

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA  
CIVIL DIVISION

MELISSA MILLIGAN,

Plaintiff,

CASE NO.:

v.

FRESH START PRODUCE SALES, INC.,  
a Florida corporation, BEDNER GROWERS,  
INC., a Florida corporation, and JOHN DOES  
1-10,

Defendants.

---

**COMPLAINT FOR PERSONAL INJURIES**

Plaintiff, MELISSA MILLIGAN, by and through undersigned counsel, sues Defendants, FRESH START PRODUCE SALES, INC., a Florida corporation, BEDNER GROWERS, INC., a Florida corporation and JOHN DOES 1-10, and for her Complaint alleges as follows:

1. This is an action for damages that exceeds Fifty Thousand Dollars (\$50,000.00) exclusive of costs, interest and attorney's fees.
2. Venue is proper in Palm Beach County, Florida because at times material to this action, the Defendants' principal places of business were located in Palm Beach County, Florida and because the causes of action alleged herein occurred in Palm Beach County, Florida.
3. At all times relevant to this action, Plaintiff Melissa Milligan was a citizen and resident of St. Augustine, St. Johns County, Florida.
4. At all times relevant to this action, Defendant Fresh Start Produce Sales, Inc. (hereinafter referred to as "Fresh Start") was a Florida Profit Corporation with its principal place of business located at 5353 Atlantic Avenue, #403, Delray Beach, Palm Beach County, Florida

and was the manufacturer, supplier, packager, distributor, and/or seller of the *Salmonella* contaminated cucumbers that were the cause of the subject outbreak, including Plaintiff's illness and injuries, as described below.

5. At all times relevant to this action, Defendant Bedner Growers, Inc., (hereinafter referred to as "Bedner Growers") was a Florida Profit Corporation with its principal place of business located at 10066 Lee Road, Boynton Beach, Palm Beach County, Florida and was the manufacturer, supplier, packager, distributor, and/or seller of the *Salmonella* contaminated cucumbers that were the cause of the subject outbreak, including Plaintiff's illness and injuries, as described below.

6. At all times relevant to this action, Defendants John Does 1-10, whose identities are not yet known, were manufacturers, suppliers, packagers, distributors, and/or sellers of the *Salmonella* contaminated cucumbers that were the cause of the subject outbreak, including Plaintiff's illness and injuries.

### **GENERAL ALLEGATIONS**

#### **The *Salmonella* bacteria**

7. *Salmonella* is an enteric bacterium, which means that it lives in the intestinal tracts of humans and other animals. *Salmonella* bacteria are usually transmitted to humans by eating foods contaminated with human or animal feces. Contaminated foods usually look and smell normal. Contaminated foods are often of animal origin, but all foods, including vegetables, may become contaminated. An infected food handler who neglects to wash his or her hands with soap and warm water after using the bathroom may also contaminate food.

8. Once in the lumen of the small intestine, the bacteria penetrate the epithelium, multiply, and enter the blood within 6-72 hours. As few as 15-20 cells of *Salmonella* bacteria can

cause salmonellosis or a more serious typhoid-like fever. Variables, such as the health and age of the host and virulence differences among the serotypes, affect the nature and extent of the illness. Infants, elderly, hospitalized, and immune suppressed persons are the populations that are most susceptible to disease and suffer the most severe symptoms.

9. The acute symptoms of *Salmonella* gastroenteritis include the sudden onset of nausea, abdominal cramping, and diarrhea lasting several days. The diarrhea often turns bloody. There is no real cure for *Salmonella* infection, except treatment of the symptoms. Persons with severe diarrhea may require rehydration, often with intravenous fluids.

10. Persons with diarrhea usually recover completely, although it may be several months before bowel habits return entirely to normal. A small number of persons who are infected with *Salmonella* will go on to develop pains in their joints, irritation of the eyes, and painful urination. This development is called reactive arthritis, and it can last for months or years, sometimes leading to chronic arthritis that is difficult to treat. Antibiotic treatment does not make a difference in whether the person later develops arthritis.

### **The 2024 *Salmonella* Outbreak**

11. The Centers for Disease Control and Prevention (CDC), public health and regulatory officials in several states, and the U.S. Food and Drug Administration (FDA) are collecting different types of data to investigate a multistate outbreak of *Salmonella* Africana and *Salmonella* Braenderup infections.

