

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
THIRD DIVISION

Burton Coy, individually,

Plaintiff,

vs.

QUALITY EGG, LLC, d/b/a "Wright  
County Egg," an Iowa limited liability  
company;  
and HILLANDALE FARMS OF IOWA,  
INC., an Iowa corporation.

Defendants.

Case No: \_\_\_\_\_

**COMPLAINT**

**JURY DEMAND**

COMES NOW, the plaintiff, Burton Coy, by and through undersigned counsel, hereby commences this action against defendants Quality Egg, LLC, Hillandale Farms of Iowa, Inc., for compensatory, equitable, injunctive, and declaratory relief. Plaintiff makes the following allegations based upon Plaintiff's personal knowledge as to Plaintiff's own acts, and upon information and belief, as well as upon Plaintiff's attorneys' investigative efforts as to Defendants' actions and misconduct, and alleges as follows:

**INTRODUCTION**

1. At all times relevant, recalled eggs were manufactured, marketed, promoted, advertised and sold by Defendants.
2. At all times relevant, Defendants misrepresented the safety of the eggs, and negligently manufactured, marketed, advertised, promoted, sold and distributed the eggs as safe for human consumption.

3. At all times relevant to this action, Defendants knew and had reason to know that the eggs were not safe for consumption, and therefore failed to operate in a safe and continuous manner, causing serious medical problems and, in some patients, catastrophic injuries.

4. At all times relevant to this action, Defendants knew, and had reason to know, that their representations that the eggs were “safe” were materially false and misleading.

5. As a result of Defendants’ actions, Plaintiff experienced serious physical trauma. Defendants knew and had reason to know of the resulting risk of injuries and deaths, but concealed this information and did not warn Plaintiff, preventing Plaintiff from making informed choices about the selection of his egg purchase.

6. This lawsuit asserts claims against Defendants for strict product liability; negligence; unjust enrichment; breach of express and implied warranties; and violation of consumer protection law.

### **I. PARTIES, JURISDICTION, AND VENUE**

1. Burton Coy is a citizen of Waldorf, Minnesota.
2. The defendant Quality Egg, LLC, d/b/a "Wright County Egg" is an Iowa limited liability company, and citizen of Iowa, that, at all times relevant, was engaged in the business of manufacturing and distributing shell eggs to customers nationally, including food retailers for resale, and is located at 2674 Highway 69, Galt, Iowa, 50101.

3. Defendant Hillandale Farms of Iowa, Inc. (hereinafter referred to as "Hillandale Farms") is an Iowa corporation with its principal place of business at 19 1/2 W Main Street, New Hampton, Iowa, 50659. Defendant Hillandale Farms was engaged in the business of manufacturing and distributing shell eggs to customers nationally.
4. Subject matter jurisdiction in this matter is proper based on the diversity of the parties, and the amount in controversy exceeds Seventy-Five Thousand Dollars (\$75,000.00), both as required under 28 U.S.C. §1332(a)(2).
5. Venue of this matter is proper in the United States District Court for the District of Minnesota, pursuant to 28 U.S.C. §1391(a), as a substantial part of the events or omissions giving rise to the claim set forth herein occurred in this judicial district.

## **II. GENERAL FACT ALLEGATIONS**

### **The Outbreak and Wright County Egg's Recalls**

6. On August 16, 2010, the Centers for Disease Control and Prevention (CDC) announced that it had observed an approximate four-fold nationwide increase, in late June and early July 2010, in reports of human illnesses caused by *Salmonella* enteritidis.
7. On August 13, 2010, the defendant Wright County Egg issued a recall of approximately 228,000,000 shell eggs that it had manufactured and distributed in recent months. Wright County Egg had distributed the recalled eggs to food wholesalers, distribution centers, and foodservice companies in California, Illinois, Missouri, Colorado, Nebraska, Minnesota, Wisconsin and Iowa. In turn, the

companies that Wright County Egg had distributed to further distributed and sold the recalled eggs.

