

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

AMRITA DRUMMOND, A MINOR CHILD,
ALMAH-LUCE DRUMMOND, A MINOR
CHILD, AND, **SARAH DRUMMOND** A
MINOR CHILD, BY AND THROUGH THEIR
PARENTS, **ROGER DRUMMOND** AND
LAURA SNIDER
13555 Mitchell Road
Bowling Green, OH 43402

AND

ROGER DRUMMOND
13555 Mitchell Road
Bowling Green, OH 43402

AND

LAURA SNIDER
13555 Mitchell Road
Bowling Green, OH 43402

Plaintiffs,

v.

NATURAL SELECTION FOODS, LLC,
A CALIFORNIA CORPORATION

AND

**NATURAL SELECTION FOODS
MANUFACTURING, LLC**
A CALIFORNIA CORPORATION,

Defendants.

CASE NO.

JUDGE

**COMPLAINT WITH JURY DEMAND
ENDORSED THEREON**

David W. Zoll (0008548)
Michelle L. Kranz (0062479)
Pamela A. Borgess (0072789)
Zoll & Kranz, LLC
6620 W. Central Ave., Suite 200
Toledo, OH 43617
(419) 841-9623
Fax: (419) 841-9719
Email: david@toledolaw.com
michelle@toledolaw.com
pamela@toledolaw.com

Come now the Plaintiffs, Sarah Drummond, Almah-Luce Drummond and Amrita Drummond, minor children, by and through their parents, and their parents, Roger Drummond and Laura Snider, individually and in their representative capacities, all by and through their attorneys of record, the law firm of Zoll & Kranz, LLC, and allege as follows:

PARTIES

9. The Plaintiffs are residents of Wood County, Ohio. The Plaintiffs reside within the jurisdiction of this Court.

10. The Defendant Natural Selection Foods, LLC, is a corporation organized and existing under the laws of the State of California, with its principal place of business, on information and belief, in the State of California. The Defendant Natural Selection Foods, LLC, is, therefore, a foreign corporation and not a resident of the State of Ohio. Further, the Defendant Natural Selection Foods, LLC is authorized to do, and in fact does, business in the State of Ohio.

11. The Defendant Natural Selection Foods Manufacturing, LLC, is a corporation organized and existing under the laws of the State of California, with its principal place of business, on information and belief, in the State of California. The Defendant Natural Selection Foods Manufacturing, LLC is, therefore, a foreign corporation and not a resident of the State of Ohio. Further, the Defendant, Natural Foods Manufacturing, LLC, (Defendants Natural Selection Foods, LLC, and Natural Selection Foods Manufacturing, LLC, will hereinafter be referred to, collectively, as “Natural Selection”) is authorized do to, and in fact does, business in the State of Ohio.

JURISDICTION AND VENUE

12. This Court has jurisdiction over the subject matter of this action pursuant to 28 USC §1332(a) because the matter in controversy exceeds seventy-five thousand dollars (\$75,000.00), exclusive of costs, it is between citizens of different states, and because the Defendants each have certain minimum contacts with the State of Ohio such that the maintenance of the suit in this district does not offend traditional notions of fair play and substantial justice.

13. Venue in the United States District Court for the Northern District of Ohio is proper pursuant to 28 USC §1391(a)(2) because a substantial part of the events or omissions giving rise to the Plaintiffs' claims and causes of action occurred in this judicial district, and because the Defendants, Natural Selection were subject to personal jurisdiction in this judicial district at the time of the commencement of the action.

GENERAL ALLEGATIONS – THE OUTBREAK

14. *E. coli* 0157:H7 outbreaks associated with lettuce or spinach, specifically the “pre-washed” and “ready-to-eat” varieties sold under various brand and trade names, are by no means a new phenomenon. In October 2003, 13 residents of a California retirement center were sickened and 2 died after eating *e. coli*-contaminated “pre-washed” spinach. In September 2003, nearly 40 patrons of a California restaurant chain became ill after eating salads prepared with bagged, “pre-washed” lettuce. In July 2002, over 50 young women were stricken with *e. coli* at a dance camp after eating “pre-washed” lettuce, leaving several hospitalized and one with life-long kidney damage. The Center for Science in the Public Interest found that of the 225 food-poisoning outbreaks

from 1990 to 1998, nearly 20 percent (55 outbreaks) were linked to fresh fruits, vegetables or salads.

