

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 20-2386

CARISSA E. HUGHES, an individual and resident of Colorado,

Plaintiff,

v.

THOMSON INTERNATIONAL, INCORPORATED, a California corporation,

Defendant.

PLAINTIFF'S COMPLAINT

COMES NOW Plaintiff Carissa E. Hughes who, by and through her attorneys, John R. Riley of Montgomery Little & Soran, PC and William D. Marler of Marler Clark, LLP PS, alleges upon information and belief as follows:

PARTIES

1. Plaintiff, Carissa E. Hughes (“Plaintiff” or “Hughes”), resides in Denver, Colorado.
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. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332(a) because the matter in controversy exceeds \$75,000.00, exclusive of costs, it is

between citizens of different states, and the Defendant has certain minimum contacts with the state of Colorado such that maintenance of the suit in this district does not offend traditional notions of fair play and substantial justice.

4. Venue in the United States District Court for the District of Colorado is proper pursuant to 28 U.S.C. § 1391(a)(2) because a substantial part of the events or omissions giving rise to Plaintiff's claims and causes of action occurred in this judicial district, and because the Defendant is subject to personal jurisdiction in this judicial district at the time of the commencement of the action.

GENERAL ALLEGATIONS

An Outbreak of *Salmonella* Newport Associated with Thomson Red Onions

5. The U.S. Food and Drug Administration (FDA), along with the Centers for Disease Control and Prevention (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.

6. 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.

7. Building on this information, and on epidemiologic information on the U.S. outbreak from the 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. and Canada. As of August 7, 2020 there are 879 reported illnesses. As of August 6, 2020, a total of 640 people

infected with the outbreak strain of *Salmonella* Newport have been reported from 43 states. States with Cases: Alaska (6), Alabama (1), Arizona (14), California (76), Colorado (14), Connecticut (2), Delaware (1), Florida (3), Georgia (1), Idaho (26), Illinois (41), Indiana (2), Iowa (20), Kansas (2), Kentucky (1), Maine (4), Maryland (1), Massachusetts (2), Michigan (36), Minnesota (14), Mississippi (2), Missouri (6), Montana (52), Nebraska (10), Nevada (8), New Hampshire (1), New Jersey (2), New Mexico (1), New York (5), North Carolina (5), North Dakota (8), Ohio (8), Oregon (85), Pennsylvania (9), South Carolina (1), South Dakota (17), Tennessee (5), Utah (90), Virginia (8), Washington (25), West Virginia (2), Wisconsin (7), Wyoming (16). Illnesses started on dates ranging from June 19, 2020, to July 23, 2020. Ill people range in age from less than 1 to 102 years, with a median age of 39. Fifty-four percent of ill people are female. Of 343 ill people with information available, 85 hospitalizations have been reported. No deaths have been reported. As of August 7, 2020, there have been 239 confirmed cases of *Salmonella* Newport illness linked to this outbreak in the following provinces: British Columbia (67), Alberta (149), Saskatchewan (5), Manitoba (13), Ontario (3), Quebec (1) and Prince Edward Island (1). Individuals became sick between mid-June and late July 2020. Twenty-nine individuals have been hospitalized. No deaths have been reported. Individuals who became ill are between 0 and 100 years of age. The majority of cases (54%) are female.

8. 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.

9. 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. On August 1, 2020, Thomson International, Inc., voluntarily recalled red, yellow, white, and sweet yellow onions because they may be contaminated with *Salmonella*. On August 1, Giant Eagle recalled onions and foods made with recalled onions sold in stores across Pennsylvania, Ohio, West Virginia, Indiana and Maryland. On August 1, Publix recalled onions sold in bulk at stores in Alabama, Georgia, North Carolina, South Carolina, Tennessee, and Virginia. On August 5, 2020, the United States Department of Agriculture's Food Safety and Inspection Service (USDA-FSIS) issued a public health alert for products made with recalled onions. Check the alert for product details. On August 6, 2020, Taylor Farms issued a recall of foods that were made from recalled onions.

10. 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

11. *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 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.

12. *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.

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

14. 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

15. 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.

16. *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 CARISSA HUGHES'S INJURIES

17. On June 25, 2020, Plaintiff purchased a red onion at the King Soopers located at 4600 Leetsdale Dr. in Glendale, Colorado. Unbeknownst to the Plaintiff at the time, she had purchased one of Defendant Thomson's red onions, which she later consumed raw as part of a veggie burger on June 28, 2020.

18. Plaintiff began to first feel ill on or about June 29, 2020. She developed cramping, diarrhea, and vomiting, and was unable to keep any food or water down.

19. Between June 29 and July 8, 2020, Plaintiff visited urgent care twice and sought medical help from a primary care physician. Plaintiff had fever, violent chills, profuse sweating for hours at a time, and severe diarrhea. She was given IV fluids, potassium, antiemetic drugs, pain relievers, and numerous COVID-19 tests.

20. Although Plaintiff tested negative for the coronavirus (SARS-CoV-2) three times, she was admitted to the hospital as a probable COVID-19 case on the morning of July 8. Her fever hit a high of 104.1°F that day. She was given IV fluids and underwent an EKG and CT scan. Numerous blood and stool cultures were done.

21. Eventually, Plaintiff was diagnosed with septic *Salmonella* and was started on IV antibiotics. Plaintiff received antibiotics for 5 days in the hospital, as well as magnesium sulfate and potassium chloride. After the hospital reported her case, Plaintiff was contacted by her local health department on July 9.

22. Plaintiff continues to recover from her bout with *Salmonella*. She suffers from digestive problems, limited diet, and occasional cramping, and takes probiotics daily.

CAUSES OF ACTION

Strict Liability – Count I

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

24. 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.

25. 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.

26. 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.

27. 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.

28. 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.

29. 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

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

31. 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.

32. 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.

33. 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.

34. 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

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

36. 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.

37. 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.

38. 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.

39. The Defendant had a duty to use ingredients, supplies, and other constituent materials that were reasonably safe, wholesome, and free of defects; 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.

40. 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

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

42. 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.*).

43. 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.

44. As a direct and proximate result of the negligent *per se* conduct by the Defendant, the Plaintiff sustained injuries 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 Complaint in an amount that is fair and reasonable, for her costs incurred, and for any other relief to which she may be entitled;

- (2) For judgment against the Defendant on Count II of this Complaint in an amount that is fair and reasonable, for her costs incurred, and for any other relief to which she may be entitled;
- (3) For judgment against the Defendant on Count III of this Complaint in an amount that is fair and reasonable, for her costs incurred, and for any other relief to which she may be entitled;
- (4) For judgment against the Defendant on Count IV of this Complaint in an amount that is fair and reasonable, for her costs incurred, and for any other relief to which she 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 11, 2020

By /s/ John R. Riley

John R. Riley, Esq.
jriley@montgomerylittle.com
Montgomery Little & Soran, PC
5445 DTC Parkway, Suite 800
Greenwood Village, CO 80111
Phone: (303) 773-8100
Fax: (303) 220-0412

William D. Marler, Esq.
bmarler@marlerclark.com
Marler Clark, LLP PS
1012 First Avenue, Floor 5
Seattle, WA 98104
Phone: (206) 346-1888
Fax: (206) 346-1898

Attorneys for Plaintiff