8. On August 16, 2010, the same day as the CDC's announcement described at paragraph 6 of this complaint, Wright County Egg expanded the recall described at paragraph 7 of this complaint to include approximately 380,000,000 eggs.
9. In the days following Wright County Egg's recalls, numerous state health departments, including the Minnesota Department of Health, announced illnesses amongst state residents linked to eggs and egg products sold by Wright County Egg.
10. On August 20, 2010, Hillandale Farms of Iowa, Inc. issued an additional recall for eggs distributed to grocery distribution centers, retail grocery stores and foodservice companies which service or are located in fourteen states, including the following: Arkansas, California, Iowa, Illinois, Indiana, Kansas, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Texas, and Wisconsin.
11. The Food and Drug Administration's (FDA) Department of Health and Human Services began an investigation into Wright County Egg's egg manufacturing facilities in Galt, Iowa, including on-site inspections at its various egg laying farms/plants between August 12 and August 30, 2010.
12. The FDA's observations from its on-site inspections are contained in FDA Form 483, issued to Wright County Egg's Chief Operating Officer, Peter A. DeCoster, on August 30, 2010, and include the following findings:

- 12.1. Chicken manure located in the manure pits below the egg laying operations was observed to be approximately 4 feet high to 8 feet high at the following locations: Layer 1 — House 1; Layer 3 — Houses 2, 7, 17, and 18. The outside access doors to the manure pits at these locations had been pushed out by the weight of the manure, leaving open access to wildlife or domesticated animals.
- 12.2. Un-baited, unsealed holes appearing to be rodent burrows located along the second floor baseboards were observed inside Layer 1 — Houses 1-9 and 11-13; Layer 2— Houses 7 and 11; Layer 3 — Houses 1, 3, 4, 5, and 6; Layer 4 — House 3.
- 12.3. Dark liquid which appeared to be manure was observed seeping through the concrete foundation to the outside of the laying houses at the following locations: Layer 1 — Houses 1, 2, 3, 4, 5, 8, 11, 12, and 14; and Layer 3 — Houses 1, 8, 13, and 17.
- 12.4. Standing water approximately 3 inches deep was observed at the southeast corner of the manure pit located inside Layer 1 — House 13.
- 12.5. Un-caged birds (chickens having escaped) were observed in the egg laying operations in contact with the egg laying birds at Layer 3 — Houses 9 and 16. The un-caged birds were using the manure, which was approximately 8 feet high, to access the egg laying area.

- 12.6. Layer 3 — House 11, the house entrance door to access both House 11 and 12 was blocked with excessive amounts of manure in the manure pits.
- 12.7. There were between 2 to 5 live mice observed inside the egg laying Houses 1, 2, 3, 5, 7, 9, 10, 11, and 14.
- 12.8. Live and dead flies too numerous to count were observed at the following locations inside the egg laying houses: Layer 1 — Houses 3, 4, 6, 8, 9, 11, and 12; Layer 2 — Houses 7 and 11; Layer 3 — Houses 3, 4, 4, 5, 7, 8, 15, 16, 17, and 18. The live flies were on and around egg belts, feed, shell eggs and walkways in the different sections of each egg laying area. In addition, live and dead maggots too numerous to count were observed on the manure pit floor located in Layer 2 — House 7.
- 12.9. You did not document washing and disinfecting of your dead hen truck and manure equipment prior to moving from farm to farm.
- 12.10. You did not maintain records documenting the washing and disinfection of the trailers used for the movement of pullets to laying houses.
- 12.11. Birds were observed roosting and flying, chicks heard chirping in the storage and milking facilities. In addition, nesting material was observed in the feed mill closed mixing system, ingredient storage and truck filling areas.

12.12. Outdoor whole kernel corn grain bins 4 and 6 observed to have the topside doors/lids open to the environment and pigeons were observed entering and leaving these openings. Birds were also observed sitting/flying around and over the openings.

12.13. Samples collected during the course of this inspection and tested by an FDA laboratory revealed the following positive analytical results for *Salmonella* Enteritidis:

- i. On 8/13/2010, an environmental sample was collected from Layer 2, house 7 manure swab from row 1 — left side.
- ii. On 8/16/2010, an environmental sample was collected from Layer 2, house 11 at manure scraper blade from row 3 — right side.
- iii. On 8/13/2010, an environmental sample was collected from Layer 4, house 3 at walkway 1 — right side and walkway 3 — right side.
- iv. On 8/14/2010, a sample of meat and bone meal was collected from ingredient bin 7 located at your feed mill.
- v. On 8/17/2010, a sample of finished feed "Developer" pullet feed was collected from the feed mill.
- vi. On 8/16/2010, an environmental sample was collected from the roof level covered ingredient bin chute 8; Second Floor ingredient bin cover 19 (ingredient bin 19 holds ground corn) located at your feed mill.

