

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT – LAW DIVISION**

Melissa Andrews,)	
)	
Plaintiff,)	
)	
vs.)	CASE NO:
)	
Carbón on 26 th , LLC d/b/a)	
Carbón Live Fire Mexican Grill,)	
)	
Defendant.)	

COMPLAINT AT LAW

NOW COMES the plaintiff, MELISSA ANDREWS, by and through her attorneys, MARLER CLARK, L.L.P., P.S. (pending admission pro hac vice) and GARY NEWLAND of NEWLAND AND NEWLAND, and by this complaint complains of the defendant CARBON ON 26TH, LLC, d/b/a CARBON LIVE FIRE MEXICAN GRILL (herein after referred to as Carbón Live Fire Mexican Grill), hereby states, alleges, and complains as follows:

COUNT I

STATEMENT OF FACTS

- 1.1 The plaintiff, Melissa Andrews, is a resident of Chicago, Cook County, Illinois.
- 1.2 The defendant, Carbón Live Fire Mexican Grill, is an Illinois limited liability company with its principal place of business located at 300 W. 26th Street location, Chicago, Illinois. At all times relevant to this Complaint, Carbón Live Fire Mexican Grill manufactured and sold food products within the State of Illinois.
- 1.3 This Court is vested with jurisdiction over the defendant because the defendant resides, and purports to have its respective principal places of business located, within the

County of Cook, State of Illinois, and the events alleged in this Complaint occurred in the County of Cook, State of Illinois.

1.4 Venue is proper in Cook County because the plaintiff resides and the defendant does business in the County of Cook.

E. coli O157:H7:

1.5 *Escherichia coli* are 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) and worse, in humans. 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. 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. Typically, a patient with an acute *E. coli* O157:H7 infection presents with abdominal cramps, bloody diarrhea, and vomiting. But *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 and life-threatening complications.

Acute Kidney Failure:

1.6 About five-to-ten percent of individuals infected with *E. coli* O157:H7 develop hemolytic uremic syndrome (HUS). HUS was first described in 1955, and today is recognized as the most common cause of kidney failure in children. HUS is believed to develop when the toxin from the bacteria, known as Shiga-like toxin (SLT), enters circulation through the inflamed bowel wall. Some organs, including the kidney, pancreas, and brain, seem more susceptible to SLT, perhaps due to the presence of increased numbers of receptors. By definition, when fully expressed, HUS presents with the triad of hemolytic anemia (destruction of red blood cells),

thrombocytopenia (low platelet count), and acute renal failure (loss of the filter function of the kidney).

1.7 There is no known therapy to halt the progression of HUS. The most important aspect of treating patients with HUS remains excellent supportive care, which includes: close observation in a tertiary-care pediatric facility; meticulous attention to fluid, electrolyte, and metabolic balance; optimal nutrition; and careful blood pressure control. The active stage of the disease usually lasts one-to-two weeks, during which a variety of complications are possible. Blood transfusions may be necessary several times during the course of the active stage. Dialysis or interventional therapy, such as plasma exchange (plasmapheresis), may be necessary for patients at risk for a bad outcome. HUS is a frightening condition that even in the best American centers has a mortality rate of about five percent. Among survivors, about five percent will eventually develop end stage renal disease (ESRD) with a resulting need for dialysis or even transplantation.

Carbón Live Fire Mexican Grill *E. coli* O157:H7 Outbreak:

1.8 The Chicago Department of Public Health (CDPH) has identified an outbreak of Shiga toxin-producing *E. coli* (STEC), impacting at least twenty-five Chicago residents. As part of the CDPH investigation, Carbón Live Fire Mexican Grill located at 300 W. 26th Street has been linked to the outbreak. Following a request from CDPH, Carbón Live Fire Mexican Grill closed voluntarily and is fully cooperating with the investigation. At least five individuals have been hospitalized as part of this outbreak. One of the leading symptoms caused by STEC is diarrhea, including bloody diarrhea. Infection can also lead to more serious complications.

1.9 CDPH recommends anyone who recently ate at the restaurant in question and is suffering these symptoms to see a medical provider for testing and inform them of the possibility of STEC.

