

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

JUN 21 2018

RICK WARREN
COURT CLERK

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AUDREA JOHNSON)
)
Plaintiff,)
)
VS.)
)
KELLOGG COMPANY)
)
Defendant.)

CJ-2018-
CJ-2018-3380

PETITION

Audrea Johnson, Plaintiff, by and through her attorneys of record, Ron Simon & Associates and Hasbrook & Hasbrook, alleges and states:

I. PARTIES

1. Plaintiff Audrea Johnson resides in Oklahoma City, Oklahoma County, State of Oklahoma.
2. Defendant Kellogg Company (“Kellogg’s”) is a Delaware corporation with its headquarters in Battle Creek, Michigan.

II. JURISDICTION AND VENUE

3. Jurisdiction and venue are proper in this Court because Plaintiff purchased and consumed the product at issue in Oklahoma County, and Kellogg’s does extensive business in Oklahoma County.

III. FACTS

The Kellogg's Honey Smacks Cereal Salmonella Outbreak

4. The Food and Drug Administration (FDA) and the Centers for Disease Control and Prevention (CDC) began investigating a growing number of Salmonella Mbandaka cases in early March of 2018. Over the next two months, the number of cases quickly escalated to over 70 by the end of May. By June 14th, with 73 confirmed cases in 31 states, the FDA and CDC identified Kellogg's Brand Honey Smacks Cereal as the source of the Salmonella Mbandaka outbreak, and Kellogg's issued a recall of its Honey Smacks Cereal in 15.3 ounce and 23 ounce packages.

5. According to the CDC, at least 73 victims have been identified in 31 states, including Oklahoma, with at least 24 requiring hospitalizations. These are preliminary numbers and widely expected to grow as more victims are tested.

6. The FDA is currently inspecting the facility that manufactures Kellogg's Honey Smacks Cereal and is working with the company to collect additional information.

About Salmonella

7. *Salmonella* is an enteric bacterium, which means that it lives in the intestinal tracts of human and other warm-blooded animals, including cattle. *Salmonella* bacteria are usually transmitted to humans who consume foods contaminated with animal feces. Such foods usually look and smell normal, meaning that a consumer has no warning of the fact of contamination.

8. After being ingested, *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.

9. 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. The duration of acute symptoms is typically four to seven days.

10. If medical treatment is provided to an infected person, it is typically treatment of the symptoms, such as prescribing anti-nausea or anti-diarrhea medications. Some physicians prescribe antibiotics. More severe cases may require intravenous fluids for treatment of dehydration, usually in an emergency room or urgent-care setting. The elderly, infants, and those with impaired immune systems are more likely to experience a severe illness or death from ingesting *salmonella* bacteria.

11. More serious cases of *salmonellosis* are also linked to cases where the particular strain of *salmonella* bacteria is resistant to traditional antibiotics, leading to more prolonged illness and often other complications.

12. In cases of prolonged or acute gastroenteritis, long-term side-effects, such as irritable bowel syndrome (IBS) or irritable bowel disease (IBD), can develop, leading to the need for long-term medical treatment and care.

Plaintiff's Salmonella Illness

13. On Saturday morning, June 16th, Audrea Johnson ate Kellogg's Honey Smacks for breakfast. She consumed two bowls of the cereal. Shortly thereafter, Audrea Johnson was very ill, with vomiting, nausea, abdominal pain, and diarrhea. She had become so ill that she presented to Saint Anthony's Hospital in Oklahoma City for treatment where she was admitted.

14. Audrea was treated for gastroenteritis, and the attending physician ordered a stool culture performed. Her stool culture was positive for *salmonella*.

15. Audrea continues to undergo medical treatment and is still recovering from her *salmonella* illness.

IV. FIRST CAUSE OF ACTION: STRICT LIABILITY

16. At all times, Defendant was in the business of importing, manufacturing, distributing, and marketing Honey Smacks Cereal (hereinafter “cereal”).

17. There was a manufacturing defect in the cereal when it left Defendant’s possession and control. The cereal was defective because it contained *salmonella*. The presence of *salmonella* was a condition of the product that rendered it reasonably dangerous.

