

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

ADAM JUNIOR and REBECCA
JUNIOR, individually and on behalf of
A.J., a minor

Plaintiff,

v.

**COMPLAINT AND DEMAND
FOR JURY TRIAL**

ANDREW & WILLIAMSON
SALES, CO., a California
corporation, d/b/a Andrew &
Williamson Fresh Produce, and RED
LOBSTER HOSPITALITY, L.L.C., a
Delaware Limited Liability Company,

Defendant.

Plaintiffs ADAM JUNIOR and REBECCA JUNIOR, individually and on behalf of their minor son A.J., for their Complaint against the Defendants state and allege as follows:

PARTIES

1. Plaintiff ADAM JUNIOR and REBECCA JUNIOR are residents of the City of St. Paul, Minnesota where they live with their minor son A.J.

2. Plaintiffs ADAM JUNIOR and REBECCA JUNIOR are the parents and natural guardians of A.J.

3. Defendant ANDREW & WILLIAMSON SALES, CO., (hereafter “A&W”) is a corporation organized and existing under the laws of the State of California with its corporate headquarters and principal place of business located in San Diego, California.

4. Defendant A&W's registered agent for service is Morgan Scudi, 5440 Morehouse Dr., Suite #4400, San Diego, CA 92121.

5. Upon information and belief, A & W operates a food production business under the name "Andrew & Williamson Fresh Produce" in which it sources, produces, processes, buys, imports, distributes and sells a variety of produce, including cucumbers, across the country, including in Minnesota.

6. Defendant RED LOBSTER HOSPITALITY, L.L.C. (hereafter "Red Lobster") is a limited liability company organized and existing under the laws of the State of Delaware with its corporate headquarters and principal place of business located in Orlando, Florida.

7. Defendant Red Lobster's Minnesota registered agent for service is Corporate Creations Network, Inc., 5200 Willson Road, #150, Edina, Minnesota 55424.

8. Upon information and belief, Red Lobster owns, operates and controls the "Red Lobster" restaurant located at 8350 3rd Street North, Oakdale, Minnesota 55128 (hereafter "Oakdale Red Lobster").

9. Upon information and belief, Red Lobster purchased cucumbers from Defendant A&W, processed those cucumbers, and then sold them to its restaurant patrons, including Plaintiffs and their minor son at the Oakdale Red Lobster.

JURISDICTION AND VENUE

10. This Court has jurisdiction pursuant to 28 U.S.C. §1332(c) because the amount in controversy exceeds Seventy-Five Thousand Dollars (\$75,000.00), exclusive of interest and costs, and because there is complete diversity of citizenship between the

Plaintiffs and Defendants.

11. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 because a substantial part of the acts and omissions giving rise to the claims asserted occurred in this district.

FACTUAL ALLEGATIONS

***Salmonella* Poona and the Outbreak**

12. *Salmonella* is a bacterium that occurs in humans and other animals and is shed in their feces.

13. When *Salmonella* is ingested by humans, it can cause severe gastroenteritis called salmonellosis. Symptoms of salmonellosis include nausea, vomiting, diarrhea, and abdominal pain. Headache, myalgia, and low-grade fever may also accompany salmonellosis.

14. Symptoms typically develop within 6 to 72 hours after contaminated food or water is ingested. Symptoms usually last for several days, but severe cases can last much longer and result in serious medical complications.

15. When severe infection occurs, *Salmonella* may spread from the intestines to the bloodstream and then to other body sites, which can result in death. Infants, the elderly, and those with impaired immune systems are more likely than others to develop severe acute illness.

16. Salmonellosis can also result in a variety of well-documented long-term health issues, including reactive arthritis (Reiter's syndrome), inflammatory bowel syndrome, and immunological deficiencies.

17. *Salmonella* can be found in a variety of foods. In recent years, fecal contamination has led to large-scale *Salmonella* outbreaks linked to fresh produce. Those outbreaks include a 2014 outbreak of *Salmonella* Newport associated with cucumbers that sickened at least 275 people in 29 states; a separate 2014 outbreak of *Salmonella* Saintpaul associated with cucumbers that sickened at least 84 people in 18 states; and a 2014 outbreak of *Salmonella* Enteritidis associated with bean sprouts that sickened at least 115 people in 12 states.

