

IN THE COURT OF COMMON PLEAS OF
MAHONING COUNTY, OHIO

BROOKE MARRIE,
177 Maple Drive
Boardman, OH 44512-1623

Plaintiff,

v.

MONTEVERDE'S, INC.,
2 Rutgers Road
Pittsburgh, PA 15205

and

CHURCH BROTHERS, LLC
16 W. Gabilan Street
Salinas, CA 93901

and

TRUE LEAF FARMS, LLC,
16 W. Gabilan Street
Salinas, CA 93901

Defendants.

CASE NO.:

COMPLAINT

JURY TRIAL DEMANDED

Instructions for Service Attached

COMES NOW Plaintiff, by and through her attorneys of record, and for her causes of action against the Defendants, MONTEVERDE'S, INC., CHURCH BROTHERS, LLC, and TRUE LEAF FARMS, LLC, complains, alleges, and states as follows:

I. PARTIES

1. Plaintiff, Brooke Marrie, is now and was at all times material to this Complaint a resident of Boardman, Mahoning County, Ohio.

2. Defendant Monteverde's, Inc. (hereinafter "Monteverde"), is and was at all times material to this Complaint a corporation organized and existing under the laws of the

Commonwealth of Pennsylvania, with its principal place of business located at 2 Rutgers Road, Pittsburgh, PA 15205. Therefore, Defendant Monteverde's is a citizen of the State of Pennsylvania.

3. Defendant Church Brothers, LLC, is a limited liability company organized and existing under the laws of the State of California with its principal place of business in Salinas, California. Church Brothers brokered the sale of, and ultimately distributed, the romaine lettuce product that is the subject of this action to Defendant Monteverde's.

4. Defendant True Leaf Farms, LLC, is a limited liability company organized and existing under the laws of the State of California with its principal place of business in Salinas, California. True Leaf owns and operates a leafy greens processing facility in the Yuma, Arizona area where it processed the romaine lettuce product that is the subject of this action, prior to distribution to Defendant Monteverde's.

II. JURISDICTION AND VENUE

5. This Court has jurisdiction over the subject matter of this action because at all times material to this Complaint, the Defendants transacted business, including the business of manufacturing and selling food items to customers and consumers, and committed tortious acts within the State of Ohio, specifically Mahoning County.

6. Venue is proper in Mahoning County, Ohio pursuant to Ohio Civ. R. 3(C) because the Defendants conducted activity in this county, manufacturing and distributing romaine lettuce products to Chick-fil-A, that gave rise to the Plaintiff's present claims for injuries, and all or part of Plaintiff's claims for relief arose in this county.

III. FACTUAL ALLEGATIONS

Prior Outbreaks Linked to Lettuce and Other Leafy Greens

7. *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 foodborne pathogen outbreaks involving contaminated lettuce or leafy greens just within the past ten years:

Date	Causative Agent	Illnesses Reported	Source
Mar. 2018	<i>E. coli</i> O157:H7	219	Romaine lettuce
Nov. 2017- Dec. 2017	<i>E. coli</i> O157:H7	41, 1 death	Romaine lettuce
Dec. 2015-Jan. 2016	Listeria monocytogenes	19, 1 death	Package salads
Apr. 2015	Escherichia coli, Shiga toxin-producing	7	Prepackaged leafy greens
Mar. 2015	<i>E. coli</i> O157:H7	12	Leafy greens
Jul. 2014	<i>E. coli</i> O111	15	Salad/cabbage served at Applebee's and Yard House (Minnesota)
Oct. 2013	<i>E. coli</i> O157:H7	33	Pre-packaged salads and sandwich wraps (California)
Jul. 2013	<i>E. coli</i> O157:H7	94	Lettuce served at Federico's Mexican Restaurant
Jul. 2013	Cyclospora	140 (Iowa); 87 (Nebraska)	Salad mix, cilantro

