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IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH

RORY MCDONALD and KARENA
MCDONALD, individually and on behalf of
their minor daughter, ALYSSA
MCDONALD,

Plaintiffs,

vs.

DWIGHT & LINFORD ENTERPRISES,
LLC., d/b/a JIMMY JOHN's, a Utah
corporation,

Defendant.

**COMPLAINT
(JURY TRIAL DEMANDED)**

(Tier 3)

Case No. 200906120

Judge Su Chon

Plaintiffs RORY MCDONALD and KARENA MCDONALD, individually and on behalf of their minor daughter, ALYSSA MCDONALD, complain against Defendant DWIGHT & LINFORD ENTERPRISES, LLC, d/b/a JIMMY JOHN'S ("Jimmy John's"), as follows:

PARTIES

1. The plaintiffs, Rory McDonald and Karena McDonald, are the parents and legal guardians of their daughter, plaintiff Alyssa McDonald, who is under 18 years of age and thus a minor (collectively “Plaintiffs”). The Plaintiffs are residents of the State of Utah.

2. Dwight & Linford Enterprises, LLC, d/b/a, Jimmy John’s (hereinafter “Jimmy John’s”) is a corporation organized and existing under the laws of the State of Utah, with its corporate headquarters and principal place of business located at 144 East 2580 South, Suite A in St. George, Utah, 84790. At all times relevant to this complaint, Jimmy John’s owned and operated the Jimmy John’s restaurant located at 5461 S. State St. in Murray, Utah.

JURISDICTION AND VENUE

3. The Third Judicial District Court in and for Salt Lake County, State of Utah, has jurisdiction of the claims asserted below pursuant to the provision of §78A-5-102, Utah Code Ann. (1953 as amended).

4. Venue is properly laid before the Third Judicial District Court in and for Salt Lake County, State of Utah, pursuant to the provisions of §78B-3-307, Utah Code Ann. (1953 as amended), in that the causes of action alleged below arose within Salt Lake County, State of Utah.

5. Pursuant to Rule 26(c)(3) of the New Utah Rules of Civil Procedure, the amount in controversy exceeds \$300,000.00, qualifying this claim for a Tier 3 standard discovery.

GENERAL ALLEGATIONS

THE JIMMY JOHN’S E. COLI OUTBREAK

6. The CDC, public health, and regulatory officials in several states, and the U.S. Food and Drug Administration are investigating a multistate outbreak of *E. coli* O103 infections linked to clover sprouts.

7. As of March 17, 2020, 39 people infected with the outbreak strain of *E. coli* O103 have been reported from six states: Florida (1); Illinois (6); Iowa (3); Missouri (1); Texas (1); and Utah (27).

8. Illnesses started on dates ranging from January 6, 2020 to March 2, 2020. Ill people range in age from 1 to 79 years, with a median age of 28. Fifty-three percent of ill people are female. Two people have been hospitalized. No deaths have been reported.

9. Epidemiologic, traceback, and laboratory evidence indicate that clover sprouts are the source of this outbreak. State and local public health officials are continuing to interview ill people to determine what they ate and other exposures they had in the week before their illness started. Sixteen (59%) of 27 people interviewed reported eating sprouts. Fourteen (58%) of 24 people interviewed reported eating sprouts at a Jimmy John's restaurant.

10. Jimmy John's reported that all of their restaurants stopped serving clover sprouts on February 24, 2020.

11. The FDA identified the outbreak strain of *E. coli* O103 in samples of Chicago Indoor Garden products that contain sprouts. On March 16, 2020, Chicago Indoor Garden recalled all products containing red clover sprouts.

12. FDA's traceback investigation has shown that a common seed lot was used to grow the sprouts recalled by Chicago Indoor Garden and the sprouts that were served at Jimmy John's locations where people sickened in the current outbreak reported eating. The same seed lot was

also used to grow sprouts linked to an outbreak of the same strain of *E. coli* O103 infections in 2019. The investigation is ongoing.

