

CIVIL CASE MANAGEMENT SHEET
(see SLR 2.011 for required use)

130608425

Case no.:

PARTIES (list overflow on separate sheets):

Pleading has Class Action Allegations: No Yes

Plaintiffs:

Defendants:

Leslie M Straka	Townsend Farms, Inc.

Related cases in Multnomah County Circuit Court (case number(s)):

Has this case been filed previously, or is it related to a case file previously in this court or in another court?

No Yes In this Circuit Court Case No. _____
 Yes In another Circuit Court Case No. _____ County: _____
 Yes In US District Court Case No. _____ Location: _____

PLAINTIFF: I am an Attorney Representing Plaintiff I am self-represented

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Notice of a change of address pursuant to UTCR 2.010(14).

TYPE OF CASE (select **ONE Primary Subject** selection does not bind or limit legal theories):

Tort and Employment

- | | |
|---|---|
| <input type="checkbox"/> Motor vehicle (including UM & UIM) | <input type="checkbox"/> Intentional personal injury (including assault, battery, false arrest, intentional infliction of emotional distress) |
| <input type="checkbox"/> Construction Defect | <input type="checkbox"/> Employer liability (ELL) |
| <input checked="" type="checkbox"/> Product liability | <input type="checkbox"/> Employment discrimination/wrongful discharge |
| <input type="checkbox"/> Wrongful Death | <input type="checkbox"/> Wage and hour |
| <input type="checkbox"/> Negligence | <input type="checkbox"/> Employment contract |
| <input type="checkbox"/> Professional negligence medical | <input type="checkbox"/> Other (specify): _____ |
| <input type="checkbox"/> Professional negligence (legal, other) | |
| <input type="checkbox"/> Defamation | |
| <input type="checkbox"/> Fraud | |
| <input type="checkbox"/> Intentional injury to property (including nuisance and trespass) | |

Contract (other than employment)

- Money Action (consumer credit)
 Insurance
 Negotiable instrument
 Other (specify): _____

Real Property

- Quiet Title
 Condemnation/Eminent Domain
 Foreclosure
 Specific Performance

Other

- | | |
|---|---|
| <input type="checkbox"/> Declaratory Judgment/Injunctive Relief | <input type="checkbox"/> Elder Abuse |
| <input type="checkbox"/> Intellectual property | <input type="checkbox"/> Interpleader (ORCP 31) |
| <input type="checkbox"/> Derivative Shareholder suit | <input type="checkbox"/> Other (specify): _____ |
| <input type="checkbox"/> Securities | |

JUN 12 2013

IN THE CIRCUIT COURT OF THE STATE OF OREGON

IN AND FOR THE COUNTY OF MULTNOMAH

LESLIE M. STRAKA,)

Plaintiff,)

vs.)

TOWNSEND FARMS, INC.,)

Defendant.)

Case No. 130608425

COMPLAINT AND DEMAND FOR JURY TRIAL

CLASS ACTION

Product Liability/Negligence/Warranty

Claims not subject to mandatory arbitration

Plaintiff, LESLIE M. STRAKA, individually, and on behalf of all others similarly- situated, alleges as follows:

1.

PRELIMINARY STATEMENT

This is an action for equitable relief arising out of defendant's distribution and sale of a contaminated fruit product, Townsend Farms Organic Anti-Oxidant Blend ("the product"). The product was contaminated with the hepatitis A virus ("HAV"). Defendant manufactured, distributed and sold the product to Costco stores in Oregon and other states, including Colorado, New Mexico, Nevada, Arizona, Hawaii, Washington, California, and other states. The contaminated product exposed consumers, as well as people in close proximity with consumers, to infection by HAV, forcing likely tens of thousands of these people to require diagnostic testing, vaccination, or other prophylactic injections. Plaintiff brings this action individually and on behalf of all similarly-situated

1 persons. Plaintiff has given notice as required by ORCP 32H and will, after the expiration of 30
2 days, amend to seek damages in addition to equitable relief that she now seeks.

3 **PARTIES**

4 2.

5 Plaintiff, Leslie M. Straka (“Plaintiff”), is a resident of Eugene, Oregon. Defendant
6 Townsend Farms, Inc., (“Defendant”), is an Oregon corporation that manufactures, distributes, and
7 sells a variety of fresh and frozen fruit products.
8

9 **JURISDICTION AND VENUE**

10 3.