Dec. 2012 – Jan. 2013	<i>E. coli</i> O157:H7	31	Shredded lettuce from Freshpoint, Inc.
Oct. 2012	<i>E. coli</i> O157:H7	33	Leafy greens salad mix (Massachusetts)
Apr. 2012	<i>E. coli</i> O157:H7	28	Romaine lettuce
Dec. 2011	Salmonella Hartford	5	Lettuce; roast beef
Dec. 2011	Norovirus	9	Lettuce, unspecified
Oct. 2011	<i>E. coli</i> O157:H7	58	Romaine lettuce
Oct. 2011	<i>E. coli</i> O157:H7	26	Lettuce
Aug. 2011	N/A	8	Lettuce; onions; tomatoes
Jul. 2011	<i>Cyclospora cayatenensis</i>	99	Lettuce based salads
Jun. 2011	Norovirus	23	Garden salad
Apr. 2011	Salmonella Typhimurium	36	Multiple salads
Feb. 2011	Norovirus	24	Garden salad
Jan. 2011	Norovirus	93	Lettuce; salad, unspecified
Jul.-Oct. 2010	Salmonella Java	136	Salad vegetable
May 2010	<i>E. coli</i> O145	33 (26 lab-confirmed)	Romaine Lettuce grown in Arizona
Apr. 2010	Salmonella Hvittingfoss	102	Lettuce, tomatoes, and olives served at Subway restaurants

Jan. 2010

E. coli

260

Lettuce grown in
France

The 2018 *E. coli* O157:H7 Outbreak Linked to Romaine Lettuce from Yuma

8. On April 13, 2018, the CDC announced a multi-state outbreak of *E. coli* O157:H7 linked to the consumption of romaine lettuce products produced in the Yuma, Arizona growing region. Ultimately, the investigation by the CDC, FDA, and local and state health agencies determined that at least 240 people from 37 states had been sickened in the outbreak.

9. Illnesses started on dates ranging from March 13, 2018 to August 22, 2018. Ill people range in age from 1 to 93 years, with a median age of 26. Sixty-six percent of ill people were female. Of more than 201 people with information available, 104 were hospitalized, including 28 people who developed hemolytic uremic syndrome (HUS). At least five victims died from their *E. coli* O157:H7 infections.

10. Epidemiologic analysis showed that the cause of the outbreak was contaminated romaine lettuce. Traceback analysis and investigation showed that the contaminated romaine lettuce came from the growing region that straddles the California-Arizona border at and around Yuma, Arizona, to include growing locations in the Imperial Valley, California.

11. The FDA, along with the CDC and state partners, conducted an environmental assessment in the Yuma growing region and collected samples of water, soil, and manure. CDC laboratory testing identified the outbreak strain of *E. coli* O157:H7 in water samples taken from a canal in the Yuma growing region. Whole genome sequencing analysis showed that the *E. coli* O157:H7 found in the canal water was closely related genetically to the *E. coli* O157:H7 from ill people.

12. More specifically, the canal water samples that yielded the three positive results for the outbreak strain of *E. coli* O157:H7 were taken from the Wellton Canal in the immediate vicinity of the Five Rivers Feedyard, which is one of several Wellton-area CAFOs.

13. The following is a Google Earth image of the Five Rivers Feedyard, which is the Wellton CAFO described in the FDA's Environmental Assessment Report. Leafy green growing fields, including on information and belief romaine lettuce fields, are adjacent to the CAFO and surround it, and the Wellton Canal, on all sides.

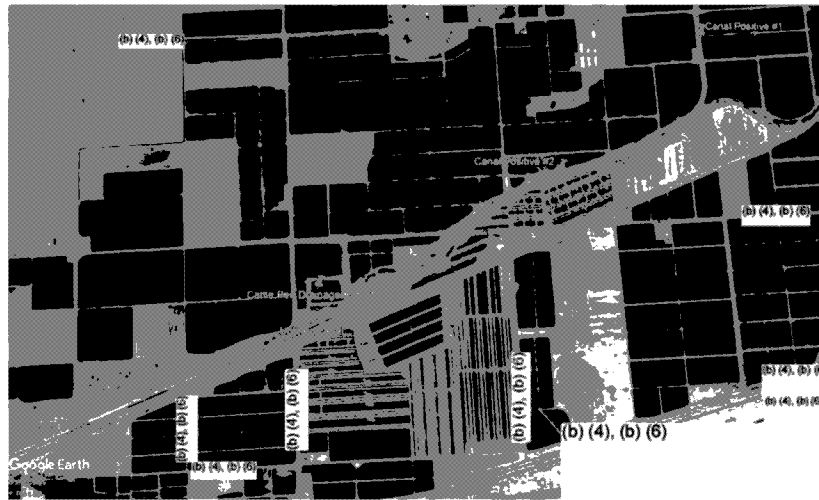


Figure 1. Wellton Irrigation Canal. This Google Earth view depicts a section of the Wellton main canal adjacent to a CAFO and locations of three outbreak-pathogen-positive irrigation water samples. The sample locations are upstream, adjacent to, and downstream of the Wellton-area CAFO. Also noted are unlined irrigation canal sections and a CAFO retention pond. Water in the canal flows from west (left) to east (right) in the figure above. The CAFO at the bottom center of Figure 1. See Figure 2 for an enlarged image of the CAFO.