A HISTORY OF JIMMY JOHN'S SPROUTS-RELATED OUTBREAKS

13. **Sprouters Northwest, Jimmy John's Restaurants, Clover *Salmonella* Sprouts Outbreak 2010.** 7 Sickened – Sprouters Northwest of Kent, WA, issued a product recall after the company's clover sprouts had been implicated in an outbreak of *Salmonella* Newport in Oregon and Washington. At least some of the cases had consumed clover sprouts while at a Jimmy John's restaurant. Concurrent with this outbreak, a separate outbreak of *Salmonella* serotype I 4,[5],12:i:- involving alfalfa sprouts served at Jimmy John's restaurants was under investigation. The recall of Northwest Sprouters products included: clover; clover and onion; spicy sprouts; and deli sprouts. The Sprouters Northwest products had been sold to grocery stores and wholesale operations in Washington, Oregon, Idaho, Alaska, British Columbia, Saskatchewan, and Alberta. The FDA inspection found serious sanitary violations.

14. **Multistate *Salmonella* Outbreak, Tiny Greens Organic Farm, Jimmy John's Restaurants, Alfalfa Sprouts 2010.** 140 Sickened – On December 17, the Illinois Department of Health announced that an investigation was underway into an outbreak of *Salmonella*, serotype I 4,[5],12:i:- Many of the Illinois patients had eaten alfalfa sprouts at various Jimmy John's restaurants in the Illinois counties of Adams, Champaign, Cook, DuPage, Kankakee, Macon, McHenry, McLean, Peoria, and Will. The sprouts were suspected to be the cause of the illnesses. On December 21 of that year, Jimmy John Liautaud, the owner of the franchised restaurant chain, requested that all franchisees remove all sprouts from the menu as a “precautionary” measure. On December 23, the Centers for Disease Control and Prevention (CDC) revealed that outbreak cases

had been detected in other states, and that the outbreak was linked with eating alfalfa sprouts from a nationwide sandwich chain. On December 26, preliminary results of the investigation indicated a link to eating Tiny Greens' Alfalfa Sprouts at Jimmy John's restaurant outlets. The FDA subsequently advised consumers and restaurants to avoid Tiny Greens Brand Alfalfa Sprouts and Spicy Sprouts produced by Tiny Greens Organic Farm of Urbana, Illinois. The Spicy Sprouts contained alfalfa, radish, and clover sprouts. On January 14, 2011, it was revealed that the FDA had isolated *Salmonella* serotype I 4,[5],12:i:- from a water runoff sample collected from Tiny Greens Organic Farm; the *Salmonella* isolated was indistinguishable from the outbreak strain. The several FDA inspections of the sprout growing facility revealed factors that likely led to contamination of the sprouts.

15. **CW Sprouts, Inc., SunSprout Sprouts, “restaurant chain (Chain A)” a.k.a. Jimmy John's *Salmonella* Outbreak 2009.** 256 Sickened – In February, 2009, Nebraska Department of Health and Human Services officials identified six isolates of *Salmonella* Saintpaul. Although this is a common strain of *Salmonella*, during 2008, only three cases had been detected in Nebraska and only four subtypes of this outbreak strain had been identified in the entire U.S. As additional reports were made, a case control study was conducted; alfalfa sprout consumption was found to be significantly related to illness. The initial tracebacks of the sprouts indicated that although the sprouts had been distributed by various companies, the sprouts from the first cases originated from the same sprouting facility in Omaha, NE. Forty-two of the illnesses beginning on March 15 were attributed to sprout-growing facilities in other states; these facilities had obtained seeds from the same seed producer, Caudill Seed Company of Kentucky. The implicated seeds had been sold in many states. On April 26, the FDA and CDC

recommended that consumers not eat raw alfalfa sprouts, including sprout blends containing alfalfa sprouts. In May, FDA alerted sprout growers and retailers that a seed supplier, Caudill Seed Company of Kentucky, was withdrawing all alfalfa seeds with a specific three-digit prefix. Many of the illnesses occurred at “restaurant chain (Chain A),” according to the CDC, which generally does not identify specific business.

16. **Jimmy John’s Restaurant Alfalfa Sprouts and Iceberg Lettuce *E. coli* Outbreak 2008.** 28 Sickened – Several University of Colorado students from one sorority became ill with symptoms of bloody diarrhea and cramping. Additional illnesses were reported. *E. coli* O157:NM(H-) was determined to be the cause. Consumption of alfalfa sprouts at the Jimmy John’s Restaurants in Boulder County and Adams County were risk factors for illness. In addition, the environmental investigation identified Boulder Jimmy John’s food handlers who were infected with *E. coli* and who had worked while ill. The health department investigation found a number of critical food handling violations, including inadequate handwashing. The fourteen isolates from confirmed cases were a genetic match to one another.

