

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF IOWA
WESTERN DIVISION**

DANIEL and LIBBY SANDS,
Individually and as Parent of A.S., a minor,

Plaintiffs,

vs.

QUALITY EGG, LLC, d/b/a "Wright County
Egg," an Iowa limited liability company,

Defendant.

Case No.

COMPLAINT

JURY DEMAND

COME NOW the Plaintiffs, Daniel and Libby Sands, Individually and as Parents of A.S., and for their cause of action against Defendant Quality Egg, LLC., respectfully allege as follows:

I. PARTIES, JURISDICTION, AND VENUE

1. Daniel and Libby Sands, husband and wife, are the natural parents of A.S., a minor child, and all are residents of Newton, Massachusetts.

2. The defendant Quality Egg, LLC, d/b/a "Wright County Egg" is an Iowa limited liability company that, at all times relevant, was engaged in the business of manufacturing and distributing shell eggs to customers nationally, including food retailers for resale, and is located at 2674 Highway 69, Galt, Iowa, 50101.

3. Subject matter jurisdiction in this matter is proper based on the diversity of the parties, and the amount in controversy exceeds Seventy-Five Thousand Dollars (\$75,000.00), both as required under 28 U.S.C. §1332(a)(2).

4. Venue of this matter is proper in the United States District Court for the Northern District of Iowa, Western Division, pursuant to 28 U.S.C. §1391(a), as a substantial part of the events or omissions giving rise to the claim set forth herein occurred in this judicial district.

II. GENERAL FACT ALLEGATIONS

5. On August 16, 2010, the Centers for Disease Control and Prevention (CDC) announced that it had observed an approximate four-fold nationwide increase, in late June and early July 2010, in reports of human illnesses caused by *Salmonella* enteritidis.

6. On August 13, 2010, the defendant Wright County Egg issued a recall of approximately 228,000,000 shell eggs that it had manufactured and distributed in recent months. Wright County Egg had distributed the recalled eggs to food wholesalers, distribution centers, and foodservice companies in California, Illinois, Missouri, Colorado, Nebraska, Minnesota, Wisconsin and Iowa. In turn, the companies that Wright County Egg had distributed to further distributed and sold the recalled eggs.

7. On August 16, 2010, the same day as the CDC's announcement described at paragraph 5 of this complaint, Wright County Egg expanded the recall described at paragraph 6 of this complaint to include approximately 380,000,000 eggs.

8. In April, 2010, public health officials in North Carolina investigated a cluster of suspected *Salmonella* illnesses. The health officials concluded that approximately 74 individuals had been sickened, with 16 cases of culture-confirmed *Salmonella enteritidis*. In a report released on July 9, 2010, the health department announced that the illnesses were linked to a pasteurized egg white product used in desserts at a restaurant in Durham, North Carolina. On August 19, 2010, North Carolina health officials stated that the North Carolina cluster of illnesses, and the commercial egg product, could be traced back to the eggs manufactured and sold by Wright County Egg.

9. The minor plaintiff, A.S., was one of those culture-confirmed with *Salmonella* enteritidis in the North Carolina outbreak.

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10. The plaintiffs purchased and A.S. consumed food at the implicated North Carolina restaurant, including the banana pudding with meringue, made using the implicated egg product, on April 20, 2010.

11. A.S. fell ill, upon her return home to Massachusetts, on April 22, 2010, with severe gastrointestinal symptoms. Her condition worsened, and she was hospitalized later that day. She remained hospitalized through April 29, 2010. It was during this hospitalization that A.S. tested positive for *Salmonella enteritidis*.

12. A.S.' *Salmonella* infection and related injuries are a direct and proximate result of her exposure to contaminated eggs manufactured and sold by the defendant.

III. STRICT PRODUCT LIABILITY

13. The defendant Wright County Egg was at all times relevant to this matter the manufacturer and seller of the adulterated food product that is the subject of the action.

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

15. The adulterated food product the defendant Wright County Egg 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 minor plaintiff, A.S.