14. The following is another Google Earth image of the Five Rivers Feedyard, which also appears in the FDA's Environmental Assessment Report. It depicts the locations at the Five Rivers Feedyard that tested positive for Shiga-toxin producing strains of *E. coli* during the FDA's investigation.

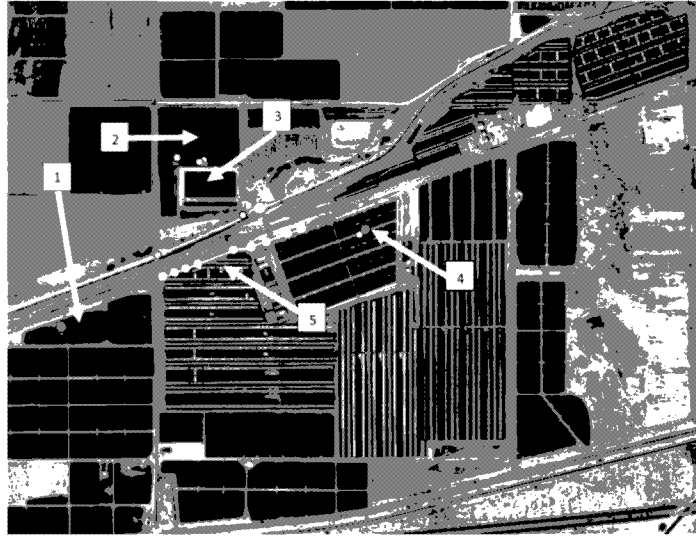


Figure 2. Overview of Wellton area CAFO and adjacent canal property. Including West (1) and North (2) Composting Facilities, North retention pond (3), fresh manure sampling location of steer feeding pens (4), Drag Swabs and soil samples along feedlot perimeter fence-line (5). Circles represent EA team sampling locations (compost and manure). Red circles indicate samples that were positive for STECs. No samples were positive for the outbreak strain.

15. Water from the Wellton canal used to irrigate romaine lettuce crops implicated in the 2018 *E. coli* O157:H7 outbreak was not treated or disinfected in any way.

***E. coli* O157:H7 Infection and Hemolytic Uremic Syndrome**

16. *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.

17. *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.

18. 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 is the painful bloody diarrhea and abdominal cramps characteristic of the intestinal illness.

19. 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.

20. *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.

21. 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.

22. 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.

Facts Relating to Defendants' Manufacture and Distribution of the Contaminated Romaine

Lettuce Products

23. On multiple dates in March 2018, Defendant Monteverde's purchased and received from Defendant Church Brothers cases of chopped romaine lettuce that had been processed by True Leaf Farms. The cases consisted of six, two-pound bags of chopped romaine each.

24. Defendant Monteverde's was the sole supplier of chopped romaine lettuce products to the Chick-Fil-A restaurant located at 1110 Boardman Poland Rd., Poland, Ohio ("subject Chick-Fil-A"), throughout March 2018. On at least March 1, 2, 5, 7, 9, 12, 14, 16, 19, 21, 23, and 26, if not other dates, Monteverde's distributed one or more cases of chopped romaine lettuce products to the subject Chick-Fil-A.

25. On or about March 21 and March 24, 2018, Plaintiff purchased a southwest Grilled Chicken Salad from the subject Chick-Fil-A.

26. The subject Chick-Fil-A prepared the salads that Plaintiff purchased using *E. coli* O157:H7-contaminated chopped romaine lettuce that it had purchased and received from

Defendant Monteverde's, and that Defendants Church Brothers and True Leaf Farms had manufactured, distributed, and sold.

27. One or both of the salads that Plaintiff purchased and consumed on March 21 and 24, 2018, from the subject Chick-fil-A were contaminated with *E. coli* O157:H7, causing her infection and injuries described below.