ALYSSA MCDONALD’S E. COLI ILLNESS

17. The Plaintiffs, by and through this reference, hereby incorporate paragraphs nos. 1 through 16 above, as if fully set forth herein.

18. The Plaintiffs reside in Murray, Utah.

19. On February 18, 2020, plaintiff Alyssa McDonald purchased and consumed an “Italian” sandwich at the Jimmy John’s restaurant located at 5461 S. State St. in Murray, Utah. She had no way of detecting that her food was contaminated by the potentially deadly fecal pathogen, *E. coli* O103:H2.

20. On February 21, Alyssa began experiencing the onset of *E. coli* symptoms, including abdominal cramping, diarrhea, nausea, fatigue, and a headache while she was at school. Worried about missing the snowboarding trip she had planned with her friends for the following day, Alyssa took ibuprofen and went to sleep early that night. Unfortunately, her symptoms did not let up; during the night, Alyssa's cramps escalated.

21. The following day, Alyssa could only muster enough strength to use the bathroom, as her stomach cramping and diarrhea had become increasingly severe. She cancelled her snowboarding trip and spent the day at home with her mom.

22. By Sunday, February 23, Alyssa's pain was so severe that she urged her mom to take her to see a doctor, as she was afraid that she might have an appendicitis.

23. At 9:21 PM that night, Alyssa presented to Cottonwood InstaCare, where Douglas Roland Smith, MD evaluated her for nausea, stomach pain, and diarrhea. Dr. Smith was concerned about Alyssa's abdominal exam, which was significant for right lower quadrant pain at McBurney point. He advised her not to go home, but to head directly to the hospital to be checked out for appendicitis.

24. Around 10 PM, Alyssa arrived at AltaView Hospital, where Paul Frandsen, MD evaluated her. Alyssa reported a two-day history of abdominal pain, which she characterized as recurring waves, and concurrent diarrhea. On exam, Dr. Frandsen found Alyssa febrile, with a temperature of 101.2 °F, but her vital signs were otherwise in normal range. Her abdomen was nondistended, but it was exquisitely tender to palpation along the right side. Dr. Frandsen ordered an ultrasound to rule out appendicitis.

25. Radiologist Jonathan Shakespear, MD performed the imaging just before midnight, which was unrevealing of any problems with Alyssa's appendix. The ultrasound was followed by an IV-contrast-enhanced CT of Alyssa's abdomen and pelvis. Radiologist Fernando Rodriguez, MD performed the CT, during which he identified moderate transverse and right colitis, which he opined could be related to infection or inflammatory bowel disease.

26. While she was under observation in the ER, Alyssa was given intravenous fluids, as well as Toradol for pain and Zofran for nausea. Blood was collected for laboratory analysis with the IV start, and she was able to give a stool sample before going home. The lab reported unremarkable values for a complete blood count, but a predominance of neutrophils was noted on the peripheral smear, suggestive of infection.

27. After several hours in the ER, Alyssa's temperature normalized, and she remained in stable condition. Given the likelihood of infectious colitis suggested by the imaging, Dr. Frandsen chose to start Alyssa on ciprofloxacin. She was released from the ER at 2:24 AM on February 24, with instructions to return to the ER for any worsening symptoms or other concerns.

28. After Alyssa left the ER, the hospital lab reported the preliminary results of her stool studies at 3:27 AM on February 24. Alyssa's stool tested positive (reactive) for Shiga-like toxins by EIA testing, suggestive of enterohemorrhagic *E. coli* (STEC/EHEC). It was negative for toxigenic *C. difficile* and *Giardia lamblia*. The lab reported Alyssa's positive STEC/EHEC infection to the health authorities and sent her sample to the state labs for confirmatory testing.

29. On March 10, 2020, Alyssa's stool tested positive for *Escherichia coli* O103:H2, as confirmed by the Utah State Health Department Laboratories. Further genetic testing determined that Alyssa's infection was a genetic match to other cases who dined at Jimmy John's.

She was included in the outbreak related to the Jimmy John's chain (UT ID: 202002STEC002, CDC ID: 2002IAEXW-1).

