



PRESS RELEASE - Ron Simon & Associates Files First Salmonella Cucumber Lawsuit in California

Date | September 10, 2015

Ron Simon & Associates Files First Salmonella Cucumber Lawsuit in California

Today the national food safety law firm of Ron Simon & Associates, along with Gomez Trial Attorneys of San Diego, filed the first California lawsuit stemming from *Salmonella*-contaminated cucumbers. The cucumbers were imported from Mexico and distributed to numerous retail outlets and restaurants in the United States by Andrew & Williamson Fresh Produce (A&W) under the *Limited Edition* label. CDC health officials have linked the tainted cucumbers to a nationwide *Salmonella* Poona outbreak.

The lawsuit was filed against A&W in San Diego County on behalf of Doris Zieman. A&W is headquartered in San Diego. A copy of the lawsuit is attached.

On the evening of August 13th, Doris Zieman was celebrating her 49th wedding anniversary at a Red Lobster restaurant with her husband. She consumed a salad made with A&W *Limited Edition* cucumbers, while her husband opted for a salad made without cucumbers.

Within 48 hours, Doris began to experience abdominal cramps, diarrhea, headaches, fever, body aches, and chills. She was taken to the hospital and admitted for food poisoning.

Stool cultures taken at the hospital revealed that she had tested positive for *Salmonella* Poona matching the outbreak strain linked to tainted A&W *Limited Edition* cucumbers.

Doris is still recovering from her *Salmonella* illness.

Andrew & Williamson Recalls Tainted *Limited Edition* Cucumbers

In August of 2015, the Centers for Disease Control and Prevention (CDC), U.S. Food and Drug Administration (FDA), and state and local health agencies became aware of a growing number of *Salmonella* Poona cases nationwide. Within a matter of weeks, the CDC identified 341 victims in 30 states. The outbreak had hospitalized at least 70 and caused the deaths of 2 individuals.

Federal investigators identified A&W *Limited Edition* cucumbers imported from Mexico as the likely source of the outbreak. Testing of leftover A&W cucumbers from restaurants and grocery stores where victims had eaten subsequently tested positive for *Salmonella*. San Diego health officials also collected cucumbers from the A&W facility which tested positive for *Salmonella*.

On September 4th, A&W recalled its *Limited Edition* cucumbers, referred to as a “slicer” or “American” cucumbers. They are dark green in color, typically measure 7 to 10 inches in length, and are traditionally sold in bulk displays without any individual packaging or plastic wrapping.

Food Safety Attorney Ron Simon Issues Statement for Victims and Establishes Salmonella Claim Center

National food safety attorney Ron Simon, who represents Doris Zieman and several other victims of the outbreak, issued the following statement today: “Americans are relying more and more on imported foods, including produce from Mexico. Unfortunately, when importers like A&W don’t properly screen the products they import, outbreaks can and do happen. In these lawsuits, we will examine how A&W failed and make sure that it takes the steps necessary to insure that this does not happen again.”

Mr. Simon and his law firm have established a Salmonella Claim Center to assist victims in the outbreak. The Salmonella Claim Center can be reached toll-free at 1-888-335-4901.

About Food Safety Attorney Ron Simon

Over the last 20 years, Ron Simon and his colleagues have prosecuted thousands of food poisoning cases for victims across the United States. His work has resulted in numerous upgrades to food safety procedures in Fortune 500 companies and in legislation designed to protect consumers from dangerous food-borne pathogens.

Mr. Simon and his clients have been featured on NBC, ABC, CBS, CNN, FOX and virtually all other major television networks and print media. Mr. Simon has collected over \$600,000,000 for his clients. He regularly publishes articles about food safety and litigation at www.foodpoisoningnews.com which are read by viewers in over 180 countries.

Through litigation, media commentary, and his food poisoning publications, Mr. Simon relentlessly challenges food manufacturers, distributors, and restaurants to do a better job in making our food safe.

For media inquiries or more information on the salmonella outbreak and ongoing litigation, please contact Ron Simon directly at (713) 819-8116 or ron@rsaalaw.com.

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8 **Attorneys for Plaintiff**

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF SAN DIEGO**

12 DORIS ZIEMAN,

13 Plaintiff,

14 vs.

15 ANDREW AND WILLIAMSON SALES
CO., INC. d/b/a ANDREW &
16 WILLIAMSON FRESH PRODUCE, and
DOES 1 through 50, inclusive,

17
18 Defendants.

Case No.

