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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

<p>MAE CAMERON, individually and as representatives for a class of similar Montanans,</p> <p style="text-align: right;">Plaintiffs,</p> <p style="text-align: center;">-vs-</p> <p>THOMSON INTERNATIONAL, INC.</p> <p style="text-align: right;">Defendant.</p>	<p>Cause No. _____</p> <p style="text-align: center;">DEFENDANT THOMSON INTERNATIONAL, INC.'S NOTICE OF REMOVAL</p>
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Defendant Thomson International, Inc. (“Thomson”) gives notice of removal of the above-captioned case to the United States District Court for the District of Montana, Billings Division pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, Fed.R.Civ.P. 81(c), and Local Federal Rule 3.3.

In support of this removal, Thomson states as follows:

1. On October 8, 2020, Plaintiff Mae Cameron (Cameron) filed an action entitled *Mae Cameron, individually and as representative for a class of similar*

Montanans v. Thomson International, Inc., Cause No. DV 20-158, Montana Sixth Judicial District, Park County.

2. Service of the Complaint was effectuated upon Thomson International on February 8, 2021, by execution of an acknowledgement of service.

3. Thomson International has not yet filed its answer or otherwise responded to the Complaint.

4. This Notice of Removal is filed “within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within 30 days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter,” pursuant to 28 U.S.C. § 1446(b)(1).

5. There are no other defendants, and therefore no other defendant’s consent to removal is required, pursuant to 28 U.S.C. § 1446(b)(2).

6. A true and correct copy of the original Complaint is attached to this Notice as Exhibit A.

7. Removal is proper pursuant to 28 U.S.C. §§ 1332 and 1441(a) since the action is one over which this Court has original jurisdiction, as it is between citizens of different states, as defined in 28 U.S.C. § 1332(a)(1), and the alleged matter in

controversy exceeds the sum of \$75,000, exclusive of interest and costs. In particular:

- a. As alleged in the complaint, Cameron is a resident of Park County, Montana. Cameron is purportedly the representative of other similarly situated Montanans.
 - b. As alleged in the complaint, Thomson International is a California corporation. Thomson International's principal place of business is in California.
 - c. The damages Cameron and the purported class seek are in excess of the \$75,000 jurisdictional threshold.
8. For purposes of removal, venue is proper in this district and division under 28 U.S.C. § 1441(a) because the removed action has been pending in this district and division.
9. By filing this Notice of Removal, Thomson International is not waiving any defense which may be available to it, and does not concede that Cameron has stated claims upon which relief may be granted.
10. No hearings or other proceedings have been set in this action.
11. Pursuant to 28 U.S.C. § 1446(d) and Local Federal Rule 3.3, a copy of this Notice of Removal will be filed promptly with the Clerk of Court for the Sixth Judicial District Court, Park County, State of Montana, in which this action has been

pending, and written notice thereof will be promptly provided to counsel for all adverse parties.

DATED this 11th day of February, 2021

MOULTON BELLINGHAM PC

By /s/ Christopher T. Sweeney
Christopher T. Sweeney

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing document was duly served upon the following persons and/or counsel of record by depositing the same in the United States mail, postage prepaid, this 11th day of February, 2021:

John Heenan
Joe Cook
HEENAN & COOK
1631 Zimmerman Trail
Billings, MT 59102
John@lawmontana.com
Joe@lawmontana.com

Channing J. Hartellius
P.O. Box 1629
Great Falls, MT 59403
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By /s/ Christopher T. Sweeney
Christopher T. Sweeney

2. Defendant, Thomson International, Inc. (“Defendant” or “Thomson”), is a for-profit corporation organized and existing under the laws of the State of California, with its principal place of business located at 9852 Buena Vista Blvd., Bakersfield, Kern County, California. Defendant was the manufacturer, supplier, packager, distributor, and/or seller of the food product that is the subject of this action.

GENERAL ALLEGATIONS

3. In a Food Safety Alert updated on September 1, 2020 by the Centers for Disease Control and Prevention (“CDC”), the CDC warns that the CDC, the U.S. Food and Drug Administration (“FDA”), and public health and regulatory offices of several states and Canada are investigating a multistate outbreak of *Salmonella* infections linked to adulterated food products.

4. According to the CDC, Defendant was identified as the manufacturer, supplier, packager, distributor, and/or seller of the food products linked to this outbreak and issued a recall of red, white, yellow, and sweet yellow onions. The food products were sold in all 50 states, the District of Columbia, and Canada.

5. *Salmonella* infections from this outbreak have been reported from June 19, 2020 to August 12, 2020. As of August 31, 2020, at least 1,012 cases of *Salmonella* infections have been linked to this outbreak, including at least 63 cases in Montana. There have been at least 136 hospitalizations linked to this outbreak.

