

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF ANOKA

TENTH JUDICIAL DISTRICT
PERSONAL INJURY

JUSTIN COLLINS,

Case No.: 02-CV-21-2846

The Hon.

Plaintiff,

v.

DON JULIO, INC.,

COMPLAINT

Defendant.

(JURY DEMAND)

Plaintiff Justin Collins, by and through his attorneys of record, OFT Law PLLC, states and alleges as follows:

PARTIES AND VENUE

1. This case arises out of a 2021 *Salmonella* outbreak linked to Don Julio's Mexican Restaurant that sickened Plaintiff.
2. Plaintiff Justin Collins is a resident of Harris, Minnesota.
3. Defendant Don Julio, Inc. ("Don Julio") is a Minnesota corporation.
4. Don Julio Inc. owns and operates a number of Don Julio's Mexican restaurants, including the one located in Anoka County at 5466 St. Croix Trail, Suites EFG, North Branch, MN 55056 (hereinafter "Don Julio's").
5. Venue is proper in Anoka County pursuant to Minnesota Statute § 542.09, because the events giving rise to Plaintiff's cause of action occurred in Anoka County.

FACTUAL BACKGROUND

Salmonella and Food Safety

6. *Salmonella* is a bacterium that occurs in humans and other animals and is shed in their feces.

7. When *Salmonella* is ingested by humans it can cause severe gastroenteritis called salmonellosis. Symptoms of salmonellosis include nausea, vomiting, diarrhea, and abdominal pain. Headache, myalgia, and low-grade fever may also accompany salmonellosis.

8. Symptoms typically develop within 6 to 72 hours after ingesting contaminated food or water. Symptoms usually last for several days but severe cases can last much longer and result in serious medical complications.

9. Long-term health issues in individuals who suffer from salmonellosis are well-documented and include reactive arthritis, inflammatory bowel syndrome, and immunological deficiencies.

10. Children, the elderly, and people with compromised immune systems are particularly susceptible to serious illness and death.

11. Because of the well-known risks to human health posed by *Salmonella* bacteria, responsible restaurant operators adopt and follow food safety procedures regarding good hygiene among workers; the proper cooking of all meat and poultry to kill bacteria; the prevention of cross contamination; proper storage of food items; and the safety of the food supplied to them.

Salmonella Outbreaks and Investigations

12. In Minnesota, *Salmonella* is classified as a reportable disease under Minn. R. 4605.7040 (B)(43).

13. Because *Salmonella* is a reportable disease, when a person in Minnesota tests positive for the bacteria, the person's health care providers are required to relay that positive test result to the Minnesota Department of Health (MDH) within one working day using the Enteric Disease Reporting Form, and to submit an isolate of the bacteria, if available.

14. MDH is required to investigate cases of reportable diseases, including *Salmonella*, "for the purpose of verification of the existence of disease, ascertaining the source of the disease causing agent, identifying unreported cases... and informing the public if necessary." Minn. R. 4605.7500. Unusual case incidence, including "any pattern of cases" or "increased incidence... which may indicate ... an outbreak" calls for increased attention and an immediate telephone report to MDH, and laboratories must submit test results and clinical materials for cases and suspected cases upon request. Minn. R. 4605.7050.

15. According to the MDH, outbreaks can be "detected through routine surveillance activities that include interviewing all persons who are diagnosed with a reportable disease" like *Salmonella*. "[W]hen multiple cases report a common exposure, such as eating a common food item" MDH initiates an investigation.

The Don Julio's Outbreak

16. In early June 2021, MDH conducted routine interviews of individuals that had tested positive for *Salmonella*. Upon information and belief, individuals indicated that they had eaten at Don Julio's within the expected incubation period for the infection.

17. Upon information and belief, MDH identified a cluster of illnesses linked to consumption of food at Don Julio's North Branch location.

Plaintiff's Illness

18. In May of 2021, Plaintiff ate at Don Julio's Mexican Restaurant in North Branch, Minnesota on multiple occasions.

19. Plaintiff developed intense stomach cramping, gastrointestinal pain, and diarrhea.

20. On May 21, 2021, Plaintiff's symptoms worsened to the point that he went to urgent care for diagnosis and treatment. At that appointment, he provided a stool sample for testing.

21. Plaintiff's stool sample subsequently tested positive for *Salmonella*, which was reported to MDH.

22. MDH interviewed Plaintiff and other individuals who all contracted the same strain of *Salmonella*. The results indicated that the Don Julio's restaurant in North Branch was the likely source.

23. On June 6, 2021, MDH re-interviewed Plaintiff with questions specific to Don Julio's.

24. Upon information and belief, MDH's investigation revealed that Plaintiff was part of a cluster of *Salmonella* illnesses arising from food consumed at Don Julio's.

