

IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF ARIZONA

SHANNON MILLER,	)	
	)	
Plaintiff,	)	CIVIL NO.
	)	
vs.	)	COMPLAINT FOR DAMAGES
	)	
BRAVO FARMS CHEESE, LLC, a	)	
Foreign limited liability corporation,	)	
	)	
Defendant.	)	
_____	)	

COMES NOW the plaintiff Shannon Miller by and through her 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, Shannon Miller resided in Maricopa County, Arizona, and is thus a citizen of the state of Arizona.

2. The defendant Bravo Farms Cheese, LLC 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 the location at Christown Spectrum Mall 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 17 or 18, 2010, Shannon Miller consumed a sample of Bravo Farms’ Dutch Style Gouda Cheese at the Costco Warehouse located at 1703 West Bethany Home Road in Phoenix, Arizona. The sample was contaminated by *E. coli* O157:H7 bacteria, a potentially lethal foodborne pathogen.

8. Onset of symptoms related to Mrs. Miller's *E. coli* O157:H7 infection occurred on or about the morning of August 24, 2008, with abdominal cramps and diarrhea. By that evening, the bouts of diarrhea had become severe, and were occurring with increasing frequency.

9. Mrs. Miller's symptoms worsened dramatically over the course of the next two days, and by October 26, 2008, she was suffering from agonizing episodes of vomiting in addition to her fever, severe abdominal cramps, and frequent bouts of diarrhea.

10. Accordingly, the same day, Mrs. Miller sought help at the emergency department at John C. Lincoln North Mountain Hospital. A CT scan done in the ER showed that Mrs. Miller's colon was severely inflamed. She was admitted to the hospital for further treatment.

11. The night of October 26, 2008 was long and difficult due to the severity of Mrs. Miller's symptoms. The bouts of diarrhea were uncontrollable, and Mrs. Miller's body, in particular her abdomen, hurt badly. She was treated with intravenous fluids, anti-nausea medications, antibiotics, and morphine.

12. Mrs. Miller would remain hospitalized until Thursday evening, October 28, 2010. She was discharged with prescriptions for Levaquin (an antibiotic) and Florastor (to restore the balance of microbiota in her gastrointestinal tract), and with instructions to remain under strict quarantine for a period of at least 10 days.

13. Mrs. Miller was contacted by an official with the Maricopa County Health Department on or about November 3, 2010, who indicated that a stool sample given during Mrs. Miller's hospitalization had tested positive for *E. coli* O157:H7. In this and subsequent conversations, Mrs. Miller related the details of her exposure on October 17 or 18, 2010 to the defendant's gouda cheese product at Costco.

14. Mrs. Miller continues to suffer from gastrointestinal irregularity as the result of her infection by *E. coli* O157:H7 from the defendant's gouda cheese product. She has received additional medical treatment for her symptoms, and has incurred significant medical expenses.

### III. STRICT LIABILITY CLAIMS

15. The defendant is a product manufacturer, distributor and seller of the gouda cheese product that injured Mrs. Miller.

16. The defendant owed a duty to Mrs. Miller 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 Mrs. Miller 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 Mrs. Miller 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 that infected Mrs. Miller 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 Mrs. Miller for the harm proximately caused by the contaminated food.

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

#### V. BREACH OF WARRANTIES

27. The defendant is liable to Mrs. Miller for breaching express and implied warranties made to her, or for which she was the intended third-party beneficiary, with respect to the gouda cheese product that caused her *E. coli* O157:H7 infection and 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, Mrs. Miller suffered severe and permanent injuries.

#### VI. DAMAGES

30. Plaintiff has 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, plaintiff prays for the following relief:

(1) That the Court award plaintiff judgment against defendant, in such sums as shall be determined to fully and fairly compensate the plaintiff 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 defendant, in an amount to be proven at trial;

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

(3) That the Court award plaintiff 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.

/s/ David W. Babcock  
David W. Babcock  
Arizona Bar No. 18978  
Attorney for Plaintiffs  
701 5<sup>th</sup> Avenue, Suite 6600  
Seattle, Washington 98104  
Tel: 206-346-1888  
Fax: 206-346-1898  
E-mail: [dbabcock@marlerclark.com](mailto:dbabcock@marlerclark.com)

Attorney for Plaintiff