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FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

OCT 12 2011

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SUE BEITIA, CLERK

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

CLARK BARTHOLOMEW,)
TANYA BARTHOLOMEW, And)
ARIC BARTHOLOMEW, A Minor,)
By His Next Friend CLARK)
BARTHOLOMEW)

Plaintiffs,)

vs.)

BURGER KING CORPORATION;)
CTI FOODS HOLDING CO., LLC.,)
DOES 1-150,)
Defendants.)

CIVIL NO. 11-00613 JMS RLP

COMPLAINT;
JURY DEMAND;
SUMMONS

COMPLAINT

ALLEGATIONS INCORPORATED INTO
EACH CAUSE OF ACTION

PARTIES

1. Plaintiff CLARK BARTHOLOMEW, TANYA BARTHOLOMEW and ARIC BARTHOLOMEW (herein, "Plaintiffs", "Clark", "Tanya" or "Aric") are individuals residing in the City and County of Honolulu, State of Hawaii.

2. Defendant BURGER KING CORPORATION ("Burger King") is a corporation, state of incorporation unknown, located at 5505 Blue Lagoon Drive, Miami, Florida 33126.

3. Defendant CTI FOODS HOLDING CO., LLC ("CTI"), on information and belief, is a Limited Liability Corporation or Company, headquartered at 22303 Highway 95, Wilder, Idaho 83676-5096. Said Defendant is hereafter referred to as CTI.

4. The ARMY AND AIR FORCE EXCHANGE ("AAFE") is, on information and belief, the owner of a Burger King restaurant located at 1130 Kolehale Avenue, Schofield Barracks, Hawaii. Plaintiffs are invoking administrative remedies as to AAFE.

5. Defendants DOES 1-30 are believed by plaintiffs to have been involved with marketing/processing food sold by Defendants. DOES 1-150 are believed to be residents of or doing business in states or countries outside of

Hawaii. The true names identities or capacities, whether individual, corporate, associate, partnership, representative, or otherwise of DOES, and their involvement herein are unknown, except that numerous DOEs are involved in the distribution chain or network supplying food to said Burger King restaurant. When known, plaintiffs will amend these pleadings to set forth the true name and capacities of each fictitiously named defendant. Plaintiffs are informed and believe, and thereon allege, that each of the parties designated herein as DOES acted in some manner, negligently, intentionally, wantonly, willfully, recklessly, maliciously and with conscious disregard of the consequences of their acts and is in some manner responsible and/or strictly liable to plaintiffs for the acts, conduct, omissions and failures, as hereinafter alleged, which directly and proximately caused injury and damage to plaintiffs.

JURISDICTION

6. Jurisdiction is based upon diversity of citizenship between Plaintiffs and Defendants. 28 USC §1332.

RES IPSA LOQUITUR

7. The needles inside the Burger King hamburger injuring plaintiff CLARK BARTHOLOMEW do not ordinarily occur absent someone's negligence. The needles in the hamburger were caused by an agency or instrumentality within

the exclusive control of defendants and were not due to any act or contribution on the part of plaintiffs.

LITIGATION HOLD

8. Plaintiffs give notice to defendants of a litigation hold barring them from destroying, losing, overwriting or purging any information related to this matter without the written consent of plaintiffs.

ALTER EGO

9. Any entity should be pierced if it is unfairly influenced and governed by other entities/individuals such that there is a unity of interest and the individuality or separateness of said entities/individuals and the organizations, including CTI, has ceased; and the facts are such that an adherence to the fiction of the separate existence of the entity would, under the circumstances, sanction fraud or promote injustice.

AGENCY, MASTER-SERVANT

10. At all times herein mentioned, one or more of the defendants or individuals was the agent, servant, employee and/or independent contractor of Burger King, CTI, DOES 1-5 and 31-40; and, on information and belief, certain DOE defendants; and was at all times mentioned herein acting within the purpose, course, and scope of such agency, service, employment and/or contract with the principal and under the control thereof. Defendants were reckless in the selection,

hiring and retention of some of the defendants and individuals, and, further, that each of the defendants when acting as a principal, was reckless in the selection, hiring and retention of each of the remaining defendants as an agent, servant, employee and/or independent contractor.

RESPONDEAT SUPERIOR

11. At all times relevant hereto, as defendants were aware, their agents, employees or independent contractors were acting within the course and scope of their employment or agency with defendants.

