

DISTRICT COURT, COUNTY OF ADAMS, STATE OF COLORADO 1100 Judicial Center Dr. Brighton, CO 80601	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>Plaintiffs: ROBERT LOPEZ and KELLI LOPEZ, Individually, and as Parents and Next Friends of S.W., a minor</p> <p>Defendants: DEL MONTE FRESH PRODUCE N.A., INC. a foreign corporation; JOHN DOES 1-10.</p>	
<p>Attorney for Plaintiffs: John Riley, Esq. No. 18962 Montgomery Little & Soran, P.C. 5445 DTC Parkway, Suite 800 Greenwood Village, Colorado 80111 Telephone: 303.773.8100 Facsimile: 303.220.0412 Email: jriley@montgomerylittle.com</p>	<p>Case No.: Courtroom:</p>
COMPLAINT AND JURY DEMAND	

COME NOW the Plaintiffs, by and through their attorneys, John Riley of Montgomery Little & Soran, P.C., and Bill Marler of Marler Clark, LLP, PS, (admission *pro hac vice* pending), file this Complaint and Jury Demand and allege as follows:

PARTIES

1. The Plaintiffs Robert Lopez, Kelli Lopez and S.W. reside in Thornton, Colorado. Robert Lopez and Kelli Lopez are the parents of S.W., a minor.

2. The Defendant Del Monte Fresh Produce N.A., Inc. (hereafter “Del Monte”) is a foreign corporation organized and existing under the laws of the State of Florida. Del Monte is registered with the Colorado Secretary of State to do, and in fact does conduct, business in Colorado. Del Monte’s registered agent in Colorado is The Corporation Company, 1675 Broadway, Suite 1200, Denver, Colorado, 80202. Del Monte’s principal place of business is located at 241 Sevilla Ave, Coral Gables, Florida, 33134.

3. Upon information and belief, the Defendants John Does 1-10 are entities who participated in the manufacture, distribution, and/or sale of the contaminated food product that was the proximate cause of the Plaintiffs’ injuries, and whose identities are not known to the

Plaintiff at this time. The Plaintiffs will seek leave of the Court to amend this Complaint at such time that the identities of these parties become known.

JURISDICTION AND VENUE

4. This Court is vested with jurisdiction over the Defendants in Colorado because the Defendants conduct business within the State of Colorado.

5. Pursuant to C.R.C.P. 98, venue of this action is proper in Adams County because the cause of action arose in this county and the Defendants transacted business in this county.

GENERAL ALLEGATIONS

6. On March 22, 2011, Del Monte announced that it was recalling 4,992 cartons of cantaloupes, each containing 4 plastic mesh sleeves with 3 cantaloupes per sleeve, because they had the potential to be contaminated with *Salmonella* Panama.

7. As of March 29, 2011, the CDC had reported 13 persons infected with the outbreak strain of *Salmonella* Panama in five states: Oregon (5 cases), Washington (4 cases), California (2 cases), Colorado (1 case) and Maryland (1 case). The CDC reported that:

Collaborative investigative efforts of state, local, and federal public health and regulatory agencies have linked this outbreak to eating cantaloupe. On March 22, 2011, Del Monte Fresh Produce N.A., Inc. voluntarily recalled cantaloupes. Consumer should not eat recalled cantaloupes and restaurant and food service operators should not serve them.

8. In early March, the Lopezes purchased Del Monte cantaloupe at their local Costco store.

9. In the days subsequent to purchase, S.W. consumed the cantaloupe.

10. S.W. fell ill on or about March 4, 2011, when she began suffering from a gastrointestinal illness. Her condition worsened daily until she required hospitalization. She remained hospitalized from March 10 to March 14, 2011.

11. While hospitalized, S.W. tested positive for *Salmonella*. The Plaintiffs were informed by health officials that the strain of *Salmonella* that infected S.W. was the strain associated with the cantaloupe outbreak and recall.

12. As of the time of the filing of this Complaint, S.W. is still recovering from her *Salmonella* infection.

13. S.W.'s *Salmonella* infection resulted directly from her consumption of Del Monte cantaloupe contaminated with *Salmonella*.

FIRST CLAIM FOR RELIEF
(Strict Product Liability)

14. The Plaintiffs hereby incorporate paragraphs 1 through 13 by this reference as if each paragraph was set forth herein in its entirety.

15. The Defendants are product manufacturers and sellers within the meaning of the Colorado Product Liability Act, C.R.S. §§13-21-401 *et seq.* The Defendants manufactured the food that was the source of the minor Plaintiff's injuries. The *Salmonella* contaminated food that was the source of the minor Plaintiff's injuries was a product within the meaning of the Act.

16. The Defendants' food product that was the source of the Plaintiff S.W.'s illness and injuries was defective, and was unreasonably dangerous to the consumer, because it was contaminated and adulterated with *Salmonella*, a potentially deadly pathogen.