25. Upon information and belief, Plaintiff's illness has been linked to consuming contaminated food produced and served by the Don Julio's.

26. As a result of contracting *Salmonella* from food prepared and served by Don Julio, Plaintiff suffered a debilitating and painful gastrointestinal illness. Consequently, he has incurred, and will continue to incur, medical expenses, lost wages, and other losses and damages to be proved at trial.

COUNT I
STRICT PRODUCT LIABILITY

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

28. Defendant Don Julio manufactured and sold the adulterated food product that sickened Plaintiff Justin Collins.

29. The food product Plaintiff Justin Collins consumed was contaminated with *Salmonella* at the time it left the control of Don Julio and was served to Plaintiff Justin Collins.

30. Food products that are contaminated with *Salmonella* are dangerous when consumed.

31. Because *Salmonella* is colorless and odorless, consumers like Plaintiff Justin Collins has no way of detecting the contamination.

32. The food products consumed by Plaintiff Justin Collins were contaminated with *Salmonella* and therefore defective and unreasonably dangerous to ordinary consumers.

33. Defendant is strictly liable to Plaintiff for the harm proximately caused by the manufacture, production and sale of its dangerous and defective food products.

34. As a result of Defendant's production and sale of a defectively manufactured product, Plaintiff Justin Collins sustained injuries and damages set forth in the preceding paragraphs.

COUNT II
NEGLIGENCE

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

36. Defendant manufactured and sold food products that were contaminated with *Salmonella*, a dangerous pathogen.

37. Defendant owed a duty to its customers, including Plaintiff, to produce and sell food products that were safe to eat, that were not adulterated with dangerous pathogens like *Salmonella*, and that were not produced and sold in violation of applicable food safety regulations and industry standards.

38. Defendant breached the duties owed to its customers by failing to adopt and follow adequate food safety policies and procedures; serving food contaminated with *Salmonella*; and other acts and omissions revealed through discovery.

39. Plaintiff Justin Collins's illness was a direct and proximate result of the negligence of Defendant.

40. As a result of Defendant's negligence, Plaintiff Justin Collins sustained injuries and damages set forth in the preceding paragraphs.

COUNT III
NEGLIGENCE PER SE (MINN. STAT § 31.02)

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

42. Defendant, its employees, agents, or those working on its behalf, as providers of food products within the State of Minnesota, owe a duty to comply with Minn. Stat. Chapter 31.

43. Minnesota Food Law, Minn. Stat. § 31.02 *et seq.*, prohibits:

- a. The manufacture, sale, or delivery, holding or offering for sale of any food that is adulterated or misbranded;
- b. The adulteration or misbranding of any food; and

c. The receipt in commerce of any food that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise.

44. Defendant, its employees, agents, or those working on its behalf, failed to comply with Minn. Stat. Chapter 31. Such conduct constitutes negligence *per se*.

45. As a result of the failure of Defendant, its employees, agents, or those working on its behalf, to comply with Minn. Stat. Chapter 31, Plaintiff Justin Collins sustained damages as set forth in the preceding paragraphs.

COUNT IV
BREACH OF IMPLIED WARRANTY

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

47. The food product produced and sold by Defendant that caused Plaintiff Justin Collins's illness was adulterated with *Salmonella* and was therefore in a defective condition unreasonably dangerous to ordinary consumers and members of the public when it left Defendant's control.

48. Defendant violated Minnesota Statutes § 336.2-314 because its goods: (a) would not pass without objection in the trade under the contract description; (b) were not of fair average quality within the description; and (c) were not fit for the ordinary purposes for which such goods are used: human consumption.

49. Plaintiff Justin Collins's injuries are a direct and proximate result of Defendant's breach of implied warranties, and the Plaintiff is entitled to recover for all actual, consequential, and incidental damages that flow directly and in a foreseeable fashion from these breaches.

50. As a direct result of Defendant's breach of its implied warranties, Plaintiff Justin Collins suffered the injuries and damages set forth in the preceding paragraphs.

JURY DEMAND

The Plaintiff hereby demands a jury trial.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays judgment against the Defendant in an amount greater than Fifty Thousand Dollars (\$50,000), together with interest, costs, and disbursements incurred herein and such other relief as the court may find just and equitable.

ACKNOWLEDGMENT

The undersigned hereby acknowledges that sanctions including costs, disbursements, and reasonable attorney and witness fees may be awarded pursuant to Minn. Stat. § 549.211.

Dated: June 11, 2021

OFT LAW PLLC

By: _____



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