11. In June 2004, the California Department of Health Services, Food and Drug Branch (CDHS-FDB) initiated a multi-agency, collaborative research project focused on identifying the environmental reservoirs for *Escherichia coli* 0157:H7, and an understanding of contamination of ready-to-eat produce, specifically lettuce and leafy greens. Its preliminary report presented at the August 2005 annual meeting of the International Assoc. for Food Protection, indicated that *Escherichia coli* 0157:H7 was isolated from sediment in an irrigation canal bordering a ranch which had been identified in three separate outbreaks as the source. Expanded sampling in the Salinas Valley area indicated periodic contamination with *Escherichia coli* 0157:H7 in the Salinas watershed.

12. After at least 18 outbreaks of *Escherichia coli* 0157:H7 since 1995 where fresh or fresh-cut lettuce or leafy greens were identified as the mechanism for the outbreak, on November 4, 2005 the U.S. Food and Drug Administration, Center for Food Safety and Applied Nutrition sent a letter to California Firms, including the Defendants, that grow, pack, process, or ship fresh and fresh-cut lettuce and other leafy greens. The purpose of said letter was to emphasize the risks of food borne illnesses within the industry, including but not limited to eight outbreaks associated with lettuce and spinach, which were traced back to growers in the Salinas, California area.

13. On January 25, 2006, the State of California, Health and Human Services Agency, Department of Health Services issued a letter to the Western Growers Association again referencing the outbreaks and illnesses associated with growers in the Salinas area, particularly those related to *e. coli* 0157:H7 outbreaks.

14. The letters indicated four separate areas in which immediate steps were recommended to be implemented, addressing issues related to current manure composting regulations, adequacy and enforcement of local, regional, and state environmental statutes and regulations addressing issues related to septic tank systems that may leak and/or flow into agricultural ditches or creeks bordering fields used for growing ready-to-eat produce, enforcement of state and federal statutes regarding farm worker access to portable toilets and hand washing facilities; assessment of locations of fields known for frequent flooding, and prohibitions against future planting in these areas, and the need for additional statutes and/or regulations such as mandatory Good Agricultural Practices and/or mandatory Hazardous Analysis Critical Control Point for fresh-cut produce processors.

THE INJURIES

15. Plaintiff Roger Drummond regularly purchased packages of Earthbound Farm® brand Organic Baby Spinach Salad (herein “Product”) from a Kroger grocery store in Bowling Green, Ohio, for consumption by his family. The family consumed the spinach at their home in August, 2006. The Product was a regular staple of the family’s meals.

16. The family’s gastrointestinal symptoms began August 31, 2006 when Sarah suffered severe abdominal cramps. Almah-Luce and Roger developed symptoms, including stomach cramping and headaches, on September 5, 2006. Laura developed diarrhea, cramping and headache on September 6, 2006. Symptoms for the family members included frequent diarrhea, abdominal cramping, and general malaise.

17. On September 4, 2006 Amrita, who was born March 28, 2005, started to act sickly. On September 7, 2006, Amrita developed bloody stools and was taken to the doctor. Her parents took her back to the doctor again on September 8, 2006.

18. On September 9, 2006, as her symptoms became worse, Amrita was rushed to Wood County Hospital. She was transferred to St. Vincent's Hospital in Toledo, Ohio on September 10, 2006, where she was admitted.

19. By September 10th Amrita had become severely ill. Tests performed by St. Vincent's showed that she had developed *e. coli* and the Wood County Health Department was so notified on September 12, 2006.

20. Thereafter tests established that Amrita suffered from hemolytic uremic syndrome, an often lethal condition commonly associated with *e. coli* 0157:H7.

21. Subsequent tests by the Ohio Health Department have established that Amrita suffered from *e. coli* 0157:H7, a specific and highly virulent strain of *e. coli*.

22. Testing has established that the strain of *e. coli* 0157:H7, which infected Amrita, originated in the products of the Defendant.

23. The products of the Defendant caused and have been implicated in a nationwide outbreak of *e. coli* 0157:H7.

24. This outbreak has, to date, been confirmed as causing harm to 175 people in 25 states.

25. The FDA, working closely with Center for Disease Control and the State of California, determined that the spinach implicated in the outbreak was grown in three counties: Monterey, San Benito and Santa Clara in California.

26. Defendants voluntarily recalled the Product on September 15, 2006.

27. The Product of the Defendants that caused Plaintiffs' illness was grown and packaged in the Salinas Valley, the location of the products implicated in the Outbreak, and was contaminated by *e.coli* as further described herein, by the Defendants.

28. The Defendants were the grower, harvester, packager and distributor of the Product.

29. Defendants had actual knowledge of the risk of adulteration of its products with *e. coli* 0157:H7, but failed to take reasonable steps to prevent such adulteration.

