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Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
STATE OF IDAHO, IN AND FOR THE COUNTY OF WASHINGTON**

Terry McLean

Plaintiff,

vs.

ProSource Inc. dba ProSource Produce,
LLC and Pinehurst Café

Defendants.

Case No.

COMPLAINT FOR DAMAGES

DEMAND FOR JURY TRIAL

Plaintiff Terry McLean, by and through his counsel of record **Ron Simon & Associates**
and **Peterson Lawyers**, allege and complain as follows:

I. PARTIES

1. Plaintiff Terry McLean is an adult and resident of Moore, North Carolina.
2. Defendant ProSource Inc. dba ProSource Produce, LLC (hereinafter “ProSource”) is an Idaho corporation headquartered in Weiser, Idaho.
3. Defendant Pinehurst Café (hereinafter “Pinehurst”) is a company transacting

business in the State of North Carolina, located at 5 Mccaskill Road East, Pinehurst, North Carolina 28374.

JURISDICTION AND VENUE

4. This Court has jurisdiction and venue over Defendant because it is a domestic corporation headquartered in Idaho, and because purchases of the tainted products.

GENERAL ALLEGATIONS

5. Plaintiff hereby incorporates paragraphs 1 through 3 above.

The *Salmonella* Bacterium

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

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

8. The acute symptoms of *salmonella* gastroenteritis (or *salmonellosis*) include nausea, vomiting, diarrhea, fever, abdominal cramping and/or stomach pain, dysuria, muscle pain, fatigue, and dehydration.

9. Doctors typically treat the symptoms of *salmonellosis* with anti-nausea or anti-diarrhea medications. Some physicians prescribe antibiotics. Many severe cases may require intravenous fluids for treatment of dehydration, usually in an emergency room or urgent-care setting. In others, long-term side-effects, such as Irritable Bowel Syndrome (IBS) or Reactive

Arthritis (RA) can develop, requiring extensive ongoing medical treatment and care. The elderly, infants, and those with impaired immune systems are more likely to experience severe illness or death from ingesting *salmonella* bacteria.

The *Salmonella* Outbreak

10. On October 20, 2021, The Centers for Disease Control and Prevention (CDC) identified fresh whole onions as the source of a large outbreak of Salmonella Oranienburg. The fresh whole red, white, and yellow onions were imported from Chihuahua, Mexico and distributed by ProSource Inc., a company located in Weiser, Idaho. These onions were sold to restaurants and grocery stores throughout the United States. According to ProSource Inc., the onions were last imported on August 27, but can last up to three months in storage and may still be in homes and businesses.

11. The outbreak has already been linked to 652 illnesses in 37 states with 129 of the victims requiring hospitalization. No deaths have been reported.

12. According to the CDC, both epidemiologic and traceback data show that whole red, white, and yellow onions imported from Chihuahua, Mexico, and distributed throughout the United States by ProSource Inc., are the source of the outbreak. Investigators are still working to determine if other onions and suppliers are linked to this outbreak. In the meantime, retailers and consumers have been instructed not to sell, serve, or consume fresh whole red, white, or yellow onions that were imported from Chihuahua, Mexico, and are being asked to check storage coolers and coolers for these onions.

13. As part of the outbreak investigation, the CDC has conducted environmental swabs and tested product in circulation. The outbreak strain was identified in a sample of cilantro and lime from a restaurant condiment cup collected from a sick person's home. The sick

person also reported that the cup contained onions, though none were left in the cup when it was tested.

Plaintiff's Salmonella Illness

14. Plaintiff purchased a hot dog with onions at Pinehurst Café in Pinehurst, North Carolina on October 5, 2021.

15. A few hours later on October 5, 2021, Plaintiff was ill with the symptoms of Salmonellosis, including severe abdominal cramping, vomiting, diarrhea, nausea, and dehydration. He presented to emergency room at FirstHealth of the Carolinas.

16. While the hospital, Plaintiff was diagnosed with *salmonella* through a positive stool culture.

17. The Moore County Health Department (MCHD) in North Carolina identified the *salmonella* as that linked to the *Salmonella* Onion outbreak.

FIRST CAUSE OF ACTION

(Strict Products Liability)

18. Plaintiffs hereby incorporate paragraphs 1 through 17 above.

19. At all times, Defendants were in the business of producing, manufacturing, preparing, marketing and serving food (hereinafter “the product”) to the public.

20. There was a manufacturing defect in the product when it left Defendants’ possession and control. The product was defective because it contained *salmonella*. The presence of *salmonella* was a condition of the product that rendered it unreasonably dangerous.

