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IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE DISTRICT OF ARIZONA

Rosalie Styles,

Plaintiff,

v.

Red Lobster Hospitality, LLC, a Florida
corporation,

Defendant.

NO.

COMPLAINT

DEMAND FOR JURY TRIAL

Plaintiff, by and through undersigned counsel, and for her claims against the
Defendant, alleges as follows:

PARTIES

1. Plaintiff Rosalie Styles resides in Maricopa County, Arizona.

2. Defendant Red Lobster Hospitality, LLC is a corporation organized and existing under the laws of Florida and conducts business throughout the United States, including the State of Arizona.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332. The amount in controversy exceeds \$75,000 exclusive of interests and costs, and this is an action by an individual plaintiff against a Defendant with its principal place of business in another state.
4. Venue in this judicial district is proper pursuant to 28 U.S.C. § 1391(a)(2) because a substantial part of the events or omissions giving rise to the claim occurred in this judicial district and because the Defendant was subject to personal jurisdiction in this judicial district at the time of the commencement of the action.

GENERAL ALLEGATIONS

Prior Outbreaks Linked to Lettuce and Other Leafy Greens

5. *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:

Date	Causative Agent	Illnesses Reported	Source
Nov. 2017- Dec. 2017	E. coli O157:H7	41, 1 death	Romaine lettuce
Dec. 2015-Jan. 2016	Listeria monocytogenes	19, 1 death	Package salads
Apr. 2015	Escherichia coli, Shiga toxin-producing	7	Prepackaged leafy greens

1	Mar. 2015	E. coli O157:H7	12	Leafy greens
2				
3	Jul. 2014	E. coli O111	15	Salad/cabbage served at Applebee's and Yard House (Minnesota)
4				
5	Oct. 2013	E. coli O157:H7	33	Pre-packaged salads and sandwich wraps (California)
6				
7	Jul. 2013	E. coli O157:H7	94	Lettuce served at Federico's Mexican Restaurant
8				
9	Jul. 2013	Cyclospora	140 (Iowa); 87 (Nebraska)	Salad mix, cilantro
10	Dec. 2012 – Jan. 2013	E. coli O157:H7	31	Shredded lettuce from Freshpoint, Inc.
11				
12	Oct. 2012	E. coli O157:H7	33	Leafy greens salad mix (Massachusetts)
13	Apr. 2012	E. coli O157:H7	28	Romaine lettuce
14	Dec. 2011	Salmonella Hartford	5	Lettuce; roast beef
15	Dec. 2011	Norovirus	9	Lettuce, unspecified
16	Oct. 2011	E. coli O157:H7	58	Romaine lettuce
17	Oct. 2011	E. coli O157:H7	26	Lettuce
18	Aug. 2011	N/A	8	Lettuce; onions; tomatoes
19				
20	Jul. 2011	Cyclospora cayatenensis	99	Lettuce based salads
21	Jun. 2011	Norovirus	23	Garden salad
22	Apr. 2011	Salmonella Typhimurium	36	Multiple salads
23				
24	Feb. 2011	Norovirus	24	Garden salad
25	Jan. 2011	Norovirus	93	Lettuce; salad, unspecified
26	Jul.-Oct. 2010	Salmonella Java	136	Salad vegetable
27				
28	May 2010	E. coli O145	33 (26 lab-confirmed)	Romaine Lettuce grown in Arizona

1	Apr. 2010	Salmonella Hvittingfoss	102	Lettuce, tomatoes, and olives served at Subway restaurants
2	Jan. 2010	E. coli	260	Lettuce grown in France
3	Dec. 2009	Norovirus	16	Lettuce
4	Aug. 2009	Salmonella Typhimurium	27	Lettuce
5	Aug. 2009	Salmonella spp	124	Romaine lettuce; Recalls issued by Tanimura & Antle, Inc. (lettuce), Muranaka Farm, Inc. (parsley), and Frontera Produce (cilantro)
6	Jul. 2009	Salmonella Typhimurium	145	Shredded lettuce from Taylor Farms
7	May. 2009	Norovirus	10	Lettuce, onion, and tomato in chicken salad
8	Nov. 2008	E. coli O157:H7	130	Romaine lettuce
9	Oct. 2008	E. coli O157:H7	2	Chopped shredded iceberg lettuce (Michigan)
10	Oct. 2008	E. coli O157:H7	43 (Johnathan's Family Restaurant), 21 (Little Red Rooster Restaurant), 12 (M.T. Bellies Restaurant)	Lettuce
11	Oct. 2008	Norovirus	64	Tomato relish, lettuce- based salad
12	Aug.-Sep. 2008	E. coli O157:H7	74	Lettuce from Aunt Mid's Produce Company (California)
13	Aug.-Oct. 2008	E. coli O157:H7	13	Spinach (Oregon)
14	May. 2008	E. coli O157:H7	10	Prepackaged lettuce
15	May. 2008	E. coli O157:H7	6	Pre-packaged salad

