

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF KALAMAZOO

RACHEL TAMMINGA,

Plaintiffs,

vs

WOLVERINE PACKING CO.,

Defendant.

COMPLAINT

NOW COME Plaintiffs, RACHEL TAMMINGA, by her attorneys, Michael G. Heilmann of MICHAEL G. HEILMANN LAW OFFICE, PC, and William D. Marler of MARLER CLARK, LLP (pending admission pro hac vice), pursuant to MCR 2.118(A)(1), to allege and state as follows:

I. PARTIES

1. The amount in controversy is in excess of Twenty-Five Thousand (\$25,000.00) Dollars or is otherwise within the jurisdiction of this Court.

2. At all times material hereto, the plaintiff Rachel Tamminga was a resident of Kalamazoo, Kalamazoo County, State of Michigan.

3. The defendant Wolverine Packing Co. owns and operates USDA Establishment # 2574B, located 2535 Rivard, Detroit, Michigan. Wolverine Packing carries on at this location the manufacture and distribution of ground beef products for

shipment to customers in Michigan and other states. Wolverine Packing is a Michigan corporation.

II. GENERAL ALLEGATIONS

4. The plaintiff adopts by reference the allegations contained in paragraphs 1 through 3 of this Complaint with the same effect as if herein fully set forth.

5. On May 19, 2014, the Centers for Disease Control and Prevention (CDC) announced that an E. coli O157:H7 outbreak had sickened 11 people in 4 states. The 11 ill people (“cases”) were residents of Michigan, Ohio, Massachusetts, and Missouri. Epidemiologic investigation by the CDC and various state and local health departments revealed that the outbreak was caused by contaminated ground beef manufactured and distributed by Defendant Wolverine Packing.

6. Sixty percent of the cases have required hospitalization for treatment of their E. coli O157:H7 infections. No cases of hemolytic uremic syndrome have been reported, and no deaths have been linked to this outbreak, as of the date that this Complaint was filed.

The Plaintiff's Illness

7. Rachel Tamminga lives in Kalamazoo, Michigan. In the days preceding onset of her illness, Ms. Tamminga consumed ground beef from a restaurant in Farmington, Michigan, as well as at least one other location. The ground beef that she consumed at one or more of these restaurants had been manufactured and sold by the Defendant, and was contaminated by E. coli O157:H7, leading to Ms. Tamminga's E.

coli O157:H7 infection.

8. Onset of Ms. Tamminga's symptoms began April 23, 2014. She woke up that morning and experienced multiple bouts of diarrhea. She had a final examination scheduled for that day (Plaintiff is a college student), and went to class to take the exam. Afterward, she returned home, where her symptoms became progressively worse. By that evening, Ms. Tamminga was suffering from grossly bloody diarrhea, and had developed severe abdominal pains.

9. The next morning, Ms. Tamminga's mother drove her to the emergency department at Bronson Hospital in Kalamazoo. By this time, Ms. Tamminga was passing nothing but large clots of blood in her stools. After treatment, she was discharged home where she spent the remainder of the night on the bathroom floor.

10. The following day, her symptoms continuing unabated, Ms. Tamminga saw her family physician, who ordered her immediately to Zeeland Hospital. At the emergency department of Zeeland Hospital, she was treated and ultimately admitted to the regular hospital. She remained hospitalized for 6 days. She was treated supportively with pain medicine, intravenous hydration, and anti-nausea medications.

11. After discharge from Zeeland Hospital, Ms. Tamminga went to her parents' home so that she could receive assistance in her recovery. While there, she remained extremely sore and weak, and blood tests showed that she continued to be anemic as a result of the loss of so much blood during her illness. Ms. Tamminga later returned to her own residence in Kalamazoo, but has not yet returned to her former health. She continues to suffer from weakness and gastrointestinal discomfort on a

regular basis.

III. Breach of Warranty: Count I

12. The Plaintiff adopts by reference the allegations contained in paragraphs 1 through 11 of this Complaint with the same effect as if herein fully set forth.

13. The Defendant is liable to the Plaintiff for breaching express and implied warranties that it made regarding the ground beef that the Plaintiff purchased and consumed. These express and implied warranties included the implied warranties of merchantability and/or fitness for a particular use. Specifically, the Defendant expressly warranted, through its sale of food to the public and by the statements and conduct of its employees and agents, that the food it prepared and sold was fit for human consumption and not otherwise adulterated or injurious to health.

14. The Plaintiff relied upon Defendant's express and implied warranties at the time the product left the control of the Defendant.

15. The Plaintiff alleges that the E. coli-contaminated ground beef that Defendant manufactured and sold would not pass without exception in the trade and was therefore in breach of the implied warranty of merchantability.