FIRST CAUSE OF ACTION – NEGLIGENCE

12. Plaintiff CLARK BARTHOLOMEW incorporates the foregoing allegations as though fully set forth herein.

13. At all times herein, defendants owed a duty to Plaintiff to conform to a certain standard of conduct in their preparation and delivery of fast food to Plaintiff, to avoid injury by dangerous foreign objects in the fast food product. The duty owed was for the protection of Plaintiff against unreasonable risks of injury and damages caused by foreign objects in food and its components. Defendants have had prior injuries caused by foreign objects, including needles in hamburgers, and have ample notice of the danger.

14. Defendants breached the duty owed as aforesaid by failing to exercise reasonable care and by failing to conform to the standard required, including without limit, as follows:

A. On or about December 1, 2010 at approximately 6:14 p.m., Plaintiff CLARK BARTHOLOMEW ordered a value meal triple stacker hamburger with fries and a drink from Burger King located at 1130 Kolekole Avenue, Schofield Barracks, Hawaii and took the meal to his home.

B. While eating the hamburger, Plaintiff bit into a needle that was hidden in the hamburger. The needle pieced Plaintiff's tongue and caused Plaintiff to bleed.

C. On December 3, 2010, Plaintiff complained of a stomach ache and sought medical treatment for another needle that was lodged in his small intestine. Plaintiff was hospitalized and placed on bed rest until December 9, 2010.

D. The franchisor, Burger King, requires uniformity in Burger King restaurants in the grade, quality and source of the meat and other ingredients used in its triple stacker ham burgers. Burger King contractually controls and restricts the products and services offered. The uniformity the franchisor requires in the selection and recommendation of ingredients and

procedures is necessary for the protection of plaintiffs and others so situated.

The franchisor failed to exercise reasonable care to protect plaintiffs and increased the risk of harm to plaintiff by failing to inspect uniform ingredients used in its products or to otherwise assure their safety, or to warn plaintiffs and others about foreseeable risks in the products.

15. As a direct, proximate and/or legal cause of defendants' breaches of duty and negligence, as aforesaid, Plaintiff CLARK BARTHOLOMEW suffered severe physical injury, including injuries to his stomach, rectum and tongue, all to Plaintiff's damage.

16. As a further direct, proximate and/or legal cause of defendants' breaches of duty and negligence as aforesaid, Plaintiff suffered anxiety, fear, loss of sleep, extreme distress and lost wages all to Plaintiff's damage.

17. As a further direct, proximate and/or legal cause of defendants' negligence and other tortious acts and omissions, Plaintiff was required to divert substantial resources and time to deal with injury and damages caused by defendants' conduct and omissions, all to Plaintiff's injury and financial loss.

18. As a direct, proximate and/or legal result of the negligent conduct of the defendants, causing injuries to Plaintiff, Plaintiff has sustained special and general damages, in the amounts to be shown by proof at the time of trial.

19. In committing the tortious acts alleged in this, and other claims, defendants acted oppressively, wantonly, recklessly, maliciously and fraudulently, with a conscious disregard of the Plaintiff's rights, with the intention of benefiting themselves financially; with such malice as implies a spirit of mischief or criminal indifference to civil obligations, or willful conduct; or, an entire want of care raising the presumption of a conscious indifference to consequences, and with the intention of causing, or recklessly disregarding the probability of causing, injury to Plaintiff, justifying imposition of exemplary damages.

20. Defendants as principals, franchisors, or as employers, had advance knowledge of the unfitness of employees or agents involved herein, and employed them with a conscious disregard of the rights or well-being of others and ratified the wrongful conduct for which damages are claimed. The oppression, recklessness, fraud or malice of defendants' employees or agents was done on the part of one or more of defendants' officers, directors, or managing agents. In so acting, the defendants acted recklessly; or intended to, and did, vex, annoy, injure and harass Plaintiff. As a result of such conduct, Plaintiff is entitled to exemplary and punitive damages, according to proof.

SECOND CAUSE OF ACTION – NEGLIGENCE

21. Plaintiff TANYA BARTHOLOMEW incorporates the foregoing allegations as though fully set forth herein.

22. At all times herein, defendants owed a duty to Plaintiff to conform to a certain standard of conduct as aforesaid.

23. Defendants breached the duty owed to Plaintiff by failing to conform to the standard required as aforesaid in that Plaintiff is CLARK BARTHOLOMEW's immediate family member and was present during his injury and suffering caused by Defendants.

24. As the proximate direct and/or legal cause of the failure on defendants' part to conform to the required standards, defendants caused injury to Plaintiff, including anxiety, loss of sleep, extreme distress, all to her damage as hereinabove alleged.

THIRD CAUSE OF ACTION – NEGLIGENCE

25. Plaintiff ARIC BARTHOLOMEW incorporates the allegations in paragraphs 1-20 and 22-24 as though fully set forth herein.