CAUSES OF ACTION – STRICT LIABILITY – COUNT I

30. Plaintiffs incorporate all of the allegations of the Complaint as if fully rewritten herein.

31. At all times relevant hereto, the Defendants were manufacturers and sellers of the adulterated food Product that is the subject of this action.

32. The Product that the Defendants manufactured, distributed, and/or sold was, at the time it left the Defendants' control, defective and unreasonably dangerous for its ordinary and expected use because it contained *e. coli* 0157:H7, a deadly pathogen.

33. The adulterated food Product that the Defendants manufactured, distributed, and/or sold was delivered to the Plaintiffs without any change in its defective condition. The adulterated food product that the Defendants manufactured, distributed and/or sold was used in the manner expected and intended, and was consumed by Plaintiffs Sarah Drummond, Almah-Luce Drummond, Amrita Drummond, Roger Drummond and Laura Snider.

34. The Defendants owed a duty of care to the Plaintiffs to design, manufacture, and/or sell food that was not adulterated that were fit for human

consumption, that was reasonably safe in construction, and that was free of pathogenic bacteria or other substances injurious to human health. The Defendants breached this duty.

35. The Defendants owed a duty of care to the Plaintiffs to design, prepare, serve, and sell food that was fit for human consumption, and that was safe to the extent contemplated by a reasonable consumer. The Defendants breached this duty.

36. Plaintiffs suffered injury and damages as a direct and proximate result of the defective and unreasonably dangerous condition of the adulterated food product that the Defendants manufactured, distributed, and/or sold.

BREACH OF WARRANTY – COUNT II

37. Plaintiffs incorporate all of the allegations of the Complaint as if fully rewritten herein.

38. The Defendants are liable to the Plaintiffs for breaching express and implied warranties that they made regarding adulterated product that the Plaintiffs purchased. These express and implied warranties included the implied warranties of merchantability and/or fitness for a particular use. Specifically, the Defendants expressly warranted, through their sale of food to the public and by the statements and conduct of their employees and agents, that the food that they prepared and sold was fit for human consumption and not otherwise adulterated or injurious to health.

39. Plaintiffs allege that the *e. coli*-contaminated food that the Defendants sold to Plaintiffs would not pass without exception in the trade and was therefore in breach of the implied warranty of merchantability.

40. Plaintiffs allege that the *e. coli*-contaminated food that the Defendants sold to Plaintiffs was not fit for the uses and purposes intended, *i.e.* human consumption, and that this product was therefore in breach of the implied warranty of fitness for its intended use.

41. As a direct and proximate cause of the Defendants' breach of warranties, as set forth above, the Plaintiffs sustained injuries and damages in an amount to be determined at trial.

BREACH OF WARRANTY – ADDITIONAL EXPRESS WARRANTIES– COUNT III

42. Plaintiffs incorporate all of the allegations of the Complaint as if fully rewritten herein.

43. The Defendants are liable to the Plaintiffs for breaching express warranties that they made regarding adulterated product that the Plaintiffs purchased.

44. The Defendants expressly warranted that the product was “Washed and Ready to Use.”

45. The Defendants expressly warranted that the product was “USDA Organic”, that it was grown “using farming methods that replenish the soil, protect our air and water, and preserve precious natural resources.”

46. The Defendants further warranted that the Product was “the healthiest choice for you and the planet.”

47. The Defendants further warranted that the Product was of the highest quality, that the water used by it in growing, harvesting, packing, washing and distributing its products was safe and free of bacterial contamination.

48. The Defendants further expressly warranted that the Product was safe and free from contamination.

49. The Defendants further warranted that the Product was grown, packaged and distributed in accordance with Qualified Through Verification Level One Rating, in accordance with Good Agricultural Practices and Good Manufacturing Practices, and was subjected to rigorous and regular quality control.

50. Plaintiffs allege that the *e. coli*-contaminated food that the Defendants sold to Plaintiffs was not fit for the uses and purposes intended, *i.e.* human consumption, and that this product was therefore in breach of the express warranty of fitness for its intended use.

51. On October 21, 2000, the National Organic Program (NOP) Standards adopted by the U.S. Department of Agriculture (USDA) went into effect. The NOP standards define farming, production and certification practices for foods bearing an organic label which are sold in the United States. In order to obtain Organic Certification, the strictest organic production and handling standards must be implemented and complied with. Natural Selection/Earthbound Farms has obtained Organic Certification, and thereby agreed to adhere to the NOP Standards.

