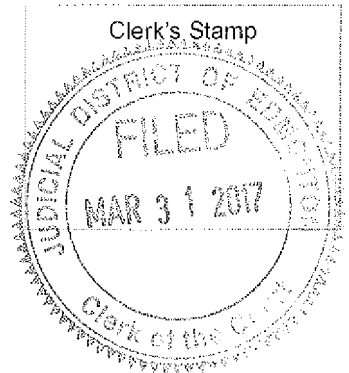


COURT FILE NUMBER 1703-06254
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE EDMONTON
PLAINTIFF(S) REDACTED as REPRESENTATIVE PLAINTIFF
DEFENDANT(S) SMUCKER FOODS OF CANADA CORP.
DOCUMENT STATEMENT OF CLAIM



ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
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A Class Proceeding pursuant to the
Class Proceedings Act, Chapter C-16.5

NOTICE TO DEFENDANT(S)

You are being sued. You are a defendant.

Go to the end of this document to see what you can do and when you must do it.

Statement of facts relied on:

A. LITIGANTS

1. The Representative Plaintiff REDACTED resides in the City of Victoria in the Province of British Columbia.
2. The Defendant SMUCKER FOODS OF CANADA CORP. (“Smuckers”) is a food processing and manufacturing corporation. Smuckers has operations throughout Canada. Products are sold through supermarkets, food service distributors and other retail and wholesale outlets. Smuckers is a corporation incorporated under the laws of Canada. Its registered office is in Markham, Ontario.
3. This action relates to the *E. coli* contamination of flour produced under the Robin Hood brand by Smuckers. To date, 25 people are believed to have become ill from consuming flour contaminated with *E. coli*.
4. A mandatory recall was implemented by the Canadian Food Inspection Agency (“CFIA”). The mandatory recall is for all 10 kilogram bags of all-purpose flour that have an expiry date of April 17, 2018 (“Recalled Flour” or “Products”).
5. The Recalled Flour has been sold and consumed in the provinces of British Columbia, Alberta, Saskatchewan and Manitoba.
6. This class action concerns the Defendant’s negligent manufacturing, quality control, monitoring, processing, storage, distribution and sale of the Recalled Flour.
7. The Plaintiff purchased a bag of the Recalled Flour in British Columbia.
8. After consuming the Recalled Flour in the form of cookie dough, the Plaintiff became extremely ill for a period of several weeks. She was nauseous, feverish, and required hospitalization as her kidneys were shutting down from the *E. coli* infection.
9. As a result of the events described above, the Plaintiff incurred expenses such as missed time from work, loss medical expenses, and pain and suffering.
10. At all material times, the Defendant manufactured, processed, stored and packaged a variety of flour products for profit in the Province of Alberta and elsewhere in Canada.

B. CLASS

11. The Plaintiff claims on behalf of herself and natural persons in Canada who:
 - a. Consumed Recalled Flour and suffered a physical illness or injury;
 - b. Purchased Recalled Flour and suffered an economic loss;
 - c. Purchased the Recalled Flour, which was not of merchantable quality or reasonably fit for the purpose of sale to consumers; or
 - d. Purchased the Recalled Flour and suffered emotional distress.

C. THE RECALL

12. On March 28, 2017, the Canadian Food Inspection Agency (“CFIA”) issued a recall for all ten kilogram bags of Robin Hood all-purpose flour with the best before date of April 17, 2018.
13. CFIA stated that the Recalled Flour had been contaminated with *E. coli*.
14. The Public Health Agency of Canada found that there are currently 25 cases of *E. coli* that are linked to the Recalled Flour.
15. The Recall covers thousands of bags of flour.

D. POSSIBLE HEALTH CONSEQUENCES ASSOCIATED WITH *E. COLI*

16. Consumption of food contaminated with *E. coli* can cause serious and potentially life-threatening illnesses. Symptoms can be similar to food poisoning and include severe abdominal pain and bloody diarrhea. Some people might suffer more serious consequences, including seizures or strokes, and some may need blood transfusions and kidney dialysis. Others may live with permanent kidney damage. In the most severe cases, people may die.