11 Defendant’s principal office is located at 23400 NE Townsend Way, Fairview, Multnomah
12 County, Oregon, where defendant carries on regular and sustained business activity. Defendant is
13 engaged in the manufacture, distribution, and sale of “Townsend Farms Organic Anti-Oxidant
14 Blend,” (“the product”) a frozen berry and pomegranate seed mix that the Centers for Disease
15 Control and Prevention has determined to be the cause of an outbreak of at least 79 hepatitis A
16 illnesses in eight western states.
17

18 **CLASS ALLEGATIONS**

19 4.

20 This action is brought as a class action, pursuant to ORCP 32, on behalf of all persons who
21 were exposed to HAV as a direct and proximate result of 1) consumption of the product or 2)
22 exposure to, or close proximity with, persons who were exposed to the product, and (3) thereafter
23 received vaccinations against HAV or a prophylactic dose of IG, or underwent serology or other
24 diagnostic testing procedures to determine whether exposure to the defendant’s contaminated
25 product had resulted in infection by HAV.
26

5.

1
2 The class is so numerous that joinder is impracticable. Although plaintiff does not yet know
3 the precise size of the class, based on information and belief, the product was distributed to Costco
4 stores and thereafter sold to consumers over a wide geographic region between a date in the first
5 several months of 2013 to the date that the outbreak linked to the defendant's product was
6 announced, May 31, 2013, on or about which date Costco stores removed the contaminated product
7 from store shelves. Based upon preliminary investigation and information and belief, the class
8 includes thousands of Oregon residents. Regardless of the exact number, joinder is impracticable
9 because the product was sold in high volume over a period of months through retail distribution.
10

11 6.

12 There are questions of law and fact common to the class members, including:

13 (a) Whether the defendant breached express and implied warranties by its sale of
14 food that was contaminated with HAV;

15 (b) Whether defendant was negligent in its manufacture and sale of food that was
16 contaminated with HAV;

17 (c) Whether the defendant is strictly liable for its sale of food that was
18 contaminated with HAV;

19 (d) Whether the defendant was negligent *per se* in its manufacture and sale of
20 food that was contaminated with HAV;

21 (e) Whether plaintiff and similarly-situated individuals suffered physical injury as
22 a result of receiving injections of vaccine and prophylactic medication, and as a result of blood
23 draws to test for infection by HAV;
24
25
26

1 (f) Whether plaintiff and similarly-situated individuals are entitled to recover
2 economic damages in the form of medical expenses;

3 (g) Whether plaintiff and similarly-situated individuals are entitled to recover
4 non-economic damages as a result of their exposures, the physical injuries from injections or blood
5 draws and associated emotional distress;

6 (h) Whether the defendant is liable to all exposed persons who obtained
7 vaccination or a prophylactic dose of IG to avoid infection or illness, or whose blood was tested for
8 the presence of HAV infection.
9

10 7.

11 The claims of the named plaintiff are typical of the claims of the class in that:

12 (a) All claims arise from common conduct in the manufacture, handling, testing,
13 marketing, distribution, and sale of the product;

14 (b) The injuries suffered by the named plaintiff and the class members differ only in the
15 extent of damage; and

16 (c) The named plaintiff's claims for relief are based upon the same legal theories as are
17 the claims of the class members.
18

19 8.

20 The named plaintiff will fairly and adequately protect and represent the interests of the class
21 in that:

22 (a) Her claims are typical of the claims of the class members;

23 (b) She is represented by attorneys who are qualified and competent counsel who will
24 vigorously prosecute this litigation; and
25
26

1 (c) Her interests are not antagonistic to or in conflict with the interests of the class
2 members.

3 9.

4 A class action is superior to other available methods for the fair and efficient adjudication of
5 this case in that:

- 6 (a) Common questions of law and fact predominate over factors affecting only individual
7 members;
- 8 (b) As far as plaintiff knows, no class action that purports to include Oregon consumers
9 suffering the same injury has been commenced;
- 10 (c) Individual class members have little interest in controlling the litigation, due to the
11 high cost of each individual action and because plaintiff and his attorneys will
12 vigorously pursue the claims;
- 13 (d) The forum is desirable as defendant is headquartered and does business in Multnomah
14 County, and much of the conduct creating this wide-spread contamination occurred in
15 Multnomah County;
- 16 (e) A class action will be an efficient method of adjudicating the claims of the class
17 members who have suffered damages as a result of the same conduct by defendant;
- 18 (f) In the aggregate, class members have claims for relief that are significant in scope
19 relative to the expense of the litigation;
- 20 (g) Equitable relief will prevent future harm to plaintiff, class members and members of
21 the public.
22
23
24
25
26

1 **ALLEGATIONS COMMON TO ALL CLAIMS**

2 10.