18. Because *Salmonella* contamination is such a well-known risk in the production of produce, produce manufacturers have long adopted food safety measures focused on preventing *Salmonella* contamination and detecting the presence of *Salmonella* in produce.

19. A&W actively promoted and marketed its produce as safe. According to its website:

Your safety is of utmost importance to us. **We don't delegate safety issues.** Our involvement starts at the top and then includes every member of our team. So your safety becomes part of our culture. We strive every day to earn and keep your trust and confidence!

Our safety standards are among the highest in the industry. These standards have been developed in concert with our key retail and restaurant partners so that they cover the entire supply chain from field to fork.

(emphasis added)

20. On its website, A&W also claimed to have implemented a robust testing program:

We routinely use testing as a way to confirm that our food safety and farming systems are working as designed. We do a lot of testing. We test the cleanliness of the water used on our farms and in our packing sheds. **We test our fields and facilities for bacteria, such as E. coli and salmonella.** We even test for pesticide residues.

We use qualified, third party labs to analyze our samples. We share the results with interested parties including, governmental agencies, retailers, and restaurants.

(emphasis added)

21. Safe produce production requires produce manufacturers to adopt, implement and follow food safety systems that include, but are not limited to, the following:

- a. The adoption of current good manufacturing practices;
- b. The implementation and enforcement of modern sanitation standard operating procedures;
- c. Current, written, validated and enforced Hazard Analysis and Critical Control Point (“HACCP”) assessments and procedures;
- d. Training for employees on effective practices in the cultivation and harvest of produce;
- e. Testing programs designed to ensure the efficacy of sanitation and food safety policies and procedures, including, but not limited to: daily product sampling and testing; and holding product from the market pending testing results;
- f. Consultation with appropriate experts, including, but not limited to, microbiologists and sanitarians; and
- g. A system for selecting and monitoring any third party farming and production operations, particularly when those farms are outside the United States.

22. Because of the severe health risks and the significant public health costs posed by *Salmonella*, the Centers for Disease Control (“CDC”) in conjunction with state health departments actively monitor *Salmonella* cases throughout the country to identify the illness-causing food and stop outbreaks.

23. State and CDC labs routinely perform testing on *Salmonella* samples that identify the *Salmonella* bacteria’s serotype and perform a further genetic subtyping process known as Pulsed-Field Gel Electrophoresis (“PFGE”). The PFGE results—akin to genetic fingerprints—are then loaded into a national database where they are easily compared to each other.

24. This system alerts the CDC when the number of *Salmonella* cases spikes or when a group of *Salmonella* cases are caused by the same, or closely related, genetic strain of the bacteria. The CDC then investigates those cases as a single-source outbreak.

25. In August and early September of 2015, the CDC detected a spike in cases caused by *Salmonella* Poona, a rare serotype of *Salmonella*.

26. PFGE testing on samples from ill individuals revealed common PFGE patterns.

27. The CDC and state health departments launched a full-scale epidemiological investigation, which included interviewing individuals who contracted outbreak strains of *Salmonella* Poona.

28. Through this process, the CDC found that 58 of the 80 people interviewed reported eating cucumbers in the week before their illness began.

29. As of September 5, 2015, the CDC had identified 11 illness clusters (which the CDC defines as “two or more people who do not live in the same household who report eating at the same restaurant location, attending a common event, or shopping at the same location of a grocery store in the week before becoming ill”) in seven states. In all of these clusters, public health interviews found that cucumbers were a food item eaten in common by ill people.

30. Public health officials then traced the outbreak-causing cucumbers back to a common supplier, A&W.

31. Upon information and belief, the outbreak-causing cucumbers were grown in Baja, Mexico.

32. Significantly, as part of the investigation, the San Diego County Health and Human Services Agency isolated *Salmonella* from cucumbers collected during a visit to a A&W facility.