(Unlimited Civil)

COMPLAINT FOR DAMAGES

DEMAND FOR JURY TRIAL

19
20
21 Plaintiff Doris Zieman by and through her attorneys of record **Ron Simon & Associates** and
22 **Gomez Trial Attorneys**, hereby allege as follows:

23 **PARTIES**

24 1. Plaintiff Doris Zieman (hereinafter "Plaintiff") is an adult and resident of White Bear
25 Lake, Minnesota.

26 2. Defendant Andrew & Williamson Sales, Co., Inc. d/b/a Andrew & Williamson Fresh
27 Produce, (hereinafter "A&W" or "Defendant") is a California corporation headquartered in San Diego
28 County, California that imports, manufactures, distributes and sells *Limited Edition*® label cucumbers

1 from Baja Mexico, including to Red Lobster. It may be served through its agent for service of process,
2 Morgan Scudi, at 5440 Morehouse Drive, Suite 4400, San Diego, California 92121.

3 3. Plaintiff does not know the true names and capacities, whether corporate or otherwise,
4 of those Defendants sued herein as DOES 1 through 50, inclusive, and Plaintiff prays leave that when
5 the true names of said Defendants are ascertained Plaintiff may amend this complaint to insert the
6 same with appropriate allegations. Plaintiff is informed and believes, upon such information and
7 belief, alleges that each of the Defendants designated herein by such fictitious names are responsible in
8 some manner for the events described herein, and caused injuries and damages to Plaintiff.

9 **JURISDICTION AND VENUE**

10 4. Plaintiff hereby incorporates paragraphs 1 through 3 above.

11 5. Jurisdiction and venue are proper in California because the Defendant conducts regular
12 business activities in California and Andrew & Williamson Fresh Produce is headquartered in San
13 Diego County, California. Further, Defendant engages in substantial, continuous, and systematic
14 contacts with the State of California, purposefully directing their activities towards California,
15 including the placement of their goods into the stream of commerce with the intent and expectation
16 that they will likely be repurchased and used by consumers in California. This litigation arises out of
17 those activities.

18 **GENERAL ALLEGATIONS**

19 6. Plaintiff hereby incorporates paragraphs 1 through 5 above.

20 **The Salmonella Bacterium**

21 7. *Salmonella* is an enteric bacterium, which means that it lives in the intestinal tracts of
22 humans and other warm-blooded animals. *Salmonella* bacteria are typically transmitted to humans by
23 food or water contaminated with feces. Such foods usually look and smell normal, meaning that a
24 consumer has no warning of the fact of contamination.

25 8. After ingestion, *Salmonella* bacteria travel to the lumen of the small intestines, then
26 penetrate the epithelium, multiply, and enter the blood. This infection process – also referred to as the
27 incubation period – usually takes 6 to 72 hours for the onset of symptoms. As few as 15-20 cells of
28 *Salmonella* bacteria can cause infection.

1 9. The acute symptoms of *Salmonella* gastroenteritis (or *Salmonellosis*) include nausea,
2 vomiting, diarrhea, fever, abdominal cramping and/or stomach pain, dysuria, muscle pain, fatigue, and
3 dehydration.

4 10. Doctors typically treat the symptoms of *Salmonellosis* with anti-nausea or anti-diarrhea
5 medications. Some physicians prescribe antibiotics. Many severe cases may require intravenous
6 fluids for treatment of dehydration, usually in an emergency room or urgent-care setting. In others,
7 long-term side-effects, such as Irritable Bowel Syndrome (IBS) or Reactive Arthritis (RA) can
8 develop, requiring extensive ongoing medical treatment and care. The elderly, infants, and those with
9 impaired immune systems are more likely to experience severe illness or death from ingesting
10 *Salmonella* bacteria.

11 **Plaintiff's Illness**

12 11. Plaintiff Doris Zieman is a 73-year old resident White Bear Lake, Minnesota who, on
13 August 13, 2015, was celebrating her 49th wedding anniversary with her husband.

14 12. The couple decided to celebrate at the local Red Lobster, located in Maplewood
15 Minnesota.

16 13. As part of their meals, both Plaintiff and her husband enjoyed a salad. For Plaintiff, the
17 salad contained *Limited Edition*® label cucumbers. Her husband, luckily, ate a Caesar salad that
18 contained no cucumbers.

19 14. The *Limited Edition*® label cucumbers used by Red Lobster were imported, produced,
20 packaged, marketed, and sold by Defendant A&W.

