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IN THE CIRCUIT COURT FOR THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

CONNIE MC CLOUD,

Plaintiff,

vs.

SPROUTERS NORTHWEST, INC., a
foreign corporation,

Defendant.

NO.
COMPLAINT FOR DAMAGES
NOT SUBJECT TO MANDATORY
ARBITRATION

JURY DEMAND

AMOUNT CLAIMED: \$100,000.00

The plaintiff hereby complains and alleges as follows:

PARTIES

1.

CONNIE MC CLOUD: The plaintiff, Connie McCloud, is an adult, and at all times relevant hereto was a resident of Multnomah County, Washington.

2.

SPROUTERS NORTHWEST, INC.: The defendant Sprouters Northwest, Inc.

1 (“Sprouters Northwest”) is a foreign corporation, incorporated under the laws of the State of
2 Washington, doing business in the State of Washington. At all times relevant hereto,
3 Sprouters Northwest conducted business in the State of Oregon, including, but not limited to,
4 the sale of sprouts in Oregon that gave rise to this action.

5 JURISDICTION AND VENUE

6 3.

7 Venue is proper in Multnomah County, pursuant to ORS §14.080, as the case of
8 action arose in Multnomah County, and the defendant conducted business in Multnomah
9 County and is therefore deemed to be a resident of Multnomah County for venue purposes.

10 4.

11 The Court has jurisdiction over this matter because the defendant is engaged in
12 substantial and not isolated activities within this state; because acts and omissions giving rise
13 to this litigation occurred within this state; and because products manufactured and sold by
14 the defendant were consumed within this state in the ordinary course of trade.

15 FACTS

16 5.

17 Outbreak Facts

18 On January 3, Oregon Public Health Division announced that sprouts manufactured
19 and sold by the defendant were linked to six cases of *Salmonella* Newport, two in Oregon
20 and four in Washington State. All of the defendant’s sprout products were recalled as a
21 result. A seventh illness connected to the outbreak was later confirmed.

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Connie McCloud's Illness

6.

On or about December 14, 2010, the plaintiff Connie McCloud purchased a bagel sandwich containing, among other items, the defendant's sprouts. Shortly after purchase, the plaintiff consumed the sprouts with the sandwich, as expected and intended by the defendant.

7.

The plaintiff subsequently fell ill with gastrointestinal symptoms. Her symptoms worsened until she required medical attention. As part of her medical care, the plaintiff submitted a stool sample. The stool culture was positive for *Salmonella*.

8.

The Multnomah County Health Department contacted the plaintiff regarding her *Salmonella* infection, and confirmed that her *Salmonella* infection strain was a match to an outbreak linked to sprouts.

9.

The plaintiff's *Salmonella* infection was caused directly by her consumption of the defendant's contaminated sprouts.

10.

The plaintiff has not fully recovered from her *Salmonella* infection.

FIRST CLAIM FOR RELIEF

Strict Liability

11.

1 The plaintiff adopts and incorporates by reference paragraphs 1 through 10 as though
2 fully set forth herein.

3 12.

4 At all times relevant hereto, the defendant was a manufacturer and seller of the
5 adulterated sprouts product that is the subject of this action.

6 13.

7 The defendant's sprouts product that were the source of the plaintiff's illness and
8 injuries were in a defective condition at the time that the sprouts left the possession or control
9 of the defendant, and were unreasonably dangerous to the consumer, because they were
10 contaminated and adulterated with *Salmonella*, a potentially deadly pathogen.

11 14.

12 The sprouts manufactured and sold by the defendant reached the plaintiff without
13 substantial change in the condition in which they were sold. The sprouts product that the
14 defendant manufactured, distributed, and/or sold was used in the manner expected and
15 intended by the defendant, *i.e.*, human consumption.

16 15.

17 The defendant's defective *Salmonella*-contaminated sprouts caused the plaintiff's
18 *Salmonella* infection and the plaintiff's subsequent damages.

19 16.

