



PRESS RELEASE - Ron Simon & Associates Files Wrongful Death Lawsuit in Cucumber Salmonella Outbreak

Date | September 14, 2015

Ron Simon & Associates Files Wrongful Death Lawsuit in Salmonella Cucumber Outbreak

Today the national food safety law firm of Ron Simon & Associates, along with Gomez Trial Attorneys of San Diego, filed the first wrongful death lawsuit stemming from *Salmonella*-contaminated cucumbers.

The tainted cucumbers were imported from Mexico and distributed to numerous US retail outlets and restaurants by Andrew & Williamson Fresh Produce (A&W) under the *Limited Edition* label. CDC health officials have linked the cucumbers to a nationwide *Salmonella* Poona outbreak that has killed two victims and sickened hundreds more.

The firms filed the lawsuit against A&W in the Southern District Court of California in San Diego on behalf of Mildred Hendricks and her successor-in-interest Pamela Hendricks Drawbaugh. A&W is headquartered in San Diego, where Mildred Hendricks lived at the time of her death.

A copy of the lawsuit and a photo of Mildred Hendricks are attached.

Mildred Hendricks consumed A&W *Limited Edition* cucumbers in August 2015. Shortly thereafter, she began to suffer from severe *Salmonella* food poisoning. She sought medical attention and doctors immediately admitted her to the hospital on August 14th. But despite efforts by her medical team, she passed away on August 17th from acute *Salmonella* poisoning.

Cultures taken at the hospital tested positive for *Salmonella* Poona matching the outbreak strain linked to tainted A&W *Limited Edition* cucumbers.

Mildred Hendricks was 99 and living independently at home at the time of her death. She was scheduled to celebrate her 100th birthday this coming December with her family and friends in San Diego.

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 weeks, the CDC identified 341 victims in 30 states. The outbreak had hospitalized at least 70 and caused the deaths of 2 individuals, including Mildred Hendricks and another individual in Texas.

Federal investigators identified A&W *Limited Edition* cucumbers imported from Mexico as the likely source of the outbreak. Left-over A&W cucumbers collected 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 Issues Statement and Establishes Salmonella Claim Center

National food safety attorney Ron Simon, who represents the family of Mildred Hendricks and other victims of the cucumber *Salmonella* outbreak, issued the following statement today: “When importers fail to properly clean and test the food they sell, they put their customers in harm’s way. Unfortunately, Mildred Hendricks paid the ultimate price. Her death is a tremendous loss to her family and community. She will be missed.”

Mr. Simon is in San Diego today meeting with clients and media. To assist victims of the outbreak, his law firm has established a Salmonella Claim Center which 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 safety 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 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 MILDRED HENDRICKS, deceased,
13 by and through her successor-in-
interest, PAMELA HENDRICKS
14 DRAWBAUGH; and PAMELA
HENDRICKS DRAWBAUGH, an
15 individual,

16 **Plaintiff,**

17 vs.

18 ANDREW AND WILLIAMSON
SALES CO., INC. d/b/a ANDREW &
19 WILLIAMSON FRESH PRODUCE,
and DOES 1 through 50, inclusive,
20

21 **Defendants.**

Case No. '15CV2038 JAH NLS

(Unlimited Civil)

COMPLAINT FOR DAMAGES

DEMAND FOR JURY TRIAL

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23
24
25 Plaintiff MILDRED HENDRICKS, deceased, by and through her successor-in-
26 interest, Pamela Hendricks Drawbaugh, and PAMELA HENDRICKS DRAWBAUGH,
27 an individual, by and through their attorneys of record **Ron Simon & Associates** and
28 **Gomez Trial Attorneys**, hereby allege as follows:

1 **PARTIES**

2 1. Plaintiff Pamela Hendricks Drawbaugh is an adult resident of Travis
3 County, Texas. She brings suit individually and as successor-in-interest to her aunt,
4 Mildred Hendricks, deceased, and for the wrongful death of her aunt, Mildred
5 Hendricks.

6 2. Defendant Andrew & Williamson Sales, Co., Inc. d/b/a Andrew &
7 Williamson Fresh Produce, (hereinafter “A&W” or “Defendant”) is a California
8 corporation headquartered in San Diego County, California that imports, manufactures,
9 distributes and sells *Limited Edition*® label cucumbers from Baja Mexico, including to
10 Red Lobster. It may be served through its agent for service of process, Morgan Scudi,
11 at 5440 Morehouse Drive, Suite 4400, San Diego, California 92121.

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

19 **JURISDICTION AND VENUE**

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

21 5. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332
22 because the amount in controversy exceeds \$75,000, exclusive of interest and costs, and
23 because Defendants are all either incorporated and/or have their principal place outside
24 of the state in which the Plaintiff resides.