30. Alyssa continues to recover from her bout of *E. coli*.

FIRST CLAIM FOR RELIEF
(Strict Liability)

31. The Plaintiffs, by and through this reference, hereby incorporate paragraphs nos. 1 through 30 above, as if fully set forth herein.

32. Jimmy John's manufactured and sold the adulterated food product, i.e. the "Italian" sandwich, that is the subject of the action.

33. The adulterated food product that Jimmy John's manufactured, distributed, or sold was, at the time it left Jimmy John's control, defective and unreasonably dangerous for its ordinary and expected use because it contained *E. coli* O103, a harmful pathogen.

34. The adulterated food product that Jimmy John's manufactured, distributed, or sold reached plaintiff Alyssa McDonald without any change in its defective condition.

35. The adulterated food product that Jimmy John's manufactured, distributed, or sold was used in the manner expected and intended, and was consumed by Alyssa.

36. Alyssa suffered injury and damages as a direct and proximate result of the defective and unreasonably dangerous condition of the adulterated food product that Jimmy John's manufactured, distributed, or sold.

SECOND CLAIM FOR RELIEF
(Negligence)

37. The Plaintiffs, by and through this reference, hereby incorporate paragraphs nos. 1 through 36, above, as if fully set forth herein.

38. Jimmy John's owed the Plaintiffs a duty to use reasonable care in the manufacture, distribution, and sale of its food product, the observance of which duty would have prevented or eliminated the risk that Jimmy John's food products would become contaminated by *E. coli* O103 or any other dangerous pathogen.

39. Jimmy John's breached this duty.

40. Jimmy John's 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.

41. Jimmy John's failed to comply with its duty and was therefore negligent.

42. The Plaintiffs, including plaintiff Alyssa McDonald, are among the class of persons designed to be protected by these statutes, laws, regulations, safety codes, or provisions pertaining to the manufacture, distribution, storage, and sale of similar food products.

43. Jimmy John's had a duty to properly supervise, train, and monitor its employees, and to ensure its employees' compliance with all applicable statutes, laws, regulations, or safety codes pertaining to the manufacture, distribution, storage, and sale of similar food products.

44. Jimmy John's failed to do so and was therefore negligent.

45. Jimmy John's further had a duty to use ingredients, supplies, and other constituent materials that were reasonably safe, wholesome, free of defects, and that otherwise complied with applicable federal, state, and local laws, ordinances, and regulations, and that were clean, free from adulteration, and safe for human consumption.

46. Jimmy John's failed to do so and was therefore negligent.

47. As a direct and proximate result of Jimmy John's acts and omissions of negligence, Alyssa sustained injuries and damages in an amount to be proven at trial.

THIRD CLAIM FOR RELIEF
(Negligence *Per Se*)

48. The Plaintiffs, by and through this reference, hereby incorporate paragraphs nos. 1 through 47, above, as if fully set forth herein.

49. Jimmy John's 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 Cosmetics Act (21 U.S.C. § 301 *et seq.*).

50. Jimmy John's failed to comply with the provisions of the health and safety acts identified above, and, as a result, was negligent *per se* in its manufacture, distribution, and sale of food adulterated with *E. coli* O103, a harmful pathogen.

51. As a direct and proximate result of conduct by Jimmy John's that was negligent *per se*, plaintiff Alyssa McDonald sustained damages in an amount to be proven at trial.

DAMAGES

52. The Plaintiffs have suffered general, special, incidental, and consequential damages as the direct and proximate result of the acts and omissions of Jimmy John's, in an amount that shall be fully proven at the time of trial. These damages include, but are not limited to: damages for general pain and suffering; damages for loss of enjoyment of life, both past and future; medical and medical-related expenses, both past and future; emotional distress, past and future; pharmaceutical expenses, past and future; and all other ordinary, incidental, or consequential damages that would or could be reasonably anticipated to arise under the circumstances.

JURY DEMAND

Plaintiffs hereby demand a jury trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Jimmy John's as follows:

A. Ordering compensation for all general, special, incidental, and consequential damages suffered by the Plaintiffs as a result of Jimmy John's conduct;

B. Awarding the Plaintiffs their reasonable attorneys' fees and costs, to the fullest extent allowed by law; and

C. Granting all such additional and/or further relief as this Court deems just and equitable.

DATED this 24th day of September, 2020.

/s/ Dustin Lance

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