

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss

SUPERIOR COURT DEPT.
OF THE TRIAL COURT
DOCKET NO.

BRANDI HENSON, as Mother and Next of)
 Kin for her minor child Jackson Henson,)
 Plaintiffs)
)
 v.)
)
 SUNLAND, INC., a foreign corporation;)
 and TRADER JOE’S COMPANY, a foreign)
 corporation,)
 Defendant)

**COMPLAINT AND
JURY CLAIM**

COMPLAINT FOR DAMAGES

The plaintiff, Brandi Henson, by and through her counsel of record, JAMES M. BRADY of Attorney Jim Brady and Associates, PC, and WILLIAM D. MARLER of Marler Clark, LLP, PS, (pending admission *pro hac vice*) states, alleges and complains as follows:

I.

PARTIES

1. The plaintiff, Brandi Henson, is a resident of South Grafton, Worcester County, Massachusetts, and is the minor child Jackson Henson’s mother. Ms. Henson purchased Valencia peanut butter for consumption by her son Jackson, who is 4 years old. The peanut butter, which had been manufactured and sold by the defendants, was contaminated by *Salmonella* Bredeney, causing Jackson’s *Salmonella* infection and related injuries, described below.

2. The defendant Sunland, Inc., is a corporation organized and existing under the laws of the state of New Mexico. Sunland manufactures and distributes peanut butter products,

including the Valencia brand peanut butter that caused Jackson Henson's *Salmonella* Bredeney infection. At all times material hereto, the defendant manufactured and sold its peanut butter products nationally to retail entities, including the defendant Trader Joe's. Sunland distributed its peanut butter products, including the peanut butter that caused the Jackson Henson's *Salmonella* Bredeney infection, to the Trader Joe's location at 77 Boston Turnpike, Shrewsbury, Massachusetts, and as such, was doing business in Massachusetts.

3. The defendant Trader Joe's Company is a corporation organized and existing under the laws of the state of California. Trader Joes is a retail grocery company that owns and operates grocery stores nationally, including the location at 77 Boston Turnpike, Shrewsbury, Massachusetts. Trader Joes sold the defendant Sunland's Valencia brand peanut butter products, including the peanut butter that caused Jackson Henson's *Salmonella* Bredeney infection.

II.

JURISDICTION AND VENUE

4. This court is vested with original jurisdiction over the defendant, as a corporation doing business within the State of Massachusetts, pursuant to Massachusetts General Laws, Chapter 212, Section 4.

5. The venue of this action is proper in Worcester County, pursuant to Massachusetts General Laws, Chapter 223, Section 1, as plaintiff lives in the Commonwealth, and is a resident of Worcester County.

III.

FACTUAL ALLEGATIONS

The Outbreak

6. On or about September 22, 2012, the Centers for Disease Control and Prevention (CDC) announced an outbreak of *Salmonella* Bredeney infections, causing 29 illnesses in 18 states. The CDC's investigation, done in conjunction with numerous state and local health departments, identified Trader Joe's Valencia brand peanut butter as the contaminated food item that had caused the outbreak.

7. On or about September 30, 2012, the CDC increased the number of victims that had been identified in the peanut butter outbreak to 30. Among persons for whom information is available, illness onset dates range from June 11, 2012 to September 11, 2012. Ill persons range in age from less than 1 year to 77 years, with a median age of 7 years. Sixty-three percent of ill persons are children under the age of 10 years. Sixty-six percent of ill persons are male. Among 13 persons with available information, 4 (31%) patients reported being hospitalized. No deaths have been reported.

8. On or before September 24, 2012, defendants Sunland and Trader Joe's both recalled Valencia brand peanut butter products. Sunland's recall included not only its Valencia brand peanut butter, but also all other brands of almond and peanut butter that it had manufactured between May 1, 2012 and September 24, 2012.

Prior Peanut Butter Outbreaks

9. In November 2006, public health officials detected a substantial increase in reports of *Salmonella* Tennessee isolates. In February, 2007, a multistate, case-control study linked the consumption of either Peter Pan or Great Value Peanut Butter brands with infection.

Subsequently the same strain of Salmonella Tennessee was isolated from unopened jars of peanut butter and from environmental samples collected from the processing plant. The product was recalled, and new illness reports declined. Unsanitary conditions at the Sylvester, Georgia, processing plant were known about since 2004. On April 5, 2007, ConAgra announced inadvertent moisture from a leaking roof and sprinkler system could have promoted bacteria growth in the plant. Great Value brand was sold at WalMart stores.

10. Beginning in November 2008, CDC (Centers for Disease Control) PulseNet staff noted a small and highly dispersed, multistate cluster of Salmonella Typhimurium isolates. The outbreak consisted of two pulsed field gel electrophoresis (PFGE) defined clusters of illness. The first cluster displayed a unique primary enzyme (XbaI) restriction pattern and an uncommon secondary enzyme (BlnI) pattern. The second cluster had two closely related XbaI patterns that were very similar to the first cluster and a BlnI pattern that was indistinguishable from the first cluster. Illnesses continued to be revealed through April 2009, when the last CDC report on the outbreak was published. Peanut butter and peanut butter containing products produced by the Peanut Corporation of America plant in Blakely, Georgia, were implicated. King Nut brand peanut butter was sold to institutional settings. Peanut paste was sold to many food companies for use as an ingredient. Implicated peanut products were sold widely throughout the USA, 23 countries and non-U.S. territories. Despite numerous product recalls, beginning in January, 2009, the wide dispersion of the peanut products, the long shelf life of these products, and the multiple labeling made it impossible to assure that all sources of these contaminated products had been totally eliminated. Peanut prices and demand for peanut-based products were little affected by this outbreak.

