

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA**

CINDY DAY, an individual,)	
)	Case No.
Plaintiff,)	
)	
v.)	COMPLAINT AND
)	JURY DEMAND
ALDI INC.,)	
an Illinois Corporation,)	
)	
Defendant.)	
_____)	

COMPLAINT

COMES NOW Plaintiff, Cindy Day, by and through her attorneys of record, Wandro and Associates, P.C., and Marler Clark, L.L.P., P.S., complaining of Defendant, Aldi Inc., and alleges and states as follows:

PARTIES

1. At all times relevant to this action, Plaintiff, Cindy Day, resides in Johnston, Polk County, Iowa. Plaintiff is a citizen of the State of Iowa.

2. At all times relevant to this action, Defendant, Aldi Inc., was an Illinois corporation with its principal place of business located at 1200 N. Kirk Rd., Batavia, IL 60510. Aldi Inc. is a citizen of the State of Illinois. At all times relevant to this action, Aldi Inc. was a manufacturer, distributor, and seller of Asian Chopped Salad mix to customers across the midwestern US.

JURISDICTION AND VENUE

3. This Court has jurisdiction over the subject matter of this action pursuant to 28 USC § 1332(a) because the matter in controversy exceeds \$75,000, exclusive of costs; it is

between citizens of different states; and because Aldi Inc. has certain minimum contacts with the State of Iowa such that the maintenance of this 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 Southern District of Iowa is proper pursuant to 28 USC § 1391(a)(1) and (2) because Aldi Inc. was subject to personal jurisdiction in this judicial district at the time of the commencement of the action, and because a substantial part of the events or omissions giving rise to Plaintiff's claims and causes of action occurred in this judicial district.

FACTS

The Outbreak

5. According to the Centers for Disease Control and Prevention (CDC), as of December 4, 2019, 102 people infected with an outbreak strain of *E. coli* O157:H7 have been reported from 23 states, and 2 cases have been reported in Canada. Epidemiologic, laboratory, and traceback evidence indicate that romaine lettuce from the Salinas, California growing region is the likely source of this outbreak.

6. CDC has advised that consumers not eat, and retailers not sell, any romaine lettuce grown in the Salinas, California, growing region. This includes all use-by dates and brands of romaine lettuce from this region.

7. The Food and Drug Administration (FDA) and state health departments continue to trace the source of the romaine lettuce eaten by ill people. Investigation is ongoing to determine the source of contamination and if additional products are linked to illness. This outbreak is caused by the same strain of *E. coli* O157:H7 that caused outbreaks linked to leafy greens in 2017 and to romaine lettuce in 2018.

Prior Outbreaks Linked to Lettuce and Other Leafy Greens

8. *E. coli* O157:H7 outbreaks associated with lettuce and other leafy greens are by no means a new phenomenon. Outlined below is a list of *E. coli* outbreaks involving contaminated lettuce or leafy greens in the past decade:

Date	Vehicle	Etiology	Confirmed Cases	States/Provinces
Sept. 2009	Lettuce: Romaine or Iceberg	<i>E. coli</i> O157:H7	29	Multistate
Sept. 2009	Lettuce	<i>E. coli</i> O157:H7	10	Multistate
April 2010	Romaine	<i>E. coli</i> O145	33	5:MI, NY, OH, PA, TN
Oct. 2011	Romaine	<i>E. coli</i> O157:H7	60	Multistate
April 2012	Romaine	<i>E. coli</i> O157:H7	28	1:CA Canada
June 2012	Romaine	<i>E. coli</i> O157:H7	52	Multistate
Sept. 2012	Romaine	<i>E. coli</i> O157:H7	9	1:PA
Oct. 2012	Spinach and Spring Mix Blend	<i>E. coli</i> O157:H7	33	Multistate
Apr. 2013	Leafy Greens	<i>E. coli</i> O157:H7	14	Multistate
Aug. 2013	Leafy Greens	<i>E. coli</i> O157:H7	15	1:PA
Oct. 2013	Ready-To-Eat Salads	<i>E. coli</i> O157:H7	33	Multistate
Apr. 2014	Romaine	<i>E. coli</i> O126	4	1:MN
Apr. 2015	Leafy Greens	<i>E. coli</i> O145	7	3:MD, SC, VA
June 2016	Mesclun Mix	<i>E. coli</i> O157:H7	11	3:IL, MI, WI
Nov. 2017	Leafy Greens	<i>E. coli</i> O157:H7	67	Multistate and Canada

Date	Vehicle	Etiology	Confirmed Cases	States/Provinces
Mar. 2018	Romaine	<i>E. coli</i> O157:H7	219	Multistate and Canada
Nov. 2018	Romaine	<i>E. coli</i> O157:H7	88	Multistate and Canada
Sept. 2019	Romaine	<i>E. coli</i> O157:H7	23	Multistate
Nov. 2019	Romaine	<i>E. coli</i> O157:H7	104	Multistate and Canada

The *E. coli* O157:H7 bacteria

9. *Escherichia coli* are the name of a common family of bacteria, most members of which do not cause human disease. *E. coli* O157:H7 is a specific member of this family that can cause bloody diarrhea (hemorrhagic colitis) in humans. In the years since *E. coli* O157:H7 was first identified as a cause of diarrhea, this bacterium has established a reputation as a significant public health hazard.