33. According to the CDC, as of September 3, 2015, 285 people infected with the outbreak strains of *Salmonella* Poona have been reported from 27 states. The number of ill people reported from each state is as follows: Alaska (8), Arizona (60), Arkansas (6), California (51), Colorado (14), Idaho (8), Illinois (5), Kansas (1), Louisiana (3), Minnesota (12), Missouri (7), Montana (11), Nebraska (2), Nevada (7), New Mexico (15), New York (4), North Dakota (1), Ohio (2), Oklahoma (5), Oregon (3), South Carolina (6), Texas (9), Utah (30), Virginia (1), Washington (9), Wisconsin (2), and Wyoming (3).

34. Illnesses started on dates ranging from July 3, 2015 to August 26, 2015. One death has been reported from California, and 53 people have reported being hospitalized.

35. Faced with the widespread contamination of its products, A&W initiated a recall of all cucumbers sold under the “Limited Edition” brand label during the period from August 1, 2015, through September 3, 2015.

A.J.’s *Salmonella* infection and the Minnesota Cluster

36. On August 9, 2015, Plaintiffs, their son A.J., and their family went to the Oakdale Red Lobster to celebrate A.J.’s grandmother’s birthday.

37. In preparation for serving dinner on that day, Oakdale Red Lobster staff processed A&W cucumbers to be served in salads by, among other things, slicing the cucumbers.

38. Restaurant staff then served salads containing sliced A&W cucumbers to its patrons, including A.J.

39. On approximately August 11, 2015, A.J. began developing stomach cramps and diarrhea.

40. Instead of improving as his parents had anticipated, A.J.’s symptoms continued to worsen in the following days.

41. His parents then sought medical treatment for A.J. A.J.’s treating doctor suspected food poisoning and obtained a stool culture.

42. The results of this testing confirmed that A.J. had contracted *Salmonella* and doctors prescribed a course of oral antibiotics for A.J.

43. The positive stool culture was then forwarded to the Minnesota Department of Health (MDH) who performed further testing on the sample.

44. The MDH test results revealed that A.J. had contracted *Salmonella* Poona with a PFGE pattern that matched one of the outbreak strains.

45. At roughly the same time that A.J. contracted salmonellosis, MDH was receiving reports that several additional individuals had contracted *Salmonella* Poona and launched an investigation.

46. The investigation revealed that 12 Minnesotans, including A.J., contracted *Salmonella* Poona from contaminated cucumbers as part of the nationwide outbreak linked to A&W.

47. In addition, MDH found that 10 of the 12 sickened individuals, including A.J., consumed contaminated A&W cucumbers at a Red Lobster restaurant.

48. As part of its investigation, MDH confirmed that Red Lobster restaurants, including the Oakdale Red Lobster, had received and served the A&W “Limited Edition” “slicer” cucumbers that have since been linked to the nationwide outbreak and subject to recall.

49. As a direct and proximate result of consuming contaminated A&W cucumbers prepared and served by Red Lobster, A.J. suffered a debilitating and painful gastrointestinal illness, incurred, and will incur, medical expenses, and suffered other losses and damages as proved at trial.

COUNT I – STRICT PRODUCT LIABILITY – MANUFACTURING DEFECT

A&W

50. Plaintiffs incorporate the preceding paragraphs by reference as if each paragraph was set forth here.

51. Defendant A&W manufactured, processed, distributed, marketed and sold the adulterated cucumbers that caused A.J.'s illness.

52. The A&W cucumbers consumed by A.J. were contaminated with *Salmonella* Poona when they left the control of Defendant A&W.

53. A.J.'s consumption of the contaminated cucumbers caused him to become infected with *Salmonella* and develop salmonellosis.

54. Cucumbers contaminated with *Salmonella* are dangerous if eaten and are particularly dangerous to children, the elderly, and anyone with a compromised immune system.

55. Because *Salmonella* is colorless and odorless, consumers like A.J. and his parents have no way of detecting the contamination.

56. The A&W cucumbers purchased by Plaintiffs and consumed by their son A.J. were contaminated with *Salmonella* and were therefore defective and unreasonably dangerous to ordinary consumers.