18. There was a marketing defect in the cereal when it left Defendant’s possession and control. The cereal was defective because it contained *salmonella*, and Defendant 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. Defendant also failed to give adequate warnings and instructions to avoid such dangers. Defendant’s failure to provide such warnings and instructions rendered the cereal unreasonably dangerous.

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

20. Defendant is therefore strictly liable for manufacturing, distributing, and marketing defective and unreasonably dangerous cereal and introducing it into the stream of commerce.

V. SECOND CAUSE OF ACTION: NEGLIGENCE, INCLUDING NEGLIGENCE PER SE

21. Defendant owed Plaintiff a duty of ordinary care in the manufacture, preparation, testing, packaging, marketing, storing, holding, distribution, and selling of the cereal in question. Further, Defendant owed Plaintiff the duty of warning or instructing Plaintiff of potentially

hazardous or life-threatening conditions with respect to the cereal.

22. Defendant breached its duty in one or more of at least the following ways:
 - a. negligently manufacturing, preparing, distributing, and marketing cereal;
 - b. failing to properly test the cereal before placing it into the stream of commerce;
 - c. failing to prevent human, insect, and/or animal feces from coming into contact with the cereal;
 - d. failing to implement policies to prevent sick and/or contaminated employees from handling the cereal;
 - e. failing to implement proper hand washing policies for all employees;
 - f. failing to have adequate hand washing facilities;
 - g. failing to store, package, hold, or prepare the cereal or its ingredients in a manner to prevent it from becoming contaminated with filth which could render it injurious to health;
 - h. failing to adequately monitor the safety and sanitary conditions of their premises;
 - i. failing to apply their own policies and procedures to ensure the safety and sanitary conditions of their premises;
 - j. failing to adopt and/or follow recommended good manufacturing practices;
 - k. failing to take reasonable measures to prevent the transmission of *salmonella* bacteria and related filth and adulteration from their premises;
 - l. failing to properly train and supervise their employees and agents to

prevent the transmission of *salmonella* bacteria and related filth and adulteration from their premises;

- m. failing to warn Plaintiff and the general public of the dangerous propensities of the cereal, particularly that it was contaminated with *salmonella*, despite knowing or having reason to know of such dangers; and
- n. failing to timely disclose post-sale information concerning the dangers associated with the cereal.

23. 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 cereal 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 Oklahoma Statutes Title 63, Public Health and Safety §63-1-1102-9 which tracks the federal statute.

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

25. Defendant failed to comply with the provisions of both the federal and state statutes set forth above, and as a result, was negligent per se in manufacturing and selling food adulterated with *salmonella*, a deadly pathogen.

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

27. All dangers associated with the cereal were reasonably foreseeable and/or

scientifically discoverable by Defendant at the time Defendant placed the cereal into the stream of commerce.

VI. THIRD CAUSE OF ACTION: BREACH OF WARRANTY

28. Defendant is a merchant who produces, manufactures, distributes, and markets cereal products to consumers. Plaintiff is a consumer.

29. Defendant breached the implied warranty of merchantability by impliedly warranting that their cereal was of merchantable quality and fit for human consumption when it was not due to the conditions under which it was prepared, packaged, and held and due to the presence of *salmonella*. Plaintiff reasonably relied upon Defendant's skill and judgment as to whether the cereal was of merchantable quality and fit for human consumption.

30. Defendant breached the implied warranty of fitness for a particular purpose by holding out unreasonably dangerous cereal (i.e. cereal produced under insanitary conditions and containing *salmonella*) to the public as being safe when Defendant knew or had reason to know that the food was not safe, and that the public would consume the food.

31. Defendant did not disclaim these implied warranties.

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

VII. DAMAGES

33. Defendant's 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, loss of love,

companionship, comfort, care, assistance, protection, affection, society, moral support, loss of training and guidance, attorneys' fees (to the extent recoverable) and other general, special, ordinary, incidental and consequential damages as would be anticipated to arise under the circumstances.

WHEREFORE, Plaintiff demands judgment against Defendant Kellogg Company in an amount in excess of Seventy Five Thousand Dollars (\$75,000.00), plus costs, interest, fees and all other appropriate relief.

Respectfully submitted,



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