25 6. Jurisdiction and venue are proper in California because the Defendant
26 conducts regular business activities in California and Andrew & Williamson Fresh
27 Produce is headquartered in San Diego County, California. Further, Defendant engages
28 in substantial, continuous, and systematic contacts with the State of California,

1 purposefully directing its activities towards California, including the placement of their
2 goods into the stream of commerce with the intent and expectation that they will likely
3 be repurchased and used by consumers in California. This litigation arises out of those
4 activities.

5 **GENERAL ALLEGATIONS**

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

7 **The Salmonella Bacterium**

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

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

17 10. The acute symptoms of *Salmonella* gastroenteritis (or *Salmonellosis*)
18 include nausea, vomiting, diarrhea, fever, abdominal cramping and/or stomach pain,
19 dysuria, muscle pain, fatigue, and dehydration.

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

28 ///

1 **Plaintiff Mildred Hendricks' Wrongful Death**

2 12. Plaintiff Mildred Hendricks, a 99 year old resident of San Diego County,
3 California, unknowingly consumed *Limited Edition*® label cucumbers in early August,
4 2015.

5 13. The *Limited Edition*® label cucumbers she consumed were imported,
6 produced, packaged, marketed, and sold by Defendant A&W.

7 14. When Plaintiff consumed the cucumbers, she was unaware that they were
8 contaminated with *Salmonella*.

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

13 16. Plaintiff sought and received significant medical treatment as a result of her
14 illness, including being hospitalized.

15 17. Unfortunately, on August 17, 2015, Plaintiff died as a result of her injuries.

16 **The Salmonella Poona Outbreak**

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

23 19. As of September 8th, the CDC had identified 341 victims with the outbreak
24 strains of *Salmonella* Poona from 30 states, including: Alaska (9), Arizona (66),
25 Arkansas (6), California (72), Colorado (14), Hawaii (1), Idaho (8), Illinois (6), Kansas
26 (1), Kentucky (1), Louisiana (4), Minnesota (12), Missouri (8), Montana (10), Nebraska
27 (2), Nevada (7), New Mexico (18), New York (4), North Dakota (1), Ohio (2),
28 Oklahoma (8), Oregon (8), Pennsylvania (2), South Carolina (7), Texas (18), Utah (30),

1 Virginia (1), Washington (10), Wisconsin (2), and Wyoming (3).

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

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

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

14 22. Originally, health officials identified 11 separate *Salmonella* clusters in 7
15 states. In each of these, officials identified cucumbers as the likely source.

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

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

25 25. By September 3rd, the CDC and FDA had enough information to
26 confidently identify imported cucumbers from the Baja region of Mexico, and
27 distributed by Andrew & Williamson Fresh Produce under the label *Limited Edition*®,
28 as the source of the Salmonella Poona outbreak sweeping the nation. Since then,

1 several state health and agriculture departments have collected and tested leftover
2 cucumbers from retail locations for the presence of *Salmonella*. According to the CDC,
3 the Nevada Department of Health and Human Services isolated one of the outbreak
4 strains of *Salmonella* Poona from a cucumber collected from a retail location. In
5 addition, the Arizona Department of Health Services and the Montana Department of
6 Public Health and Human Services have now isolated *Salmonella* from cucumbers
7 collected from retail locations in those states, and the San Diego County Health and
8 Human Services Agency isolated *Salmonella* in cucumbers at the Andrew &
9 Williamson Fresh Produce facility.

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

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

15 27. On September 4, 2015, after consultation with the FDA, Andrew &
16 Williamson Fresh Produce recalled all cucumbers sold under the *Limited*
17 *Edition*® brand label during the period from August 1, 2015 through September 3,
18 2015. The recalled cucumbers had been shipped in a black, green, yellow, and craft
19 colored carton bearing the words “Limited Edition Pole Grown Cucumbers.” Labeling
20 on the cases of recalled cucumbers identified them as product grown and packed by
21 Rancho Don Juanito in Mexico. As noted above, they were often sold in bulk.

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

1 Red Lobster).

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

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

9 31. This investigation is ongoing, and the CDC, FDA, and state and local
10 public health agencies are continuing to identify additional victims through PulseNet.

11 **FIRST CAUSE OF ACTION**

12 **(Strict Products Liability)**

13 32. Plaintiff hereby incorporates paragraphs 1 through 30 above.

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

18 34. There was a manufacturing defect in the product when it left Defendant’s
19 possession and control. The product was defective because it contained *Salmonella*.
20 The presence of *Salmonella* was a condition of the product that rendered it unreasonably
21 dangerous.

22 35. There was a marketing defect in the product when it left Defendant’s
23 possession and control. The product was defective because it contained *Salmonella* and
24 Defendant failed to give adequate warnings of the product’s dangers that were known or
25 by the application of reasonably developed human skill and foresight should have been
26 known. Defendant also failed to give adequate warnings and instructions to avoid such
27 dangers. Defendant’s failure to provide such warnings and instructions rendered the
28 product unreasonably dangerous.