13. Congressional investigators report that Wright County Egg failed to report evidence of positive *Salmonella* test results to local, state or federal officials.

#### **FDA's EGG SAFETY RULE**

14. In an effort by the FDA to address SE contamination control on egg farms, the Egg Safety Rule (74 FR 33030. 2009-07-09) was enacted on July 9, 2009. Producers were to be in compliance by July 9, 2010. The regulation provides, in part, shell egg producers to implement measures to prevent *Salmonella* Enteritidis (SE) from contaminating eggs on the farm and from further growth during storage compliance with the rule and to register with FDA. Large-scale egg producers that produce shell eggs for human consumption and that do not sell all of their eggs directly to consumers must comply with the refrigeration requirements under the rule, including producers whose eggs receive treatments such as pasteurization. Those who transport or hold shell eggs must also comply with this rule. Defendants are large-scale egg producers.

#### **Burton Coy's *Salmonella* Illness**

15. Before August 13, 2010, Mr. Coy purchased a carton of Sunny Farm Eggs from Walmart in Waseca, Minnesota. Mr. Coy's eggs contained the following Julian date, P1860-207, which was later recalled by the Defendant.
16. While at home on August 13, 2010, Mr. Coy consumed the recalled eggs for breakfast.

17. On or about the evening of August 13, 2010, Mr. Coy began to suffer from severe gastrointestinal distress, including abdominal cramps, nausea and profuse diarrhea and vomiting.
18. On or about August 15, 2010, after his symptoms continued to worsen, Mr. Coy sought medical treatment at a nearby emergency room. Based on the severity of his illness, the decision was made to admit him for treatment and close monitoring. Mr. Coy remained hospitalized until he was deemed sufficiently stabilized, and discharged on or about August 17, 2010.
19. After her discharge, Mr. Coy continued his follow up care with his primary care physician.
20. Upon information and belief, a stool sample was obtained during his hospitalization and sent to a laboratory to be cultured and tested.

**III. CLAIMS FOR RELIEF  
COUNT I  
STRICT PRODUCT LIABILITY**

21. The defendants were at all times relevant to this matter the manufacturer and seller of the adulterated food product that is the subject of the action.
22. The adulterated food product that the defendants manufactured, distributed, and sold was, at the time it left the defendant's control, defective and unreasonably dangerous for its ordinary and expected use because it contained *Salmonella*, a deadly pathogen.
23. The adulterated food product the defendants manufactured, distributed, and sold was delivered to the plaintiff without any change in its defective condition. The

adulterated food product the defendants manufactured, distributed, and sold was used in the manner expected and intended, and was consumed by the plaintiff.

24. The plaintiff consumed the eggs in a manner for which it was reasonably foreseeable by the Defendants.
25. The Plaintiff was not aware of, and could not have reasonably discovered, the dangerous nature of the contaminated eggs.
26. The plaintiff suffered injury and damages as a direct and proximate result of the defective and unreasonably dangerous condition of the adulterated food product that the defendants manufactured, distributed, and sold. These damages include, but are not limited to: physical and mental pain and suffering, past and future in the form of the pain and suffering, including bodily suffering, discomfort and loss of enjoyment of life; and medical costs and expenses to this point and the present value of reasonable medical expenses in the future.
27. The Defendants, therefore, are strictly liable to the Plaintiffs. Additionally, Defendants' conduct was so outrageous as to constitute ill will, bad motive and reckless indifference to the interests of the consumers. The Plaintiff, therefore, is entitled to punitive damages.