10. *E. coli* O157:H7 lives in the intestines of cattle and other ruminants. *E. coli* O157:H7 is also notable among pathogenic bacteria for its extremely low infectious dose—that is, the number of bacteria necessary to induce infection in a person. While for most pathogenic bacteria it takes literally millions of bacterial colonies to cause illness, it is now known that fewer than 50 *E. coli* O157:H7 bacteria can cause illness in a child. The practical import is that even a microscopic amount of exposure can trigger a devastating infection.

11. The most severe cases of the *E. coli* O157:H7 infection occur in young children and in the elderly, presumably because the immune systems in those age populations are the most vulnerable. After a susceptible individual ingests *E. coli* O157:H7, the bacteria attach to the inside surface of the large intestine and initiates an inflammatory reaction of the intestine. What

ultimately results is the painful bloody diarrhea and abdominal cramps characteristic of the intestinal illness.

12. The mean incubation period (time from ingestion to the onset of symptoms) of *E. coli* O157:H7 is estimated to be two to four days (range, 1-21 days). Typically, a patient with an acute *E. coli* O157:H7 infection presents with abdominal cramps, bloody diarrhea, and vomiting. The duration of diarrhea in children with *E. coli* O157:H7 infections are significantly longer than that of adults.

13. *E. coli* O157:H7 can produce a wide spectrum of disease from mild, non-bloody diarrhea, to severe bloody diarrhea accompanied by excruciating abdominal pain to life-threatening complications. In most infected individuals, the intestinal illness lasts about a week and resolves without any long-term effects. Antibiotics do not appear to aid in combating these infections, and recent medical studies suggest that antibiotics are contraindicated for their risk of provoking more serious complications. Apart from good supportive care, which should include close attention to hydration and nutrition, there is no specific therapy.

14. About 10% of individuals with *E. coli* O157:H7 infections (mostly young children) go on to develop hemolytic uremic syndrome (HUS), a severe, potentially life-threatening complication. The essence of the syndrome is described by its three central features: destruction of red blood cells, destruction of platelets (those blood cells responsible for clotting), and acute renal failure due to the formation of micro-thrombi that occlude microscopic blood vessels that make up the filtering units within the kidneys.

15. There is no known therapy to halt the progression of HUS. The active stage of the disease usually lasts one to two weeks, during which a variety of complications are possible. HUS is a frightening illness that even in the best American medical facilities has a mortality rate of

about 5%. The majority of HUS patients require transfusion of blood products and develop complications common to the critically ill.

Cindy Day's *E. coli* O157:H7 infection

16. On or about November 2, 2019, Ms. Day purchased an Asian Chopped Salad mix from Aldi located at 8400 Douglas Ave, Urbandale, IA 50322. This product contains romaine lettuce.

17. Ms. Day consumed the salad product over the next several days.

18. On Thursday, November 7, 2019, Ms. Day began to experience diarrhea. Her condition continued to deteriorate to include vomiting and her diarrhea became bloody on Saturday, November 9, 2019.

19. Ms. Day sought medical care at a local clinic, where she was given anti-nausea medication. A stool sample provided to the clinic tested positive for *E. coli* O157:H7.

20. Polk County Health Department informed her that her strain of *E. coli* O157:H7 is a genetic to other outbreak cases.

21. Ms. Day is still recovering from her *E. coli* O157:H7 infection. Due to her illness, she lost wages and may lose more wages in the future.

**COUNT I
(Strict Product Liability)**

22. Plaintiff incorporates the preceding paragraphs of this Complaint, by this reference, as if each of these paragraphs were set forth here in its entirety.

23. Defendant manufactured, distributed, and sold the adulterated salad product that injured Plaintiff.

24. Defendant manufactured its Asian Chopped Salad mix, which included romaine lettuce, for sale to the public.

25. Food that is contaminated by *E. coli* O157:H7 is unsafe when put to the use reasonably foreseeable considering the nature of the product. Namely, *E. coli* O157:H7 contaminated food is unfit for human consumption.