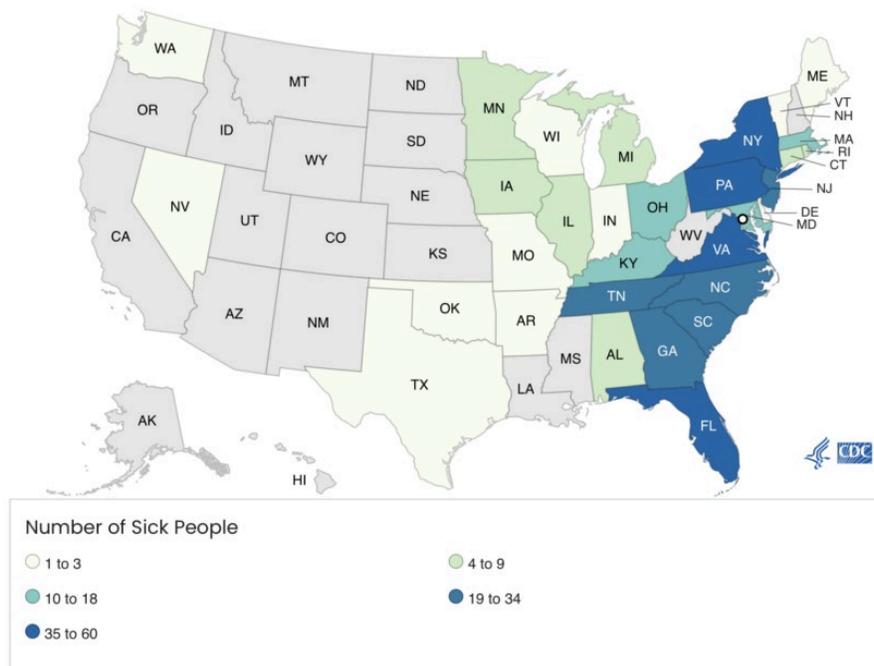
12. While originally reported as two separate outbreaks, CDC and FDA combined these two outbreak investigations as they shared several similarities, including where and when illnesses occurred, the demographics of ill people and the foods they reported eating before they became sick.

13. Laboratory, epidemiological, and traceback data have determined that cucumbers grown by Defendant, Bedner Growers, Inc., are a likely source of illnesses in this outbreak.

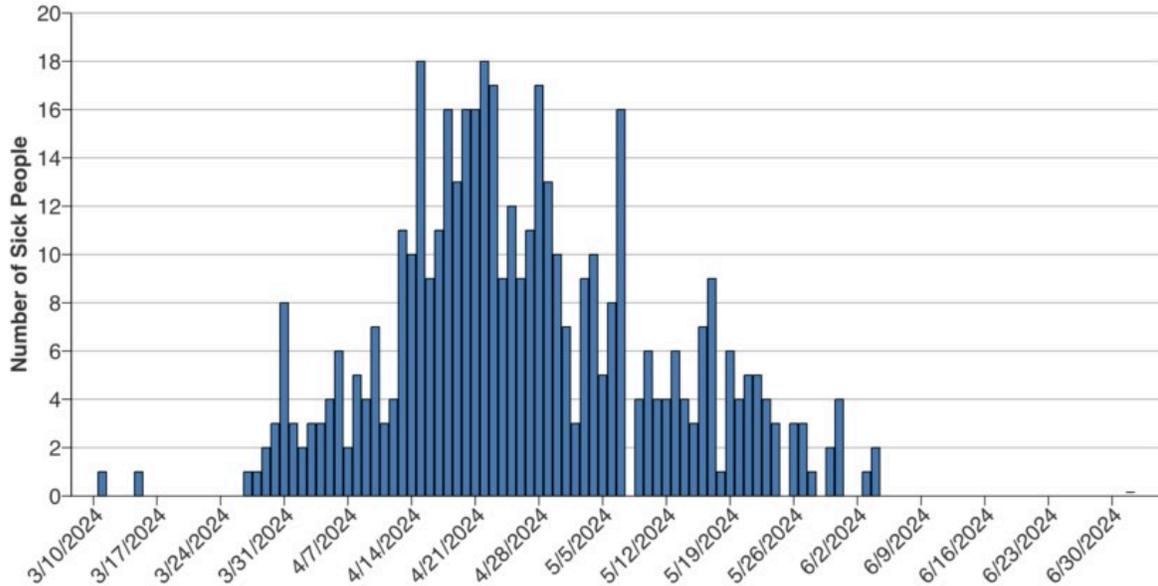
14. As part of the investigation, FDA conducted an onsite inspection at Bedner Growers and collected samples as part of this inspection and found that *Salmonella* Braenderup was detected in samples of untreated canal water used by Bedner Growers.