1	May 2008	E. coli O157:H7	9	Lettuce (California, U.S.)
2				
3	Apr. 2008	Salmonella Branderup	12	Green salad, tomato
4	Jul. 2007	Shigella sonnei	72	Salad
5	Jul. 2007	E. coli O157:H7	26	Lettuce
6	Feb. 2007	Norovirus	8	Lettuce
7	Jan. 2007	Norovirus	9	Salad
8	Nov. 2006	E. coli O157:H7	78	Lettuce
9	Oct. 2006	E. coli O157:H7	205	Pre-packaged baby spinach from Dole Food Company (California)
10				
11	Sep. 2006	Norovirus	9	Salad
12				
13	Sep. 2005	E. coli O157:H7	34	Prepackaged bagged lettuce from Dole Food Company
14				
15	Jun. 2006	Salmonella Typhimurium	18	Lettuce, tomatoes
16	Oct. 2005	E. coli O157:H7	12	grapes, green; lettuce, prepackaged
17	Nov. 2004	E. coli O157:H7	6	Lettuce, unspecified
18	Jul. 2004	Salmonella Newport	97	Iceberg lettuce
19	Nov. 2003	E. coli O157:H7	19	Spinach, unspecified
20	Oct. 2003	E. coli O157:H7	16	Spinach, unspecified
21	Sep. 2003	E. coli O157:H7	51	Lettuce-based salads, unspecified
22				
23	Nov. 2002	E. coli O157:H7	60	Romaine lettuce
24	Jul. 2002	E. coli O157:H7	32	Romaine lettuce from Spokane Produce (Washington)
25				
26	Jul. 2002	E. coli O157:H7	55	Caesar salad
27	Nov. 2001	E. coli O157:H7	20	Lettuce-based salads, unspecified
28				

1	Oct. 2000	E. coli O157:H7	6	Salad
2	May 2000	Campylobacter jejuni	13	Salad
3	May 2000	Norovirus	3	Salad
4	Feb. 2000	Norovirus	7	Salad
5	Oct. 1999	E. coli O157:H7	45	Lettuce, salad
6	Oct. 1999	E. coli O157:H7	47	Salad
7	Oct. 1999	Norovirus	16	Salad
8	Sep. 1999	E. coli O157:H11	6	Lettuce
9	Sep. 1999	Norovirus	115	Lettuce
10	Sep. 1999	E. coli O111:H8	58	Salad
11	Aug. 1999	Norovirus	25	Salad
12	May 1999	Norovirus	28	Salad
13	Feb. 1999	E. coli O157:H7	72	Lettuce
14	May 1998	E. coli O157:H7	2	Salad
15	May 1996	E. coli O157:H7	61	Lettuce
16	Oct. 1995	E. coli O153:H46	11	Lettuce
17	Sep. 1995	E. coli O153:H47	30	Lettuce
18	Sep. 1995	E. coli O157:H7	21	Lettuce
19	Jul. 1995	E. coli O153:H48	74	Lettuce

The 2018 *E. coli* O157:H7 Outbreak Linked to Romaine Lettuce from Yuma

6. As of May 1, 2018, 121 people infected with the outbreak strain of *E. coli* O157:H7 have been reported from 25 states. Alaska 8, Arizona 8, California 24, Colorado 2, Connecticut 2, Georgia 4, Idaho, 11, Illinois 1, Kentucky 1, Louisiana 1, Massachusetts 2, Michigan 4, Mississippi 1, Missouri 1, Montana

1 8, New Jersey 7, New York 2, Ohio 3, Pennsylvania 20, South Dakota 1,
2 Tennessee 1, Virginia 1, Washington 6, Wisconsin 1.

