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CHAUNDA and SHEA RODRIGUES, and Z.R.

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THIRD CIRCUIT
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IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

CHAUNDA and SHEA RODRIGUES,
individually, and as parents of Z.R., a
minor,

Plaintiffs,

vs.

ISLAND NATURALS MARKET, INC.,
d/b/a ISLAND NATURALS MARKET &
DELI, a Hawai'i corporation,

Defendant.

CIVIL NO. _____
OTHER NON-VEHICLE TORT

**COMPLAINT; DEMAND FOR JURY
TRIAL; SUMMONS**

8868-001

COMPLAINT

COME NOW, Plaintiffs, CHAUNDA and SHEA RODRIGUES, individually, and as
parents of Z.R., a minor, for a Complaint against Defendant ISLAND NATURALS
MARKET, INC., d/b/a ISLAND NATURALS MARKET & DELI, a Hawai'i corporation,
and alleges as follows:

I. THE PARTIES

1. Plaintiffs, CHAUNDA & SHEA RODRIGUES and their son, Z.R. (hereinafter "Plaintiffs"), are and were citizens and residents of Hilo, County of Hawai'i, State of Hawai'i.

2. Defendant ISLAND NATURALS MARKET, INC. is a Hawai'i corporation which does business in the State of Hawai'i. At all times relevant to this complaint, the defendant operated the establishment, Island Naturals Market & Deli, located at 1221 Kilauea Ave in Hilo, Hawai'i.

II. STATEMENT OF FACTS

3. By this reference, Plaintiffs incorporate paragraphs 1 through 2 of this Complaint as if each was set forth here in its entirety.

About Angiostrongyliasis, a/k/a Rat Lungworm

4. Angiostrongyliasis, also known as rat lungworm, is a disease that affects the brain and spinal cord. It is caused by a parasitic nematode (roundworm parasite) called *Angiostrongylus cantonesis*. The adult form of *A. cantonesis* is only found in rodents. However, infected rodents can pass larvae of the worm in their feces. Snails, slugs, and certain other animals (including freshwater shrimp, land crabs, and frogs) can become infected by ingesting this larvae; these are considered intermediate hosts.

5. Humans can become infected with *A. cantonesis* if they eat (intentionally or otherwise) a raw or undercooked infected intermediate host, thereby ingesting the parasite. Sometimes, people can become infected by eating raw produce that contains a small infected snail or slug, or part of one. It is currently not known for certain whether the slime left by infected snails and slugs are able to cause infection.

6. Infection with *A. cantonesis* can cause a rare type of meningitis, eosinophilic meningitis, and according to the CDC, *A. cantonesis* is the most common cause of human eosinophilic meningitis. Some infected individuals do not have any symptoms or only have mild symptoms. In other infected persons, the symptoms can be much more severe.

7. Symptoms usually begin 1 to 3 weeks after exposure to the parasite, but have been known to range anywhere from 1 day to as long as 6 weeks after exposure. When symptoms are present, they can include severe headache and stiffness of the neck, tingling or painful feelings in the skin or extremities, low-grade fever, nausea, and vomiting. Sometimes, a temporary paralysis of the face may also be present, as well as light sensitivity. Although it varies from case to case, symptoms usually last between 2-8 weeks.

8. There are no readily available blood tests for angiostrongyliasis. In Hawai'i, cases can be diagnosed with a polymerase chain reaction (PCR) test, performed by the State Laboratories Division that detects *A. cantonesis* DNA in a patient's cerebrospinal fluid (CSF) or other tissue. Most often, however, a diagnosis is based on a patient's exposure history—such as if they have a history of travel to areas where the parasite is known to be found or history of ingestion of raw or undercooked snails, slugs, or other animals known to carry the parasite—and their clinical signs and symptoms consistent with angiostrongyliasis, as well as laboratory finding of eosinophils (a special type of white blood cell) in their CSF. There is no reliable diagnostic test available to detect infections of angiostrongyliasis.

9. There is no specific treatment for angiostrongyliasis. In 2018, the Hawai'i Governor's Joint Task Force on Rat Lungworm Disease published preliminary evidence-based clinical guidelines for the diagnosis and treatment of neuroangiostrongyliasis. The preliminary guidelines call for a complete neurologic examination; a detailed history of possible exposure to snails/slugs, rats, or other things suggesting a risk for infection; and a lumbar puncture, or spinal tap, to diagnose the disease and relieve headaches caused by the disease. Because the parasites cannot grow or reproduce in humans and will die eventually, causing inflammation, steroids should be given as early as possible to reduce inflammation. Anti-parasitic drugs, such as albendazole, may be helpful, although there is limited evidence of this in humans. If albendazole is used, it must be combined with steroids to treat any possible increase in inflammation caused by dying worms. Persons with symptoms should consult their healthcare provider for more information.

