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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO**

Keith Robert Willis, an individual,

Plaintiff,

v.

Thomson International, Incorporated, a
California corporation,

Defendant.

CASE NO.

UNLIMITED JURISDICTION

**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

DEMAND FOR JURY TRIAL

PLAINTIFF'S COMPLAINT

COMES NOW Plaintiff Keith Robert Willis who, by and through his attorneys, Murphy & Murphy, alleges upon information and belief as follows:

PARTIES

1. Plaintiff, Keith Robert Willis ("Plaintiff" or "Keith"), is a resident of the City of San Diego, San Diego County, California.

2. The defendant, Thomson International, Incorporated ("Defendant" or "Thomson"), is a domestic for-profit corporation organized and existing under the laws of the State of California,

with its principal place of business located at 9852 Buena Vista Blvd., Bakersfield, Kern County, California. Thomson was the manufacturer, supplier, packager, distributor, and/or seller of the adulterated food product that is the subject of this action.

JURISDICTION AND VENUE

3. Plaintiff's cause of action arose and accrued in San Diego County, California, and Defendant's principal place of business is located in Kern County, California. Therefore, jurisdiction and venue are proper in this Court.

GENERAL ALLEGATIONS

An Outbreak of *Salmonella* Associated with Thomson Red Onions

4. The FDA, along with CDC and state and local partners, is investigating a multistate outbreak of *Salmonella* Newport infections. The Public Health Agency of Canada is also investigating an outbreak of *Salmonella* Newport illnesses that have a genetic fingerprint closely related to the U.S. outbreak.

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

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

United States:

Total Illnesses: 396
Hospitalizations: 59

Illness Onset Date Range: July 12, 2020

States with Cases: AK (6), AZ (14), CA (49), CO (10), FL (3), ID (5), IL (10), IN (2), IA (15), KS (1), KY (1), ME (4), MD (1), MI (23), MN (10), MO (6), MT (33), NE (5), NV (5), NY (4), NC (3), 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).

Canada:

Total Illnesses: 114

Hospitalizations: 16

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

Provinces with Cases: British Columbia (43), Alberta (55), Manitoba (13), Ontario (2), and Prince Edward Island (1).

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

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

9. Consumers, restaurants, and retailers should not eat, sell, or serve red, white, yellow, or sweet onions from Thomson International, Inc. or products containing such onions. If

you cannot tell if your onion is from Thomson International, Inc. or if your food product contains such onions, you should not eat, sell, or serve it, and should throw it out.

The *Salmonella* Bacteria

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

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

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

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

- Diarrhea
- Abdominal cramps
- Fever of 100°F to 102°F
- Bloody diarrhea
- Vomiting
- Headache

- Body aches

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

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

PLAINTIFF KEITH ROBERT WILLIS'S INJURIES

16. During the month of June 2020, Plaintiff purchased and consumed Defendant's red onions.

17. Plaintiff began to first feel ill on or about July 1, 2020. Plaintiff felt weak with nausea, and developed severe diarrhea and headaches.

18. Plaintiff was seen by his treating physician who ordered a stool culture. That culture eventually came back positive for *Salmonella* Newport.

19. Plaintiff was placed on antibiotics and continues to be on antibiotics.

20. Plaintiff continues to suffer weakness, headaches, diarrhea, and constipation.

21. Plaintiff was contacted by the San Diego Department of Health, which confirmed that he was part of the *Salmonella* Newport Outbreak linked to Defendant's red onions.

CAUSES OF ACTION

Strict Liability – Count I

22. The Plaintiff incorporates by reference paragraphs 1 – 21 herein by reference.

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

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

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

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

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

28. The Plaintiff 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 manufactured, supplied, packaged, distributed, and/or sold.

Breach of Warranty – Count II

29. The Plaintiff incorporates by reference paragraphs 1 – 28 herein by reference.

30. The Defendant is liable to the Plaintiff for breaching express and implied warranties that it made regarding the adulterated product that the Plaintiff purchased. These express and implied warranties include the implied warranties of merchantability and/or fitness for a particular use. Specifically, the Defendant 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.

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

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

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

Negligence – Count III

34. The Plaintiff incorporates by reference paragraphs 1 – 33 herein by reference.

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

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

37. The Defendant had a duty to properly supervise, train, and monitor its respective employees, and to ensure that its respective employees complied with all applicable statutes, laws, regulations, safety codes, and provisions pertaining to the manufacture, distribution, storage, and sale of similar food products. The Defendant breached this duty and was therefore negligent.

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

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

Negligence Per Se – Count IV

40. The Plaintiff incorporates by reference paragraphs 1 – 39 herein by reference.

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

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

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

PRAYER FOR RELIEF:

WHEREFORE, the Plaintiff prays as follows:

- (1) For judgment against the Defendant on Count I of this Petition in an amount that is fair and reasonable, for his costs incurred, and for any other relief to which he may be entitled;
- (2) For judgment against the Defendant on Count II of this Petition in an amount that is fair and reasonable, for his costs incurred, and for any other relief to which he may be entitled;
- (3) For judgment against the Defendant on Count III of this Petition in an amount that is fair and reasonable, for his costs incurred, and for any other relief to which he may be entitled;
- (4) For judgment against the Defendant on Count IV of this Petition in an amount that is fair and reasonable, for his costs incurred, and for any other relief to which he 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 3, 2020

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