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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

8 KENDRA M. COOPER, an individual and
citizen of Canada,

9
10 Plaintiff,

11 v.

12 THOMSON INTERNATIONAL,
INCORPORATED, a California Corporation;
13 DOES 1-10, inclusive; and ROE ENTITIES
1-10, inclusive,

14
15 Defendants.

CASE NO.

**PLAINTIFF’S COMPLAINT FOR
DAMAGES FOR:**

1st Cause of Action: Strict Product Liability

**2nd Cause of Action: Breach of Implied
Warranty**

3rd Cause of Action: Negligence

4th Cause of Action: Negligence Per Se

16
17 COMES NOW Plaintiff Kendra M. Cooper who, by and through her attorneys, Murphy &
18 Murphy and Marler Clark, alleges upon information and belief as follows:

19 **PARTIES**

20 1. Plaintiff, Kendra M. Cooper (“Plaintiff” or “Kendra”), is a citizen and resident of the
21 City of Edmonton, Alberta, Canada.

22 2. The defendant, Thomson International, Incorporated (“Defendant” or “Thomson”), is
23 a domestic for-profit corporation organized and existing under the laws of the State of California,
24 with its principal place of business located at 9852 Buena Vista Blvd., Bakersfield, Kern County,
25 California. Thomson was the manufacturer, supplier, packager, distributor, and/or seller of the
26 adulterated food product that is the subject of this action.

27 3. DOES 1 – 10, inclusive, are persons, and ROE ENTITIES 1-10, inclusive, are
28 corporations, related subsidiary or parent entities, associations, or business entities, whose true

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1 names and identities and capacities are unknown to Plaintiff at this time. The DOE Defendants are
2 individual persons acting on behalf of or in concert with, or at the direction of, any of the
3 Defendants. The ROE Defendants may be corporations, associations, partnerships, subsidiaries,
4 holding companies, owners, predecessor or successor entities, joint ventures, parent corporations,
5 related business entities or the employer of any of the Defendants. Each named Defendant and the
6 DOE and ROE Defendants are legally responsible for the events and happenings stated in this
7 Complaint, and thus proximately caused injury and damages to Plaintiff. In particular, said DOE
8 and ROE Defendants are responsible in full or in part for the production, distribution, processing,
9 preparation, contamination, and sale of onions that were contaminated food products sold to or by
10 Defendant to Plaintiff and caused his *Salmonella* Newport. Plaintiff will ask leave of this Court to
11 insert the true names and capacities for such DOE and ROE Defendants when discovered to
12 substitute those true names as defendants into these proceedings for said DOE and ROE
13 Defendants.

14 JURISDICTION AND VENUE

15 4. This Court has jurisdiction over the subject matter of this action pursuant to 28
16 U.S.C. § 1332(a) because the matter in controversy exceeds \$75,000.00, exclusive of costs, it is
17 between citizens of different states, and the Defendant has certain minimum contacts with the state
18 of California such that maintenance of the suit in this district does not offend traditional notions of
19 fair play and substantial justice.

20 5. Venue in the United States District Court for the Eastern District of California is
21 proper pursuant to 28 U.S.C. § 1391(a)(2) because a substantial part of the events or omissions
22 giving rise to Plaintiff's claims and causes of action occurred in this judicial district, and because
23 the Defendant is subject to personal jurisdiction in this judicial district at the time of the
24 commencement of the action.

25 GENERAL ALLEGATIONS

26 An Outbreak of *Salmonella* Associated with Thomson Red Onions

27 6. The FDA, along with CDC and state and local partners, is investigating a multistate
28 outbreak of *Salmonella* Newport infections. The Public Health Agency of Canada is also

1 investigating an outbreak of *Salmonella* Newport illnesses that have a genetic fingerprint closely
2 related to the U.S. outbreak.

3 7. Investigators in the U.S. and Canada have been collaborating to identify the source
4 of this outbreak. On July 30, 2020, Canadian health officials announced that they had determined
5 red onions from the U.S. to be the potential source of the Canadian outbreak. The Canadian
6 investigation has also prompted a recall warning by the Canadian Food Inspection Agency.

