

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Kelly Aherns,

Plaintiff,

—vs.—

CHIPOTLE MEXICAN GRILL, INC.,
a Delaware Corporation,

Defendant.

Case No.:

COMPLAINT FOR DAMAGES

JURY DEMAND

COMES NOW, the Plaintiff, Kelly Aherns, (“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 Minneapolis, 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 locations in Richfield, Minnetonka, and/or Bloomington (Mall of America), 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. In September 2015, Minnesota Department of Health (MDH) and Minnesota Department of Agriculture (MDA) investigators reported an outbreak of *Salmonella* Newport among customers of at least 22 different Chipotle restaurants located primarily in the Twin Cities metro area, with one in St. Cloud and one in Rochester. Meal dates ranged from August 16 to August 28, 2015. Illness onset dates

occurred between August 19 and September 3. There were at least 64 outbreak-associated cases. Nine persons required hospitalization.

6. MDH and MDA have identified tomatoes as the source of the *Salmonella* Newport outbreak, and are working with state and federal partners to trace the tomatoes back to the farm of origin.

Chipotle's Other Outbreaks in 2015

7. In August 2015, Ventura County Environmental Health and Ventura County Public Health Division staff investigated an outbreak of Norovirus among patrons of a Chipotle restaurant located in the Simi Valley Towne Center in California. During the week of August 18, 2015, about 300 customers and 18 restaurant employees reported symptoms. Laboratory testing of patient specimens confirmed the presence of Norovirus.

8. In or around the end of July 2015, the Chipotle restaurant located at 1415 Broadway, Seattle, Washington, which restaurant was, at all times relevant, owned and operated by the defendant, was the source of an *E. coli* O157:H7 outbreak that sickened at least five people, including the plaintiff.

9. On December 11, 2015, public health officials in Boston reported an increased number of people deemed to be norovirus cases. The recent spike in norovirus cases was ultimately linked to the consumption of contaminated food at the Chipotle Mexican Grill in Cleveland Circle in Brighton, Massachusetts. Ultimately, the outbreak claimed at least 140 victims, many of whom were students at Boston College.

10. From mid-October through the beginning of December 2015, a total of 55 people were infected by *E. coli* O26 in multiple states as a result of consuming

contaminated food at Chipotle restaurants. The majority of illnesses were reported from Washington and Oregon during October 2015. The number of ill people reported from each state was as follows: California (3), Delaware (1), Illinois (1), Kentucky (1), Maryland (1), Minnesota (2), New York (1), Ohio (3), Oregon (13), Pennsylvania (2), and Washington (27).

11. In December 2015, a second outbreak of a different, rare strain of *E. coli* O26 was identified by public health officials, who concluded that the outbreak was associated with the consumption of contaminated food at Chipotle restaurants. A total of five people infected with this strain of *E. coli* O26 were reported from three states. The number of ill people reported from each state was as follows: Kansas (1), North Dakota (1), and Oklahoma (3).

12. In recent weeks, the US District Attorney's office for the Central District of California has served Chipotle with subpoenas for information relating to the above-described norovirus outbreak at Chipotle's Simi Valley, California restaurant that was the source of the outbreak. The criminal investigation is ongoing.

Salmonella

13. 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*.

14. *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

15. 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.

16. 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.

17. *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

18. Prior to her *Salmonella* infection, Plaintiff was a regular customer at Minneapolis metro-area chipotle restaurants, including the Minnetonka, Richfield, and Mall of America locations. She ate at the Richfield location on August 17 and 25, the Minnetonka location on August 15, and the Mall of America location on August 28, 2015.

19. Food that Plaintiff consumed on one or more of these occasions was contaminated by *Salmonella*, leading to Plaintiff's Salmonellosis illness and injuries:

20. Onset of Ms. Aherns's symptoms occurred on or about August 28, 2015, and included nausea, abdominal cramps, bouts of severe diarrhea, and a host of other flu-like symptoms.

21. Plaintiff was seen in the emergency department at Park Nicollet Methodist Hospital on or about August 30. She underwent abdominal/pelvic CT scan that showed ascending and transverse colitis, likely of an infectious etiology. After several hours in the emergency department, Plaintiff developed supraventricular tachycardia, and as a result was placed on continuous pulse oximetry and underwent electrocardiogram.

22. Plaintiff was discharged the same day, but her symptoms continued. She learned from MDH that she had tested positive for Salmonella on or about September 5, and that the DNA profile of her bacterial isolate was an indistinguishable match to the Chipotle Salmonella outbreak strain.

23. Plaintiff's gastrointestinal symptoms gradually waned over time, but she continued to feel unwell with dizziness, lightheadedness and fatigue. Over the ensuing several months, Plaintiff underwent a variety of diagnostic tests and procedures to determine the cause of her neurological symptoms, incurring substantial medical bills in the process. Ultimately, Plaintiff's neurological symptoms were causally connected to the severe dehydration she had experienced during the acute Salmonellosis illness.

24. Plaintiff underwent treatment for the neurological symptoms for several months, and the costs of her treatment, to date, total \$20,476.20. Plaintiff has also incurred other economic losses, as well as severe and likely permanent emotional and physical injuries, as a proximate result of her consumption of Salmonella-contaminated food at Chipotle restaurants in August 2015.

IV. CAUSES OF ACTION

Strict Liability—Count I

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

26. 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.

27. 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.

28. 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.

29. 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.

30. 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

31. 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.

32. 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.

33. 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.

34. 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

35. 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.

36. 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.

37. 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.

38. 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.

39. 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

40. 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.*)

41. 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.

42. 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

43. 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: February 5, 2016

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

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