21 15. When Plaintiff consumed the cucumbers on August 13th, she was unaware that they
22 were contaminated with *Salmonella*.

23 16. After consuming the cucumbers, Plaintiff experienced symptoms consistent with
24 *Salmonella* poisoning (i.e. one or more of the following: nausea, vomiting, diarrhea, fever, stomach
25 cramps, muscle aches, abdomen pain, weakness, and dehydration).

26 17. Plaintiff sought and received significant medical treatment as a result of her illness,
27 including being hospitalized.

28 18. To this day Plaintiff continues to recover from severe *Salmonella* poisoning, and

1 continues to suffer ongoing and persistent gastrointestinal complications and other complications that
2 stem for ingestion of the *Limited Edition*® label cucumbers imported, produced, packaged, and sold by
3 Defendants.

4 **The Salmonella Poona Outbreak**

5 19. In August of 2015, the Centers for Disease Control and Prevention (CDC), U.S. Food
6 and Drug Administration (FDA), and state and local health agencies became aware of a growing
7 number of *Salmonella* Poona cases spread across many states using PulseNet. PulseNet, the national
8 subtyping network of public health and food regulatory agency laboratories, employed DNA
9 “fingerprinting” on *Salmonella* bacteria isolated from ill people by using a technique called pulsed-
10 field gel electrophoresis.

11 20. As of September 8th, the CDC had identified 341 victims with the outbreak strains
12 of *Salmonella* Poona from 30 states, including: Alaska (9), Arizona (66), Arkansas (6), California (72),
13 Colorado (14), Hawaii (1), Idaho (8), Illinois (6), Kansas (1), Kentucky (1), Louisiana (4), Minnesota
14 (12), Missouri (8), Montana (10), Nebraska (2), Nevada (7), New Mexico (18), New York (4), North
15 Dakota (1), Ohio (2), Oklahoma (8), Oregon (8), Pennsylvania (2), South Carolina (7), Texas (18),
16 Utah (30), Virginia (1), Washington (10), Wisconsin (2), and Wyoming (3).

17 21. According to the CDC, the first identified victim began to suffer the symptoms of
18 salmonellosis on July 3rd, with the latest victim reporting onset of symptoms on August 26th. But
19 because there is a 2 to 4 week time-elapse between when a person begins to suffer the symptoms of
20 salmonellosis and when the CDC numbers capture that person’s illness in its official count, the number
21 of illnesses is likely to continue to rise in the coming weeks.

22 22. The victims identified so far range in age from less than 1 year to 99, with a median age
23 of 13. Fifty-three percent of victims are children younger than 18 years of age, while just over half (or
24 57%) are women. So far, approximately one third of the victims interviewed report being hospitalized.
25 The CDC has reported two deaths, including one in California and one in Texas.

26 **FDA, CDC Link Outbreak to Andrew & Williamson Fresh Produce Cucumbers**

27 23. Originally, health officials identified 11 separate *Salmonella* clusters in 7 states. In
28 each of these, officials identified cucumbers as the likely source.

1 24. By using trace-back information gathered in victim interviews and from the
2 establishments linked to these illnesses, investigators were able to identify tainted cucumbers imported
3 from the Mexican Baja region and distributed by Andrew & Williamson Fresh Produce as the likely
4 source of the outbreak.

5 25. Several state health and agriculture departments collected leftover cucumbers from
6 restaurants and grocery stores where ill people reported having eaten or shopped to test for the
7 presence of *Salmonella*. The San Diego County Health and Human Services Agency also visited the
8 A&W facility and collected cucumbers for testing.

9 26. By September 3rd, the CDC and FDA had enough information to confidently identify
10 imported cucumbers from the Baja region of Mexico, and distributed by Andrew & Williamson Fresh
11 Produce under the label *Limited Edition*®, as the source of the Salmonella Poona outbreak sweeping
12 the nation. Since then, several state health and agriculture departments have collected and tested
13 leftover cucumbers from retail locations for the presence of *Salmonella*. According to the CDC, the
14 Nevada Department of Health and Human Services isolated one of the outbreak strains
15 of *Salmonella* Poona from a cucumber collected from a retail location. In addition, the Arizona
16 Department of Health Services and the Montana Department of Public Health and Human Services
17 have now isolated *Salmonella* from cucumbers collected from retail locations in those states, and the
18 San Diego County Health and Human Services Agency isolated *Salmonella* in cucumbers at the
19 Andrew & Williamson Fresh Produce facility.

