

COPY

IN THE CIRCUIT COURT OF HAMILTON COUNTY, TENNESSEE

CHANDLER FUSSELL, an individual

Plaintiff,

v.

FRESHPOINT ATLANTA, INC.; ARAMARK
EDUCATIONAL SERVICES, LLC; and
JOHN DOE DEFENDANTS 1, 2, and 3;

Defendants.

Case No. 19C346

FIRST AMENDED COMPLAINT

FILED IN OFFICE
2020 MAR 12 PM 4:05
LARRY HENRY, CLERK
BY [Signature] CC

COMES NOW, Plaintiff Chandler Fussell, who, by and through his attorneys of record, RAINEY KIZER REVIERE & BELL, PLC, and MARLER CLARK, LLP, PS, alleges upon information and belief as follows:

PARTIES

1.1 Plaintiff currently resides in Obion County, Tennessee. At all other times relevant to the events that gave rise to this lawsuit, Plaintiff resided in Hamilton County, Tennessee, where he was a student at the University of Tennessee Chattanooga.

1.2 Freshpoint Atlanta, Inc. (Freshpoint), is a corporation organized and existing under the laws of the State of Georgia. At all times relevant, Freshpoint was a distributor of food products to foodservice locations within several counties in southeastern Tennessee, including Hamilton County. Freshpoint distributed the contaminated romaine lettuce products that are the subject of this action to the Chick-Fil-A restaurant located at 615 McCallie Avenue, Suite 107, Chattanooga, Tennessee.

1.3 Aramark Educational Services, LLC (Aramark), is a limited liability company organized and existing under the laws of the State of Delaware. At all times relevant, Aramark was the possessor of land and premises located at 615 McCallie Avenue, Suite 107, Chattanooga, Tennessee, at which location it operated, under agreement with the University of Tennessee-Chattanooga, the “Chick-Fil-A” restaurant that prepared and sold the contaminated salad that caused Plaintiff’s injuries.

1.4 John Doe Defendants 1, 2, and 3, are growers, processors, distributors, manufacturers and sellers of of the contaminated lettuce and salad products that are the subject of this action. Plaintiff is presently unaware of the identities of John Doe Defendants 1, 2, and 3, but alleges that, at all relevant times, these entities, in the ordinary course of their businesses, grew, processed, distributed, manufactured and sold the contaminated romaine lettuce and salad products that are the subject of this action.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

The 2018 Romaine Lettuce *E. coli* O157:H7 Outbreak

2.1 As of June 28, 2018, at least 210 people in 36 states were sickened in an outbreak of *E. coli* O157:H7 linked to romaine lettuce grown in the Yuma, Arizona region. Illnesses also occurred in Canada and are not included in this count.

2.2 Illnesses started on dates ranging from March 13, 2018 to June 6, 2018. Ill people range in age from 1 to 88 years, with a median age of 28. Sixty-seven percent of ill people are female. Of 201 people with information available, 96 (48%) have been hospitalized, including 27 people who developed hemolytic uremic syndrome, a type of kidney failure. At least five victims died from their *E. coli* O157:H7 infections.

2.3 Epidemiologic, laboratory, and traceback evidence—generated during a large multi-agency investigation that included Centers for Disease Control and Prevention (CDC) and Food and Drug Administration (FDA), and officials from various state and local public health agencies—indicated that romaine lettuce from the Yuma growing region was the likely source of this outbreak.

2.4 In interviews, ill people answered questions about the foods they ate and other exposures they had before they became ill. Of the 166 people interviewed, 145 (87%) reported eating romaine lettuce in the week before their illness started. This percentage was significantly higher than results from a survey of healthy people in which 46% reported eating romaine lettuce in the week before they were interviewed. Some people who became sick in this outbreak did not report eating romaine lettuce but had close contact with someone else who got sick from eating romaine lettuce.

2.5 The FDA and state and local regulatory officials traced the romaine lettuce to many farms in the Yuma growing region. The FDA, along with CDC and state partners, started an environmental assessment in the Yuma growing region and collected samples of water, soil, and manure. CDC laboratory testing identified the outbreak strain of *E. coli* O157:H7 in water samples taken from a canal in the Yuma growing region. Whole genome sequencing analysis showed that the *E. coli* O157:H7 found in the canal water is closely related genetically to the *E. coli* O157:H7 from ill people. Laboratory testing for other environmental samples is continuing. FDA is continuing to investigate to learn more about how the *E. coli* O157:H7 bacteria could have entered the water and ways this water could have contaminated romaine lettuce in the region.

E. coli O157:H7 and Hemolytic Uremic Syndrome

2.6 *Escherichia coli* is the name of a common family of bacteria, most members of which do not cause human disease. *E. coli* O157:H7 is a specific member of this family that can cause bloody diarrhea (hemorrhagic colitis) in humans. In the years since *E. coli* O157:H7 was first identified as a cause of diarrhea, this bacterium has established a reputation as a significant public health hazard.

