

**FILED**  
**12-05-2019**  
**John Barrett**  
**Clerk of Circuit Court**  
**2019CV009273**  
**Honorable Laura Gramling**  
**Perez-32**  
**Branch 32**

STATE OF WISCONSIN      CIRCUIT COURT      MILWAUKEE COUNTY

KATERYNA SYLASKA  
5223 10th Ave  
Kenosha, WI 53140

Plaintiff,

vs.

SUMMONS  
Case No.

Products Liability: 30100

ROUNDY'S SUPERMARKETS, INC., d/b/a  
PICK 'N SAVE,  
875 E Wisconsin Ave, Suite 100,  
Milwaukee, WI 53202-5409  
-and-  
c/o Corporation Service Company,  
8040 Excelsior Drive, Suite 400  
Madison, WI 53717

Defendant.

THE STATE OF WISCONSIN, To each person named above as a Defendant:

You are hereby notified that the Plaintiff named above has filed a lawsuit or other legal action against you. The complaint, which is attached, states the nature and basis of the legal action.

Within 20 days of receiving this summons, you must respond with a written answer, as that term is used in chapter 802 of the Wisconsin Statutes, to the complaint. The court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the court, whose address is 901 N 9<sup>th</sup> Street, Milwaukee, WI 53233, and to Lindsay C. Lien Rinholen, Plaintiff's attorney, whose address is 730 2<sup>nd</sup> Avenue South, Suite 810, Minneapolis, MN 55402. You may have an attorney help or represent you.

If you do not provide a proper answer within 20 days, the court may grant judgment against you for the award of money or other legal action requested in the complaint, and you may lose your right to object to anything that is or may be incorrect in the complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 5th day of December, 2019.

**OFT LAW, PLLC**

Electronically Signed by:

By: Lindsay C. Lien Rinholen  
Lindsay C. Lien Rinholen, #1103163  
Brendan J. Flaherty (*PHV forthcoming*)  
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KATERYNA SYLASKA  
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COMPLAINT  
Case No.

Products Liability: 30100

ROUNDY’S SUPERMARKETS, INC., d/b/a  
PICK ‘N SAVE,  
875 E Wisconsin Ave, Suite 100,  
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-and-  
c/o Corporation Service Company,  
8040 Excelsior Drive, Suite 400  
Madison, WI 53717

Defendant.

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Plaintiff, by and through her counsel of record, Lindsay Lien Rinholen, Brendan Flaherty, and Ryan Osterholm of OFT Law, PLLC, states and alleges as follows:

**INTRODUCTION**

1. This lawsuit arises out of a multistate outbreak of *E. coli* O157:H7 associated with the consumption of pre-packaged salad products containing romaine lettuce.

2. Plaintiff contracted a severe *E. coli* O157:H7 from a contaminated pre-packaged salad product produced and sold by Defendant Roundy’s Supermarkets, Inc. This infection developed into full-blown Hemolytic Uremic Syndrome (HUS), requiring hospitalization and dialysis. She will face a lifetime of diminished kidney function and related illness.

### **PARTIES**

3. Plaintiff Kateryna Sylaska is an adult resident of Kenosha County with a mailing address of 5223 10th Avenue, Kenosha, WI 53140.

4. Defendant Roundy's Supermarkets, Inc., ("Roundy's") is a Wisconsin corporation with its principal office located at 875 E Wisconsin Ave, Suite 100, Milwaukee, WI 53202-5409. Its registered agent for service is Corporation Service Company, 8040 Excelsior Drive, Suite 400, Madison, WI 53717.

5. Roundy's operates over 150 retail grocery stores under a variety of names, including the "Pick 'N Save" grocery stores. Pick 'N Save has more than 100 locations across Wisconsin.

6. Venue is proper in Milwaukee County under Wis. Stat. 801.50(2)(c) because Defendant Roundy's principal office is located in Milwaukee and Roundy's does substantial business in Milwaukee County.

### **FACTUAL BACKGROUND**

#### **Shiga-Toxin Producing *E. coli***

7. Shiga-Toxin producing *E. coli* ("STEC") is a bacterium that occurs in humans and other ruminant animals and is shed in their feces. The most common and well-known STEC strain is *E. coli* O157:H7.

8. When *E. coli* O157:H7 or other STEC strains are ingested by humans, the bacteria causes an inflammatory response in the large intestine resulting in severe gastrointestinal symptoms, such as bloody diarrhea and abdominal cramps.

9. *E. coli* O157:H7 infections can also cause life-threatening complications including kidney damage and Hemolytic Uremic Syndrome ("HUS").

10. About 5-10% of people who are diagnosed with STEC infection develop HUS. HUS results in the destruction of blood platelets, a low red blood cell count, and kidney failure due to damage in the very small blood vessels of the kidneys.

11. HUS is also associated with severe damage to other organs, including the brain and pancreas.

12. Most frightening for patients, once the process of HUS begins, there is no medical treatment that can reverse it. On the contrary, treatment for HUS centers on supportive therapy and in severe cases requires dialysis.

