

IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF ARIZONA

RENE CHAVEZ and BRIDGETTE )  
CHAVEZ, husband and wife, individually )  
And as Guardians ad Litem, for A.C., a )  
Minor, )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
BRAVO FARMS CHEESE, LLC, a )  
Foreign limited liability corporation, )  
 )  
Defendant. )  
\_\_\_\_\_ )

**CIVIL NO.**

**COMPLAINT FOR DAMAGES**

COME NOW the plaintiffs Rene Chavez and Bridgette Chavez, individually and as guardians ad litem for their minor child A.C., by and through their attorneys of record, DAVID W. BABCOCK, and Marler Clark, LLP, PS, and alleges as follows:

**I. PARTIES, JURISDICTION, AND VENUE**

1. At all times relevant hereto, Rene and Bridgette Chavez were husband and wife and the natural parents and guardians of A.C., a minor. At all times relevant hereto, the Chavez family resided in Maricopa County, Arizona, and are thus citizens of the state of Arizona.

2. The defendant Bravo Farms Cheese, LLC (hereafter “Bravo Farms”) is a limited liability corporation organized under the laws of the state of California, and with its principal place of business in California as well. Bravo Farms is thus a citizen of the state of California. At all times relevant hereto, Bravo Farms was a cheese manufacturer that produced and

distributed cheese products to Costco locations in the southwestern United States, including locations in Maricopa County, Arizona.

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 District of Arizona, 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. FACTS

5. The Outbreak: On November 4, 2010, the Centers for Disease Control and Prevention (CDC) issued an alert to consumers and health professionals about an outbreak of *E. coli* O157:H7 in five states: Arizona, California, Colorado, New Mexico and Nevada. The alert was based on epidemiological evidence linking at least 25 *E. coli* O157:H7 illnesses in those states to a cheese product called “Bravo Farms Dutch Style Gouda Cheese” that the defendant manufactured and distributed to Costco Warehouses. Costco offered the cheese product for sampling and sale at the “cheese road show” held at certain Costco Warehouses, including multiple locations in Phoenix, Arizona, from October 5 to November 1, 2010.

6. Further investigation by the CDC and various state and local health agencies demonstrated that the 25 *E. coli* O157:H7 cases from Arizona, California, Colorado, New Mexico and Nevada in the outbreak shared an indistinguishable DNA fingerprint pattern. The fingerprint pattern has never been seen before in the PulseNet database, which is the national subtyping network made up of state and local public health laboratories and federal food

regulatory laboratories. The CDC and other health agencies in affected states continue to monitor for additional illnesses in the outbreak.

7. The Plaintiff's *E. coli* O157:H7 infection: On or about October 15, 2010, A.C. consumed a sample of Bravo Farms' Dutch Style Gouda Cheese at the Costco Warehouse located at the Christown Spectrum Mall in Phoenix, Arizona. The sample was contaminated by *E. coli* O157:H7 bacteria, a potentially lethal foodborne pathogen.

8. A.C. began to feel ill on or about October 17, 2010. The next morning, she began to suffer from bouts of diarrhea and a low-grade fever. Later in the morning she began to suffer from abdominal pain and severe cramping.

9. A.C.'s illness did not relent after several days of symptoms; in fact, by October 20, 2010, her symptoms had become so severe that her mother rushed her to the emergency department at St. Joseph's Hospital. There, A.C. underwent multiple diagnostic tests, including an ultrasound and CT scan, to determine what the cause of her severe symptoms was. During her stay in the emergency room, A.C.'s pain level was so extreme that she was treated with morphine.

10. Later in the evening of October 20, 2010, A.C. was admitted to the hospital for further treatment. During her hospitalization, A.C.'s pain level, and gastrointestinal symptoms, remained extreme. In fact, her physicians ultimately had to supplement the morphine with Versed to sedate her. The Versed, at one point, caused A.C. to have problems breathing, and she had to be placed on supplemental oxygen.

11. A.C. was finally discharged on or about Friday, October 22, 2010. At this point, she remained acutely ill, but could at least eat popsicles. She was discharged with a prescription for an antibiotic called Rocephin.

12. Bridgette Chavez took her daughter to see her pediatrician on or about Monday, October 25, 2010, for follow-up treatment. Later the same day, Mrs. Chavez was contacted by Maricopa County Health Department and learned that A.C. had tested positive for *E. coli* O157:H7. After learning this information, A.C.'s pediatrician immediately phoned Mrs. Chavez and instructed her to stop administering the antibiotic Rocephin for fear of causing hemolytic uremic syndrome.