A. cantonesis's History in Hawai'i

10. Angiostrongyliasis first became a reportable illness to the Hawai'i Department of Health (HDOH) in 2007, meaning that clinicians are required to report patients with eosinophilic meningitis, and laboratories are required to provide cerebrospinal fluid results for such patients. When suspected cases are reported, disease investigators work closely with the patients to carefully examine where they live, work, recreate, or may have traveled in order to identify how they may have become infected.

11. Since tracking of angiostrongyliasis began in 2007, there have been 46 laboratory-confirmed cases and 37 probable cases, resulting in a total of 83 cases statewide reported to the HDOH. Two adult deaths related to the disease have been reported, one in 2012 and the other in 2015. Between 2006 and 2016, the HDOH recorded between one and 11 cases of angiostrongyliasis per year. In 2017, there was a total of 18 laboratory-confirmed cases— meaning lumbar puncture samples tested positive for the parasite—and three probable cases—meaning persons had symptoms and history consistent with an infection, but there was no laboratory confirmation.

12. Historically, a majority of cases occurred on Oahu. However, since 2004, most cases have appeared on Hawai'i island. In 2017, out of the 18 confirmed and 3 probable cases reported, 11 confirmed cases and 2 probable cases of angiostrongyliasis were from Hawai'i Island.

The Plaintiffs' Claims

13. Chaunda and Shea Rodrigues are the 31-year-old parents of Z.R., their 13-month-old son. They live in Hilo, Hawai'i.

14. On December 31, 2019 Chaunda went to Island Naturals to purchase lunch. She purchased two sandwiches "made to order" avocado sandwiches (one with mayo and one with Dijon mustard). After arriving home, Shea ate one sandwich and Chaunda ate the first half of sandwich and fed some of the avocado from her sandwich to her son.

15. After consuming approximately half her sandwich, Plaintiff Chaunda took another bite and felt something stick in her top left jaw. She removed the item from her mouth and discovered it was a 2.5" slug. She inspected the rest of her sandwich and found the other part of the slug still inside. The realization of what she had consumed caused her to vomit.

16. Plaintiff Chaunda was aware of the risk of rat lungworm so she contacted a local hospital who told her that there was little they could do until symptoms manifested. Upset at the thought that she would simply have to "wait and see," plaintiff Chaunda eventually went to Hilo Medical Center Emergency Department on January 1, 2020, where she was treated for two hours and prescribed albendazole.

17. Plaintiffs Shea and Z.R. also sought medical attention due to their exposure to the rat lung worm parasite. Plaintiff Z.R. received treatment at Hilo Urgent Care on January 2, 2020, and Plaintiff Shea received treatment from Sarah Strong, N.D., on January 3, 2020.

18. Plaintiff Chaunda took the entire plate with the slug (frozen within three hours of the incident) to the Jarvi Lab at the University of Hawai'i at Hilo's Daniel K. Inouye College of Pharmacy on January 2, 2020, to determine her and her family's risk of developing angiostrongyliasis. They selected the most likely areas of slug to be infected as the sample was too large to process entirely in one test. They reported that the slug Plaintiff Chaunda partially consumed tested positive for the rat lungworm parasite, *Angiostrongylus cantonesis*.

19. Presently, Plaintiff Chaunda has experienced increased pressure in shoulders, pressure in lower left at base of skull, stiffness in the neck, tingling in head, fatigue, pressure in lower lumbar portion of her spine and headaches.

As of January 6, 2020, Shea has been experiencing sensitivity to light, headaches pressure to lower left side of head, loss of appetite and fatigue.

III. STRICT PRODUCTS LIABILITY

20. By this reference, the plaintiffs incorporate paragraphs 1 through 19 of this Complaint as if each was set forth here in its entirety.

21. At all times material to this Complaint, the Defendant was in the business of manufacturing, distributing, marketing, and/or selling food products, including sandwich products like those purchased and consumed by the plaintiffs, in the ordinary course of business.

22. There was a manufacturing defect in the sandwich products purchased by the plaintiffs on December 31, 2019, and insufficient warning of said defects when the sandwich products left the Defendant's possession and control.