7 8. Building on this information, and on epidemiologic information on the U.S. outbreak
8 from CDC, the FDA's traceback investigation was able to identify Thomson International, Inc. as a
9 likely source of contaminated red onions in the U.S. There have been 396 reported cases in the
10 United States and 114 in Canada, to date.

11 United States:

12 Total Illnesses: 396

Hospitalizations: 59

13 Illness Onset Date Range: July 12, 2020

14 States with Cases: AK (6), AZ (14), CA (49), CO (10), FL (3), ID (5), IL (10), IN (2), IA (15), KS
15 (1), KY (1), ME (4), MD (1), MI (23), MN (10), MO (6), MT (33), NE (5), NV (5), NY (4), NC (3),
16 ND (5), OH (7), OR (71), PA (2), SC (1), SD (11), TN (5), TX (1), UT (61), VA (4), WA (2), WI
(5), and WY (11)

17 Canada:

18 Total Illnesses: 120

Hospitalizations: 17

19 Illness Onset Date Range: Mid-June and mid-July 2020

20 Provinces with Cases: British Columbia (43), Alberta (56), Saskatchewan (4), Manitoba (13),
Ontario (2), Quebec (1) and Prince Edward Island (1).

21 9. Thomson International, Inc. of Bakersfield, California is recalling red, yellow, white,
22 and sweet yellow onions shipped from May 1, 2020 through the present. The onions are being
23 recalled because they have the potential to be contaminated with *Salmonella*, an organism that can
24 cause serious and sometimes fatal infections in young children, frail or elderly people, and others
25 with weakened immune systems. Healthy persons infected with *Salmonella* often experience fever,
26 diarrhea (which may be bloody), nausea, vomiting, and abdominal pain. In rare circumstances,
27 infection with *Salmonella* can result in the organism getting into the bloodstream and producing
28 more severe illnesses such as arterial infections (i.e., infected aneurysms), endocarditis, and

1 arthritis.

2 10. The onions were distributed in 5 lb. cartons, 10 lb. cartons, 25 lb. cartons, 40 lb.
3 cartons, 50 lb. cartons (bulk), 2 lb. mesh sacks, 3 lb. mesh sacks, 5 lb. mesh sacks, 10 lb. mesh
4 sacks, 25 lb. mesh sacks, and 50 lb. mesh sacks, under the brand names Thomson Premium, TLC
5 Thomson International, Tender Loving Care, El Competitor, Hartley's Best, Onions 52, Majestic,
6 Imperial Fresh, Kroger, Utah Onions, and Food Lion.

7 11. Consumers, restaurants, and retailers should not eat, sell, or serve red, white, yellow,
8 or sweet onions from Thomson International, Inc. or products containing such onions. If you cannot
9 tell if your onion is from Thomson International, Inc. or if your food product contains such onions,
10 you should not eat, sell, or serve it, and should throw it out.

11 **The Salmonella Bacteria**

12 12. *Salmonella* is the second most common intestinal infection in the United States.
13 More than 7,000 cases of *Salmonella* were confirmed in 2009; however, the majority of cases go
14 unreported. The Centers for Disease Control and Prevention (CDC) estimates that over 1 million
15 people in the U.S. contract *Salmonella* each year, and that an average of 20,000 hospitalizations and
16 almost 400 deaths occur from *Salmonella* poisoning, according to a 2011 report.

17 13. *Salmonella* infections usually occur when a person eats food contaminated with the
18 feces of animals or humans carrying the bacteria. *Salmonella* outbreaks are commonly associated
19 with eggs, meat, and poultry, but these bacteria can also contaminate other foods, such as fruits and
20 vegetables. Foods that are most likely to contain *Salmonella* include raw or undercooked eggs, raw
21 milk, contaminated water, and raw or undercooked meats.

22 14. Symptoms of *Salmonella* infection, or salmonellosis, range widely and are
23 sometimes absent altogether. The most common symptoms include diarrhea, abdominal cramps,
24 and fever.