1.10 “This is a serious condition that is treatable,” said CDPH Commissioner Julie Morita, M.D. “Anyone who believes they may be symptomatic and ate at this restaurant should see their medical provider immediately. CDPH is taking every precaution as part of our robust response in order to limit the impact of this outbreak.”

1.11 STEC can be transmitted through consumption of contaminated foods including undercooked beef, unpasteurized juice, raw milk and unwashed, raw produce. The menu items responsible for this outbreak have not yet been identified and the investigation is ongoing. Health officials continue to be onsite at the 300 W. 26th Street location and are also interviewing patients to rule out other possible exposures.

1.12 CDPH has also issued an alert to area physicians of the outbreak, providing medical guidance. Medical providers who suspect STEC should submit specimens for testing. Antibiotics and anti-diarrheal medicines should not be used to treat STEC as they may worsen symptoms. Medical experts instead encourage supportive medical care, including intravenous fluids, when necessary. Chicago providers must report diagnosed cases to the Chicago Department of Public Health.

Melissa Andrews E. coli O157:H7 illness:

1.13 On June 22, 2016, the plaintiff, Melissa Andrews, purchased three chicken tacos, chips, and salsa from the defendant, Carbón Live Fire Mexican Grill, through Grub Hub.

1.14 The plaintiff first became ill on June 26, 2016. Diarrhea began on Sunday, June 26, and then severe abdominal cramping began in the evening on Monday, June 27, 2016. She soon developed bloody diarrhea and nausea.

1.15 The plaintiff went to immediate care the morning of the June 28, 2016. She was told to go to the hospital for a CAT scan on her appendix. At the hospital, they did the scan, and noticed significant inflammation in her colon and some inflammation in her appendix. She had

several surgeons examine her abdomen and conclude that surgery to remove the appendix was not necessary.

1.16 The plaintiff was kept overnight for observation because of her symptoms and dehydration. She was put on IV fluids and given morphine to help with the abdominal pain. Overnight they added two antibiotics.

1.17 Plaintiff was put on bowel rest and not allowed food or water. They kept her another night to monitor her condition (due to the frequent bloody diarrhea) and then a third night because her white blood cell count went up. On July 1, 2016, after she was able to tolerate solid food, she was discharged.

1.18 The plaintiff continues to slowly recover.

COUNT II
STRICT PRODUCT LIABILITY

2.1 The 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.

2.2 The defendant manufactured, distributed, and sold the adulterated food that injured the plaintiff and caused her to become infected with *E. coli* O157:H7.

2.3 The defendant manufactures food and drink products for sale to the public.

2.4 Food and drink that is contaminated with *E. coli* O157:H7 is unsafe when put to the use reasonably foreseeable considering the nature of the product. Namely, *E. coli* O157:H7-contaminated food and drink is unfit for human consumption.

2.5 The food that the plaintiff purchased from the defendant was contaminated with *E. coli* O157:H7. The plaintiff's consumption of the contaminated food caused her to become infected with *E. coli* O157:H7 and to suffer injuries as a direct and proximate result.

2.6 The food that the plaintiff purchased and consumed was contaminated with *E. coli* O157:H7 when it left the defendant's control.

2.7. The Defendant is strictly liable to the Plaintiff for the harm proximately caused by its manufacture and sale of an unsafe and defective food product. The Plaintiff, Melissa Andrews, was injured both internally and externally and she suffered bodily pain and injury and mental anguish from then until now and will continue to so suffer in the future; that she has expended large sums of money in endeavoring to be cured of her said injuries; that she has lost and will in the future lose sums of money by reason of being unable to work as a result of said injuries.

WHEREFORE, plaintiff, Melissa Andrews, prays for judgment against the defendant, Carbón on 26th LLC, d/b/a Live Fire Mexican Grill, in an amount in excess of the minimum amount allowed to establish jurisdiction in the Law Division of the Circuit Court of Cook County, Illinois.

COUNT III
NEGLIGENCE

3.1 The 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.

3.2 The defendant designed, manufactured, distributed, and sold food and drink products that were adulterated with *E. coli* O157:H7 bacteria, a potentially deadly pathogen. These products, as a result of adulteration, were unfit for human consumption, and were not reasonably safe as designed, constructed, manufactured, and sold.