2.7 *E. coli* O157:H7 lives in the intestines of cattle and other ruminants. *E. coli* O157:H7 is also notable among pathogenic bacteria for its extremely low infectious dose—that is, the number of bacteria necessary to induce infection in a person. While for most pathogenic bacteria it takes literally millions of bacterial colonies to cause illness, it is now known that fewer than 50 *E. coli* O157:H7 bacteria can cause illness in a child. The practical import is that even a microscopic amount of exposure can trigger a devastating infection.

2.8 The most severe cases of the *E. coli* O157:H7 infection occur in young children and in the elderly, presumably because the immune systems in those age populations are the most vulnerable. After a susceptible individual ingests *E. coli* O157:H7, the bacteria attach to the inside surface of the large intestine and initiates an inflammatory reaction of the intestine. What ultimately results in painful bloody diarrhea and abdominal cramps characteristic of the intestinal illness.

2.9 The mean incubation period (time from ingestion to the onset of symptoms) of *E. coli* O157:H7 is estimated to be two to four days (range, 1-21 days). Typically, a patient with an acute *E. coli* O157:H7 infection presents with abdominal cramps, bloody diarrhea, and vomiting. The duration of diarrhea in children with *E. coli* O157:H7 infections are significantly longer than that of adults.

2.10 *E. coli* O157:H7 can produce a wide spectrum of disease from mild, non-bloody diarrhea, to severe bloody diarrhea accompanied by excruciating abdominal pain to life-threatening complications. In most infected individuals, the intestinal illness lasts about a week and resolves without any long-term effects. Antibiotics do not appear to aid in combating these infections, and recent medical studies suggest that antibiotics are contraindicated for their risk of provoking more serious complications. Apart from good supportive care, which should include close attention to hydration and nutrition, there is no specific therapy.

2.11 About 10% of individuals with *E. coli* O157:H7 infections (mostly young children) go on to develop hemolytic uremic syndrome (HUS), a severe, potentially life-threatening complication. The essence of the syndrome is described by its three central features: destruction of red blood cells, destruction of platelets (those blood cells responsible for clotting), and acute renal failure due to the formation of micro-thrombi that occlude microscopic blood vessels that make up the filtering units within the kidneys.

2.12 There is no known therapy to halt the progression of HUS. The active stage of the disease usually lasts one to two weeks, during which a variety of complications are possible. HUS is a frightening illness that even in the best American medical facilities has a mortality rate of about 5%. The majority of HUS patients require transfusion of blood products and develop complications common to the critically ill.

The Defendants' Manufacture, Distribution, and Sale of Contaminated Food Products

2.13 On March 19, 2018, and possibly other dates in the days or weeks before March 19, Freshpoint distributed the romaine lettuce products that are the subject of this action to Aramark at the Chick-Fil-A restaurant located at 615 McCallie Avenue, Suite 107, Chattanooga, Tennessee.

2.14 2.18 These romaine lettuce products were grown in the Yuma growing region; they were contaminated by *E. coli* O157:H7; and they were processed and distributed to Freshpoint by John Doe Defendants 1, 2, and 3.

2.15 Aramark utilized the contaminated romaine lettuce to prepare the salad sold to Plaintiff's fiancé on March 19, 2018, which salad was consumed by Plaintiff and caused the injuries described below.

Chandler Fussell's *E. coli* O157:H7 Infection

2.16 At the time of the events giving rise to this suit, Chandler Fussell was a student at the University of Tennessee at Chattanooga. His fiancé, Tatum Cary, was also a student at the school.

2.17 On or about March 19, 2018, Ms. Cary purchased a salad from the Chick-Fil-A restaurant located at 615 McCallie Avenue, Suite 107, Chattanooga, Tennessee, and brought it to Mr. Fussell, who ate it. The salad was made with, among other things, romaine lettuce and chicken. The romaine lettuce was contaminated by *E. coli* O157:H7.

2.18 On or about the evening of March 22, 2018, Mr. Fussell began to experience stomach cramps and nausea. The next day, he developed diarrhea and other gastrointestinal symptoms.

2.19 On or about March 25, 2018, Mr. Fussell sought medical attention from CHI Memorial hospital in Hixson, Tennessee, and was soon transferred to the CHI Memorial Hospital downtown location in Chattanooga, where he was admitted for further care and treatment.

2.20 Mr. Fussell was diagnosed with hemolytic uremic syndrome and experienced kidney failure. He required multiple plasmapheresis treatments and would remain hospitalized for almost two weeks.