E. NEGLIGENCE

17. The Defendant is liable to the Plaintiff and the other Class members in negligence.

18. At all material times the Defendant owed a duty of care to the Plaintiff and other Class members to ensure that its products were safe for consumption and that ingestion of those products would not cause illness or injury.
19. The Plaintiff and the other class members plead that the Defendant breached its duty and the standard of conduct expected of them in the circumstances.
20. The Plaintiff and other class members plead that the Defendant breached its duty to safely manufacture goods for consumption to the class.
21. The Defendant owed to the Plaintiff and other similarly situated persons in British Columbia, Alberta, or elsewhere in Canada the following duties of care and other duties, among others:
 - a. To ensure that its flour products were safe for consumption and that consumption of such products would not cause illness or injury;
 - b. To conduct adequate and regular testing on its flour products to ensure that they were safe for consumption and that consumption of such products would not cause illness or injury;
 - c. To develop and implement adequate control methods for dealing with situations of *E.coli* contamination, so as to ensure that *E.coli* contaminated flour does not enter the marketplace; and/or
 - d. Upon discovering that *E.coli* contaminated flour had entered the marketplace, to warn the Class of the *E.coli* contamination, take immediate and comprehensive steps to remove any and all contaminated and/or possibly contaminated flour products from the marketplace, or take any other appropriate remedial action.
22. The Plaintiff and the other class members state that the Defendant breached its duty by failing to ensure that its flour products were safe for consumption. The Plaintiff and the other class members' damages were caused by the negligence of the Defendant. Such negligence includes, but is not limited to:
 - a. Failing to test its flour products thoroughly prior to marketing and distribution to ensure they were safe for consumption;

- b. Failing to implement, ensure and follow quality control and assurance processes in the processing, storage and distribution of its flour products;
- c. Failing to recall all of its tainted flour immediately upon learning that people were becoming ill after ingesting them;
- d. Failing to adopt technological advances in laboratory testing of flour products and advances in equipment;
- e. Failing to devote sufficient financial resources to staffing personnel with expertise in food safety;
- f. Failing to implement adequate procedures for the cleaning of equipment in order to prevent the contamination of food products, or, in the alternative, failed to ensure such procedures were followed;
- g. Failing to implement adequate procedures to ensure that outside contaminants were not brought into the plant where flour was manufactured and/or processed, or, in the alternative, failed to ensure such procedures were followed;
- h. Failing to employ and properly train competent staff on proper, safe or adequate food handling techniques;
- i. Failing to take adequate steps to ensure that its flour products were safe for consumption and that consumption of such products would not cause illness or injury;
- j. Smuckers did not adequately train employees regarding product safety and did not implement adequate safety measures;
- k. Smuckers did not implement adequate cleaning and maintenance procedures;
- l. Smuckers did not conduct adequate and regular testing on its flour products to ensure that they were safe for consumption and that consumption of such products would not cause illness or injury; and
- m. Upon discovering possible *E.coli* contamination, Smuckers:
 - i. did not take immediate and comprehensive steps to inform the CFIA or the public of the contamination;

- ii. did not immediately remove any and all affected products from the marketplace;
- iii. did not ensure that the retail channels in which the Recalled Flour was sold were adequately informed of the recall;

F. SALE OF GOODS ACT CLAIMS

23. In this Statement of Claim, “Sale of Goods Legislation” refers to:

- (a) Sale of Goods Act, RSA 2000 c. s-2, s. 16;
- (b) Sale of Goods Act, RSBC 1996 c. 140, s. 18;
- (c) Civil Code of Quebec, LRQ, c C-1991, s 1726;
- (d) Sale of Goods Act, CCSM c. S10, s. 16;
- (e) Sale of Goods Act, RSO 1990 c. s.1, s. 15;
- (f) Sale of Goods Act, RSNB 1973, c S-1, s. 15;
- (g) Sale of Goods Act, RSNL 1990, c S-6, s. 16;
- (h) Sale of Goods Act, RSNS 1989 c. 408, s. 17;
- (i) Sale of Goods Act, RSNWT 1988, c. S-2, s. 18;
- (j) Consolidation of Sale of Goods Act, RSNWT 1988, c. S-2, s. 18;
- (k) Sale of Goods Act, RSPEI 1988, c S-1, s. 16;
- (l) Sale of Goods Act, RSS 1978, c S-1. s. 16; and
- (m) Sale of Goods Act, RSY 2002, c 198, s. 15.