20 Because the defendant manufactured and sold the sprouts that were the source of the
21 plaintiff's *Salmonella* infection and injuries, and those sprouts were defective and not

1 reasonably safe due to *Salmonella* contamination, the defendant is strictly liable to the
2 plaintiff for the harm proximately caused by its manufacture and sale of a defective product.

3 17.

4 As a direct and proximate result of the defendant's culpable acts and omissions, the
5 plaintiff was infected with *Salmonella* and suffered economic damages. She is thus entitled
6 to an award for her lost medical and medically-related expenses, both past and future; travel
7 and travel-related expenses, past and future; pharmaceutical expenses, past and future; and
8 related wage and lost earning capacity damages, in sums not presently known.

9 18.

10 As a further direct and proximate result of the defendant's culpable acts and
11 omissions, the plaintiff has suffered non-economic damages, including, but not limited to:
12 damages for general pain and suffering; damages for loss of enjoyment of life, both past and
13 future; emotional distress, and future emotional distress; and all other ordinary, incidental
14 and consequential non-economic damages as would be anticipated to arise under the
15 circumstances, and is thus entitled to an award of non-economic damages in an amount of
16 \$100,000 or as determined at trial.

17 **SECOND CLAIM FOR RELIEF**

18 **Breach of Warranty**

19 19.

20 The plaintiff adopts and incorporates by reference paragraphs 1 through 18 as though
21 fully set forth herein.

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20.

The defendant is a manufacturer and seller of sprouts food products.

21.

Through its manufacture and sale of sprouts, the defendant warranted that its products 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.

22.

The sprouts manufactured and sold by the defendant and consumed by the plaintiff were contaminated with the *Salmonella* bacteria. Sprouts contaminated with *Salmonella* would not pass without exception in the trade, were unreasonably dangerous for their ordinary and foreseeable use, and the sale of such food products was thus in breach of the implied warranty of merchantability.

23.

The sprouts manufactured and sold by the defendant were contaminated with the *Salmonella* bacteria, and were not fit for the uses and purposes intended by either the plaintiff or the defendant, *i.e.*, human consumption. The sale was thus a breach of the implied warranty of fitness for their intended use.

24.

Because the defendant manufactured and sold sprouts that were in breach of its express and implied warranties, and the breach was the direct and proximate cause of the

1 plaintiff's *Salmonella* infection and the plaintiff's injuries, the defendant is liable to the
2 plaintiff for the harm proximately caused by its sale of *Salmonella*-contaminated food.

3 25.

4 The plaintiff suffered personal injury and economic and non-economic damages as a
5 direct and foreseeable consequence of the defendant's breach of warranties, and is thus
6 entitled to an award for her lost medical and medically-related expenses, both past and
7 future; travel and travel-related expenses, past and future; pharmaceutical expenses, past and
8 future; and related wage and lost earning capacity damages, in sums not presently known.

9 26.

10 As a further direct and foreseeable consequence of the defendant's breach of
11 warranties, the plaintiff has suffered non-economic damages, including, but not limited to:
12 damages for general pain and suffering; damages for loss of enjoyment of life, both past and
13 future; emotional distress, and future emotional distress; and all other ordinary, incidental
14 and consequential non-economic damages as would be anticipated to arise under the
15 circumstances, and is thus entitled to an award of non-economic damages in an amount of
16 \$100,000 or as determined at trial.

17 **THIRD CLAIM FOR RELIEF**

18 Negligence

19 27.

20 The plaintiff adopts and incorporates by reference paragraphs 1 through 26 as though
21 fully set forth herein.

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28.

The defendant owed to the plaintiff a duty to use reasonable care in the manufacture, distribution, and sale of its sprouts product, which duty would have prevented or eliminated the risk that the defendant’s sprouts product would become contaminated with *Salmonella* or any other dangerous pathogen. The defendant breached this duty.

29.

The defendant had a duty to comply with all statutes, laws, regulations, or safety codes pertaining to the manufacture, distribution, storage, and sale of its sprouts product, 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, and was therefore negligent.

30.

In the manufacture and production of its sprouts, the defendant owed to the plaintiff 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 the defendant failed to do so.

31.