26. The salad product that Plaintiff purchased, and consumed, was contaminated with *E. coli* O157:H7 when it left the control of Defendant. Plaintiff's consumption of the contaminated food caused her to become infected by *E. coli* O157:H7 and to suffer injuries as a direct and proximate result of that consumption.

27. Defendant is strictly liable to Plaintiff for the harm proximately caused by the manufacture and sale of an unsafe and defective food product.

COUNT II
(Negligence)

28. Plaintiff incorporates the preceding paragraphs of this Complaint, by this reference, as if each of these paragraphs were set forth here in its entirety.

29. Defendant designed, manufactured, distributed, and sold a salad product that was contaminated with *E. coli* O157:H7, a deadly pathogen.

30. Defendant owed a duty to all persons who purchased and consumed its product, including Plaintiff, to manufacture and sell salad products that were safe to eat, that were not adulterated with deadly pathogens like *E. coli* O157:H7, and that were not in violation of applicable food and safety regulations. Defendant breached this duty.

31. Defendant owed a duty to all persons who purchased and consumed its products, including Plaintiff, to ensure that any representations regarding the certifications its products had undergone prior to distribution and sale were made with reasonable care. Defendant breached this duty.

32. Defendant had a duty to comply with all statutes, laws, regulations, or safety codes pertaining to the manufacture, distribution, storage, and sale of its food products, but failed to do so, and was therefore negligent. Plaintiff was among the class of persons designed to be protected by these statutes, laws, regulations, safety codes or provision pertaining to the manufacture, distribution, storage, and sale of similar food products.

33. Defendant breached the duties owed to the ultimate consumers of the salad product by committing the following acts and omissions of negligence:

- a. Failed to adequately maintain or monitor the sanitary conditions of its products, premises, equipment and employees, and the products, premises, equipment and employees of other entities in the supply chain of the subject salad product;
- b. Failed to properly operate its facilities and equipment in a safe, clean, and sanitary manner;
- c. Failed to apply its food safety policies and procedures to ensure the safety and sanitary conditions of its food products, premises, and employees;
- d. Failed to apply food safety policies and procedures that met industry standards for the safe and sanitary production of food products, and the safety and sanitary condition of its premises and employees;
- e. Failed to prevent the transmission of *E. coli* O157:H7 to consumers of its salad products;
- f. Failed to properly train its employees and agents how to prevent the transmission of *E. coli* O157:H7 on its premises, from its facility or equipment, or in its food products;
- g. Failed to properly supervise its employees and agents to prevent the transmission of *E. coli* O157:H7 on its premises, from its facility or equipment, or in its food products.
- h. Failed to test its salad products for microbial pathogens, like *E. coli* O157:H7.

27. Defendant had a duty to comply with all statutory and regulatory provisions that pertained or applied to the manufacture, distribution, storage, labeling, and sale of its food products. Defendant breached this duty.

28. Defendant owed a duty to Plaintiff to use reasonable care in the manufacture, distribution, and sale of its food products, to prevent contamination with *E. coli* O157:H7. Defendant breached this duty.

29. Plaintiff's injuries proximately and directly resulted from the negligence of Defendant, and from Defendant's violations of statutes, laws, regulations, and safety codes pertaining to the manufacture, distribution, storage, and sale of food.

COUNT III (Breach of Warranty)

30. Plaintiff incorporates the preceding paragraphs of this Complaint, by this reference, as if each of these paragraphs were set forth here in its entirety.

31. By offering the subject salad product for sale to the public, Defendant impliedly warranted that such salad product was safe to eat, that it was not adulterated with a deadly pathogen, and that the salad product had been safely prepared under sanitary conditions.

32. Defendant breached the implied warranties about the food it manufactured and sold to Plaintiff, which was consumed by Plaintiff and caused Plaintiff's injuries and losses.

33. Plaintiff's injuries proximately and directly resulted from Defendant's breach of implied warranties, and Plaintiff is thus entitled to recover for all actual, consequential, and incidental damages that flow directly and in a foreseeable fashion from these breaches.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays as follows:

(1) That the Court award Plaintiff judgment against Defendant for damages.

(2) That the Court award all such other sums as shall be determined to fully and fairly compensate Plaintiff for all general, special, incidental and consequential damages incurred, or to be incurred, by Plaintiff as the direct and proximate result of the acts and omissions of Defendant;

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

(4) 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

(5) That the Court award such other and further relief as it deems necessary and proper in the circumstances.

JURY TRIAL DEMAND

Plaintiff demands trial by jury on all issues raised herein.

Dated this 11th day of December, 2019.

Respectfully submitted,

/s/ Ben Arato

Steven Wandro

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