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TANJA DZINOVIC,
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CASE NO.
PLAINTIFFS' FIRST AMENDED
COMPLAINT FOR DAMAGES

Plaintiff,

AETNA INSURANCE CORPORATION
151 Farmington Avenue
Hartford, CT 06156,

Involuntary—Plaintiff,

v.

L & K TRICOLI, LLC, d/b/a “Baker Street
Restaurant and Pub,” and;

JOHN DOE INSURANCE COMPANY, an
insurance company, and;

ENVIRON/WRIGHT COUNTY, INC., a
foreign corporation, d/b/a “Wright County
Egg,” and;

JANE DOE INSURANCE COMPANY, an
insurance company;

Defendants.

COMES NOW the plaintiff, Tanja Dzinovic, by and through her attorneys of record,

Denis W. Stearns, and the law firm of Marler Clark, L.L.P., P.S., to allege by way of first amended complaint as follows:

I. THE PARTIES

1.1 At all times relevant to this action, the plaintiff, Tanja Dzinovic, has lived in Pleasant Prairie, Wisconsin, making her a resident within the jurisdiction of this Court, and a citizen of the State of Wisconsin.

1.2 Involuntary Plaintiff Aetna Insurance Corporation is a medical insurance company that paid medical expenses associated with the illnesses suffered by the plaintiff. Aetna is a proper party to this lawsuit for the determination of the rights of subrogation, if any. The plaintiff denies that Aetna is entitled to full recovery of any amounts paid.

1.3 The defendant L & K Tricoli, LLC, d/b/a “Baker Street Restaurant and Pub” (“Baker Street”) is a domestic corporation that, at all times relevant, was engaged in the business of manufacturing and selling food and beverages in the State of Wisconsin. At all times relevant, Baker Street operated the restaurant located at 6208 Green Bay Road in Kenosha, Wisconsin, where it engaged in this business.

1.4 The defendant John Doe Insurance Company is an insurance company whose identity and principal place of business are currently unknown. John Doe Insurance Company is, as a result, hereby named pursuant to Wis. Stats. Sec. 807.12 by this fictitious designation, which will be amended upon identification of the proper party. By virtue of Wis. Stats. Sec. 803.04(2), John Doe Insurance Company is a proper party to this action and is jointly and severally liable to the plaintiff.

1.5 The defendant Environ/Wright County, Inc., d/b/a “Wright County Egg” is a foreign corporation that, at all times relevant, was engaged in the business of manufacturing and distributing shell eggs to customers nationally, including food distributors for resale.

1.6 The defendant Jane Doe Insurance Company is an insurance company whose identity and principal place of business are currently unknown. Jane Doe Insurance Company is, as a result, hereby named pursuant to Wis. Stats. Sec. 807.12 by this fictitious designation, which will be amended upon identification of the proper party. By virtue of Wis. Stats. Sec. 803.04(2), Jane Doe Insurance Company is a proper party to this action and is jointly and severally liable to the plaintiff.

II. GENERAL ALLEGATIONS

2.1 On July 13, 2010, the Kenosha County Health Department closed the Baker Street Restaurant and Pub due to an investigation into a *Salmonella* enteritidis outbreak that had occurred amongst patrons of the restaurant. Ultimately, at least 30 confirmed Salmonella enteritidis illnesses were linked to the outbreak, including the plaintiff’s.

2.2 On August 16, 2010, the Centers for Disease Control and Prevention announced that it had observed an approximate four-fold nationwide increase, in late June and early July 2010, in reports of the specific strain of Salmonella enteritidis that was involved in the outbreak at Baker Street Restaurant and Pub.

2.3 Also on August 16, 2010, the defendant Wright County Egg issued a recall of shell eggs that it had manufactured and distributed in recent months. Wright County Egg had distributed the recalled eggs to food wholesalers, distribution centers, and foodservice companies in California, Illinois, Missouri, Colorado, Nebraska, Minnesota, Wisconsin and Iowa. In turn,

the companies that Wright County Egg had distributed to further distributed and sold the recalled eggs nationally.

2.4 On information and belief, defendant Baker Street Restaurant and Pub purchased and used in the manufacture of its menu items Salmonella-contaminated shell eggs subject to defendant Wright County Egg's August 16, 2010 recall. As a result, food manufactured by defendant Baker Street Restaurant and Pub was contaminated, causing, in part, the outbreak described at paragraph 2.1 in Kenosha County, Wisconsin.