## **COUNT II NEGLIGENCE**

28. Plaintiff repeats and re-alleges, as if fully set forth herein, each and every allegation contained in the above paragraphs and further allege:

29. The defendants owed a duty to the plaintiff to use reasonable care in its manufacture, distribution, and sale of its food products, which duty, if met, would have prevented or eliminated the risk that the defendants' food products would become contaminated with *Salmonella* or any other dangerous pathogen. The defendants breached this duty.
30. This duty of the Defendants extended to use of reasonable care in the manufacturing, testing, labeling, sterilizing, packaging, supplying, marketing, selling, advertising, warning, and otherwise distributing the eggs.
31. The defendants had a duty to comply with all statutes, laws, regulations, or safety codes pertaining to the manufacture, distribution, storage, and sale of its food product, but failed to do so, and were therefore negligent. The plaintiff is among the class of persons designed to be protected by these statutes, laws, regulations, safety codes or provision pertaining to the manufacture, distribution, storage, and sale of similar food products.
32. The defendants had a duty to properly supervise, train, and monitor its employees, and to ensure its compliance with all applicable statutes, laws, regulations, or safety codes pertaining to the manufacture, distribution, storage, and sale of similar food products, but it failed to do so and were therefore negligent.
33. Contrary to their duty, the Defendants were guilty of one or more of the following careless and negligent acts and/or omissions:
- a. Failed to adequately and properly test, inspect, and comply with federal and statutory regulations, including the Egg Safety Rule, so that the eggs were

safe for the purpose for which they were manufactured, distributed, and sold;

- b. Failed to utilize and/or implement a reasonably sterile environment in the manufacture of eggs;
  - c. Failed to manufacture eggs in a reasonably safe condition for public consumption, which it was intended;
  - d. Failed to adequately and properly warn Plaintiff purchasing eggs contaminated with SE of the risks of complications when used in a manner for which it was intended;
  - e. Failed to adequately and properly warn Plaintiff purchasing eggs contaminated with *Salmonella* of the risks of diseases when used in a manner for which it was intended;
  - f. Manufactured and distributed eggs contaminated with *Salmonella*, which constituted a hazard to health;
  - g. Manufactured and distributed eggs contaminated with *Salmonella* which caused adverse side effects; and
  - h. Were otherwise careless and negligent.
34. As a direct and proximate result of Defendants' manufacturing, testing, distributing, packaging, supplying, marketing, selling, advertising, warning, and otherwise distributing eggs in interstate commerce, Plaintiff was at an increased risk of developing fever, abdominal cramps, diarrhea, headaches, and serious

blood and organ infections upon consumption and have suffered compensatory and punitive damages in an amount to be proven at trial.

**COUNT III  
NEGLIGENCE PER SE**

35. Plaintiff repeats and re-alleges, as if fully set forth herein, each and every allegation contained in the above paragraphs and further allege:
36. Defendants had an obligation not to violate the law in the manufacture, processing, assembly, inspection, marketing, packaging, preparation for use, sale and warning of the risks and dangers of eggs contaminated with *Salmonella*.
37. The defendant had a duty to comply with all applicable state and federal regulations intended to ensure the purity and safety of its food product, including, but not limited to, the requirements of the Federal Food, Drug and Cosmetics Act, 21 U.S.C. § 301 et seq and the Egg Safety Rule, 21 U.S.C.A. § 1035(a) and (b).
38. The defendant failed to comply with the provisions of the health and safety acts identified above, and, as a result, was negligent per se in its manufacture, distribution, and sale of food adulterated with *Salmonella*, a deadly pathogen.
39. As a direct and proximate result of conduct by the defendant that was negligent per se, the plaintiff sustained injuries and damages.

**COUNT IV  
VIOLATION OF MINNESOTA CONSUMER PROTECTION STATUTE  
Minn. Stat. §§ 325D.43, et seq., 325F.67, et seq. and 325F.68 et seq.**

40. Plaintiff repeats and re-alleges, as if fully set forth herein, each and every allegation contained in the above paragraphs and further allege:

41. Defendants engaged in unfair competition or unfair or deceptive acts or practices in violation of any and all state consumer protection statutes when it represented, through advertising, warranties, and other express representations, that their eggs were safe for the consuming public, which they were not.
42. Defendants further violated state consumer protection statutes when it falsely represented that their eggs were of a particular standard or quality when they were not.
43. Finally, Defendants violated state consumer protection statutes when it advertised their eggs with the intent not to sell it as advertised, and when, in so doing, Defendants concealed and suppressed facts material to the true characteristics, standards, and quality of consumable eggs.
44. Defendants' deceptive practices were specifically designed to induce Plaintiffs and the Classes to buy their eggs.
45. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff was damaged by paying in whole or in part for the purchased eggs.
46. As a direct and proximate result of Defendants' violations of state consumer protection statutes, Plaintiff has sustained economic losses and other damages for which they are entitled to statutory, compensatory damages and declaratory relief in an amount to be proven at trial.

