

CAUSE NO. 2021CI21491

CHING-YI ORTIZ
INDIVIDUALLY AND AS
NEXT FRIEND OF A.O.

Plaintiff,

VS.

SUCCESS FOODS
MANAGEMENT GROUP,
LLC D/B/A TORCHY'S
TACOS AND PROSOURCE
PRODUCE, LLC

Defendants.

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IN THE DISTRICT COURT OF

BEXAR COUNTY, TEXAS

288TH JUDICIAL DISTRICT

**PLAINTIFF'S FIRST AMENDED PETITION
AND REQUESTS FOR DISCLOSURE**

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff Ching-yi Ortiz, individually and as next friend of A.O., file this first amended Petition and Requests for Disclosure complaining of Defendants, Success Foods Management Group, LLC d/b/a Torchy's Tacos and ProSource Produce, LLC (hereinafter referred to as "Torchy's" and "ProSource" or "Defendants"), and would respectfully show the Court as follows:

**I.
DISCOVERY CONTROL PLAN**

1.1 Consistent with the requirements of TEX. R. CIV. P. 190.4, Plaintiff

intends to conduct discovery under Level 3 and plead that this action is not governed by the expedited actions process in TEX R. CIV. P. 269, as Plaintiff seeks monetary recovery over \$200,000. Plaintiff will seek an agreed Order or other Court Order to this effect.

II. PARTIES

2.1 Plaintiff Ching-yi Ortiz is a citizen and resident of Bexar County, Texas and was a citizen and resident of Bexar County, Texas always relevant to this suit. She is bringing her individual claims for personal injury on behalf of her minor son A.O.

2.2 Defendant, Success Foods Management Group, LLC d/b/a/ Torchy's Tacos, is a domestic for-profit limited liability company with its principal place of business in Austin, Texas organized and existing under the laws of the State of Texas. Additionally, Success Foods Management Group, LLC has a corporate office in the State of Texas, maintains a registered agent for service of process in Texas, actively conducts business in Texas, and in fact, this action arises from Success Foods Management Group, LLC's conduct in Texas. At all times relevant hereto, Success Foods Management Group, LLC d/b/a Torchy's Tacos was a manufacturer, distributor, and seller of contaminated food products in Texas. Defendant may be served with process with its registered agent, Corporation Service Company d/b/a CSC Lawyers Inco, located at 211 E. 7th Street, Suite 620, Austin, Texas 78701.

Citation hereby requested.

2.1 Defendant, ProSource Produce, LLC, is a domestic, for-profit limited liability company with its principal place of business in Hailey, Idaho, organized and existing under the laws of the State of Idaho. ProSource Produce, LLC actively conducts business in Texas, and in fact, this action arises from ProSource Produce, LLC's conduct in Texas. At all times relevant hereto, ProSource Produce, LLC was a distributor and seller of contaminated food products to restaurants in Texas, including Defendant Success Foods Management Group, LLC. Defendant may be served with process at its headquarters located at 109 S. Main Street, Hailey, ID 83333. **Citation hereby requested.**

III. JURISDICTION AND VENUE

3.1 The amount in controversy far exceeds the minimal jurisdictional limits of this Court, and damages exceed \$1,000,000.

3.2 Venue is proper in Bexar County, Texas, pursuant to Texas Civil Practice and Remedies Code § 15.002(a)(1) because it is the County in which all or a substantial part of the events or omissions giving rise to the Plaintiff's causes-of-action occurred.

3.3 Plaintiff expressly disavows any claims are being made pursuant to federal law, treaties, or constitution. Although the amount in controversy exceeds \$75,000, there is a lack of complete diversity because the Plaintiff and at least one Defendant are citizens of Texas. Further, Defendant Success Foods Management Group, LLC is properly joined, served, and is a citizen

of the State of Texas, in which this action is brought. Therefore, any removal, or consent to removal, of this case to Federal Court would be improper.

3.4 The Court has general and specific personal jurisdiction over Defendants because they have sufficient contacts, generally and regarding this specific action, such that the exercise of jurisdiction over them is proper and does not offend traditional notions of fair play and substantial justice. Defendants conduct and solicit business in Texas, derive substantial revenues and profits from their business in Texas, purposely direct their activities towards Texas and its residents, and purposely avail themselves of the privilege of conducting business in Texas.