17. The food product manufactured by the Defendants reached the Plaintiffs without substantial change in the condition in which it was sold.

18. The Defendants' defective *Salmonella* contaminated food product caused the Plaintiff S.W.'s *Salmonella* infection and subsequent damages.

19. The Defendants were the sellers of the defective *Salmonella* contaminated food product.

20. The Defendants were engaged in the business of selling food products.

21. Because the Defendants manufactured the food product that was the source of the S.W.'s illness and the Plaintiffs' injuries and losses, which food was defective and not reasonably safe due to *Salmonella* contamination, the Defendants are strictly liable to the Plaintiffs for the harm proximately caused by their sale of defective food.

SECOND CLAIM FOR RELIEF
(Breach of Warranties)

22. The Plaintiffs hereby incorporate paragraphs 1 through 21 by this reference as if each paragraph was set forth herein in its entirety.

23. The Defendants owed a duty to the Plaintiffs to manufacture and sell a food product that conformed to its express and implied warranties, including, but not limited to, the implied warranty of merchantability and the implied warranty of fitness for a particular use or purpose.

24. The food product manufactured and sold by the Defendants was contaminated with the *Salmonella* bacteria. Such contaminated food products would not pass without exception in the trade, and the sale of such food products was thus in breach of the implied warranty of merchantability.

25. The food product manufactured and sold by the Defendants was contaminated with the *Salmonella* bacteria, and was not fit for the uses and purposes intended by either the Plaintiffs or the Defendants, *i.e.*, human consumption. The sale was thus a breach of the implied warranty of fitness for its intended use.

26. Because the Defendants manufactured and sold food that was in breach of their express and implied warranties, the Defendants are liable to the Plaintiffs for the harm proximately caused by their sale of contaminated food.

THIRD CLAIM FOR RELIEF
(Negligence and Negligence *per se*)

27. The Plaintiffs hereby incorporate paragraphs 1 through 26 by this reference as if each paragraph was set forth herein in its entirety.

28. The Defendants negligently manufactured, distributed and sold a food product that was not reasonably safe.

29. The Defendants were negligent in manufacturing, distributing and selling a product that was not reasonably safe because adequate warnings or instructions were not provided, including, but not limited to, the warning that their product may contain *Salmonella*, and thus should not be given to, or eaten by, people.

30. The Defendants had a duty to comply with all statutory and regulatory provisions that pertained or applied to the manufacture, distribution, storage, labeling, and sale of their food products, including, but not limited to, the Federal Food, Drug, and Cosmetics Act, which bans the manufacture, sale and distribution of any “adulterated” food, but failed to do so.

31. In the manufacture and production of their finished product, the Defendants owed to the Plaintiffs a duty to use supplies and raw materials that were in compliance with applicable federal, state, and local laws, ordinances and regulations; that were from safe and reliable sources; and that were clean, wholesome, free from spoilage and adulteration, and safe for human consumption, but failed to do so.

32. The Plaintiffs are among the class of persons designed to be protected by the statutory and regulatory provisions pertaining to the Defendants’ manufacture, distribution, storage, labeling, and sale of their food.

33. As a result of the Defendants’ negligence, and as a result of the Defendants’ violation of statutes designed to protect the Plaintiffs from contaminated foods, the Defendants are liable to S.W. for her *Salmonella* illness and for the Plaintiffs’ injuries and losses.

DAMAGES

34. The Plaintiffs hereby incorporate paragraphs 1 through 33 by this reference as if each paragraph was set forth herein in its entirety.

35. The Plaintiffs have suffered general and special, incidental and consequential damages as the direct and proximate result of the acts and omissions of the Defendants, which damages shall be fully proven at the time of trial. Such damages include, but not limited to, damages for loss of enjoyment of life, both past and future; medical and medical related expenses, both past and future; travel and travel-related expenses, past and future; emotional distress and future emotional distress; pharmaceutical expenses, past and future; wage loss; and other ordinary, incidental and consequential damages as would be anticipated to arise under the circumstances.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs pray:

A. That the Court award the Plaintiffs judgment against the Defendants in such sums as shall be determined to fully and fairly compensate the Plaintiffs for all general, special, incidental and consequential damages incurred, or to be incurred, by the Plaintiffs as the direct and proximate result of the acts and omissions of the Defendants;

B. That the Court award the Plaintiffs their costs, including experts fees, and reasonable attorneys' fees incurred;

C. That the Court award such other and further relief as it deems necessary and proper in the circumstances.

PLAINTIFFS HEREBY DEMANDS TRIAL TO A JURY OF SIX PERSONS ON ALL ISSUES SO TRIABLE.

DATED: March 31, 2011

s/ John R. Riley

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And

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