IL, MI, WI
Nov. 2017	Leafy Greens	<i>E. coli</i> O157:H7	67	Multistate and Canada
Mar. 2018	Romaine	<i>E. coli</i> O157:H7	219	Multistate and Canada
Nov. 2018	Romaine	<i>E. coli</i> O157:H7	88	Multistate and Canada
Sept. 2019	Romaine	<i>E. coli</i> O157:H7	23	Multistate
Nov. 2019	Romaine	<i>E. coli</i> O157:H7	104	Multistate and Canada

The *E. coli* O157:H7 bacteria

10. *Escherichia coli* are the name of a common family of bacteria, most members of which do not cause human disease. *E. coli* O157:H7 is a specific member of this family that can cause bloody diarrhea (hemorrhagic colitis) in humans. In the years since *E. coli* O157:H7 was first identified as a cause of diarrhea, this bacterium has established a reputation as a significant public health hazard.

11. *E. coli* O157:H7 lives in the intestines of cattle and other ruminants. *E. coli* O157:H7 is also notable among pathogenic bacteria for its extremely low infectious dose—that is, the number of bacteria necessary to induce infection in a person. While for most pathogenic bacteria it takes literally millions of bacterial colonies to cause illness, it is now known that fewer than 50 *E. coli* O157:H7 bacteria can cause illness in a child. The practical import is that even a

microscopic amount of exposure can trigger a devastating infection.

12. The most severe cases of the *E. coli* O157:H7 infection occur in young children and in the elderly, presumably because the immune systems in those age populations are the most vulnerable. After a susceptible individual ingests *E. coli* O157:H7, the bacteria attach to the inside surface of the large intestine and initiates an inflammatory reaction of the intestine. What ultimately results in the painful bloody diarrhea and abdominal cramps characteristic of the intestinal illness.

13. The mean incubation period (time from ingestion to the onset of symptoms) of *E. coli* O157:H7 is estimated to be two to four days (range, 1-21 days). Typically, a patient with an acute *E. coli* O157:H7 infection presents with abdominal cramps, bloody diarrhea, and vomiting. The duration of diarrhea in children with *E. coli* O157:H7 infections are significantly longer than that of adults.

14. *E. coli* O157:H7 can produce a wide spectrum of disease from mild, non-bloody diarrhea, to severe bloody diarrhea accompanied by excruciating abdominal pain to life-threatening complications. In most infected individuals, the intestinal illness lasts about a week and resolves without any long-term effects. Antibiotics do not appear to aid in combating these infections, and recent medical studies suggest that antibiotics are contraindicated for their risk of provoking more serious complications. Apart from good supportive care, which should include close attention to hydration and nutrition, there is no specific therapy.

15. About 10% of individuals with *E. coli* O157:H7 infections (mostly young children) go on to develop hemolytic uremic syndrome (HUS), a severe, potentially life-threatening complication. The essence of the syndrome is described by its three central features: destruction of red blood cells, destruction of platelets (those blood cells responsible for clotting), and acute

renal failure due to the formation of micro-thrombi that occlude microscopic blood vessels that make up the filtering units within the kidneys.

16. There is no known therapy to halt the progression of HUS. The active stage of the disease usually lasts one to two weeks, during which a variety of complications are possible. HUS is a frightening illness that even in the best American medical facilities has a mortality rate of about 5%. The majority of HUS patients require transfusion of blood products and develop complications common to the critically ill.

Charles Nunley's *E. coli* O157:H7 infection

17. Plaintiff purchased and consumed romaine lettuce from Mariano's Grocery Store, located at 625 S. Main St., Wheaton, IL 60187, multiple times in the two weeks preceding his illness.

18. Plaintiff's symptom onset occurred on or about November 11, 2019, and included abdominal pain, nausea, and diarrhea, which soon turned bloody

19. Plaintiff's condition continued to deteriorate, and he sought medical care at Central DuPage Hospital on November 13 and again on November 15. Plaintiff remained hospitalized until November 20, 2019.

20. A stool sample collected from Plaintiff at Central DuPage Hospital tested positive for *E. coli* O157.

21. Plaintiff continues to recover from his *E. coli* infection.

22. As a result of his *E. coli* O157:H7 infection, Plaintiff suffered significant physical injury, economic loss, medical bills, pain and suffering, loss of normal life, lost wages, and emotional distress.

CAUSES OF ACTION

COUNT I—STRICT PRODUCT LIABILITY

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

24. The Defendant manufactured, distributed, and sold the adulterated food that injured Plaintiff and caused him to become infected with *E. coli* O157:H7.

25. Food and drink that is contaminated with *E. coli* O157:H7 is unsafe when put to the use reasonably foreseeable considering the nature of the product. Namely, *E. coli* O157:H7-contaminated food and drink is unfit for human consumption.