57. The cucumbers lacked any warning whatsoever to consumers. On the contrary, A&W promised through its marketing and promotional materials that its produce was safe.

58. A&W is strictly liable to the Plaintiffs for the harm proximately caused by the manufacture and sale of its dangerous and defective cucumbers and for its failure to warn of foreseeable risks to ordinary consumers.

59. As a result of Defendant A&W's production and sale of a defectively manufactured product and failure to warn, Plaintiffs and their minor son sustained injuries and damages set forth in the preceding paragraphs.

COUNT II – NEGLIGENCE

A&W

60. Plaintiffs incorporate the preceding paragraphs by reference as if each paragraph was set forth here.

61. A&W manufactured, processed, distributed, marketed, and sold cucumbers that were contaminated with *Salmonella*, a deadly pathogen.

62. A&W owed a duty to all persons who consumed its products, including Plaintiff, to manufacture and sell cucumbers that were safe to eat, that were not adulterated with deadly pathogens like *Salmonella*, and that were not produced in violation of applicable food safety regulations and industry standards.

63. A&W breached the duties owed to the consumers of its cucumbers by committing the following negligent acts and omissions:

- a. Failing to adequately maintain and monitor the safety of its products, premises, equipment and employees;
- b. Failing to properly operate its farming operations, packing facilities and equipment in a safe, clean, and sanitary manner;

- c. Failing to adopt, implement, and follow adequate food safety policies and procedures;
- d. Failing to apply its food safety policies and procedures to ensure the safety and sanitary conditions of its food products, premises, and employees;
- e. Failing to adopt, implement, and validate food safety policies and procedures that met industry standards for the safe and sanitary production of produce;
- f. Failing to prevent the transmission of *Salmonella* to consumers of its cucumbers;
- g. Failing to properly train its employees and agents how to prevent the transmission of *Salmonella*;
- h. Failing to properly supervise its employees and agents to prevent the transmission of *Salmonella*; and
- i. Failing to adequately test its fields, processing facilities, and cucumbers for microbial pathogens, including *Salmonella*.

64. A.J.'s injuries are a direct and proximate result of the negligence of Defendant A&W.

65. As a result of Defendant A&W's negligence, Plaintiff and his minor son sustained the injuries and damages set forth in the preceding paragraphs.

COUNT III – NEGLIGENCE PER SE (MINN. STAT. § 31.02)

A&W

66. Plaintiffs incorporate the preceding paragraphs by reference as if each paragraph was set forth here.

67. Defendant A&W, its employees, agents, or those working on its behalf, as providers of food products within the State of Minnesota, owe a duty to comply with Minn. Stat. Chapter 31.

68. Minnesota Food Law, Minn. Stat. § 31.02 *et seq.*, prohibits:

- a. The manufacture, sale, or delivery, holding or offering for sale of any food that is adulterated or misbranded;
- b. The adulteration or misbranding of any food;
- c. The receipt in commerce of any food that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise.

69. A&W, its employees, agents, or those working on its behalf, failed to comply with Minn. Stat. Chapter 31. Such conduct constitutes negligence *per se*.

70. As a result of the failure of Defendant A&W, its employees, agents, or those working on its behalf, to comply with Minn. Stat. Chapter 31, Plaintiff and his minor son sustained damages as set forth in the preceding paragraphs.

COUNT IV – NEGLIGENCE PER SE (21 U.S.C. § 331)

A&W

71. Plaintiffs incorporate the preceding paragraphs by reference as if each paragraph was set forth here.

72. Defendant A&W, its employees, agents, or those working on its behalf, as providers of food products in the United States of America, owe a duty to comply with 21 U.S.C. § 331, which states:

The following acts and the causing thereof are prohibited:

- a. The introduction or delivery for introduction into interstate commerce of any food that is adulterated;
- b. The receipt in interstate commerce of any food that is adulterated, and the delivery or proffered delivery thereof for pay or otherwise....