(a) Alberta

24. The Plaintiff pleads and relies upon the Sale of Goods Act, RSA 2000 c. s-2, s. 16, and pleads that there is an implied warranty or condition that the Products are reasonably fit for the intended purpose and of merchantable quality.

(b) British Columbia

25. The Plaintiff pleads and relies upon the Sale of Goods Act, RSBC 1996 c. 140, s. 18, and pleads that there is an implied warranty or condition that the Products are reasonably fit for the intended purpose and of merchantable quality.

(c) Quebec

26. The Plaintiff pleads and relies upon the Civil Code of Quebec, LRQ, c C-1991, s 1726, and pleads there is an implied warranty that property is, at the time of sale, free of latent defects which render it unfit for the intended purpose or which so diminish its usefulness that the buyer would not have bought it or paid so high a price had he/she been aware of them.

(d) Manitoba

27. The Plaintiff pleads and relies upon the Sale of Goods Act, CCSM c. S10, s. 16, and pleads that there is an implied warranty or condition that the Products are reasonably fit for the intended purpose and of merchantable quality.

(e) Ontario

28. The Plaintiff pleads and relies upon the Sale of Goods Act, RSO 1990 c. s.1, s. 15, and pleads that there is an implied warranty or condition that the Products are reasonably fit for the intended purpose and of merchantable quality.

(f) New Brunswick

28. The Plaintiff pleads and relies upon the Sale of Goods Act, RSNB 1973, c S-1, s. 15, and pleads that there is an implied warranty or condition that the Products are reasonably fit for the intended purpose and of merchantable quality.

(g) Newfoundland

29. The Plaintiff pleads and relies upon the Sale of Goods Act, RSNL 1990, c S-6, s. 16, and pleads that there is an implied warranty or condition that the Products are reasonably fit for the intended purpose and of merchantable quality.

(h) Nova Scotia

30. The Plaintiff pleads and relies upon the Sale of Goods Act, RSNS 1989 c. 408, s. 17, and pleads that there is an implied warranty or condition that the Products are reasonably fit for the intended purpose and of merchantable quality.

(i) Northwest Territories

31. The Plaintiff pleads and relies upon the Sale of Goods Act, RSNWT 1988, c. S-2, s. 18, and pleads that there is an implied warranty or condition that the Products are reasonably fit for the intended purpose and of merchantable quality.

(j) Nunavut

32. The Plaintiff pleads and relies upon the Consolidation of Sale of Goods Act, RSNWT 1988, c. S-2, s. 18, and pleads that there is an implied warranty or condition that the Products are reasonably fit for the intended purpose and of merchantable quality.

(k) Prince Edward Island

33. The Plaintiff pleads and relies upon the Sale of Goods Act, RSPEI 1988, c S-1, s. 16, and pleads that there is an implied warranty or condition that the Products are reasonably fit for the intended purpose and of merchantable quality.

(l) Saskatchewan

34. The Plaintiff pleads and relies upon the Sale of Goods Act, RSS 1978, c S-1, s. 16, and pleads that there is an implied warranty or condition that the Products are reasonably fit for the intended purpose and of merchantable quality.

(m) Yukon

35. The Plaintiff pleads and relies upon the Sale of Goods Act, RSY 2002, c 198, s. 15, and pleads that there is an implied warranty or condition that the Products are reasonably fit for the intended purpose and of merchantable quality.
36. The Plaintiff and class members who bought the Recalled Flour are “buyers” within the meaning of the *Sale of Goods Legislation*.
37. The Defendant, having agreed to sell the Products to the Plaintiff and class members, is a “seller” within the meaning of the *Sale of Goods Legislation*.