2.21 While hospitalized, Mr. Fussell submitted a stool sample that tested positive for *E. coli* O157:H7. After discharge from the hospital, Mr. Fussell learned from public health officials from the State of Tennessee that he had tested positive for a strain of *E. coli* O157:H7 that matched the multi-state outbreak linked to romaine lettuce from the Yuma, Arizona growing region, described above.

2.22 Mr. Fussell's *E. coli* O157:H7 infection, which was proximately caused by his ingestion of contaminated romaine lettuce that the Defendants distributed and sold, has left him with permanent injuries requiring ongoing medical cost and treatment.

CAUSES OF ACTION

COUNT I – STRICT LIABILITY

3.1 Plaintiff incorporates the preceding paragraphs of this Complaint, by this reference, as if each and every of these paragraphs was set forth here in its entirety.

3.2 At all times relevant, Defendants were in the business of manufacturing and selling food products to the public. Defendants manufactured and sold the romaine lettuce and salad products that caused Mr. Fussell's *E. coli* O157:H7 infection and injuries.

3.3 The adulterated romaine lettuce and salad products that Defendants manufactured, distributed, and sold were, at the time they left Defendants' control, defective and unreasonably dangerous for their ordinary and expected use because they were contaminated by *E. coli* O157:H7, a bacterium dangerous to human health.

3.4 Because the adulterated romaine lettuce and salad products were contaminated by *E. coli* O157:H7, they were dangerous to an extent beyond that which would be contemplated by the ordinary consumer who purchases them.

3.5 Additionally, because of their contamination by *E. coli* O157:H7, the romaine lettuce and salad products were not put on the market by a reasonably prudent manufacturer or seller, assuming that the manufacturer or seller knew or should have known of the products' dangerous condition.

3.6 The romaine lettuce and salad products were expected to reach the consumer, i.e. Mr. Fussell, and be consumed by him, without substantial change. Mr. Fussell used the product in the manner expected and intended by consuming it.

3.7 Mr. Fussell suffered injury and damages as a direct and proximate result of the defective and unreasonably dangerous condition of the adulterated food products that Defendants manufactured, distributed, and sold. These damages include but are not limited to: physical and mental pain and suffering, past and future, 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.

COUNT II – NEGLIGENCE AND NEGLIGENCE PER SE

3.8 Plaintiff incorporates the preceding paragraphs of this Complaint, by this reference, as if each and every of these paragraphs was set forth here in its entirety.

3.9 Because the romaine lettuce and salad products were, at the time of their sale by Defendants, contaminated by *E. coli* O157:H7, the products were defective and unreasonably dangerous for their ordinary and expected use.

3.10 Defendants owed to Mr. Fussell a duty to comply with all applicable state and federal statutes, laws, regulations, and safety codes intended to ensure the purity and safety of their food products, including, but not limited to, the requirements of the Tennessee Food, Drug, and Cosmetic Act, Tennessee Code Annotated, Title 53.

3.11 Mr. Fussell is among the class of persons intended to be protected by these statutes, laws, regulations, and safety codes pertaining to the manufacture, distribution, storage, and sale of similar food products.

3.12 Defendants failed to comply with the provisions of the health and safety acts identified above, and, as a result, were negligent per se in their manufacture, distribution, and sale of food adulterated by *E. coli* O157:H7, a pathogen harmful to human health.

3.13 Defendants also owed a duty to Mr. Fussell to use reasonable care in the manufacture, distribution, and sale of their food products, which duty, if met, would have prevented or eliminated the risk that their food products would become contaminated with *E. coli* O157:H7 or any other dangerous pathogen.

3.14 Defendants' duty described in the foregoing paragraph required that they exercise reasonable care in the selection and approval of growers, processors, and other individuals and entities involved in the manufacture and production of the subject romaine lettuce product.

3.15 At the time of this sale, being contaminated by *E. coli* O157:H7, the romaine lettuce and salad products that Defendants manufactured and sold were not fit for the ordinary purpose for which food is used, and Defendants therefore breached their duty of reasonable care with regard to these products.

3.16 Mr. Fussell suffered personal injury as a direct result of Defendants' breach of their duty of reasonable care, as set forth above. These damages include, but are not limited to: physical and mental pain and suffering, past and future, 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.

COUNT III – BREACH OF WARRANTY

3.17 Plaintiff incorporates the preceding paragraphs of this Complaint, by this reference, as if each and every of these paragraphs were set forth here in its entirety.

3.18 Defendants are liable to Mr. Fussell for breaching express and implied warranties that they made regarding the adulterated romaine lettuce and salad products that Plaintiff consumed. These express and implied warranties included the implied warranties of merchantability and/or fitness for a particular use. Specifically, by offering food products for sale to the general public, Defendants impliedly warranted that these food products were safe to eat, that they were not adulterated with a harmful pathogen, and that the food products had been safely prepared under sanitary conditions.

