

**IN THE SUPERIOR COURT OF THE STATE OF NORTH CAROLINA
IN AND FOR THE COUNTY OF CUMBERLAND**

TARA FOSTER,)
)
Plaintiff,)
)
vs.)
)
AROMA HOTELS, LLC, dba)
HOLIDAY INN FAYETTEVILLE -)
BORDEAUX, 1707 OWEN DRIVE,)
FAYETTEVILLE, NORTH CAROLINA,)
)
Defendant.)
_____)

COMPLAINT FOR DAMAGES

The plaintiff, Tara Foster, by and through her counsel of record, Steven C. Lawrence of Anderson, Johnson, Lawrence & Butler, L.L.P., and William D. Marler of Marler Clark, LLP, PS, (pro hac vice admission pending) states, alleges and complains as follows:

I.

PARTIES

1. The plaintiff, Tara Foster, is a resident of Arden, Buncombe County, North Carolina (hereinafter “plaintiff”). Ms. Foster purchased and consumed food and drink at the defendant’s hotel Café Bordeaux located at 1701 Owen Drive, Fayetteville, North Carolina causing her infection by *Salmonella* and related injuries, described below.

2. The defendant Aroma Hotels, LLC, dba Holiday Inn Fayetteville – Bordeaux is a

properly licensed North Carolina limited liability company doing business as “Holiday Inn” maintaining and operating restaurant location at 1701 Owen Drive, Fayetteville, North Carolina (hereinafter “defendant”). At all times material hereto, the defendant was carrying on in its ordinary course of business the manufacture, preparation, service and sale of food to its customers at that location, and as such, was doing business in Cumberland County, North Carolina.

II.

JURISDICTION AND VENUE

3. This court is vested with jurisdiction over the defendant because, at all times material hereto, it was a limited liability company doing business and maintaining a place of business in Cumberland County, North Carolina.

4. This court is vested with original jurisdiction because the damages sought by the plaintiff are in excess of Ten Thousand Dollars (\$10,000.00 USD).

5. The venue of this action is proper in Cumberland County, pursuant to N.C. Gen. Stat. §§ 1-79 and 1-80, because the cause of action arose in this county.

III.

FACTUAL ALLEGATIONS

6. The North Carolina Department of Health and the Cumberland County Health Department have reported that that 86 people reported having signs or symptoms consistent with *Salmonella* infections, and at least five people have been hospitalized after eating at one of two restaurants at the Holiday Inn Bordeaux in Fayetteville. All seem to have eaten at the All American Sports Bar and Grill and The Café Bordeaux within the hotel. At least 12 cases of

Salmonella symptoms were in people from out-of-state. 14 reported cases were staff members at the hotel.

7. The plaintiff purchased and consumed food on May 8 and 9, 2013 at the defendant's Café Bordeaux.

8. Onset of plaintiff's gastrointestinal symptoms caused by the *Salmonella* bacteria she had ingested from the food prepared for her on May 8 and May 9, 2013 by the defendant occurred on May 10, 2013.

9. Over the next three days, plaintiff's symptoms progressed to include abdominal cramps, diarrhea, body aches, headaches, dehydration, heart palpitations, hypersensitivity to light and touch, and other gastrointestinal difficulties. Plaintiff was seen in the Emergency Room at Mission Hospital in Asheville, North Carolina on May 13, 2013 and she was admitted on May 13, 2013. While hospitalized her symptoms continued and she underwent a colonoscopy and biopsy. Her stool cultured positive for *Salmonella*. Plaintiff was discharged on May 17, 2013.

10. Plaintiff's symptoms continue.

VI.

FIRST CAUSE OF ACTION

(Product Liability and Breach of Warranties)

11. The defendant is the owner and operator of the retail food establishment that manufactured and sold the adulterated food that injured the plaintiff. The defendant is the product manufacturer of the food that injured the plaintiff under the North Carolina Product Liability Act ("Act"), N.C. Gen. Stat. §§ 99B-1 et al., and similar statutes. The contaminated food that the defendant prepared and sold, and that the plaintiff consumed, was a product within

the meaning of the Act and similar statutes. The defendant is the product manufacturer and seller of the *Salmonella*-contaminated food that injured the plaintiff.

12. Under the Act, and similar statutes, the defendant owed to the plaintiff a duty to manufacture a product that was reasonably safe in construction, that did not materially deviate from applicable design specifications, and that otherwise did not deviate materially from identical units in the defendant's product line.

13. Under the Act, and similar statutes, the defendant owed to the plaintiff a duty to manufacture a product that conformed to its express warranties that the food it prepared and sold was, among other things, fit for human consumption, healthful, and suitable for all persons.

14. Under the Act, and similar statutes, the defendant owed to the plaintiff a duty to manufacture a product that conformed to its implied warranties, including the implied warranty of merchantability, and that was fit for human consumption.

15. The plaintiff alleges that the food that the defendant manufactured and sold, and that the plaintiff consumed, was not reasonably safe in construction and did not conform to the defendant's express or implied warranties because it was contaminated and adulterated with, among other things, *Salmonella*.