FOURTH CAUSE OF ACTION – NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

26. Plaintiffs and each of them incorporate the foregoing allegations and as though fully set forth herein.

27. As the direct, proximate and/or legal cause of the failure on defendants' part to conform to the required standards in their food service,

defendants caused grievous physical injury to co-plaintiff CLARK BARTHOLOMEW.

28. Plaintiffs and each of them suffered emotional distress or severe emotional distress as a further direct, proximate and/or legal cause of defendants' breaches of their duty of care as aforesaid. Further, Plaintiff TANYA BARTHOLOMEW and ARIC BARTHOLOMEW witnessed CLARK BARTHOLOMEW's grievous injury from eating the hamburger containing needles.

29. Plaintiffs as reasonable persons, normally constituted, were unable to adequately cope with the mental stress engendered by defendants' negligent conduct, as aforesaid.

**FIFTH CAUSE OF ACTION – NEGLIGENT TRAINING,
RETENTION, SUPERVISION AND/OR HIRING**

30. Plaintiffs incorporate the foregoing allegations and each of them as though fully set forth herein.

31. At all times herein, defendants owed a duty to plaintiffs to conform to a certain standard of conduct in training, retention, supervision and/or hiring of agents or employees to handle the above-described food processing and food delivery service for plaintiffs' benefit.

32. Defendants breached the duty owed to plaintiffs by negligently or recklessly failing to conform to the standard required by failing to adequately train or supervise agents or employees; and, by hiring or retaining unfit agents or employees.

33. As the direct, proximate and/or legal cause of the failure on defendants' part to conform to the required standards for training, retention, supervision and/or hiring, defendants caused injury to plaintiffs as aforesaid.

34. At all times herein, defendants knew or should have discovered through a reasonable investigation that said agents or employees were not competent to conduct defendants' restaurant activities.

35. A reasonably prudent person would have anticipated that an injury or damages were likely to result from the conduct by defendants herein above described.

SIXTH CAUSE OF ACTION – STATUTORY TORT

36. Plaintiffs incorporate the foregoing allegations and each of them as though fully set forth herein.

37. Pursuant to HRS §663-1, defendants are responsible in damages for trespass or injury, whether direct or consequential, to the person or property to plaintiffs, as hereinabove alleged.

SEVENTH CAUSE OF ACTION – STRICT LIABILITY

38. Plaintiffs incorporate the foregoing allegations and each of them as though fully set forth herein.

39. Defendants' hamburger did not meet reasonable expectations of ordinary consumers as to safety.

40. Defendants owed a duty to plaintiffs to anticipate and to take precautions against reasonably foreseeable hazards of foreign objects in their food processing and products. Defendants breached said duty, proximately directly and/or legally causing damages to plaintiffs as aforesaid.

41. As a result of the foregoing, defendants are strictly liable to plaintiffs.

EIGHTH CAUSE OF ACTION – BREACH OF IMPLIED WARRANTY

42. Plaintiffs incorporate the foregoing allegations and each of them as though fully set forth herein.

43. Plaintiffs had a reasonable expectation that the Burger King hamburger was fit for consumption – the ordinary purpose of Burger King's food.

44. Defendants breached the implied covenants of merchantability, fitness and safety.

NINTH CAUSE OF ACTION – FAILURE TO WARN

45. Plaintiffs incorporate the foregoing allegations and each of them as though fully set forth herein.

46. The unsafe defect, a foreign object in defendants' food, rendered it dangerous for foreseeable users.

47. Defendants failed to adequately warn plaintiffs or others so situated about the unreasonably defective and unsafe food and said failure proximately, directly and/or legally caused injuries as aforesaid.

WHEREFORE, Plaintiffs pray:

A. For general and special damages according to proof. The amounts of damages are within the minimum jurisdictional limits of the Court in which the action is brought;

B. For additional special pecuniary damages according to proof;


C. For punitive damages according to proof;

D. Prejudgment interest on the foregoing;

E. For costs of suit.

F. For any other relief the Court deems just.

DATED: Honolulu, Hawaii, October 12, 2011.



PAUL H. SACCOCCIO
STEPHEN M. SHAW
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By His Next Friend CLARK)	
BARTHOLOMEW)	
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CTI FOODS HOLDING CO., LLC.,)	
DOES 1-150,)	
)	
)	
Defendants.)	

JURY DEMAND

Plaintiffs CLARK BARTHOLOMEW, TANYA BARTHOLOMEW and
ARIC BARTHOLOMEW demand a trial by jury on all claims in this action.

DATED: Honolulu, Hawaii, October 12, 2011.



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