

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

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ST. PAUL, MN

JEFFREY J. ALMER, as Trustee for the Next-
of-Kin of SHIRLEY MAE ALMER, Decedent,

Plaintiff,

v.

KANAN ENTERPRISES, INC., d/b/a King
Nut Companies, a foreign corporation,

Defendant.

CASE NO. 10cv 4783 MJD/JSM

DEMAND FOR JURY TRIAL

PLAINTIFF'S COMPLAINT FOR DAMAGES

COMES NOW the plaintiff, JEFFREY J. ALMER, as the duly Court-Appointed Trustee for the Next-of-Kin of SHIRLEY MAE ALMER, Decedent, by and through his attorneys of record, Jardine, Logan & O'Brien, P.L.L.P., and Marler Clark, L.L.P., P.S., asserting claims against defendant Kanan Enterprises, Inc., d/b/a King Nut Companies and allege as follows:

I. PARTIES

1. The plaintiff JEFFREY J. ALMER has, at all times relevant to this Complaint, been a resident of Savage, Scott County, Minnesota, and accordingly is a resident of the state of Minnesota. The decedent SHIRLEY MAE ALMER was at all times relevant to this complaint a resident of Brainerd, Crow Wing County, Minnesota. The plaintiff JEFFREY J. ALMER has been duly appointed trustee for the next-of-kin of SHIRLEY MAE ALMER by Order of the Hennepin County District Court dated January 26, 2009. See Order as **Exhibit No. 1**.

2. The defendant, Kanan Enterprises, Inc., d/b/a King Nut Companies (King Nut), is an Ohio corporation, organized under the laws of the state of Ohio, with its principal office located in Ohio, at 31900 Solon Road, Solon, Ohio 44139. The defendant King Nut is therefore

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a foreign corporation and not a citizen of the state of Minnesota. The defendant King Nut is, however, authorized to and does conduct business in the state of Minnesota. At all times relevant to this matter, King Nut was a manufacturer and seller of food products, including those that contained peanut butter.

II. JURISDICTION AND VENUE

3. This Court has jurisdiction over the subject matter of this action pursuant to 28 USC § 1332(a) because the matter in controversy exceeds \$75,000.00, exclusive of costs, and it is between citizens of different states.

4. Venue in the United States District Court for the District of Minnesota is proper pursuant to 28 USC § 1391(a)(2) because a substantial part of the events or omissions giving rise to the plaintiff's claims and causes of action occurred in this judicial district. Additionally, the defendant was subject to personal jurisdiction in this judicial district at the time of the commencement of the action.

III. GENERAL ALLEGATIONS

Salmonella

5. *Salmonella* is an enteric bacterium, which means that it lives in the intestinal tracts of humans and other animals, including birds. *Salmonella* bacteria are usually transmitted to humans by eating foods contaminated with animal feces. Contaminated foods usually look and smell normal. Contaminated foods are often of animal origin, such as beef, poultry, milk, or eggs, but all foods, including vegetables, may become contaminated. Many raw foods of animal origin are frequently contaminated, but fortunately thorough cooking kills *Salmonella*. A food handler who neglects to wash his or her hands with soap and warm water after using the bathroom may also contaminate food.

6. Once in the lumen of the small intestine, the *Salmonella* bacteria penetrate the epithelium, multiply, and enter the blood within 24 to 72 hours. As few as 15-20 cells of *Salmonella* bacteria can cause salmonellosis or a more serious typhoid-like fever. Variables such as the health and age of the host and virulence differences among the serotypes affect the nature of the diagnosis. Infants, elderly, hospitalized, and the immune-suppressed are the populations that are the most susceptible to disease and suffer the most severe symptoms, including death.

7. The acute symptoms of *Salmonella* gastroenteritis include the sudden onset of nausea, abdominal cramping, and bloody diarrhea with mucous. There is no real cure for *Salmonella* infection, except treatment of the symptoms.

8. Persons with severe diarrhea may require rehydration, often with intravenous fluids. *Salmonella* can be treated with ampicillin, gentamicin, trimethoprim/sulfamethoxazole, or ciprofloxacin. Unfortunately, some *Salmonella* bacteria have become resistant to antibiotics, largely as a result of the use of antibiotics to promote the growth of feed animals.

9. Persons with diarrhea usually recover completely, although it may be several months before their bowel habits are entirely normal. A small number of persons who are infected with *Salmonella* will go on to develop pains in their joints, irritation of the eyes, and painful urination. This is called Reiter's syndrome. It can last for months or years, and can lead to chronic arthritis, which is difficult to treat. Antibiotic treatment does not make a difference in whether or not the person later develops arthritis.