3 From April 29, 2013 to June 7, 2013, at least 79 people were infected by HAV and became
4 ill due to consumption of the defendant's product. The illnesses thus far have been reported to have
5 occurred in residents of eight western states: Washington, Hawaii, Utah, Colorado, New Mexico,
6 Nevada, Arizona, and California.
7

8 11.

9 The defendant manufactured, distributed, and sold the product to Costco stores across the
10 western United States, and possibly to other Costco stores across the country, for retail sale.
11

12 12.

13 On or about the date of the public announcement about the HAV outbreak associated with
14 the defendant's product, May 31, 2013, Costco stores removed the defendant's product from store
15 shelves.
16

17 13.

18 HAV, which causes severe gastrointestinal illness and, in severe cases, liver failure and
19 death, incubates in the human body for between 15 and 50 days. Therefore, public health officials
20 across the country continue to monitor for additional HAV infections and illnesses occurring as part
21 of the HAV outbreak associated with the defendant's product. Additional potential class members
22 may be identified in coming weeks.
23

24 14.

25 The CDC and other state and regional public health agencies have advised any purchasers of
26 the defendant's product to refrain from consuming the product, and to obtain HAV vaccination, or a
prophylactic dose of IG. Public health officials have also recommended that people exposed to an

1 individual known to have become ill in the defendant's HAV outbreak, or who were exposed to the
2 product, to also obtain HAV vaccination, or a prophylactic dose of IG.

3 15.

4 It is estimated that more than 10,000 people were potentially exposed to HAV as a result of
5 the defendant's manufacture, distribution, and sale of the contaminated product. These exposed
6 individuals were exposed either by consumption of the product or exposure to a person who
7 consumed the product.

8 16.

9
10 The plaintiff purchased and consumed the product numerous times during May and early
11 June, 2013, before the product's association with the HAV outbreak was known, and before Costco
12 stores removed the product from store shelves. The plaintiff received a hepatitis A vaccine on or
13 about June 5, 2013, with additional subsequent medical care, incurring physical injury, economic
14 injury and pain and suffering, and causing plaintiff to experience emotional distress, fear, and
15 anxiety over her possible infection by HAV.

16
17 **FIRST CLAIM FOR RELIEF**

18 **(Product Liability)**

19 17.

20 Defendant is engaged in the business of selling the product. Defendant manufactured,
21 distributed and sold the product, which was expected to reach—and did reach—the consumer or user
22 without substantial change in condition.

23 18.

24
25 The product was in defective condition unreasonably dangers to the user or consumer in one
26 or more of the following ways:

1 (a) It contained an indeterminate defect, in that it was contaminated with HAV;

2 (b) Alternatively, through improper handling, sanitation, testing and inspection practices in
3 the manufacturing process, it was produced with a manufacturing defect.

4 19.

5 The dangerous defect caused plaintiff and similarly-situated people injury in the form of
6 contamination and invasive medical care necessarily undertaken to treat and minimize harm from the
7 dangerous defects. As a result of the dangerous defect, which was publicized by public health
8 officials, plaintiff and plaintiff and similarly-situated individuals obtained injections of vaccination
9 and/or prophylactic doses of IG, to treat the health consequences of contamination. As a result of
10 the dangerous defect, plaintiff and similarly-situated individuals also submitted gave samples of
11 blood for testing to determine whether they had been infected by HAV. As a further result of the
12 contamination and associated injections, plaintiff and similarly-situated people suffered physical
13 injury, with associated pain, suffering and worry.
14

15 20.

16 Plaintiff has given notice required by ORCP 32H. At the conclusion of the notice period,
17 plaintiff will amend the complaint to seek damages for injuries to plaintiff and similarly-situated
18 individuals.
19

20 21.

21 In order to minimize the harm, Costco, the retail distributor, offered to pay blood tests,
22 vaccinations, and immune globulin treatment. Some members of the proposed class have been
23 treated at Costco's expense. In addition, some class members have incurred direct expenses,
24 including payment for care, co-pays, deductibles, and expenses that must be reimbursed to various
25 insurers, and local state and federal health organizations. Accordingly, plaintiff seeks equitable relief
26

1 in the form of a court-ordered fund created at defendant's expense that reimburses all payers for all
2 payments made for testing, care and prevention, including to class members, to Costco, to insurers,
3 and to local, state and federal governments. Such fund should, include the costs of investigations and
4 warnings to members of the proposed class and public, notice to all potential payers, accounting for
5 all expenses, and administration. The fund should be created by defendant and overseen by the
6 Court, using its equitable power.

7 **SECOND CLAIM FOR RELIEF**

8 **(Negligence-First Count: Common law negligence)**

9
10 22.

11 Plaintiff incorporates §§1-21.

12 23.