16. The plaintiff, as a customer at defendant's restaurant, is a person who the defendant might reasonably have expected to use, consume or be affected by its potentially contaminated food products.

17. Because the food that the defendant manufactured and sold and that was later consumed by the plaintiff was adulterated, was not reasonably safe in design and construction, was not fit for human consumption, lacked adequate warnings and instructions, and did not conform to the defendant's express or implied warranties, the defendant breached both express

and implied warranties, and is liable to the plaintiff for the harm proximately caused to her by its manufacture and sale of contaminated and adulterated food products.

VII.

SECOND CAUSE OF ACTION

(Negligence)

18. The defendant manufactured, distributed, and sold a food product that was adulterated, not fit for human consumption, and that was not reasonably safe as designed, manufactured, or sold.

19. The defendant was negligent in manufacturing, distributing, and selling a food product that was adulterated with *Salmonella*, not fit for human consumption, and not reasonably safe because it was contaminated with *Salmonella* and because adequate warnings or instructions were not provided, including but not limited to the warning that its product may contain *Salmonella*, and thus should not be given to, or eaten by humans.

20. The defendant had a duty to properly supervise, train, and monitor its employees, or the employees of its agents or subcontractors, engaged in the preparation of its food products, to ensure compliance with the defendant's operating standards and to ensure compliance with all applicable health regulations. The defendant failed to properly supervise, train, and monitor these employees engaged in the manufacture, preparation and delivery of the food product defendants sold to its patrons, and thus breached that duty.

21. The defendant owed a duty to the plaintiffs to comply with all statutory and regulatory provisions that pertained or applied to the manufacture, distribution, storage, labeling, and sale of its food products, including all applicable local, state, and federal health and safety regulations, such as N.C. Gen. Stat. Article 12, Chapter 106, and the Federal Food, Drug and

Cosmetics Act. The defendant, by its manufacture, distribution, storage, labeling, and sale of adulterated, unsafe, and unhealthy food products to the plaintiff, failed to conform to this duty.

22. The defendant owed the plaintiff the duty to exercise reasonable care in the preparation and sale of its food products, as it was reasonably foreseeable that the defendant's manufacture and sale of food products contaminated with *Salmonella* would cause injury and harm to its customers, including the plaintiff. The defendant breached that duty, and thereby caused injury to the plaintiff.

23. The plaintiff, as customer and patron of the defendant's restaurant, was the defendant's business invitee and is therefore among the class of persons designed to be protected by the statutory and regulatory provisions pertaining to the manufacture, distribution, storage, labeling, and sale of food by the defendant.

24. The defendant was negligent in producing and selling a food product contaminated with *Salmonella*. The defendant's negligent acts and omissions included, but were not limited to:

(a) Failed to adequately maintain or monitor the sanitary conditions of its food, drink, water, premises, and employees;

(b) Failed to properly operate its restaurant in a safe, clean, and sanitary manner;

(c) Failed to apply its food safety policies and procedures to ensure the safety and sanitary conditions of its food, drink, water, premises, and employees;

(d) Failed to prevent the transmission of *Salmonella* from its food, drink, water, premises, or employees to its business invitees and customers;

(e) Failed to properly train its employees and agents how to prevent the

transmission of *Salmonella* on its premises, or in its food, drink and water;

(f) Failed to properly supervise its employees and agents to prevent the transmission of *Salmonella* on its premises, or in its food, drink and water;

(g) Failed to design, implement, have, or enforce a hand-washing or glove-use policy effective to prevent the transmission of *Salmonella* on its premises, or in its food, drink and water;

(h) Failed to design or implement an employee sick-leave policy that would allow, encourage, or cause employees to not work while sick;

25. The defendant breached the aforementioned duties as alleged herein.

VIII.

DAMAGES

26. The plaintiff has suffered general and special, incidental and consequential damages as the direct and proximate result of the acts and omissions of the defendant, which damages are in excess of Ten Thousand Dollars (\$10,000.00) and shall be fully proven at the time of trial. These damages include, but are not limited to: damages for wage loss; medical and medical-related expenses; travel and travel-related expenses; emotional distress; fear of harm and humiliation; physical pain; physical injury; and all other ordinary, incidental and consequential damages as would be anticipated to arise under the circumstances.

PRAYER FOR RELIEF

WHEREFORE, the plaintiff prays for the following relief:

- (1) For a trial by jury;
- (2) That the plaintiff recover judgment for damages for such sums in excess of \$10,000.00, as shall be determined to fully and fairly compensate her for all general, special,

incidental and consequential damages respectively incurred by them as the direct and proximate result of the acts and omissions of the defendant;

(3) That the court awards the plaintiff her costs, disbursements and reasonable attorneys' fees incurred;

(4) That the court award the plaintiff the opportunity to amend or modify the provisions of this complaint as necessary or appropriate after additional or further discovery is completed in this matter, and after all appropriate parties have been served; and

(5) That the court awards such other and further relief as it deems necessary and equitable in the circumstances.

Dated May _____, 2013

Respectfully submitted,
The Plaintiffs,
By Their Attorneys,

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Pending Admission Pro Hac Vice

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