Past Peanut Butter Outbreaks

10. The first documented outbreak, in 1996, of salmonellosis associated with the consumption of peanut butter was reported in the Journal of Applied Microbiology in 2000. Between April and June 1996, 15 persons with *Salmonella* enterica serovar Mbandaka infection

were reported in South Australia. *Salmonella* Mbandaka was isolated from three opened jars of peanut butter from case households, and from three unopened jars from retail outlets. Further investigation implicated roasted peanuts from a third Australian state as the source of the *Salmonella* contamination.

11. On February 14, 2007, the United States Food and Drug Administration (FDA), as part of its investigation of a nationwide *Salmonella* outbreak, warned consumers not to eat Peter Pan and Great Value brands of peanut butter with a product code beginning 2111, and announced a recall of the products by their manufacturer, ConAgra. The CDC ultimately linked 628 persons infected from 44 states with the outbreak strain of *Salmonella* Tennessee to the consumption of the product.

2008-2009 Peanut Butter *Salmonella* Outbreak

12. On January 9, 2009, the Minnesota Department of Agriculture (MDA) announced a product advisory after MDA's preliminary laboratory testing indicated the presence of *Salmonella* bacteria in a five-pound container of King Nut brand creamy peanut butter. The contamination was discovered as a result of product testing initiated after an MDH epidemiological investigation implicated King Nut creamy peanut butter as a likely source of *Salmonella* infections in Minnesota residents beginning in late 2008. The Minnesota *Salmonella* cases were a genetic match to other cases then being identified throughout the nation.

13. On January 10, 2009, King Nut announced that *Salmonella* had been found in a five-pound tub of its peanut butter and that they were voluntarily recalling all of their peanut butter products made from Peanut Corporation of America (PCA) peanuts.

14. On January 13, 2009, PCA announced a voluntary recall of peanut butter produced in its processing facility located in Blakely, Georgia because it had the potential to be

contaminated with *Salmonella*. The FDA subsequently notified PCA that product samples originating from its Blakely, Georgia, processing plant were tested and found positive for *Salmonella* by laboratories in the states of Minnesota, Georgia, and Connecticut.

15. On January 16, 2009, PCA expanded its voluntary recall to include all peanut butter produced on or after August 8, 2008, and all peanut paste produced on or after September 26, 2008, in its Blakely, Georgia, plant because of potential *Salmonella* contamination. That same day, the Connecticut Department of Health confirmed it found *Salmonella* in an unopened jar of King Nut brand peanut butter.

16. The Centers for Disease Control (CDC) counts 714 persons from 46 states as infected with the same genetic outbreak strain of *Salmonella* Typhimurium linked to King Nut's peanut butter product and other PCA peanut products. At least nine deaths were attributed to the outbreak, including the decedent.

Decedent Shirley Mae Almer's Injuries

17. In December, 2008, decedent SHIRLEY MAE ALMER was a resident of the Good Samaritan Society – Bethany rehabilitation center located in Brainerd, Minnesota.

18. While at the rehabilitation center, SHIRLEY MAE ALMER was served and consumed peanut butter product manufactured by defendant King Nut.

19. On or about December 12, 2008, SHIRLEY MAE ALMER began to suffer from gastrointestinal symptoms that included diarrhea.

20. Over the next several days her condition continued to deteriorate. By December 18, there was a notable decrease in her cognitive function followed by labored breathing and increased general discomfort.

21. On December 20, 2008, she was transferred by ambulance to St. Joseph's

Hospital for medical treatment.

22. The emergency room doctors noted her serious condition, and believed she had some form of infection. Throughout the rest of the day on December 20 and into December 21, she struggled to breathe.

23. At approximately 9:00 PM on December 21, SHIRLEY MAE ALMER died as a result of complications associated with her *Salmonella* infection.

24. Following her death, an epidemiologist from the Minnesota Department of Health confirmed that Ms. Almer had cultured positive for *Salmonella*. The immediate cause of Ms. Almer's death was sepsis (bacteria in the blood).

IV. CAUSES OF ACTION

Strict Liability—Count I

25. The defendant King Nut was at all times relevant to this matter the manufacturer and seller of the adulterated food product that is the subject of the action.

26. The adulterated food product that the defendant King Nut manufactured, distributed, and sold was, at the time it left the defendant King Nut's control, defective and unreasonably dangerous for its ordinary and expected use because it contained *Salmonella*, a deadly pathogen.

27. The adulterated food product the defendant King Nut manufactured, distributed, and sold was delivered to the plaintiffs without any change in its defective condition. The adulterated food product the defendant manufactured, distributed, and sold was used in the manner expected and intended, and was consumed by the decedent, SHIRLEY MAE ALMER.

28. The decedent SHIRLEY MAE ALMER suffered injury and damages, resulting in her death, as a direct and proximate result of the defective and unreasonably dangerous condition

of the adulterated food product that the defendant King Nut manufactured, distributed, and sold.

