

IN THE IOWA DISTRICT COURT FOR CERRO GORDO COUNTY

John L. Cookman,	:	LAW NO:
Plaintiffs,	:	
	:	PETITION AT LAW
	:	
vs.	:	(EXPEDITED CIVIL ACTION)
	:	
GROWERS EXPRESS LLC a/k/a	:	
GROWERS EXPRESS (DE) LLC,	:	
ELKHORN PACKING CO., LLC,	:	
WALMART, INC.,	:	
	:	
Defendants.	:	

COUNT I-GENERAL ALLEGATIONS

COMES NOW the Plaintiff, and for cause of action against the Defendants, states as follows:

1. At all times material hereto, Plaintiff John L. Cookman was a resident of Mitchell County, Iowa.
2. At all times material hereto, Defendant, GROWERS EXPRESS LLC a/k/a, GROWERS EXPRESS (DE) LLC, (GROWERS EXPRESS) was a foreign corporation doing business in Cerro Gordo County, Iowa.
3. At all times material hereto, Defendant, ELKHORN PACKING CO., LLC, (ELKHORN PACKING) was a foreign corporation doing business in Cerro Gordo County, Iowa.
4. At all times material hereto, Defendant, WALMART, INC., (WALMART) was a foreign corporation doing business in Cerro Gordo County, Iowa.
5. Defendant, GROWERS EXPRESS, is one of the largest suppliers of fresh vegetables in the nation.
6. Defendant, GROWERS EXPRESS, developed a growing model that migrates to different regions throughout the year growing primarily in California, Arizona and Mexico which

allows GROWERS EXPRESS to consistently grow and distribute 30-plus commodities on a year-round basis.

7. Defendant, GROWERS EXPRESS, contracted with Defendant, ELKHORN PACKING, to harvest and package its fresh vegetables including the head of Romaine lettuce which is the subject of this law suit.
8. Defendant, GROWERS EXPRESS, supplied a head of Romaine lettuce to WALMART in Mason City, Iowa, containing multiple small fish hooks that were discovered by a consumer on January 1, 2018.
9. Defendant, ELKHORN PACKING, is a leading custom harvester with operations in the Salinas Valley, Santa Maria, El Centro and Yuma regions.
10. Defendant, ELKHORN PACKING, expertise includes providing general field labor for harvesting of lettuces, cauliflower, broccoli and other vegetable crops, as well as providing labor for the Nursery, Floral and Vineyard industries.
11. Defendant, ELKHORN PACKING, harvested and packaged a head of Romaine lettuce containing multiple small fish hooks that ended up for sale at WALMART, in Mason City, Iowa.
12. Defendant, WALMART, operates over 11,300 retail units under 58 banners or names in 27 countries and eCommerce websites in 10 countries.
13. Defendant, WALMART, sold a head of Romaine lettuce containing multiple small fish hooks that were discovered by a consumer on January 1, 2018.
14. On January 1, 2018, a consumer opened the sealed bag of Romaine lettuce.
15. At the same date and time, the consumer attempted to eat the Romaine lettuce purchased from WALMART in Mason City.

16. At the same date and time, while attempting to eat the Romaine lettuce, the consumer discovered multiple small fish hooks imbedded in his tongue.
17. The consumer found other multiple small fish hooks in the uneaten salad as well.
18. The head of lettuce containing multiple small fish hooks caused the consumer permanent injuries.
19. Plaintiff, John L. Cookman was the consumer who attempted to eat the head of Romaine lettuce.

COUNT II- NEGLIGENCE

COMES NOW the Plaintiff, and for cause of action against the Defendants, states as follows:

20. Plaintiff's re-plead paragraphs 1 through 19 as though fully set forth herein.
21. The Defendants are negligent in, but not limited to, the following conduct:
 - a. Choosing to hire the employees committing the conduct in question;
 - b. By not properly training the employees committing the conduct in question;
 - c. By not properly supervising the employees committing the conduct in question;and
 - d. Other unspecified acts of negligence;
22. The harms and losses to Plaintiff would not have happened except for the negligent conduct of Defendants.
23. Repetition of Defendant's negligent conduct makes it more likely harm of the type Plaintiff suffered would happen to another consumer in the community.
24. As a result of the Defendants' negligent conduct, John L. Cookman was injured and seeks compensation for the following elements of harm and loss:

- a. Past medical expense;
- b. Future medical expense;
- c. Past loss of function of body;
- d. Future loss of function of body;
- e. Past physical pain and mental suffering, including loss of enjoyment of life;
- f. Future physical pain and mental suffering, including loss of enjoyment of life.

WHEREFORE, Plaintiff, John L. Cookman, prays for judgment against Defendants for damages in a reasonable and proper amount plus interest as allowed by law, for the costs of this action, and for such other and further relief as is just and equitable in the premises.