3
4 7. Illnesses started on dates ranging from March 13, 2018 to April 21, 2018. Ill
5 people range in age from 1 to 88 years, with a median age of 29. Sixty-three
6 percent of ill people are female. Of 102 people with information available, 52
7 (51%) have been hospitalized, including 14 people who developed hemolytic
8 uremic syndrome, a type of kidney failure. One death was reported from
9 California.

10
11 8. Illnesses that occurred after April 11, 2018, might not yet be reported due to
12 the time it takes between when a person becomes ill with *E. coli* and when the
13 illness is reported. This takes an average of two to three weeks.

14
15 9. State and local health officials continue to interview ill people to ask about the
16 foods they ate and other exposures before they became ill. Forty-one (95%)
17 of 43 people interviewed reported eating romaine lettuce in the week before
18 their illness started. Most people reported eating a salad at a restaurant, and
19 romaine lettuce was the only common ingredient identified among the salads
20 eaten. The restaurants reported using bagged, chopped romaine lettuce to
21 make salads. At this time, ill people are not reporting whole heads or hearts of
22 romaine. Information collected to date indicates that chopped romaine lettuce
23 from the Yuma, Arizona growing region could be contaminated with *E.*
24 *coli* O157:H7 and could make people sick.

25
26
27 10. Federal and state public health officials continue to investigate this outbreak.

1 precise location(s) at which the contaminated lettuce was grown and/or
2 processed.

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4 **E. coli O157:H7 Infection and Hemolytic Uremic Syndrome**

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11. *Escherichia coli* is 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.
 12. *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.
 13. 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

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

3
4 14. The mean incubation period (time from ingestion to the onset of symptoms) of
5 *E. coli* O157:H7 is estimated to be two to four days (range, 1–21 days).
6 Typically, a patient with an acute *E. coli* O157:H7 infection presents with
7 abdominal cramps, bloody diarrhea, and vomiting. The duration of diarrhea in
8 children with *E. coli* O157:H7 infections are significantly longer than that of
9 adults.
10

11 15. *E. coli* O157:H7 can produce a wide spectrum of disease from mild, non-
12 bloody diarrhea, to severe bloody diarrhea accompanied by excruciating
13 abdominal pain to life-threatening complications. In most infected individuals,
14 the intestinal illness lasts about a week and resolves without any long-term
15 effects. Antibiotics do not appear to aid in combating these infections, and
16 recent medical studies suggest that antibiotics are contraindicated for their
17 risk of provoking more serious complications. Apart from good supportive
18 care, which should include close attention to hydration and nutrition, there is
19 no specific therapy.
20

21
22 16. About 10% of individuals with *E. coli* O157:H7 infections (mostly young
23 children) go on to develop hemolytic uremic syndrome (HUS), a severe,
24 potentially life-threatening complication. The essence of the syndrome is
25 described by its three central features: destruction of red blood cells,
26 destruction of platelets (those blood cells responsible for clotting), and acute
27
28

1 renal failure due to the formation of micro-thrombi that occlude microscopic
2 blood vessels that make up the filtering units within the kidneys.

3
4 17. There is no known therapy to halt the progression of HUS. The active stage
5 of the disease usually lasts one to two weeks, during which a variety of
6 complications are possible. HUS is a frightening illness that even in the best
7 American medical facilities has a mortality rate of about 5%. The majority of
8 HUS patients require transfusion of blood products and develop complications
9 common to the critically ill.
10

11 **Rosalie Styles' Injuries**

12 18. On or about March 23, 2018, Rosalie consumed romaine lettuce from the
13 Yuma, Arizona growing region in a Caesar salad at the Red Lobster
14 restaurant located at 7921 W. Bell Road, Peoria, Arizona 85382. The
15 romaine lettuce was contaminated by *E. coli* O157:H7 bacteria, leading to
16 Rosalie's *E. coli* O157:H7 infection and related injuries.
17

18 19. Rosalie began feeling ill around March 29, 2018. She experienced nausea,
19 abdominal cramps, fatigue and bloody diarrhea, culminating in her admittance
20 to Abrazo Arrowhead Campus on March 30, 2018.
21

22 20. Rosalie remained hospitalized until April 2, 2018. During her hospitalization,
23 she submitted a stool sample that tested positive for *E. coli* O157:H7.
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25 21. Rosalie's recovery continues as of the date of this *Complaint*.
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CAUSES OF ACTION