IV. GENERAL ALLEGATIONS OF FACTS

A. The Outbreak

4.1 As of September 29, 2021, 652 people from 37 have been reported as confirmed cases in an ongoing outbreak of *Salmonella* Oranienburg, including 158 cases in Texas, linked to whole fresh onions.

4.2 Illnesses so far have onset dates between June 19, 2021, and September 14, 2021, with sick people ranging from less than 1 year to 97 years, and a median age of 37.

4.3 129 people have been hospitalized nationwide, so far resulting in no deaths.

4.4 The CDC and public health officials have conducted 193 interviews to determine what people ate before they were ill. Seventy-five

percent (145) of individuals with information reported eating or maybe eating raw onion, or dishes likely containing raw onion before they became sick.

4.5 The FDA conducted a traceback investigation and identified ProSource Inc. as a common supplier of imported onions to many of the restaurants where sick people ate, including one restaurant where investigators identified the outbreak strain in a condiment cup that reportedly had contained onions.

B. The *Salmonella* Bacteria

4.6 *Salmonella* is the second most common intestinal infection in the United States. More than 7,000 cases of *Salmonella* were confirmed in 2009; however, most cases go unreported. The Centers for Disease Control and Prevention estimates that over 1 million people in the U.S. contract *Salmonella* each year, and that an average of 20,000 hospitalizations and almost 400 deaths occur from *Salmonella* poisoning, according to a 2011 report.

4.7 *Salmonella* infection usually occurs when a person eats food contaminated with the feces of animals or humans carrying the bacteria. *Salmonella* outbreaks are commonly associated with eggs, meat, and poultry, but these bacteria can also contaminate other foods such as fruits and vegetables. Foods that are most likely to contain *Salmonella* include raw or undercooked eggs, raw milk, contaminated water, and raw or undercooked

meats.

4.8 Symptoms of *Salmonella* infection, or Salmonellosis, range widely, and are sometimes absent altogether. The most common symptoms include diarrhea, abdominal cramps, and fever.

4.9 Typical Symptoms of *Salmonella* infection, which appear 6 to 72 hours after eating contaminated food and last for 3 to 7 days without treatment, include:

- Diarrhea
- Abdominal Cramps
- Fever of 100 F to 102 F
- Bloody diarrhea
- Vomiting
- Headache
- Body Aches

4.10 Complications of *Salmonella* poisoning are more likely to occur among young children and people aged 65 or older. Possible complications like Reactive Arthritis are thought to occur in 2 to 15 percent of *Salmonella* patients. Symptoms include inflammation of the joints, eyes, or reproductive or urinary organs. On average, symptoms appear 18 days after infection. Irritable Bowel Syndrome can also be a long-term complication.

4.11 *Salmonella* infections generally last 3 to 7 days, and often do not require treatment. People with severe dehydration may need rehydration through an IV. Antibiotics are recommended for those at risk of invasive disease, including infants under three months old. Typhoid fever, which is an acute illness associated with the fever caused by *Salmonella*, can be treated

with a 14-day course of antibiotics. Unfortunately, treatment of *Salmonella* has become more difficult as it has become more resistant to antibiotics. Finding the right antibiotic for a case of *Salmonella* is crucial to treating this bacterial infection.

C. A.O.'s *Salmonella* Infection and Illness

4.12 On or about August 21, 2021, A.O. ate dinner at the Torchy's Tacos located at 18210 Sonterra Pl, San Antonio, TX 78258.

4.13 On August 27, he began to experience exhaustion and a headache. His symptoms progressed over the next ten days with increasing intensity. He developed a fever, diarrhea, and intense pain in his lower back.

4.14 A.O. was taken to the Prestige Emergency Room on September 3, 2021, but an examination failed to yield a diagnosis.

4.15 On or about September 7, 2021, A.O. was in such intense pain he could not walk or sit up, and he was taken to the Methodist Children's Hospital where he received treatment for complications from his *Salmonella* Oranienburg infection in the Pediatric Intensive Care Unit.

4.16 The infection caused A.O. to develop sepsis, organ failure, pneumonia, acidosis, thrombocytopenia, a pericardial effusion, interstitial emphysema, and caused A.O. extreme pain when it reached the bones around his sacroiliac joint.

4.17 A.O. continues to be treated daily with long term IV antibiotics for *Salmonella* Oranienburg, which was found in his blood, urine, and stool,

as well as several other medications to address his related complications.