21. There was a marketing defect in the product when it left Defendants’ possession and control. The product was defective because it contained *salmonella* and Defendants failed to give adequate warnings of the product’s dangers that were known or by the application of

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

22. Defendants' conduct was a direct, proximate, and producing cause of Plaintiff's injuries and damages set forth below.

23. Defendants are therefore strictly liable for importing, manufacturing, distributing, marketing, and selling defective and unreasonably dangerous product and introducing it into the stream of commerce.

SECOND CAUSE OF ACTION

(Negligence and Negligence Per Se)

24. Plaintiffs hereby incorporate paragraphs 1 through 23 above.

25. Defendants owed Plaintiff a duty of ordinary care in the manufacture, preparation, testing, packaging, marketing, distribution, and selling of the product. Further, Defendants owed Plaintiff the duty of warning or instructing Plaintiff of potentially hazardous or life-threatening conditions with respect to the product.

26. Defendants breached its duties in one or more of at least the following ways:

- a. negligently importing, manufacturing, distributing, and marketing the product;
- b. failing to properly test the product before placing it into the stream of commerce;
- c. failing to prevent human and/or animal feces from coming into contact with the product;
- d. failing to adequately monitor the safety and sanitary conditions of its

- premises;
- e. failing to apply its own policies and procedures to ensure the safety and sanitary conditions of its premises;
- f. failing to adopt and/or follow FDA recommended good manufacturing practices;
- g. failing to take reasonable measures to prevent the transmission of *Salmonella* and related filth and adulteration from its premises;
- h. failing to properly train and supervise its employees and agents to prevent the transmission of *Salmonella* and related filth and adulteration from its premises;
- i. failing to warn Plaintiff and the general public of the dangerous propensities of the product, particularly that it was contaminated with *Salmonella*, despite knowing or having reason to know of such dangers; and
- j. failing to timely disclose post-sale information concerning the dangers associated with the product.

27. Furthermore, Defendant had a duty to comply with all applicable health regulations, including the FDA's Good Manufacturing Practices Regulations, 21 C.F.R. part 110, subparts (A)-(G), and all statutory and regulatory provisions that applied to the manufacture, distribution, storage, and/or sale of the deli food or its ingredients, including but not limited to, the Federal Food, Drug, and Cosmetics Act, § 402(a), as codified at 21 U.S.C. § 342(a), which bans the manufacture, sale and distribution of any "adulterated" food, and the Idaho Food, Drug and Cosmetic Act, Title 37, especially 37-122 et. Seq. In addition, Defendant had a duty to

comply with Idaho Food Code, IDAPA 16.02.19.

28. Under both federal and applicable state law, food is adulterated if it contains a “poisonous or deleterious substance which may render it injurious to health.”

29. The product was adulterated because it contained *Salmonella*. Thus, by the import, manufacture, distribution, delivery, storage, sale, and/or offering for sale of the product and/or the product’s ingredients, Defendants breached their statutory and regulatory duties.

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

31. Defendants’ conduct was a direct, proximate, and producing cause of Plaintiff’s injuries and damages set forth below.

32. All dangers associated with the product were reasonably foreseeable and/or scientifically discoverable by Defendants at the time Defendants placed the product into the stream of commerce.

THIRD CAUSE OF ACTION

(Breach of Implied Warranties)

33. Plaintiffs hereby incorporate paragraphs 1 through 32 above.

34. Defendants are merchants who manufacture, import, distribute, and market the product.

35. Plaintiff is a consumer.

36. Defendants breached the implied warranty of merchantability by impliedly warranting that the product was of merchantable quality and fit for human consumption when it was not due to the presence of *salmonella*. Plaintiff reasonably relied upon Defendants’ skill and judgment as to whether the product was of merchantable quality and fit for human consumption.

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

38. Defendants did not disclaim these implied warranties.

39. Defendants' conduct was a direct, proximate, and producing cause of Plaintiff's injuries and damages set forth below.

DAMAGES

40. Plaintiffs hereby incorporate paragraphs 1 through 39 above.

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

42. WHEREFORE, Plaintiff pray for judgment against Defendants as follows:

- a. Past and future economic and non-economic damages;
- b. Court costs.
- c. Reasonable attorney fees;
- d. Pre- and post-judgment interest at the highest rate allowed by law; and
- e. For such other relief as the Court deems just and proper.

JURY DEMAND

Pursuant to Idaho Rules of Civil Procedure 38(b), Plaintiff demands a jury trial for all triable claims.

Dated: October 21, 2021

PETERSON LAWYERS



Courtney M. Peterson

RON SIMON & ASSOCIATES

Ron Simon

(Pending *Pro Hac Vice*)

Attorneys for Plaintiff