25 15. Typical symptoms of *Salmonella* infection appear 6 to 72 hours after eating
26 contaminated food, last for 3 to 7 days without treatment, and usually consist of:

- 27
- Diarrhea
 - Abdominal cramps
- 28

- 1 • Fever of 100°F to 102°F
- 2 • Bloody diarrhea
- 3 • Vomiting
- 4 • Headache
- 5 • Body aches

6 16. Complications of *Salmonella* poisoning are more likely to occur among young
7 children and people age 65 or older. Possible complications like reactive arthritis are thought to
8 occur in 2 to 15 percent of *Salmonella* patients. Symptoms include inflammation of the joints,
9 eyes, or reproductive or urinary organs. On average, symptoms appear 18 days after infection.
10 Irritable bowel syndrome (IBS) can also be a long-term complication.

11 17. *Salmonella* infections generally last 3 to 7 days and often do not require
12 treatment. People with severe dehydration may need rehydration through an IV. Antibiotics are
13 recommended for those at risk of invasive disease, including infants under three months old.
14 Typhoid fever is treated with a 14-day course of antibiotics. Unfortunately, treatment of *Salmonella*
15 has become more difficult as the pathogen has become more resistant to antibiotics. Finding the
16 right antibiotic for a case of *Salmonella* is crucial to treating this bacterial infection.

17 **PLAINTIFF KENDRA COOPER'S INJURIES**

18 18. On July 4, 2020, Plaintiff purchased a Super Bacon Thickburger at the Carl's Jr.
19 restaurant located at 3791 17 Street in Edmonton, Alberta, Canada. The Super Bacon Thickburger
20 contained Defendant's red onions, which Plaintiff consumed.

21 19. Plaintiff began to first feel ill on or about July 6, 2020. Plaintiff developed cramping,
22 diarrhea, whole body aches, headache, fever, dehydration, exhaustion and was unable to sleep.

23 20. Plaintiff called emergency medical services twice and was transported to the
24 emergency room at Grey Nuns Community Hospital on July 12th. She was given a potassium
25 infusion. Chest and abdominal X-rays were done. Blood and stool cultures were performed, which
26 eventually came back positive for *Salmonella* Newport on the 15th.

27 21. Plaintiff was placed on antibiotics for 10 days.

28 22. Plaintiff was seen by her family doctor on July 23rd for swelling in her lower legs,

1 ankles, and feet.

2 23. Plaintiff continues to recover.

3 24. Plaintiff was contacted by the Alberta Health Department, which confirmed that she
4 was part of the *Salmonella* Newport Outbreak linked to Defendant's red onions.

5 **CAUSES OF ACTION**

6 **Strict Liability – Count I**

7 25. The Plaintiff incorporates by reference paragraphs 1 – 24 herein by reference.

8 26. At all times relevant hereto, the Defendant was the manufacturer, supplier, packager,
9 distributor, and/or seller of the adulterated food products that are the subject of this action.

10 27. The adulterated food product that the Defendant manufactured, supplied, packaged,
11 distributed, and/or sold was, at the time it left the Defendant's control, defective and unreasonably
12 dangerous for its ordinary and expected use because it contained *Salmonella*, a deadly pathogen.

13 28. The adulterated food product that the Defendant manufactured, supplied, packaged,
14 distributed, and/or sold was delivered to the Plaintiff without any change in its defective condition.
15 The adulterated food product that the Defendant manufactured, supplied, packaged, distributed,
16 and/or sold was used in the manner expected and intended, and was consumed by the Plaintiff.

17 29. The Defendant owed a duty of care to the Plaintiff to manufacture, supply, package,
18 distribute, and/or sell food that was not adulterated, that was fit for human consumption, that was
19 reasonably safe in construction, and that was free of pathogenic bacteria or other substances
20 injurious to human health. The Defendant breached this duty.

21 30. The Defendant owed a duty of care to the Plaintiff to manufacture, supply, package,
22 distribute, and/or sell food that was fit for human consumption and that was safe to consume to the
23 extent contemplated by a reasonable consumer. The Defendant breached this duty.

24 31. The Plaintiff suffered injury and damages as a direct and proximate result of the
25 defective and unreasonably dangerous condition of the adulterated food product that the Defendant
26 manufactured, supplied, packaged, distributed, and/or sold.

27 **Breach of Warranty – Count II**

28 32. The Plaintiff incorporates by reference paragraphs 1 – 31 herein by reference.