COUNT I
BREACH OF WARRANTY

- 1
- 2
- 3
- 4 22. Plaintiff incorporates by reference and make a part of this count each and every
- 5 foregoing paragraph of this *Complaint*.
- 6
- 7 23. Defendant produced, distributed, and sold the contaminated food product that
- 8 injured the Plaintiff, and caused her *E. coli* O157:H7 infection. The Defendant
- 9 is, therefore, a manufacturer, distributor, and seller of an adulterated food
- 10 product, and the adulterated food product reached the Plaintiff without
- 11 substantial change from the condition in which it was sold by the Defendant.
- 12
- 13 24. The Defendant is subject to liability to the Plaintiff for its breaches of express
- 14 and implied warranties made to the Plaintiff with respect to the food product sold
- 15 to her, including the implied warranties of merchantability and of fitness for a
- 16 particular use. Further, the Defendant expressly warranted, through its sale of
- 17 food to the public, and by the statements and conduct of its employees and
- 18 agents, that the food product ultimately sold to the Plaintiff was fit for human
- 19 consumption, and not otherwise adulterated or injurious to health.
- 20
- 21 25. The food product sold by the Defendant and ultimately consumed by Plaintiff,
- 22 which product was contaminated with *E. coli* O157:H7 and related filth and
- 23 adulteration, would not pass without exception in the trade, and was thus in
- 24 breach of the implied warranty of merchantability.
- 25
- 26 26. The Plaintiff further alleges that the contaminated food sold by the Defendant
- 27 and consumed by the Plaintiff was not fit for the uses and purposes intended by
- 28

1 either the Plaintiff or the Defendant, *i.e.*, human consumption, and that this
2 product was therefore in breach of the implied warranty of fitness for its
3 intended use.

4
5 27. As a further direct and proximate result of the conduct of Defendant and its
6 agents, servants, and/or employees as aforesaid, Plaintiff suffered an *E. coli*
7 O157:H7 infection and the adverse effects associated with the same, as
8 described in previous paragraphs of this complaint.

9
10 28. As a further direct and proximate result of the conduct of Defendant and its
11 agents, servants, and/or employees, Plaintiff was forced to endure great pain,
12 suffering, and inconvenience and may endure the same in the future. She was
13 forced to submit to medical, medicinal, and therapeutic care and may be forced
14 to submit to the same in the future.

15
16 29. As a further direct and proximate result of the conduct of Defendants and its
17 agents, servants, and/or employees, Plaintiff suffered an inability to perform the
18 activities of daily living or some of them.

19
20 30. As a further direct and proximate result of the conduct of Defendant and its
21 agents, servants, and/or employees, Plaintiff was forced to expend sums of
22 money for doctors, hospitals, and/or other items necessary for his proper care
23 and treatment.

24
25 **COUNT II**
26 **STRICT LIABILITY**

27 31. Plaintiff incorporates by reference and makes a part of this Count each and
28 every foregoing paragraph of this *Complaint*.

1 32. The Defendant owed a duty to the Plaintiff to manufacture and sell only food
2 that was not adulterated, was fit for human consumption, was reasonably safe
3 in construction, and was free of pathogenic bacteria or other substances
4 injurious to human health. The Defendant breached this duty.
5

6 33. The Defendant owed a duty to the Plaintiff to provide adequate warnings about
7 the non-obvious danger of its food products, including warnings and instructions
8 indicating that the food might contain pathogenic bacteria, including *E. coli*
9 O157:H7. The Defendant breached this duty.
10

11 34. The Defendant owed a duty to the Plaintiff to prepare, serve, and sell food that
12 was fit for human consumption, and that was safe to the extent contemplated by
13 a reasonable and ordinary consumer. The Defendant breached this duty.
14

15 35. Because the food that the Plaintiff purchased and consumed was adulterated,
16 not fit for human consumption, not reasonably safe in design and construction,
17 lacked adequate warnings and instructions, and was unsafe to an extent
18 beyond that contemplated by the ordinary consumer, the Defendant is liable to
19 the Plaintiff for the harm proximately caused to the him by its manufacture and
20 sale of contaminated and adulterated food products, and as such the Defendant
21 is strictly liable to the Plaintiff for such harm.
22