3.3 The defendant owed a duty to all persons who were the eventual consumers of its product, as well as all persons foreseeably at risk of secondary transmission of disease, to manufacture and sell food and drink that was safe to eat, was not adulterated with potentially deadly pathogens, like *E. coli* O157:H7, and that was not in violation of applicable food and safety regulations.

3.4 The defendant owed a duty to all persons who were the eventual consumers of its product, as well as all persons foreseeably at risk of secondary transmission of disease, to maintain its premises in a sanitary and safe condition so that no one eating food produced at the defendant's premises would be exposed to, or infected by, a potentially deadly pathogen, like *E. coli* O157:H7.

3.5 The defendant breached the duties it owed to persons who were the eventual consumers of its product, as well as all persons foreseeably at risk of secondary transmission of disease, by committing the following acts and omissions of negligence:

3.5.1 Failing to adequately maintain or monitor the sanitary conditions of its food, drink, water, premises, and employees;

3.5.2 Failing to properly operate the locations where it manufactured its food in a safe, clean, and sanitary manner;

3.5.3 Failing to prevent the transmission of *E. coli* O157:H7 from its food, drink, water, premises, or employees, to the ultimate consumers of its products, and those foreseeably at risk of secondary transmission of disease;

3.5.4 Failing to properly train its employees and agents how to prevent the transmission of *E. coli* O157:H7 on its premises, or in its food, drink and water;

3.5.5 Failing to properly supervise its employees and agents to prevent the transmission of *E. coli* O157:H7 on its premises, or in its food, drink and water;

3.5.6 Manufacturing and selling adulterated food in violation of 410 ILCS 620/3.2;

3.5.7 Storing, offering, and delivering food in violation of 410 ILCS 620/3.1 and 410 ILCS 620/3.4;

3.5.8 Failing to maintain its premises in a clean, sanitary, and healthful manner in violation of 410 ILCS 650/1 and 410 ILCS 650/2; and

3.5.9 Failing to properly and carefully select and monitor the entities from which it purchased and received raw materials used in the production of the its products.

3.6 The Defendant is strictly liable to the Plaintiff for the harm proximately caused by its manufacture and sale of an unsafe and defective food product. The Plaintiff, Melissa Andrews, was injured both internally and externally and she suffered bodily pain and injury and mental anguish from then until now and will continue to so suffer in the future; that she has expended large sums of money in endeavoring to be cured of her said injuries; that she has lost and will in the future lose sums of money by reason of being unable to work as a result of said injuries.

WHEREFORE, plaintiff, Melissa Andrews, prays for judgment against the defendant, Carbón on 26th LLC, d/b/a Live Fire Mexican Grill, in an amount in excess of the minimum amount allowed to establish jurisdiction in the Law Division of the Circuit Court of Cook County, Illinois.

COUNT IV
BREACH OF WARRANTY

4.1 The 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.

4.2 By offering food for sale to the general public, the defendant expressly warranted that such food was safe to eat, that it was not adulterated with a deadly pathogen, and that the food had been safely prepared under sanitary conditions.

4.3 By offering food for sale to the general public, the defendant also impliedly warranted that such food was safe to eat, that it was not adulterated with a deadly pathogen, and that the food had been safely prepared under sanitary conditions.

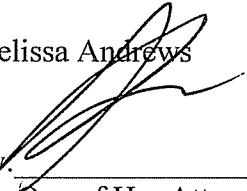
4.4 The defendant breached its express and implied warranties with regard to the food it manufactured and that was ultimately consumed by the plaintiff.

4.5 The Defendant is strictly liable to the Plaintiff for the harm proximately caused by its manufacture and sale of an unsafe and defective food product. The Plaintiff, Melissa Andrews, was injured both internally and externally and she suffered bodily pain and injury and mental anguish from then until now and will continue to so suffer in the future; that she has expended large sums of money in endeavoring to be cured of her said injuries; that she has lost and will in the future lose sums of money by reason of being unable to work as a result of said injuries.

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Respectfully submitted,

Melissa Andrews

By: 

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