23. The sandwich products contained a manufacturing defect because they contained a slug contaminated with rat lungworm, a potentially deadly parasite, when they left the Defendant's possession and control. The presence of the rat lungworm parasite—or *A. cantonesis*—was a condition of the product that rendered the sandwich products unreasonably dangerous for their intended use beyond the extent that would be contemplated by the ordinary consumer or user of the sandwich products. Due to the presence of the rat lungworm parasite, the sandwich products did not conform to the design of the Defendant's other products at the manufacturing state.

24. There was an insufficient warning defect in the sandwich products when they left the defendant's possession and control. The sandwich products were defective because they were contaminated with the rat lungworm parasite and the Defendant failed to give adequate warnings of the product's dangers, which by the application of reasonably developed human skill and foresight, should have been known. The Defendant also failed to give adequate warnings and instructions to avoid such dangers. The Defendant's failure to provide such warnings and instructions rendered the sandwich products unreasonably dangerous.

25. The sandwich products' manufacturing defects and insufficient warnings were the direct, proximate, and producing cause of the plaintiffs' injuries and damages set forth below.

26. The Defendant is therefore strictly liable for manufacturing, distributing, marketing, and/or selling defective and unreasonably dangerous sandwich products and introducing them into the stream of commerce.

IV. NEGLIGENCE

27. By this reference, the plaintiffs incorporate paragraphs 1 through 26 of this Complaint as if each was set forth here in its entirety.

28. The Defendant owed the plaintiffs a duty or ordinary care in the manufacture, preparation, packaging, marketing, distribution, and selling of the sandwich products in question. Further, the Defendant owed the plaintiffs a duty of warning or instructing them of potentially hazardous or life-threatening conditions with respect to the sandwich products.

29. The Defendant breached its duties in one or more of the following ways:
- a. Negligently importing, manufacturing, distributing and selling the raw ingredients making up the sandwich products;
 - b. Failing to properly handle, clean, wash, or prepare the raw ingredients making up the sandwich products before placing them into the stream of commerce;
 - c. Failing to prevent human and/or animal feces, and parasites from coming into contact with the sandwich products;
 - d. Failing to adequately monitor the safety and sanitary conditions of their premises;
 - e. Failing to apply their own policies and procedures to ensure the safety and sanitary conditions of their premises;
 - f. Failing to adopt and/or follow FDA recommended good manufacturing practices;
 - g. Failing to take reasonable measures to prevent the transmission of the rat lungworm parasite and related adulteration of their premises;
 - h. Failing to properly train and supervise their employees and agents to prevent the transmission of the rat lungworm parasite and related filth and adulteration of their premises;
 - i. Failing to warn the plaintiffs and the general public of the dangerous propensities of the sandwich products that they consumed, particularly that they were contaminated with the rat lungworm parasite, despite knowing or having reason to know of such dangers;

j. Failing to instruct the plaintiffs of proper procedures to safe use of the sandwich products; and

k. Failing to timely disclose post-sale information concerning the dangers associated with the sandwich products.

30. All dangers associated with the contaminated sandwich products were reasonably foreseeable and/or scientifically discoverable by the Defendant at the time the Defendant placed the sandwich products into the stream of commerce.

31. The Defendant's conduct was a direct, proximate, and producing cause of the plaintiffs' injuries and damages set forth below.

V. BREACH OF IMPLIED WARRANTY

32. By this reference, the plaintiffs incorporates paragraphs 1 through 31 of this Complaint as if each was set forth here in its entirety.

33. The Defendant is a merchant who manufactures, distributes, markets, and/or sells sandwich products. The plaintiffs were consumers and the plaintiffs were exposed to the rat lungworm parasite thereby.

34. The Defendant breached the implied warranty of merchantability by impliedly warranting that the sandwich products were fit for the ordinary purpose for which sandwiches are used, that, as a fungible good, the sandwich products were of fair and average quality within the description on the package, and that the sandwich products were adequately labeled.

35. The ordinary purpose for which sandwiches are used is human consumption. The sandwich products purchased and consumed by the plaintiffs were not fit for human consumption due to the fact that they were contaminated with the rat lungworm parasite.

36. The sandwich products, as a fungible good, were not of average quality, as sandwiches of average quality would not be contaminated with the rat lungworm parasite.

37. The sandwich products were not adequately labeled, as the Defendant failed to warn of the risk of rat lungworm contamination.