Jackson Henson's *Salmonella* Bredeney Infection

11. The plaintiff regularly purchases Valencia brand peanut butter at the Trader Joe's location at 77 Boston Turnpike, Shrewsbury, Massachusetts, for consumption, at home, by her son, Jackson Henson, and other members of the Henson family. She did so on multiple occasions from May through July 2012.

12. Jackson Henson regularly consumes Valencia brand peanut butter on sandwiches and other items. In the week before the onset of symptoms related to his *Salmonella* Bredeney infection, Jackson consumed Valencia brand peanut butter, which had been manufactured and sold by the defendants, on several occasions.

13. Onset of Jackson's illness occurred on or about July 31, 2012, with nausea, cramps and diarrhea.

14. Jackson's symptoms persisted in the days following onset of illness. Ultimately, he became so ill that he required two visits to his pediatrician. A stool sample submitted during one of these visits ultimately tested positive for *Salmonella* Bredeney matching the strain known to be involved in the peanut butter outbreak.

15. Jackson continues in his recovery from his *Salmonella* Bredeney infection. The plaintiff has incurred significant economic expense, and other losses, as a proximate result of the defendants' manufacture and sale of *Salmonella*-contaminated Valencia brand peanut butter to the plaintiff.

VI.

FIRST CAUSE OF ACTION: Breach of Implied Warranty of Merchantability

1. The plaintiffs re-state and re-affirm their allegations contained in paragraphs 1 through 15 the plaintiffs' complaint as if re-stated herein.

2. The plaintiff's minor child, Jackson Henson, consumed the defendants' food product, which was contaminated with Salmonella bacteria. Salmonella bacteria makes people ill if consumed.

3. As a result of consuming the defendants' food product, which was contaminated by Salmonella bacteria, Jackson Henson became ill.

4. As a result of said illness, the plaintiff suffered substantial bodily, financial, and emotional damage.

WHEREFORE, the plaintiff, Brandi Henson, demands judgment against the defendants,, plus costs, interest and attorneys' fees and such other relief as this Honorable Court may deem just and proper.

SECOND CAUSE OF ACTION: Breach of Implied Warranty of Fitness for a Particular Purpose

1. The plaintiffs re-state and re-affirm their allegations contained in paragraphs 1 through 15 of this complaint as if re-stated herein.
2. The defendants had reason to know that the sale of food to a customer of Trader Joes would be consumed by said customer or her family members.
3. The defendants had reason to know that the Plaintiff, and her family, including the minor child Jackson Henson, are relying on the skill and/or judgment of the defendants to select and/or furnish suitable food to their customers for consumption.
4. The plaintiff and her family, including Jackson Henson, in fact relied upon the defendants' skill and/or judgment when she purchased food for consumption which was furnished by the defendants.
5. As a result of consuming food tainted with Salmonella Bacteria, the minor child Jackson Henson became ill.

6. As a result of said illness, the minor child Jackson Henson suffered a serious illness, effecting his body and mind and causing substantial body, financial, and emotional damage.

WHEREFORE, the plaintiff demands judgment against the defendants, plus costs, interest and attorneys' fees and such other relief as this Honorable Court may deem just and proper.

THIRD CAUSE OF ACTION: Negligence

1. The plaintiffs re-state and re-affirm their allegations contained in paragraphs 1 through 15 the plaintiffs' complaint as if re-stated herein.
2. The defendants owed a legal duty of care to the plaintiff, and the minor child Jackson Henson, with regard to the food the defendant manufactured and sold to the plaintiff.
3. The defendants breached their duty of care to the plaintiff, and the minor child Jackson Henson, when they manufactured and sold the plaintiff a food product that was contaminated with the above-referenced strain of the Salmonella.
4. As a result of ingesting said food tainted with the Salmonella bacteria, the minor child Jackson Henson suffered a serious illness, effecting his body and mind and causing substantial body, financial, and emotional damage.

WHEREFORE, the plaintiff, Brandi Henson, demands judgment against the defendants, plus costs, interest and attorneys' fees and such other relief as this Honorable Court may deem just and proper.

JURY TRIAL DEMAND

Plaintiffs demand trial by jury of all issues so triable on all counts.

Respectfully submitted,

Attorneys for Plaintiffs,

James M. Brady, Esq.
ATTORNEY JIM BRADY AND ASSOCIATES, PC
1068 Main Street
Walpole, MA 02081
508-660-8888 (Phone)
508-668-5519 (Fax)
BBO#543676
jbrady@AttorneyJimBrady.com

WILLIAM D. MARLER, ESQ.
MARLER CLARK
1301 Second Avenue, Suite 2800
Seattle, WA 98101
206-346-1888 (Phone)
206-346-1898 (Fax)
bmarler@marlerclark.com