13 Defendant was negligent in one or more of the following ways that foreseeably caused harm
14 to plaintiff and similarly-situated individuals:

15 (a) Defendant knew or should have known that it manufactured, distributed, and sold a food
16 product that was potentially adulterated, not fit for human consumption, and that was not reasonably
17 safe as designed, manufactured, or sold.

18 (b) Defendant knew or should have known that it was manufacturing, distributing, and
19 selling a food product that was potentially adulterated with HAV, not fit for human consumption,
20 and not reasonably safe because it was contaminated with HAV and because adequate warnings or
21 instructions were not provided, including but not limited to the warning that its product may contain
22 HAV, and thus should not be given to, or eaten by humans.

23 (c) Defendant failed to adequately supervise, train, and monitor its employees, or the
24 employees of its agents or subcontractors, engaged in the preparation of its food products, to ensure
25
26

1 compliance with the defendant's operating standards and to ensure compliance with all applicable
2 health regulations. The defendant failed to properly supervise, train, and monitor these employees, or
3 the employees of its agents or subcontractors engaged in the manufacture, preparation and delivery
4 of the product, and thus breached that duty.

5 **(Negligence - Second Count: Negligence Per Se)**

6 24.

7
8 Plaintiff re-incorporates ¶¶1-23.

9 25.

10 Various statutory and regulatory provisions regulate the manufacture, distribution, storage,
11 labeling and sale of defendant's food products, including the applicable provisions of the federal
12 Food, Drug and Cosmetic Act, and Oregon food and public health statutes, all of which prohibit the
13 manufacture and sale of any food that is "adulterated," or otherwise "injurious to health." ORS
14 616.235.

15 26.

16
17 The food that the defendant manufactured and sold, and that the plaintiff purchased and
18 consumed, was "adulterated" within the meaning of the federal Food, Drug and Cosmetic Act, and
19 the applicable Oregon statutes, because it contained a deleterious substance that rendered it injurious
20 to health.

21 27.

22
23 Defendant violated federal, state and local food safety regulations by its manufacture and sale
24 of adulterated food.

25 28.

26 ORS 616.235 and the federal Food, Drug and Cosmetic Act were intended to protect this

1 class of persons, including plaintiff and similarly-situated individuals, from this type of harm, food-
2 borne infection. The federal, state and local food safety regulations applicable here, and as set forth
3 above, establish a positive and definite standard of care in the manufacture and sale of food, and the
4 violation of these regulations constitute negligence *per se*.

5 29.

6 As a result of defendant’s violations of federal, state and local food safety regulations,
7 plaintiff and similarly-situated individuals suffered the previously-alleged harms, losses and
8 damages.
9

10 **THIRD CLAIM FOR RELIEF**
11 **(Breach of Warranties)**

12 30.

13 Plaintiff re-incorporates ¶¶ 1-29
14

15 31.

16 Defendant manufactured and sold the product to Costco, and plaintiff purchased the product
17 from Costco, and this action was a “sale” as that term is used at ORS 72.3140(1).
18

19 By indirectly selling food to the plaintiff, defendant impliedly warranted that the food sold was fit
20 for the ordinary purpose for which food is used.

21 32.

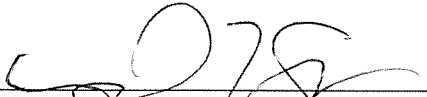
22
23 By indirectly selling food to the plaintiff, the defendant expressly warranted that such food
24 was safe to eat, that it was not adulterated with a deadly pathogen, and that the food had been safely
25 prepared.
26

At the time of this sale, being contaminated with HAV, the product was not fit for the ordinary purpose for which food is used, and the defendant breached its express and implied warranties with regard to the food it manufactured and sold to the plaintiff and similarly-situated individuals. As a result, plaintiff and similarly-situated individuals suffered the previously-alleged injuries, harms, losses and damages.

WHEREFORE, the plaintiff prays for the following relief:

- (1) An order certifying this matter as a class action;
- (2) An order appointing Andrew Weisbecker, Marler Clark, and David F. Sugerman as class counsel;
- (3) Equitable relief in the form of an order creating a fund for payment and repayment of funds to plaintiff, similarly-situated people, Costco, paying health insurers, local, state and federal governments for costs of investigation, notice and medical care associated with this contamination;
- (4) Conditionally: damages as proved by plaintiff and similarly-situated individuals if defendant fails to provide complete relief as required by ORCP 32I;
- (5) Plaintiff's costs and disbursements incurred in this action; and
- (6) Such other relief as the Court may deem just.

DATED this 12th day of June, 2012.

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Plaintiff demands a jury trial.

DATED this 12th day of June, 2012.

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