

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Christine Bento,

Plaintiff,

—vs.—

CHIPOTLE MEXICAN GRILL, INC.,
a Delaware Corporation,

Defendant.

Case No.:

COMPLAINT FOR DAMAGES

JURY DEMAND

COMES NOW, the Plaintiff, Christine Bento, (“Plaintiff”) by and through her attorneys of record, asserting claims against the Defendant, Chipotle Mexican Grill, Inc., a Delaware Corporation Inc., (“Defendant” or “Chipotle”), and states and alleges as follows:

I. PARTIES

1. The Plaintiff, at all times material to this Complaint, is and was a resident of Hopkins, Minnesota, and is a citizen of the State of Minnesota

2. The Defendant, Chipotle Mexican Grill, Inc., is a corporation organized and existing under the laws of the State of Delaware. Chipotle, together with its subsidiaries (collectively the “Company”), develops and operates fast-casual, fresh Mexican food restaurants. As of June 30, 2015, the Company operated 1,847 Chipotle restaurants throughout the United States. At all times relevant to the allegations contained in this Complaint, the Company was registered to do business, and did conduct business, in the

State of Minnesota. The Company manufactured and sold the food products that are the subject of this action at its restaurant location in St. Louis Park, Minnesota.

II. JURISDICTION AND VENUE

3. This Court has jurisdiction over the subject matter of this action pursuant to 28 USC § 1332(a) because the matter in controversy exceeds \$75,000.00, exclusive of costs, it is between citizens of different states, and because the Defendant has certain minimum contacts with the State of Minnesota such that the maintenance of the suit in this District does not offend traditional notions of fair play and substantial justice.

4. Venue in the United States District Court for the District of Minnesota is proper pursuant to 28 USC § 1391(a)(2) because a substantial part of the events or omissions giving rise to the Plaintiff's claims and causes of action occurred in this judicial district, and because the Defendant was subject to personal jurisdiction in this judicial district at the time of the commencement of the action.

III. GENERAL ALLEGATIONS

The *Salmonella* Newport Outbreak

5. The Minnesota Department of Health (MDH) and the Minnesota Department of Agriculture (MDA) have identified tomatoes as the source of the *Salmonella* Newport outbreak that has sickened dozens of people who ate at Chipotle restaurants in Minnesota since late August. Investigators are working with state and federal partners to trace the tomatoes back to the farm of origin.

6. Since the outbreak was reported in early September, additional illnesses have been confirmed by MDH. A total of 64 cases and 22 locations now have been

linked to the outbreak. Nine people have been hospitalized. Meal dates for the cases range from August 16 to August 28 and people became ill between August 19 and September 3. The cases range in age from 10 to 69 years and are from 13 metro counties and several greater Minnesota counties.

7. “We expected to see additional cases because it can take up to 10 days for symptoms of *Salmonella* to appear, another few days to a week before people go to their doctors and the cases get reported to us,” said MDH Epidemiologist Dana Eikmeier.

Salmonella

8. The term *Salmonella* refers to a group or family of bacteria that variously cause illness in humans. The taxonomy and nomenclature of *Salmonella* have changed over the years and are still evolving. Currently, the Centers for Disease Control and Prevention (CDC) recognizes two species, which are divided into seven subspecies. These subspecies are divided into over 50 serogroups based on somatic (O) antigens present. The most common *Salmonella* serogroups are A, B, C, D, E, F, and G. Serogroups are further divided into over 2,500 serotypes and are typically identified through a series of tests of antigenic formulas listed in a document called the Kauffmann-White Scheme published by the World Health Organization Collaborating Centre for Reference and Research on *Salmonella*.

9. *Salmonella* is an enteric bacterium, which means that it lives in the intestinal tracts of humans and other animals. *Salmonella* bacteria are usually transmitted to humans by eating foods contaminated with animal feces or foods that have been handled by infected food service workers who have practiced poor personal hygiene.

Contaminated foods usually look and smell normal and are often of animal origin, such as beef, poultry, milk, or eggs, but all foods, including vegetables, may become contaminated. Many raw foods of animal origin are frequently contaminated, but thorough cooking kills *Salmonella*.

Medical Complications of Salmonellosis

10. Several bacteria, including *Salmonella*, induce reactive arthritis. The term reactive arthritis refers to an inflammation of one or more joints, following an infection localized at a site distant from the affected joints. The predominant site of the infection is the gastrointestinal tract. And although the resulting joint pain and inflammation can resolve completely over time, permanent joint damage can occur.

11. Reiter's syndrome, a form of reactive arthritis, is an uncommon but debilitating syndrome caused by gastrointestinal or genitourinary infections. In a small number of persons, the joint inflammation is accompanied by conjunctivitis (inflammation of the eyes), and uveitis (painful urination). This triad of symptoms is called Reiter's Syndrome. The reactive arthritis associated with Reiter's may develop after a person eats food that has been tainted with bacteria. The most common gastrointestinal bacteria involved are *Salmonella*, *Campylobacter*, *Yersinia*, and *Shigella*. Although a triad of arthritis, conjunctivitis, and urethritis characterizes Reiter's syndrome, not all three symptoms occur in all affected individuals.

12. *Salmonella* is also a cause of a condition called post infectious irritable bowel syndrome (IBS), which is a chronic disorder characterized by alternating bouts of constipation and diarrhea, both of which are generally accompanied by abdominal

cramping and pain. In one recent study, over one-third of IBS sufferers had had IBS for more than ten years, with their symptoms remaining fairly constant over time. IBS sufferers typically experienced symptoms for an average of 8.1 days per month.