16. The plaintiffs suffered injury and damages as a direct and proximate result of the defective and unreasonably dangerous condition of the adulterated food product that the defendant Wright County Egg manufactured, distributed, and sold. These damages include, but

are not limited to: physical and mental pain and suffering, past and future in the form of the pain and suffering including bodily suffering, discomfort and loss of enjoyment of life; and medical costs and expenses to this point and the present value of reasonable medical expenses in the future.

WHEREFORE, the plaintiffs, Daniel and Libby Sands, Individually and as Parents of A.S., a minor, request damages in an amount that will reasonably compensate plaintiffs for the said injuries and damages, together with interest and costs, as permitted under Iowa law.

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IV. BREACH OF WARRANTY

17. Plaintiffs replead the allegations set forth in paragraph 1 through 16 above and incorporate same as if set forth fully herein.

18. The defendant Wright County Egg is liable to the plaintiffs for breaching express and implied warranties it made regarding the adulterated product that the plaintiffs purchased. These express and implied warranties included the implied warranties of merchantability and fitness for a particular use. Specifically, the defendant Wright County Egg expressly warranted, through its sale of food to the public and by the statements and conduct of its employees and agents, that the food it prepared and sold was fit for human consumption and not otherwise adulterated or injurious to health.

19. The plaintiffs allege that the *Salmonella*-contaminated food that defendant Wright County Egg sold to the plaintiffs would not pass without objection in the trade and was not fit for the ordinary purposes for which such goods are used, and was therefore in breach of the implied warranty of merchantability.

20. The plaintiffs allege that the *Salmonella*-contaminated food that the defendant Wright County Egg sold to the plaintiffs was not fit for the particular uses and purposes

intended, *i.e.* human consumption, and that this product was therefore in breach of the implied warranty of fitness for its particular purpose.

WHEREFORE, the plaintiffs, Daniel and Libby Sands, Individually and as Parents of A.S., a minor, request damages in an amount that will reasonably compensate plaintiffs for the said injuries and damages, together with interest and costs, as permitted under Iowa law.

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V. NEGLIGENCE PER SE

21. The Plaintiffs replead the allegations set forth in paragraphs 1 through 20 above and incorporates same as if fully set forth herein.

22. The defendant Wright County Egg 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.*

23. The defendant Wright County Egg 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.

24. As a direct and proximate result of conduct by the defendant Wright County Egg that was negligent *per se*, the plaintiffs sustained injuries and damages.

WHEREFORE, the plaintiffs, Daniel and Libby Sands, Individually and as Parents of A.S., a minor, requests damages in an amount that will reasonably compensate plaintiffs for the said injuries and damages, together with interest and costs, as permitted under Iowa law.

VI. NEGLIGENCE

25. Plaintiffs replead the allegations set forth in paragraphs 1 through 24 above and incorporate same as if fully set forth herein.

26. The defendant Wright County Egg owed a duty to the plaintiffs 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 Wright County Egg's food products would become contaminated with *Salmonella* or any other dangerous pathogen. The defendant Wright County Egg breached this duty.

27. The defendant Wright County Egg 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 plaintiffs 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.

28. The defendant Wright County Egg 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.

WHEREFORE, the plaintiffs, Daniel and Libby Sands, Individually and as Parents of A.S., a minor, request damages in an amount that will reasonably compensate plaintiffs for the said injuries and damages, together with interest and costs, as permitted under Iowa law.

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PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs, Daniel and Libby Sands, Individually and as Parents of A.S., a minor, pray for judgment against the defendant Wright County Egg as follows:

a. Judgment for plaintiffs against the defendant for just compensation in a fair and reasonable amount for the damages above set forth; and

b. Such additional and/or further relief, including interest, costs, and reasonable attorney fees, as this Court deems just and equitable.

JURY DEMAND

Plaintiffs hereby demand a jury trial.

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Dated this _____ day of August, 2010.

/s/ Steven P. Wandro
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ATTORNEYS FOR PLAINTIFFS

Original filed.