20 27. The *Limited Edition*® cucumbers, referred to as a “slicer” or “American” cucumbers are
21 dark green in color. Typical length is 7 to 10 inches. They are traditionally sold in a bulk display
22 without any individual packaging or plastic wrapping.

23 **Andrew & Williamson Fresh Produce Issues Recall**

24 28. On September 4, 2015, after consultation with the FDA, Andrew & Williamson Fresh
25 Produce recalled all cucumbers sold under the *Limited Edition*® brand label during the period from
26 August 1, 2015 through September 3, 2015. The recalled cucumbers had been shipped in a black,
27 green, yellow, and craft colored carton bearing the words “Limited Edition Pole Grown Cucumbers.”
28 Labeling on the cases of recalled cucumbers identified them as product grown and packed by Rancho

1 Don Juanito in Mexico. As noted above, they were often sold in bulk.

2 29. According to A&W, these *Limited Edition*® cucumbers were distributed in the states of
3 Alaska, Arizona, Arkansas, California, Colorado, Florida, Idaho, Illinois, Kansas, Kentucky,
4 Louisiana, Minnesota, Mississippi, Montana, Nevada, New Jersey, New Mexico, Oklahoma, Oregon,
5 South Carolina, Texas, and Utah, but reached customers through retail, food service companies,
6 wholesalers, and brokers (including, but not limited to, these establishments: In-N-Out, Save Mart,
7 Sam’s Club, The Capital Grille, United, Albertson, HEB, Safeway, Kroger, Walmart, Costco, Fresh &
8 Easy, and Red Lobster).

9 30. As of September 4th, the CDC had identified victims in Missouri, Nebraska, North
10 Dakota, New York, Ohio, Virginia, Washington, Wisconsin, and Wyoming - all states which are NOT
11 on the list of states that received the cucumbers directly from A&W.

12 31. In addition, A&W shipped the tainted cucumbers directly to New Jersey, Florida,
13 Kentucky, and Mississippi. These states have not yet identified victims as of September 4th.

14 32. This investigation is ongoing, and the CDC, FDA, and state and local public health
15 agencies are continuing to identify additional victims through PulseNet.

16 **FIRST CAUSE OF ACTION**

17 **(Strict Products Liability)**

18 33. Plaintiff hereby incorporates paragraphs 1 through 32 above.

19 34. At all times, Defendant was in the business of importing, manufacturing, distributing,
20 and/or marketing *Limited Edition*® cucumbers grown and packed by Rancho Don Juanito in Mexico
21 and distributed by A&W as “Limited Edition Pole Grown Cucumbers” throughout the United States
22 (“product”).

23 35. There was a manufacturing defect in the product when it left Defendant’s possession
24 and control. The product was defective because it contained *Salmonella*. The presence of *Salmonella*
25 was a condition of the product that rendered it unreasonably dangerous.

26 36. There was a marketing defect in the product when it left Defendant’s possession and
27 control. The product was defective because it contained *Salmonella* and Defendant failed to give
28 adequate warnings of the product’s dangers that were known or by the application of reasonably

1 developed human skill and foresight should have been known. Defendant also failed to give adequate
2 warnings and instructions to avoid such dangers. Defendant's failure to provide such warnings and
3 instructions rendered the product unreasonably dangerous.

4 37. Defendant's conduct was a direct, proximate, and producing cause of Plaintiff's injuries
5 and damages set forth below.

6 38. Defendant is therefore strictly liable for importing, manufacturing, distributing,
7 marketing, and selling defective and unreasonably dangerous product and introducing it into the stream
8 of commerce.

9 **SECOND CAUSE OF ACTION**

10 **(Negligence, including Negligence Per Se)**

11 39. Plaintiff hereby incorporates paragraphs 1 through 38 above.

12 40. Defendant owed Plaintiff a duty of ordinary care in the manufacture, preparation,
13 testing, packaging, marketing, distribution, and selling of the product in question. Further, Defendant
14 owed Plaintiff the duty of warning or instructing Plaintiff of potentially hazardous or life-threatening
15 conditions with respect to the product.