38. The Products are chattels personal and are “goods” within the meaning of the *Sale of Goods Legislation*.
39. The Products were supplied by the Defendant to Plaintiff and class members, under contracts of sale. Sufficient privity of contract existed between the Defendant and the Plaintiff and Class, and between the Defendant, and each class member.
40. In each contract of sale, there was:
 - a. an implied condition that the Products were reasonably fit for their ordinary purpose, where the Plaintiff and class members expressly or by implication made known to the Defendant the particular purpose for which the Products were required;
 - b. an implied condition that the Products were of merchantable quality; and
 - c. an implied warranty or condition as to the quality and fitness of the Products for their ordinary purpose.
41. The Defendant breached these implied warranties and conditions. The Plaintiff and class members reasonably expected that the Products were safe, of merchantable quality, and reasonably fit for its ordinary purpose. The Products were not safe, of merchantable quality, or reasonably fit for their ordinary purpose. The Plaintiff repeats the material facts in regards to the negligence claim with respect to this statutory claim.
42. As a result of the Defendant breaches of the implied warranties and conditions, the Plaintiff and class members have suffered damages and those who purchased the Products are entitled to statutory remedies pursuant to the *Sale of Goods Legislation*.

E. VICARIOUS LIABILITY

43. The Plaintiff pleads that the Defendant can only act through its employees, directors, officers and agents and is vicariously liable for their acts and omissions as hereinafter pleaded. The acts and omissions particularized and alleged in this

claim to have been done by the Defendant was authorized, ordered or done by the Defendant employees, directors, officers and agents while engaging in the management, direction, control and transaction of the Defendant business and are therefore acts and omissions for which the Defendant is vicariously liable.

F. PUNITIVE DAMAGES

44. The Plaintiff and the other class members plead that the Defendant's conduct in terms of manufacturing, quality control, monitoring, processing, storage, distribution and sale of certain flour products was without care and in disregard of the health of the Plaintiff and the other class members, and motivated by economic considerations such as the maintaining of revenue and market share. Such conduct renders the Defendant liable to pay punitive damages.
45. The Plaintiff and the other class members plead that they would not have purchased or consumed the Recalled Flour had they known of the defective nature of the quality control, monitoring, processing, storage, distribution and sale of the said flour products.

G. DAMAGES

46. The Plaintiff and other Class members experienced physical injury as a result of consuming Recalled Flour, including symptoms of abdominal cramping, vomiting, headache, fever, and diarrhea.
47. The Plaintiff and other Class members suffered psychological injuries as a consequence of their physical injuries. The Plaintiff and other Class members suffered psychological injuries as a result of fearing for their health and their lives, as well as fearing for the health and lives of family members who also consumed Recalled Flour. They have lost and will continue to lose enjoyment of life.
48. As a further result of the breaches as pleaded above, the Plaintiff and those other persons similarly situated have suffered loss and damages, the particulars of which include:

- a. For persons who purchased Recalled Flour for consumption, did not consume the Recalled Flour and did not receive a full refund for the Recalled Flour, damages equivalent to the purchase price;
 - b. For persons who purchased Recalled Flour which was not of merchantable quality, damages equivalent to the purchase price under the Sales of Goods Acts;
 - c. For persons who consumed Recalled Flour and experienced resulting illness, damages for any out-of-pocket medical expenses, damages for lost wages, damages for any future care expense, and damages for pain and suffering.
49. Where a person suffered illness or injury as a result of consumption of Recalled Flour:
- a. The Defendant's negligent conduct gives rise to common law damages for the person's spouse for loss of consortium;
 - b. The Defendant's negligent conduct gives rise to common law damages for the person's dependants for loss of care, guidance and companionship; and
 - c. The Defendant's negligent conduct gives rise to damages pursuant to the *Tortfeasors Act*, RSA 2000, c. T-5.
50. The Plaintiff and other Class Members will continue to suffer physical injury, psychological injury, and emotional upset flowing from the consumption of Recalled Flour for the foreseeable future.
51. The Plaintiff and other Class members have suffered pecuniary damages due to illness and the threat of illness.
52. They have incurred hospital, medical, nursing, medication and other out-of-pocket expenses and will incur future care costs. They have lost income and will continue to lose income in the future.
53. The Defendant is liable to pay damages to the Plaintiff and to the other Class members including, but not limited to, damages on account of out-of-pocket expenses associated with consuming Recalled Flour.
54. As a result of illness from consuming Recalled Flour and the acts or omissions of the Defendant, some of the Class Members received healthcare services, health services,