73. A&W, its employees, agents, or those working on its behalf, failed to comply with U.S.C. § 331. Such conduct constitutes negligence *per se*.

74. As a result of the failure of Defendant A&W, its employees, agents, or those working on its behalf, to comply with 21 U.S.C. § 331, Plaintiff and his minor son sustained damages as set forth in the preceding paragraphs.

COUNT V – BREACH OF IMPLIED WARRANTY

A&W

75. Plaintiffs incorporate the preceding paragraphs by reference as if each paragraph was set forth here.

76. The cucumbers produced, distributed and sold by A&W that caused A.J.'s illness were adulterated with *Salmonella* and were in a defective condition unreasonably dangerous to ordinary consumers and members of the public when they left A&W's control.

77. A&W violated Minnesota Statutes § 336.2-314 because its goods would not: (a) pass without objection in the trade under the contract description; (b) were not of fair average quality within the description; and (c) were not fit for the ordinary purposes for which such goods are used: human consumption.

78. A.J.'s injuries are a direct and proximate result of A&W's breach of implied warranties, and the Plaintiff is entitled to recover for all actual, consequential, and incidental damages that flow directly and in a foreseeable fashion from these breaches.

79. As a direct result of Defendant A&W's breach of its implied warranties, Plaintiff and his minor son suffered the injuries and damages set forth in the preceding paragraphs.

COUNT VI – STRICT PRODUCT LIABILITY – MANUFACTURING DEFECT
RED LOBSTER

80. Plaintiffs incorporate the preceding paragraphs by reference as if each paragraph was set forth here.

81. Defendant Red Lobster manufactured, processed, marketed, served and sold the adulterated cucumbers that caused A.J.'s illness.

82. The A&W cucumbers served by Red Lobster and consumed by A.J. were contaminated with *Salmonella* Poona when they left the control of Defendant Red Lobster.

83. A.J.'s consumption of the contaminated cucumbers caused him to become infected with *Salmonella* and develop salmonellosis.

84. Cucumbers contaminated with *Salmonella* are dangerous if eaten and are particularly dangerous to children, the elderly, and anyone with a compromised immune system.

85. Because *Salmonella* is colorless and odorless, consumers like A.J. and his father have no way of detecting the contamination.

86. The A&W cucumbers served by Red Lobster, purchased by Plaintiffs and consumed by their son A.J. were contaminated with *Salmonella* and were therefore defective and unreasonably dangerous to ordinary consumers.

87. The cucumbers and salad served by Red Lobster lacked any warning whatsoever to consumers.

88. Red Lobster is strictly liable to the Plaintiffs for the harm proximately caused by the manufacture and sale of its dangerous and defective cucumbers and for its failure to warn of foreseeable risks to ordinary consumers.

89. As a result of Defendant Red Lobster's production and sale of a defectively manufactured product and failure to warn, Plaintiffs and their minor son sustained injuries and damages set forth in the preceding paragraphs.

COUNT VII – NEGLIGENCE

RED LOBSTER

90. Plaintiffs incorporate the preceding paragraphs by reference as if each paragraph was set forth here.

91. Red Lobster manufactured, processed, marketed, served and sold cucumbers that were contaminated with *Salmonella*, a deadly pathogen.

92. Red Lobster owed a duty to all its restaurant patrons who consume its products, including Plaintiff, to manufacture and sell cucumbers that were safe to eat, that

were not adulterated with deadly pathogens like *Salmonella*, and that were not produced in violation of applicable food safety regulations and industry standards.

93. Red Lobster breached the duties owed to the patrons by committing the following negligent acts and omissions:

- i. Failing to adequately maintain and monitor the safety of its products, premises, equipment and employees;
- j. Failing to properly operate its restaurants in a safe, clean, and sanitary manner;
- k. Failing to adopt, implement, and follow adequate food safety policies and procedures;
- l. Failing to apply its food safety policies and procedures to ensure the safety and sanitary conditions of its food products, premises, and employees;
- m. Failing to adopt, implement, and validate food safety policies and procedures that met industry standards for the safe and sanitary production of produce;
- n. Failing to prevent the transmission of *Salmonella* to consumers of its cucumbers by, among other acts and omissions, failing to adequately wash the cucumbers it served;
- o. Failing to properly train its employees and agents how to prevent the transmission of *Salmonella*; and
- p. Failing to properly supervise its employees and agents to prevent the transmission of *Salmonella*.