16 41. Defendant breached its duties in one or more of at least the following ways:

- 17 a. negligently importing, manufacturing, distributing, and marketing the product;
- 18 b. failing to properly test the product before placing it into the stream of
19 commerce;
- 20 c. failing to prevent human and/or animal feces from coming into contact with the
21 product;
- 22 d. failing to adequately monitor the safety and sanitary conditions of its premises;
- 23 e. failing to apply its own policies and procedures to ensure the safety and sanitary
24 conditions of its premises;
- 25 f. failing to adopt and/or follow FDA recommended good manufacturing practices;
- 26 g. failing to take reasonable measures to prevent the transmission of *Salmonella*
27 and related filth and adulteration from its premises;
- 28 h. failing to properly train and supervise its employees and agents to prevent the

- 1 transmission of *Salmonella* and related filth and adulteration from its premises;
- 2 i. failing to warn Plaintiff and the general public of the dangerous propensities of
- 3 the product, particularly that it was contaminated with *Salmonella*, despite
- 4 knowing or having reason to know of such dangers; and
- 5 j. failing to timely disclose post-sale information concerning the dangers
- 6 associated with the product.

7 42. Furthermore, Defendant had a duty to comply with all applicable health regulations,

8 including the FDA’s Good Manufacturing Practices Regulations, 21 C.F.R. part 110, subparts (A)-(G),

9 and all statutory and regulatory provisions that applied to the import, manufacture, distribution,

10 storage, and/or sale of the product or product ingredients, including but not limited to, the Federal

11 Food, Drug, and Cosmetics Act, § 402(a), as codified at 21 U.S.C. § 342(a), which bans the

12 manufacture, sale and distribution of any “adulterated” food, and California’s Sherman Food, Drug,

13 and Cosmetic Act, CA Health & Safety Code § 110545, which imposes an identical ban.

14 43. Under both federal and applicable state law, food is adulterated if it contains a

15 “poisonous or deleterious substance which may render it injurious to health.”

16 44. The product was adulterated because it contained *Salmonella*. Thus, by the import,

17 manufacture, distribution, delivery, storage, sale, and/or offering for sale of the product and/or the

18 product’s ingredients, Defendant breached its statutory and regulatory duties.

19 45. Plaintiff was a member of the classes sought to be protected by the regulations and

20 statutes identified above.

21 46. Defendant’s conduct was a direct, proximate, and producing cause of Plaintiff’s injuries

22 and damages set forth below.

23 47. All dangers associated with the product were reasonably foreseeable and/or

24 scientifically discoverable by Defendant at the time Defendant placed the product into the stream of

25 commerce.

26 **THIRD CAUSE OF ACTION**

27 **(Breach of Implied Warranties)**

28 48. Plaintiff hereby incorporates paragraphs 1 through 47 above.

1 49. Defendant is a merchant who manufactures, imports, distributes, and markets product.

2 50. Plaintiff is a consumer.

3 51. Defendant breached the implied warranty of merchantability by impliedly warranting
4 that their product was of merchantable quality and fit for human consumption when it was not due to
5 the presence of *Salmonella*. Plaintiff reasonably relied upon Defendant's skill and judgment as to
6 whether the product was of merchantable quality and fit for human consumption.

7 52. Defendant breached the implied warranty of fitness for a particular purpose by holding
8 out unreasonably dangerous product (i.e. product containing *Salmonella*) to the public as being safe
9 when they knew or had reason to know that the product was not safe and that the public would
10 consume the product.

11 53. Defendant did not disclaim these implied warranties.

12 54. Defendant's conduct was a direct, proximate, and producing cause of Plaintiff's injuries
13 and damages set forth below.

14 **DAMAGES**

15 55. Plaintiff hereby incorporates paragraphs 1 through 54 above.

16 56. Defendant's conduct was a direct, proximate, and producing cause of Plaintiff's injuries
17 and damages, including but not limited to damages in the past and future for the following: pain and
18 suffering, mental anguish, physical impairment, physical disfigurement, loss of enjoyment of life,
19 medical and pharmaceutical expenses, travel and travel-related expenses, emotional distress, lost
20 wages, lost earning capacity, loss of consortium, punitive and/or exemplary damages and attorneys'
21 fees (to the extent recoverable) and other general, special, ordinary, incidental and consequential
22 damages as would be anticipated to arise under the circumstances.

23 57. WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

- 24 a. Past and future economic and non-economic damages;
- 25 b. Court costs;
- 26 c. Pre- and post-judgment interest at the highest rate allowed by law; and
- 27 d. For such other general and special relief as the Court deems just and proper.

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DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial for all triable claims.

Dated: September 10, 2015

GOMEZ TRIAL ATTORNEYS



John H. Gomez, Esq.
John P. Fiske, Esq.
Ahmed S. Diab, Esq.

RON SIMON & ASSOCIATES

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(Pending Pro Hac Vice)

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