**COUNT V**  
**UNJUST ENRICHMENT**

47. Plaintiff repeats and re-alleges, as if fully set forth herein, each and every allegation contained in the above paragraphs and further allege:
48. As the intended and expected result of their conscious wrongdoing, Defendants have profited and benefitted from the purchase of contaminated eggs by the Plaintiff.
49. Defendants have voluntarily accepted and retained these profits and benefits, derived from the Plaintiff, with full knowledge and awareness that, as a result of Defendants' fraud and other conscious and intentional wrongdoing, Plaintiff did not receiving a product of the quality, nature, or fitness that had been represented by Defendants or that Plaintiff as a reasonable consumer, expected.
50. By virtue of the conscious wrongdoing alleged in this Complaint, Defendants have has been unjustly enriched at the expense of the Plaintiff, who is entitled to in equity, and hereby seek, the disgorgement and restitution of Defendants' wrongful profits, revenue, and benefits, to the extent, and in the amount, deemed appropriate by the Court; and such other relief as the Court deems just and proper to remedy the Defendants' unjust enrichment.

**COUNT VII**  
**BREACH OF EXPRESS WARRANTY**

51. Plaintiff repeats and re-alleges, as if fully set forth herein, each and every allegation contained in the above paragraphs and further allege:

52. Defendants expressly warranted to Plaintiff, by and through statements made by Defendants or their authorized agents or sales representative, orally and in publications and written materials intended for the general public, that their eggs were safe, fit and proper for public consumption.
53. By consuming contaminated eggs, Plaintiff relied on the skill, judgment, representations and foregoing express warranties of the Defendants. Said warranties and representations were false in that the contaminated eggs were not safe and were unfit for public consumption.
54. As a direct and proximate result of Defendants' breaches of warranties, Plaintiff was, and continues to be, at an increased risk of developing severe abdominal cramps, fever, diarrhea, headaches, infection of the bloodstream, recurring joint pain, reactive arthritis, Reiter's syndrome, endocarditis, and death. Plaintiff suffered compensatory and punitive damages in an amount to be proven at trial.

**COUNT VIII**  
**BREACH OF IMPLIED WARRANTY**

55. Plaintiff repeats and re-alleges, as if fully set forth herein, each and every allegation contained in the above paragraphs and further allege:
56. Prior to the time that the contaminated eggs were ingested by Plaintiff, Defendants impliedly warranted to Plaintiff that the eggs were of merchantable quality and safe and fit for public consumption.

57. Plaintiff was and is unskilled in the manufacture and distribution of eggs and reasonably relied entirely on the skill, judgment and implied warranty of the Defendants.
58. The eggs were neither safe for its intended use nor of merchantable quality, as warranted by Defendants, in that the contaminated eggs had dangerous propensities when ingested by the public, and would cause severe injuries to the consumer.
59. As a direct and proximate result of Defendants' breaches of warranties, Plaintiff was, and continues to be, at an increased risk of developing severe abdominal cramps, fever, diarrhea, headaches, infection of the bloodstream, recurring joint pain, reactive arthritis, Reiter's syndrome, endocarditis, and death. Plaintiff has suffered compensatory and punitive damages in an amount to be proven at trial.

### **PRAYER FOR RELIEF**

WHEREFORE, the plaintiff, Burton Coy, prays for judgment against the defendant as follows:

- a) Judgment for the plaintiff against the defendants for just compensation in a fair and reasonable amount for the damages above set forth; and
- b) Such additional and/or further relief, including interest, costs, and reasonable attorney fees, as this Court deems just and equitable.

### **JURY DEMAND**

The plaintiff hereby demands a jury trial.

Dated this 20th day of September 2010.

Respectfully submitted,

ZIMMERMAN REED, PLLP

s/ Charles S. Zimmerman

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