6. On July 7, 2020, Plaintiff consumed a salad at Chico Hot Springs, 163 Chico Road, Pray, Park County, Montana, 59065, which contained Defendant’s recalled food product. At the time, Plaintiff was unaware of any recall.

7. Plaintiff consumed Defendant’s recalled food product, unaware of the potential risk of becoming infected by *Salmonella* bacteria. Plaintiff subsequently fell

extremely ill, suffering over a week of diarrhea and vomiting, and was ultimately sent to the emergency room and hospitalized for several days as a result of salmonella exposure.

CAUSES OF ACTION

Count 1: Strict Liability under § 27-1-719, MCA

8. Plaintiff incorporates by reference paragraphs 1-7 herein.

9. At all times relevant hereto, Defendant was the manufacturer, wholesaler, or retailer of the food product that is the subject of this action.

10. Defendant owed a duty of care to Plaintiff and other consumers to manufacture and sell food products fit for human consumption and free from any defective and unreasonably dangerous condition.

11. Defendant breached its duty of care. At the time the food product left Defendant's control, the food product contained a defective condition – *i.e.*, *Salmonella* bacteria – which was unreasonably dangerous to Plaintiff and other Montana consumers.

12. The food product was expected to, and did indeed reach, Plaintiff without substantial change in the condition in which it was sold.

13. Plaintiff did not discover the defect in the food product, nor was the defect open and obvious.

14. Plaintiff did not make unreasonable use of the food product.

15. Plaintiff suffered injury and damages as a direct and proximate result of her consumption of the defective and unreasonably dangerous food product.

Count 2: Breach of Warranty under § 30-2-314, MCA

16. Plaintiff incorporates by reference paragraphs 1-15 herein.

17. Defendant owed an implied warranty that the food product it sold was merchantable.

18. Defendant breached this implied warranty by failing to sell a food product which could pass without objection in the trade, which was of fair average quality, which was fit for the ordinary purposes for which such food products are used, which was adequately contained, packaged, and labeled, or which failed to conform to the promises or affirmations of fact made on the container or label.

19. Plaintiff suffered injury and damages as a direct and proximate result of Defendant's breach of its implied warranty of merchantability.

Count 3: Negligence

20. Plaintiff incorporates by reference paragraphs 1-19 herein.

21. Defendant owed Plaintiff a duty of care in the manufacture, supply, packaging, distribution, and/or sale of its food product, which duty would have prevented or eliminated the risk that the food product would become contaminated with *Salmonella* or any other defective or unreasonably dangerous condition.

22. Defendant breached this duty of care by failing to keep its food product free from contamination of *Salmonella* bacteria and by allowing said contaminated food product to be sold and consumed.

23. Plaintiff suffered injury and damages as a direct and proximate result of Defendant's negligence.

Count 4: Negligence *Per Se*

24. Plaintiff incorporates by reference paragraphs 1-23 herein.

25. Defendant owed Plaintiff a duty to comply with all applicable state and federal regulations concerning the manufacture, supply, packaging, distribution, and/or

sale of its food product, including but not limited to the requirements of the Federal Food, Drug, and Cosmetic Act set forth in 21 U.S.C. § 301 *et seq.*

26. Defendant breached its duty by manufacturing adulterated food and/or introducing or delivering for introduction adulterated food into interstate commerce.

27. Plaintiff suffered injury and damages as a direct and proximate result of Defendant's negligence *per se*.

CLASS ALLEGATIONS

28. Plaintiff brings this action on her own behalf and on behalf of a class of persons similarly situated pursuant to Rule 23, Mont. R. Civ. P.

29. The class is comprised of all Montana residents who consumed Thomson onions and suffered salmonella infection.

30. According to public reporting, the class is comprised of approximately 63 people. The class is so numerous that joinder of all members is impracticable. The Complaint concerns common questions of law or fact common to the class. These include whether Defendant violated Montana law as described herein. The claims of Plaintiff are typical of those of the class. All of Plaintiff's claims are based upon the same factual and legal theories.

31. Plaintiff will fairly and adequately protect the interests of the class. Plaintiff has no interest antagonistic to those of the class. Plaintiff's counsel is competent and experienced in class action litigation.

32. Defendant has acted on grounds generally applicable to the class, thereby making final relief appropriate with respect to the class as a whole.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully request a judgment against Defendant as follows:

1. For certification of a class action seeking monetary damages.
2. For appointment of Plaintiff as class representative and her attorneys as class counsel.
3. For compensatory damages caused to Plaintiff and the class by Defendant in an amount to be proven at trial;
4. For costs, interest, and pre-judgment interest as determined by the Court; and
5. For any and all further legal or equitable relief as the Court deems proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury in this matter.

Dated this 5th day of October, 2020.

/s/John Heenan

John Heenan

Attorneys for Plaintiff

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Thomson International Facing Class Action Over 2020 Onion-Related Salmonella Newport Outbreak](#)