1 36. Defendant's conduct was a direct, proximate, and producing cause of
2 Plaintiff's injuries and damages set forth below.

3 37. Defendant is therefore strictly liable for importing, manufacturing,
4 distributing, marketing, and selling defective and unreasonably dangerous product and
5 introducing it into the stream of commerce.

6 **SECOND CAUSE OF ACTION**

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

8 38. Plaintiff hereby incorporates paragraphs 1 through 36 above.

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

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

1 prevent the transmission of *Salmonella* and related filth and
2 adulteration from its premises;

3 i. failing to warn Plaintiff and the general public of the dangerous
4 propensities of the product, particularly that it was contaminated
5 with *Salmonella*, despite knowing or having reason to know of such
6 dangers; and

7 j. failing to timely disclose post-sale information concerning the
8 dangers associated with the product.

9 41. Furthermore, Defendant had a duty to comply with all applicable health
10 regulations, including the FDA's Good Manufacturing Practices Regulations, 21 C.F.R.
11 part 110, subparts (A)-(G), and all statutory and regulatory provisions that applied to the
12 import, manufacture, distribution, storage, and/or sale of the product or product
13 ingredients, including but not limited to, the Federal Food, Drug, and Cosmetics Act, §
14 402(a), as codified at 21 U.S.C. § 342(a), which bans the manufacture, sale and
15 distribution of any "adulterated" food, and California's Sherman Food, Drug, and
16 Cosmetic Act, CA Health & Safety Code § 110545, which imposes an identical ban.

17 42. Under both federal and applicable state law, food is adulterated if it
18 contains a "poisonous or deleterious substance which may render it injurious to health."

19 43. The product was adulterated because it contained *Salmonella*. Thus, by the
20 import, manufacture, distribution, delivery, storage, sale, and/or offering for sale of the
21 product and/or the product's ingredients, Defendant breached its statutory and
22 regulatory duties.

23 44. Plaintiff was a member of the classes sought to be protected by the
24 regulations and statutes identified above.

25 45. Defendant's conduct was a direct, proximate, and producing cause of
26 Plaintiff's injuries and damages set forth below.

27 46. All dangers associated with the product were reasonably foreseeable and/or
28 scientifically discoverable by Defendant at the time Defendant placed the product into

1 the stream of commerce.

2 **THIRD CAUSE OF ACTION**

3 **(Breach of Implied Warranties)**

4 47. Plaintiff hereby incorporates paragraphs 1 through 45 above.

5 48. Defendant is a merchant who manufactures, imports, distributes, and
6 markets product.

7 49. Plaintiff is a consumer.

8 50. Defendant breached the implied warranty of merchantability by impliedly
9 warranting that their product was of merchantable quality and fit for human
10 consumption when it was not due to the presence of *Salmonella*. Plaintiff reasonably
11 relied upon Defendant's skill and judgment as to whether the product was of
12 merchantable quality and fit for human consumption.

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

17 52. Defendant did not disclaim these implied warranties.

18 53. Defendant's conduct was a direct, proximate, and producing cause of
19 Plaintiff's injuries and damages set forth below.

20 **DAMAGES**

21 54. Plaintiff hereby incorporates paragraphs 1 through 52 above.

22 55. Defendant's conduct was a direct, proximate, and producing cause of
23 Plaintiff's injuries and damages, including but not limited to damages in the past and
24 future for the following: pain and suffering, mental anguish, physical impairment,
25 physical disfigurement, loss of enjoyment of life, medical and pharmaceutical expenses,
26 travel and travel-related expenses, emotional distress, lost wages, lost earning capacity,
27 loss of consortium, punitive and/or exemplary damages and attorneys' fees (to the
28 extent recoverable) and other general, special, ordinary, incidental and consequential

1 damages as would be anticipated to arise under the circumstances.

2 56. Mildred Hendricks died as a direct result of Defendant's actions outlined
3 above. Plaintiff Pamela Hendricks Drawbaugh seeks damages individually, and as
4 successor-in-interest to the claims of the decedent Mildred Hendricks, through a
5 survivorship action on her behalf pursuant to California Code of Civil Procedure §
6 377.30, et. seq.

7 57. Plaintiff Pamela Hendricks Drawbaugh also seeks wrongful death damages
8 allowable under California Code of Civil Procedure § 377.60, et. seq.

9 58. WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

- 10 a. Past and future economic and non-economic damages;
11 b. Court costs;
12 c. Pre- and post-judgment interest at the highest rate allowed by law;
13 and
14 d. For such other general and special relief as the Court deems just and
15 proper.

16 **DEMAND FOR JURY TRIAL**

17 Plaintiff demands a jury trial for all triable claims.

18
19
20 Dated: September 14, 2015

GOMEZ TRIAL ATTORNEYS

21
22 By: /s/ Ahmed S. Diab
23 John H. Gomez, Esq.
24 John P. Fiske, Esq.
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