38. The Defendant breached the implied warranty of fitness for a particular purpose by holding out unreasonably dangerous sandwich products (*i.e.* sandwich products contaminated with the rat lungworm parasite) to the plaintiffs and the public as being safe when they knew or had reason to know that the sandwich products were not safe and that the plaintiffs and the public would consume the sandwich products.

39. The Defendant did not disclaim these implied warranties.

40. The Defendant's conduct was a direct, proximate, and producing cause of the plaintiffs' injuries and damages set forth below.

VI. DAMAGES

41. By this reference, the plaintiffs incorporates paragraphs 1 through 40 of this Complaint as if each was set forth here in its entirety.

42. The Defendant's conduct was a direct, proximate, and producing cause of the plaintiffs' personal injuries and damages, including but not limited to, pain and suffering, lost wages, lost earning capacity, past and future medical and pharmaceutical expenses, emotional distress, and other general, special, ordinary, incidental, and consequential damages as would be anticipated to arise under the circumstances.

WHEREFORE, the plaintiffs pray for judgment against the Defendant as follows:

1. General damages to be proven at trial;
2. Special damages to be proven at trial;
3. Court costs;
4. Pre-and post-judgment interest at the highest rate allowable by law; and
5. For such other general and specific relief as the Court deems just and

proper.

DATED: Honolulu, Hawai'i, January 13, 2020

A handwritten signature in black ink, appearing to read "Michael O'Connor", written over a horizontal line.

MICHAEL O'CONNOR
Attorney for Plaintiffs
CHAUNDA, SHEA, AND Z.R. RODRIGUES

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

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ISLAND NATURALS MARKET, INC.,
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Defendant.

CIVIL NO. _____

DEMAND FOR JURY TRIAL

8868-001



DEMAND FOR JURY TRIAL

Plaintiffs, CHAUNDA and SHEA RODRIGUES, individually, and as parents of
Z.R., a minor, hereby demand trial by jury on all issues so triable herein.

DATED: Honolulu, Hawai'i, January 13, 2020.



MICHAEL O'CONNOR
Attorneys for Plaintiffs
CHAUNDA, SHEA, AND Z.R. RODRIGUES

STATE OF HAWAII CIRCUIT COURT OF THE THIRD CIRCUIT	SUMMONS TO ANSWER CIVIL COMPLAINT	CASE NUMBER
PLAINTIFF CHAUNDA and SHEA RODRIGUES, individually, and as parents of Z.R., a minor	VS.	DEFENDANT(S) ISLAND NATURALS MARKET, INC., d/b/a ISLAND NATURALS MARKET & DELI, a Hawai'i corporation
PLAINTIFF'S NAME & ADDRESS, TEL. NO. MICHAEL F. O'CONNOR, #1098 Ogawa Lau Nakamura & Jew, 707 Richards Street, Suite 600 Honolulu, Hawaii 96813 PH:(808) 533-3999; FAX: (808) 533-0144		
TO THE ABOVE-NAMED DEFENDANT(S) You are hereby summoned and required to file with the court and serve upon MICHAEL F. O'CONNOR, ESQ., Ogawa Lau Nakamura & Jew, 707 Richards Street, Suite 600 Honolulu, Hawaii 96813 <hr/> plaintiff's attorney, whose address is stated above, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the date of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. THIS SUMMONS SHALL NOT BE PERSONALLY DELIVERED BETWEEN 10:00 P.M. AND 6:00 A.M. ON PREMISES NOT OPEN TO THE GENERAL PUBLIC, UNLESS A JUDGE OF THE ABOVE-ENTITLED COURT PERMITS, IN WRITING ON THIS SUMMONS, PERSONAL DELIVERY DURING THOSE HOURS. A FAILURE TO OBEY THIS SUMMONS MAY RESULT IN AN ENTRY OF DEFAULT AND DEFAULT JUDGMENT AGAINST THE DISOBEYING PERSON OR PARTY.		
The original document is filed in the Judiciary's electronic case management system which is accessible via eCourt Kokua at: http://www.courts.state.hi.us	Effective Date of 28-Oct-2019 Signed by: /s/ Cheryl Salmo Clerk, 3rd Circuit, State of Hawai'i 	
 In accordance with the Americans with Disabilities Act, and other applicable state and federal laws, if you require a reasonable accommodation for a disability, please contact the ADA Coordinator at the Circuit Court Administration Office on HAWAII- Phone No. 808-961-7424, TTY 808-961-7422, FAX 808-961-7411, at least ten (10) working days prior to your hearing or appointment date.		