94. A.J.'s injuries are a direct and proximate result of the negligence of Defendant Red Lobster.

95. As a result of Defendant Red Lobster's negligence, Plaintiff and his minor son sustained the injuries and damages set forth in the preceding paragraphs.

COUNT VIII – NEGLIGENCE PER SE (MINN. STAT. § 31.02)

RED LOBSTER

96. Plaintiffs incorporate the preceding paragraphs by reference as if each paragraph was set forth here.

97. Defendant Red Lobster, its employees, agents, or those working on its behalf, as providers of food products within the State of Minnesota, owe a duty to comply with Minn. Stat. Chapter 31.

98. Minnesota Food Law, Minn. Stat. § 31.02 *et seq.*, prohibits:

- d. The manufacture, sale, or delivery, holding or offering for sale of any food that is adulterated or misbranded;
- e. The adulteration or misbranding of any food;
- f. The receipt in commerce of any food that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise.

99. Red Lobster, its employees, agents, or those working on its behalf, failed to comply with Minn. Stat. Chapter 31. Such conduct constitutes negligence *per se*.

100. As a result of the failure of Defendant Red Lobster, its employees, agents, or those working on its behalf, to comply with Minn. Stat. Chapter 31, Plaintiff and his minor son sustained damages as set forth in the preceding paragraphs.

COUNT IX – NEGLIGENCE PER SE (21 U.S.C. § 331)

RED LOBSTER

101. Plaintiffs incorporate the preceding paragraphs by reference as if each paragraph was set forth here.

102. Defendant Red Lobster, its employees, agents, or those working on its behalf, as providers of food products in the United States of America, owe a duty to comply with 21 U.S.C. § 331, which states:

The following acts and the causing thereof are prohibited:

- c. The introduction or delivery for introduction into interstate commerce of any food that is adulterated;
- d. The receipt in interstate commerce of any food that is adulterated, and the delivery or proffered delivery thereof for pay or otherwise....

103. Red Lobster, its employees, agents, or those working on its behalf, failed to comply with U.S.C. § 331. Such conduct constitutes negligence *per se*.

104. As a result of the failure of Defendant Red Lobster, its employees, agents, or those working on its behalf, to comply with 21 U.S.C. § 331, Plaintiff and his minor son sustained damages as set forth in the preceding paragraphs.

COUNT X – BREACH OF IMPLIED WARRANTY

RED LOBSTER

105. Plaintiffs incorporate the preceding paragraphs by reference as if each paragraph was set forth here.

106. The cucumbers produced, served and sold by Red Lobster that caused A.J.'s illness were adulterated with *Salmonella* and were in a defective condition unreasonably dangerous to ordinary consumers and members of the public when they left Red Lobster's control.

107. Red Lobster violated Minnesota Statutes § 336.2-314 because its goods would not: (a) pass without objection in the trade under the contract description; (b) were not of fair average quality within the description; and (c) were not fit for the ordinary purposes for which such goods are used: human consumption.

108. A.J.'s injuries are a direct and proximate result of Red Lobster's breach of implied warranties, and the Plaintiff is entitled to recover for all actual, consequential, and incidental damages that flow directly and in a foreseeable fashion from these breaches.

109. As a direct result of Defendant Red Lobster's breach of its implied warranties, Plaintiff and his minor son suffered the injuries and damages set forth in the preceding paragraphs.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays judgment against the Defendant in an amount greater than Seventy-Five Thousand Dollars (\$75,000.00) together with pre- and post-judgement interest, costs, and disbursements incurred herein and such other relief as the court may find just and equitable.

JURY DEMAND

Plaintiffs hereby demand a jury trial.

Respectfully Submitted,

Dated: this 7th day of September, 2015

PRITZKER OLSEN, P.A.

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