Plaintiff's Injuries

28. Plaintiff began experiencing symptoms of abdominal cramps, nausea, and diarrhea on March 26, 2018.

29. Over the next 48 hours, her condition continued to deteriorate. When her diarrhea became bloody, Plaintiff sought medical attention at St. Elizabeth Boardman Hospital on March 30, 2018.

30. Plaintiff was admitted and remained hospitalized until April 2, 2018. While in the hospital, Plaintiff's stool tested positive for *E. coli* O157:H7.

31. Further testing at the Ohio Department of Health classified Plaintiff as a confirmed case in the 2018 Romaine Lettuce *E. coli* O157:H7 outbreak associated with romaine lettuce grown in the Yuma, Arizona region.

IV. CAUSES OF ACTION

COUNT I - Product Liability

32. By this reference, the Plaintiff incorporates the foregoing paragraphs as if each was set forth here in its entirety.

33. At all times relevant to this action and the allegations in this complaint, the Defendants were manufacturers within the meaning of the Ohio Product Liability Act, O.R.C. §2307.71, *et seq.*

34. The Defendants manufactured the romaine lettuce product contaminated with *E. coli* O157:H7 that caused the Plaintiff's illnesses and injuries.

35. The *E. coli* O157:H7-contaminated romaine lettuce product that caused the Plaintiff's injuries was a product within the meaning of O.R.C. §2307.71 (A)(12)(a).

36. The romaine lettuce product that caused the Plaintiff's injuries, was, at the time it left the Defendants' control, defective within the meaning of O.R.C. §2307.73 (A)(1). More specifically, the romaine lettuce product was unreasonably dangerous for its ordinary and expected use, because it contained *E. coli* O157:H7, a potentially deadly pathogen.

37. The romaine lettuce product was sold to the Plaintiff without any change in its defective condition, and the romaine lettuce product was used in the manner expected and intended, i.e., human consumption.

38. The Plaintiff's injuries occurred as a direct and proximate result of the defective and unreasonably dangerous condition of the adulterated romaine lettuce product that was manufactured and sold by the Defendants.

COUNT II - Negligence

39. By this reference, the Plaintiff incorporates the foregoing paragraphs as if each was set forth here in its entirety.

40. For all times relevant to this action, the Defendants owed a duty to the ultimate consumers of their romaine lettuce products to use reasonable care in the manufacture of such

products, and to prevent or eliminate the risk that their romaine lettuce products would be contaminated with *E. coli* O157:H7, or any other similarly deadly pathogen.

41. For all times relevant to this action, the Defendants had a duty to comply with all statutes, laws, regulations or safety codes pertaining to the manufacture, distribution, storage, and sale of their romaine lettuce products.

42. With reference to duties identified in the preceding paragraphs, the Defendants did not comply with such duties in the manufacture of the *E. coli* O157:H7-contaminated romaine lettuce products, the exposure to which was the proximate cause of Plaintiff's injuries.

43. Plaintiff is among the class of persons designed to be protected by these statutes, laws, regulations, safety codes or provisions pertaining to the manufacture, distribution, storage, and sale of the Defendants' romaine lettuce products.

44. The Defendants had a duty to properly supervise, train, and monitor their employees, and to ensure that their employees complied with all applicable statutes, laws, regulations, or safety codes pertaining to the manufacture, distribution, storage, and sale of their romaine lettuce products.

45. The Defendants had a duty to use ingredients, supplies, and other constituent materials that were reasonably safe, wholesome, free of defects, and that otherwise complied with the Pure Food and Drug Law of Ohio. Such compliance requires that the Defendants' ingredients, supplies, and other constituent materials were clean, free from adulteration, and safe for human consumption.

46. The Plaintiffs' *E. coli* O157:H7 illnesses and injuries occurred as a direct and proximate result of the Defendants' breach of duties and noncompliance with applicable law and safety regulations.

COUNT III - Negligence per se

47. By this reference, the Plaintiff incorporates the foregoing paragraphs as if each was set forth here in its entirety.

48. The romaine lettuce product that the Defendants manufactured and sold, and that caused the Plaintiff's injuries, was adulterated within the meaning of the Pure Food and Drug Law of Ohio, O.R.C. §3715.59(A).

49. The Defendants violated O.R.C. §3715.52(A)(1) by their manufacture and sale of the adulterated romaine lettuce product.