insured services, treatment or other services and became beneficiaries of such services pursuant to the healthcare legislation of the Province or Territory in which each Class Member resided or received treatment. A claim is hereby advanced for the cost of such services under the applicable Provincial and Territorial Legislation including the *Health Care Costs Recovery Act*, S.B.C. 2008, *Health Services Insurance Act*, C.C.S.M.c. H-35, *Health Services Act*, R.S.N.B. 1973 c. H-3, *Health Services and Insurance Act*, R.S.N.S. 1989, c. 197, *Health Insurance Act*, R.S.O. 1990 c.H-6, *Health Insurance Act*, R.S.Q. c.A-29, and *The Department of Health Act* R.S.S.c.P-17, *Health Care Insurance Plan Act*, R.S.Y. 2002 c-107, *Hospital Insurance and Health and Social Services Administration Act*, R.S. N.W.T., 1988 c.T-3, *Hospital Insurance and Health and Social Services Administration Act*, R.S.N.W.T (Nu) 1988 c.T-3, and the regulations thereunder and amendments thereto.

55. The trial of this action will not likely take more than twenty-five days to complete.
56. The Plaintiff and the other class members propose that this action be tried in the City of Edmonton in the Province of Alberta.

I. REMEDY SOUGHT:

57. The Plaintiff and the Class therefore claims against the Defendants:
 - a. A declaration that the Recalled Flour was contaminated;
 - b. A declaration that the Defendant is liable to the Plaintiff and the other Class Members for the damages caused by the Recalled Flour;
 - c. Alternatively, a declaration that the Defendant was negligent in the manufacturing, processing and packaging of the Recalled Flour;
 - d. Certification of this action;
 - e. damages, in the sum of \$25,000,000.00:
 - i. For persons who purchased Recalled Flour for consumption, did not consume the Recalled Flour and did not receive a full refund for the Recalled Flour, damages equivalent to the purchase price;
 - ii. For persons who purchased Recalled Flour for consumption and consumed the product but did not get sick, damages equivalent to the purchase price as the product was fit or of merchantable quality;

- iii. For persons who consumed Recalled Flour and experienced resulting illness, damages for any out-of-pocket medical expenses, damages for lost wages, damages for any future care expense, and damages for pain and suffering.
- iv. Special damages;
- v. Punitive damages;
- vi. Interest pursuant to the *Judgment Interest Act*, R.S.A. 2000, c. J 1 as may be allowed;
- vii. past and future care costs pursuant to *Health Care Costs Recovery Act*, S.B.C. 2008, *Health Services Insurance Act*, C.C.S.M.c. H-35, *Health Services Act*, R.S.N.B. 1973 c. H-3, *Health Services and Insurance Act*, R.S.N.S. 1989, c. 197, *Health Insurance Act*, R.S.O. 1990 c.H-6, *Health Insurance Act*, R.S.Q. c.A-29, and *The Department of Health Act* R.S.S.c.P-17, *Health Care Insurance Plan Act*, R.S.Y. 2002 c-107, *Hospital Insurance and Health and Social Services Administration Act*, R.S. N.W.T., 1988 c.T-3, *Hospital Insurance and Health and Social Services Administration Act*, R.S.N.W.T (Nu) 1988 c.T-3 and the regulations thereunder and amendments thereto;
- viii. costs of this action on a solicitor/client basis; and
- ix. such further and other relief as this Honourable Court may allow or counsel may advise.

NOTICE TO THE DEFENDANT(S)

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of Queen's Bench at Edmonton, Alberta, AND serving your statement of defence or a demand for notice on the plaintiffs' address for service.

WARNING

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiffs against you.