The Plaintiff's Illness

13. The Plaintiff ate at the Defendant's restaurant at 5480 Excelsior Boulevard, St. Louis Park, MN 55416 on or about August 19 or 20, 2015.

14. On August 23, 2015 the Plaintiff began to experience diarrhea, stomach pains, headache, nausea, and vomiting.

15. Two days later, the Plaintiff sought treatment at Park Nicollet Clinic for her symptoms.

16. She was admitted to Park Nicollet-Methodist Hospital overnight and submitted a stool culture for testing.

17. The Plaintiff's stool culture ultimately tested positive for *Salmonella*.

18. Following her discharge from the hospital, Plaintiff continued to experience stomach pain, diarrhea, and cramping.

19. The Plaintiff was contacted by, and spoke with the Minnesota Department of Health regarding her *Salmonella* infection and its relation to the Defendant's restaurant.

IV. CAUSES OF ACTION

Strict Liability—Count I

20. The Defendant was at all times relevant hereto the manufacturer and seller of the adulterated food product that is the subject of the action.

21. The adulterated food product that the Defendant manufactured, distributed, and/or sold was, at the time it left the Defendant's control, defective and unreasonably dangerous for its ordinary and expected use because it contained *Salmonella*, a deadly pathogen.

22. The adulterated food product that the Defendant manufactured, distributed, and/or sold was delivered to the Plaintiff without any change in its defective condition. The adulterated food product that the Defendant manufactured, distributed, and/or sold was used in the manner expected and intended, and was consumed by the Plaintiff.

23. The Defendant owed a duty of care to the Plaintiff to design, manufacture, and/or sell food that was not adulterated, which was fit for human consumption, that was reasonably safe in construction, and that was free of pathogenic bacteria or other substances injurious to human health. The Defendant breached this duty.

24. The Defendant owed a duty of care to the Plaintiff to design, prepare, serve, and sell food that was fit for human consumption, and that was safe to the extent contemplated by a reasonable consumer. The Defendant breached this duty.

25. Plaintiff suffered injury and damages as a direct and proximate result of the defective and unreasonably dangerous condition of the adulterated food product that the Defendant manufactured, distributed, and/or sold.

Breach of Warranty—Count II

26. The Defendant is liable to the Plaintiff for breaching express and implied warranties that it made regarding the adulterated food product that the Plaintiff purchased. These express and implied warranties included the implied warranties of

merchantability and/or fitness for a particular use. Specifically, 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.

27. Plaintiff alleges that the *Salmonella*-contaminated food that the Defendant sold to them would not pass without exception in the trade and was therefore in breach of the implied warranty of merchantability.

28. Plaintiff alleges that the *Salmonella*-contaminated food that the Defendant sold to them 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.

29. As a direct and proximate cause 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 III

30. The Defendant owed to the Plaintiff a duty to use reasonable care in the manufacture, distribution, and sale of its food product, the breach of which duty would have prevented or eliminated the risk that the Defendant's food products would become contaminated with *Salmonella* or any other dangerous pathogen. The Defendant breached this duty.

31. The 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

product, but 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.

32. The Defendant had a duty to properly supervise, train, and monitor its respective employees, and to ensure their compliance with all applicable statutes, laws, regulations, or safety codes pertaining to the manufacture, distribution, storage, and sale of similar food products, but it failed to do so, and was therefore negligent.

33. The Defendant had a duty to use ingredients, supplies, 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, but it failed to do so, and was therefore negligent.

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

Negligence Per Se—Count IV

35. The Defendant had 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.*), and the Minnesota Food Law (Minn. Stat. § 31.01 *et seq.*)

36. The 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 *Salmonella*, a deadly pathogen.

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

V. DAMAGES

38. The Plaintiff has suffered general, special, incidental, and consequential damages as the 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. 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.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays for judgment against 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. Ordering statutory prejudgment interest;

- C. Awarding Plaintiff 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.

Dated: September 24, 2015

JARDINE, LOGAN & O'BRIEN, P.L.L.P.

By: *Viola Hruby*

JOSEPH E. FLYNN (A.R.#165712)

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MARLER CLARK, LLP, PS

/s William D. Marler

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(Admission *pro hac vice* pending)

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CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Christine Bento,

(b) County of Residence of First Listed Plaintiff Hennepin County, MN (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Joseph E. Flynn (#165712)
Vicki A. Hruby (#0391163)
JARDINE, LOGAN & O'BRIEN, PLLP
8519 Eagle Point Blvd., #100
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651-290-6500

William D. Marler (WSBA #17233)
MARLER CLARK LLP, PS
1301 Second Ave., #2800
Seattle, WA 98101
206-346-1888

DEFENDANTS

Chipotle Mexican Grill, Inc., a Delaware Corporation.

County of Residence of First Listed Defendant Denver County, CO (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES. (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
Incorporated or Principal Place of Business In This State
Incorporated and Principal Place of Business In Another State
Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, PERSONAL INJURY, REAL PROPERTY, CIVIL RIGHTS, PRISONER PETITIONS, FOREFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed From State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation
7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute Under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 USC Sec. 1332(a)

Brief description of case: Plaintiff ingested food produced by Defendant that was contaminated with Salmonella

VII. REQUESTED IN COMPLAINT

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$75,000 +

CHECK YES only if demanded in complaint JURY DEMAND Yes No

VIII. RELATED CASE(S) IF ANY (See Instructions)

Judge: ADM/TNL

DOCKET NUMBER: 15-cv-3648 and 15-cv-3681

Date: 9/24/15

SIGNATURE OF ATTORNEY OF RECORD: s/ Vicki A. Hruby

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. Do not cite jurisdictional statutes unless diversity. Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.