1 33. The Defendant is liable to the Plaintiff for breaching express and implied warranties
2 that it made regarding the adulterated product that the Plaintiff purchased. These express and
3 implied warranties include the implied warranties of merchantability and/or fitness for a particular
4 use. Specifically, the Defendant expressly warranted, through its sale of food to the public and by
5 the statements and conduct of its employees and agents, that the food it prepared and sold was fit for
6 human consumption and not otherwise adulterated or injurious to health.

7 34. The contaminated food that the Defendant sold to the Plaintiff would not pass
8 without exception in the trade and was therefore in breach of the implied warranty of
9 merchantability.

10 35. The contaminated food sold to the Plaintiff was not fit for the uses and purposes
11 intended (i.e., human consumption); this product was therefore in breach of the implied warranty of
12 fitness for its intended use.

13 36. As a direct and proximate cause of the Defendant's breach of warranties, as set forth
14 above, the Plaintiff sustained injuries and damages in an amount to be determined at trial.

15 **Negligence – Count III**

16 37. The Plaintiff incorporates by reference paragraphs 1 – 36 herein by reference.

17 38. The Defendant owed to the Plaintiff a duty to use reasonable care in the manufacture,
18 supply, packaging, distribution, and sale of its food product, which duty would have prevented or
19 eliminated the risk that the Defendant's food products would become contaminated with *Salmonella*
20 or any other dangerous pathogen. The Defendant breached this duty and was therefore negligent.

21 39. The Defendant had a duty to comply with all federal, state, and local statutes, laws,
22 regulations, safety codes, and provisions pertaining to the manufacture, distribution, storage, and
23 sale of its food product, but failed to do so, and was therefore negligent. The Plaintiff was among
24 the class of persons designed to be protected by these statutes, laws, regulations, safety codes, and
25 provisions pertaining to the manufacture, distribution, storage, and sale of similar food products.
26 The Defendant breached this duty and was therefore negligent.

27 40. The Defendant had a duty to properly supervise, train, and monitor its respective
28 employees, and to ensure that its respective employees complied with all applicable statutes, laws,

1 regulations, safety codes, and provisions pertaining to the manufacture, distribution, storage, and
2 sale of similar food products. The Defendant breached this duty and was therefore negligent.

3 41. The Defendant had a duty to use ingredients, supplies, and other constituent
4 materials that were reasonably safe, wholesome, and free of defects; that otherwise complied with
5 applicable federal, state, and local laws, ordinances, regulations, codes, and provisions; and that
6 were clean, free from adulteration, and safe for human consumption. The Defendant breached this
7 duty and was therefore negligent.

8 42. As a direct and proximate result of the Defendant's negligence, the Plaintiff
9 sustained injuries and damages in an amount to be determined at trial.

10 **Negligence Per Se – Count IV**

11 43. The Plaintiff incorporates by reference paragraphs 1 – 42 herein by reference.

12 44. The Defendant had a duty to comply with all applicable state and federal regulations
13 intended to ensure the purity and safety of its food product, including the requirements of the
14 Federal Food, Drug, and Cosmetic Act (21 U.S.C. § 301, *et seq.*).

15 45. The Defendant breached that duty and, as a result, was negligent *per se* in its
16 manufacture, distribution, and sale of food adulterated with *Salmonella*, a deadly pathogen.

17 46. As a direct and proximate result of the negligent *per se* conduct by the Defendant,
18 the Plaintiff sustained injury and damages in an amount to be determined at trial.

19 **PRAYER FOR RELIEF:**

20 WHEREFORE, the Plaintiff prays as follows:

- 21 (1) For judgment against the Defendant on Count I of this Petition in an amount that is
22 fair and reasonable, for her costs incurred, and for any other relief to which she may
23 be entitled;
- 24 (2) For judgment against the Defendant on Count II of this Petition in an amount that is
25 fair and reasonable, for her costs incurred, and for any other relief to which she may
26 be entitled;
- 27 (3) For judgment against the Defendant on Count III of this Petition in an amount that is
28 fair and reasonable, for her costs incurred, and for any other relief to which she may

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be entitled;

(4) For judgment against the Defendant on Count IV of this Petition in an amount that is fair and reasonable, for her costs incurred, and for any other relief to which she may

be entitled;

(5) For costs of suit herein incurred; and

(6) For such other and further relief as this Court may deem proper.

JURY TRIAL DEMANDED

DATED: August 4, 2020.

By 
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