13. Because of the severe health risks and the significant public health costs posed by STEC, the Centers for Disease Control (“CDC”), the Food and Drug Administration (“FDA”), in conjunction with state and local health departments, actively monitors STEC cases to identify the source of illness-causing foods and stop outbreaks.

14. State and CDC labs routinely perform sophisticated testing on STEC samples, including a genetic subtyping process called Whole Genome Sequencing (WGS). Those genetic patterns are then loaded into a national database where they are compared to one another.

15. WGS testing allows public health officials to more definitively traceback illnesses to a common source, such as a particular growing field that was contaminated with *E. coli* O157:H7.

16. This system alerts state departments of health, the CDC and the FDA when the number of STEC cases spikes or when a group of cases are caused by the same, or closely related, genetic strain of the bacteria. The CDC and health departments then investigate those cases as a single-source outbreak.

### **E. coli Outbreaks and Fresh Produce**

17. Fresh produce, and specifically lettuce and leafy greens, have long been associated with *E. coli* infections in humans.

18. Specifically, the romaine lettuce industry has been plagued by *E. coli* outbreaks.

19. Since 2017 romaine has been responsible for a staggering number of severe illnesses and deaths:

a. 2017 *E. coli* O157:H7 Outbreak: 76 cases; 2 HUS; 2 deaths

b. 2018 *E. coli* O157:H7 Outbreak: 91 cases; 4 HUS

c. 2018 *E. coli* O157:H7 Outbreak: 218 cases; 27 HUS; 5 deaths

20. Because of the well-known risks posed by STEC in fresh produce, responsible produce manufacturers, distributors and retailers take proactive steps to prevent contamination in both the growing areas and throughout the production process.

21. These steps should include careful selection of suppliers; regular product and environmental testing; monitoring of growing areas and production; and training of personnel.

### **2019 Multistate E. coli Outbreak**

22. In mid-November 2019, public health officials in Wisconsin began investigating a cluster of *E. coli* O157:H7 infections in the state.

23. When it became apparent that that the Wisconsin illnesses were part of a larger, multistate cluster of *E. coli* infections, the Centers for Disease Control and Prevention became involved in the investigation.

24. When the epidemiological evidence suggested romaine lettuce was the likely common source of the *E. coli* illnesses, the FDA began its investigation into the source of the adulterated romaine lettuce.

25. Preliminary investigation revealed that romaine lettuce from the Salinas, California growing region was the likely source of the outbreak.

26. The outbreak strain of *E. coli* O157:H7 that caused the cluster of illnesses in Wisconsin and in other states is genetically similar to an outbreak strain linked to romaine lettuce in 2018.

27. To date, the CDC reports that more than 102 individuals from 23 states tested positive for the outbreak strain. Wisconsin alone reported 31 illnesses associated with the outbreak.

28. Of those victims, 58 have been hospitalized and 10 have developed HUS.

**Plaintiff Kateryna Sylaska**

29. Plaintiff Kateryna Sylaska routinely purchased and consumed bagged salad products sold at Defendant Roundy's Pick 'n Save grocery stores, including those containing romaine lettuce.

30. On or about November 11, 2019, Plaintiff began experiencing stomach cramping and diarrhea.

31. The following day her cramping continued and intensified. She also developed the hallmark symptom of an STEC infection: profuse bloody diarrhea.

32. Frightened by the severity and persistence of her symptoms, Plaintiff presented to a local emergency department where she submitted a stool sample to be cultured, was given IV fluids, and was eventually discharged.

33. The following day her sample tested positive for STEC. The sample was later confirmed to be positive for *E. coli* O157:H7.

34. Her symptoms still did not improve. On November 15, 2019, she followed up with a gastroenterologist, who had her directly admitted to the hospital, where she remained until November 17, 2019.

35. Although she remained incredibly weak with ongoing symptoms, she appeared to be improving and was discharged and told to follow up with her primary care doctor.

36. Unfortunately, Plaintiff's condition deteriorated, and by Monday, November 18, 2019, she had a 103 degree fever.

37. After consulting her gastroenterologist, she was told to return to the ER. It was immediately apparent at this point that her condition was critical.

38. Soon after arriving at the hospital on November 18, 2019, Plaintiff was diagnosed with hemolytic uremic syndrome (HUS), and admitted to the intensive care unit.

39. Plaintiff remained in the intensive care unit from November 18 to 27, 2019, where she underwent hemodialysis because her kidney function was extremely poor.

40. Her kidney function stabilized and she was transferred out of ICU but remained hospitalized through December 4, 2019.

41. Upon information and belief, Plaintiff's stool culture proved to be genetically related to the outbreak strains of *E. coli* O157:H7 associated with romaine lettuce produced in the Salinas Valley of California.