Negligence—Count II

29. The defendant King Nut owed a duty to the plaintiff to use reasonable care in its manufacture, distribution, and sale of its food products, which duty, if met, would have prevented or eliminated the risk that the defendant King Nut's food products would become contaminated with *Salmonella* or any other dangerous pathogen. The defendant King Nut breached this duty.

30. The defendant King Nut had a duty to comply with all statutes, laws, regulations, or safety codes pertaining to the manufacture, distribution, storage, and sale of its food product, but failed to do so, and was therefore negligent. The plaintiff and decedent are among the class of persons designed to be protected by these statutes, laws, regulations, safety codes or provision pertaining to the manufacture, distribution, storage, and sale of similar food products.

31. The defendant King Nut had a duty to properly supervise, train, and monitor its employees, and to ensure their compliance with all applicable statutes, laws, regulations, or safety codes pertaining to the manufacture, distribution, storage, and sale of similar food products, but it failed to do so and was therefore negligent.

32. The defendant King Nut had a duty to use ingredients, supplies, and other constituent materials that were reasonably safe, wholesome, free of defects, and that otherwise complied with applicable federal, state, and local laws, ordinances, and regulations, and that were clean, free from adulteration, and safe for human consumption, but it failed to do so and was therefore negligent.

33. The defendant King Nut was negligent in its purchase and use of ingredients, supplies, and other constituent materials that were contaminated with *Salmonella* bacteria. The

defendant King Nut had a duty to carefully select and monitor its suppliers, or other subcontractors, but failed to adequately supervise them, or provide them with adequate standards, in writing.

34. As a direct and proximate result of the defendant King Nut's acts of negligence, SHIRLEY MAE ALMER suffered injury and damages, resulting in her death on December 21, 2008.

Negligence Per Se—Count III

35. The defendant King Nut had a duty to comply with all applicable state and federal regulations intended to ensure the purity and safety of its food product, including, but not limited to, the requirements of the Federal Food, Drug and Cosmetics Act, 21 U.S.C. § 301 *et seq.*, and the Minnesota Food Laws, Minn. Stat. § 31.01 *et. seq.*

36. The defendant King Nut failed to comply with the provisions of the health and safety acts identified above, and, as a result, was negligent *per se* in its manufacture, distribution, and sale of food adulterated with *Salmonella*, a deadly pathogen.

37. As a direct and proximate result of conduct by the defendant King Nut that was negligent *per se*, the plaintiff sustained injuries and damages in an amount to be determined at trial and the next-of-kin of SHIRLEY MAE ALMER have incurred expenses for her last illness and funeral expenses and have sustained pecuniary and non-pecuniary losses within the meaning of Minn. Stat. § 573.02 and were otherwise damaged.

38. As a direct and proximate result of the defendant King Nut's acts of negligence *per se*, SHIRLEY MAE ALMER died on December 21, 2008.

DAMAGES

39. During the time decedent SHIRLEY MAE ALMER was injured due to the acts,

errors and omissions of the defendant King Nut, and since her death on December 21, 2008, the plaintiffs and next-of-kin of SHIRLEY MAE ALMER have suffered general, special, incidental, and consequential damages as the direct and proximate result of the acts and omissions of the defendant, in an amount that shall be fully proven at the time of trial. These damages include, but are not limited to, the pecuniary and non-pecuniary losses suffered by the next-of-kin due to SHIRLEY MAE ALMER's death, medical and medical-related expenses, travel and travel-related expenses, pharmaceutical expenses, the loss of advice, comfort, assistance, companionship, counsel, guidance and protection, and all other ordinary, incidental, and consequential damages that would or could be reasonably anticipated to arise under the circumstances.

PRAYER FOR RELIEF

WHEREFORE, the plaintiff prays:

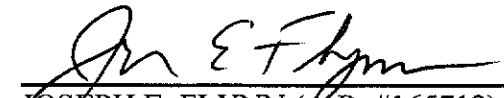
- (a) That the defendant be served with a copy of this Complaint and answer as required by law;
- (b) That the plaintiff be granted a judgment against the defendant on Counts I-III above for all general, special, incidental, and consequential damages suffered by the plaintiff in an amount deemed appropriate by the Court to fully compensate the plaintiff;
- (c) That the plaintiff be awarded reasonable attorneys fees and costs;
- (d) That the Court order statutory prejudgment interest;
- (e) That the plaintiff be granted a trial by jury;
- (f) That the court award the plaintiff 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

- (f) That the plaintiff be awarded such other and further relief as would be equitable and just under the circumstances.

JURY DEMAND

The plaintiff hereby demands a jury trial.

JARDINE, LOGAN & O'BRIEN, P.L.L.P.



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