COUNT III- NEGLIGENCE-RES IPSA LOQUITUR

COMES NOW the Plaintiff, and for cause of action against the Defendants, states as follows:

25. Plaintiffs re-plead paragraphs 1 through 24 as though fully set forth herein.
26. Defendants had exclusive control of the head of Romaine lettuce containing multiple small fish hooks when the bag was sealed.
27. There was no change in the condition of the head of Romaine lettuce after it left the defendant's exclusive control when John L. Cookman opened the sealed bag which could reasonably have caused the injury.
28. The injury would not have occurred if ordinary care had been used by the Defendants.
29. The harms and losses to Plaintiff would not have happened except for the negligent conduct of Defendants.
30. Repetition of Defendant's negligent conduct makes it more likely harm of the type Plaintiff suffered would happen to another consumer in the community.

31. As a result of the Defendants' negligent conduct, John L. Cookman was injured and seeks compensation for the following elements of harm and loss:

- a. Past medical expense;
- b. Future medical expense;
- c. Past loss of function of body;
- d. Future loss of function of body;
- e. Past physical pain and mental suffering, including loss of enjoyment of life;
- f. Future physical pain and mental suffering, including loss of enjoyment of life.

WHEREFORE, Plaintiff, John L. Cookman, prays for judgment against Defendants for damages in a reasonable and proper amount plus interest as allowed by law, for the costs of this action, and for such other and further relief as is just and equitable in the premises.

COUNT IV- MANUFACTURING DEFECT

COMES NOW the Plaintiff, and for cause of action against the Defendants, states as follows:

32. Plaintiff's re-plead paragraphs 1 through 31 as though fully set forth herein.
33. Defendants grew, harvested, supplied and or sold the head of Romaine lettuce containing multiple small fish hooks at issue.
34. Defendants were in the business of growing, harvesting, supplying and or selling fresh product including heads of Romaine lettuce.
35. At the time the head of Romaine lettuce at issue left the Defendants' control it contained a manufacturing defect that departed from its intended design and use.
36. The manufacturing defect was a proximate cause of the injuries suffered by Plaintiff.
37. As a result, John L. Cookman was injured and seeks compensation for the following

elements of harm and loss:

- a. Past medical expense;
- b. Future medical expense;
- c. Past loss of function of body;
- d. Future loss of function of body;
- e. Past physical pain and mental suffering, including loss of enjoyment of life;
- f. Future physical pain and mental suffering, including loss of enjoyment of life.

WHEREFORE, Plaintiff, John L. Cookman, prays for judgment against Defendants for damages in a reasonable and proper amount plus interest as allowed by law, for the costs of this action, and for such other and further relief as is just and equitable in the premises.

COUNT V- BREACH OF IMPLIED WARRANTY OF FITNESS

FOR A PARTICULAR PURPOSE.

COMES NOW the Plaintiff, and for cause of action against the Defendants, states as follows:

38. Plaintiff's re-plead paragraphs 1 through 37 as though fully set forth herein.
39. Defendants had reason to know the particular purpose of the head of Romaine lettuce was to be eaten by consumers.
40. Defendants had reason to know consumers relied upon Defendants skill or judgment in furnishing sealed and packaged heads of Romaine lettuce.
41. This reliance created an implied warranty of fitness of the sealed and packaged head of Romaine lettuce for the particular purpose of eating.
42. Plaintiff, the ultimate consumer of the sealed and packaged head of Romaine lettuce, was an intended beneficiary of this implied warranty.

43. The sealed and packaged head of Romaine lettuce at issue was not fit for the particular purpose.
44. The failure of sealed and packaged head of Romaine lettuce was a proximate cause of Plaintiffs injuries.
45. As a result, John L. Cookman was injured and seeks compensation for the following elements of harm and loss:
 - a. Past medical expense;
 - b. Future medical expense;
 - c. Past loss of function of body;
 - d. Future loss of function of body;
 - e. Past physical pain and mental suffering, including loss of enjoyment of life;
 - f. Future physical pain and mental suffering, including loss of enjoyment of life.

WHEREFORE, Plaintiff, John L. Cookman, prays for judgment against Defendants for damages in a reasonable and proper amount plus interest as allowed by law, for the costs of this action, and for such other and further relief as is just and equitable in the premises.

COUNT VI- BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY.

COMES NOW the Plaintiff, and for cause of action against the Defendants, states as follows:

46. Plaintiffs re-plead paragraphs 1 through 45 as though fully set forth herein.
47. At the time of the sale of the sealed and packaged head of Romaine lettuce at issue, Defendants dealt in fresh produce of the kind at issue, and held itself out as having knowledge or skill specific or particular to fresh produce.
48. This created an implied warranty of merchantability as to the sealed and packaged head of

Romaine lettuce at issue, of which Plaintiff was an intended third party beneficiary.

49. The sealed and packaged head of Romaine lettuce at issue was not merchantable.
50. The lack of merchantability was a proximate cause of Plaintiff's injuries.
51. As a result, John L. Cookman was injured and seeks compensation for the following elements of harm and loss:
 - a. Past medical expense;
 - b. Future medical expense;
 - c. Past loss of function of body;
 - d. Future loss of function of body;
 - e. Past physical pain and mental suffering, including loss of enjoyment of life;
 - f. Future physical pain and mental suffering, including loss of enjoyment of life.

WHEREFORE, Plaintiff, John L. Cookman, prays for judgment against Defendants for damages in a reasonable and proper amount plus interest as allowed by law, for the costs of this action, and for such other and further relief as is just and equitable in the premises.

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By 

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