16. The Plaintiff alleges that the E. coli-contaminated ground beef product that the Defendant sold was not fit for the uses and purposes intended, i.e. human consumption, and that this product was therefore in breach of the implied warranty of fitness for its intended use.

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

Negligence: Count II

18. The Plaintiff adopts by reference the allegations contained in paragraphs 1 through 17 of this Complaint with the same effect as if herein fully set forth.

19. Defendant owed Plaintiff a duty to use reasonable care in the manufacture, distribution, and sale of its food products, including the E. coli-contaminated ground beef product, the observance of which duty would have prevented or eliminated the risk that its food products would become contaminated with E. coli or any other dangerous pathogen. Defendant breached this duty.

20. Defendant had a duty to comply with all statutes, laws, regulations, or safety codes pertaining to the manufacture, distribution, storage, and sale of its food products, including the E. coli-contaminated ground beef product. Defendant failed to do so, and was 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.

21. Defendant had a duty to properly supervise, train, and monitor its employees, and to ensure its employees' compliance with all applicable statutes, laws, regulations, or safety codes pertaining to the manufacture, distribution, storage, and sale of similar food products. Defendant failed to exercise reasonable care in observing these duties and was therefore negligent.

22. Defendant had a duty to use ingredients, supplies, manufacturing methods, and other constituent materials that were reasonably safe, wholesome, free of defects, and that otherwise complied with applicable federal, state, and local laws, ordinances, and regulations, and that were clean, free from adulteration, and safe for human consumption. Defendant failed to exercise reasonable care in observing this duty and was therefore negligent.

23. As a direct and proximate result of the Defendant's acts and omissions of negligence, the Plaintiff sustained injuries and damages in an amount to be determined at trial.

Negligence Per Se: Count III

24. The Plaintiff adopts by reference the allegations contained in paragraphs 1 through 23 of this Complaint with the same effect as if herein fully set forth.

25. Defendant owed to the Plaintiff a duty to comply with all applicable state and federal regulations intended to ensure the purity and safety of its food product, including the requirements of the Federal Food, Drug and Cosmetics Act (21 U.S.C. § 301 et seq.), the Michigan adulterated food statutes (MCL 289.5101.), the Federal Meat Inspection Act (FMIA), 21 U.S.C. 601, and all of the rules, regulations, and policies promulgated pursuant to it, including, but not limited to: HACCP, 9 C.F.R. Parts 416 and 417.

26. 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 E. coli, a potentially deadly pathogen.

27. As a direct and proximate result of conduct by Defendant that was negligent *per se*, the Plaintiff sustained injury and damages in an amount to be determined at trial.

Violation of Michigan Consumer Protection Act: Count IV

28. The plaintiffs adopt by reference the allegations contained in paragraphs 1 through 27 of this Complaint with the same effect as if herein fully set forth.

29. Defendant breached an implied warranty that resulted in a violation of the Michigan Consumer Protection Act, entitling the consumer to attorney fees under MCL 445.903(1).

30. Defendant further expressly promised that the food sold was of high quality and violated that promise under the Michigan Consumer Protection Act, MCL 445.903(1).

31. As a direct and proximate result of conduct by Defendant that was in violation of the Michigan Consumer Protection Act, the plaintiffs sustained injury and damages in an amount to be determined at trial.

IV. DAMAGES

32. The Plaintiff adopts by reference the allegations contained in paragraphs 1 through 31 of this Complaint with the same effect as if herein fully set forth.

33. The Plaintiff has suffered general, special, incidental, and consequential damages as the direct and proximate result of the acts and omissions of the defendants as stated herein, in an amount that shall be fully proven at the time of trial. These

damages include, but are not limited to: damages for general pain and suffering; damages for loss of enjoyment of life, both past and future; medical and medical related expenses, both past and future; travel and travel-related expenses, past and future; emotional distress, past and future; pharmaceutical expenses, past and future; and all other ordinary, incidental, or consequential damages that would or could be reasonably anticipated to arise under the circumstances.

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

- A. Award damages in whatever amount over \$25,000.00 the plaintiff is found to be entitled;
- B. Ordering compensation for all general, special, incidental, and consequential damages suffered by the plaintiff as a result of the defendant's conduct;
- C. Awarding the plaintiff her reasonable attorneys fees and costs, to the fullest extent allowed by law; and
- D. Granting all such additional and/or further relief as this Court deems just and equitable.

MICHAEL G. HEILMANN, PC

By: _____
Michael G Heilmann (P33034)
Attorney for Plaintiff
20300 Superior, Suite 230
Taylor, MI 48180
734.307.3800 office

Dated: May , 2014

JURY DEMAND

Wherefore, Plaintiff hereby requests a trial by jury of the within cause.

MICHAEL G. HEILMANN, PC

By: _____
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Dated: May , 2014