Tanja Dzinovic's *Salmonella* Infection

2.5 On or about Friday, June 18, 2010, at approximately 9 p.m., Tanja Dzinovic and her boyfriend dined at the Baker Street Restaurant and Pub.

2.6 Ms. Dzinovic ordered a California Cobb Salad that included grilled chicken, avocado, bacon, hard boiled eggs, red onions, tomatoes, bleu cheese crumbles, with balsamic vinegar dressing. She also had some Chicken dumpling soup with bread, and ate a small amount from her boyfriend's plate, which included fried fish and salad from the salad bar.

2.7 Ms. Dzinovic's gastrointestinal symptoms began on or about Monday morning, June 21, 2010, with severe abdominal cramps, diarrhea, and general malaise. The symptoms persisted for the next two days, before becoming significantly worse on Wednesday, June 23, 2010.

2.8 Ms. Dzinovic's symptoms continued to worsen throughout the day on Wednesday, causing her to seek medical treatment from Aurora Medical Hospital on Thursday, June 24, 2010. A stool sample taken at the hospital confirmed that she had been infected by *Salmonella enteritidis*.

2.9 Ms. Dzinovic was discharged after being treated at Aurora Medical Hospital. She

continues to suffer from gastrointestinal symptoms as a direct result of the Salmonella infection that she contracted by consuming the Salmonella-contaminated food manufactured and sold by the defendants.

III. CAUSES OF ACTION

Strict Liability—Count I (against both defendants)

3.1 At all times relevant to this action, the defendants were the sellers of the adulterated food product that, as a result of its defective and unsafe condition, injured the plaintiff.

3.2 The adulterated food product that the defendants manufactured, distributed, or sold was, at the time it left the defendants' control, defective and unreasonably dangerous for its ordinary and expected use due to its contamination with *Salmonella*, a deadly pathogen.

3.3 The adulterated food product that the defendants manufactured, distributed, or sold was delivered to the plaintiff without any change in its defective condition.

3.4 The adulterated food product that the defendants manufactured, distributed, or sold was used in the manner expected and intended.

3.5 The 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 defendants manufactured, distributed, and sold.

Negligence—Count II

3.6 For purposes of this cause of action, the plaintiff incorporates all of the above-stated allegations as if fully set forth here.

3.7 The defendants owed to the plaintiff a duty to use reasonable care in the manufacture, distribution, and sale of their food products, the observance of which duty would

have prevented or eliminated the risk that such food products would become contaminated with *Salmonella* or any other dangerous pathogen. The defendants breached this duty.

3.8 The defendants had a duty to comply with all statutes, laws, regulations, and safety codes pertaining to the manufacture, distribution, storage, and sale of their food products, but failed to do so, and were therefore negligent. The plaintiff is among the class of persons intended to be protected by these statutes, laws, regulations, safety codes and provision pertaining to the manufacture, distribution, storage, and sale of similar food products.

3.9 The defendants had a duty to properly supervise, train, and monitor their employees, and to ensure their employees' compliance with all applicable statutes, laws, regulations, and safety codes pertaining to the manufacture, distribution, storage, and sale of similar food products, but the defendants failed to do so and were therefore negligent.

3.10 The defendants 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 the defendants failed to do so and were therefore negligent.

3.11 The defendants owed a duty of care to the plaintiff to design, manufacture, and/or sell food that was not adulterated, that 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 defendants breached this duty.

3.12 The defendants 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 defendants breached this duty.

3.13 As a direct and proximate result of the defendants' acts and omissions of negligence, the plaintiff sustained injuries and damages in an amount to be determined at trial.

IV. DAMAGES

4.1 For purposes of pleading damages, the plaintiff incorporates all of the above-stated allegations as if fully set forth here.

4.2 The plaintiff suffered general, special, incidental, and consequential damages as a 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. Such damages include, but are not limited to: past and future damages for pain and suffering, loss of enjoyment of life, mental distress, and fear of future illness and death; past and future medical expenses and other costs or related out-pocket expense; and any other damages that are reasonably anticipated to arise under the circumstances.

JURY DEMAND

The plaintiff hereby demands a jury trial.

PRAYER FOR RELIEF

WHEREFORE, the plaintiff prays for judgment against the defendants 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. Awarding plaintiff her reasonable attorneys fees and costs, to the fullest extent allowed by law; and

C. Granting all such additional or further relief as this Court deems just and equitable under the circumstances.

DATED this ___ day of August, 2010.

ON BEHALF OF THE PLAINTIFFS:

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