V. STRICT LIABILITY

5.1 The food product at issue in this suit was designed, manufactured, constructed, marketed and/or distributed by and through Defendants.

5.2 The food product in question remained unchanged from the time it was originally manufactured, distributed, and sold by Defendants until it reached A.O. The product in question was defective and in an unreasonably dangerous condition when it left the hands of Defendants and always remained defective and unreasonably dangerous thereafter until it ultimately caused the Plaintiff's damages.

5.3 At the time the food product left control of the Defendants, it was defective and unreasonably dangerous in that it was not adequately manufactured or marketed to minimize the risk of injury or death.

5.4 The above unreasonably dangerous defects, among others, in the product in question were the proximate and producing cause of the Plaintiff's damages.

VI. NEGLIGENCE

6.1 Defendants owed a duty to the Plaintiff to take reasonable care to prevent the manufacture, distribution, and sale of food products contaminated with *Salmonella*, *E. Coli*, or other foodborne pathogens.

6.2 Defendants owed a duty to the Plaintiff to maintain their premises, equipment, and facilities, and supervise their employees, in a reasonable manner to prevent the contamination of the food products that they manufactured, distributed and/or sold by *Salmonella* Oranienburg.

6.3 Defendants breached these duties. The breach of these duties was the proximate cause of the Plaintiff's injuries.

VII. NEGLIGENCE PER SE

7.1 Defendants owed a duty to the Plaintiff to comply with all applicable laws and regulations relating to the manufacture, distribution, and sale of food, requiring that such food be free of pathogens, and unadulterated.

7.2 A.O. was among the class of persons, namely consumers, intended to be protected by laws related to the manufacture, distribution, and sale of food that was free from pathogens and unadulterated.

VIII. DAMAGES

8.1 As a result of their injuries, A.O. and Ortiz seek monetary damages to compensate them for the following elements of damage:

- (a) Reasonable and necessary medical care and expenses in the past;
- (b) Reasonable and necessary medical care and expenses that will, in reasonable probability, be incurred in the future;
- (c) Physical pain and suffering in the past;
- (d) Physical pain and suffering that will, in reasonable probability,

- be incurred in the future;
- (e) Physical impairment in the past;
 - (f) Physical impairment that will, in reasonable probability, be suffered in the future;
 - (g) Mental anguish in the past;
 - (h) Mental anguish that will, in reasonable probability, be suffered in the future;
 - (i) Disfigurement in the past;
 - (j) Disfigurement that will, in reasonable probability, be suffered in the future;
 - (k) Loss of wages and/or wage-earning capacity in the past; and
 - (l) Loss of wages and/or wage-earning capacity that will, in reasonable probability, be incurred in the future.

IX.
PRE-JUDGMENT AND POST-JUDGMENT INTEREST

9.1 Plaintiff seeks pre-judgment and post-judgment interest at the highest rate provided by law.

X.
RESERVATION OF RIGHTS

10.1 Plaintiff reserves the right to prove the amount of damages at trial. Plaintiff reserves the right to amend this petition and add additional counts and/or parties as discovery continues.

XI.
CONDITIONS PRECEDENT

11.1 Pursuant to Rule 54 of the Texas Rules of Civil Procedure, all conditions precedent to Plaintiff's rights to recover and Defendants' liability have been performed or have occurred.

XII.
JURY DEMAND

12.1 Plaintiff requests a trial by jury and have tendered the applicable fee.

XIII.
RULE 193.7 NOTICE

13.1 Pursuant to notice requirements of Rule 193.7 of the Texas Rules of Civil Procedure, Plaintiff intends to use all documents produced in response to written discovery in the trial of this cause.

XIV.
RULE 21(A) SERVICE

14.1 Plaintiff hereby gives notice that all service pursuant to Rule 21(a) or for any such purpose including discovery requests and responses should be directed to: bmarler@marlerclark.com and service@jahlawfirm.com

XV.
PRAYER

15.1 WHEREFORE, PREMISES CONSIDERED, the Plaintiff prays that Defendants be cited to appear and answer herein, that this cause be set down for trial before a jury, and that Plaintiff recover judgment of and from

Defendants for actual damages, in such amount as the evidence shows and the jury determines to be proper, together with pre-judgment interest and post-judgment interest, costs of suit, and such other and further relief which Plaintiff may show herself to be entitled, whether at law or in equity.

Dated this 21st day of October 2021.

Respectfully submitted,

HILL LAW FIRM



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