13. During her conversation with the Maricopa County health official, Mrs. Chavez also related information about A.C.'s food consumption history, and ultimately was asked to authorize Maricopa County Health Department to obtain her purchase history from the Christown Spectrum Mall Costco location.

14. A.C. continues to recover from her *E. coli* O157:H7 infection and related illness. The Chavez family has incurred substantial economic loss as a result of A.C.'s injuries.

### **III. STRICT LIABILITY CLAIMS**

15. The defendant is a product manufacturer, distributor and seller of the gouda cheese product that sickened A.C.

16. The defendant owed a duty to the plaintiffs to manufacture and distribute a product that was reasonably safe in construction, that did not materially deviate from applicable design specifications, and that did not otherwise deviate in some material way from otherwise identical units in its product line, but failed to do so.

17. The defendant owed a duty to the plaintiffs to manufacture and distribute a product that conformed to its express warranties, *i.e.*, that the food was, among other things, not adulterated and was fit for human consumption, but failed to do so.

18. The defendant owed a duty to the plaintiffs to manufacture and distribute a product that conformed to its implied warranties, including, but not limited to, the implied warranty that the food was fit for human consumption, but failed to do so.

19. The gouda cheese product infected A.C. with *E. coli* O157:H7 was not reasonably safe in construction, and did not conform to defendant's express or implied warranties, because it was contaminated and adulterated with, among other things, *E. coli* O157:H7.

20. Because the gouda cheese product was not reasonably safe in construction, and did not conform to defendant's express or implied warranties, the defendant is strictly liable to the plaintiffs for the harm proximately caused by the contaminated food.

21. As a direct and proximate result of the defendant's culpable acts and omissions, the plaintiffs suffered severe and permanent personal injuries, as well as substantial economic loss.

#### **IV. NEGLIGENCE CLAIMS**

22. The defendant breached the standard of care in manufacturing, distributing and selling a product that was not reasonably safe.

23. The defendant was negligent in manufacturing, distributing and selling a product that was not reasonably safe because it was contaminated with *E. coli* O157:H7, and because adequate warnings or instructions were not provided, including, but not limited to, the warning that the gouda cheese product may contain *E. coli* O157:H7.

24. The defendant had a duty to comply with all applicable federal and state statutory and regulatory provisions that pertained or applied to the manufacture, distribution, storage, labeling, and sale of food products, 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. The plaintiffs are among the class of persons intended to be protected by the statutory and regulatory provisions pertaining to defendant's manufacture, distribution, storage, labeling, and sale of food.

25. The defendant had a duty to use supplies and/or raw materials in producing and distributing products that were in compliance with applicable federal, state, and local laws, ordinances and regulations; that were from safe and reliable sources; that were clean, wholesome and free from contamination and adulteration; and that were safe for human consumption, but failed to do so.

26. As a direct and proximate result of the defendant's culpable acts or omissions, the plaintiffs suffered severe and permanent personal injuries, as well as substantial economic loss.

#### **V. BREACH OF WARRANTIES**

27. The defendant is liable to the plaintiffs for breaching express and implied warranties made to them, or for which they were the intended third-party beneficiary, with respect to the gouda cheese product that caused A.C.'s *E. coli* O157:H7 infection and the plaintiffs resulting injuries.

28. The contaminated gouda cheese product was not fit for the uses and purposes intended by the defendant, as represented by the defendant, and thus was in breach of implied warranties of fitness for its intended use.

29. As a direct and proximate result of the defendant's breach of warranties, the plaintiffs suffered severe and permanent injuries.

#### **VI. DAMAGES**

30. The plaintiffs have suffered general and special, incidental and consequential damages as the direct and proximate result of the acts and omissions of the defendant, which

damages shall be fully proven at the time of trial. These damages include, but are not limited to: damages for general pain and suffering; permanent physical injury; damages for loss of enjoyment of life, both past and future; medical and medical related expenses, both past and future; travel and travel-related expenses, past and future; emotional distress, and future emotional distress; pharmaceutical expenses, past and future; related wage and lost earning capacity damages, and all other ordinary, incidental and consequential damages as would be anticipated to arise under the circumstances.

### **PRAYER FOR RELIEF**

WHEREFORE, the plaintiffs pray for the following relief:

(1) That the Court award the plaintiffs judgment against the defendant, in such sums as shall be determined to fully and fairly compensate the plaintiffs for all general, special, incidental and consequential damages incurred, or to be incurred, as the direct and proximate result of the acts and omissions of the defendant, in an amount to be proven at trial;

(2) That the Court award the plaintiffs their costs, disbursements and reasonable attorneys' fees incurred;

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

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

SIGNED AND DATED this 10<sup>th</sup> day of November, 2010.

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

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