15. Whole Genome Sequencing (WGS) analysis determined that the *Salmonella* found in the water used by Bedner Growers is a match to a strain of *Salmonella* Braenderup that is causing some of the illnesses in this outbreak. Additional types of *Salmonella* were detected in both the soil and water samples collected at Bedner Growers, and CDC and FDA are currently looking to see if these strains have caused illness in people.

16. As of July 2, 2024, a total of 449 people infected with one of the outbreak strains of *Salmonella* Africana and *Salmonella* Braenderup have been reported from 31 states and the District of Columbia. Of these illnesses, 215 people were infected with the newly added *Salmonella* Braenderup strain.



17. Illnesses started on dates ranging from March 11, 2024 to June 4, 2024. Of 360 people with information available, 125 have been hospitalized and no deaths have been reported.



18. Public health investigators used the PulseNet system to identify illnesses that may have been part of this outbreak. CDC PulseNet manages a national database of DNA fingerprints of bacteria that cause foodborne illnesses. DNA fingerprinting is performed on bacteria using a method called whole genome sequencing (WGS). WGS showed that bacteria from sick people’s samples are closely related genetically. This means that people in this outbreak likely got sick from the same type of food.

19. FDA’s traceback investigation identified Bedner Growers, Inc., in Florida as a supplier of cucumbers in this outbreak. This one grower does not account for all illnesses in this outbreak. FDA collected samples at the grower in Florida and identified *Salmonella* Braenderup in untreated canal water. WGS determined that the *Salmonella* found in the water is the same strain of *Salmonella* Braenderup that made people in this outbreak sick. Additional soil and

*water samples collected at Bedner Growers, Inc. were positive for other strains of Salmonella.* CDC and FDA are looking to see if these strains have caused illness in people.

### **Plaintiff Melissa Milligan's Injuries**

20. On May 19, 2024 and June 4, 2024, Plaintiff purchased cucumbers at Publix Super Markets at Shoppes at Murabella in St. Augustine, Florida.

21. The cucumbers distributed to Publix by Defendant, Fresh Start Produce Sales, Inc., and grown by Defendant, Bedner Growers, Inc. were contaminated by *Salmonella* and were the cause of Plaintiff's illness and injuries.

22. Plaintiff consumed the cucumbers from late May through early June, 2024. On or about June 10, 2024, Plaintiff experienced the onset of symptoms consistent with a *Salmonella* infection, including nausea, abdominal cramping, diarrhea, fever, muscle aches, fatigue, headache and a urinary tract infection.

23. On or about June 13, 2024, Plaintiff presented to an Urgent Care clinic for evaluation and treatment for her symptoms. She was prescribed medication for her diarrhea.

24. As Plaintiff's symptoms continued to worsen over the next few days, she presented to her primary care doctor at Flagler Health+ and was ordered to provide a urine test, blood work and a stool sample.

25. The stool sample collected confirmed a diagnosis of *Salmonella* infection. Furthermore, Plaintiff's urine test showed blood in her urine which can be an emergency symptom of severe *Salmonella* infection.

26. Plaintiff continues to recover from her *Salmonella* infection, and she now suffers from anxiety about the food she eats.

**CAUSES OF ACTION**

**COUNT I**  
**STRICT LIABILITY**

27. Plaintiff readopts and incorporates by reference the allegations contained in paragraphs 1 through 26 as though fully set forth herein.

28. The cucumbers that caused Plaintiff's illness and injuries, as alleged herein, were, at the time they left the respective Defendants' control, defective and unreasonably dangerous because they were contaminated by *Salmonella*, a dangerous foodborne pathogen.

29. These cucumbers reached the Plaintiff without any change in their defective condition, and Plaintiff used the cucumbers for their intended use by consuming them. That the products were contaminated by *Salmonella*, a dangerous foodborne pathogen, rendered them defective in that the risks associated with consuming the food products exceeded a reasonable buyer's expectations.

30. Defendants owed the Plaintiff a duty to manufacture, process, distribute, supply and sell food products that were not adulterated, that were fit for human consumption, that were reasonably safe in construction, and that were free from the presence of pathogenic bacteria or other substances injurious to human health. Defendants breached these duties.