42. Upon information and belief, all of the lettuce products consumed by Plaintiff during the incubation period for *E. coli* O157:H7 were purchased from Pick 'n Save in Kenosha, Wisconsin.



43. As a direct and proximate result of consuming contaminated Defendant's contaminated produce product, Plaintiff suffered a debilitating *E. coli* infection which permanently damaged her kidneys and will continue to impact her health for the rest of her life.

44. As a direct and proximate result of consuming contaminated Defendant's contaminated produce product, Plaintiff incurred substantial medical and hospital expenses; was unable to work; and suffered other losses and damages as proved at trial.

**COUNT I – STRICT LIABILITY – MANUFACTURING DEFECT**

45. Plaintiff incorporates the preceding paragraphs by reference as if each paragraph was set forth here.

46. At all relevant times, Defendant was a distributor and seller of an adulterated food product that, as a result of its unsafe condition, injured the Plaintiff.

47. The adulterated food product that Defendant distributed and sold was, at the time it left Defendant's control, defective and unreasonably dangerous for its ordinary and expected use due to its contamination with the *E. coli* O157:H7 bacteria, a potentially lethal foodborne pathogen.

48. The adulterated food product that Defendant distributed and sold was delivered to the Plaintiff without any change in its defective condition.

49. The adulterated food product that Defendant distributed and sold was used in the manner expected and intended—that is, as a ready-to-eat food product. Plaintiff suffered injury and damages as a direct and proximate result of the defective and unreasonably dangerous condition of the adulterated food product that Defendant distributed, and sold.

**COUNT II - STRICT LIABILITY – FAILURE TO WARN**

50. Plaintiff incorporates the preceding paragraphs by reference as if each paragraph was set forth here.

51. Defendant sold pre-packaged salad products containing *E. coli* O157:H7.

52. Because it is not detectable by human senses, *E. coli* O157:H7 constituted a hidden danger in pre-packaged salad products.

53. The foreseeable risk of harm associated with *E. coli* O157:H7 contamination of pre-packaged salad products is a resultant *E. coli* infection in those who consume it, which could include complications like HUS or death.

54. The risk of harm associated with *E. coli* O157:H7 contamination could have been avoided by a proper warning to consumers like Plaintiff.

55. Retailers selling produce from growing reactions implicated in *E. coli* outbreaks can warn consumers by placing notices in retail displays.

56. Defendant failed to properly warn consumers, including Plaintiff, that the pre-packaged salad products it sold were contaminated with *E. coli* O157:H7.

57. Defendant's failure to properly warn consumers like Plaintiff rendered the pre-packaged salad products not reasonably safe.

58. Plaintiff suffered injury and damages as a direct and proximate result of Defendant's failure to warn of the foreseeable risk associated with the produce it distributed and sold.

### **COUNT III – NEGLIGENCE**

59. Plaintiffs incorporate the preceding paragraphs by reference as if each paragraph was set forth here.

60. Defendant owed to the Plaintiff a duty to use reasonable care in the distribution and sale of its food products.

61. If Defendant had used reasonable care in the distribution and sale of its food

products, Defendant would have prevented Plaintiff's illness.

62. Defendant breached this duty by the following acts and omissions, among others:

- a. Failing to adequately warn its in-store customers of the risks of romaine produced in the Salinas Valley;
- b. Failing to properly select and screen produce suppliers to ensure the products it received and resold were not adulterated with dangerous pathogens;
- c. Failing to require adequate testing policies and procedures for its suppliers and failing to adequately verify testing procedures;
- d. Violating state and federal statutes, regulations and guidance establishing standards for the production and sale of food products; and
- e. Other acts and omissions as revealed through discovery.

63. As a direct and proximate result of the Defendant's negligence, Plaintiff sustained injuries and damages as set forth above and in an amount to be determined at trial.

### **DAMAGES**

64. Plaintiff incorporates the preceding paragraphs by reference as if each paragraph was set forth here.

65. Plaintiff suffered general, special, incidental, and consequential damages as a direct and proximate result of the acts and omissions of the Defendant, in an amount that shall be fully proven at the time of trial. Such damages include, but are not limited to: past and future damages for pain and suffering, loss of enjoyment of life, mental distress, and fear of future illness and death; past and future medical expenses and other costs or related out-of-pocket expense; lost wages, past and future; and any other damages that are reasonably anticipated to arise under the circumstances.

**JURY DEMAND**

The Plaintiff hereby demands a jury trial.

**PRAYER FOR RELIEF**

WHEREFORE, the Plaintiff prays for judgment against the Defendant as follows:

- A. Ordering compensation for all general, special, incidental, and consequential damages suffered by the Plaintiff as a result of the Defendant's conduct;
- B. Awarding Plaintiff reasonable attorney's fees and costs, to the fullest extent allowed by law; and
- C. Granting all such additional or further relief as the Court deems just and equitable under the circumstances.

Dated this 5th day of December, 2019.

**OFT LAW, PLLC**

Electronically Signed by:

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