50. The Pure Food and Drug Law of Ohio establishes a positive and definite standard of care in the manufacture and sale of food, and the violation of this law is negligent per se.

51. Plaintiff is among the class of persons designed to be protected by these laws and safety regulations pertaining to the manufacture, distribution, storage, and sale of the Defendants' romaine lettuce products.

52. The Plaintiff's injuries occurred as a direct and proximate result of the Defendants' violation of the Pure Food and Drug Law of Ohio.

COUNT IV - Ohio Consumer Sales Practices Act, O.R.C. § 1345.01 et seq.

53. By this reference, the Plaintiff incorporates the foregoing paragraphs as if each was set forth here in its entirety.

54. The Defendants are "supplier[s]" as that term is defined in O.R.C. § 1345.01(C).

55. Plaintiff is a "consumer" as that term is defined in O.R.C. § 1345.01(D).

56. The Defendants' acts and practices, as described above, were unfair or deceptive acts or practices in connection with a consumer transaction, in violation of O.R.C. § 1345.02, in that the Defendants, among other things, represented that food that Defendants

manufactured and sold, and that caused the Plaintiff's *E. coli* O157:H7 infection and related injuries:

- (a) had performance characteristics, uses, or benefits that it did not have;
- (b) was of a particular standard or quality that it was not; and
- (c) had been supplied in accordance with a previous representation, when it was not.

56. As a direct and proximate result of Defendants' violations of the Ohio Consumer Sales Practices Act, O.R.C. § 1345.01, et seq., the plaintiffs are entitled to damages as set forth in O.R.C. § 1345.09, trebled, including noneconomic damages, attorney's fees and expenses.

COUNT V - Uniform Commercial Code, O.R.C. § 1302.01, et seq.

57. By this reference, Plaintiff incorporates the foregoing paragraphs as if each was set forth here in its entirety.

58. The Defendants are "seller[s]" and "merchant[s]" as those terms are defined in O.R.C. § 1302.01(A)(4) and (5).

59. The Defendants made express and/or implied warranties about the food that Defendants manufactured and sold, and that caused the Plaintiff's *E. coli* O157:H7 infection and related injuries including, but not limited to, the following:

- (a) affirmations of fact or promise which related to the goods and became part of the basis of the bargain;
- (b) description of the goods that became part of the basis of the bargain;
- (c) that the food items were merchantable, as defined in O.R.C. § 1302.27, in that they would pass without objection in the trade, were fit for the ordinary purpose

for which they were sold, were adequately contained, packaged and labeled, and conformed to promises or affirmations of fact on the container; and

- (d) that the food items were fit for the purpose for which they were purchased, as defined in O.R.C. § 1302.28, in that the Defendants had reason to know that they would be consumed and that Plaintiff would rely on Defendants' skill or judgment to furnish suitable goods.

60. The Defendants breached the express and/or implied warranties they made because they manufactured and sold food items that caused Plaintiff's *E. coli* O157:H7 infection and related injuries.

61. As a direct and proximate result of Defendants' breaches of express and/or implied warranties, Plaintiff is entitled to damages.

V. DAMAGES

64. Plaintiff has suffered general, special, incidental, and consequential damages as the direct and proximate result of the acts and omissions of the Defendants, in an amount which 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; past medical and medical-related expenses; future medical and medical-related expenses; travel and travel-related expenses, both past and future; lost wages; 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.

VI. PRAYER FOR RELIEF

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

- (a) Compensation in an amount in excess of Twenty-Five Thousand Dollars (\$25,000.00) for all general, special, incidental, and consequential damages suffered by the Plaintiff as a result of the Defendants' conduct;
- (b) Statutory prejudgment interest;
- (c) Reasonable attorneys' fees and costs, to the fullest extent allow by law; and
- (d) All such additional and further relief as this Court deems just and equitable.

VII. JURY DEMAND

A jury is demanded for the trial of this action.

Dated: March 16, 2020

/s/ David C. Comstock, Jr.

BONEZZI SWITZER POLITO & HUPP CO. L.P.A.
DAVID C. COMSTOCK, JR. (0040145)
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ATTORNEYS FOR PLAINTIFF

To the Clerk:

Please serve a copy of the summons and complaint upon the defendants by certified mail, return receipt requested, at the addresses listed above.