As a result of the defendant’s negligence, and as a result of the defendant’s violation of statutes designed to protect the plaintiff from injury due to contaminated foods, the defendant is liable to the plaintiff for her *Salmonella* infection and injuries.

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32.

As a direct and proximate result of the defendant's negligent acts and omissions, the plaintiff was infected with *Salmonella* and suffered economic damages. She is thus entitled to an award for her lost medical and medically-related expenses, both past and future; travel and travel-related expenses, past and future; pharmaceutical expenses, past and future; and related wage and lost earning capacity damages, in sums not presently known.

33.

As a further direct and proximate result of the defendant's negligent acts and omissions, the plaintiff has suffered non-economic damages, including, but not limited to: damages for general pain and suffering; damages for loss of enjoyment of life, both past and future; emotional distress, and future emotional distress; and all other ordinary, incidental and consequential non-economic damages as would be anticipated to arise under the circumstances, and is thus entitled to an award of non-economic damages in an amount of \$100,000 or as determined at trial.

FOURTH CLAIM FOR RELIEF

Negligence Per Se

34.

The plaintiff adopts and incorporates by reference paragraphs 1 through 33 as though fully set forth herein.

35.

The defendant had a duty to comply with all applicable state and federal regulations

1 intended to ensure the purity and safety of its food product, including the requirements of the
2 Oregon adulterated food statutes (ORS § 616.205 *et seq.*).

3 36.

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

7 37.

8 The plaintiff is among the class of persons designed to be protected by the statutory
9 and regulatory provisions pertaining to the defendant's manufacture, distribution, and sale of
10 its food.

11 38.

12 As a direct and proximate result of the defendant's conduct that was negligent *per se*,
13 the plaintiff was infected with *Salmonella* and suffered economic damages. She is thus
14 entitled to an award for her lost medical and medically-related expenses, both past and
15 future; travel and travel-related expenses, past and future; pharmaceutical expenses, past and
16 future; and related wage and lost earning capacity damages, in sums not presently known.

17 39.

18 As a further direct and proximate result of the defendant's conduct that was negligent
19 *per se*, the plaintiff has suffered non-economic damages, including, but not limited to:
20 damages for general pain and suffering; damages for loss of enjoyment of life, both past and
21 future; emotional distress, and future emotional distress; and all other ordinary, incidental

1 and consequential non-economic damages as would be anticipated to arise under the
2 circumstances, and is thus entitled to an award of non-economic damages in an amount of
3 \$100,000 or as determined at trial.

4 **JURY DEMAND**

5 40.

6 The plaintiff hereby demands a jury trial.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, the plaintiff prays for the following relief:

9 (a) On the plaintiff's First Claim for Relief:

10 1. The plaintiff has incurred and will likely incur economic damages in
11 sums not presently known.

12 2. Non-economic damages in the amount of \$100,000 or as determined at
13 trial.

14 (b) On the plaintiff's Second Claim for Relief:

15 1. The plaintiff has incurred and will likely incur economic damages in
16 sums not presently known.

17 2. Non-economic damages in the amount of \$100,000 or as determined at
18 trial.

19 (c) On the plaintiff's Third Claim for Relief:

20 1. The plaintiff has incurred and will likely incur economic damages in
21 sums not presently known.

1 2. Non-economic damages in the amount of \$100,000 or as determined at
2 trial.

3 (d) On the plaintiff's Fourth Claim for Relief:

4 1. The plaintiff has incurred and will likely incur economic damages in
5 sums not presently known.

6 2. Non-economic damages in the amount of \$100,000 or as determined at
7 trial.

8 (e) That the Court award the plaintiff the opportunity to amend or modify the
9 provisions of this complaint as necessary or appropriate after additional or further discovery
10 is completed in this matter, and after all appropriate parties have been served; and

11 (f) That the Court award such other and further relief as it deems necessary and
12 proper in the circumstances.

13
14 SIGNED AND DATED this 19th day of January, 2011.

15 MARLER CLARK, L.L.P., P.S.

16
17 _____
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20 Seattle, WA 98104
21 (206) 346-1888

Attorneys for the Plaintiff