52. Upon information and belief, Natural Selection/Earthbound Farms knew or should have known that periodic contamination of its products by *Escherichia coli* 0157:H7 was occurring, and should have taken additional steps to minimize the risks associated and the dangers to the consumers.

53. Upon information and belief, Natural Selection/Earthbound Farms failed to take adequate steps to prevent the periodic contamination.

54. The Defendants breached each and every warranty made by it concerning its compliance with its certifications, labels, warranties and representations.

55. As a direct and proximate cause of the Defendants' breach of warranties, as set forth above, the Plaintiffs sustained injuries and damages in an amount to be determined at trial.

NEGLIGENCE – COUNT IV

56. Plaintiffs incorporate all of the allegations of the Complaint as if fully rewritten herein.

57. The Defendants owed to the Plaintiffs a duty to use reasonable care in the manufacture, distribution, and sale of their food product, the breach of which duty would have prevented or eliminated the risk that the Defendants' food products would become contaminated with *e. coli* 0157:H7 or any other dangerous pathogen. The Defendants breached this duty.

58. The Defendants had a duty to comply with all statutes, laws, regulations, or safety codes pertaining to the manufacture, distribution, storage, and sale of their food product, but failed to do so, and were therefore negligent. The Plaintiffs are 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.

59. The Defendants had a duty to properly supervise, train, and monitor their respective employees, and to ensure their respective employees' compliance with all applicable statutes, laws, regulations, or safety codes pertaining to the manufacture,

distribution, storage and sale of similar food products, but the Defendants failed to do so and were therefore negligent.

60. The Defendants 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, but the Defendants failed to do so and were therefore negligent.

61. The Defendants had a duty to engage in Good Agricultural Practices and Good Manufacturing Practices to keep its products from contamination, but the Defendants failed to do so and were therefore negligent.

62. The Defendants had a duty to warn consumers of the potential for e.coli infection from its Products, but failed to do so and were therefore negligent.

63. The Defendants breached each of the duties alleged herein.

64. As a result and proximate result of the Defendants' acts and omissions of negligence, the Plaintiffs sustained injuries and damages in an amount to be determine at trial.

NEGLIGENCE PER SE – COUNT V

65. Plaintiffs incorporate all of the allegations of the Complaint as if fully rewritten herein.

66. The Defendants had a duty to comply with all applicable state and federal regulations intended to ensure the purity and safety of their food product, including the requirements of the Federal Food, Drug and Cosmetics Act (21 U.S.C. §301 *et seq.*).

67. The Defendants failed to comply with the provisions of the health and safety acts identification above, and, as a result, were negligent *per se* in their manufacture, distribution, and sale of food adulterated with *e. Coli* 0157:H7, a deathly pathogen.

68. As a direct and proximate result of conduct by the Defendants that was negligent *per se*, the Plaintiffs sustained injury and damages in an amount to be determined at trial.

COMPENSATORY DAMAGES

69. The Plaintiffs have suffered general, special incidental, and consequential damages as the direct and proximate result of the acts and omissions of the Defendants, 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; travel and travel-related expenses, past and future; lost wages and impaired earnings, 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.

PUNITIVE DAMAGES

70. The actions and inactions of the Defendants, as alleged herein, which caused the illness of the Plaintiffs, were willful, wanton, reckless, and occurred in light of the actual knowledge of Defendants that serious harm or death was substantially likely to occur.

71. The Defendants made express warranties of safety and fitness when they in fact knew that such express warranties were patently false.

72. As a result of such misconduct the Plaintiffs are entitled to Punitive Damages, in an amount to be assessed by the Jury.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs pray for judgment against the Defendants as follows:

- A. Ordering compensation for all general, special, incidental, and consequential damages suffered by the Plaintiffs as a result of the Defendants' conduct, in an amount to be determined by the jury but exceeding \$100,000.00;
- B. Awarding Plaintiffs punitive damages to punish the Defendants for their willful, wanton and reckless behavior;
- C. Awarding Plaintiffs their reasonable attorneys fees, expenses and costs, to the fullest extent allowed by law; and
- D. Granting all such additional and/or further relief as this Court and the Jury deem just and equitable.

DATED: September 26, 2006.

/s/ David W. Zoll
David W. Zoll

/s/ Michelle L. Kranz
Michelle L. Kranz
Zoll and Kranz, LLC
Attorneys for Plaintiffs

JURY DEMAND

The Plaintiffs hereby demand a jury trial.

/s/ David W. Zoll
David W. Zoll