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

REBECCA PITT,

Plaintiff,

vs.

DWIGHT & LINFORD ENTERPRISES,
LLC, d/b/a JIMMY JOHN'S, a Utah limited
liability company

Defendants.

COMPLAINT
(JURY TRIAL DEMANDED)

(Tier 3)

Plaintiff REBECCA PITT (“plaintiff”) complains against Defendant Dwight & Linford Enterprises, L.L.C., d/b/a JIMMY JOHN’S (“Jimmy John’s”) as follows:

PARTIES

1. Rebecca Pitt is a resident of the State of Utah.
2. Jimmy John’s is a limited liability company organized and existing under the laws of the State of Utah, with its headquarters located 81 W 3300 S., STE B, Salt Lake City, Utah

84115. At all times relevant to this complaint, Jimmy John's owned and operated the Jimmy John's restaurant located at 3292 S. 1300 E. Suite 105, Salt Lake City, UT 84106.

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 LLC 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 I4,[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 counties. The sprouts were suspected to be the cause of the illnesses. On Dec. 21 that year Jimmy John Liataud, the owner of the franchised restaurant chain, requested that all franchisees remove all sprouts from the menu as a “precautionary” measure. On Dec. 23, the Centers for Disease Control 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 Dec. 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 I4,[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, 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 2008 in the entire USA. 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 seed 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.

REBECCA PITT’S E. COLI ILLNESS

17. The plaintiff, by and through this reference, hereby incorporates paragraphs nos. 1 through 13, above, as if fully set forth herein.

18. Rebecca Pitt resides in Salt Lake City, Utah.

19. On February 19, 2020, Rebecca consumed a Beach Club sandwich with sprouts (“the Sandwich”) purchased from the Jimmy John’s located at 3292 S. 1300 E., Suite 105, Salt Lake City, Utah.

20. On February 22, Rebecca began experiencing the onset of *E. coli* symptoms, including abdominal cramps, nausea, and diarrhea.

21. Rebecca visited her primary care physician on February 28, 2020, because her symptoms continued unabated. A stool sample was obtained during that visit which eventually tested positive for Shiga toxin-producing *E. coli*. The Salt Lake County Health Department subsequently contacted Rebecca about her diagnosis, symptoms, as well as her food history.

22. Rebecca continues to suffer from fatigue, nausea, diarrhea, abdominal cramping, headaches, and a significantly restricted diet.

FIRST CLAIM FOR RELIEF
(Strict Liability)

23. The plaintiff, by and through this reference, hereby incorporates paragraphs nos. 1 through 19, above, as if fully set forth herein.

24. Jimmy John's manufactured and sold the adulterated food product, i.e. the Sandwich, that is the subject of the action.

25. 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.

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

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

28. The plaintiff 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)

29. The plaintiff, by and through this reference, hereby incorporates paragraphs nos. 1 through 25, above, as if fully set forth herein.

30. Jimmy John's owed the plaintiff 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.

31. Jimmy John's breached this duty.

32. 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.

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

34. The plaintiff is 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.

35. 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.

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

37. 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.

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

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

THIRD CLAIM FOR RELIEF
(Negligence *Per Se*)

40. The plaintiff, by and through this reference, hereby incorporates paragraphs nos. 1 through 35, above, as if fully set forth herein.

41. 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.*).

42. 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.

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

DAMAGES

44. The plaintiff has 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; travel and travel-related expenses, past and future; emotional distress, past and future; pharmaceutical expenses, past and future; loss of consortium, 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

Plaintiff hereby demands a jury trial.

PRAYER FOR RELIEF

WHEREFORE, the plaintiff prays for judgment against Jimmy John's as follows:

- A. Ordering compensation for all general, special, incidental, and consequential damages suffered by the plaintiff as a result of the Jimmy John's conduct;
- B. Awarding the plaintiff her 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 15th day of April, 2020.

/s/ Dustin Lance

Dustin Lance
LANCE ANDREW, P.C.

William D. Marler
MARLER CLARK
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