23
24 **COUNT III**
NEGLIGENCE

25 36. Plaintiff incorporates by reference and makes a part of this Count each and
26 every foregoing paragraph of this *Complaint*.
27
28

1 37. The Defendant had a duty to comply with all statutory and regulatory provisions
2 that pertained or applied to the manufacture, distribution, storage, labeling, and
3 sale of the food products that injured Plaintiff, including the applicable
4 provisions of the Federal Food, Drug and Cosmetic Act, and similar Arizona
5 food and public health statutes, including without limitation the provisions of the
6 Arizona Revised Statutes §§36-902, 36-904, all of which prohibit the
7 manufacture and sale of any food that is adulterated, or otherwise injurious to
8 health.
9
10

11 38. The food product that Defendant manufactured and sold, and that the Plaintiff
12 purchased and consumed, was adulterated within the meaning of the federal
13 Food, Drug and Cosmetic Act, and similar Arizona statutes, because it
14 contained a deleterious substance that rendered it injurious to health, *i.e.*, *E. coli*
15 O157:H7 bacteria.
16

17 39. The Defendant violated federal, state, and local food safety regulations by its
18 manufacture and sale of adulterated food. These federal, state, and local food
19 safety regulations are applicable here, and establish a positive and definite
20 standard of care in the manufacture and sale of food. The violation of these
21 regulations constitutes negligence as a matter of law.
22

23 40. The Plaintiff is in the class of persons intended to be protected by these statutes
24 and regulations, and Plaintiff was injured as the direct and proximate result of
25 the Defendant's violation of applicable federal, state, and local food safety
26 regulations.
27
28

1 41. The Defendant was negligent in the manufacture, distribution, and sale of a food
2 product that was adulterated with *E. coli* O157:H7, not fit for human
3 consumption, and not reasonably safe because adequate warnings or
4 instructions were not provided.
5

6 42. Once the Defendant learned, or in the exercise of reasonable care should have
7 learned, of the dangers associated with preparing and selling food, including,
8 but not limited to, cross-contamination between foods, and the dangers
9 associated with improperly cleaned or washed food, it had a duty to warn the
10 Plaintiff, but failed to do so.
11

12 43. The Defendant had a duty to use supplies and raw materials in producing its
13 food products that were in compliance with applicable federal, state, and local
14 laws, ordinances and regulations; that were from reliable sources; and that were
15 clean, wholesome, free from adulteration and fit for human consumption, but
16 failed to do so, and therefore breached that duty.
17

18 44. The Defendant was negligent in the selection of its suppliers, or other agents or
19 subcontractors, and failed to adequately supervise them, or provide them with
20 adequate standards, and, as a result, produced and sold food that was
21 adulterated with *E. coli* O157:H7.
22

23 45. The Defendant had a duty to properly supervise, train, and monitor its
24 employees, or the employees of its agents or subcontractors, engaged in the
25 preparation and sale of its food products, to ensure compliance with the
26 Defendant's operating standards and to ensure compliance with all applicable
27 health regulations. The Defendant failed to properly supervise, train, and
28

1 monitor these employees engaged in the manufacture, preparation and
2 delivery of the food product ultimately sold to the Plaintiff, and thus breached
3 that duty.
4

5 **PRAYER FOR RELIEF**

6 **WHEREFORE**, Plaintiff prays for the following relief:

- 7
- 8 1. That the Court award Plaintiff judgment against Defendant, in such sums
9 as shall be determined to fully and fairly compensate the Plaintiff for all
10 general, special, incidental and consequential damages incurred, or to be
11 incurred, as the direct and proximate result of the acts and omissions of
12 Defendant, in an amount to be proven at trial.
 - 13 2. That the Court award Plaintiff her costs, disbursements and reasonable
14 attorneys' fees incurred.
 - 15 3. That the Court award such other and further relief as it deems necessary
16 and proper in the circumstances.

17 **JURY DEMAND**

18 Plaintiff demands a trial by jury on all issues so triable with the maximum
19 number of jurors permitted by law.

20 RESPECTFULLY SUBMITTED this 2nd day of May 2018.

21 **O'STEEN & HARRISON, PLC**

22 

23 _____
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27 **MARLER CLARK, L.L.P., P.S.**
28 William D. Marler

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of May 2018, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing.

/s/ Jonathan V. O'Steen

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