31. As a direct and proximate result of the defective and unreasonably dangerous condition of the cucumbers that Defendants manufactured, processed, distributed, and sold, the Plaintiff sustained injuries and damages in an amount in excess of the jurisdictional minimum of this Court.

**COUNT II**  
**BREACH OF WARRANTY**

32. Plaintiff readopts and incorporates by reference the allegations contained in paragraphs 1 through 26 as though fully set forth herein.

33. Defendants are liable to the Plaintiff for breach of express and implied warranties that they made regarding the cucumbers manufactured, distributed, supplied and sold to the Plaintiff. These express and implied warranties included the implied warranties of merchantability and fitness for a particular use.

34. Specifically, Defendants expressly warranted, through their sale of cucumbers to the public and by the statements and conduct of their employees and agents, that the food products prepared and sold were fit for human consumption and were not otherwise adulterated or injurious to health.

35. Plaintiff alleges that the food products that Defendants manufactured, distributed, and sold to the Plaintiff would not pass without exception in the trade and were therefore in breach of the implied warranty of merchantability.

36. Plaintiff alleges that the defective food products that Defendants sold to the Plaintiff were not fit for the uses and purposes intended, *i.e.*, human consumption, and that these products were therefore in breach of the implied warranty of fitness for their intended use.

37. As a direct and proximate cause of the breaches of warranty described above, the Plaintiff sustained injuries and damages in an amount in excess of the jurisdictional minimum of this Court.

**COUNT III**  
**NEGLIGENCE**

38. Plaintiff readopts and incorporates by reference the allegations contained in paragraphs 1 through 26 as though fully set forth herein.

39. Defendants owed the Plaintiff a duty to use reasonable care in the manufacture, processing, distribution, and sale of food products. Defendants' observance of this duty would have prevented or eliminated the risk that the food products manufactured, distributed, and sold to customers, like the Plaintiff, would be contaminated with dangerous bacteria like *Salmonella* Braenderup. Defendants breached this duty and were therefore negligent.

40. Defendants owed the Plaintiff a duty to comply with all statutes, laws, regulations, or safety codes pertaining to the manufacture, processing, distribution, storage, and sale of food for human consumption. Defendants breached this duty and were therefore negligent.

41. Defendants owed the Plaintiff a duty to properly supervise, train, and monitor their employees, and to ensure that their employees complied with all applicable statutes, laws, regulations, or safety codes pertaining to the manufacture, distribution, storage, and sale of food for human consumption. Defendants breached this duty and were therefore negligent.

42. Defendants owed the Plaintiff a duty to use ingredients, supplies, and other constituent materials in their food products that were reasonably safe, wholesome, free of defects, and that otherwise complied with applicable statutes, laws, regulations, or safety codes. Defendants breached this duty and were therefore negligent.

43. Defendants owed the Plaintiff a duty to use ingredients, supplies, and other constituent materials in their food products that were sourced from safe suppliers utilizing good agricultural practices and otherwise adhering to all standards relating to the safe growth,

harvesting, and distribution of fresh product products. Defendants breached this duty and were therefore negligent.

44. As a direct and proximate result of the aforementioned acts and omissions of negligence, the Plaintiff sustained injuries and damages in an amount in excess of the jurisdictional minimum of this Court.

**JURY TRIAL DEMAND**

Plaintiff demands trial by jury of all issues so triable on all counts.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff, Melissa Milligan, prays for judgment against the Defendants as follows:

- A. Ordering compensation for all general, special, incidental, and consequential damages suffered by Plaintiff because of Defendants' conduct.
- B. The costs and expenses, including reasonable attorneys' fees to the fullest extent allowed by law; and
- C. Such additional and/or further relief as this Court deems just and equitable.

Dated: July 10, 2024

Respectfully submitted,

**CHAIKIN LAW FIRM PLLC**

/s/ Jordan L. Chaikin  
Jordan L. Chaikin, Esq.  
Florida Bar Number 0878421  
2338 Immokalee Road, #170  
Naples, FL 34110  
Tel: 239.470.8338  
[Jordan@chaikinlawfirm.com](mailto:Jordan@chaikinlawfirm.com)

**MARLER CLARK, LLP, PS**  
William D. Marler, WSBA #17233

(To be admitted *pro hac vice*)  
180 Olympic Drive S.E.  
Bainbridge Island, WA 98110  
(206) 346-1888  
[bmarler@marlerclark.com](mailto:bmarler@marlerclark.com)

***Attorneys for Plaintiff***