26. The food that Plaintiff purchased from the Defendant was contaminated with *E. coli* O157:H7. Plaintiff's consumption of the contaminated food caused him to become infected with *E. coli* O157:H7 and to suffer injuries as a direct and proximate result.

27. The food that Plaintiff purchased and consumed was contaminated with *E. coli* O157:H7 when it left the Defendant's control.

28. The Defendant is strictly liable to Plaintiff for the harm proximately caused by its manufacture and sale of an unsafe and defective food product.

29. As a direct and proximate result of the Defendant's strict liability as set forth herein, Plaintiff was caused to suffer serious injuries, has suffered bodily pain and mental anguish, has suffered and will suffer in the future pain of body and mind, has incurred medical and related expenses, and has suffered and will suffer in the future other damages.

COUNT II—NEGLIGENCE

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

31. The Defendant designed, manufactured, distributed, and sold food products that were adulterated with *E. coli* O157:H7 bacteria, a potentially deadly pathogen. These products, as a result of adulteration, were unfit for human consumption, and were not reasonably safe as designed, constructed, manufactured, and sold.

32. The Defendant owed a duty to all persons who were the eventual consumers of its product, as well as all persons foreseeably at risk of secondary transmission of disease, to manufacture and sell food that was safe to eat, was not adulterated with potentially harmful pathogens like *E. coli* O157:H7, and that was not in violation of applicable food and safety regulations.

33. The Defendant owed a duty to all persons who were the eventual consumers of its products, as well as all persons foreseeably at risk of secondary transmission of disease, to maintain its premises in a sanitary and safe condition so that no one eating food produced at the Defendant's premises would be exposed to, or infected by, a potentially harmful pathogen like *E. coli* O157:H7. The Defendant also owed a duty to all persons who were the eventual consumers of its products to use wholesome ingredients, and to source those ingredients from entities who use reasonable care in the growth, harvest and distribution of those products, in the production of food for sale to the public.

34. The Defendant breached the duties it owed to persons who were the eventual consumers of its products, as well as all persons foreseeably at risk of secondary transmission of disease, by committing the following acts and omissions of negligence:

- a. Failing to adequately maintain or monitor the sanitary conditions of its food, drink, water, premises, and employees;
- b. Failing to properly operate the locations where it manufactured its food in

a safe, clean, and sanitary manner;

c. Failing to prevent the transmission of *E. coli* O157:H7 from its food, drink, water, premises, or employees, to the ultimate consumers of its products, and those foreseeably at risk of secondary transmission of disease;

d. Failing to properly train its employees and agents on how to prevent the transmission of *E. coli* O157:H7 on its premises, or in its food, drink and water;

e. Failing to properly supervise its employees and agents to prevent the transmission of *E. coli* O157:H7 on its premises, or in its food, drink and water;

f. Manufacturing and selling adulterated food in violation of 410 ILCS 620/3.2;

g. Storing, offering, and delivering food in violation of 410 ILCS 620/3.1 and 410 ILCS 620/3.4;

h. Failing to maintain its premises in a clean, sanitary, and healthful manner in violation of 410 ILCS 650/1 and 410 ILCS 650/2; and

i. Failing to properly and carefully select and monitor the entities from which it purchased and received raw materials used in the production of the products.

35. As a direct and proximate result of the Defendant's negligent acts as set forth herein, Plaintiff was caused to suffer serious injuries, has suffered bodily pain and mental anguish, has suffered and will suffer in the future pain of body and mind, has incurred medical and related expenses, and has suffered and will suffer in the future other damages.

COUNT III—BREACH OF WARRANTY

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

37. By offering food for sale to the general public, the Defendant expressly warranted that such food was safe to eat, that it was not adulterated with a harmful pathogen, and that the food had been safely prepared under sanitary conditions.

38. By offering food for sale to the general public, the Defendant also impliedly warranted that such food was safe to eat, that it was not adulterated with a harmful pathogen, and that the food had been safely prepared under sanitary conditions.

39. The Defendant breached its express and implied warranties with regard to the food it manufactured and that was ultimately consumed by Plaintiff.

40. As a direct and proximate result of the Defendant's breach of express and implied warranties as set forth herein, Plaintiff was caused to suffer serious injuries, has suffered bodily pain and mental anguish, has suffered and will suffer in the future pain of body and mind, has incurred medical and related expenses, and has suffered and will suffer in the future other damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against the Defendant as follows:

- a. Judgment for Plaintiff against the Defendant for just compensation in a fair and reasonable amount for the damages above set forth; and
- b. Such additional and/or further relief, including interest, costs, and reasonable attorney fees, as this Court deems just and equitable.

JURY DEMAND

Plaintiff hereby demands a jury trial.

Dated: December 17, 2019

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