3.19 The *E. coli* O157:H7 contaminated food products that are the subject of this action would not pass without exception in the trade and were therefore in breach of the implied warranty of merchantability.

3.20 The *E. coli* O157:H7 contaminated food products that are the subject of this action were not fit for the uses and purposes intended, i.e., human consumption, and the products were therefore in breach of the implied warranty of fitness for their intended use.

3.21 Defendants breached the implied warranties with regard to the contaminated food products that they sold, and that Mr. Fussell consumed, causing his injuries and losses.

3.22 Mr. Fussell's injuries proximately and directly resulted from Defendants' breach of implied warranties, and he is thus entitled to recover for all actual, consequential, and incidental damages that flow directly and in a foreseeable fashion from these breaches.

DAMAGES

4.1 As a direct and proximate cause of the wrongful conduct of the Defendants, as stated in each of the causes of action above, the Plaintiff has suffered economic and non-economic damages, both past and future, including, but not limited to: all medical bills for treatment related to and deriving from his *E. coli* O157:H7 infection, and all other out-of-pocket costs; lost wages and lost earning capacity; emotional distress, anguish, loss of enjoyment of life, and pain and suffering; reduced life expectancy; and all other ordinary, incidental and consequential damages as would be anticipated to arise under the circumstances. The Plaintiff reserves the right to prove the precise amount of damages at the trial of this action.

PRAYER FOR RELIEF

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

- a. For all economic and non-economic damages sustained as a direct and proximate result of the wrongful conduct of Defendants, as stated above, all in amounts to be proven at the time and place of trial;
- b. For such other and further relief as this Court deems just and equitable, including interest, costs, and reasonable attorney fees.

JURY DEMAND

The Plaintiff hereby demands a jury trial.

RESPECTFULLY SUBMITTED this 12th day of March 2020.

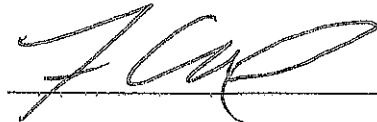
Timothy G. Wehner by FSC w/permission
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CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of this pleading or document was served upon the following counsel by mailing postage prepaid or by delivery to the person or office of such counsel:

Steve Powers
Baker Donelson
633 Chestnut St., Suite 1900
Chattanooga, TN 37450
Attorney for Freshpoint Atlanta, Inc.

This the 17 day of March, 2020.



COPY

Hamilton County

STATE OF TENNESSEE CIVIL SUMMONS

Case Number 19C346

page 1 of 1

Chandler Fussell, an individual Vs. Freshpoint Atlanta, Inc.; Aramark Educational Services, LLC; and John Doe Defendants 1, 2 and 3

Served On: Aramark Educational Services, LLC, through its registered agent, CT Corporation System, 300 Montvue Road, Knoxville, TN 37919-5546

You are hereby summoned to defend a civil action filed against you in Circuit Court, Hamilton County, Tennessee. Your defense must be made within thirty (30) days from the date this summons is served upon you.

Issued:

Clerk / Deputy Clerk

Attorney for Plaintiff: Timothy G. Wehner, Fred S. Clelland, Rainey, Kizer, Revlera & Bell, PLC, 105 S. Highland Ave., Jackson, TN 38301 (731) 423-2414

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NOTICE OF PERSONAL PROPERTY EXEMPTION

TO THE DEFENDANT(S): Tennessee law provides a ten thousand dollar (\$10,000) personal property exemption as well as a homestead exemption from execution or seizure to satisfy a judgment. The amount of the homestead exemption depends upon your age and the other factors which are listed in TCA § 26-2-301.

Mail list to Clerk, County

CERTIFICATION (IF APPLICABLE)

I, Clerk of County do certify this to be a true and correct copy of the original summons issued in this case.

Date: Clerk / Deputy Clerk

OFFICER'S RETURN: Please execute this summons and make your return within ninety (90) days of issuance as provided by law.

I certify that I have served this summons together with the complaint as follows:

Date: By: Please Print: Officer, Title

Agency Address Signature

RETURN ON SERVICE OF SUMMONS BY MAIL: I hereby certify and return that on I sent postage prepaid, by registered return receipt mail or certified return receipt mail, a certified copy of the summons and a copy of the complaint in the above styled case, to the defendant. On I received the return receipt, which had been signed by on. The return receipt is attached to this original summons to be filed by the Court Clerk.

Date: Notary Public / Deputy Clerk (Comm. Expires)

Signature of Plaintiff Plaintiff's Attorney (or Person Authorized to Serve Process) (Attach return receipt on back)

ADA: If you need assistance or accommodations because of a disability, please call ADA Coordinator, at ()